WAGES AND THE STATE

A COMPARATIVE STUDY OF THE PROBLEMS OF STATE WAGE REGULATION

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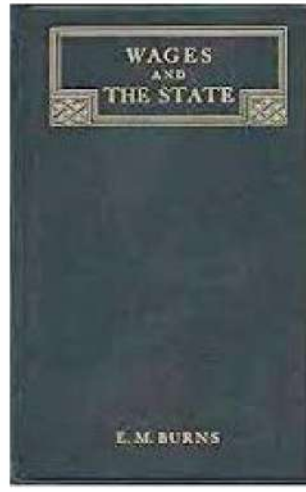

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PREFACE.

STATE intervention in industry has extended to the field of wages during the last thirty years. Arbitration Courts and Wages Boards, established by the State, determine and enforce rates of wages in many parts of the world, and there is a considerable demand for the further extension of this regulation. As yet, no comparative study of the operation of the various systems has appeared. In this book I have attempted to discover what degree of State wage-regulation exists, and to describe how the various systems are working, in such a way as to emphasize the fundamental problems at issue.

The book is divided into three parts. Part I contains an account of the extent of wage-regulation and the methods adopted in different countries. In Parts II and III I have studied the institutions at work, and have endeavoured to discover the causes which have prevented their smooth operation. Some of these causes are merely technical and administrative, and are discussed in Part II. Much more important are the problems relating to the principles on which wages are to be fixed. These problems form the subject-matter of Part III. The principles are difficult to disentangle. The method I have adopted is to exhibit their mode of operation, and to estimate their value by a study of the modifications which experience of their working has rendered necessary.

The most pleasant experience that has attended the preparation of this book has been the extraordinary willingness to help shown not only by my

colleagues, but also by Government officials and the staffs of the Colonial Government libraries in London, and of the International Labour Office in Geneva. I should also like to place on record my obligations to members of Minimum Wage authorities in different parts of the world who have replied to my various detailed questionnaires. I owe an especial debt to Dr. Hugh Dalton, who has helped me with much critical advice during the three years this book has been in preparation, and to Professor Hobhouse and Mr. C. M. Lloyd, who read through my manuscript and who have helped me with many suggestions. I take this opportunity of gratefully acknowledging my indebtedness to my teacher Professor Cannan. Such merit as this book may possess as a contribution to theoretical economics, is entirely due to his influence. Mr. W. D. Sharp has performed the unenviable task of reading my proofs.

E. M. B.

London School of Economics,
March, 1926.

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PART I.

LAWS OF WAGE REGULATION.

CHAPTER I.

THE ABANDONMENT OF *LAISSEZ-FAIRE*.

STATE Regulation of wages in the interests of wage-earners is essentially a modern movement. It is no exaggeration to say that until the end of the last century the popular attitude towards wage regulation differed little from that of the Committee on Emigration which in 1827 had emphatically declared:

"Your Committee cannot express too strong an opinion against the idea of regulating by legislation the rate of Wages, under any conceivable modification. . . . It is from an entire ignorance of the universal operation of the principle of supply and demand regulating the rate of wages, that all these extravagant propositions are advanced." [1]

Yet by 1920, in Australia and New Zealand, in Great Britain and Ireland, in the United States of America and Canada, and in several European countries, the State was playing an active part in determining rates of wages over large fields of industry. More significantly still, a considerable body of public opinion everywhere favoured the extension of such wage regulation.

This change of attitude and practice with regard to the relation of the State to wage questions is one of the most remarkable developments of the last thirty years. It is indeed true that in mediæval days wages in England had not been free from control by the gilds, or by the State. The Statute of Labourers of 1351, which established maximum rates of wages for various kinds of work, and attempted to force persons to accept employment if it was offered to them at the statutory rate, is the most famous of these early attempts

[1] *Third Report from the Select Committee on Emigration from the United Kingdom*, 1827, pp. 13 and 15.

to control wages. The principles of this Act were virtually embodied in the Statute of Apprentices of 1536, which while making labour compulsory, imposed upon the Justices of the Peace the duty of annually determining wages for each kind of industry in their own localities. Both Acts, however, seem to have been administered in the interests of employers, and this conclusion is confirmed by the failure of later attempts to invoke the enforcement of the Elizabethan Act in the interests of workers.[1] In the early years of the nineteenth century the proviso of the Act of 1536, whereby wages were to be regulated according to the plenty or scarcity of the time, appeared to offer some protection to workers adversely affected by the Napoleonic Wars and by the changes then taking place in the organisation of industry. The only result of the attempt to claim the support of this section of the Act was its removal from the statute book in 1813. It is not therefore in this early legislation that the origin of the modern movement in favour of State intervention in wages should be sought.[2]

The seventeenth and eighteenth centuries had witnessed the development of a system of close State control of economic life, which, admirably suited as it may have been to the period preceding the Industrial Revolution, was hampering and cumbersome when an attempt was made to exploit the technical changes in industry. The attitude of the early nineteenth century towards wages was part of a general reaction against State intervention in any form, which received moral support from the political economy of the time. Although the Classical Economists differed on points of detail, their teaching seemed to show that the greatest amount of material welfare could be obtained by a reliance upon free competition and the play of individual self-interest. The influence of the harsh teaching of these

[1] Cheyney refers to the failure of Parliament to enforce it in 1726 and in 1777. *Industrial and Social History of England*, p. 228.

[2] Except in so far as it can be argued that its object was the preservation of industrial peace. Even then there seems to be a fundamental difference in the attitude towards the welfare of the worker at the two periods. It is doubtful whether an attempt would be made to-day to secure industrial peace by any methods so obviously to the disadvantage of one section of the community.

economists is sometimes exaggerated at the present day, but contemporary conditions gave ample support to their theories. The doctrine of the Wages Fund accompanied by a fear of over-population must have done much to reinforce the prevalent suspicion of Government interference in industry. Yet even in the field of wages isolated efforts were made to secure a measure of State control. In 1795 Whitbread introduced a Bill into the House of Commons, the object of which was the legislative regulation of wages, and in 1808 an attempt was made to induce Parliament to fix a statutory minimum wage for weavers. These efforts were no more successful than the similar proposals made in 1835 for the relief of the distress among cotton weavers.[1] Everywhere the belief in the efficacy of free competition was triumphant. Nassau Senior could write in 1830:

"In the natural state of the relation between the capitalist and the labourer [illegible] the amount of wages to be paid, and of work to be done, are the subjects of a free and open bargain; when the labourer obtains, and knows that he is to obtain, just what his services are worth to his employer, he must feel any fall in the price of his labour to be an evil, but is not likely to complain of it as an injustice. Greater exertion and severer economy are his first resources in distress; and what they cannot supply, he receives with gratitude from the benevolent. The connexion between him and his master has the kindliness of a voluntary association, in which each party is conscious of benefit, and each feels that his own welfare depends, to a certain extent, on the welfare of the other. But the instant wages cease to be a bargain—the instant the labourer is paid not according to his *value*, but his *wants*, he ceases to be a freeman." [2]

If this facile optimism was not accepted by all, the general presumption was everywhere against the possibility of doing good by State intervention in wages, and this seems to be the characteristic view of the nineteenth century. John Stuart Mill had his doubts, and did in fact discuss the possibility of a fixed minimum wage as a cure for low wages, deciding against it on Malthusian grounds. It is significant

[1] Cunningham, *Growth of English Industry and Commerce*, p. 635.
[2] Nassau Senior, *Three Lectures on the Rate of Wages*, 1830. p. *x* of Preface.

that in his famous chapter "Of the grounds and limits of the *laissez-faire* or non-interference principle," he considers hours, but not wages, among the relatively wide group of exceptions to *laissez-faire*. Apart from this almost academic discussion, the whole subject of State regulation of wages was taboo.

It is curious that wages should so long have remained sacrosanct, during a century in which States have constantly endeavoured to regulate with increasing stringency the conditions under which production should be carried on. These efforts placed producers' costs under the partial control of the State and its inspectors. Factory Acts, Truck Acts, and Workmen's Compensation Acts, prescribed for every would-be producer a clearly defined minimum of costs which he had to be prepared to accept if he wished to carry on production at all. Until the last decade of the nineteenth century this growing limitation on the employer's power to cut his costs did not apply to wages. But from that period until the present day the growth of State intervention in the wage bargain has been phenomenal. Whereas in 1890 the idea of a State-enforced minimum wage was generally regarded as the suggestion of a visionary, a madman, or at best of one ignorant of the laws of political economy, to-day it has gained a prominent place in academic discussion and in the world of practical politics. With this very marked change in outlook there has come a great volume of wage legislation. In Australia and New Zealand there are few persons with salaries of under £250 per annum whose wages are not regulated by some authority external to the trade in which they are engaged. In all the States there is a fixed legal minimum wage below which no person may be employed, while numerous Courts and Boards fix wages for particular classes of workers. In Great Britain the Trade Boards Acts regulate the wages of between one and a half and two million workers, and agricultural workers and miners are protected by a State-enforced minimum. At the end of the War, the wages of the majority of workers were in some measure controlled by the State, under the Wages (Temporary Regulation)

Acts, for a period of nearly two years. In France in 1919, the last date for which reliable information is available, some 128,000 home workers were affected by the Minimum Wage Act of 1915. Norway, Austria and Czecho-Slovakia have all attempted in recent years to fix by law the wages of home workers, and have passed legislation, although the extent of its practical importance is uncertain. The wages of home-workers have been legally fixed in Germany since 1923. In the United States of America sixteen States have attempted, and for a time succeeded, in regulating by law the wages of the majority of women workers, while in eleven of these States similar minimum wages are also fixed for male minors. In Canada five out of nine Provinces have established active wage-fixing schemes applicable to women, and at least in British Columbia and Ontario, these minimum wages now apply to nearly all the women workers in the Province. Moreover, two other Canadian States have passed laws, but have not yet taken the steps necessary to put them into full operation. Finally, in 1918 and 1925 the Union of South Africa passed Acts which introduced a considerable measure of wage regulation into the Dominion, the extent of which it is at present impossible to estimate.

Thirty years have thus seen the abandonment over the greater part of the civilised world of *laissez-faire* in the settlement of wages. The objects which enticed men away from the easy austerity of non-intervention are worthy of more detailed consideration.

CHAPTER II.

THE OBJECTS OF WAGE REGULATION.

THE challenge to non-intervention was sounded by idealists from widely distant camps, and this fact has been reflected in the diversity of methods by which State regulation of wages has been carried out. Among their various aims two predominate: the desire to improve the position of the worker by raising his wages, and the desire to improve the condition of society as a whole by the avoidance of industrial unrest. The first manifestation of a desire to help the worker was a movement to abolish "sweating," the attempt to raise wages over a wider field being a much more recent development. The exact meaning of the term "sweating" is difficult to determine, partly because it has changed considerably since its first use, and partly because it is now a complex of vague ideas very generally held.[1]

[1] The changing meaning of the word reflects the alteration in the public attitude towards State wage regulation. As this attitude became more favourable the term sweating was given a wider meaning. "It was originally applied to a system of subcontract in certain industries in which the middleman beat down the wages of the workers to the utmost extent that the helplessness of the workers would allow."[a] This use of the word was common in the last years of the nineteenth century not only in Great Britain, where it was so used by witnesses before the House of Lords Committee on Sweating, but also in America.[b] In all the examples given in the New English Dictionary for this period, a reference to subcontract work is expressed or implied. It is defined as "employing in hard or excessive work at very low wages especially under a system of subcontract." "But others, on the contrary, maintained that subcontracting is by no means a necessary element of sweating, which consists, according to them, in taking advantage of the necessities of the poorer and more helpless class of workers, either by forcing them to work too hard or too long, or under insanitary conditions, or for starvation wages, or by exacting what some witnesses call an undue profit out of

[a] Cadbury and Shann, *Sweating*, p. 1.

[b] As, for example, in Part II of the Report of the Bureau of Labour Statistics of Illinois, dealing with the sweating system in Chicago.

As used to-day, it is roughly synonymous with the payment of "very" or "unduly" low wages, while some couple with it the idea of employment under unhealthy conditions, and often for very long hours. The crucial terms, "unduly" or "very low," are most generally taken to mean less than a very low living wage, in itself a none too precise concept, which as we shall see, expands and contracts with changing economic circumstances, but they are sometimes used merely to imply wages "very much lower than the normal rates prevailing throughout the country."[1] This is a more liberal interpretation of the term, and it is significant that when economic con-

their labour."[c] The Committee on Sweating in their Final Report were eclectic,[d] and the connexion of home- or out-work with sweating was maintained by the findings of various Committees inquiring into sweating in Australia.[e]

A new stage shortly emerged. A Committee of Inquiry in South Australia in 1904 identified sweating with the payment of an "unduly low wage," and this meaning was becoming increasingly popular, possibly because it is the definition of one unknown in terms of another.[f] By 1907 it was possible for opponents of sweating to maintain that the term "applied to almost any method of work under which workers were extremely ill paid, or extremely overworked," while the sweater was defined as "the employer who cuts down wages below the level of decent subsistence, works his operatives for excessive hours, or compels them to toil under insanitary conditions."[g] Greater precision is here given to the term by the introduction of a living wage test, and this conception of sweating was strengthened by the Select Committee of the House of Commons in 1908, which defined it as "a rate which in the conditions under which many of the workers do it [the work], yields to them an income which is quite insufficient to enable an adult person to obtain anything like proper food, clothing and house accommodation . . ."[h]

[c] *Fifth Report of the Select Committee of the House of Lords on the Sweating System* (1890), p. cxxxiv.

[d] They stated, ". . . although we cannot assign an exact meaning to 'sweating,' the evils known by that name are shown in the foregoing pages of the Report to be:—

1. An unduly low rate of wages.
2. Excessive hours of labour.
3. The insanitary state of the houses in which the work is carried on.

Ibid., p. cxxxv.

[e] e.g. the Report of the Royal Commission in Victoria in 1884.

[f] The *New English Dictionary* states that to be sweated is to be "employed in very hard or excessive work at very low wages; oppressively overworked and underpaid."

[g] Clementina Black, *Sweated Industry*, p. 1.

[h] *Report from the Select Committee on Home-Work*, 1908, p. iii.

[1] Evidence of Mr Wolfe, a prominent official in the British Ministry of Labour, before the *Committee of Inquiry into the Working and Effects of the Trade Boards Acts*, 1922. Question 01

ditions are unfavourable there is a reversion to the older and narrower "sub-living wage" meaning. The desire to stop sweating has been a strong factor in the development of State regulation of wages. Intervention to prevent the evil receives almost universal approval even from the strongest opponents of State interference in industry; and while the elasticity of the term indicates a similar elasticity in the popular notions of the extent to which State intervention is justified, as propaganda the word has been of the first importance.

The growing interest in the position of the "submerged tenth," which was so marked from 1890 onwards, crystallised round the anti-sweating movement, and was accompanied by a demand that the State should exercise its protective powers by declaring the payment of sweated wages to be a crime. As early as 1888 the demand for a minimum wage was formulated by the miners in Great Britain, and it was officially adopted by the Miners' Federation in 1889. At the same time attention was directed to the abnormally low wages paid to certain classes of workers by the "new unionism" movement, of which the match girls' strike and the Dock strike of 1890 were the most arresting manifestations. The House of Lords Committee on Sweating began its sittings in 1888, and after two years reported that the evil could "hardly be exaggerated."[1] But the Report conveyed the impression that the bad conditions were largely the fault of the workers themselves[2]; and while proposals were made in both Houses of Parliament to deal with the evil, no legislative action resulted. Nevertheless public interest was aroused, and during the succeeding years those interested in the welfare of the unorganised and badly paid classes made serious attempts to impress on the country the need for drastic action. These efforts culminated in the Trade Boards Act of 1909. The awakening of a "social conscience" was not con-

[1] *Fifth Report of the Select Committee of the House of Lords on the Sweating System* (1890), p. cxxxv.

[2] This conclusion called forth a vigorous protest from Lord Dunraven, the Chairman of the Committee. See *House of Lords Debates*, June 9 and 10, 1890.

fined to England. It is evident in the famous Encyclical of 1891, on the Conditions of Labour, in which Pope Leo XIII pronounced that the

"preservation of life is the bounden duty of each and all, and to fail therein is a crime. It follows that each one has a right to procure what is required in order to live; and the poor can procure it in no other way than by work and wages. Let it be granted then, that as a rule workman and employer should make free arrangements, and in particular should freely agree as to wages; yet there is a dictate of nature more imperious and more ancient than any bargain between man and man, that the remuneration must be enough to support the wage-earner in reasonable and frugal comfort."

In Australia the appointment of various Committees of Inquiry and contemporary references in the Reports of Factory Inspectors testify to the same uneasiness regarding the wage conditions in certain trades. As early as 1884 a Royal Commission in Victoria had identified sweating with home-work and subcontracting, and recommended alterations in the Factory Acts. From that date there was almost continuous interest in the anti-sweating movement, which spread to the other Australian States. In 1890 a Bill was introduced into the Queensland Parliament by Sir Samuel Griffith, with the object of giving legislative recognition to the principle that workers should be paid a wage adequate to maintain a reasonable standard of life. In South Australia a Shops and Factories Commission was appointed in 1892 to inquire into the alleged sweating of workers, and from 1896 onwards the Reports of the Chief Inspector of Factories supply evidence of the very low wages paid in certain trades, especially in the clothing industry. During the same period inquiries into sweating were conducted in Chicago, Massachusetts, and New York.

Thus in the last decade of the nineteenth century there was an almost universal attempt to investigate and remedy the evils denoted by the term "sweating." Yet Lord Askwith's comment on the movement in England: ". . . there was a necessity for a great deal of hard spadework and some more or less sensational exhibitions and meetings

before the Government or the public began to understand that something should be done,"[1] applies to almost every other country. It was twenty years before the movement initiated in 1890 bore fruit on any considerable scale. Australia is a notable exception, and in the history of *action* in support of a minimum wage, as apart from the *feeling* on the subject, Australia holds the first place. But even in Australia achievement lagged behind aspiration. In Victoria interest in the wages question flagged after the Report of the Commission of 1884, but revived in 1890, when the Chief Inspector of Factories issued a report on the sweating system, confirming the existence of the evils alleged. The matter was taken up by the press, and the Report of a Parliamentary Committee of Inquiry which was appointed in 1893, stimulated the formation of an Anti-Sweating League in Melbourne. Finally, thanks to the efforts of Mr. Alexander Peacock, later Prime Minister, the Factory and Shops Act of 1896 fixed a universal minimum wage of two shillings and sixpence per week. Still more important was the provision in the Act for the appointment of Special Boards to determine wages in certain trades. The wages thus decided upon were legally enforceable on all employers. It would be hard to overestimate the importance of this Act, which not only encouraged other States to interfere in wage bargains, but also largely determined the form of that interference. The influence of this legislation was very soon felt in the neighbouring State of South Australia. It was found that Victorian manufacturers were sending goods to Adelaide to be made up, and then shipping them back to Melbourne, and this action emphasised the bad conditions so constantly referred to in the Reports of the South Australian Factory Inspectors. In 1900, in the face of tremendous opposition, a Factories Amendment Act was passed, establishing a fixed minimum wage of four shillings a week, and authorising the establishment in certain trades of Wages Boards on the lines already adopted in Victoria. By 1900 Queensland had also joined in the experiment of wage regulation, the Factory Act of

[1] Askwith, *Industrial Problems and Disputes*, p. 282.

that year providing for a minimum weekly wage of two shillings and sixpence for fifty-six hours. The feeling against sweating ultimately resulted in the Act of 1908, which introduced Wages Boards similar to those in South Australia.

In Great Britain State action was longer postponed. Indeed, it was not until the Australian experiments were more than ten years old that those interested in the sweating problem in the former country were encouraged to hope that the evil might be tackled on similar lines. In 1898 Sir Charles Dilke introduced into the House of Commons the first of a series of unsuccessful Bills to provide Wages Boards, but no real progress was made until 1906, when the *Daily News* organised a Sweating Exhibition, which led to the formation of an Anti-Sweating League. At the same time various private investigations were made, and books and articles were published advocating the institution of Trade Boards. Much of this renewed interest must be attributed to the publication of Mr. Rowntree's *Poverty* in 1901, which translated into concrete terms the prevailing vague ideas of a living wage. The expression in money of this itemised budget, which none could accuse of generosity, provided a standard of comparison, and vividly brought home to the public the low standard which was enforced on many wage-earners. At the same time the knowledge of the wages and conditions of work of certain classes of workers was widely disseminated by the publication of numerous private inquiries and by well-attended public meetings.[1]

In 1908 Mr. Aves, a Civil Servant, was sent out by the Government to investigate the working of the wage-regulating laws in Australia and New Zealand. His Report, although more favourable to the new experiments than might have been expected, insisted that the satisfactory working of the laws was very largely due to the peculiarly favourable economic conditions then ruling in the countries

[1] Details of wages paid can be obtained from *Sweating*, by Cadbury and Shann, Chapter II; Clementina Black's *Sweated Industry*; *Minimum Rates in the Chain-making Industry*, by R. H. Tawney, p. 20; and *Minimum Rates in the Box-Making Industry*, by M. E. Bulkley, p. 30.

concerned. For this reason, and because he anticipated serious administrative difficulties, Mr. Aves concluded that while the establishment of Special Boards was desirable, "the evidence does not appear to justify the conclusion that it would be advantageous to make the recommendations of any Special Boards . . . legally binding." [1] Later in the same year a Select Committee of the House of Commons considered the problem of Home Work, and the possible remedies for the evils arising out of this institution. After reviewing the then existing provisions relating to the notification of Home Work in the Factory and Workshop Act, 1901, the Committee decided that "these provisions of the existing law have failed to produce any amelioration of the condition of home-workers . . " [2] and concluded "that unless Parliament steps in and gives them [the workers] the protection and support which legislation alone can supply, the prospects of any real and substantial improvement in their position and condition being brought about are very small and remote." [3] Wages Boards with compulsory power were recommended, and in 1909, after a further attempt by Sir Charles Dilke, a Government Bill was introduced by Mr. Churchill, which ultimately became the Trade Boards Act of 1909. This Act was intended to deal only with sweated industries where wages were "unduly low," but by an Act of 1918 it was made possible to deal with wages in trades where abuses were not glaring.

During and after the War, the movement for the abolition of sweated wages and for endorsement by the State of a more adequate wage standard gathered momentum. In France the campaign in favour of the regulation of home industries, which had been waged since the beginning of the century, was at last crowned with success. Little progress had been made until 1910, when the Reports of the Ministry of Labour's Committee of Inquiry became

[1] *Report on the Wages Boards and Industrial Conciliation and Arbitration Acts of Australia and New Zealand*, by Ernest Aves. 1908. *Cd.* 4167, p. 125.
[2] *Report from the Select Committee on Home Work*, 1908, p. viii.
[3] *Ibid.*, p. xiii.

available.[1] These showed that in the lingerie trade 60 per cent. of the workers who replied to the inquiry were receiving less than 16 centimes per hour, while in isolated districts the hourly earnings were as low as 5 centimes. The International Institute for the Diffusion of Social Experiments agitated for the regulation of home work; books on the minimum wage were written,[2] and Consumers' Leagues were formed; Bills were introduced and duly disposed of in Committee; but nothing effective was done until 1915, when the Home Work Act was passed.[3] The example of France was followed in 1918 and 1919 by Norway, Austria, and Czecho-Slovakia, where Home Work Acts, modelled on the French plan, were adopted.

This speeding up of the wage regulation movement during and after the War was also marked in America and Canada. Here, again, the motive was a desire to raise wages, which crystallised round the demand for a living wage for women. The first State to abandon the attitude of non-intervention was Massachusetts. In 1911 several groups were studying social conditions, and, as a result of their efforts, a State Committee of Inquiry was appointed to investigate the position of working women. The Report of the Committee roused public feeling, and in 1912 legal provision was made for the fixing of minimum rates in certain trades. Interest in the question spread, and by 1913 eight other American States had minimum wage laws. Immediately after the war there was another burst of activity, so that by the end of 1919 the number had grown from eight to sixteen.[4]

[1] *Enquête sur le Travail à Domicile dans la Lingerie. Ministère du Travail et de la Prévoyance Social.* The volumes dealing with the artificial flower and shoe trades appeared in 1909 and 1911 respectively.

[2] e g R Broda, *La Fixation Legale des Salaires*; P. Boyval, *La Lutte contre le Sweating System*; B Raynaud, *Vers le Salaire Minimum.*

[3] For details of this Act see Section on France in Chapter V.

[4] Although it may appear from the wording of the various American Acts that the main object of the legislation was the promotion of health and morals, this was not the case except in the very general sense that it was realised that an increase in the wages of badly paid persons results in better health. The reason for the stress laid upon this aspect of the legislation is due to peculiar constitutional difficulties. See Note at end of Chapter VI.

In Canada the desire to raise wages also found expression in minimum wage laws. In the words of Dr. MacMillan, the Chairman of the Minimum Wage Board of Ontario :

"The supporters of these laws have championed them on the ground that they guaranteed and defined a wholesome subsistence for a class of workers who are economically feeble. They were not sought by those who are most directly to benefit from them. No working women lobbied on their behalf. It was the mental picture of a woman giving her life's effort to a task which did not return her sufficient for food, shelter and clothing, which stirred the public to resolve that such a thing should not be permitted. . . . But there was another reason for the attempt to prevent low wages. It was held to be very important both from the employers' point of view and for the general prestige of the Dominion that the relatively high standard of living in Canada should not be undermined. Thus people welcomed minimum wage laws as a rampart against the advance of the destructive low wage. They thought it good business to save the comparatively helpless from being forced down below the line of decent subsistence. For how many more might not follow her in her descent?"[1]

As in Massachusetts, the first stage was the formation of groups to study social conditions. In British Columbia, the possibility of a minimum wage law was discussed as early as 1914, but nothing was done until 1918. In the same year a minimum wage law was passed in Alberta, and Ontario, Manitoba and Saskatchewan followed suit.

Thus in many countries the relatively limited objective of preventing sweating encouraged social reformers to challenge the doctrines of traditional economic science, and to rush in where economists feared to tread. They were accompanied in their advance by those who believed that it was within the power of the State to promote industrial peace by legislation. It was held that instead of leaving strikes and lock-outs to be settled by a trial of strength, in which the community as a whole is invariably the loser, the State should attempt to adjust matters by acting as arbitrator. As with the desire to prevent low wages, the movement in favour of the use of compulsory

[1] *Minimum Wage Legislation in Canada and its Economic Effects*, by J. W. MacMillan. *International Labour Review*, April, 1924.

arbitration powers by the State was a growth of the last years of the nineteenth century, while the initial action again came from Australia and New Zealand. Unlike the former movement, however, it has not been adopted with the same enthusiasm in other States, and has only grown to serious proportions in the countries of its origin.[1]

The years 1890 to 1894 witnessed for almost the first time much bitter industrial strife in Australia and New Zealand.[2] The most far-reaching in effects was the maritime strike of 1890, which, beginning in Melbourne, developed into an All-Australia strike, and ultimately spread to New Zealand. The strikers were beaten, and within a short time asked for a conference to discuss terms. This was refused by the employers, and the strike dragged on for three months. The same stubborn attitude on the part of the employers in the big mining dispute at Broken Hill in 1892 caused a reaction in public opinion, which was previously inclined to be hostile to the strikers, and led to a realisation that the public interests were as likely to suffer from a refusal to come to terms on the part of the employers as by the initial refusal to work on the part of the men. At the same time the repeated failure of strikes induced Trade Unionists to regard more favourably the possibility of attaining their aims by legislative measures. Attempts were made in various States to introduce legislation

[1] It is true that voluntary arbitration is now, and had been for long, a feature of the industrial organisation of many States. Moreover numerous Governments have so far recognised its utility and importance as to make provision for the appointment of arbitrators where this is requested by the parties concerned, or the constitution of a special board of conciliators or arbitrators to which the disputing parties can refer. But the Australasian experiments which ultimately led to widespread State regulation of wages are a more fundamental interference than this. Resort to the arbitration tribunals set up by the State is no longer permissive but compulsory. Failure to observe the awards becomes a crime, punishable by fine or imprisonment. It follows that strikes, which are attempts to obtain by force more than is given in the award, or lock-outs, which are attempts in the opposite direction, are alike prohibited. A fuller discussion of the nature of compulsory arbitration will be found in Chapter III, p. 32 *et seq.*

[2] The best short account of the industrial disturbances of the time is given by Mr. Pember Reeves in his *State Experiments in Australia and New Zealand*, Vol II. A treatment of the subject from the opposite point of view will be found in *State Regulation of Labour and Labour Disputes in New Zealand*, by H. Broadhead.

providing for voluntary arbitration. The first compulsory measure which became law was that of New Zealand. A Bill had been drafted in 1891, but the Upper House objected to the compulsory clauses. After being passed three times by the Lower House it was finally placed on the statute book in 1894.[1] The Act provided for a Court of Arbitration and certain subsidiary bodies known as Conciliation Boards. Disputes were to be referred to the latter in the first instance, and only if no settlement was thereby obtained were they to go before the Court, whose decision was binding.[2] Like the Victorian Act of 1896, the New Zealand Act is important because it was the first of its kind, and was therefore largely used as a model by other States.

In New South Wales also an attempt to prevent strikes was the original reason for State intervention in the wage bargain. There had been so many strikes in the late eighties that a Royal Commission of Inquiry was appointed in 1890. At first a Conciliation and Arbitration Act was passed, but as there was no power to enforce decisions, it was ineffective, and was allowed to lapse in 1894. In 1899 a further Act provided for the setting up of courts in which the Labour Minister was to act as Conciliator, but in which the element of compulsion was again absent. This also proving inadequate, an Act of 1901 set up a Court of Arbitration, the awards of which were legally binding. State regulation of wages was introduced for similar reasons in West Australia, which had also been affected by the labour troubles of the nineties, and was impressed with the success of the New Zealand legislation. Accordingly an Arbitration Act was passed in 1900,[3] following to a large extent the machinery of the Act of 1894. In two other States the original cause of intervention in wages was reinforced by this desire to stop strikes. As early as 1892 a Court of Conciliation had been set up in Queensland, but the compulsory powers which are of the essence of State regulation were not introduced until

[1] *Industrial Conciliation and Arbitration Act*, 1894.
[2] Further details of the legislation will be found in Chapter IV.
[3] *Industrial Conciliation and Arbitration Act, West Australia*, 1900.

1912, although they had previously been demanded by the Labour Party. In that year there was a big general strike in sympathy with the attempt of the tramway workers to obtain an award from the Federal Court, and this turned the scale in favour of compulsory arbitration. Similarly in 1908 strikes and lock-outs against the determination of a Wages Board were prohibited in South Australia. Four years later an Arbitration Court was constituted.

In no case was the desire to put an end to industrial disturbances more marked than in the original Commonwealth legislation. By the Constitution Act of 1900 the Federal Parliament was given power to legislate with regard to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State," and this power was made use of in the Commonwealth Conciliation and Arbitration Act of 1904.

These organisations, created to maintain industrial peace, rapidly developed into bodies exercising wide powers of control over the wages to be paid in many fields of industry. This eventuality does not appear to have been clearly foreseen, to judge by the lack of instructions in the relevant Acts regarding the principles which were to guide the arbitrators in making their wage decisions. Only by degrees was it realised that the majority of industrial disputes were disputes about wages. As experience began to show that the Arbitration Courts were not merely bodies called upon to give wages decisions in a few isolated cases, but were important economic tribunals, constantly regulating the conditions of work of thousands of employees, there was a series of attempts on the part of the judges to formulate principles for themselves, or to obtain some ruling from Parliament on the subject.[1] Of recent years there has been a tendency for the two main objects of intervention in wages to be closely connected in practice, so that it is sometimes difficult to distinguish the two. The con-

[1] *Vide* Chapter XII, p. 265 *et seq.* The growing influence of the power of the State, acting through the judges of the courts, is reflected, during the early years of this century, in various newspaper attacks on wage decisions, and on the judges who made them.

necting link has been the conception of the living wage. It has already been shown how the attempt to attach a more precise meaning to the term "sweating" led to the emergence of the living wage theory. If the wage to be paid was not to be determined by the unregulated forces of supply and demand, it was necessary to seek some new standard based on what was generally considered a desirable wage, and the "living wage" concept supplied this need. At the same time the living wage has become a matter of practical politics in those systems which have for their object the prevention of industrial disputes. Judges have held that "One cannot conceive of industrial peace, unless the employee has secured to him wages sufficient for the essentials of human existence." [1] The same view has been expressed by a Judge of the South Australian Court:

"I have heard one capable observer say that, so far as he could see, the main function of Industrial Courts was to give the wage earners just enough to keep them quiet. Such an attitude is conceivable in the very early days in the history of an Industrial Court, but as the institution develops and precedents broaden, an Industrial Judge is driven towards the goal of a coherent and enduring body of principles if he is to ensure industrial stability." [2]

Foremost among this body of principles has been the doctrine of the living wage, and the later history of the Courts, as of the Wages Boards, has largely been the history of an attempt to define this conception.

It has sometimes been said that two other motives have induced States to regulate wages. The first of these is stated to be the desire to increase population, the second a desire to encourage the organisation of capital and labour within certain trades. On examination, however, it does not seem as if either of these aims has been very important. The second of the two probably rests upon a misapprehension. In support of the theory, the New Zealand Act

[1] H. B. Higgins, *A New Province for Law and Order*, p. 6. Mr. Higgins was the President of the Commonwealth Court from 1907 to 1920.

[2] Jethro Brown, in *Australia: Economic and Political Studies*, edited by Meredith Atkinson, p. 219.

of 1894 and the British Trade Boards Act of 1918 are quoted. It is true that the New Zealand Act of 1894 is called an "Act to encourage the formation of industrial unions and associations," but it is clear that the real object was not to encourage unionism for its own sake, and in fact the clause was omitted from the amending Act four years later. The discussions which preceded the passing of the Bill and the testimony of the author of the Act make it clear that its real object was industrial peace. But it was felt at the time that the best way to ensure this was to work through duly accredited unions, which might be given a sense of responsibility by official State recognition. So also, while the British Trade Boards Act of 1918 may be applied to any trade by the Minister of Labour "if he is of opinion that no adequate machinery exists for the effective regulation of wages throughout the trade," he must also have "regard to the rates of wages prevailing in the trade." This emphasis on the lack of "adequate machinery" is sometimes cited in support of the view that the object of the Act was the encouragement of organisation. It seems more accurate to regard it as the meeting-point of the two movements already discussed. On the one hand, there was, towards the end of the War, much talk of a reconstructed England, and in the sphere of wages this took the form of a demand that the worker should be guaranteed a reasonable standard of living. It was found that the Trade Boards Act of 1909 was useless in furthering this aim, as its basis was too narrow to allow of its extension to those trades where the wages paid could not be described as sweated or unduly low, as compared with those in other industries. On the other hand, there was at the same time an attempt to "secure a permanent improvement in the relations between employer and workmen," an attempt, in fact, to ensure industrial peace. To this end the Whitley Committee was appointed to "recommend means for securing that industrial conditions affecting the relations between employers and workmen shall be systematically reviewed by those concerned, with a view to improving conditions in the future." The Com-

mittee emphasised the importance of developing a relationship between employers and employed, on something other than a cash basis, and insisted that "the work-people should have a greater opportunity of participating in the discussion about the adjustment of those parts of industry by which they are most affected." This could be attained by an extension of collective bargaining methods, or by an increased use of Trade Board machinery whereby the two sides were brought together to discuss wages problems. The Committee favoured the former idea, as being the more permanently satisfactory, but recognised that this was only possible where trades were well organised. They therefore recommended that in those trades which satisfied this condition the now well-known Whitley Councils should be set up. For the less well-organised industries, recourse was to be had to the Trade Boards Act. Before this could be done, it was necessary to pass an amending Act, which not only permitted the extension of the machinery to non-sweated trades, but also gave greater power to the Trade Boards in the hope of fostering the feeling of responsibility and common interest, on which the Whitley Committee had laid such stress. Thus here too, it seems reasonable to suppose that the object of the resulting increased State regulation of wages was not the encouragement of unionism *per se*, but that it was an extension to still wider fields of the already existing attempts to secure industrial peace and to raise wages.

It remains to deal with the suggestion that wage regulation by the State has been brought about with a fourth object in view, namely the encouragement of the growth of population. It is true that if a State required an increase in the population, one way of securing this might be by guaranteeing to a worker that as his family increases, so will his income, and the series of social experiments to which the name of Family Endowment has been given has been pointed to as an example of wage regulation with this object in view. Certainly Mr. McGirr, in introducing a Motherhood Endowment Bill into the Legislative Assembly of New South Wales in 1921, stated that "Motherhood

Endowment is based on the fact that we want to populate Australia"; but this seems to be an isolated opinion, and it is significant that the introducer of the same Bill in the Upper House merely said that it was an extension of the Arbitration system. This latter view is supported by the sequence of events before 1921. In 1919 the high level of the Cost of Living Declaration of the Board of Trade had caused uneasiness, and had raised anew the question of the size of the average family which was to be maintained by it. In order to overcome the difficulty of overpaying the family of less than normal size, and of underpaying the large family, a scheme of family endowment was proposed in the Maintenance of Children Bill in that year. This failed to pass, and the 1921 Bill shared its fate. It is, however, important to note that the first Bill dealt with wages, being really an extension of the arbitration system, whose object we have already discussed, while the second was not in reality concerned with wages at all, for it was proposed to make the payment to the mother, and to raise the sum required by means which did not involve a direct intervention in the wages system. Hence it does not seem justifiable to quote New South Wales as an example of State regulation of wages with the idea of encouraging the growth of population. Nor can the example of France be urged with any more success. A system of Family Endowment, closely connected with the wages system, has now been in operation for over five years, and concerns some two and a half million wage earners,[1] but it is not wage regulation. In the majority of cases it is merely voluntary and when it is in effect obligatory,[2] the State does not require that a certain minimum wage shall be paid to any particular worker; it merely insists that workers with families shall receive more than those without, and is indifferent to the level of the basic wage.

[1] An excellent description of the system in France is given by Paul Douglas, *Family Allowances and Clearing Funds in France. Quarterly Journal of Economics*, February, 1924 *Vide* also *Family Allowances*, a study published by the International Labour Office.

[2] By an Act of 1922 the payment of wages on a family basis is obligatory on firms applying for Government contracts.

In some respects it is comparable to a form of insurance against parenthood; in others it is a form of taxation.[1] But in neither event can it be regarded as State interference in wages in the sense in which the phrase is used in this study.[2]

While it would be rash to eliminate the population motive from those which have led to the breakdown of the *laissez-faire* attitude towards wages, its influence has been in no way comparable to that of the two movements discussed earlier in this chapter. It is to a desire to raise the wages of the less fortunate sections of the community and to an attempt to secure industrial peace, that the praise or blame for the existing extent of State regulation of wages must be attributed.

[1] See my paper on *The Economics of Family Endowment*, in *Economica*, June, 1925

[2] It is indeed even doubtful if the family endowment movement in France was as closely connected with the population motive as has been maintained. Miss Rathbone says (*The Disinherited Family*, p. 199): "Although the motives that have led so many employers to adopt the system of family allowances have been partly humane and partly economic, there is no doubt that the hope of increasing the birth rate and the survival rate have played a great part; perhaps the chief part." From her own account of the growth of the movement, however, it seems that it originated in Grenoble as a result of a series of discussions at a local society, regarding the difficulties of workers with large families, and that the practical plan to alleviate this was adopted at the Etablissements Joya, which was already famous as a centre of social experiments. There seems nothing to show that the family endowment system was introduced here with any conscious idea of filling the "empty cradle," and its extension to other firms in the district seems to have been the result of a demand on the part of the workers concerned for wages conditions as good as those at Maison Joya. The origin of the movement in other trades is more obscure, but it seems clear that the desire to do something to meet the hardships due to the rapidly rising prices, and the wish to prevent widespread dissatisfaction of the workers, was even more important than the desire to encourage population.

CHAPTER III.

THE METHODS ADOPTED.

The Fixed Minimum Wage—The Board System—The Arbitration System.

ANY attempt to discuss in detail the problems of wage regulation must be preceded by a description of the various systems in force in the different countries. There is at present no one source from which all the relevant information as to the existing laws can be obtained, and it seems useful therefore to give here a concise account, in barest outline, of those facts a knowledge of which is necessary in order to appreciate the arguments of later chapters. For convenience of exposition, the methods of enacting minimum wages have been divided into three main groups. In what follows, reference will be made to them under the titles of the Fixed Minimum Wage, the Board System, and the Arbitration System. The point common to all these methods is the legal enforcement of the rate decided upon, whether it be stated in an Act of Parliament, decided upon by the representatives of a trade, or awarded by a third party. In all cases the State makes itself responsible for enforcing the payment of the wage, either by the institution of criminal proceedings for non-payment or by recourse to other sanctions.[1] This is the difference between the wage decision of an English Whitley Council, and an Industrial Agreement made between two unions in New Zealand, and registered with the Arbitration Court. Moral obligation is no longer relied upon as an adequate force.

THE FIXED MINIMUM WAGE.

Where the Fixed Minimum Wage method prevails, the wage payable is stated with greater or less precision in the

[1] For details of the methods adopted, see Chapter VIII below.

Act itself, and the scope of its operation defined. That is to say, it is laid down whether the Act is applicable throughout the State, as in New South Wales, or whether it is restricted to a particular district, as in South Australia, where the operation of the Factory Act does not extend beyond the metropolitan area. So also will it be stated whether certain industries are to be excluded, or whether the Act applies to all trades in the country. Thus in Queensland, pastoral and agricultural industries, miners and colliers are excluded. The Fixed Minimum Wage is adopted in Arizona, Utah, Porto Rico, the Argentine, and formerly in Alberta, and is found in the Factory Acts of all the Australian States and of New Zealand. While this method is essentially inflexible, in that only one rate is applicable to large groups of people of very different capacities who may be employed on different work, for a varying number of hours, attempts are yet made to adjust the wage to be paid to the experience of the worker. Queensland furnishes one of the best examples of this adjustment. Under the Factories and Shops Acts, 1900–1920, it is provided in Part VII, Section 45 (1), that every employee under twenty-one is entitled to receive 7*s*. 6*d*. per week during the first year of employment, and thereafter an annual increment of not less than 2*s*. 6*d*. for the next five years, while persons not under twenty-one with not less than four years' experience are to receive a minimum weekly wage of 17*s*. 6*d*. for the first year and 20*s*. for the succeeding years. Special rates are also fixed in the same Act for persons under twenty-one who have experience, and for those over that age who have none. Similar, though less detailed, provision is found in the Factory Acts of New Zealand, Tasmania, and West Australia. Differentiation according to trades is very rare under the Fixed Minimum Wage method, and as a rule no account is taken of special circumstances.[1] New South Wales is typical of the general

[1] Except in Tasmania, where a special rate is fixed for laundry workers. In the Argentine by an Act of November 29, 1923, the province of San Juan is to be divided into two parts, and in each workers are divided into three groups, for each of which a different Fixed Minimum Wage is prescribed. Special minima are also fixed in the Act for workers pasturing

form in enacting that: "No workman or shop assistant shall be employed unless in the receipt of a weekly wage of at least four shillings a week." [1] Before leaving this method it is worth noting that there is a very wide divergence between the wages thus fixed. These range from a minimum of two shillings and sixpence a week payable in Victoria, to one of ten dollars in Arizona, or thirty-five shillings in Western Australia.

The Board System.

The second method of regulating wages is the Board System. The essential feature of this scheme is that it is based upon industries, and the control of what the wage shall be rests to a large extent with the trade itself. The members of an industry are legally forced to form a Board, equally representative of employers and workers, under a Chairman elected by themselves or appointed by the State. The wage which is decided upon by this body will be issued as a Determination of the Board, and after a prescribed lapse of time, during which persons affected may raise objections, it becomes enforceable on all employers in the trade and in the district in which the Board has power to regulate wages. The Board System in this simple form is found in Victoria, South Australia, Tasmania, Great Britain, Norway, Czecho-Slovakia, Austria and South Africa.[2] The procedure at the meetings of the Boards differs greatly from that under the Arbitration System. As a rule, one side or the other brings up a point, which is discussed by both parties, and unless agreement is at once reached, the sides adjourn for private conference. It is at this stage that the Chairman or official Secretary performs his most useful functions. It is for him to interview both parties, and endeavour to

cattle outside the irrigated areas, and for workers employed on public utility undertakings.

[1] *Factories and Shops Act*, 1912 (New South Wales). Part III, Section 65.

[2] Under the *Regulation of Wages, Apprentices and Improvers Act* 1918, whereby the Governor-General may appoint Wages Boards consisting of at least three members, for trades in which the prevailing rate of wages is exceptionally low. Some seventeen local Boards have been set up, but their importance has been negligible. [Official Year Book, Union of South Africa, 1910–20.]

discover how much each is prepared to concede. He must discuss the points at issue with both sides, and persuade them to adopt a conciliatory attitude. The full Board then will meet again, and if possible come to an agreement. If, after several adjournments, it becomes clear that neither side will give way, it is necessary for the Chairman to give his casting vote. In practice he refrains from doing so as long as possible, and the success of a Board can often be judged by the rarity of the occasions on which the casting vote is required. The mere knowledge that the Chairman *may* vote for the other side is often enough to prevent the workers or employers from unduly prolonging the proceedings, or from adopting an uncompromising position.[1] When a question is virtually decided by the Chairman in this way it is sometimes said that the Board system approximates so closely to the Arbitration system as to be practically indistinguishable from it. But this is not the case, for a Board chairman must persuade at least one side to vote with him. Unlike an arbitrator, he cannot give a decision with which neither side agrees. This is indeed the fundamental difference between the Board and the Arbitration systems. In the former only discussion and conciliation is used; in the latter the two sides plead their case before a third party who alone can give a decision.

The Board System does not always assume a simple form. There is another variety of what is essentially the same method, which is found in the United States and in Canada, where the Boards differ from those already described in the degree of control exercised over their activities. Even the simple Boards are always subject to the ultimate control of some external authority. This body may be the Department which is responsible to Parliament for the administration of the labour laws, or a Court of Arbitration which acts as a Court of Appeal from the decision of the Board, or a specially constituted Court which acts as a co-ordinating body for

[1] For further details as to the actual proceedings of a Board, see R. H Tawney, *Minimum Rates in the Chain-making Industry*, Chapter III, and Dorothy Sells, *The British Trade Boards System*, pp. 18–27.

the various Boards, or in the last resort the ordinary Courts of Law which are charged with the duty of interpreting the Act and administering punishment for non-compliance. The degree of control varies very considerably from country to country. In Tasmania the Boards are virtually independent, and from this state of affairs there is gradual transition through stages of increasing control to the American position. In Canada and the United States it is usual to appoint a Permanent Commission, or to delegate to some existing authority such as the Labour Department of the State, the power to intervene in wages. Having satisfied itself as to the necessity of intervention, it is the duty of this body to fix minimum wages, and for this purpose it usually sets up a Wages Board, constituted in the same manner as a simple Wages Board, that is to say, equally representative of employers and workers. Alternatively the central authority may proceed to fix wages by means of more or less informal conferences with the representatives of the trade concerned. In three States only is the appointment of these Boards compulsory,[1] but in practice they are almost always set up. The usual procedure is for the central authority to request the Board to determine what is a living wage which should be paid in the industry concerned, and when a decision is reached by ordinary Board methods, that is to say by discussion followed by a vote, this is forwarded to the Central Commission as the recommendation of the Board. It is then reviewed by the Commission, which may approve, disapprove, or amend it, or may re-submit it to the same or another Board. If the recommendation is adopted, the central authority may call a Public Meeting, where the matter will again be discussed, or it may at once declare it to be the legal minimum wage, the practice in this respect varying from State to State, While in general the central body substantially adopts the recommendations of the Wages Board, or makes only minor alterations, the fact remains that not only the initiative, but also the final power lies with the Commission or Government Department. Even in those cases where

[1] i.e. in Massachusetts, Kansas, and Wisconsin.

the appointment of a Board is compulsory, the freedom of the Commission as to the making of the final decision is in theory in no way impaired. This raises the question as to whether the methods usually adopted in America and Canada should justifiably be grouped under the Board system. It was stated above that the essence of this system was that the trades themselves are entrusted with the determination of the minimum wage, and it may therefore be argued that this final supremacy of the Commission destroys the reality of the Board System in the countries under consideration. On the whole, however, it seems more convenient to regard them as "limited boards" than to deal with them separately or as part of the Arbitration System. The method of fixing the wage in the first instance is essentially one of discussion, in which the parties meet together to exchange views. There is no procedure similar to that before an Arbitration Court, in which one party files a claim against another, and argues it in the presence of a Judge. This is more especially the case when the central authority, as in some Canadian States, practically co-opts representatives of the trade under consideration to act with it in determining the appropriate rate. Moreover, as will be shown in Chapter IX, even where there is disagreement as to the proper wage between the representatives of the trade and the Central Commission, cases are more frequently referred to the original Board for reconsideration, or to another Board consisting of other representatives of the trade, than settled arbitrarily by the central authority. In many cases also this last body numbers employers and workers among its members. Finally, it must not be forgotten that in fact the wage recommended by the Wage Board is almost invariably adopted,[1] for all circumstances combine to render this the simplest, and probably in the long run the most satisfactory, course open to the Commission, which has usually neither the time nor the specialised knowledge to reopen the whole question. Thus it is safe to say that the biggest part in

[1] *Vide infra*, Chapter IX, p. 216.

deciding the wage is played by the members of the trade concerned.

There is yet another reason why it is more convenient to group the Canadian and American experiments under the Board System. Under Arbitration, the initiative comes in the first instance from workers or employers themselves, and the Judge, who here represents the central authority, can only take the initiative if he is convinced that a strike or lock-out has taken place or is impending. Under the method here considered, the central bodies are instructed to make inquiries into the conditions in various trades, and if the wage conditions are unsatisfactory, they are to proceed to fix or alter the minimum wage. There is no need to wait for an industrial dispute, and as a rule the workers dealt with under the Canadian and American legislation approximate much more to the members of the Board trades in Great Britain and Europe, than to the highly organised and independent workers who are covered by the Arbitration laws in Australia. It must be admitted that in the last resort there is no hard and fast line to be drawn between the Board and the Arbitration Systems. Under the former there is merely a more definite attempt to get an agreement by consultation with the members of the trade concerned, and as a result there is a greater likelihood of compromise. In these circumstances it seems justifiable to regard the American methods as belonging to the Board type, especially when it is remembered that even a Simple Board is subject to some degree of central control.

A third variety of the Board System is found in France, where the work of fixing rates is split up between two Boards, the Comité de Salaires and the Comité d'Expertise. The former body decides upon the hourly rate, the latter determines how long it takes to make various articles, and what piece rates will yield the time rate as fixed by the Comité de Salaires. The French method of electing the Board members also differs from that generally adopted under the Board system.[1] But all three types have many features

[1] Details of the French method will be found in Chapter V.

in common, and it is possible to group them together for the purposes of the following discussion. There is considerable difference as between various Board systems in the interpretation placed on the word "trade." In Great Britain and in Australia there is a tendency to split up industries very carefully, and to have several Boards dealing with cognate trades. In Canada and America, as a general rule, many different trades are grouped together under the one heading of "Manufacturing" or "Mercantile" industry. It is clear that as the number of non-related trades dealt with under one Board increases, the method becomes less and less like the pure Board system, the essence of which was that the members of the trade itself played a very large part in determining the wage which was to be fixed.

The Arbitration System.

The third method of regulating wages is the Arbitration System. Australia is the traditional home of this kind of legislation, although there have been short-lived experiments in Great Britain and Kansas. This method may take several forms, of which Arbitration and Conciliation as practised in Australasia are the best known. Arbitration itself is of two kinds, voluntary and compulsory, but it is the latter alone which concerns the student of State wage regulation. The first form is found in the Act of 1896 in Great Britain, which permitted the Board of Trade to take steps to promote the amicable settling of disputes, and for this purpose to appoint an arbitrator if so requested by both parties. The Act contains no compulsion on the parties to attend, or to submit to the award rather than to strike, and there is no provision for the extension of the award to other firms not originally engaged in the dispute. There is indeed in this kind of arbitration nothing fundamentally different from the position where two parties agree privately to the settlement of a dispute by a third person binding themselves to abide by the decision. The fact that the State facilitates recourse to arbitration by the provision of a recognised body to whom the parties

may apply does not warrant the inclusion of this kind of interference in wages in a discussion of State regulation of wages. For the essential features of compulsory arbitration are two in number. The first is the existence of a permanent Court of Arbitration, which deals with disputes either itself or through Deputy Courts; the second is the legal obligation on both employers and workers to submit to the Award of a Court and to refrain from endeavouring to obtain different terms by resort to direct action during its currency. Compliance is enforced by the imposition of penalties in respect of strikes and lock-outs. In certain States employers and workers are not only bound to submit to an award once it has been made; they are also forced to refer any dispute to the Court of Arbitration and to abide by its decision. State arbitrators are sometimes given power to summon before themselves the parties to a dispute in any, or in certain specified, trades. As a general rule cases are brought to the notice of a Court on the initiative of the persons concerned. Practice in this respect differs from State to State, but everywhere the parties are bound to accept the decisions of the Court, and are guilty of punishable offences for attempting by industrial disturbance or otherwise to evade the full terms of the award. In this way the State makes itself responsible for forcing employers to pay the wages which the Court has declared payable in any industry. Such conditions are found in New South Wales, New Zealand, West Australia, South Australia, Queensland, and the Commonwealth of Australia as a whole; and until recently similar legislation effectively existed in Kansas. There are probably as many variations of type within the Arbitration group as were found under the Board System. As a general rule the Court consists of a Judge who has attained a high position in the ordinary Courts of Law, who may sit alone to deal with cases, or who may be assisted by another Judge, or by assessors. These are persons, usually two in number, who are appointed by the two parties to the dispute, and who give assistance on technical points.

When a dispute arises, the case may in some States be

taken direct to the Court; in others it must be referred in the first instance to a Board of Conciliation, whence it is referred to the Court if no agreement is reached. The hearing of disputes often occupies much time, and both sides usually employ lawyers to work up the cases for them, although in Australia lawyers themselves may not as a rule plead in Court. The matters which may be dealt with in an award are numerous, and the powers of a Court are generally much wider than those of a Board. The award finally pronounced by the Judge may apply only to those members who were the original parties to the dispute; or it may by special decree or otherwise be extended to and bind all persons engaged in the trade concerned in the district defined by the Court. While an award is in operation no strike or lock-out against it may take place, and though in some States it is provided that no award may be altered within a given period of time, in most cases the parties are not prohibited from bringing the issue before the Court at a later date. Sometimes the decision of the Court is final, sometimes there is the possibility of an appeal to the full bench of all the Judges of the Court.

As a rule the Arbitration System works through registered unions. It is clear that penalties for striking can be more easily enforced if there exists some body who can be held responsible for the action of workers. Hence as a rule the Arbitration Acts apply only to workers' unions which are registered, and whose registration may be cancelled if they fail to comply with the award of a Court. As cancellation involves the withdrawal of State support in enforcing awards against employers, there is a considerable inducement to workers not to take action which involves cancellation. In certain States, however, the Act applies to all unions whether registered or not.

Voluntary Conciliation is outside the scope of this book, but when it is brought closely into relationship with the Arbitration System by the adoption of various devices it becomes of considerable importance in the study of wage regulation by the State. In certain States, before a dispute can be brought before the Arbitration Court, it must be

referred to a Conciliation Council or Board. Such a body usually consists of a Special Conciliation Commissioner, who may or may not be assisted by representatives of both sides. The significant feature lies in the fact that if an agreement is reached by this procedure it can be filed with the Court, and is thereby created an Award of the Court for the purposes of the Act. That is to say, penalties can be enforced against persons engaging in a strike or lock-out while the Agreement is operative, and the State will prosecute cases of non-payment of the agreed wage. This principle underlies the Conciliation Councils and Committees of New Zealand, Queensland, New South Wales, and is to be found in the Labour Disputes Committees of New Zealand and the Compulsory Conferences which can be called under the Arbitration Acts of the Commonwealth of Australia. In some States the Arbitration Court is empowered to extend such an agreement to firms which were not parties to the original dispute, but this power is usually carefully limited, and can be exercised only after full inquiry into all the circumstances. Yet a third variation of the Arbitration method is found in the provision for the making of Industrial Agreements. These Agreements may be made between certain defined groups of employers and workers, usually unions or associations registered under the Arbitration Acts. If filed with the Court, such an agreement is regarded in the same way as one arrived at under a Conciliation Commissioner, and a breach thereof constitutes a punishable offence.

At this stage it may well be asked whether the last two types of wage fixation, which have been considered under the heading of Arbitration, ought not more properly to be included under the Board System, for the process whereby the wage is fixed is essentially one in which the members of the trade play a large part. This fact must be admitted, and the argument for a grouping under the Arbitration System rests rather on grounds of expediency than of logic. The Industrial Agreement, whether arrived at privately or before a Conciliation Commissioner, is always found with the Arbitration System, and only in Tasmania

does it exist side by side with the Board System. It is administered through arbitration machinery, and relies on the same sanctions for enforcement. Unlike the Board method, it not only enforces a minimum payment on employers, but also prevents workers from forcibly attempting to obtain a higher wage. If a dispute occurs as to the interpretation of the Agreement, or if its terms are questioned, there is no provision for its reference to a body representative of the trade, but it will go before the Court as an industrial dispute. Frequently such an Agreement is only reached because it is known that disagreement means a reference to an arbitrator. It is in reality a device for reducing the number of cases which are brought before the Court, and is recognised as such in States where it is provided that no dispute may be dealt with by the Court until it has been before a Conciliation Committee. In such circumstances it is merely an economy of time to provide that a settlement so reached shall rank as an award of the Court, and if this is so, it seems logical to extend the privilege to agreements which are made before the case gets even as far as the Conciliation Committee. It is for these reasons that the Industrial Agreement, however arrived at, will here be treated as a form of the Arbitration method of fixing wages.

Before we leave the subject of the methods whereby State regulation of wages is effected, one further development must be noticed. Of recent years an additional body with special wage-fixing powers has been set up in New South Wales and South Australia. This body is in part a further specialisation of the Arbitration method, in part a reversion to the Fixed Minimum Wage. It is a specialisation of Arbitration, because, acting as an integral part of that system, it performs the specialised function of determining what is the living wage at any time, a function which was formerly indifferently carried out by the Court. It has been evolved to meet the need for some principle to guide the decisions of the Court of Arbitration, and the acceptance of the living wage as that principle. On the other hand it is a reversion to the Fixed Minimum Wage

method in that it prescribes a flat rate of wages for all trades which are regulated by either of the other two methods. Once such a body has made a Living Wage Declaration, no lower wages may be fixed by any authority whatsoever, while in those trades where awards or determinations had previously been made for a rate less than the declared figure, it is provided that this old wage shall automatically be replaced by the new official living wage figure; and this may result in fixing a flat rate of wages for a large number of industries.

CHAPTER IV.

WAGE REGULATION IN AUSTRALIA AND NEW ZEALAND.

New Zealand—West Australia—Victoria—Tasmania—Queensland—New South Wales—South Australia—Commonwealth.

THE previous chapter contained a general description of the various methods of wage regulation adopted by different States. It is now necessary to discover exactly which methods have been adopted in particular countries. It is only fitting that such an inquiry should deal first of all with Australia and New Zealand, where the pioneer work was done, and where the greatest amount of experiment has taken place.[1] An observer of conditions in these States is at first apt to be confused by the complexity of the organisations created to deal with wages, and by the apparent anomalies and inconsistencies. This sense of confusion will be much reduced by bearing in mind the following summary of the facts. In the first place it is important to note that in each Australian State and in New Zealand there is a fixed Minimum Wage. In addition to this the various States have adopted further machinery for regulating wages. In New Zealand and West Australia the Arbitration method alone has been introduced, while Victoria and Tasmania have adhered to the Board System. In Queensland there is a combination of the Board and the

[1] Since this chapter was written three articles on *Wage Regulation in Australia and New Zealand*, by Dorothy Sells, have appeared in the *International Labour Review* of October, November, December, 1924. The Report by Paul S. Collier on *Wage Regulation in Australasia*, which was printed in the *Fourth Report of the Factory Investigating Commission, New York*, 1915, gives an excellent description of the methods in force up to 1915.

Arbitration methods, while in South Australia and New South Wales, in addition to these two systems, there exists also an *ad hoc* body charged with the duty of declaring a living wage. Finally, the Commonwealth of Australia has set up a Court to deal with industrial disputes which extend beyond the boundaries of any one State, and since 1921 also provides for the formation of Boards to deal with similar disputes. The possibilities of conflict between different authorities are numerous, and will be touched upon after the position in each State has been examined in greater detail.

New Zealand.

New Zealand, in 1894, passed the first Compulsory Arbitration Act, which laid the foundation of so much of the wage regulation which exists at the present time. The Industrial Conciliation and Arbitration Act of 1894 established Boards of Conciliation and a Court of Arbitration which could deal with disputes and to which unions registered under the Act were subject. In 1898 an amendment made it possible for the Court to prescribe minimum rates of wages. At first much of the work was done by the Conciliation Boards, but these were not very successful, although by 1900 they had become practically Arbitration Courts. In 1901 a further Amendment made it possible to take disputes direct to the Court, and after that time the Boards were little used. They were abolished in 1908, when a Consolidating Act was passed. The amendments prior to this date had widened the scope of the Acts, and later had strengthened the enforcement of awards by the provision of penalties. These changes reflected the general attitude towards arbitration: at first workers had been friendly, while employers had been definitely hostile; with the coming of a period of less economic prosperity, and the growing tendency of each new award to be on a lower level, or at any rate not on a higher level than the last, opinion changed, and employers became on the whole the supporters of the system, while the workers were dissatisfied.

The Consolidating Act of 1925,[1] which embodies the Act of 1908 and its various amendments, governs the position at the present day. In addition four other Acts have been passed which bear upon wage regulation in New Zealand.

The Arbitration System here works through registered unions. Any society of not less than three employers or fifteen workers may be registered as an industrial union, while it is open to any trade union if it so desires to register as a separate union, subject to the discretion of the Registrar. Also any body representing not less than two industrial unions may be registered as an Industrial Association. The effect of registration is to render the union and its members liable to all provisions of the Act. It is possible for unions to cancel registration, but as this does not relieve them of any obligations under an existing Award or Agreement, there is not much inducement to withdraw from registration. Disputes which affect registered unions are to be referred to a Council of Conciliation, and while the matter is under consideration neither party to the dispute must do anything in the nature of a strike or lock-out. Such action is also prohibited during the currency of an Award. For the purposes of the Act New Zealand is divided into Industrial Districts by the Governor, and for each a Clerk of Awards is appointed, who is responsible for the necessary technicalities. A maximum of four Commissioners are appointed by the Governor for three years, each to have jurisdiction within his own Industrial District or Districts, as assigned by the Governor. Where no Commissioner is immediately available, the Governor may appoint some one to deal with a dispute. No dispute can be referred to the Court of Arbitration until it has first been submitted to a Conciliation Commissioner, who, sitting with assessors, constitutes a Council of Conciliation. Any agreement which is thus reached is regarded as an Industrial Agreement, which will be enforced as an Award of the Court. If there is no agreement, it is the

[1] *An Act to Consolidate certain Enactments of the General Assembly relating to the Settlement of Industrial Disputes by Conciliation and Arbitration*, October, 1925.

duty of the Commissioner to endeavour to persuade the parties to come to some temporary working agreement, until the matter can be brought before the Court. The Council may also make recommendations regarding the dispute, which shall not have binding force, but which may make the public aware of the merits or demerits of the case. These recommendations may be taken by the Court of Arbitration as the basis of its Award without further inquiry, and this fact lends greater significance to the proceedings of the Councils. Their success may be gauged from the fact that during the year ending March, 1921, out of 258 cases dealt with, 236, or some 91.5 per cent., were settled or substantially settled without recourse to the Court.[1]

There is one Court for the whole of New Zealand, consisting of three members appointed by the Governor. One of these is the Judge of the Court who must be eligible for appointment as a Judge of the Supreme Court. The other two members are nominated on the recommendation of Industrial Unions of employers and workers respectively, for a period of three years. The Court has the power to refer any matter to a special investigating Board, and base its awards on its report. Awards are to be made within one month of the first sitting on any case, and the scope of the jurisdiction of the Court and of its Awards is relatively wide. Co-ordination between trades is facilitated by the provision that where more than one Award or Agreement relates to an industry, the Court may, on application of the party affected, adjust the terms of the Award, while in an industrial dispute the Governor has power to declare one industry related to another for the purposes of the Act. The Award is to specify the original parties on whom it is binding, and the industry and Industrial District to which it relates, which in all cases shall be that where the dispute originated. Further, the Award extends to, and binds, any trade union,

[1] *Report of the Department of Labour for the year ending March* 31, 1921. During the previous year the percentage so settled was 93 (see *Report for the year* 1920).

Industrial Union or Association, or any employer, who, not being an original party to the Award, is at any time connected with or engaged in the industry to which the Award relates in that District. On the other hand, the Court can limit the operation of the Award to any city, town, or district within an Industrial District; but on the application of any trade union it can extend the scope if this had been so limited.

At first there was no provision for the extension of Awards to all parts of the Dominion. In 1911 an Amending Act provided that an association of employers or workers could make application to the Court in the first instance for an Award to apply to more than one District. But owing to a lack of precision as to the place where applications were to be heard, and the enormous amount of detailed work which the procedure laid down in the Acts involved, the Unions were advised by the Court not to put in claims,[1] and in fact no Awards on a Dominion basis were ever made under the 1911 Act. The technical flaws in the Act were not remedied until 1920, when another Amending Act gave more explicit instructions as to the place where cases were to be heard, and simplified the procedure. An Amending Act of 1922 finally placed Dominion Awards on the same basis as those within one District. It is now possible for the parties to make application for a Conciliation Council if the dispute affects two or more Districts, and the Minister may appoint a special Conciliation Commissioner to deal with the combined district. Agreements made before such a Council are regarded as Awards if filed with the Court. Within a year of the passage of the 1922 Act five Dominion Awards had been made.[2]

In addition to those Agreements made before a Conciliation Commissioner, it is possible for any trade union, Industrial Union or Association to come to an Industrial

[1] *New Zealand Bakers and Pastrycooks Case.* June 25 and 26, 1912. *Awards*, Vol. XIII, p. 497. Further information as to the difficulties created by the Act of 1911 is given in the Evidence before the *Labour Bills Committee* in 1920. *House Documents*, Ig, 1920.

[2] *Report of the Department of Labour for the year ending March* 31, 1924, p. 5.

Agreement with an employer or employers, with regard to any "industrial matter." This term is given a wide meaning, and among other things includes the regulation of wages. Such an Agreement, if duly filed with the Court, becomes binding on the parties concerned in the same way as an Award. As in the case of the Awards of the Court, the duration of these Agreements is to be for a maximum period of three years.

For some years the legislation outlined above appeared to be workable and effective, and at one time New Zealand was not unjustly known as the land without strikes. But after 1910 there was a considerable increase in industrial unrest, as measured by the frequency of strikes.[1] The change was accompanied by a growing reluctance on the part of workers to register under the Industrial Conciliation and Arbitration Acts, thereby removing themselves from the control of the Court. Matters reached a crisis in 1913, the year of the greatest unrest ever experienced in New Zealand, and as a result the Labour Disputes Investigation Act was passed. This Act has never been very popular among the workers, by whom it was opposed from its inception on the grounds that all that was needed was the improvement of the existing Act, which was alleged to be administered chiefly in the interests of employers.[2] The new Act was a measure endeavouring to deal with those workers who refused to register under the Arbitration Act, and applies to societies of workers, whether incorporated or not, and whether registered under any Act or not, who are not for the time being bound by any Award or Industrial Agreement under the 1908 Act. It also applies to the employers of such workers. Labour Disputes Committees are set up, which are to consist of not less than three or more than seven members. With the excep-

[1] The number of strikes increased from 15 in 1910 to 73 in 1913, and the number of workers affected grew from 255 to 13,400. *New Zealand Official Year Book*, 1923, p. 608

[2] See evidence of Mr. Maddison (representing the Executive Board of the Carpenters and Joiners of the Dominion), and Mr. Carey (Wellington Trades and Labour Council) before the Labour Bills Committee on November 14, 1913.

tion of the Chairman, the members are to be appointed half by the workers and half by the employers concerned in a particular dispute. The Chairman is to be elected by the members, or, failing agreement within two days, by the Minister of Labour. Members of societies defined under the Act may in the event of a dispute give notice to the Minister of their claims, and he shall then refer the case to a Conciliation Commissioner, or directly to a Labour Disputes Committee. If the former is unable to obtain a settlement, the dispute automatically goes to the latter body, which has power to make investigations and either obtain a settlement, or make a Recommendation to the Minister, which shall be published in the press. If no agreement is reached before the Labour Disputes Committee, the majority recommendations shall be communicated to the unions, which shall then decide by ballot whether to accept them or strike. If the result is in favour of a strike this may lawfully take place after the expiry of seven days. On the other hand, if an Agreement is reached before the Committee, it may be filed with the Clerk of Awards and is regarded in every way as an Award under the 1908 Act. In practice the 1913 Act has not been used as much as might have been expected. To a strong union it seems to offer the advantages of State enforcement of a collective agreement, combined with the freedom to strike.[1] And yet by 1921 there were only five cases in which unions had cancelled their registration under the 1908 Act, and filed their disputes under the Industrial Disputes Investigation Act [2]; one of these later re-registered under the older Act.[3] In all up to the end of 1923 only twenty-two unions, involving forty-two disputes, have been dealt with under the 1913 Act, while in 1923 alone as many as 569 Awards were in force under the Conciliation and Arbitration Act.[4]

[1] It is, of course, possible to strike only if the Agreement has not been concluded, and as a means of enforcing a demand. When the Agreement is registered, it becomes an offence to resort to direct action during its currency.

[2] *Report of the Labour Department for the year ending March* 31, 1921.

[3] The Dunedin Tramway Workers.

[4] *Report of the Department of Labour, New Zealand*, 1922–1923, p. 4.

As in all other countries, the exigencies of the War, reinforced by rapidly rising prices, necessitated frequent alterations in wage rates, and a careful examination of such wage regulation authorities as existed. In New Zealand, the first sign of the new conditions was the Cost of Living Act of 1915, which provided merely for the appointment of a body to inquire into the cost of living and other matters, and to report thereon to the Governor, with recommendations for specific legislation. Of more importance was the War Legislation and Statute Law Amendment Act of 1918 and its Amendment, which gave the Court wider powers with regard to the alteration and amendment of rates. In particular the Court was more free to alter rates if there had been any variation in the conditions affecting the trade, and if there had been any change in the cost of living. This meant that it was no longer necessary for the full three years to elapse before a case could be again taken to the Court, and immediately it was almost overwhelmed with appeals for revision on account of the change in the level of prices. As a result it was finally led to adopt the expedient of other Courts in Australia, notably that of New South Wales, and declare from time to time a general minimum wage based on the cost of living. No Award or Agreement could enforce a lower wage than this, and the Court was thus left free to deal only with disputes peculiar to particular trades. The 1918 Act was repealed in so far as it related to the Court, by the Industrial Arbitration Act of 1921–22, which laid down conditions as to the basis on which wages were to be regulated. That Act, however, expired at the end of 1923.

The Cost of Living Act was repealed by the Board of Trade Act of 1919. This gave the Board of Trade which was created by the 1915 Act a new status and authority. It was to consist of the Minister of Trade and Commerce as President, and four other members, appointed by the Government for five years. These other members need possess no special qualifications. The Board is authorised to hold inquiries into any industrial matter whatsoever

"relative to any industry carried on or proposed to be carried on in New Zealand . . . for the purpose of obtaining information which may be required for the due control, regulation, and maintenance of the industries of New Zealand; the due observance, enforcement, or amendment of the laws relative thereto, and the discovery of breaches in those laws." Of special importance is Section 26, under which the Governor in Council, on the recommendation of the Board, may by regulations under the Act make provision for the establishment of fixed maximum or minimum prices or rates for any classes of goods or services, or otherwise regulate or control such prices or rates "for the regulation and control of industries in any manner whatever, which is deemed necessary for the maintenance and prosperity of these industries, and the economic welfare of New Zealand."[1] It is clear that had the Board chosen so to interpret its amazingly wide powers, it might have become a very serious rival to the Court, and this is in fact what was felt by competent observers at the time. Sir John Findlay, ex-Attorney-General of New Zealand, wrote in 1921 that the Act "if workable, will supersede all that is important in the compulsory arbitration system."[2] In fact, however, this has not happened. For some time the membership of the Board was an adequate safeguard against a drastic use of its powers, and its work was confined to inquiry, followed by very little active regulative work. By 1923 its membership had been allowed to lapse until the President was the only member, and at the same time the Department had been so restricted that any far-reaching or detailed investigation was impossible.[3] Nevertheless it is important to realise that this Act still contains possibilities which might under a different administration be developed in a manner that would have considerable bearing upon State regulation of wages in New Zealand.

Nor must it be forgotten that there is also a Fixed Minimum Wage in this State, which first appeared in the Factory

[1] *Board of Trade Act*, 1919, Section 26(1)e
[2] *International Labour Review*, October, 1921, p. 40.
[3] Condliffe, *Experiments in State Control in New Zealand*, *International Labour Review*, March, 1924.

Act of 1901. At the present time, no person can be employed in any factory, shop or office, for less than ten shillings a week for the first year of employment. This sum must increase each year by five shillings, until a minimum of thirty shillings is reached.[1]

West Australia.

West Australia is the only Australian State which has followed the example of New Zealand in adopting the Arbitration method of regulating wages without any serious complications. There has been in this State none of the experimentation which characterises so many of the other States of the Commonwealth. Indeed, until 1920 there was not even a Fixed Minimum Wage. This adherence to the method of Arbitration alone may in part be attributed to the nature of the country and the industries carried on there. The chief industries are those relating to the production of raw materials, and there is very little manufacturing The type of worker concerned in West Australia is better organised and less compromising than in Victoria, for instance.

The first Arbitration Act was passed in 1900, but it was scarcely on the statute book before it was repealed. The new Act was not materially different from the old one, and in reality only an amending Act was needed. It was explained, however, that business men, who were the people most likely to have to read the Act, would probably be confused by the necessity of reading two Acts, and that therefore it would be simpler to pass an entirely new law.[2] The chief effect of the new measure was to make the older Act operative, and the whole system was modelled on that created in New Zealand in 1900. In 1912 a Consolidation Act gave the Court of Arbitration very wide powers, and together with the Amending Acts and

[1] *Factories Act of* 1921, Section 32. *Shops and Offices Act*, 1921, Section 11.

[2] Speech of the Hon. W. W. James, introducer of the Bill into the Lower House *West Australian Parliamentary Debates*, Vol. 19, September 27, 1901.

the Factory Act of 1920, determines the wage-regulating machinery in West Australia at the present time.

The Arbitration method works through the registration of unions. Any society consisting, in the case of employers, of two or more persons who in the past three months have employed on the average fifty workers per month, or in the case of workers, of any number not less than fifteen, may be registered under the Act. The effect of registration is to render the union liable to comply with the Act. This in fact means that it must not engage in any strike or lock-out, and that it must observe the terms of any award which applies to it.

The pivot of the system is the Court of Arbitration, which consists of three members appointed by the Governor. The Chairman is to be a Judge of the Supreme Court, while the other two members are appointed on the recommendation of employers' and workers' unions respectively. By the Act of 1920 the appointment of a Deputy Chairman is made possible. It is contemplated that everything in connexion with wage regulation shall be done through the Court, which is therefore given full jurisdiction over any industrial disputes referred to it by the parties under the Act. In some cases, however, it is necessary for the Court itself to initiate proceedings, and it is given power to do so by summoning the disputants to a Compulsory Conference. Disputes not so settled are then referred to the Court. A still closer approximation to New Zealand methods was made in 1920, by the addition of a proviso that the Minister may from time to time appoint a Special Commissioner, who may summon any person to appear before him if he thinks that a strike is pending. If as a result of his mediation a settlement is reached, this may be filed with the Court and is enforced as an Award. Even if not all the points are settled, an Industrial Agreement may be made respecting just those matters on which there is unanimity. The Court has power to prescribe a minimum wage, and to limit working hours except in the pastoral and agricultural industries, and it may make regulations dealing with technical matters, which shall have the force

of law, unless Parliament passes a hostile resolution. The Court has made considerable use of these powers. While an Award is in force it is to be a common rule of the industry, and is binding on all employers and workers engaged in it whether members of an industrial union or not. Such a common rule, however, may be confined to a specified locality, and generally is. In 1922, for example, out of a total of seventy-seven Awards only four applied to the whole State.[1] Awards may be made for any specified period of not more than three years, or for one year, and henceforth from year to year. Interpretation and amendment of awards is done by the Court on the application of any employer or industrial union.

The Act facilitates the making of Industrial Agreements. Any industrial union or association may make an agreement with any other, and if registered with the Court, it will be binding on the parties concerned. It is possible for names to be added after the Agreement is made. In 1922 ten such additions were made; the corresponding number in 1921 was forty. If the Court declares that an Industrial Agreement shall be regarded as an Award, it automatically becomes binding on all employers and workers in the locality specified. Before taking such action, however, the Court must give notice of its intention, and hear objections from the parties interested. In 1922 two such extensions were made.

It has already been stated that there was no Fixed Minimum Wage until 1920. This omission has borne with particular harshness upon the "white workers," or persons, chiefly women, engaged in the clothing trades. These, as always, were insufficiently organised to take the necessary preliminary steps towards registration under the Act, and thus secure consideration of their case. This has resulted in the existence of a considerable amount of underpayment.[2] There is now a Fixed Minimum Wage of 10s.

[1] *Commonwealth Labour Report*, 1922, p. 94.

[2] The unsatisfactory conditions in these trades has been pointed out from time to time in the *Reports of the Medical, Health, Factories and Early Closing Department*. The subject received particular attention in the *Report for the year* 1915.

per week, rising by annual increments to 35s., below which no person may be employed. Moreover, by Section 45(g) of the Factories and Shops Act, 1920, no woman over twenty-one may be employed, unless holding a special permit, at less than the lowest minimum wage prescribed for a woman in any Award or Industrial Agreement under the Arbitration Act. This is a new form of the Fixed Minimum Wage, which has not been adopted elsewhere.

Victoria.

Victoria was the other pioneer State in wage-regulating experiments, and, unlike New Zealand, developed the Board system. Moreover, with Tasmania, Victoria has clung to this particular method with astonishing persistence, although here as elsewhere, envious eyes have been cast upon the system in other States. Thus in 1913 the Victorian Employers' Federation petitioned the Legislative Assembly to make strikes illegal. The Chief Inspector of Factories was called upon to make a report, but his conclusions were not in favour of the innovation. The matter was then dropped, only to be raised again in the following year, when an unsuccessful attempt was made to pass an Act which would have forbidden strikes by methods in use in New Zealand. This time Mr. Murphy, the Chief Inspector of Factories, was sent on a voyage of inquiry to the other States. In his Report [1] he came to the conclusion that the comparative immunity from strikes which was enjoyed by Victoria was sufficient evidence of the superiority of Wages Boards over the Arbitration method. He did, however, make suggestions for the improvement of the system in Victoria, proposing among other things that on the outbreak of a strike a Determination should automatically be suspended, and that certain strike provisions should be introduced and applied only to trades, and branches of trades, regulated by Wages Boards, and to public utility industries. Here the matter for the time rested.

[1] *Report of Chief Inspector of Factories, Melbourne, on Anti-Strike Legislation in Operation throughout the Australian States and Recommendations regarding such Legislation for Victoria*, July 1, 1915.

The original Act in 1896 was passed in the first instance for four years only. It was renewed for two years in 1900, and from that date until 1908, when the system was firmly established, it was subject to continual attacks and numerous amendments, most of which detracted from the efficiency of the Boards. In 1903 a Court of Industrial Appeals was set up, to which disputed Determinations could be referred. From 1908 the growth of the Board system has been continuous, and the Boards have increased in numbers until by the end of 1922 there were no less than one hundred and seventy-four in existence, regulating the wages of some 184,500 workers. At the same time there has been a growing tendency to extend the operation of the Boards from the metropolitan area to the shires.[1]

The present position is governed by the Consolidated Factories and Shops Act of 1915, as amended by the Acts of 1920 and 1922.[2] Part VII of the 1915 Act relates to Special Boards, which since 1920 have been known as Wages Boards. These Boards may be set up by the Governor in Council for any trade or branch thereof, or for any group of trades, and may deal with the whole or any defined part of Victoria. Until 1920 the setting up of a Board was preceded by an inquiry undertaken by the Minister on the presentation to him of a petition. He would then move a Resolution in Parliament that a new Wages Board should be set up, and this Resolution was almost invariably passed in both Houses. As early as 1915, however, Mr. Murphy recommended that as the Wages Boards had justified their existence the procedure might be simplified and the Minister invested with power to set up Boards. This suggestion was adopted in the Act of 1920 and Wages Boards may now be appointed without reference to Parliament. The Governor may extend the powers granted to a Wages Board so that it can fix wages

[1] According to the Inspector's Report for the year ending 1921, thirty-nine Boards were not State wide, and there were eight cases in which there was a separate Board for the country and for the metropolitan district.

[2] *An Act to Consolidate the Law relating to the Supervision and Regulation of Factories and Shops*, No. 2650, 1915. The Amending Acts are Nos. 3093 in 1920 and 3252 in 1922.

for any trade which in his opinion is of similar class or character to that to which the Board originally applied. Since 1922 the Governor may also exempt an industry from the operation of a Board for a period of six months in order to give the trade time to adapt itself to new processes or work.[1] In addition, the Governor is given power to adjust the powers and jurisdiction as between any two Boards.

The Boards are true to type in that they consist of equal numbers of representatives of employers and workers, six to ten in total numbers, together with an independent chairman. Nominations for membership are invited in the press, and appointments, until 1922, were made by the Governor. This work has now been transferred to the Minister, who may also appoint members directly if sufficient nominations are not forthcoming from members of the trade concerned. Provision is made for the reconsideration of an appointment on appeal from one-fifth of the workers or employers engaged in the industry. Board members must possess certain occupational and residential qualifications. They must have been *bona fide* workers or employers in the trade for six months immediately preceding their appointment, while they must also reside within the locality for which the Board is appointed. It is worthy of note that the Chief Inspector of Factories in 1915 suggested that the former proviso should be removed, as in practice it did not have the desired effect of excluding agitators or extremists, and at the same time tended to exclude trade union leaders or organisers, most of whom were persons with valuable experience in the intricacies of wage-fixing. In place of this qualification Mr. Murphy suggested that membership of the Boards should be limited to "any person who has at any time been engaged in the trade either as employer, manager or worker, for a period of at least three years continuously."[2] The Chairman is

[1] Advantage was taken of this clause in 1923 to grant exemption to the Knitted and Woollen Goods trade.

[2] *Report of the Chief Inspector of Factories, Melbourne, on Anti-strike Legislation in operation throughout the Australian States, and Recommendations regarding such Legislation for Victoria*, July 1, 1915.

elected by the members or, if they make no election he is appointed by the Minister. In practice the chairmen tend to be persons with no special knowledge of the trade concerned, such as older civil servants, stipendiary magistrates, barristers, or even, at one time, clergymen.

There has been a tendency of recent years considerably to extend the powers given to the Boards. At one time they were considerably limited, but they may now fix the lowest prices or rates of payment due to any persons or classes of persons engaged in the trade for which they are appointed, or in repairing articles made in the trade. They can also fix the maximum number of hours per week for which the minimum wage shall be payable, according to the nature and conditions of the work, and since 1923 they are empowered to adjust the rates payable when short time is worked. They may determine overtime and holiday pay, and have very considerable powers with regard to regulating apprenticeship, including the power to limit the number or proportionate number of apprentices or improvers who may be employed. In some respects, however, the type of wage rate which may be fixed is more closely regulated than is the case with many other wage-fixing authorities, and if a time-rate is fixed by a Board, employers are forbidden to pay their workers on a piece-work basis without express permission of the Board. The Determination of a Board lasts until amended by itself or until revoked by the Court of Industrial Appeals. The Boards themselves, until 1922, were set up for a period of three years, but as considerable inconvenience and loss of time was caused by the necessity of re-election, the Act of that year provided that Boards should be appointed for one year only, but that at the end of the year they should be automatically reappointed unless any objection was offered.

The Court of Industrial Appeals acts as a court of appeal to the Boards, and to some extent co-ordinates their work. It consists of a permanent President, who must be a Judge of the Supreme Court, and who holds office for such period as the Governor in Council wishes. With him sit two other persons who are members of the Court only for the parti-

cular case concerned, and who are nominated by the representatives of both sides within twenty-one days of appeal. They are subject to the same conditions, as to residence and experience, as apply to Board members. Appeals may be made from the Determinations of the Boards by a majority of the representatives of either side of the Board, by any employer or group of employers who employ not less than 25 per cent. of the total workers in the trade, or by 25 per cent. of the workers themselves. Cases may also be referred to the Court by the Minister. In practice almost all appeals have been brought by employers, and in general the Court has reversed or modified the original Determination. The number of cases is, however, quite small. Up to the end of 1922 only fifty-nine cases had been before the Court since its creation.[1] The Determinations of the Court, which may not be altered by the Boards without its consent before the lapse of twelve months, are final. It may, however, reverse or alter its own decisions on application of either of the parties.

In addition to the Board System, wages are regulated in Victoria by the Fixed Minimum Wage method. Section 49 of the Factories and Shops Act, 1915, states that no person shall be employed at a wage of less than two shillings and sixpence per week.

TASMANIA.

Wage regulation in Tasmania was a relatively late development, the first Wages Board Act being passed in 1910, by which time all the other Australian States had had considerable experience of wages legislation. This tardiness may in part be due to the much smaller size of Tasmania, which seems to have led to a dislike of schemes likely to involve considerable expense. Like Victoria, Tasmania has maintained the Board system throughout its history, although of recent years provisions as to strikes and lock-outs, and Industrial Agreements, similar to those found where the Arbitration system is in force, have been introduced. The Act of 1910 at first applied only to the

[1] *Victorian Year Book*, 1922 to 1923, p. 339.

clothing trades, but in 1912 nineteen other trades were covered, and by 1914 twenty-three Boards were authorised, of which twenty were functioning. The number of Boards had grown to fifty by 1922.

As in the other Australian States, there is here a Fixed Minimum Wage, which was first set up by the Factory Act of 1910. The wage so fixed is a graduated one, beginning at 4s. per week, and rising to 20s. for the seventh year of service. In 1917 an Amendment was introduced whereby special Fixed Minimum rates were applied to the laundry trade. These varied not with the length of experience but with the age of the worker.

The Wages Board Act was amended in 1911, 1913 and 1917. Finally in 1920 an "Act to consolidate and amend the law relating to Wages Boards" was passed. This governs the position at the present day. As stated above, although it is in essence a Board System, there are one or two features characteristic of Arbitration methods. In the first place penalties are imposed on persons counselling, supporting, or engaging in a strike or lock-out, on account of any matter in respect of which a Board has made a Determination. In the second place, under an Amendment introduced in 1920, Agreements may be filed and registered with the Chief Inspector of Factories. Any employer, or number of employers, who employ in the same trade not less than fifty workers in Tasmania, or not less than two hundred elsewhere, may enter into an Agreement with their workers as to terms and conditions of employment. If this Agreement be filed with the Chief Inspector of Factories, it is regarded in all respects as a Determination of a Board, for a maximum period of two years. If within twenty days an objection is raised by not less than ten workers employed by any one employer or by all the workers of one employer, such number being less than ten, the Agreement shall not apply to the firm in question. Not much advantage has been taken of the new provision. During the year 1921–1922 eleven firms made Agreements, but at the end of the year most of them had already expired, or had been covered by

Determinations of a Board. In the following year only three Agreements were made.[1]

The Act of 1910 set up Wages Boards on the lines of those existing in Victoria. By 1920 there were many complaints of the overlapping of Boards, and in particular the ubiquitous problem of craft *versus* industry was coming to the fore.[2] The 1920 Act swept away all the then existing Boards, but stated that any Determinations made by them were to continue in force until replaced by an order of a new Board, or until abolished by the Governor. New Boards were to be set up by the Governor by proclamation, whenever a Resolution to that effect should be passed by both Houses of Parliament. When Parliament is not in session the Governor may establish a Wages Board for any trade, but this may be abolished by a Resolution of both Houses. Careful provisions were laid down as to the demarcation of the powers of the various Boards. If necessary, in order to avoid overlapping, the Governor may deprive any Board of all or any of its powers, and confer them on another Board. The former Board may then be abolished. The Governor may also extend the powers of any Board so that it may fix rates in any trade where in his opinion the conditions are similar to its own. Many craft Boards have now been superseded by those of an industrial character, and the old complaint that one firm might be subject to several Boards has lost much of its validity.[3] The Governor may make a Board applicable to the whole or any defined part of Tasmania, and may revise his decision from time to time.

As elsewhere, the Boards consist of equal numbers of representatives of both sides, who must here have had at least twelve months' experience in the trade within five years prior to their appointment. Members may be nominated by employers or workers, and if too many or not enough persons are so nominated, the selection may be made by

[1] *Report of the Department of Industries*, 1921–1922, and *Commonwealth Labour Report*, 1922, p. 99.
[2] See *Report of the Department of Industries*, 1919–1920.
[3] *Report of the Department of Industries*, 1921–1922.

the Minister. As a general rule, most of the appointments seem to be made by him, employers and workers not availing themselves of the opportunity to elect duly qualified persons.[1] The Chairman, who in recent years has been the same person for all the Boards, is appointed by the Governor. Representatives hold office for three years and then resign. The Chairman, however, holds office during the pleasure of the Governor.

The Boards are given very wide powers. Not only have they the duty of determining minimum wages for time and piece-work in the industries in which they are set up, but they may also fix the number of hours to be worked for such wages, and the rates for overtime. They may decide by unanimous vote that there shall be certain annual days of holiday which shall be paid for at full rates, and declare that a certain weekly wage shall be paid irrespective of the number of hours worked. They are given the usual powers to regulate the number of apprentices in their industry, and may decide what work may be done by juniors. Determinations normally remain in force for two years, although at any time the Minister may convene a meeting for the reconsideration of the whole or any part of a Determination.

There is no central body which acts as a court of appeal to the Wage Boards, and in this respect the Tasmanian Boards are probably more independent than any others, not even excepting the British Trade Boards. Determinations are challengeable only before the Supreme Court on points of law. Even in cases where the Minister has referred a case to a Board for reconsideration, the latter is free to affirm its previous decision. This independence of the Boards is likely to be maintained. A proposal for the proclamation of a general basic wage, similar to that in New South Wales, was deleted from the Amending Bill of 1920.[2]

[1] See complaints in the *Reports of the Department of Industries*, 1918–1919, and 1921–1922.

[2] *Report of the Department of Industries*, 1920–1921.

QUEENSLAND.

The States in which wage regulation is relatively simple have now been considered. It remains to deal with those in which the methods adopted are more complicated, because several systems are in operation at the same time. Of these, Queensland has the least complicated system in fact, although all three methods of regulating wages are provided for in law. Queensland was the first Australian State to attempt to give legal recognition to the right to a living wage,[1] but in actual wage legislation it has lagged behind the others. In 1900 a Fixed Minimum Wage of 2*s.* 6*d.* per week in respect of all juniors was included in the Factories and Shops Act. This minimum was raised to 5*s.* in 1908, and a graduated scale of increase was instituted. In 1916 the minimum was again increased, and now varies from 7*s.* 6*d.* to 20*s.*, according to the experience of the worker. This wage is, however, almost ineffective in view of the practically universal character of the higher Arbitration Awards. No more advanced method of wage regulation was in operation until 1908, when Wages Boards, modelled on these existing in Victoria, were introduced. They were constituted in the usual manner, equally representative of employers and workers, and were applied in the first instance to the clothing and furniture trades. The Minister had power to extend the Act to other trades, and it was provided that, where no Board was created, an Agreement made between a majority of the employers and workers, and ratified by the Minister, should have the same effect as a Determination of a Special Board. The Boards were very popular, and by 1912 seventy-one had been set up, twelve at the request of employers. In 1912 there was a big general strike, accompanied by the threat of violence and civil disorder. The threat was never realised, but for some time the Government was prepared for any emergency, and was finally returned to power on the issue of its action during the strike. Almost immediately the Industrial Peace Act was passed.

[1] See Chapter II, p. 11.

The Wages Boards were retained, and were to be known in future as Industrial Boards. But they were to be subject to the control of a newly-created Industrial Court, which had very wide powers with regard to their abolition, extension, or regrouping. The Boards were to be set up by the Governor in Council on the recommendation of the Industrial Court, and were to have jurisdiction over any industrial matter or dispute within the trade for which they were appointed. Where no Board existed, the Court had original jurisdiction over all industrial matters, and over disputes submitted to it by the Minister, the Industrial Registrar, or by any employer or employers of not less than twenty workers, or by any twenty workers. It is important to note that under this Act emphasis was laid on the workers or employers as individuals, and not as members of an association or union. Trade or industrial unions could not, as in New Zealand and West Australia, invoke the aid of the Court. The Court however had power to mediate, and could call a Compulsory Conference to which parties to the dispute were liable to attend under penalty. In 1915 the Labour Party came into power, and one of its first Acts was the amendment of the wage-regulating machinery. The Industrial Arbitration Act of 1916 with the Amending Act of 1923 determines the system in force at the present time. It was only to be expected that an Act introduced by a Labour Government would have removed the disabilities previously placed on unions, and this in fact was done. Moreover, there has since been a tendency for the Court to give more and more recognition to the unions, and it has made use of its power to grant preference of employment to unionists on several occasions.

It is significant that the Act of 1916 was called an Act "to establish a Court of Industrial Arbitration and certain subsidiary tribunals," for its practical effect has been the almost complete elimination of the Board system in all but name. This means that after having experimented with the Board system alone up to 1912, and with that and the Arbitration method from 1912 to 1916, Queens-

land had reverted to what is in practice the Arbitration System alone. For the Court is the main body now functioning. It consists of not more than three Judges, one of whom is the President of the Court. These persons must be judges of Supreme Court status. Until 1923 it was possible for Judges of the District Court to act, but these have now been disqualified. Any one Judge constitutes the Court and a full bench of three constitutes the Court of Appeal. As the Court is the chief wage-regulating body, its powers are very wide and include the right to carry on the work of the Boards if these do not prove satisfactory or speedy enough. It may also recommend the regrouping or abolition of Boards, which are, indeed, only created on its recommendation. The Court has made wide use of these powers, with the result that it now carries on all the functions of the Boards, and up to 1922 only one application for the appointment of a Board had been made to it. If requested by the Minister or by any person interested, or on its own motion, the Court may inquire into and regulate any "industrial matter," a term which has been given a very wide significance. In particular, it can and does fix minimum wages, overtime rates and holiday payments; prescribe the number or proportionate number of apprentices and improvers to journeymen, of women to men, and young workers to adults. Here too is the provision, not generally found elsewhere, that the Court may fix the quantum of work or service to be done in order to qualify for the minimum wage. During and after the War, the Court made considerable use of its power to make Declarations as to the cost of living, the standard of living, the minimum wage payable to persons of either sex, and standard hours. Such a power tends in a time of rapidly rising prices to free the Court from a "multiplication of inquiries into the same matters." [1] The importance of the Court is still further emphasised by the prohibition on other Courts from interfering with it.

When a dispute arises informal conferences between the parties often take place. A Judge is usually present, and

[1] Section 9 of the 1916 Act.

if an Agreement is reached it will be embodied by the Court in an Award. Such conferences appear to be successful in the majority of cases.[1] The Court may order a Compulsory Conference at which the parties must be present, and Agreements thus made can be given the force of Awards. This also applies to Industrial Agreements made between any industrial union and association, when filed with the Registrar. As in West Australia, the Court may declare that any Industrial Agreement shall be a common rule in the calling to which it relates within any specified locality. Due notice of intention thus to extend an Agreement must, however, be given. During 1921 sixteen Industrial Agreements were made, the corresponding number in 1922 being fifteen. The appointment of Conciliation Committees is also provided for. The Awards of the Court itself are binding not only on the original parties to the dispute but also on all employers and workers in the locality to which the Award applies in the calling concerned. There is a growing tendency for Awards to apply throughout the State. Where the dispute is confined to an industry which is very distinctly localised, such as the sugar industry, the Court usually goes to the seat of the dispute.

Until 1923 practically the only important limitation placed upon the Court was that it could not legislate for domestic or agricultural and field workers. This prohibition was removed by the Amending Act of 1923. The Governor in Council has power to exempt certain classes of workers from the operation of the Arbitration Acts, and this power has been exercised in respect of certain classes of higher-paid public servants. The importance of the Court may be gauged from the fact that in 1923 it regulated the wages of some 100,000 persons, while 216 Awards were in operation, 65 of which applied to the whole State. During the same period 50 Industrial Agreements were operative.[2]

[1] *Industrial Arbitration in Queensland*, by T. W. McCawley, President of the Court of Industrial Arbitration. *International Labour Review*, March, 1922, p. 395.

[2] See Table on p. 87.

Although in practice all the work in Queensland is done by the Court, it must not be forgotten that the Act of 1916 makes provision for the constitution of Boards. They are however in every sense of the word "subsidiary tribunals." The Boards created under the 1912 Industrial Peace Act were abolished in 1916 and new Boards were to be constituted on the recommendation of the Court. They are to consist of from two to four members, equally representative of employers and workers, with a chairman chosen by agreement, or if this is lacking, appointed by the Minister. They may make Awards, which, if there is no appeal within thirty days, have the force of Awards of the Court. It seems generally contemplated that their most usual function shall be the making of inquiries on matters as requested by the Court, which is not bound to adopt their recommendations.

New South Wales.

In New South Wales every method which was discussed in the preceding chapter is to be found in operation. Here we find not only the Fixed Minimum Wage, the Board System, and the Arbitration Method, but also an additional body, which in this State is called the Board of Trade, and which is charged with the duty of declaring what shall be a "living wage" at any particular time.

Compulsory State regulation of wages in New South Wales dates from 1901, when an Act based on New Zealand legislation was passed. This set up a Court of Arbitration to deal with collective agreements and to regulate the general conditions of employment in trades subject to the Act. It was made possible for "industrial unions" which were recognised by the Court to make written agreements with employers, which would become legally enforceable when filed with the Court. The Act proved very popular, and was so much used that the Court became incapable of dealing with the large number of applications before it, but until 1908, for political reasons, it was neither repealed nor amended. In order to deal with the congestion, the Industrial Disputes Act of 1908 was passed, which attempted

to combine the system of Conciliation Boards with the Court of Arbitration. Boards were set up in various trades, on the lines of those established in Victoria, while the Court was retained as a Court of Appeal and consolidating authority. Unlike the Victorian Boards, those in New South Wales had always an arbitral character, which was emphasised by the powers given to them to deal with trade disputes. The passage of the Act was followed by an increase of unionism,[1] accompanied by a demand on the part of the unions so formed for the appointment of local or country Boards to deal with their particular branch of trade. No little confusion resulted, for the Boards as far as possible were constituted according to industries, while workers were organised in unions based on crafts or on the material worked upon, and there were numerous exceptions to every classification made. In 1910 the Clerical Workers Act was passed, authorising the constitution of a tribunal to fix minimum wages for persons in clerical work, this work not being an industry or calling scheduled under the 1908 Act. In fact, no such tribunal was ever constituted.

The Industrial Arbitration Act of 1912 attempted to grapple with the problem of overlapping, and made provision for the redistribution of Boards. The industries subject to the Act were defined by schedule, and Boards were to be constituted "for any industry or calling, or division or combination of the same." The principle adopted was the formation of Boards on a craft or trade rather than on an industrial basis, and the grouping of such boards in allied industries under one chairman. The ultimate aim seemed to be the maintenance of some twenty-eight subsidiary arbitration courts, subject to the control of the main Court. Of the twenty-eight groups which were mentioned in the Schedule to the Act, all except the Engine Drivers and Labourers were definitely industrial, but within the groups the basis was not entirely one of craft. With the exception of the Broken Hill district (the mining

[1] The numbers increased from 138 unions (including employers' unions) with 95,701 members in 1907 to 171 (excluding employers) with 150,527 members in 1911, and 206 unions (workers only) with 227,684 members in 1915. *N.S.W. Year Book*, 1907–8, p. 487; 1912, p. 861; and 1916, p. 812.

county of Yancowinna), the Boards were State-wide. In Yancowinna, special local Boards were later set up. The general result of the 1912 Act was that the number of Boards was reduced from 213 to 135, grouped into twenty-eight groups, while the limits of the Boards were more carefully defined.

The Industrial Arbitration Act of 1912 is still in force, and with its Amending Acts of 1916, 1918, 1919, 1920 and 1922 determines the position at the present time. At first sight it appears as if the system of Boards, subject to the general control of the Court of Arbitration is maintained, and in fact some two hundred and seventy Boards are in existence. These Boards however occupy a peculiar position, and, strictly speaking, should not be compared with those in other States. With the exception of those set up for trades in the County of Yancowinna, the whole of their work is carried on by the Court, and it may well be asked why they are allowed to remain in existence. The answer is supplied by an official statement of their function. They appear to act in an advisory capacity, and to provide in themselves a convenient definition of the scope of an Award.

"Apart from the fact that technical questions of law render it necessary to preserve the Industrial Boards beyond the time of their actual utility, it is unquestionable that for the time being their constitutions represent the most convenient expression for award treatment of each industry. Should the Boards be no longer continued, it will be necessary to prescribe by some similar expressed plan as is contained in the Board constitutions the vested employer and employee interests which are involved in the present system, because these interests were from time to time secured by the several parties before the Court, on claims for demarcation of either industry or craft interest. . . . The Board constitution is an actual definition of such interests, and is also the most vital expression of them, and essential for reference." [1]

Thus in practice the Board System in New South Wales exists only in Yancowinna; elsewhere the Court of Arbitra-

[1] *Report of the Department of Labour and Industries, New South Wales,* 1919.

tion is the important body. It consists of a Judge appointed by the Governor. The Judge must be a Judge of the Supreme or a District Court or a barrister of five years' standing. In addition the Governor is empowered to appoint a maximum of three additional persons. One Judge constitutes the Court, but in certain cases two are prescribed, while where the problem of piece- or log-rates arises, the Court may sit with two Assessors. On the whole the number of cases in which Assessors sit is not large. In 1920, eighty-eight out of three hundred and thirty cases were dealt with by a special Court sitting with Assessors. In 1918 it was made possible to create Districts which should be subject to Deputy Courts, but so far only one such Court, in the Newcastle District, has been set up. Special Courts were created in 1918 for the Crown employees and for the mining industry, but these were abolished in 1922, public servants being deprived of the right to go before the Court. A special Salaries Committee now deals with their claims.

The powers of the Court are very wide and include all those exercised by the Boards before 1916, when it took over all their duties. It has considerable powers of demarcation, and for this purpose may codify in one Award all orders binding any employer, or class or section of employers, or group of industries, or members of an industrial union employed by the same employer, or class or section of employers. The object is of course to avoid the difficulties due to the overlapping of Awards which characterised the earlier years of wage regulation in this State. The Court may fix both piece- and time-rates of wages, and on application or reference to it, may vary such rates from time to time. It may fix the number of hours to be worked for any particular wage and fix rates for overtime and holidays. Power is given to it to declare preference to unionists and to legislate on any industrial matter. In 1918 a new feature was introduced, the Court being empowered to prescribe the quantity of work to be done for a given wage, while at the same time an attempt was made to limit its powers by the insertion of a clause that

"as far as is consistent with the maintenance of industrial peace, the Court shall deal only with wages and hours of employment, leaving all other matters to Shop Committees, Conciliation Committees, Industrial Councils, or voluntary committees." [1] An important clause is that giving the Court power to make retrospective Awards. Awards of the Court apply to all persons engaged in the industries or callings within the locality covered [2] for a period not exceeding three years, and variations of these awards are seldom made during their currency, except in special circumstances and with the consent of both parties. Appeals may be made from one Judge to three, and the decision of the full bench is final. Where the public interests are threatened, the Crown may appeal from an Award.

Disputes may be brought before the Court by an employer of not less than twenty workers in any industry or calling, or by any industrial union of workers, registered under the Act. The Minister in charge of the Department of Labour and Industry may also refer cases to the Court, and as fourteen days' notice must be given to the Minister before any strike commences, under penalty, this in effect allows the Court to take notice of the majority of disputes if it so wishes.

Industrial Agreements may be made by any industrial or trade union with an employer or employers in respect of any industrial matter. If made for a specified term of not more than five years and filed with the Registrar, the Agreement will be enforced as an Award. During 1921 forty such agreements were filed. In New South Wales, however, there is no provision for the extension of Agreements to other firms in the District for which it was originally made. Conciliation machinery was introduced into the system of this State at a relatively late date. It was not until 1911 that the Minister of Labour initiated an active policy of conciliatory intervention in disputes, by the appointment of one of the Investigating Officers

[1] Section 24A of the 1912 Act as Amended, s.s. 3.
[2] The Court may not, however, determine the wages of persons in receipt of over £10 per week or £522 per annum.

of the Department to act as mediator. This innovation received legislative sanction in 1912 when a Special Commissioner was appointed. His usefulness was considerably limited by a decision of the Courts in 1914 that he had no power to force the parties to a dispute to appear before him. This disability was removed in 1918, and the machinery for conciliation is now very similar to that in other States where the Arbitration System is in force. In 1919 the Special Commissioner intervened in thirty-six disputes, in twenty-eight of which he was successful in obtaining a settlement.[1] It is customary for him to utilise the services of members of the inspectorate staff. Conciliation Committees may also be set up under the Act, either for particular geographical districts named in the Act, or for districts where more than five hundred workers are engaged in coal or metalliferous mining. They may also be appointed for any occupation or calling other than mining in which more than one hundred persons are employed. These Committees consist of two to four members, equally representative of both employers and workers, together with a chairman unanimously elected, or appointed by the Minister, if unanimity is impossible. If an agreement be reached and filed with the Registrar, it automatically becomes an Industrial Agreement, and is so enforced. This rule also applies to Agreements arrived at before a Special Conciliation Commissioner. The Conciliation Committees appear to be very popular and every Annual Report contains a list of new Committees appointed.

The Arbitration machinery in New South Wales has now been considered, and it remains to deal with the other wage-regulating bodies. The Board system only operates effectively in the District of Yancowinna. In theory, Boards can be constituted on the recommendation of the Court, for "any industry, or division of any industry, or any combination, arrangement, or grouping of industries as the Minister on recommendation of the Court may direct." The Chairman, who is appointed by the Minister, may be Chairman of any number of Boards. The ordinary members,

[1] *Report of the Department of Labour and Industries*, 1919.

from two to four in number, equally representative of both sides, are appointed by the Court from persons nominated by employers and industrial unions, or in default of agreement, are nominated by the Minister. They must be or have been actual members of the trade concerned, unless it is one where women are predominatingly employed. The powers of the Boards are nearly as wide as those of the Court, but are not exercised. They can act on reference by the Court in particular cases, but such reference is rare. The Boards in the Yancowinna County however do exercise all their powers, but are subject to the Court as an Appeal authority. In particular, applications for variation or a re-hearing of a Board's Award may be made to the Court, and if a Board refuses to take action the Court may intervene and act itself. On its own initiative it may also prohibit the proceedings of a Board, and vary or rescind any Award. The relative importance of the Board and Arbitration Systems in New South Wales may be gauged from the fact that in the two-year period 1920 to 1921 fourteen Awards were made by the Boards, and two were varied, while the Court made no less than two hundred and forty new Awards, and varied six hundred and fifty-nine.[1]

The Board of Trade, a very important body set up as a result of the Act of 1918, consists of a President who is a Judge of the Arbitration Court, a Deputy President, and four Commissioners. At first four additional Commissioners were appointed, to represent rural districts, who were to sit only when agricultural matters were discussed, but in 1922 this provision was abolished. In that year rural industries were carefully defined and excluded from the operation of the Arbitration Acts. It is the duty of the Board to discuss and determine a living wage, which shall be the basis of all Industrial Awards and Agreements.

"The Board shall at such times as it thinks fit, but at intervals of not less than three months, after public inquiry as to the increase or decrease in the average cost of living, declare what shall be for the purpose of the Act the living

[1] *Official Year Book, New South Wales*, 1921, p. 577.

wages for adult male and adult female employees, in the State, or in any defined area." [1]

No Award or Agreement may be made for a wage lower than the declared living wage, and the Act of 1919 states that when a Declaration is made, any party to an Award may apply to the Court to vary any Award which prescribes a lower wage than that named by the Board, and that the Court shall make such variation. The question whether the Declarations of the Board of Trade were applicable to occupations not covered by an Award or Agreement was soon raised, and a test case was brought to the High Court of Australia. The New South Wales Supreme Court in 1921 declared that it was illegal to apply the Board of Trade minimum to such trades, and that the Court could not penalise employers for paying wages at less than the Declared Rate. The High Court in 1922 reversed this decision,[2] but since that date the question has not arisen, as the Board has refrained from issuing the necessary Regulations. The Board has also very considerable investigatory and advisory functions. It is given the powers of inquiry of a Royal Commission, and in particular may inquire into such matters as the existence of sweating, the productivity of industries, and the effect of the regulation of conditions of employment upon such productivity. It is also charged with the duty of collecting statistics relating to industrial matters, and under the Monopolies Act of 1923, upon complaint or reference by the Attorney-General, it must make inquiry regarding monopoly or combination in restraint of trade, and furnish him with a report and recommendations. It has very wide administrative powers over apprenticeship conditions, and on this subject its Regulations take precedence over the Awards of the Court.

The Fixed Minimum Wage is also a feature of wage regulation in New South Wales. The Minimum Wage Act of 1908 enacted that no person should be employed as a workman or shop assistant at a rate of wages of less than

[1] *Industrial Arbitration Act*, Section 79(1) as amended by Section 11 of the Amending Act of 1922.

[2] *Commonwealth Labour Report*, 1922, p. 96.

four shillings a week, and made provision for overtime payment and for tea money. These regulations were incorporated into the Factories and Shops Act of 1912. In practice the importance of this minimum has been outweighed by the extension of the legal wage under the Board of Trade Declaration, and while at first inspectors reported many breaches of the Act, infractions are now decreasing in number, and the chief result of the Act seems to have been the destruction of night work.[1]

South Australia.

South Australia provides a more perfect example than any of the other States, of the operation of every kind of method of wage regulation. It is true that in New South Wales all the main types were to be found, but the Board system existed only to a limited degree, while there was no provision for the extension of Awards or Agreements to parties not originally covered. In South Australia the Board System is a very important part of the wage-regulating mechanism, and from 1900 until 1912 was the only method employed. The Act of 1900 authorised the appointment of Wages Boards similar to those existing in Victoria, but the Act was not operative until 1904. Almost immediately after its passage there was an election which resulted in the return of a majority unfavourable to the institution of the Board System. As a result, it was possible for employers successfully to oppose the passing of certain Regulations, without which the Act could not be put into effect. Nor was the course of minimum-wage legislation to run smoothly after 1904. Certainly in that year Boards were appointed, but unfortunate flaws in the wording of the Act of 1904 rendered its operation, if not impossible, at least merely voluntary until 1906. Even so, its scope was restricted to "white work," to women and to boys under twenty-one. An equally unsuccessful Act was passed in 1906, and it was not until a year later that a general consolidating Act was passed which swept

[1] *New South Wales Year Book*, 1912, p. 898. In 1921 compliance was said not to be so good in the millinery and dressmaking trades.

away the old Boards, abolished the old Regulations, and placed the system on a new and more satisfactory basis. The Court of Industrial Appeals, based on the Victorian model, which was created in 1906, was retained, while strikes and lock-outs against the Determinations of a Board were prohibited and penalised. In 1907, the appointment of sixteen Wage Boards was authorised, and since that time the number has steadily increased. Various amendments, chiefly of an administrative character, were made between the date of the Consolidating Act and 1912, by which time the system seems to have been fairly well established.

The Arbitration method was introduced in that year,[1] the Industrial Arbitration Act setting up the Court of Industrial Arbitration in place of the Court of Industrial Appeals, and giving it much wider powers. The Board of Industry, a body similar to the New South Wales Board of Trade, was introduced in the Industrial Code of 1920, a magnificent piece of legislation which repealed the Industrial Arbitration Acts of 1912, 1915, and 1916, and the Factories Acts of 1907, 1908, 1910, and 1915. This Act, which was the work of very expert draughtsmen and was carefully discussed with both employers and workers beforehand, regulates practically all the industrial legislation in South Australia. Here, however, we are merely concerned with the Sections which deal with wage regulation. Careful provision is made in the Code for the appropriate spheres of action of the various bodies, and their relations to one another are closely defined. It is indeed interesting to note that South Australia, which in earlier periods suffered almost more than any other State from loose and careless drafting of her minimum wage legislation,[2] now lays down more carefully than the other States the conditions under which the system shall operate. As in New South Wales, the methods adopted are very closely interrelated. The Fixed Minimum Wage, common to all Australian States, is here a weekly minimum wage

[1] There had been an ineffective Act in 1894.

[2] This lack of precision had also been a characteristic of the Boards themselves, who have frequently caused difficulties on account of the careless wording of a Determination. See especially the *Report of the Chief Inspector of Factories, for the year ending December* 31, 1918.

of ten shillings.[1] In the second place there are Industrial Boards, similar to those in Victoria, but possessing wider powers. These are subject in various matters to the control of the Court of Arbitration, while there is also a Board of Industry, which is a body comparable in its constitution, powers and duties to the New South Wales Board of Trade. It forms an integral part of the wage-regulating system of the State on account of its duty of declaring a living wage.

The Board System is a much more important factor in the wage-regulating mechanism in South Australia than it is in New South Wales. Since 1920 Boards have been set up on the recommendation of the Board of Industry, which can also make recommendations to the Minister of Industry as to their abolition, and as to the transfer of a class of workers from the scope of one Board to that of another. In other cases the Industrial Court has power to decide on the demarcation of industries, and this is to be done through a Special Board. Pending the appointment of a Board, application may be made to the Court to obtain the benefit of an Award. Boards consist of four, six, or eight members, and a Chairman, who is to be nominated by a majority of the Board, or failing such nomination, by the President of the Board of Industry. The ordinary members must be *bona fide* employers and workers in the trade, although each side may have one representative who does not fulfil this qualification, provided he is not a lawyer. The members are, as usual, to be nominated by persons engaged in the industry concerned, and appointed by the President of the Court. If the number of nominations exceeds the number of vacancies, or if not enough persons are nominated, the selection and appointments are made directly by the President. The Boards are charged with the duty of fixing minimum prices or rates, and they may also fix the quantum of work to be done for a given wage, the times and hours to be worked, overtime and holiday rates, the number, or proportionate number, of apprentices who are to be employed, and in general may determine any "industrial matter," a term, which as

[1] Section 333 of the Industrial Code.

will be seen later, has been given a very wide connotation. They are free to fix any kind of rate they choose[1] except that, as in Victoria, it is specified that out-work must be piece work, and this provision also applies here to work carried on in charitable institutions. Determinations of the Boards may last for a maximum of three years, although when they have been in force for more than one year, application may be made to the Court for an order referring the particular Determination back to the Board for reconsideration. The Board is free to refuse to alter the rate, if it sees no reason for so doing, although it may alter or rescind Determinations when it thinks this course desirable. Appeal against the Determinations of the Board lies to the Court, which may confirm, quash, or vary them, or refer them back to the Board for reconsideration. Such appeals may be in respect of a particular rate, or on a question of legality. The Minister may also refer a Determination to the Court at any time during its operation, and the Governor may in cases of extreme urgency suspend the whole or part of a Determination. If this happens the Board must reconsider its position, but if it declines to make any change, the Governor must revoke the suspension. Thus the dignity and independence of the Boards is maintained. As a general rule the jurisdiction of the Boards extends only to the metropolitan area, except in the case of public and railway employees, but their scope may be extended by proclamation to all other parts of the State, after a resolution to that effect has been passed in both Houses of Parliament.

The Industrial Court consists of a President or Deputy President, and, if the presiding Judge so wishes, of two assessors. The President, who in the first instance was the judge acting in that capacity to the previous Court of Industrial Appeals, must be a person who is eligible for appointment as a Judge of the Supreme Court. He is appointed by the Governor for seven years, although his term of office may be extended. It is the duty of the Industrial Court to deal with all industrial disputes and matters

[1] They may not, however, fix wages in respect of persons earning more than £10 per week.

submitted to it by the Minister or Industrial Registrar, by an employer or employers of not less than twenty workers, or by not less than twenty workers themselves. It has power to call Compulsory Conferences for the settlement of disputes, and matters not so decided are finally dealt with in Court. It carries on for a Board in case of urgency, if the Board cannot decide as to the exercise of its duties, or if the Minister reports that a Board has failed to perform its functions. Apart from these cases, and from its duties as a Court of Appeal, it is expressly provided that the Court shall not have jurisdiction over any industrial matter in any industry for which a Board has been appointed. On the other hand, the jurisdiction of the Court does not depend on the existence of a dispute or the making of prior claims or demands in relation to such industrial matter. With regard to those matters falling within its sphere, the Court may act upon its own initiative. There is, however, one exception. Variations of Awards, or the reopening of matters previously settled before the Court, may be initiated only on the application of an association or person affected or aggrieved by the Award or Order, or claiming to be so affected or aggrieved. In all other respects the powers of the Industrial Court are extraordinarily wide, and there is no appeal from its decisions. It has all the powers of the Boards, and there are only two limitations of practical importance on its power to regulate industrial matters: it is not allowed to grant preference of employment to unionists, and it is not allowed to prescribe a rate of wages lower than the living wage as defined in the Act.

Awards of the Court are to have effect within the locality specified, and are binding on all parties to the dispute, and on all who are summoned to appear before the Court in the hearing of the case. By Section 21 of the Code the Court can declare by Award or Order that any practice, regulation, rule or custom, determined by any Award in relation to any industrial matter, shall be a common rule of the industry, binding on all persons engaged therein in the districts which the Court shall specify. But it must before making such ruling consider possible competition, and define the con-

ditions under which such a rule shall apply, the areas to be affected and any exceptions from its operation. For this purpose it must give an opportunity for persons likely to be affected to state their objections to the proposed extension. Retrospective Awards may be made, except where workers have taken part in a strike, and in any case Awards may date back only to the time when the Court first took the matter into consideration. It is generally contemplated that Awards shall continue in operation for a maximum period of three years, while those affecting the public service, or railway employees, must receive the assent of both Houses of Parliament.

As in New Zealand, and the other States where the Arbitration System is in operation, provision is here made for the making of Industrial Agreements between associations of workers and employers. It is possible for further names to be added to the Agreement after it has been made, and such Agreements may at any time be cancelled by the Court, or varied so as to conform with a Determination of a Board, or with any common rule which may have been applied to the industry in question. Such a common rule might be made if an Agreement were concluded between at least three-fifths of the employers, and the same proportion of the workers in a defined locality, respecting any matter which would be within the jurisdiction of a Board. On a favourable report from the Court, in making which persons likely to be affected must be heard, the Minister may declare that the Agreement "shall have the same force and effect as regards all employers and employees in the said industry, in the said locality, as if it were the Determination of a Board."[1] This cannot be done, however, in an industry for which a Board has been set up, or in which the Court has made an Award.

The Board of Industry was set up in 1920 by the Industrial Code and consists of a President, who is to be the President or Deputy President of the Industrial Court, and four Commissioners, two of whom are to be nominated by the South Australian Employers' Federation, and two by the United

[1] Section 98(5) of the Industrial Code, 1920.

Trades and Labour Council of South Australia. Its duties with regard to the scheduling and grouping of industries for the purpose of the appointment of Boards have already been discussed. Of even greater importance are its other functions. Like the New South Wales Board of Trade, it is charged with the duty of declaring a living wage. In this State, however, the Declaration is to be made not more than twice a year.[1] If any of the Awards of the Court, or the Determinations of the Boards, prescribe wages below the level of the Cost of Living as declared by the Board of Industry, the Living Wage figure must automatically be substituted for the figure in the Award or Determination. If a wage has been thus raised and the Board later announces a lower living wage, the Awards or Determinations must be correspondingly lowered. Its other powers, for which it is given the rights of a Royal Commission, are purely investigatory, but it is also "to exercise and perform such other functions and duties as may be directed by a Resolution passed by both Houses of Parliament."[2] It is still too soon to give any account of the working of the Board of Industry, but it may safely be said that apart from its living wage declarations it is not likely to rival the influence of the Board of Trade in New South Wales, while its potential powers are in no way comparable to those given to the similarly named body in New Zealand.[3] The activities of the other wage-regulating bodies in South Australia may to some extent be gauged from the table on page 87. The most important body is still probably the Court.

In 1922 an attempt was made, under the leadership of Sir Henry Barwell, to repeal the Industrial Code in so far as it related to the Industrial Boards, the Industrial Court and the Board of Industry. In its place, Conciliation Boards of three members were to be appointed to deal with industrial disputes. The New Bill included also a prohibition of strikes, lock-outs, and picketing during the conciliation

[1] It will be remembered that the New South Wales Board of Trade was empowered to alter the Living Wage Declaration at intervals of not less than three months. See p 68.

[2] Section 258(*d*) of the *Industrial Code*, 1920.

[3] See pp. 45–6.

process. The Bill, which caused intense excitement at the time, failed to pass.

The Commonwealth.

In addition to the elaborate provision for the regulation of wages in every State with the exception of the Northern Territory, the position in Australia is further complicated by the existence of other authorities operating on a Federal basis. The most important of these is the Commonwealth Court of Conciliation and Arbitration, which was set up by the Commonwealth Conciliation and Arbitration Act of 1904. The Court has powers of "Conciliation and Arbitration for the prevention and settlement of industrial disputes *extending beyond the limits of any one State*"[1] (my italics). The Act has been amended several times since 1904,[2] the objects of most of the amendments having been the improvement of the administrative working of the Act. While the machinery is substantially the same as that originally set up in 1904, there have been so many decisions of the High Court as to the validity of certain sections of the law, that it is impossible to obtain a correct picture of the working of the system from a mere perusal of the Act itself. The more important of these legal decisions will be dealt with below in connexion with the matters to which they are relevant.

The Act, like similar legislation in New Zealand, is based upon unionism.

> "Indeed, without unionism, it is hard to conceive how arbitration could be worked. It is true that there are methods provided by which the Court can intervene for the preservation of industrial peace even when its powers are not invoked by any union; but no party can file a plaint for the settlement of a dispute except an 'organisation,' that is to say, a union of employers or workers registered under the Act."[3]

In order to be thus registered, unions must comply with certain conditions as to membership, lack of restrictive

[1] Extract from the title of the Act.
[2] i.e. in 1909, 1910, 1911, 1914 (twice), 1915, 1918, 1920 and 1921.
[3] H. B Higgins, *op. cit.* p. 15.

clauses, proper collection of union dues, audit of accounts, etc. Wilful refusal to obey the orders of the Court or failure to fulfil the conditions of registration may involve cancellation of registration. Such cancellation does not, however, relieve the organisation from the obligation to comply with an award or from any penalty or liability.[1] Strikes and lock-outs are forbidden in respect of industrial disputes as defined, and on the part of any persons bound by the Awards of the Court. In fact this means that in serious disputes, that is to say in those likely to lead to strikes, the only alternative for the parties is to call in the aid of the Court. The President of the Court, however, whose duty it is "at all times by all lawful ways and means to reconcile parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the Court has cognisance of them, in all cases in which it appears to him that his mediation is desirable in the public interest,"[2] may call a conference presided over by himself or such other person as he directs. If no agreement is reached the President may refer the matter to the Court. The Court may also intervene in a dispute on invitation of the State concerned. Thus there are four main ways in which the Court may deal with disputes: on its own motion when the case is certified by the Registrar as being one with which it is competent to deal; on reference to it by an organisation or association registered under the Act; at the request of the relevant authority in a State in which a dispute is in existence; and finally if the President has exercised his powers to call a Conference, which has not proved successful.

The Court consists of the President and such Deputy Presidents as may be appointed. Up to June 1922 there was only one Deputy President. The President is appointed by the Governor-General from among the Justices of the High Court. Until 1921 the Deputy Presidents had to possess the same qualifications. They may now be appointed from among persons who are barristers or solicitors

[1] Some doubt exists as to whether or not cancellation deprives the union of the benefits of an award. See the controversy between Mr. Hughes and Mr. Justice Higgins, *ibid*, p. 66.

[2] Section 16 of the *Conciliation and Arbitration Act*, 1904–1921.

of the High Court or of the Supreme Court of a State, and have been such for at least five years. The Judges are appointed for seven years and are eligible for reappointment. In addition to the Judge, the Court may on application of any of the original parties to the dispute, consist of two assessors, each side appointing one. Little use has been made of this provision.

Throughout the Act emphasis is laid on the conciliatory functions of the Court, arbitration being regarded as a reserve power, only to be resorted to " in default of amicable agreement between the parties."[1] Accordingly ample provision is made for the appointment of bodies who can deal with any case and if possible arrive at a settlement without recourse to the Court. The latter has power to delegate cases to a Local Industrial Board and may base its Award on the Board's findings without further inquiry. The Board itself may consist of any State industrial authority willing to act, or any local Board as prescribed by the Court, consisting of equal representation of both sides, together with a chairman, who is to be a Justice of the High Court or the Supreme Court of a State. The Court may also refer cases to a Conciliation Committee, consisting of equal numbers of representatives of employers and workers. Since 1920 it has also been possible to set up Boards of Reference to deal with matters arising out of an existing award. Until then careless wording of the clause providing for these Boards had rendered their appointment impossible.[2] The powers of the Court itself are not so wide as

[1] Section 2 of the Act.

[2] In 1910 a new clause was inserted in the Commonwealth Conciliation and Arbitration Act providing for the appointment of Boards of Reference to which minor disputes as to the interpretation or application of an existing Award could be referred This would have relieved the pressure on the main Court Unfortunately the clause was so badly worded that it was possible for opponents who wished to hinder the working of the Act to argue with success that a Board of Reference could only deal with matters specifically relegated to it by the terms of the Award. As the cases which were causing delay in the Court were precisely those which were *not* foreseen at the time the Award was made, this decision as to the scope of the Boards of Reference meant that an innovation which might have done much to remove one of the greatest causes of the unpopularity of Arbitration, was from the first rendered null and void. Cf. Higgins, *op. cit.*, pp. 22 and 50–51.

a perusal of Section 38 would lead one to suppose. It has power to make Awards, which since 1920 may be retrospective to a date not earlier than that on which the Court first had cognisance of the dispute. No variation of an Award can be made and no case reopened, save on the application of an organisation or person affected or aggrieved. Unless so altered, Awards remain in force for a period of five years. In spite of the power given to the Court in Section 28, to reopen cases or vary awards, the full High Court held that it could not entertain any new dispute during the specified period of an Award on a subject which had been dealt with in that Award.[1] The Court need not, however, in its Awards be restricted to the specific plaints that have come before it, but can include other matters if these seem necessary to procure industrial peace. In the Act the Court was given power to enforce its own Awards and to impose penalties, but here again a pronouncement of the High Court declared this to be invalid, as the President of the Conciliation Court was not a person holding office on a life tenure.[2] In addition to the wide range of matters with which it can deal in an Award, as for example "all matters relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms, and conditions of employment or non-employment,"[3] the Court is given power to declare preference of employment to unionists "whenever in the opinion of the Court, it is necessary, for the prevention or settlement of the industrial dispute, or for the maintenance of industrial peace, or for the welfare of society."[4] With regard to the regulation of hours of work, however, it is subject to certain limitations. It may not since 1920 increase the standard hours of work in any industry or reduce the standard hours to less than forty-eight per week, unless the question is heard by the President and not less than two Deputy Presidents.[5] According to Section 38, the Court may extend

[1] Higgins, *op. cit.*, p. 112. [2] Higgins, *op. cit.*, pp 110–111.
[3] Section 3 of the Act, definition of "Industrial Matters."
[4] Section 40 of the Act.
[5] This was done for the first time in September, 1922, when hours in the Engineering and Timber industries were increased from 44 to 48.

the operation of an Award to the whole of an industry in which there has been a dispute, and may declare within what limits or areas the common rule which it has thus made shall apply. Once more the High Court intervened and crippled the power of the Court. By holding in 1910 that this section of the Act was invalid, it very considerably limited the usefulness of the Arbitration machinery, for regulation of wages and other conditions could only proceed on a piecemeal basis.[1] Finally, it should be noted that the decision of the Court of Conciliation is final and conclusive, and is not subject to appeal in any Court whatever.

Reference has already been made to the Compulsory Conferences which may be called by the President. The Commonwealth legislation also resembles that of the States which adopt arbitration, in providing for the making of Industrial Agreements, breaches of which are regarded as breaches of the Court's Awards. These Agreements may be made between any organisations registered pursuant to the Act for a period of not more than five years, but on application the Court may order that an Agreement may be varied so far as is necessary to bring it into conformity with any common rule declared by itself. Much use is made of Industrial Agreements, but too much emphasis must not be laid upon the absolute number of them. Thus from 1914–1915, out of 224 separate Industrial Agreements filed with the Court, 175 were made on behalf of the Federated Engine Drivers' and Firemen's Association, in terms of one particular Award.[2] This indicates one of the main uses of the Agreement, namely the application to particular districts and branches of a trade the principles enunciated in a Court Award.

In 1920 the Industrial Peace Acts were passed, and Mr. Justice Higgins, for so many years President of the Conciliation Court, resigned. There was a very close relation between these two important facts. Under the new Acts it is possible for Special Tribunals to be set up to deal with

[1] *Australian Boot Trade Employees' Federation* and *Whybrow & Co.*, 1910, 11 C.L.R., p 311

[2] *Commonwealth Labour Report*, No. 6, p. 78, ditto, No. 7, p. 439.

any matter the subject of a dispute. The Tribunals consist of an equal number of representatives of employers and workers and a chairman to be chosen by agreement, or if this is impossible, appointed by the Governor-General. They are to have cognisance of all disputes referred to them by organisations of employees or employers, and for the purpose of settling such cases they are given all the powers of the Court of Arbitration. A Tribunal, or its Chairman, may also summon the parties to attend a conference, and if an Agreement is reached there it may be filed with the Industrial Registrar and count as an Award of the Court. If no agreement is obtained at the conference, the matter is heard before a Special Board, an order or award of which also may be enforced as an Award of the Court. The Acts also provide for the setting up of Local Boards with powers similar to those of the Special Tribunals. The significant fact about these bodies lies in their independence of the Court. They are in no way subject to it, and if anything, they have been placed in a more favourable position. It was on these grounds that Mr. Higgins resigned from his Presidency. For while it is provided that no award or order of a Special Tribunal or Local Board shall be challenged, appealed against, reviewed, or quashed, or called in question in any Court, and that during its currency the Court of Arbitration shall not have power to make any Award or Order inconsistent with it, there is no similar specific protection for the Court. It is merely stated that no dispute as to which the hearing has commenced in the Court shall be referred to a Special Tribunal. There is no provision relating to what happens when the Court has made an Award in a previous period, against which there is a strike or about which there is a dispute during its currency. Thus a new authority dealing with industrial disputes on a Federal basis has been set up.

When the Act first came before the House in 1920 it met with considerable opposition from the Labour representatives and was regarded as an attempt to kill the Court of Arbitration, or at any rate as an attempt to get rid of Mr. Justice Higgins. The truth of this charge is very difficult

to determine without a considerable inside knowledge of Australian home politics during and after the War, but it is safe to assert that for some considerable time the relations between Mr. Hughes, the Federal Prime Minister, and Mr. Higgins, the President of the Court, had been very strained. The position seems to have been very similar to that existing between Mr. Lloyd George and Lord Askwith in England.[1] In both cases there was a struggle between the politician, who desired an immediate settlement of industrial disputes regardless of the ultimate consequences, and the expert, who desired a settlement in accordance with principles already formulated by him, and in operation over various parts of the industrial field. Mr. Hughes, in introducing the Bill into Parliament, argued that his object was to avoid the cumbersome methods and congestion of the Arbitration Court. He stated that: "As things stand now, suitable machinery for bringing the parties together, and for recognising the status of labour as a full party in industry, does not exist," and that "the object of the creation of these special tribunals . . . is not to supersede but merely to supplement the Arbitration Court. The Court will remain."[2] There seems, however, much justice in Mr. Higgins's retort that if these really were the aims of the Prime Minister, the matter could have been better dealt with by the appointment of additional Deputy Judges to the Court, and by the adoption of some of the other administrative reforms which he had for long been unsuccessfully urging. Moreover, the fact that in no case was Mr. Higgins or the Deputy President consulted as to the new Act suggests that the object of the Industrial Peace Act must be sought elsewhere than in a desire to remedy technical deficiencies in the Arbitration machinery. On the other hand, in justice to Mr. Hughes, it must be noted that there is a class of workers who have always remained outside the scope of the Arbitration Act,

[1] Askwith, *Industrial Problems and Disputes*, particularly Chapters entitled "Twelve and a half per cent." and "Government Methods." These may well be read and compared with the last chapter in Mr. Higgins's book.

[2] Debates on the Second Reading of the Industrial Peace Bill, July 29, 1920.

and who have been suspicious of the Court and therefore disinclined to appear before it. It was possible to argue, therefore, that the new machinery to be set up under the Industrial Peace Act would but satisfy a need which the Arbitration Court in any case had failed to meet. As, however, the trades concerned are so well defined, and are confined almost entirely to coal mining and certain branches of engineering and shipping, it would have seemed less ambiguous, and certainly more tactful, to have passed a special Act dealing with these trades, and to have amended the Conciliation and Arbitration Acts so as to reduce the delay in the hearing of cases.[1] In fact the Special Tribunals have not proved so harmful an influence as was feared by Mr. Higgins. The slight use made of them in practice is difficult to explain but is probably not unconnected with the fact that the appointment of members, and of the most important person, the Chairman, rests (failing unanimous choice by the two sides) with the Governor-General, that is to say, in reality with the Federal Prime Minister. As this office since the passage of the Industrial Peace Acts has been held by persons who are not remarkable for their sympathy with the workers' point of view, it is not surprising that there has been a tendency to prefer registration under the Arbitration Court. During 1921, the Special Tribunals made seventeen awards, fifteen of which were in respect of coal mining.[2] In the same year 121 Commonwealth Awards were made, while 657 Industrial Agreements were filed.[3] In the following year the awards of the Special Tribunals were confined to coal mining.

There are two other less important Wage Tribunals operating on a Federal basis. In 1920 a Commonwealth Public Service Arbitrator was appointed to deal with all matters relating to salaries of officers and employees in the Commonwealth public service. Since 1911 this work had been done by the Arbitration Court, subject to a general supervision on the part of Parliament. The other Federal Wage author-

[1] The Act was amended later. The problems arising from the existence of several unrelated tribunals are dealt with in Chapter XI.

[2] *Commonwealth Labour Report*, 1922, p. 100.

[3] *New South Wales Year Book*, 1921, p. 580.

ity is the Industrial Board, set up under the Industrial Board Ordinances, 1922. This Board is given power to deal with rates of pay, hours, and conditions of employment of workers engaged on Commonwealth works in the Territory for the Seat of Government. No decision of this Board, however, can affect the operation of any Award of a Commonwealth Court or Industrial Tribunal applying to the Territory. The Industrial Board consists of a person nominated by the Minister, one nominated by the workers, and a chairman decided upon by agreement, or failing this, appointed by the Prime Minister.

It will be seen from the foregoing account that in Australia there is an enormous variety of authorities dealing with wages and that the chances of conflicting decisions are great. This is specially the case in States where all three methods of wage regulation prevail, and where the possibility of Federal intervention also exists. The situation may best be realised by taking a concrete case. It would, for example, be possible for a group of workers in South Australia who are covered by an Industrial Board to ask for an increase of wages, which might not be conceded by the Board. According to the State law appeal would lie to the Industrial Court. Should the Court not grant all that was asked, by arrangement with workers in the same trade in another State to present the same demand, or by organising an inter-State strike, the matter could be brought before the Federal Court. As it has been held that the Commonwealth Court has no power to increase hours or decrease wages awarded by a State wage authority, the workers would have everything to gain, and nothing to lose, by making yet another attempt to obtain the wage they desire. Moreover, if the Federal Award were disliked, it would presumably be possible to accept it for a short period, but to raise the matter again at no distant date, and ask for a Special Tribunal. In practice of course all the necessary conditions for thus prolonging the settlement of a claim are not always present, and attempts are made to check the evil.[1] A further result of the multiplicity of wage-determining authorities is that

[1] See Chapter IX, pp. 251 *et seq.*

one employer will often find that the wages of his workers who are engaged on similar work will be governed by different Awards.[1] This would happen if the workers belonged to different unions, some of which may be registered under the Federal Court, while the others are subject to State authority. And unfortunately it often happens that the Awards of the two authorities are mutually inconsistent. In a later chapter we shall have to deal with the general problem of overlapping authorities, and it will be seen that Australia provides the finest example of the difficulties to be avoided or solved.

The following table gives some indication of the numbers, scope, and activities of the various wage-regulating tribunals in Australia, in 1913, 1918 and 1923.

[1] In the Debate on the Second Reading of the Industrial Peace Bill, July, 1920, one of the Members, Mr. Marks, quoted the case of a Sydney firm, Messrs. A. Hordern & Sons, which was working under fifty-eight different Awards.

BOARDS AUTHORISED AND CONSTITUTED: AWARDS, DETERMINATIONS AND AGREEMENTS IN FORCE 1913, 1918 AND 1923 [1]

Particulars	At Dec 31	Commonwealth. Court.	Commonwealth. Public Service Arbitrator	N S W.	Vic.	Q'land	S.A.	W.A.	Tas.	Total.
Boards Authorised [2]	1913	—	—	216[3]	135	75	56	—	23	505
	1918	—	—	17[4]	153	2[5]	58	—	37	267[6]
	1923	—	—	274	177	—	76	—	47	574
Boards Constituted	1913	—	—	223	132	74	51	—	21	501
	1918	—	—	17[4]	149	2[5]	56	—	36	260[6]
	1923	—	—	274	175	—	76	—	41	566
Boards which have made Awards or Determinations	1913	—	—	123	123	74	47	—	19	386
	1918	—	—	219	142	2[5]	59	—	32	445
	1923	—	—	258	166	—	66	—	33	523
Awards and Determinations in force	1913	17	—	265[4]	127	73	54	18	21	575
	1918	85	—	284	147	184	80	54	32	866
	1923	141	29	318	171	216	78	87	48	1,088
State Awards and Determinations Applying to whole State	1913	—	—	32	8	3	—	—	15	58
	1918	—	—	24	16	23	—	5	26	94
	1923	—	—	31	43	65	9	5	39	192
Applying to Metropolitan Area	1913	—	—	58	—	28	53	13	1	153
	1918	—	—	86	1	46	66	32	—	231
	1923	—	—	85	1	48	47	49	—	230
Applying to Metropolitan and County Areas	1913	—	—	49	105	1	—	1	5	161
	1918	—	—	108	120	39	4	3	6	280
	1923	—	—	137	116	43	2	7	7	312
Applying to County Areas.	1913	—	—	126	14	41	1	4	—	186
	1918	—	—	66	10	76	10	14	—	176
	1923	—	—	65	11	60	20	26	2	184
Commonwealth Court Awards in force in each State	1913	—	—	13	17	15	16	9	13	—
	1918	—	—	63	62	48	57	41	51	—
	1923	—	—	81	109	32	79	40	62	—
Commonwealth Public Service Arbitrator; Determination in force in each State	1923	—	—	28	25	25	26	26	24	—
Industrial Agreements in force	1913	238	—	73	—	5	11	82	—	401
	1918	569	—	79	—	71	26	88	—	833
	1923	454	—	116	—	50	43	72	5	740
Commonwealth Agreements in force in each State	1913	—	—	132	129	68	62	57	61	—
	1918	—	—	145	359	74	93	54	54	—
	1923	—	—	64	284	24	48	38	18	—
Number of persons working under State Awards and Determinations (estimated)	1918	—	—	260,000	150,000	90,000	25,000	32,000	12,000	569,000
	1923	—	—	275,000	184,500	100,000	32,000	35,000	15,000	641,500

NOTES.

[1] Figures obtained from *Commonwealth Labour Reports*, July, 1919, p. 113, and August, 1924, p. 85.

[2] The figures for New South Wales are exclusive of Demarcation Boards.

[3] Including Boards which were subsequently dissolved owing to alteration in the sectional arrangement of industries and callings.

[4] Omitting a number of Boards which expired on December 31, 1913.

[5] On December 13, 1918, an order was made by the N S W. Court recommending the reconstitution of 220 Industrial Boards which had expired by effluxion of time, and on February 19, 1919, such Boards were constituted.

[6] By the Act of 1916 all Industrial Boards under the Act of 1912 were dissolved in January, 1917, with the exception of those Boards which had matters pending or partly heard.

CHAPTER V.

WAGE REGULATION IN EUROPE.

Great Britain—Ireland—France—Norway—Austria and Czecho-Slovakia —Germany—Other States.

STATE regulation of wages in Europe is, except in Great Britain, entirely a post-war development. It differs from that of Australia not only in the methods by which wages are fixed by the State, but also in the kind of worker in whose favour the legislation is passed. While the desire to stop sweating was by no means a negligible factor in Australia in inducing the State to intervene in wages, the most important influence, as we have seen, was the desire to promote industrial peace. This latter objective was practically insignificant in Europe.[1] The greater part of State wage regulation in Europe was introduced in order to prevent the payment of very low wages. That this was so is seen by the scope of the early European Acts. In Great Britain and in Norway the original Acts applied either only to home workers, or to trades in which there was a great deal of out-work accompanied by the payment of very low wages. In France, Austria and Czecho-Slovakia legislation is still confined to trades of this type. It is only of recent years or during the stress of the War that a tentative attempt has been made to deal with the wages of the more organised worker. In Australia, on the other hand, he is the chief object of State wage regulation. This difference in the kind of worker dealt with has been reflected in the methods by which wages have been fixed. In Australia the

[1] Except perhaps in so far as it could be argued that the British Trade Boards Act of 1918 was part of a wide scheme to ensure industrial peace, and that the main object of the Coal Mines (Minimum Wage) Act of 1912 was the removal of a grievance likely to cause industrial warfare.

Arbitration method is paramount. In Europe the pure type of Board System prevails, while Arbitration is the exception. European systems, however, are more like the Australian than the American or Canadian, in that, except in France, they regulate the wages of men as well as women.

It should perhaps be made clear at the outset that there are two types of legislative interference with the payment of wages which will not be dealt with here. The first of these is the system of Family Endowment as it is practised in France and elsewhere. The reasons for this exclusion have already been given in Chapter II. Nor will an account be given of the expedients adopted, chiefly in Germany, for varying wages in accordance with a rapidly changing level of prices. For while constituting an interesting economic experiment, they leave untouched the question of the basic amount of the wage which shall be paid, and merely specify that any wage must move concurrently with changing prices. Moreover, there are as yet insufficient data on which to base any judgment, and the utility of the devices is likely to end with the removal of a condition of rapidly changing prices.

Great Britain.

Contrary to the general tradition, in the matter of wage regulation Great Britain has been anything but conservative. It is true that nothing drastic was done until 1909, but since that date practically every method of wage regulation has been tried. The Trade Boards Act of 1909 provided for the setting up of Trade Boards based on the Victorian Wages Boards, in certain industries where wages were found to be abnormally low. This Act originally applied only to four trades, Ready-made and Wholesale Bespoke Tailoring, Paper Box Making, Machine-made Lace and Net Finishing, and Chain-Making, but it was possible to extend it to trades where similar conditions prevailed by a Provisional Order which was subject to confirmation by Parliament. In 1913 this machinery was used, and the Act was extended to the following trades: Sugar, Confectionery and Food Preserving; Shirtmaking, Hollow-ware and Tin Box Making and

Linen and Cotton Embroidery.[1] The Act proved very popular, and when towards the end of the War it was felt that there should be some provision against the inevitable post-war disorganisation of industry and the accompanying fall in wages, two Committees recommended that the machinery of the Trade Boards Act should be utilised. A Sub-Committee of the Reconstruction Committee in 1917 recommended that certain amendments should be made in the Act of 1909, and this opinion was endorsed in the Whitley Report of 1918. It was then suggested as part of a large scheme for the reorganisation of industry that in those industries in which there was little or no organisation, the Trade Boards Act should be applied, "pending the development of such degree of organisation as would render possible the establishment of a National Council or District Councils." For this purpose it was necessary to amend the existing Act. In 1918, therefore, a new Act empowered the Minister of Labour to extend the scope of the Act by a Special Order without confirmation by Parliament, although such Order was to be laid before each House of Parliament for objection within forty days, and a public inquiry could be held if serious objections to the draft Order were made. But there was an even more important amendment. The Minister was empowered to extend the Act to certain trades if he was "of opinion that no adequate machinery exists for the effective regulation of wages throughout the trade and that accordingly, having regard to the rate of wages prevailing in the trade or any part of the trade, it is expedient that the principal Act should apply to that trade." It was no longer necessary to show that "the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employments."[2] The effect of this widening of the scope was seen in the rapid increase in the number of Boards. At the time of the passing of the 1918 Act there were thirteen Trade Boards in existence, covering in all some half a million workers. Within a little

[1] Parliament refused to confirm the application of the Act to the Laundry trade.

[2] Section (2) of the *Trade Boards Act*, 1909.

over two years, the number of Boards had grown to sixty-three [1]; and the number of workers affected had increased to some three millions, the majority of these being women. This process slackened after 1921 and there was at the same time a change in the general attitude towards Trade Boards, a change for which the big slump in trade was largely responsible. The creation of new Boards ceased and in some cases Boards which had already been authorised were not set up or did not fix any rates.

The general method of constituting the Boards is the same as in Victoria. The total membership depends upon the size and character of the trade which is subject to regulation. In practice it ranges from the twelve members of the Chain Trade Board, to the seventy-eight of the Grocery Board. The ordinary members, equally representative of employers and workers, are appointed by the Minister of Labour, who generally invites the different trade organisations to nominate representatives. These nominees are usually appointed, but in the less well organised trades or sections of trades the members are appointed directly by the Minister. Each Board has in addition to the ordinary members, from three to five Appointed Members, who are chosen by the Minister of Labour. These persons, one of whom acts as Chairman of the Board, are usually specialists in the study of sociological problems, or prominent social workers. In trades where a considerable proportion of women are employed one of the Appointed Members must be a woman. Very often university professors of law or economics are appointed as chairmen. This is the only provision made in the Trade Board system for the appointment of persons to represent the interest of the consumer or the general public. For the rest there is very little detailed specification as to the type of person to be appointed. Not all the ordinary members are actual workers or employers in the trades concerned. Frequently they are secretaries of workers' or employers' organisations or members of the legal profession. When home workers or middlemen or women (as in the Lace trade) form an integral part of the

[1] At this time the Irish Boards were also included.

organisation of the trade, these must be represented on the Board.

Trade Boards are charged with the duty of fixing a minimum rate of wages for time-workers in their trade, and may also fix minimum piece-rates, a general minimum rate of wages for piece-workers (a Piece-work Basis Time-rate), a minimum time-rate for piece workers to secure to them a minimum rate of remuneration on a time-work basis (a Guaranteed Time-rate), and overtime rates. Any of these rates may be fixed "to apply universally to the trade or so as to apply to any special process in the work of the trade or to any special area, or to any class of workers in the trade, or to any class of workers in any special process or in any special area." Further, a Board has power to fix a series of minimum rates to come into operation successively on the expiration of specified periods. The Boards have made very considerable use of these wide powers. They can also amend and cancel rates, and in all cases of amendment or fixation Notice of Intention must be given to all persons in the trade. After the expiration of two months the Board has to consider objections, and the rate finally decided is submitted to the Minister of Labour for confirmation or re-reference to the Board within one month. As a general rule the rates fixed by the Board are confirmed by the Minister without alteration. There is no provision for a Court of Appeal, as in many Australian States.

It is possible for a Trade Board to establish a District Trade Committee for any special area and to delegate to it any powers other than those of fixing minimum wages. In constitution the District Committees are to be Trade Boards in miniature, consisting of some members of the original Trade Board and of workers and employers, not being members of the Trade Board, who are engaged in the trade in the district for which the Committee is set up. The Chairman is to be one of the Appointed Members of the Trade Board. Once a District Committee has been appointed it cannot be dissolved, and a Trade Board is bound to consult it when fixing rates within the district, although it is not bound to adopt its recommendation. The power to set up

District Committees has been little used, and according to the Cave Committee, which investigated the working of the Trade Boards system in 1922, the local areas have been badly selected, while the Committees have in fact been given very little real power by the Boards. When rates are fixed by the Boards they are applicable to all employers in the trade concerned. As a rule the Determinations of a Trade Board apply to the whole of England and Scotland. In very exceptional cases certain areas have been removed from the operation of rates, or have been dealt with separately.

It has already been stated that after the War many complaints were made about the operation of the Trade Boards Acts. In consequence a Committee presided over by Viscount Cave was appointed in 1921 to inquire into the operation of the Acts. As frequently happens in Great Britain, the mere appointment of a Committee of Inquiry silenced active opposition for a time, and when in 1922 a critical but by no means condemnatory Report was published, the danger of the complete repeal of the Acts had already passed. An Amending Act, purporting to give effect to the Recommendations of the Committee, was introduced into Parliament in 1923 but was not passed. The practical effect of the agitation against the Trade Board system has borne fruit in the cessation of the extension of the Act to new trades and in the more conservative use made by the Boards and the Minister of the optional powers given to them.[1]

Only an outline of the Trade Boards system has been given, for full information with regard to its operation is readily accessible.[2] The Board system has been applied to other trades in Great Britain by special enactment. In 1912, as a result of a big strike in the coal-mining trade the Coal Mines Minimum Wage Act was passed. The Board of Trade was empowered to recognise Joint District Boards for any District, which were to be established in the different

[1] For a statement of the present (1925) policy with regard to Trade Boards see *Labour Gazette*, January, 1925, p. 6.

[2] See especially the *Report of the Cave Committee, Cmd.* 1645 *of* 1922; Dorothy Sells, the *British Trade Boards System*; W. Addington Willis, *Trade Boards*; J. Hallsworth, *The Legal Minimum*.

districts to fix minimum wages for all underground workers. These Boards were fairly and adequately to represent the workmen in coal mines and their employers, and were to have an independent chairman chosen by both sides, or (failing agreement) by the Board of Trade. Frequently the existing District Boards were constituted Boards under the Act. It was to be the duty of these Boards to fix rates, payment of which should be an implied term of every contract of employment. Failure to comply with certain conditions as regards the regularity and efficiency of work led to a forfeiture of the right to the minimum. The District Committees had also to decide who was to be a "workman" within the meaning of the Act, and whether a worker had complied with the necessary conditions. Amendments to the rates fixed were to be made after one year or at any time by agreement of the members of the District Board, or on application (after the giving of three months' notice) by workers or employers who appeared to the Board to represent a considerable body of opinion in the district.

There has been great variety in the working of these District Boards, the more so as, once constituted, they were subject to no further interference on the part of the Board of Trade. Except in South Derbyshire, Warwickshire and Lancashire, the decision was left to the independent chairman, and this has meant great diversity in the levels of wages and the basis on which wages have been fixed. At the present time the Act still remains on the statute book, but its real influence is negligible. There has been very little activity on the part of the Boards for some years, and such rates as are fixed are unimportant as compared with the higher rates in operation as a result of the 1921 Agreement, which is not enforced by the State. In any case the minimum fixed by the Board was always very low, especially as the original intention of the Act was to deal with workers who were working in abnormal places. That is to say, its intention was not to raise general wages in the trade but to prevent the wages of individuals from falling below those generally paid in any particular district.

Until 1917 the position of the agricultural worker in Great Britain was left untouched by any form of wage regulation. The Corn Production Act of that year guaranteed to the farmer a minimum price for certain corn crops, and at the same time provided for the setting up of Wages Boards in agriculture. Part II of the Act set up an Agricultural Wages Board, consisting of equal numbers of representatives of both farmers and workers, who were to be elected or nominated by the then Board of Agriculture and Fisheries, together with a chairman, who was to be appointed from the members of the Wages Board by the central authority. Certain appointed members were also added, these last being, in general, experts on agricultural matters. As finally constituted, the Board consisted of thirty-nine members, of whom seven were "independent and impartial" persons appointed by the Ministry of Agriculture. District Councils were set up in the various counties or groups of counties, on which at least one member of the Agricultural Wages Board sat as a member. The Board had power to delegate any of its powers and duties other than the fixing of wages to the District Committee, although it was the duty of the latter to recommend minimum wages applicable to its own area. It was indeed expressly provided in the Act that no revision or cancellation of wages should take place unless recommended or reported on by the District Committee.[1] The actual fixing of the rates was to be done by the Board, although, as in the case of Trade Boards, the Board was bound to reconsider its decision if so requested by the responsible Minister. In order to provide against the anticipated conservative attitude of the Board towards wages, and to protect workers in case of delay, a minimum wage of 25*s*. a week was in effect instituted as from the date of the Act.

Similar machinery was called into being for the fixing of agricultural wages in Scotland. The Secretary of the Board of Agriculture for Scotland was to divide Scotland

[1] Compare the proviso under the Trade Boards Act with respect to the duties of District Trade Committees, p. 92.

into districts and combinations of districts. Where he was satisfied that there already existed a body representative of both sides, he could recognise it as a District Wages Committee. Where no such body existed, a Joint Committee was to be appointed. In order to have a central co-ordinating body, analogous to the Agricultural Wages Board in England, the Scottish Board of Agriculture was to group all the districts into five combination districts, each of which was to elect two members (one employer and one worker) to constitute a Central Wages Committee. To this Committee the Board appointed a chairman and secretary and two women members. This body was to possess all the powers and duties of the English Agricultural Wages Board. Where the District Committee failed to fix wages in the time allowed by the Board the Central Committee was empowered to take over this function. It seems probable that the difference in the machinery used in England and Scotland reflects a difference in the position of the workers in the two countries. Agricultural workers in Scotland were in the main better paid and more independent than similar workers in England. This machinery for the fixing of agricultural wages was abolished in October 1921, when the subsidies to farmers were withdrawn, and in its place a system of Conciliation Committees was adopted. In the words of the Act, it was "expedient that local joint conciliation committees, representative of persons employing workmen, should without delay be formed by agreement . . . for the purpose of dealing with wages or hours or conditions of employment." In the first two years, or until such conciliation committees were formed, the existing District Wages Committees were to be continued, although they had no power to enforce their decisions. It was, however, open to them to apply to the Minister of Agriculture to confirm any decision arrived at, and on such confirmation workers in the area secured the right to recover in a court of law the wages so fixed. Owing partly to the hostility of the farming community, and partly to the decrease in the strength of the agricultural unions, the system did not enjoy any marked degree of success. In many Districts no agreements were made,

while in others there was a considerable decline in the level of the wages which were fixed.

Three years later State regulation of wages was again introduced into the agricultural industry. By the Agricultural Wages (Regulation) Act of 1924 the Minister of Agriculture was empowered to establish an Agricultural Wages Committee for each county in England, and an Agricultural Wages Board for the whole country. The Committees consist of equal numbers of employers and workers together with two impartial persons appointed by the Minister, and a Chairman. The latter is appointed by the Committee or, failing agreement, by the Minister. The Central Board resembled the previous Agricultural Wages Board in constitution, but not in powers. Like the old Board it consisted of equal numbers of representative employers and workers together with a number of independent persons, not to exceed one quarter of the total membership of the Board, appointed by the Minister. Unlike its predecessor the new Agricultural Wages Board was able to act only when the local Committees failed in their duty. The emphasis in the new Act is placed upon these Agricultural Wages Committees. It is they who are to fix and cancel or vary wages. It is they who are to take the initiative. The only serious control over their activities lies in the power of the Minister of Agriculture to order a Committee to reconsider any minimum rate fixed by them. Only if a Committee does not function within two months of its appointment, or if it fails to fix a rate on the expiry of an old one, or at the direct request of a Committee, can the Board function. For the rest it is concerned with making the necessary orders when notified by a Committee that an award has been made, and with enforcing the payment of such rates as are fixed.

Thus there is a very significant difference between the two Acts. Two other changes are worthy of note. In the 1924 Act there is no fixed minimum wage mentioned in the Act itself. This omission is particularly important in view of the lack of central control over the determinations of the local Committees. In the second place, the later Act does not apply to Scotland.

The Arbitration method of regulating wages was introduced into Great Britain during the War. Voluntary arbitration has long been a feature of English industrial life, and Conciliation Boards have been much used since the middle years of the last century. The first positive step to promote the use of this machinery was taken by the State in 1896, The title of the Conciliation Act of that year well described its purpose. It was "an Act to make better provision for the Prevention and Settlement of Trade Disputes." For this purpose the Board of Trade was empowered to take any steps which seemed expedient to enable the parties to a dispute to meet together. On the application of either side it could appoint a conciliator; at the request of both sides, an arbitrator. The practical importance of this Act was negligible. "It was a mere skeleton, and a skeleton so restricted in shape and size as necessarily to affect any life with which it might be endowed." [1]

The next step towards compulsory arbitration was taken in 1915. The Munitions of War Act, 1915, again authorised the Board of Trade to take steps to obtain a settlement where a dispute was in existence or pending. Disputes in trades engaged in supplying munitions of war were to go before tribunals determined by agreement between the parties or by the Board of Trade. A new element was introduced by the proviso that any award so made became binding on both parties, and failure to comply could be punished by penalties exercised through a Munitions Tribunal. Strikes were prohibited in the trades covered by the Act until twenty-one days had elapsed after the difference had been reported to the Board of Trade. Further additions were made during the War to what was in effect an Arbitration System. The Munitions Act of 1916 authorised the Minister of Munitions to constitute Special Arbitration Tribunals to deal with disputes concerning women and unskilled and semi-skilled men. The Act of 1917 made the existing Committee on Production [2] a Special Tribunal for

[1] Askwith, *Industrial Problems and Disputes*, p. 78.

[2] The Committee on Production was set up in 1915 to discover how the productive powers of the employees in the engineering and shipbuilding establishments could be made fully available to meet the national

dealing with disputes as to time-rates under Orders of the Minister of Munitions in controlled establishments. At the same time the Minister of Munitions was given power to extend to a whole trade the terms of an award which was already applicable to a large section. To a considerable extent the awards of the Committee on Production determined the course of wages during the war, especially after 1917, when the engineering and other well organised trades agreed to submit cases to it every four months for the revision of working conditions. The number of cases referred to arbitration grew from 45 in 1915 to 3,500 in 1918.

This war-time control of wages was continued after the signing of the Armistice by the Wages (Temporary Regulation) Act of 1918. The Act itself was based on the recommendation of a Committee of Reconstruction of which Sir John Simon was chairman. Its object was the prevention of any sudden fall in wages immediately the War ceased. The Act enforced the payment to workers of not less than the "prescribed rate" (defined below) for a period of six months from the date of the Act. An Amendment in May 1919 extended the period for a further six months and in the following November the Industrial Courts Act prolonged it until September 1920. The "prescribed" rate as respects a man or boy in any trade or branch of industry, in any district, was defined as the recognised time-rate or other basis for determining wages, which was generally applicable on November 11, 1918, to that class of workman in that trade or industry in that district. As regards women whose wages were regulated by Orders under the Munitions of War Acts, the "prescribed rate" was the rate payable under the said Order or Award. If there was an agreement existing between the employers of a majority of the workers in a district and these workers, the rate was to be the wage payable under that agreement. For women,

emergency. In particular, the Committee which consisted of a representative of the Admiralty and the War Office, with Sir George Askwith as Chairman, reported that disputes between employers and workers should be referred to an impartial tribunal nominated by the Government. The Government acted on this suggestion and appointed the Committee on Production as the chief arbitration tribunal of the country.

to whom neither of the above conditions applied, the prescribed rate was to be that paid by the employers of the majority of the workers in the district. It will be seen that the Act was really an attempt to enforce the payment of wages at not less than the rates ruling at the time of the Armistice. The Act was not, however, so inflexible as at first sight appears. The old Committee on Production was rechristened, and was made an Interim Court of Arbitration, which was charged with the duty of settling disputes arising out of the interpretation of the Act. It was possible for a substantial proportion of the workers or employers to make a claim for the substitution of a new rate in place of the existing prescribed rate. Such claims might be referred by the Minister of Labour to the Interim Court, and when a variation was made the Minister was empowered to extend such rate to all employers and workers on whom the old prescribed rate was binding. Proceedings for enforcement were to take place before a Munitions Tribunal. After 1919 the Tribunal to which alterations in the prescribed rate were referred was the same in personnel but different in name. The Industrial Courts Act of 1919 named the Interim Court of Arbitration, *alias* the Committee on Production, as the standing Industrial Court. By now it consisted of some thirteen members, for since 1917 it had been increased in size by the addition of representatives of employers and workers. It was practically a standing panel of arbitrators to which parties to a dispute could apply for the appointment of a settlement board. Its decisions no longer had statutory force and the Act of 1919 thus abolished the element of compulsion in the settlement of wage disputes in Great Britain.

No account of State intervention in wages in Great Britain would be complete without some mention of the Fair Wages Clause, which arose out of a Resolution in the House of Commons in 1909. By this Resolution Government contractors shall " under the penalty of a fine or otherwise, pay rates of wages, and observe hours of labour not less favourable than those commonly recognised by employers and trade societies . . . . in the trade in the district where the work is carried

out." If the Clause is violated firms are struck off the list of those invited to tender by the Government. The Fair Wages Clause has also been adopted by Local Authorities.

IRELAND.

The Trade Boards Acts of 1909 and 1918 were also applicable to Ireland, although the administration was carried on from the London office. After 1923, however, when both North and South Ireland undertook their own government, the administration of these Acts was necessarily transferred to Belfast and Dublin. The Irish Trade Boards for any particular trade had always been quite separate bodies, so that the transition was easily effected.

In 1923 the Government of Northern Ireland repealed the 1909 and 1918 Trade Boards Acts in so far as they related to that country, and passed a new consolidating and amending Act.[1] The Boards previously existing under the repealed Acts were retained, and power was vested in the Irish Ministry of Labour to create new Boards. But there were several significant alterations. The influence of the Cave Committee and its recommendations can easily be traced in the new measure. Once again the conditions which must be satisfied before a Trade Board can be set up include the prevalence in any branch of the trade of unduly low wages as compared with the rate in other occupations, a condition which had been removed by the Trade Boards Act of 1918. But an even more important alteration was made in regard to the rates which might be fixed by the Boards. The Cave Committee had pronounced against the elaborate scales of rates fixed by the British Trade Boards, drawing a sharp distinction between

"(*a*) A true minimum wage—that is to say, the least wage which should be paid to the ordinary worker of the lowest grade of skill engaged in the trade, and (*b*) those other and higher scales of payment which it is desirable to secure for the part skilled and skilled workers. The former . . . should be fixed by a vote of the majority of the whole Board, including the Appointed

[1] *An Act to Consolidate and Amend the Law relating to Trade Boards in Northern Ireland.* 13 & 14 Geo. V. ch. 32. Dated November 27, 1923.

Members, and when confirmed should be enforced by all the authority of the law; but the latter . . . should be determined by agreement between the two sides of the Board, without the vote of the Chairman or Appointed Member, and when confirmed should be enforceable by civil proceedings only."[1]

The new Northern Ireland Trade Boards Act adopts these recommendations with the exception of the last clause. By Section 6 of the 1923 Act a Trade Board may fix general minimum piece-rates by agreement between at least three-fourths of the members of the two sides, but when fixed such rates are enforceable in the same manner as the general minimum time-rate.

Apart from these alterations and several minor amendments, the Trade Boards system in Northern Ireland is substantially the same as that in Great Britain.

The Trade Boards Acts of 1909 and 1918 still remain in force in the Irish Free State, and have not been amended. The Acts apply to fourteen trades.[2]

France.

The French system was inaugurated in 1915 by the Home-work Act of that year after a long period of agitation on the part of social reformers. This Act is limited in scope to women home-workers, although men similarly employed may claim at least the wage paid to women, which indeed is little enough. Moreover, the Act was until 1922 confined entirely to home-workers engaged in the manufacture of clothing or articles ultimately intended for clothing. In 1922 it was extended to cover all lace, sewing, embroidery, etc., whatever the destination of the work, and to certain accessory articles of clothing, knitted goods, the manufacture of medals, small jewellery and rosaries.

The authorities charged with the fixing of rates were, in the first place, intended to be the Conseils du Travail set up

[1] *Cave Committee Report*, p. 28.

[2] i.e. Paper Box, Aerated Waters, Brush and Broom, Dressmaking and Women's Light Clothing, Hat, Cap and Millinery, Linen and Cotton Embroidery, Milk Distribution, Ready-made and Wholesale Bespoke, Retail Bespoke Tailoring, Sheet Making, Sugar, Confectionery and Food Preserving, Tobacco, General Waste Materials Reclamation, Wholesale Mantle and Costume.

under the Act of July 17, 1908.[1] In fact, only three such councils existed, none of which dealt with the clothing trade. In their absence the authority was to be a Comité de Salaires, to be set up in the chief town of each Department (33f).[2] These committees were to consist of the senior Juge de Paix, and two to four workers engaged in the trade, though not necessarily home-workers, and the same number of employers. The term of appointment was three years. The Prefects have the duty of summoning the committees and of determining the number of members, who are actually chosen by the assembled presidents and vice-presidents of the local Conseil de Prud'hommes and, failing agreement, by President of the Civil Tribunal. The Conseils de Prud'-hommes, or probiviral courts, as reorganised by the Acts of 1907 and 1908, are set up for industrial towns and consist of as many trade sections as are required. Each is composed of two employers and two workers with a president chosen alternately from either side. They deal with trade disputes, wages and dismissal claims, and combine the functions of a court of arbitration with those of a court of summary jurisdiction.

It is the duty of the Comité de Salaires to fix the hourly rate which is to be paid for the various kinds of home-work carried on in the district, and the Act lays down very carefully the matters to be taken into consideration by the Comité when making a decision. The wage fixed must be equal to the wage customarily paid in the district to workers of average ability engaged on similar work in factories and workshops (33e).

The system is unique in providing that the further duty of deciding the time to be taken over each article, in order to translate these hourly rates into piece-rates, shall be determined by a separate body, the Comité d'Expertise. The Prefect has power to set up these committees for the various branches of trade or for various localities. They consist

[1] These may be appointed in any locality by the Conseil d'Etat on the request of persons interested, or on official initiative, for particular trades, to study the interests of the trade and to give expert advice.

[2] The figures in brackets refer to the relevant sections of the Act of 1915.

of two women workers and two employers in the trade concerned, and are presided over by the local Juge de Paix. Here again the members are chosen by the assembled sectional officers of the Conseil de Prud'hommes. After the Comité de Salaires has fixed the daily wage to be paid in the district, it is the duty of the Comité d'Expertise to discover the length of time necessary to make various articles in order that piece-rates may be fixed which will allow the ordinary worker to earn the minimum hourly or weekly rate. The latter need function only at the request of the Government, the probiviral courts, or a trade association, but if they wish, they may on their own initiative draw up the necessary tables showing the time taken to make various articles. In this difficult task they are entitled to receive assistance from various quarters. They have access, for instance, to the schedules of wages and piece-rates in the clothing trade in various districts, which have been drawn up from time to time as a result of the Decree of August, 1899, relating to the making of military garments,[1] while the Ministerial Circular of July 24, 1915, instructs Inspectors to attend the committees and give advice when requested. It is a further duty of the committees to give advice and information to the judicial authorities, when workers sue for the fixing of a rate applicable to themselves

The decision as to the minimum wage is to be published by the Prefect and is to become effective after three months unless an appeal is lodged. Appeals which are not settled by agreement are decided by a Central Commission sitting at the Ministry of Labour (33h). This is composed of two members of the Wages Committee concerned (one representing the employers and the other the employed), two representatives of the trade in question, and the permanent members of the Commission. The latter consist of two members elected from the probiviral courts for a term of three years and one member of the Court of Cassation, nominated by the Court, who acts as President. In practice appeals to the Central Commission have been few. Up to October 1, 1920, the Court had given only thirty-six deci-

[1] Circular of the Minister of Labour, January 12, 1917.

sions.[1] The general tendency seems to have been to obtain a settlement either by reconsideration or by employing the inspectors as conciliators. The proceedings of the Commission are marked by considerable delay.

By October, 1920, Comités de Salaires had been set up in all Departments except Aisne and Ardennes, while there were 297 Comités d'Expertise in existence. The setting up of the committees did not, however, proceed as quickly as might have been wished, as is shown by a number of Ministerial Circulars reminding Prefects of their duties under the Act. The Act, as evidenced by its recent extension to other trades, does not appear to be unpopular, but this fact may be accounted for in several ways. Its scope is very limited, extending only to women home-workers in certain specified trades,[2] while the basis of the wage to be fixed is rigidly defined and by no means represents an ambitious scheme of social reform. It merely prevents outworkers from receiving lower wages than factory hands, and makes no attempt to question the adequacy of the wages paid to the latter. Also the Committees have been very slack in revising wages. A wage once fixed is usually not altered within the three years' period allowed for in the Act, thus making the existence of the Committees of little real value in many cases.[3] Finally, prices have not yet begun to fall in France, and so there has been no inconvenient pressure to raise wages on a falling market. For the past three or four years interest in the Act of 1915 has declined, and its place has been taken by animated discussions about the system of Family Endowment. Even the official reports on the operation of the Minimum Wage Act have ceased to appear since 1920.[4] Reasons have already been given for excluding the system of Family Endowment from an examination of State wage regulation. Even under the Act of 1922,

[1] *Bulletin du Ministère du Travail*, October, 1920.

[2] An unsuccessful attempt was made in June, 1917, to extend the provisions of the Act to workers in workshops

[3] See in particular the Circulars of the Minister dated September 11, 1922, November 29, 1916, February 23, 1916, and August 26, 1924.

[4] A fuller account of the operation of the French system will be found in my article on "The French Minimum Wage Act of 1915" in *Economica*, November, 1923.

which enforces payment of wages on a family basis on firms applying for Government contracts, the State does not enforce the payment of any minimum sum, unless it can be argued that the minimum payment per child, approved of by any particular Cuisse, is a minimum wage. This seems on the whole a doubtful extension of the idea of a minimum wage, for there is nothing to prevent an employer from paying no more than that, and it cannot seriously be maintained that the enforced payment of 25 francs a month [1] constitutes State regulation of wages.

Norway.

The Norwegian Act of 1918 applies to home-workers, and persons employed in outwork shops. Like the French Act of 1915 its scope is limited to the manufacture of clothing and needlework of all kinds. A general Home-work Council is charged with the duty of securing hygienic conditions in the home-work trades, and if it finds that a minimum wage is necessary to secure good conditions it may fix one through the agency of a Wages Board. These Boards may be set up for one or more branches of a trade. As in France too, one Wages Board is contemplated for each commune, but in practice one Board is often appointed for several communes. Members of the Boards are selected by the communal authority from nominations received from associations of employers and workers. The Boards consist of not less than four members, with the addition of a chairman appointed by the Home-work Council. French precedent is again followed to the extent of limiting the wage which is fixed to that ruling in factories in the district, but in Norway the Wages Boards themselves fix the piece-rates. Co-ordination is obtained through the Home-work Council, which may either confirm or refer back a rate. As in Tasmania, minimum rates may be suspended in favour of a collective agreement concluded between workers and employers. The Act was passed for a period of five years in

[1] This is the highest "wage" which could be enforced on a public works contractor in respect of a worker who had only one child.

the first instance, but in 1923 was renewed for a similar period.

In 1918 another Act was passed to provide a minimum wage for lower-grade commercial employees, who are defined for this purpose as women and men regularly employed for remuneration by the owner of a commercial undertaking where the work is carried on in a shop, office or warehouse. If the communal authority decides that wage conditions are unsatisfactory, it can decide that a minimum wage be fixed, and for this purpose may appoint a Wages Board, which consists of a chairman and as many ordinary members (equally representative of both sides) as the communal authority may decide. The central authority is the Commercial Wage Council, which consists of three or five members of either sex, who must be persons not economically interested in the decisions of the Council. This body has to see that "the rates fixed for separate localities are in reasonable proportion to the rates fixed in other localities." Here, too, the minimum may be suspended if a collective agreement is made. This Act was at first operative only for a limited period but in 1922 it was extended, and continued until 1925.

A system of Compulsory Arbitration was in operation from 1916 to 1923. In 1916 as a result of considerable unrest, a Compulsory Arbitration Act empowered the Government to direct that a dispute should be settled by Arbitration if it was one likely to endanger important public interests. The Award of the Court was binding and stoppages of work were prohibited. The Arbitration Court consisted of a chairman and two members appointed by the Government, together with two others, one each appointed by the Federation of Trade Unions and the Federation of Employers' Associations. This Act was very little used, but as it only applied to disputes arising during the War it was extended in 1919 and again in 1920 for yet another year. In 1922 a new Act made certain slight alterations, and extended arbitration until 1923. The Court made 111 Awards under this Act, but as the general tendency was towards a reduction of wages, the

renewal of the Act was strenuously opposed by the socialist and communist parties, and since 1923 Compulsory Arbitration in Norway has ceased to exist.[1]

Austria and Czecho-Slovakia.

The influence of the French Minimum Wage Act may also be traced in the limited scope of the Home-Work Acts of Austria and Czecho-Slovakia. It will be convenient to consider these two States together, for their minimum wage legislation is very similar, largely because its conception dates from the time when the two states were politically one. In Austria the Act applies to outworkers engaged in the manufacture of clothing, shoes, and under-clothing, while in Czecho-Slovakia it applies to the same type of worker engaged in the manufacture of the above articles, and also textiles, the making of glass and mother of pearl. In both countries the extension of the law to other trades is anticipated, although no specific provisions are made to this effect.

The Austrian Home-Work Act of 1918[2] provides that the State Department for Social Welfare, in agreement with the State Department for Public Health, shall establish a Central Home-work Commission for every branch of manufacture where goods are made by home-work, the grouping of trades being based upon their local distribution. Each Commission is to consist of at least nine members, equally representing contractors and home-workers, while if middlemen exist they are to be given suitable representation. These persons are to be appointed for three years by the Secretary of State for Social Welfare after the organised bodies of employers and workers have been given an opportunity to make nominations. In addition, other persons, equal in number to the representatives of workers or employers, and possessing the necessary knowledge and capacity to judge of the condition of the industry, are to be appointed. One of these is

[1] An excellent account of the operation of the Compulsory Arbitration Laws is given by Johan Castberg in the *International Labour Review*, February 1925, p. 15.

[2] *Gesetz uber die Regelung der Arbeits-und Lohnverhältnisse in der Heimarbeit. Vom Dezember* 19, 1918.

to be nominated by the Secretary of State for Public Health. The president and deputy of each Commission is to be appointed by the Secretary for Social Welfare from among its members. Local Home-work Commissions may also be set up, the nomination of members resting with the competent Provincial Governments who also appoint the president and his deputy. These bodies may make proposals to the relevant Central Commission respecting rates and agreements, while they must report on matters concerning their trade if so requested. The president of the local Commission must be invited to attend the meetings of the central body when such recommendations or resolutions are under discussion. In addition, the local commissions are given important conciliation functions and have power to make recommendations for the settlement of disputes, which however the parties are not bound to accept. At least two-thirds of the total membership of the Central body must be present when Determinations are made. These are submitted to the State Department for Social Welfare.

Similar conditions prevail in Czecho-Slovakia. The Act of 1919 [1] provides for the establishment of a Central Home-work Commission in each branch of the specified industries by the Minister of Social Welfare. The Commission is constituted on the lines of that in Austria. The Minister may refer back rates for reconsideration, but in the last resort the decision lies with the Commission. District Home-work Commissions may be appointed for any branch of trade in which a Central Commission exists. The fact that the Chairman of the Central Commission may at all times attend meetings of the District Commission in an advisory capacity forms a bond between the two bodies. The District Commissions are in any case merely advisory, but they also act as conciliatory authorities in the industries with which they are concerned. As in Austria, a collective agreement takes precedence if necessary over a Determination, while the Central Commission may declare a collective agreement to be a Determination within the meaning of the Act.

[1] *Gesetz vom Dezember* 12, 1919, *Slg Nr* 29 *betr. die Regelung der Arbeits und Lohnverhältnisse in der Heimarbeit.*

Little information is available as to the operation of these laws. Up to 1925 economic conditions in Austria had prevented the Act from becoming a very important factor, and the inspectors complain that there is much ignorance of the law. In Czecho-Slovakia five Central Commissions had been set up by the end of 1924,[1] of which four had their seat at Prague and one at Jehlave. Each had jurisdiction over the whole country excepting Sub-Carpathian Russia, and four of these had established also a number of District Committees.[2] Only the Glass Commission, however, had been successful in actually fixing a rate. The rest have been concerned with the settlement of industrial disputes and general advisory work. This lack of activity is attributable partly to the apathy of workers and the trade unions, and partly to a technical difficulty in the Act.[3]

GERMANY.

Of more recent date is the German Home-work Act of 1923,[4] amending a previous Act of 1911, and containing provisions for the regulation of wages in home-work trades. The Act provides for very detailed supervision of home-work, including the conditions under which it is to be carried on, the hours and kind of work, health and sanitation, etc. The rate of wages to be paid appears among these conditions. The Federal Minister of Labour, with the consent of the Federal Council, after hearing the economic associations and official trade representatives of employers and workers, may decide that Trade Committees shall be established for particular branches of industry and particular areas. If a joint request is received from the association of employers and employees, such a committee *must* be set up. A trade committee consists of equal numbers of representatives of the industrial employers and home-workers concerned,

[1] Textiles, Clothing and Linen, Glass, Mother of Pearl, and Footwear.

[2] There were eight in textiles, eight in clothing and linen, five in glass, and six in footwear.

[3] See p. 189 *n.* Fuller information regarding the operation of the Czecho-Slovakian law may be obtained from the reprint of an article by Mr. Sirotek, in *Industrial and Labour Information*, Vol. 14, No. 13, p. 16.

[4] *Bekanntmachung der neuen Fassung, des Hausarbeitgesetzes. Vom Juni* 30, 1923 (*Reichsgesetzblatt, Teil I, S.* 472; *Reichsarbeitsblatt*, 1923, Nr. 14, S. 451).

together with a chairman and two assessors, all three of whom must possess the requisite expert knowledge. The Council, at the request of State and communal authorities, is to ascertain the amount of the actual earnings of home-workers, and give opinions as to their adequacy. Inadequate wages are defined as remuneration which is such that home-workers cannot attain the wages customary in the locality by working normal hours, or which is lower than the wages paid in factories and workshops in the same district for similar work. In all cases an effort is first to be made to secure a collective agreement, which may be ratified by the Trade Committee as being generally enforceable, and only in default of such agreement is the Trade Committee itself to fix minimum wages which shall be valid and final if adopted by the chairman and one assessor together with a two-thirds majority of the representatives, but which shall otherwise require confirmation by the authority which established the Trade Committee.[1] The payment of wages less than those declared in the collective contract or fixed by the Trade Committee is punishable by a fine. The Act has been in force for too short a time for any useful comment to be made upon its operation, although it may be suggested that to place so much reliance upon collective contracts when one party is almost by definition weak and unorganised, is somewhat optimistic.

A form of the Arbitration system is also found in Germany. By the National Service Act of 1916 and the Manifesto of the Council of People's Commissioners of 1918, adjustment boards were set up which were similar in character to the existing conciliation boards. Unlike the latter, however, the adjustment boards could act on their own initiative and could give binding awards. In cases of "social or economic necessity" these awards may be extended to persons who were not parties to the original

[1] This emphasis on the collective bargain is also seen in the Order of November 28, 1924, which prescribes that a Trade Committee, before coming to a decision must ascertain whether there is any collective agreement in force for home-workers in that trade. If such an agreement exists, and the wages fixed under it are held to be adequate, the Committee may make the terms of the agreement binding on all persons in the trade.

dispute. Moreover, the services of these boards may be utilised by parties anxious to conclude collective agreements, and these agreements too may be extended to other persons, if so declared by the Federal Minister of Labour. Before so extending an award, the Minister ascertains from the local chambers of commerce and other industrial authorities whether the collective agreement is an important factor in the determination of labour conditions in the particular occupation. In fact not many such extensions have been made, and the whole machinery has been working under conditions so abnormal that it is impossible as yet to determine how far it is successful.

Other States.

Since 1919 there has been an Arbitration Act in Poland which provides for the settlement of collective disputes by inspectors of agricultural labour, using a conciliation or arbitration board. Parties refusing to take part in a compulsory conference are liable to a heavy fine. Any award or agreement so arrived at shall be legally binding on all agricultural workers and employers in the district. The Board itself consists of not less than three, or more than five, representatives of each side, together with a chairman appointed by agreement between the parties, or failing this by the Minister of Labour.

The regulation of wages was one of the first steps taken by the Russian Soviet Government. In December scales of wages were decreed which aimed at some degree of equalisation but which took into account also the professional ability of the wage earner. In 1919 payment in kind became general, and workers were divided into some thirty-five groups who received payment varying with the relative importance to the State of the work performed by each group. Towards the end of 1920 it was felt that some stimulus to production was necessary, and later Wage Orders emphasised that more attention should be paid to purely economic factors.[1] With the adoption of the New Economic

[1] e.g. the *Order as to General Wages, June* 17, 1920, prescribed that in drawing up schedules of wages the following points should be taken into

Policy in 1921 many of the factories which had been administered by the State were leased to co-operatives, labour groups, or individuals. The payment of wages in such undertakings is regulated by a Decree of June 18, 1921. An attempt is made to link together the workman's payment and the total output of the concern, and equalisation by fixing wage tariffs is abandoned.[1] A minimum payment is assured to each worker, which is increased only with an increased production. The size of the central fund for each enterprise, out of which the minimum payment is to be made, is determined by the Supreme Economic Council and the All-Russian Council of Trade Unions, by reference to the needs of each worker employed and the cost of other factors of production.[2]

There remain one or two less important cases of wage regulation in Europe. In Switzerland minimum wages are fixed for certain sections of the hand-embroidery trade; in Holland by a Decree of September 23, 1920, persons employed in the Herring Skewering industry between the hours of 10 p.m. and 2 a.m. must be paid not less than 25 fl. more than the usual rate per hour. Finally, there is an interesting return to mediæval conditions in Hungary under the Agricultural Wages Order of February 24, 1921, which provides for the fixing of maximum wages paid in agriculture according to the kind of work and the season. The important clause is Section 2 whereby it is stated that after the determination of the wage "workers shall not in virtue of any contract claim more than the wages so determined."

consideration: the time necessary for learning the trade thoroughly, the injuriousness and danger of the conditions under which the work is carried out, the arduousness of the work, and the degree of responsibility for its performance.

[1] Cf. *Wage Regulations of September* 16, 1921.

[2] A fuller description of the Russian system can be found in an article by Amy Hewes, in *The Journal of Political Economy*, April, 1922, p. 274.

CHAPTER VI.

WAGE REGULATION IN THE UNITED STATES AND CANADA.

The United States.

Minimum Wage regulation in the United States and Canada is of even more recent date than that considered in the preceding chapter. The earliest Act, that of Massachusetts, did not become law until 1912, while the similar legislation of the other States was a later development. We have seen that by 1911 an active interest was being taken in Massachusetts in the position of the worst-paid classes, and that the alleged evil conditions were corroborated by the report of an Investigation Committee which sat in that year. Even so, the passage of an Act to set up wage-regulating boards was made possible only by the withdrawal of any penal provisions. In other words, the Act in Massachusetts is non-mandatory. By 1913 eight other States [1] had placed minimum wage laws upon their statute books, although on account of a challenge to the law in Oregon very little effective work was done until 1917. During the War several other States followed suit,[2] and although the extension of such legislation is now slower, the movement still continues. This is evidenced by the adoption of a minimum wage law in South Dakota in 1923, and by the attempts still being made to pass wage-regulating Acts in Ohio,[3] New York, and other States. By 1924, therefore, seventeen American States had experimented, with varying degrees of success, in minimum-wage regulation.

[1] i.e. California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, and Wisconsin.

[2] i.e. Arizona in 1917, Arkansas and Kansas in 1915, District of Columbia in 1918, North Dakota and Porto Rico and Texas in 1919.

[3] See the *Monthly Labour Review*, March, 1923, p. 55.

The constitutional problem has vitally affected both the form and development of minimum-wage legislation in the United States. The Fifth and Fourteenth Amendments provide that legislation which deprives of property or interferes with liberty of contract is invalid, unless it is "due process," or as it is commonly put, unless it can be justified by "police power." This term is very vague, but in effect means that such legislation must be shown to be necessary for the general welfare of the community. The laws have also been attacked on the grounds that they delegate legislative functions to an administrative agency. These points were raised almost immediately in Oregon, and as will be seen from the Note appended to this chapter, there has been a long series of lawsuits, which have, for the time being in some cases and permanently in others, interfered with the operation of the laws. Until 1923 the interpretation of the Courts was on the whole favourable to the existing laws, but since then there has been a significant change of attitude, and the future is full of uncertainty. Nevertheless, the necessity of successfully meeting constitutional challenges has materially affected the scope and form of the various laws. The charge of interfering with freedom of contract was met until 1923 by arguments that the States were justified in interfering with the right of contract, when such right was derogatory to the public welfare, health, or morals, or when in fact it was difficult to argue that real freedom of contract already existed. It was argued that such a position existed with regard to the wage bargains of women and minors. Hence in all cases the operation of the minimum wage laws is expressly limited to women and minors, and in some cases to women only.[1] Moreover to emphasise the fact that the laws are merely an application of the police powers of the State, the majority of the Acts state in the preamble that their object is "to protect the lives and health, and morals of women and minor workers," or to determine "the proper conditions of labour" for such per-

[1] In fact, of course, it is probable that even were there no constitutional difficulties, the minimum wage laws would only apply to women on account of the strong opposition on the part of male workers.

sons. The second difficulty as to the delegation of legislative powers has been met by a careful definition in the Acts themselves of the basis on which wages are to be fixed, so that it can be argued that the function of the Commission or Wages Board is merely the administrative work of determining the appropriate arithmetical equivalent of the basis when applied to different industries. Great care has also been taken, when Wages Boards exist in addition to a Central Commission, to ensure that all final power shall be vested in the Central Commission. The Wages Board is in all cases advisory only.

There are thus three main characteristics of minimum wage regulation in the United States. In the first place, laws are limited in application to women and in some cases to minors. In the second place, the basis of the wage is always defined, with greater or less precision, while in certain States the exact money wage is inserted in the Act itself. Finally, even where Wage Boards, in the ordinary sense of the word, exist, their powers are very limited as compared with many of those in Australia and Europe. It is not proposed to give any detailed account of the various bodies which regulate wages in the American States,[1] but some knowledge of the position is necessary for a proper understanding of the problems involved. One broad distinction between the systems has already been indicated. It is possible to divide them into those which are and those which are not mandatory. On the one hand are those laws which, like that of Massachusetts, the ineffective Nebraska law, and since 1923 the District of Columbia, rely for their enforcement upon the pressure of public opinion. Contravention of them is not punishable in the Courts. In the other group of States, offenders can be punished by fine or imprisonment. All three methods of regulating wages are found in the United States. In four States we find the Fixed Minimum Wage method, in one State Arbitration is used, while the remainder adopt what is essentially the Board method, though modified to suit the special

[1] A full account is contained in *Bulletin No. 285 of the United States Bureau of Labour Statistics*, 1921.

conditions operating in America. There is little to be said about the Fixed Minimum Wage. It is found in Arizona, Porto Rico, South Dakota, and Utah, and in all these cases is true to type. The Minimum Wage Law merely enumerates certain classes of workers, and states that they shall not be paid less than the wage named in the Act. The Board method, however, as it is found here, deserves longer consideration. In general, provision is made for the constitution of a permanent body or Commission, which is charged with the duty of fixing a living wage for certain enumerated classes of workers. The Commission may act either alone, through special conferences with representatives of the trade concerned, or through Wages Boards. In Texas and Arkansas there is no advisory Board. In all other cases, these Wages Boards are merely advisory, and, with the exception of Massachusetts, Kansas, and Wisconsin, their use is optional.

In California, District of Columbia, Oregon, Texas, and Washington the permanent Commission is appointed to deal solely with wages and matters relating thereto. In Colorado, Kansas, Minnesota, North Dakota, and Wisconsin the work is done by the body which is concerned with other labour laws, while in Massachusetts it is done by a special Minimum Wage Division of such a Department. The membership of the special Industrial Welfare Commission varies from five members (in California and Washington) to three (in District of Columbia, Texas, and Oregon). Where the permanent Commission is appointed to deal solely with wage matters, it is constituted so as to represent the interests of employers and workers, with a paid chairman, or other person to represent the public. Thus in Oregon, to take a typical case, it is provided that the Commission is to consist of one member of the employer class, one of the worker class, and one person to be "fair and impartial between employers and employees, and to work for the best interests of the public as a whole." In this State the Commission elects a secretary who receives a salary, while members of the Commission receive expenses only. In some States there is a special provision that at

least one of the members shall be a woman, but in almost all cases women are in fact represented on the Commission whether or not there is this proviso.

The Wages Boards also vary in size and constitution. Except in California, the Boards consist of representatives of employers and workers, together with an equal or rather smaller number of representatives of the public, in addition to the Chairman. This provision for the appointment of members of the public as such, is a peculiarity of American and Canadian methods. Its desirability will be discussed in a later section. In California there are no representatives of the public, although the procedure prior to the calling of the Boards is the same as elsewhere. That is to say, the Commission is authorised to investigate "the wages paid, the hours and conditions of labour and employment in the various occupations, trades and industries in which women and minors are employed in the State of California, and to make investigations into the comfort, health, safety, and welfare of such women and minors." If as a result of such inquiries the Commission is of opinion that the wages paid in any industry are not "living wages" as defined in the Act, it may call a Wages Board, to suggest a suitable living wage for the trade. The Wages Board may also make recommendations as to hours and suitable conditions of employment in the trade. The deliberations of the Board are to be a matter of record for the use of the Commission, which is not bound to adopt them in fixing the living wage. Although the calling of the Wage Board or conference with members of the trade concerned is not compulsory in all States, in practice almost all the Commissions have made the calling of a Board the preliminary step to the fixing of a rate.[1] There is, however, considerable variation in the relations of the Boards to the central wage-fixing authority. As a general rule the Commissions tend to adopt the recommendations of the Boards, although in certain cases, of which Kansas is an example, they exercise

[1] California occasionally refuses to exercise its powers, and fixes rates itself after a public hearing, while in Oregon and Wisconsin the practice has developed of making use of a single conference and calling upon it to act for each industry in turn.

their legal freedom of action and reject them. In such circumstances it is customary for the central authority to call another conference or appoint another Wages Board. It is indeed this tendency to fix the living wage as far as possible in consultation with members of the trade concerned that justifies the inclusion of the American experiments under the Board System.[1] When a Commission has adopted a rate a Public Hearing or Meeting is necessary before it can become law. This meeting is widely advertised and may be attended by all persons interested. In fact these meetings seldom perform any useful function, are not well attended, and are largely used as a means of advertisement for the airing of the views of persons who feel strongly on the subject of State regulation of wages. It is very rare that an alteration in the rate previously decided upon is made as a result of a Public Meeting.[2] Revisions of rates already fixed or the initiation of new rates may generally be effected by a motion of the central body, or as a result of a petition as to the lack of relationship between the wages paid in certain trades and the requirements of a living wage. It is thus possible to make revisions either upwards or downwards.

Two of the three forms of minimum wage legislation in the United States have now been considered. In four States the Fixed Minimum Wage has been found,[3] in ten an approximation to the Board System.[4] In two other States the method adopted does not conveniently fit into any classification. In Arkansas the amount of the wage to be paid was originally inserted in the Act itself. To this extent therefore, it falls under the Fixed Minimum Wage System. But it is further provided that a Commission shall be appointed to fix a lower or higher minimum, should it find on inquiry that such alteration is necessary to supply an adequate living wage to women in industry.

[1] A fuller account of the relationship between the Central Commissions and the Wages Boards will be found in Chapter IX, p. 216.

[2] See Chapter IX, p. 221 *et seq.*

[3] i.e. in Arizona, Porto Rico, South Dakota and Utah.

[4] i.e. in California, Colorado, District of Columbia, Kansas, Massachusetts, Minnesota, North Dakota, Oregon, Washington, and Wisconsin.

This brings the method into line with the Board System as it is adopted elsewhere in the United States, for although there is no provision for the appointment of a Wages Board, an Amendment of the law in 1921 provided for the addition of representatives of employers and workers to the Commission, which previously consisted of three members, the Commissioner of Labour, and "two competent women." To some extent the method adopted in Arkansas now corresponds to that existing in Texas before the Minimum Wage law was repealed in that State. In Texas there was a Central Commission, charged with the duty of fixing wages in trades where investigation showed it to be desirable. The method adopted was unlike the Board System, in that there was no provision for the calling of a Wage Board, representative of both sides. On the other hand, the constitution of the Commission which consisted of the Head of the Bureau of Labour Statistics, the representatives of the employers and workers on the Industrial Accident Board, and the State Superintendent of Public Instruction, did allow the employer and worker interests to have some voice in the determination of the minimum wage. Moreover, the method could not well be classified under the Arbitration System. There was no provision for the bringing of disputes by organised workers, no regulations against strikes and lock-outs, and it was specially provided that in no case should the Commission act as a Board of Arbitration during a strike. The initiative as to the fixing of rates came in the first instance from the Commission, although petitions asking for the amendment of rates could be made to it. On the whole, therefore, it seems most convenient to regard the systems of Arkansas and Texas as imperfect and incomplete types of the Board method.

The Arbitration method has been adopted only in Kansas. The Compulsory Arbitration Law of 1920 created a Court of Industrial Relations consisting of three Judges appointed by the Governor for a period of three years. In case of serious disorder, the Court, on its own motion or at the request of ten citizens, was empowered to summon the parties before it and investigate the dispute. It could,

however, only act in those trades in which it could be argued that a stoppage of work would endanger the public interests. That is to say, its activities were confined to disputes in trades engaged in the manufacture or transportation of food products, or clothing in common use by the people, or in such trades as mining. The Court in its finding was to "state specifically the terms and conditions upon which the said industry . . . should thereafter be conducted," and had power to prescribe a "reasonable minimum wage or standard of wages." The wages so fixed by the Court were to constitute the legal rate in the trade concerned. The Court had dealt with some forty cases when its activities were suspended by an adverse judgment in the United States Supreme Court. The Court of Industrial Relations had intervened in a dispute at the Wolf Packing Company, claiming justification for so doing on the grounds that the strike was likely to spread to other firms, and so become a menace to State safety. The decision of the Supreme Court, again invoking the Fourteenth Amendment, declared that the Act was invalid in so far as it authorised the fixing of wages in a single establishment, for, it was argued, a strike in one establishment could not be regarded as imperilling the public interests. For the time being, therefore, the activities of the Court, at least in so far as wage regulation is concerned, are severely limited.

The Kansas wage-regulating machinery is not the only American experiment which is at the present time practically refraining from functioning. The activities of the District of Columbia Minimum Wage Commission were cut short by the decision of the Supreme Court in 1923.[1] The Commission has not yet been abolished, but it is unable to carry on any active functions and can only rely on the consent of employers for the observance of Orders. This decision in the District of Columbia case has already had far-reaching effects on the activities of the other American Minimum Wage bodies. The Porto Rico Act has been declared unconstitutional, while test cases are being brought in other States, chiefly in Wisconsin and California. Every-

[1] See Note at end of this Chapter.

where, however, the positive functions of the central Commissions have suffered. Efforts are being made to enforce the Act by methods which do not bring the employers too obviously in conflict with the law. In some States, of which Oregon is a prominent example, the employers have for the time being signified their determination to support the law, but elsewhere the position is not so easy. Even in Massachusetts, where the enforcement of the law has long been on the basis of consent, fortified by the pressure of public opinion, the position of the Minimum Wage Division has been made more difficult by a decision that newspapers are not bound to publish the names of employers who are found to be violating the Law. But before this recent strengthening of the position of the opponents of minimum-wage legislation, not all of the systems described above were actually operating, while there was a wide variation in the effectiveness of those which were. The Nebraska Law of 1913, which was based on the system then in operation in Massachusetts, was never put into operation. It was repealed in 1919, and its failure seems to have been largely due to the lack of interest in the Act. The same thing happened in Colorado. Investigations were undertaken after the passage of the Act in 1913, but as certain changes in the law were recommended nothing was done until a new Act was passed in 1917. No further action was then taken by the Commission, on the ground that no adequate appropriation had been granted and that there was no popular interest in the subject. More recently efforts have been made to collect information on the basis of which action could be taken, but up to the present the law has remained a dead letter. An attempt was made to amend the Texas law in 1921, and to this end the Act of 1919 was repealed. But a veto by the Governor of the new measure, on the grounds that it was inconsistent and unworkable, has left this State temporarily without a minimum-wage law. Thus of the wage-regulating laws enacted at one time or another by seventeen States, two have never been put into operation, one has been repealed, and two have recently been declared unconstitutional. The rising prices which

accompanied the War rendered the Fixed Minimum Wage systems practically ineffective, as alterations in the original rates were not made except after the lapse of long periods. In North Dakota, Minnesota, and Kansas, the laws are still operative, but these States are largely agricultural and have a weak administrative personnel; hence in practice the laws are not very important. Moreover, in Kansas matters are complicated by the Supreme Court decision already referred to, for the central authority which deals with wage regulation on Board methods is the Court of Industrial Relations. The laws are more effective in Oregon and Washington, but here too, the administrative personnel is not too strong and is limited by lack of funds. The most active application of the minimum-wage laws is to be found in California, Massachusetts, and Wisconsin. In fact, therefore, the operation of State regulation of wages in the United States is by no means so extensive as appears at first sight. Nevertheless, large fields of women's labour are covered, and although the actual wage fixed may not be high enough in many cases to effect any considerable change in the position of the workers concerned, the experience of American States forms an important part of the data to be studied in discussing the problems of State regulation of wages.[1]

[1] The new Wages Board Act of 1925 in South Africa is similar in some respects to American Acts in that it sets up a Central Board of three persons appointed by the Governor-General, assisted by Divisions which may be set up from time to time, for any particular trade, and which also consist of three members, one of whom may be a member of the Central Board. The Minister may appoint to the Board not more than two additional persons, to be members for the purpose of any special investigation, and where desired by the Board, or a representative section of the trade, these persons may represent employer and worker interests.

It is the function of the Board to investigate, report, and submit recommendations to the Minister in respect of any matters relating to wages or conditions of labour, either on application of any registered union or association or of a representative number of workers or employers, or by direction of the Minister. Upon consideration of any report from the Board, the Minister may declare a minimum rate or wage which shall not be less than that assessed by the Board, and prescribe at the same time the class of persons in any area or trade to which the wage is applicable. While provision is made for the consideration of objections, no rule is laid down respecting the final decision on a proposed rate. It may be referred back to the Board for reconsideration, and the presumption seems to be that the Minister will make the final decision—though appar-

CANADA.

It is a significant fact that Canada in her minimum wage legislation has followed the example of the United States, rather than of Britain. The methods adopted are indeed very similar to those used in America. But whereas American legislation generally provides for fixing the wages of male minors as well as females, that of Canada applies only to women.[1] And while European systems have usually originated in an attempt to prevent the sweating of home workers, it is only of recent date that the Canadian States have realised the necessity of dealing with home-work as well as work in factories. Thus it was not until 1922, when it became evident that home-work was spreading, that the Ontario Minimum Wage Board announced its intention of regulating this class of work after the completion of its other Orders. While minimum wage legislation in Canada is thus probably more limited in scope than that in force elsewhere, this fact cannot be attributed, as in the United States, to constitutional difficulties. Moreover organised labour has been more keenly in favour of State intervention, while the opposition of employers has been less active.

Alberta, although one of the less highly industrialised

ently his only alternative is to refrain from fixing, or to fix a rate higher than that suggested by the Board. In making a recommendation the Board has to take into account all three bases to which reference is made in Chapter XII. While no choice between them is indicated, it appears that the economic conditions of the trade and the relations between white and coloured labour will probably be important factors. For although it is laid down that if the Board "cannot recommend in respect of the employees . . . a wage or rate upon which such employees may be able to support themselves in accordance with civilised habits of life, it shall make no recommendation in regard to such wages or rates, but shall report to the Minister on the conditions in such trade, and the reasons for its decision," it is stated immediately afterwards that "the Minister may yet direct the Board to make such recommendation as it deems fit."

The Act does not apply to agricultural workers, domestic servants, members of the teaching or academic professions, officers of Parliament or Public Servants, or to parties who are covered by an award or agreement made under Sections 7 or 9 of the Industrial Conciliation Act, 1924, and which fixes wages not lower than those applicable under the Wages Board Act. It is still too early to make any comment upon the operation of this legislation.

[1] With the exception of the New Brunswick Act of 1922 and the Fair Wages Clauses.

States, was the first to pass a minimum wage law. Under the Factories Act of 1917, a Fixed Minimum Wage of $1.50 per shift was instituted for all persons other than apprentices, employed in any factory, shop, office, or office building. The Act was by no means popular, and in 1919 the Cabinet was authorised to appoint a Committee in each of four cities with a population of over five thousand, to make recommendations relative to minimum wages and maximum hours. A joint meeting of the chairmen of these four committees decided, however, that they had no power unless a definite complaint was made, and in practice no action was taken. In 1920 an Amending Act provided that an advisory committee of five persons, appointed for the whole province, should be set up to investigate conditions, and to decide upon a minimum wage. A report was made to the Lieutenant-General, who was empowered to put the recommendations into effect by an Order in Council. While proposing that a minimum wage of $13 per week should be fixed for women and persons under eighteen years of age, the Committee suggested that hours of labour should be regulated by legislation rather than by Order in Council. It further recommended that legislation should be speedily introduced for the establishment of Wages Boards similar to those in other provinces. The Cabinet adopted the latter and not the former of these recommendations, but owing to Labour opposition, nothing was done until after the return of the Farmer Labour Party in 1921. The Minimum Wage Act of 1922 authorised the appointment of the desired Wage Boards in twelve specified towns and cities of over fifteen hundred inhabitants. These Boards were given power to fix minimum wages for all classes of women workers, with the option, as in the United States, of calling a conference, representative of the trade concerned, for advisory purposes. The appointment of a Board is at the option of the Cabinet, and it was provided that until a new minimum was established under one of the new Boards, the Fixed Minimum Wage of the 1917 Act should apply. Within a year of the passage of the new Act special rates had been fixed for the laundry and dyeing and cleaning

trades, and for persons working in hotels, restaurants, offices, shops, stores, and mail order houses.[1]

In other Provinces, the initial establishment of a minimum wage law was attended with more difficulty, but the step once taken progress was more rapid. In British Columbia various social workers had urged protective wage legislation since 1914, and in 1917 the agitation received new strength from the accession of various reform organisations, which were keenly interested in the subject. In 1918 an Act was passed, which adopted the American method of fixing wages by means of a central board, with the help of advisory conferences or wages boards. The central authority was to consist of three members, including the Deputy Minister of Labour, who was to act as Chairman. One member was to be a woman. This body is charged with the duty of ascertaining the wages paid to women workers, and of determining a minimum wage if necessary. The Board may call advisory conferences or wages boards to assist it in this latter function. The advisory body is to consist of equal numbers of representatives of both sides with one or more representatives of the public, such number not to be more than either of the other two. This Board is to give advice and submit an estimate of the proper wage, but, as in the United States, the Central Board may adopt or reject its findings, or may if it wishes refer the matter to another conference. At the present time practically all fields of women's labour[2] are affected by the Act, which in 1922 was said to regulate the wages of over ten thousand women.[3] In practice this means that nearly all the workers whose wages are regulated are employed in the south-west corner of the State, agriculture and mining being the chief industries over most of the country. In 1919 an Amendment to the Coal Mines Regulation Act provided for the appointment of a Coal Mines Minimum

[1] *Monthly Labour Review*, May, 1923, p. 144. The Act was amended in 1924, giving the Board wider powers and enforcing further penalties.

[2] i.e. mercantile industry, laundry and dyeing, catering, office work, manufacturing, hairdressing and amusements, telephones and telegraphs, fish curing, and fruit and vegetable canning.

[3] *Canadian Labour Gazette*, August, 1923.

Wage Board, to consist of the Chief Inspector and an equal number of representatives of both sides. This section of the Act has never been put into effect.

The Manitoba Minimum Wage Act was passed in 1918. Here again a Central Minimum Wage Board was set up, to consist of two employers, two workers and an impartial chairman. While there is no special provision as to the calling of conferences of members of the trade, the Board has in fact always consulted both sides. The Board is one of the most active in the Dominion, and during the year 1921–1922 made four hundred and thirty-five recommendations, two hundred and ninety-seven dealing with conditions of work, fifty-seven with hours of labour, and seventy-six with wages.[1] The Fair Wages Clause, on the lines of that in force in Great Britain, also exists in Manitoba, and applies to wages in the basic building and constructional trades. The wages so prescribed are paid by practically all contractors of note.

In Saskatchewan a Central Minimum Wage Board, constituted as in Manitoba, was set up in 1919, and in addition to the ordinary minimum wage functions was given the duty of fixing maximum hours and regulating sanitary conditions in shops and factories. Originally the activities of the Board were confined to the cities, but Orders could be extended to other localities as well. Moreover, in 1920 the jurisdiction of the Board was extended to include hotels and restaurants, in addition to the shops and factories originally contemplated. As a rule the Board acts without consulting the representatives of the trades concerned, and by 1922 had fixed the wages of over two thousand workers, chiefly in the laundry trade, in shops and stores, mail order houses, and hotels and restaurants.

The fifth Canadian State with an active minimum wage regulating body is Ontario. The relevant Act was passed in 1920, and set up a Board of five persons, with power to investigate wage conditions and establish a minimum wage, but with no power to regulate the hours or conditions of

[1] *Seventh Annual Report of the Bureau of Labour of the Department of Public Works, Manitoba.*

work. The Board consists of five persons, two of whom are to be women, and in this respect resembles that of Saskatchewan, but differs from that of Manitoba, where it is expressly provided that the Board shall consist of two representatives of employers and two representatives of the workers, although in each case one of the members is to be a woman. Without calling formal conferences, it has been the custom of the Ontario Board to discuss proposed rates with members of the trades concerned. Rates have been fixed for the laundry trade, for manufacturing industries, and for stores and shops, and by the end of 1922 the Board had covered at least fifty-three thousand workers, that is to say, nearly all the women workers in the province.

In all these five States, with the exception of Ontario, the basis on which the wage is to be fixed has been defined in the Act itself. As in the United States the basis is the necessary cost of living, although this is defined in different terms. While there is no Minimum Wage Act in New Brunswick comparable to those existing or provided for in other parts of Canada, this State has, by the introduction of a modified fixed minimum wage for teachers, opened a new field in the history of wage regulation in the Dominion. The Schools Act of 1922 provides for a fixed minimum wage for male as well as female school teachers. The salaries of teachers are based upon the value of the district in which they carry on their duties.[1]

Two other States have passed wage legislation, which has not yet been put into operation. In 1919 an unpaid Commission was authorised in Quebec. It was to consist of three members, one of whom was to be a woman, and was to be given power to call advisory conferences in the various industries for the fixing of wages. Its scope was limited to the fixing of wages in industrial establishments, i.e. in the manufacturing industries, excluding workers in stores, hotels, restaurants and offices. Up to the end of 1924,

[1] The actual scales are as follows: for districts with a valuation of $20,000 and under, the minimum wage is $500 p.a.; for those with a valuation of over $20,000, $600 p.a.; over $50,000, $700 p.a. (*Canadian Labour Gazette*, June, 1924, p. 481).

however, the Government had not even appointed the commission, in spite of protests from all parts of the Province.[1] This reluctance to put the Act into operation is probably mainly due to the economic conditions of Quebec, which is endeavouring to attract manufacturers. For this purpose low wages act as an inducement. Furthermore, it is probable that the relative weakness of the workers' organisations, which like those on the Continent, are divided into opposing religious and secular groups, has prevented the organised workers from bringing pressure to bear on the Government. In Nova Scotia also an Act was passed but never put into effect. In 1920 a commission of inquiry, which had been set up in the previous year, reported in favour of legislation on the lines of that existing in Saskatchewan. Accordingly an Act authorised the setting up of a Minimum Wage Board, consisting of five persons, two of whom were to be women. The Act was in the first instance applicable only to cities and incorporated towns, but might be extended by an Order in Council. But there was also a provision in the Act whereby "This Act shall come into force on . . . and not before such day as the Governor in Council orders and declares by proclamation." Until 1924 the Governor issued no proclamation, but in that year an amending Act was passed. The Minimum Wage Board of five persons is continued and given power to establish after due inquiry a minimum wage and to determine the maximum number of hours per week for which this minimum shall be payable. Such wages orders may be made for one industry or for several industries throughout the province, and the new Act was made applicable to all women except farm workers and domestic workers. The previous Act had applied only to women in factories and shops.

It will be seen later that although there are by no means so many different wage-regulating bodies as there are in Australia, the problem of unification of decrees has already been raised in Canada. So far little has been done to solve

[1] See, for example, the protest of the Annual Convention of Catholic workers of Canada, August, 1923 (*Canadian Labour Gazette*, October, 1923, p. 994).

the problem, although the Pacific States have taken a novel step in holding joint conferences with those American States, also on the Pacific Coast, which have wage-regulating bodies. This is a new form of international co-operation, the results of which may be of far-reaching importance. There is in Canada no Dominion legislation comparable to the Australian Federal Court. The nearest approach to it is the adoption of the Fair Wages Clause by the Dominion. Since 1900 the policy of the Government with regard to contracts has been based upon a House of Commons Resolution of that year, in which it was agreed that "every effort should be made to secure the payment of such wages as are generally accepted as current in each trade for competent workmen in the district where the work is carried out."[1] The adoption of this principle has been made more explicit by the Orders in Council of July 1922 and April 1924. It applies not only to direct Government contracts, but also to railway or constructional work towards which financial aid has been voted by Parliament.

Detailed consideration of the famous Lemieux Act has been deliberately omitted as outside the scope of this work. A very slight examination will show that the Industrial Disputes Investigation Act of 1907 does not constitute State regulation of wages. In Australia the State appointed a body which heard disputes about industrial matters and made awards which were binding on the parties concerned. After an award had been made it was illegal for a party to the dispute to engage in a strike or lock-out. In some cases all strikes were illegal in respect of matters which had not been submitted to a State tribunal, but the reality of the State's control over wages lay in the element of compulsion. It had the power to fix the legal wage in any trade in which there was a dispute. It is this power which is lacking in the Canadian legislation. The Act of 1907 applies only to public utilities and mines, and prohibits strikes and lock-outs in these trades unless certain specified requirements have been complied with. Conditions and terms of employment

[1] Words of the Resolution, quoted in *Canadian Labour Gazette*, February, 1925, p. 146.

may not be changed without thirty days' notice, and if it appears that a dispute is likely either party may apply to the Dominion Department of Labour for the appointment of a Conciliation Board. This Board, which consists of a nominee of the employers, a nominee of the workers and a chairman chosen by agreement or appointed by the Minister of Labour, investigates the case and publishes its findings. Neither party is however bound to accept these recommendations, and after the report is published a strike may lawfully take place. The intention of the Act therefore is not to make all strikes illegal, but to prevent their occurrence before the parties have had time for consideration and before the public has been made aware of the facts of the case.[1]

Note on the Constitutional Difficulties in the United States.

It has been indicated in the preceding chapter that minimum wage legislation has been constantly challenged in both State and Federal Courts in the United States. In general there has been much similarity in the grounds on which complaints have been brought before the Courts. The first case was raised in 1913, when a certain man, named Settler, endeavoured to obtain an injunction against the operation of the Oregon law. The case came before Judge Cleeton in the Circuit Court of Oregon, and it was alleged by the plaintiff that the law was illegal on three counts. In the first place, it was said to delegate legislative power to the Commission and Conference created by the Act. In the second place, it violated Section 20 of Article I of the State Constitution, whereby the passing of any law granting to any citizen privileges or immunities which do not apply to all is forbidden. Finally, it was said to violate the Fourteenth Amendment [2] of the Federal Constitution by depriving the employer of his property and his liberty of contract without due process of law, and by denying him the equal protection of the law.

[1] Since the above was written, the Industrial Disputes Investigation Act has been declared unconstitutional in the House of Lords. See *The Times*, January 21, 1925.

[2] Section 1 of this Amendment states that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The Court decided that interference with wages in the circumstances defined by the Act, with the consequent limitation of the right to contract, was justified as a necessary exercise of the police power of the State. The importance of maintaining the health and protecting the morals of women was emphasised, and the Court stated that there was no obvious difference between the arguments in favour of limiting the hours of employment of women and children, which had been admitted by the Supreme Court of the United States,[1] and those in favour of fixing a minimum wage. Both were an application of the police powers of the State, and as such, justifiable interference with freedom of contract.

With regard to the delegation of legislative functions to an administrative body, the Court ruled that in reality the law had fixed the standard by reference to which wages were to be determined, in providing that they must be adequate to supply the necessary cost of living and maintain the health of women. It was argued therefore that the administrative body was merely left to work out the mathematical details by applying the standard to any particular district or industry. Nor was it possible to urge the existence of Wages Boards in proof of the contention that legislative powers were being delegated, for the Commission had power to veto the findings of a Wages Board or Conference. The question whether the prohibition of appeals from the decision of the Commission on matters of fact rendered the Act null and void was met by a declaration of the Court that the Act was complete without that section which forbade appeal.

The matter was then again raised by Simpson, an employee of Settler, the previous plaintiff. She claimed that if the Act were put into operation she would be unable to obtain employment, as she was not worth the minimum wage to her employer. She was therefore being penalised and prevented from exercising her freedom to contract. Here too the finding of the Court was in favour of the validity of the law, whereupon both cases were taken to the Supreme Court of the State of Oregon. Once again the points at issue were whether the Act was within the police power of the State, and whether the due processes of law were observed. Once again the decision of the Court emphasised the validity of the Act. In particular it is of interest to note that Judge Eakin then expressly stated that "Every argument put forth to sustain the maximum hours law, or upon which it was established, applies equally in favour of the constitutionality of the minimum wage law as within the police power of the State, and as a regulation tending

[1] *Muller* v. *Oregon*, 208 U.S. 412, 28 Sup Ct. 324.

to guard public morals and the public health." It was further stated that the Act did not discriminate against individual employers nor interfere with the freedom of contract, because in fact, in the cases to which the law was applicable, no freedom of contract previously existed, while the provisions whereby the plaintiffs had the right and opportunity to be heard before the Commission were deemed to provide an adequate answer to the claim that the Act really took away property without due process of law.

The Supreme Court of the United States, to which the cases were later carried, did not decide the matter until January, 1917. By an equal division of the Court, Mr. Justice Brandeis abstaining, as he had previously acted as Counsel for the Defence in a lower court, the constitutionality of the Act was upheld. The case was fought in this Court on the grounds of alleged infringement of the provisions of the Fourteenth Amendment.

Further attempts to test the constitutionality of the various State minimum wage laws were made in Minnesota, Arkansas, Washington, Massachusetts, Texas and the District of Columbia. In Minnesota the District Court held the law unconstitutional in that it delegated legislative power to the appointed commission, and that it abridged the right of individuals to make contracts, without any reasonable foundation for holding that such restrictions are necessary or appropriate for protecting the safety, health or morals of working women. The Supreme Court of the State, however, declared that in view of the conditions known to be attached to the employment of women, there was a reasonable basis for the assertion that the exercise of the coercive power of the State was necessary to safeguard public health and morals. It was further held that there was no delegation of legislative powers, since the Act itself stated that the employer was to pay a living wage as defined In Arkansas and Washington the law was also held constitutional, in the former State on the grounds of the justification provided by the inadequacy of women's wages, and the injurious results thereof; in the latter, by reference to the argument of the Supreme Court of Oregon regarding the similar law in that State. Finally, in September 1918, the Supreme Court of Massachusetts declared that the minimum wage law of that State was constitutional, in that it fell within the group of statutes which, for the promotion of the public welfare, could lawfully regulate contracts.

Thus up to 1918 the legality of minimum wage laws had been upheld in five separate States, usually after very careful consideration and reference to several Courts. At the same time the constitutionality of minor aspects of the various laws had been tested in different Courts. Towards the end of the War

there was a change in attitude, and since 1922 the advocates of minimum wage legislation have been fighting a hard battle, and one in which the result is yet uncertain. Indeed all the evidence seems to suggest that the Courts are becoming less generous in their interpretation of the functions of the State with regard to the regulation of wages as a means of increasing general welfare. From this point of view, the most disastrous pronouncement was that made by the Supreme Court of the United States, in April 1923. The Minimum Wage Act of the District of Columbia was then declared unconstitutional, in that it conflicted with the Fifth Amendment. This decision was the sequel to a series of test cases, begun in May 1920, when the Children's Hospital of the District of Columbia and a woman lift-attendant brought an unsuccessful suit before Justice Bailey in the District Supreme Court. As in the Settler and Simpson case in Oregon, the claim of the worker was that the Act would deprive her of her employment, while the Hospital claimed that it was a violation of the constitutional right of women freely to contract for their services, while employers were deprived of liberty and property without due process of law. The first decision was given in favour of the supporters of the Act and was confirmed by the Court of Appeals of the District in June 1921. After some little trouble, and on what appear to be grounds of somewhat doubtful validity,[1] a re-hearing of the case was held before the same Court, which then declared the Act unconstitutional. The case was then carried to the Supreme Court of the United States, where the decision of the re-hearing was confirmed. In view of the importance of this judgment, the reasoning on which it was based deserves careful analysis.

It was the Judgment of a divided Court, four judges being in favour while three opposed, Mr. Brandeis again abstaining from voting. Mr. Justice Sutherland, in delivering the majority opinion, made much of the Fifth Amendment, and argued that the recent changes in the "contractual, political, and civil status of women, culminating in the Nineteenth Amendment", had altered the conditions which previously justified the Act. "While the physical differences must be recognised in appropriate cases, and legislation fixing hours or conditions of work

[1] Justice Robb, a member of the Court, was prevented from sitting at the first hearing owing to illness, and his place was taken by Justice Stafford, who united with the Chief Justice in sustaining the constitutionality of the law, Justice Van Orsdel disagreeing. The latter then united with Justice Robb, on his return to the Court, and voted for a re-hearing on the ground that the Court had not been properly constituted, an unusual procedure, to say the least, and one which was severely commented upon by Chief Justice Smythe (*Children's Hospital* v. *Adkins*,

may properly take them into account, we cannot accept the doctrine that women of mature age, *sui juris*, require, or may be subjected to, restrictions upon their liberty of contract, which could not lawfully be imposed in the case of men under similar circumstances." This disposed of one argument which had previously been much used by minimum wage supporters. But Mr. Justice Sutherland did not stop here. It had further been held that no charge of delegating legislative functions to an administrative body could be made on account of the provisions of the Act that the wage fixed was to be "wages sufficient for living wages" (*sic*). This argument was also disposed of in the Judges' decision. "The standard furnished by the statute for the guidance of the Board is so vague as to be impossible of practical application with any reasonable degree of accuracy." So too the factors which make possible a variety of interpretations of the minimum or living wage were examined, and even that last stronghold of defence, the preservation of morals, was attacked. "The relation between earnings and morals is not capable of standardisation. It cannot be shown that well-paid women safeguard their morals more carefully than those who are poorly paid. Morality rests upon other considerations than wages, and there is certainly no such prevalent connexion between the two, as to justify a broad attempt to adjust the latter with reference to the former." It was further argued in the judgment that there is no close analogy between the fixing of the hours of labour and the fixing of rates of wages, and that decisions supporting the former could not be urged in support of the latter. It was affirmed that the law was unfair in that it penalised only one party, the employer, and took no account of the "fair value of services rendered." "The ethical right of every worker, man or woman, to a living wage may be conceded . . . but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it." Finally it was suggested that the Act was a dangerous extension of the police power, which might equally well be claimed to justify the fixing of maximum wages. "The power to fix high wages connotes, by like course of reasoning, the power to fix low wages." [1]

This judgment is certainly the most crushing blow which minimum wage legislation in the United States has had to sustain. All the old legal excuses and justifications have here been examined and found wanting. But in some respects the reasoning seems hardly justified by the existing facts. It was indeed accompanied by two dissenting opinions, and it is note-

[1] The extracts quoted above have been taken from the report of Mr. Justice Sutherland's speech in the *Monthly Labour Review*, May, 1923, pp. 134–143.

worthy that the authors of these were Justices Holmes and Taft, who are generally agreed to have been the most able members of the Court. The argument that the power to fix minimum wages connotes also the power to fix maximum wages was shown to be a *non sequitur* by Mr. Justice Taft, who also held that the equality of women with men did not extend to the wage bargain. Both he and Mr. Justice Holmes considered that the analogy between wages and hours for the purposes of restrictive legislation was valid: "one is the multiplier and the other is the multiplicand."

The fact that minimum wage legislation, which is a deprivation of property, is constitutionally innocuous unless it is "without due process of law," and that this phrase is not defined, means that actual inclusions or exclusions are entirely judge-made. The personnel of the Courts is therefore a very important matter. A writer in the *Harvard Law Review* [1] has shown that in view of the constitution of the Supreme Court and the known attitude of its members towards State intervention in industry, any appeal which was brought before it prior to June 1923 would probably have resulted in a decision favourable to the constitutionality of minimum wage laws. But, as we have seen, the District of Columbia case was not brought up until 1923, by which time the membership of the Court had altered. As a result, "minimum wage legislation is unconstitutional, not because the constitution makes it so, not because its economic results or its economic propensities would move a majority of judges to think it so, but because it chanced not to come before a particular Supreme Court bench which could not muster a majority against it, and chanced to be presented at the succeeding term when the requisite, but no more than requisite, majority was sitting." [2]

The Fourteenth Amendment has also been invoked to put an end, for the time being at any rate, to the activities of the Kansas Court of Industrial Relations. The Supreme Court of the United States decided, in June 1923, that in the particular case before it the application of the Court was in conflict with this troublesome Amendment. The case originally arose out of a dispute between the employers and workers of the Wolff Packing Company. The Court held that it was acting within its jurisdiction in intervening, as the impending strike might have spread to the larger packing houses, with the effect of endangering the public food supply. The Supreme Court however ruled that the circumstances of the case did not war-

[1] "The Judiciality of Minimum Wage Legislation," by T. R. Powell, *Harvard Law Review*, March, 1924.

[2] *Ibid.*, p. 552.

rant such an intervention. It was stated that the dispute did not constitute a danger to the public welfare, as the size of the firm involved was too small appreciably to affect the total food supply. In other words, the abridgment of private rights that results from the public settlement of wages can only be justified constitutionally when a most serious and grave public interest is menaced. Thus decisions as to the legality of intervention by the Kansas Court will have to be made on a qualitative basis. Not only will this raise many difficult border-line cases and lead to excessive inquiries into the circumstances of each case, but it will also have the effect of crippling the most useful functions of the Court. For it could render its greatest service in taking cognisance of, and if possible settling, disputes before they attain large and serious proportions. If it has to wait until the public interest is in fact endangered, a settlement will be much more difficult to attain, and that very inconvenience which it was the object of the founders of the Court to avoid, will result. In view of these considerations, and of the fact that the majority of the cases dealt with by the Court in the past have been of comparatively small magnitude, it is clear that the decision of the Supreme Court practically puts an end to the wage-regulating activities of the Kansas Court of Industrial Relations, at least for the time being.[1]

Time has yet to show what will be the effect of these two adverse decisions upon the minimum wage movement in America. Already there are signs that the District of Columbia Decision is being used as a threat to curtail the activities of certain too energetic Commissions, and movements are afoot to bring test cases to decide the validity of the other State laws. In Porto Rico the State Court has declared the local law unconstitutional, and the same thing has happened in Wisconsin. Unless the California or Wisconsin advocates of minimum wage legislation are able to prepare a case on grounds which will enable the Supreme Court of the United States to give a decision in their favour, without going back on the reasoning which led it to condemn the District of Columbia law, the end of mandatory minimum wage legislation seems in sight. Whatever the result may be, it is undeniable that supporters of the minimum wage in the United States have been faced with obstacles with which similar reformers in other States have not had to contend.

[1] Cf. Herbert Feis, "The Kansas Court of Industrial Relations?" in *Quarterly Journal of Economics*, August, 1923. A fuller technical discussion of the difficulties involved will be found in an article on "The Constitutional Limitations on Compulsory Arbitration," by S. P. Simpson. *Harvard Law Review*, April, 1925.

PART II.

PROBLEMS OF TECHNIQUE.

CHAPTER VII.

AN ANALYTICAL VIEW.

INEVITABLY the growth of this widespread State control of wages has been accompanied by equally widespread criticism, both intelligent and unintelligent. The indignation of the employer, who has been forced to pay higher wages, the complaints of workers who feel that they have lost their employment owing to the introduction of a minimum wage, and the distrust of the more radical worker, who regards the present organisation of society as profoundly unsatisfactory, have been reinforced by the generally prevailing assumption in favour of free competition and non-interference which lay at the back of classical political economy. The result has been the emergence of a strongly critical opposition to the extension of the movement. It may readily be admitted that so large a development of State control requires careful study and examination, both with regard to its practical consequences, and to the modifications which it may possibly introduce into accepted economic theory. Unfortunately such criticism as exists is neither unbiased nor consistent. State regulation of wages has been charged with raising wages unduly, and with deceiving the worker by not raising them enough; it has been accused of failing to reduce the number of strikes and lock-outs, and at the same time of discouraging trade unionism; it is stated to have put up prices, and also to have driven employers out of business; the authorities concerned are charged in the same breath with failing to fix wages which the trade can bear, and with not fixing a living wage. In short, State regulation seems to have been found wanting because it has not proved a cure for all industrial ills.

In examining the various systems it is therefore necessary to be clear as to the criterion of success that is adopted. It is useless to analyse the working and effects of wage regulation without recognising and constantly making allowance for the fact that it is the expression of very different objects. Thus one system has been accused of not being successful in stopping strikes when its only object was to raise wages. Another may be deemed a failure because it has not ensured a living wage, when it was merely an attempt to minimise industrial disturbances. The raising of wages and the avoidance of industrial unrest are not always mutually consistent aims.

It is also important to separate essentials from non-essentials. For many critics whatever is best administered is best. In the case of State wage regulation the manner in which the law is administered assumes peculiar importance. It often happens that failure to attain the ends originally intended is due not to any fundamental error in the theoretical basis of the system, but to mistakes in administration or in the wording of the relevant Act. A shortage of inspectors may mean that the Act will be observed only by those employers who were always paying satisfactory rates, while the underpayment continues elsewhere as before, and the Act fails to protect those in whose interest it was passed. The resulting inequality of conditions as between conscientious and other employers may cause unrest and confusion which will be popularly attributed to the principle of wage regulation, but which will in fact be due to a particular administrative shortcoming. Lack of precision in the wording of a law may have similar effects. An Act which is intended to embody a perfectly sound principle may be so badly drafted that it defeats its own ends. It proves unworkable as it stands, and opponents point to its failure as evidence of the unsatisfactory nature of the basic principle. Minimum wage legislation has been particularly unfortunate in this respect. Subsequent reference will be made to many cases in which ill effects were directly traceable to such an avoidable cause. At one time the work of the Australian Commonwealth Court was enormously increased,

and the hearing of all cases delayed, because owing to a technical flaw in the Act it was impossible to delegate certain work to a Board of Reference.[1] In other States orders have been unenforceable because they were badly drafted, and confusion has resulted when an attempt has been made to apply them.

Even when allowance is made for the possibility of these technical flaws, it is by no means easy to come to a conclusion as to the effects of State intervention in wages. The various experiments not only differ in the way in which they are administered, but they also vary considerably in the methods by which the wages are fixed. We have seen that there are three main methods of interfering with the wage bargain, and the investigator must thus be careful to distinguish those results which are due to the particular method adopted from those which are inherent in the principle itself.

Finally the systems differ not only with regard to the type of authority which is charged with fixing the minimum wage but also with regard to the basis on which that authority will fix wages. In one case a wage may be fixed in some relationship to the physical needs of workers, in another it may be adjusted according to the wages of other workers doing similar work. Yet again it may be determined by reference to what it is felt the trade can bear. The adoption of one of these theories will lead to very different results from the adoption of another, and here again effects must be traced to their proper cause.

All these considerations suggest that critics of minimum wage legislation must distinguish carefully effects which are due to technical or local causes from those due to the adoption of an unsound principle, or the application of a sound principle to conditions to which it is not appropriate. These constitute the two main types of difficulty to be met in any attempt to regulate wages by methods of State intervention. In this study, therefore, the existing wage regulating systems will be examined, and a sharp line will be drawn separating what will be termed the more technical problems

[1] Higgins, *op. cit.*, pp. 22, 150–2.

from those which are inherent in the substitution of some other regulating principle for the principle of supply and demand. In the first group we shall have to deal with the selection of the authority which is to be charged with the work of wage fixing, and the problems which are common to whatever authority be chosen.

Such are problems of the enforcement of the rates when fixed, the penalties for non-compliance, the adequacy of the inspectorate, and the overlapping of rates between authorities and trades. Where for example, two or more authorities are given powers to fix wages in any one district, the relative scope and precedence of the powers and orders of each body need to be carefully defined. These matters assume particular importance in such a country as Australia, where a trade may be subject to the Awards not only of two bodies within one State but also to those of the Federal Court of Arbitration. The same is true of Great Britain, where separate Boards exist for such closely allied trades as Shirt-making, Retail Bespoke Tailoring, Wholesale Mantle and Costume, Dressmaking and Women's Light Clothing, and Ready-made and Wholesale Bespoke Tailoring. It is clear that questions of scope must often arise under such circumstances, which if not satisfactorily settled will do much to impede the successful operation of any minimum wage law. Another matter which is of importance is the constitution and personnel of the selected authority. If, as in the case of the French Comités de Salaires, the authority consists of persons who are either uninterested or opposed to legislation of this character, the law can very soon be made meaningless. In the same way an arbitration system may be ruined by the appointment of an unsuitable Judge.

After these technical and administrative problems have been traversed the way is clear for a consideration of questions of principle. These will be found to centre round the determination of the wage to be fixed. The different bases which have been adopted by the various authorities will be examined, both from the point of view of the ease by which they may be translated into terms of money, and in relation to their suitability in particular circumstances. In order

to make a decision with regard to this last matter it is necessary to know, not only what are the objects of wage regulation, but also the causes of the conditions which it is intended to alter. In this connexion the causes of low wages and industrial unrest will be discussed, and an attempt made to discover how far the various minimum wage systems provide a suitable remedy. There remain certain other matters, although not so many as might be supposed. Thus the problem of unemployment will be largely a question of the existing conditions of the trade and the kind of wage enforced, and as such will be discussed with the basic rate. The effect of wage regulation on general prices will be treated in the same way, as will the much debated question of the effect upon recruitment to the trades concerned.

It would be absurd to claim that any definite answer can be given to all the many questions involved, and no such attempt will be made. Nothing short of a detailed inquiry into each of the systems will suffice. But it seems likely that a comparative study of the working of the different systems in many countries may help to dispose of certain points and to direct the attention of investigators to the problems of fundamental importance.

CHAPTER VIII.

INSPECTION AND ENFORCEMENT.

The Need for Strict Enforcement—The Punishment of Contraventions—Enforcement under Arbitration—Conclusions.

The Need for Strict Enforcement.

It was suggested in the previous chapter that before any judgment can be passed on the desirability of State regulation of wages, it is necessary to know whether the law is well administered and strictly enforced. A very slight reflection will show that the importance attached to this proposition is not exaggerated. A law which is not enforced in practice ceases to exist. A law which is badly administered leads to confusion and inequity. However ideal in constitution and scientific in principle, a minimum wage law cannot have other than disastrous results if it is badly administered.

Considerations of justice alone suggest that a system which does not enforce the payment of minimum wages upon unwilling employers is grossly unfair to those who are more conscientious. It enables the less scrupulous firms to obtain the advantage of a reduction in costs, and therefore tends to perpetuate and foster the growth of what is often the less desirable and less efficient type of employer. This may in time force the law-abiding employers to abandon their position, if they find it impossible to compete with the firms who are not compelled to pay high wages. To some extent this has happened under the Massachusetts Minimum Wage Act, which relies for its sanction upon moral pressure. According to recent reports some employers are taking up the attitude that they would comply, but cannot do so unless the law is enforced upon other less willing firms

in the same trade.[1] This same point was emphasised by the Cave Committee after hearing considerable evidence upon the administration of the British Trade Boards Acts. "It appears to us," they state, "to be of importance that, so far as minimum rates continue to be compulsory, they should be made effective: for if offenders escape punishment, those traders who obey the law have good cause for complaint."[2]

But there is a reason even stronger than the claims of equity why strict enforcement of minimum wage laws is necessary. It is that unless strictly enforced, the Act will not attain any of the objects for which it was passed. The firm which readily complies is usually that which was paying the higher wages even before the Act was passed. Hence the real force of an Act which aims at raising wages or preventing sweating is directed against precisely that employer who does not comply and who will continue so to act unless pressure is brought to bear upon him. This pressure is not likely to be exerted by his employees. For where the under-payment is considerable or where the conditions under which the work is carried on justify the description of sweating, the workers are usually too ignorant or frightened either to act themselves or to make to the administrative authority complaints on which action might be taken.

The uselessness of relying upon workers to bring cases of non-compliance to the notice of the appropriate authorities has been reiterated over and over again in the reports of factory inspectors in the various countries. In South Australia "the task of the inspectors would be made much easier if operatives would be less reticent, and realise that the duties of inspectors are to see that justice is meted out, and that any communications to them are quite confidential."[3] In West Australia, in speaking of the recovery of arrears of wages, the Chief Inspector states: "I am confi-

[1] *Commonwealth of Massachusetts; Department of Labour and Industries: Report of the Division of the Minimum Wage for the year ending November* 30, 1921, p. 16.

[2] *Cave Committee Report*, p. 43.

[3] *Report of the Chief Inspector of Factories, South Australia, for the year ending December* 31, 1919.

dent that in the majority of cases such action would never have been taken [by the workers] and the amounts would then have been lost to the employees."[1] The same view was endorsed by the Committee which investigated the Administration of the Trade Boards in Great Britain in 1921, which stated that "to limit the inspection merely to complaints would in effect fail exactly in the trades and districts where inspection was most necessary. It is among the wholly unorganised workers and the home-workers where evasion is most likely to be rife, and it is precisely in these classes that complaints are least likely to mature."[2]

It may perhaps be asked why the services of trade union officials are not utilised for this purpose. It is true that when a trade is well organised this is possible. But, at least when the object of wage regulation is the abolition of sweating or the raising of low wages, the workers are often entirely unorganised, and hence it is useless to rely upon non-existent union officials. When, on the other hand, the object of wage regulation is the preservation of industrial peace, it usually happens that the trades which are regulated are highly organised. In these cases it is customary to use the services of trade union officials. In the Commonwealth of Australia inspection of awards is entirely carried on by them, and with regard to the separate States it has been said that "the second most important job of the union official is the policing of awards."[3]

Experience varies as to the desirability of working in co-operation with union officials. In Queensland the system appears to have worked well; but it was quite soon found to be undesirable in New Zealand.

These facts imply that the first qualification for a good minimum wage administration is an inspectorate adequate

[1] *Report of the Medical, Health, Factories and Early Closing Departments, West Australia, for the year ending* 1913. Many other reports in Australia bring out the same facts.

[2] *Trade Boards Administrative Committee, Report to the Minister of Labour, London*, 1921, p. 6. The same point is emphasised in the *British Columbia Department of Labour Report*, 1922; in the *New South Wales Year Book*, 1912, p. 888, and in the *Queensland Annual Report*, 1918–19, etc.

[3] Trade union officials may be officially authorised to enforce in Queensland and West Australia.

in number not only to deal with complaints but also large enough to carry out systematic and chance inspections in the trades affected. It frequently happens indeed that the worst cases of underpayment are revealed only in this way. Moreover, not all workers or employers are aware of the existence of the Minimum Wage Act. In order to inform all workers of the rates which are applicable to them, or all employers of their obligation to pay a certain wage, most Governments distribute Notices to all firms known to them.[1] These Notices, which set out the legal rates, must be posted under penalty by employers in places where work is given out, and where they can be readily seen by all employees concerned. But new firms may be established and old ones may for various reasons be omitted from the official list of persons to be notified. It frequently happens that firms refuse to post the Notices sent to them. In these circumstances the workers may be ignorant of their right to a particular wage, and this furnishes a further reason for arguing that it is not safe to rely upon the complaints of workers as a measure of non-compliance.[2]

Two reasons for emphasising the importance of a satisfactory administration of any Minimum Wage Act have been given. An adequate system of inspection is also the only way under the Board System of bringing to the notice of the wage-regulating authority the appropriateness of any rate which may be fixed. Experience has shown that it is impossible to rely on statements as to the suitability of particular wage rates made by interested persons. It may be asked why the members of the Board itself should not bring up the matter. There are two reasons for thinking that reliance upon this particular expedient is not satisfactory. In the first place, the Board may not be constituted so as adequately to represent the interest of all sides of the trade. Thus in the case discussed below, it was admitted by Mr. Wolfe before the Cave Committee[3] that the British

[1] Not all States, however, do this. In Austria there is yet no satisfactory method of notification.

[2] See Report of Inspector Tait, *Queensland Report for* 1919–20, also Inspector Reitmuller, *Report* 1921–2.

[3] *Minutes of Evidence before the Cave Committee*, Questions 438 and 442.

Dress-making Trade Board was not in fact representative of the small retail and country dressmakers. The result was that the section of the trade which was most seriously affected was not represented on the Board in adequate numbers to register a protest. But even if a Board were exactly representative of all sections of the trade, there is another reason why it is important that there should be an inspectorate able to make an impartial survey of the effect of the Act in different sections. Both sides are apt to be biased in making any report to the Board on the effect of wages paid, and complaints of the excessively high or low level of the wages fixed would certainly be discounted by one side or the other. Nor can the work suitably be done by the Appointed Members, who are not as a rule in close contact with the particular trade on whose Board they sit, and who are too few in numbers to be able to give any truly representative picture of the conditions over all parts of the country.

Nothing short of an impartial investigation into the conditions of the trade in various areas before and after the fixing of rates will serve to show whether a particular rate is too high or too low. If this kind of investigation is not made, it may well happen that a system of wage regulation is condemned for what may have been a very excusable and easily remediable mistake in the first fixing of a rate. Thus for example a considerable amount of the unpopularity which the British Trade Boards had to face in 1920 was due to the fact that no satisfactory provision had been made for increasing the inspectorate staff to keep pace with the extension of the scope of the Acts. In consequence, new Boards which were fixing rates for the first time were for long given no official report on the effects of those rates upon the trade in general. This omission was specially unfortunate, for the first rate fixed by a Board is usually a leap in the dark. Thus it was not until after some eighteen months of complete disorganisation in the small retail section of the dressmaking trade that it was discovered that the original rates for juniors were too high. Meanwhile there were numerous complaints from workers' organisations that there

was no uniformity in the administration of the Acts, and from apprentices and learners that it was impossible for them to obtain employment and training at the rates fixed. On the other side, employers who were complying protested that they were being penalised as against those firms which were disregarding the Act, while all employers pointed to the growing volume of unemployment in the dressmaking trade, and argued that the responsibility lay with the Trade Board which had fixed unduly high rates. This discontent might have been avoided had there been an adequate and trained staff ready to investigate complaints as they arose and to report thereon to the Boards.

In view of these facts it is clear that to a very large extent the good or bad results of State wage regulation can be directly traced to good or bad administration. The necessity for an adequate inspectorate has, it is hoped, been demonstrated. A new series of problems arises when an infraction is discovered. What sanctions are to be enforced against the offender, what arrears are to be claimed on behalf of the worker, before what kind of authority is a case to be brought: all these and many other questions have to be tackled. Where the arbitration method is used the difficulties are even greater, for it is necessary to enforce an award upon workers as well as employers. In other words, workers must not strike for higher wages, though they may of course receive more if they can obtain higher wages by peaceful methods. Here the problem of the sanctions to be enforced assumes even greater importance. It might have been thought that the significance of these considerations would have been obvious to all legislating authorities. Nevertheless, inquiry shows that this is not the case, and that it has frequently taken years of inadequate enforcement to convince people that if a thing is worth doing it is worth doing well.

It is now necessary to review the experience of different countries to discover how far these particular problems have been dealt with. The adequacy of the inspectorate and the amount of time which can be spent upon administration is largely a question of finance. It will be seen that

there has been a tendency for Governments to adopt a "penny wise and pound foolish" policy.

AUSTRALIA.

The most profitable field of inquiry is Australia.[1] In South Australia there were in 1919 three male and two female inspectors, who, together with a chief inspector and his deputy, were responsible for the enforcement of all the Awards of the Court and the Determinations of the Boards. As the number of persons subject to such Awards is in the neighbourhood of 25,000, and as the three male inspectors are also responsible for general factory inspection, it is not surprising that the Chief Inspector should complain of the inadequacy of his staff in every annual report.[2]

In Queensland there were until 1917 many complaints of the shortage of inspectors, and while at the present time the staff appears more adequate (twenty-eight inspectors) there are still reports from various inspectors on the need of more complete enforcement, especially in the country districts.[3] Tasmania has always been troubled with a shortage of inspectors. It is usually said that Tasmania is a small State and therefore cannot afford the expense of a large inspectorate, but it must be remembered that the smallness of the State means also a reduction in the amount of inspection work to be done. The Reports from 1919 onwards complain of the shortage of staff and speak of the "heavy duties" devolving on such inspectors as there are,[4]

[1] With the exception of Victoria, where the *Report of the Chief Inspector of Factories and Shops* has for some years contained no information as to the enforcement of minimum wages beyond a statement of the number of prosecutions, and the amount of arrears recovered. From this information it is, of course, impossible to draw any deductions.

[2] Thus the *Report for the year 1919* stated that no new appointments had been made for the past nine years, and pointed out that in that period the work had been enormously increased by the passage of an Industrial Arbitration Act, so that there were 130 awards and 11 common agreements to enforce. In these circumstances the use of the phrase "trying circumstances" by the officer is explicable. See also *Report for the year 1915*.

[3] See, in particular, the reports of Travelling Inspector Thiel for year ending 1922, and the Report of the Chief Inspector for the year ending 1917. *Reports of the Director of Labour and Chief Inspector of Factories and Shops, Queensland.*

[4] See *Annual Report of the Department of Industry*, 1919–20, 1920–21, and 1921–22.

while an impartial investigator reported that awards in 1911–12 were not so well observed as elsewhere.[1] In West Australia, where it would be expected that the organised state of the workers would render the problem less urgent, the same state of affairs is found. It is true that in the Annual Report for 1914 it is stated: "Fortunately the majority of agreements and awards empower the secretaries of the various unions to make the necessary examination of the records required to be kept, and to question employees, thus relieving the pressure of the energies of the staff to some extent,"[2] but all the recent Reports of the Chief Inspector complain of the shortness of staff, and point out that "owing to the very limited staff of inspectors it is quite impossible to attempt to police any award or agreement, and the activities of the Department have been limited to the investigation of complaints received."[3] Only in New South Wales does the position appear to be at all satisfactory. In 1919 the staff consisted of forty-four permanent and two temporary inspectors to deal with the wages of some 270,000 persons. But even here no inspectors at all were appointed until 1911.

No provision is made under the Commonwealth Awards for the appointment of inspectors. Hence employees have to take action themselves or through their unions. It has been argued that as a result observance is very bad in the scattered industries, such as the pastoral industry, and that considerable penalisation takes place.[4]

Great Britain.

Before the publication of the Minutes of Evidence of the Cave Committee, it was impossible to make any authoritative pronouncement as to the adequacy of the inspectorate under the Trade Boards Acts in Great Britain.[5] Not until

[1] Professor Hammond in *Quarterly Journal of Economics*, 1915, p. 339.

[2] *Report upon Medical, Health, Factories and Early Closing Departments (West Australia) for the year ending* 1914.

[3] *Ibid.* Report for the year ending 1919. See also the reports for 1916 and 1917, and the two years ending December 31, 1922.

[4] A full account of what happens was given in a speech by Mr. Cunningham. *Debates in the Federal Parliament*, April 20, 1922.

[5] Exception must, of course, be made of such independent inquiries as those of Miss Bulkley and Mr Tawney, to which reference will later be made.

1923 was an annual official report upon the working of the Acts published. Until that time answers to questions in the House of Commons constituted the only source of information. From the replies given by the Minister of Labour during the year 1920, the position appears to have been anything but satisfactory. Thus while admitting in November 1920 that there were sixty-one Boards in existence, covering 300,000 firms and some 3,000,000 workers, Dr. Macnamara stated that the number of full-time inspectors was seventeen, and that these were assisted by a number of half-time officers engaged in Unemployment Insurance inspection.[1] The facts of the case became clearer as a result of the evidence given before the Cave Committee. In 1915 there were twelve full-time inspectors, and this permitted a 4 per cent. inspection annually. It has been the custom of the Trade Boards to rely upon a relatively small number of inspections accompanied by a number of warning prosecutions. Four per cent. is not a high figure when the trades to be regulated have been subject to the Acts for a period of years, and where therefore the amount of ignorance both of the requirements and the penalties of the law is not great. It is far too low when trades are being for the first time brought under the Act, and when the difficulty of inspection is enormously increased by the increasing complexity of the rates fixed by the Boards. And yet Mr. Humbert Wolfe admitted to the Cave Committee that at the end of the War, when it must be remembered that the 1918 Act was being put into force, the number of inspectors was six, and that it was necessary to build up the staff from the beginning.[2] He further admitted that at the time of the inquiry not more than a 2 per cent. inspection was possible.[3] In other words, each firm could be visited once in fifty years. In the circumstances the wholesale and widespread evasion of which he speaks is

[1] *House of Commons, Parliamentary Debates*, December 1, 1920. See also replies on November 17 and 29, 1920, March 17, 1920, etc.

[2] *Minutes of Evidence of the Cave Committee.* Question 70.

[3] *Ibid.* Question 842. According to the evidence of Miss Power there were at the time thirty-six full-time inspectors, of whom three were engaged on indoor work and two on special inquiries. Q. 12,874.

not surprising.[1] It is clear that the problem of inspection is not easy, for the number of inspectors required diminishes when the trade has been regulated for any length of time,[2] while during and immediately after the War there was a great shortage of labour and Departments were all short-handed. There is, however, every reason to conclude that the Ministry did not realise the implications of the enormous extension of the Acts and made no attempt to train new inspectors until their presence was long overdue. This conclusion seems to be borne out by the following extract from Mr. Wolfe's evidence.[3] "No doubt since the Armistice and during the war the inspectorate dwindled rapidly, partly because we lost some of our best inspectors *and partly because it was not regarded as of primary importance.* When the Armistice came we were left very short-handed indeed." (My italics.) The evidence both of the senior Trade Board Inspector and of various employers points in the same direction. The exact amount of inspection desirable was a matter of opinion, but all, including the Ministry of Labour representatives, were agreed that a very considerable increase in the numbers of the inspectorate was necessary, and employers, workers, and the chairmen of certain Boards joined in condemning the lax enforcement of the Acts in the majority of trades.[4]

Since 1922 an attempt has been made to provide more adequately for inspection by the appointment of additional inspectors. The numbers have increased from 39 at the beginning of 1923 to 54 at the end of 1924, while an increase to 60 in the permanent inspecting staff has been sanctioned. Even so the position is not perfect. In the three years 1922, 1923, and 1924 only 2·3 per cent., 2·1 per cent., and 3 per cent. respectively of the total firms subject to the Acts were inspected. And in about 30 per cent. of the firms visited

[1] *Ibid.* Q. 434.
[2] *Ibid.* See Evidence and Statement of Miss Power.
[3] *Ibid.* Q. 13,359.
[4] See, in particular, the evidence of Miss Power and Mr. Counsel, pp. 910–11. A fuller account of the unsatisfactory results will be found in Sells *The British Trade Boards System*, pp. 32–45.

cases of underpayment were discovered.[1] There is thus still room for improvement.

Even before the War the position, though by comparison much better, was far from satisfactory. In 1915 a private inquiry into the operation of the Trade Boards Act in the Boxmaking industry was undertaken. The investigator found that there was a certain amount of evasion, especially among the smaller employers, and that this was mainly due to the inadequacy of the investigating staff.[2] Yet at that time there were ten officers, investigating eight trades.

EUROPE.

The position as to inspection in the rest of Europe is more difficult to ascertain. For France the following table sets out the facts during the period for which official information is available.[3]

Year.	No. of Visits Paid.	No. of Workers* Covered by Act.	Percentage* Visited.
1916	7,515	208,318	3·3
1917	4,510	215,218	2·1
1918	3,472	160,902	2·1
1919	1,896	128,481	1·5

* As the trades concerned are home-work trades, it seems fairer to take the numbers of workers rather than firms visited.

It is true that the inspection is small here also, but owing to the inactivity of the majority of the Wage Committees, the legal rates were considerably lower than those generally paid at the time, especially during the years 1918 to 1919,

[1] The actual figures are as follows:

Year.	Total No. of Firms.	Firms Inspected.	Percentage.	Firms in which Arrears Claimed	Percentage.
1922	188,405	4,723	2·5	—	—
1923	180,641	3,786	2·1	1,270	33·5
1924	171,540	5,076	3	1,546	39·25

(*Report on the Administration of the Trade Boards Acts*, 1922–1923, pp 14 and 18. *Report of the Ministry of Labour for the years* 1923 *and* 1924, pp. 258–265.)

[2] M. E. Bulkley, *Minimum Rates in the Boxmaking Industry*, p. 91, and Chapter VII.

[3] The figures are obtained from the Annual Reports in the *Bulletin du Ministère du Travail.*

and it is probable that even had there been a more careful inspection very few infractions would have been discovered.

In Austria, according to the annual reports for 1920 and 1921,[1] enforcement was decidedly unsatisfactory. In order to cope with new duties imposed by the Home-work Act of 1919, three women assistants were added to the factory inspectorate. It is reported, however, that even so it was impossible to effect a general inspection. The Act was very little known, and even where employers were aware of its existence there was little compliance. Such cases as were visited disclosed that on the part of both workers and employers there was considerable reluctance to keep the necessary records.[2] Moreover, as there was no working system of notification and only an inadequate inspection, it was found impossible in many cases to obtain anything like a complete list of home-workers. There are many complaints throughout the reports as to the shortage of inspectors.

There appears to be little available information as to the position in Norway[3] and Czecho-Slovakia,[4] while the German Act has not yet been in force long enough to provide data on which any judgment could be based.

United States and Canada.

Not all the American States publish information with regard to the enforcement of minimum rates. But from such reports as are available one fact emerges clearly. The work of American Minimum Wage Commissions has been severely hampered by inadequate appropriations. This has meant that not enough inspectors have been appointed, while in some cases it has been impossible to have proper office accommodation. Even in Massachusetts, where the work is carried on by a Special Minimum Wage Division of the

[1] *Oestere*: *Bundesministerium fur soziale Verwaltung. Bericht der Gerwerbe-Inspectoren uber ihre Amistätigkeit im Jahre* 1920. Also for the year 1921.

[2] *Ibid.* 1921 Report, p. lxxxiii, and 1920, p. lxxx.

[3] Since this was written, an article by F. Voss, Chairman of the Central Wages Councils has appeared in the *International Labour Review* of December, 1925, emphasising the lack of an adequate inspectorate.

[4] During 1921 inspectors in Czecho-Slovakia began to collect information about home-work and suggested that the central and departmental committees should bring pressure to bear on delinquents.

Department of Labour and Industries, and where the Division has of recent years received the (for America) relatively large annual grant of $17,000 to $18,000, requests are made in various annual reports for an increase in the sum in order to enforce the Act more completely.[1]

Elsewhere the position is less satisfactory, even in California and Wisconsin, which it will be remembered are the other two States where the minimum wage law is taken most seriously. In California eight inspectors deal with wage and sanitary orders, but this force has been found inadequate. Partly as a result of this, in 1919 the Canners' Association of the State put up the sum of $12,000, to which the Walnut Pickers' Association added $1,000, for the employment of auditors to supervise the pay-rolls of firms in those trades. These auditors are chosen by the Industrial Welfare Commission, to which they are responsible, and have carried out a very detailed inspection.[2] But "owing to a lack of funds the Commission has not been able to call for the filing of certified pay reports in hotels and restaurants, fruit and vegetable packing, general and professional offices, unclassified and field occupations. Inspections have been practically limited to those necessitated by actual complaints. A great number of women have not received the full measure of protection."[3] As the Industrial Commission in Wisconsin has also the enforcement of other labour laws in its hands, it is possible to use the services of some of its officers for the enforcement of minimum rates. The sum allotted specially for that work was but $3,600 in 1919—only one woman gives all her time to minimum wage inspection.[4]

The allowance made for enforcement under the District of Columbia Act was also meagre. The Minimum Wage Board may employ a secretary at a salary not in excess of $2,500, and may make further expenditure up to a sum not exceed-

[1] E.g., *Department of Labour and Industries, Report of the Division of Minimum Wage for the year ending November* 30, 1921.

[2] *California Industrial Welfare Commission. What California has done to protect Women Workers*, April, 1921, p. 14.

[3] *Ibid.*, p. 14.

[4] *Industrial Commission of Wisconsin. Biennial Report*, 1918–20. Madison, Wis. 1920.

ing $2,500. The staff is therefore limited and consists of the secretary and an assistant. "The practicability of operation with such a force is due to the limited area affected by the law. This makes it possible for practically all employers to be reached, and all employees to have access to the Board without further expense than the use of a telephone, or the payment of a street car fare. . . ."[1]

The Minimum Wage Commission of Minnesota has been very much handicapped by lack of an adequate appropriation; $5,000,000 a year will not provide the necessary help to enforce a wage law State-wide in its application.[2] Until 1919 the appropriation in Washington was only $5,000 per annum, but from 1919 onwards it was raised to $14,000 for the biennium. Nevertheless "the Commission finds its work seriously crippled through lack of funds. An increase in the appropriation is imperative if the service which was evidently the intent of the law is to be given to the women and children in the State."[3]

These extracts are typical of what may be found in almost every American Minimum Wage Commission report. Everywhere an inadequate grant is complained of; everywhere the impossibility of enforcing the Act with the inspection staff at the disposal of the central authority is made manifest.[4]

[1] *Bulletin of the United States Bureau of Labour Statistics, No. 285*, p. 92. See also *Third Annual Report of the Minimum Wage Board of the District of Columbia, for the year ending December 31, 1919.*

[2] *Second Biennial Report of the Minnesota Minimum Wage Commission*, 1918–21, p. 6.

[3] *Third Biennial Report of the Industrial Welfare Commission of the State of Washington*, 1917–18. See also the *Fourth Biennial Report*, p. 7.

[4] The Industrial Commission of Colorado has not taken any action under the minimum wage law, and in 1918 recommended that the "incoming legislature should either appropriate a sufficient amount of money to enable the Commission to properly perform the duties imposed upon it by the Act, or repeal it." At that time the grant was $3,000 for two years' administration of the Law (*Second Report of the Industrial Commission of Colorado*, p. 128). In Oregon, although the minimum wage law is one of the oldest in the United States, the necessity for full provision for the enforcement staff does not yet appear to be recognised. The original sum allowed was $3,500, and in 1917, owing to the failure of the attempt to combine with the child labour bureau, the sum was reduced to $4,000 for the biennium. This resulted in a voluntary consolidation of the two offices. In addition to the part-time services of the child labour department, there is some co-operation with the State Labour Bureau.

There is little information as to the position in Porto Rico, beyond

In Ontario the work is done by the Factory Inspection Branch, working in co-operation with the Minimum Wage Board. Irregularities which are discovered in the course of general factory inspection work are reported to the Board in fortnightly conferences. Action is then taken by the Board, which claims that up to 1923 it has been able to obtain payment of arrears and compliance with the Orders by nothing more than a threat to institute legal proceedings.[1] The appropriation, which is $20,000 per year, is said to be adequate and would probably be increased if necessary.[2]

For the rest, the position in Canada is not easy to determine, as little information is given by the Departments concerned.[3] It seems, however, that the need for a rigid enforcement is here not so great as elsewhere, for the Acts are relatively popular, and the wages fixed are not so high as to constitute any great burden.

The evidence from all these States justifies the statement that as a rule far too little attention has been paid to the problem of enforcement in so far as it is affected by the numbers of the inspectorate. In Australia and Great Britain

the familiar statement that the Bureau of Labour "finds itself limited in its activities on account of the lack of funds and consequently of working force," and as it appears from such cases as have been before the Courts that women workers are frightened to give information detrimental to their employers, it is probable that enforcement is by no means satisfactory. In Texas the enforcing department consisted of a secretary and two investigators, while the sum allowed for enforcement was $5,000. In Utah enforcement is in the hands of the Commissioner of Immigration, Labour and Statistics. It is reported that although he was not primarily interested in minimum wage matters he was active in enforcing the Act. Mention is, however, made of the appointment of only one woman inspector, and it seems probable that compliance was secured because the legal rate was in fact lower than the rate generally payable in the trades concerned after the first few months of the operation of the law.

[1] *Third Annual Report of the Minimum Wage Board, Ontario*, 1923, p. 17.

[2] Letter from the Chairman to the writer, April 22, 1925.

[3] They merely state the number of firms visited, and sometimes the number of prosecutions. *Vide* Saskatchewan *Report of Bureau of Labour and Industries*, and Alberta, *Report of Bureau of Labour*. In Winnipeg there are two inspectors, and this is "considered adequate." The work is not held up for lack of funds [letter to author from Bureau of Labour, June 5, 1925]. In Alberta all the labour inspectors also inspect wage regulation cases, and this is found to be adequate. [Letter to author from Office of Commissioner of Labour, September 22, 1925.]

not enough inspectors have been appointed. In the United States the total grant made for the enforcement of minimum wage laws has often been too small to permit the appointment of more than a secretary. As a result there are everywhere complaints that the objects for which minimum wage regulation is adopted have not in fact been attained.

The Punishment of Contraventions.

When an inspector has discovered an infraction of the minimum wage law, the problem how to deal with the offender arises. It is clearly useless to have a good inspectorate unless there is some means of enforcing the law and of punishing offenders. In this respect practice differs considerably. One method is to rely on the force of public opinion. Thus in Massachusetts, when an infraction is discovered, the name of the offender may be published in the daily papers. Another is to make payment of the legal wages compulsory on firms tendering for Government contracts. Thus in the Trade Boards Act of 1909 the rates of wages fixed were in the first instance not obligatory for a period of six months. It was, however, provided that no Government contract should be given to a firm which had not given notice to the Board of Trade of its willingness that the rate of wages should be immediately obligatory upon it.[1] The third and most usual method of enforcement is resort to legal action, either civil or criminal.

Where the sanction adopted is reliance upon public opinion, the underlying assumption is that if the public knew the wages paid for certain goods they would refuse to buy them. Even where the wage paid is not a "sweated wage," it is assumed that the public will still boycott a firm which has been proved to be disobeying the law. It would then follow that the contravening employer would be forced to pay better wages, on pain of having his goods shunned

[1] This same plan is now adopted in France for the enforcement of the Family Endowment scheme. Three Presidential Decrees have made compulsory in all tenders for Government work the insertion of a clause obliging the contractor to pay family allowances. Moreover, unless he employs at least 2,000 workers and has his own scheme, he must belong to a Caisse approved by the Minister of Labour.

by the public, and being forced out of the market. It is also hoped that the shame of being publicly announced as a breaker of the law may deter employers from flouting the Act. The efficacy of this method depends upon several factors, not the least important of which is the possibility of indicating to the buying public the wages paid in respect of each article sold. This has been done in two ways. In Victoria during the early days of wage legislation there was much talk of the desirability of forcing manufacturers to indicate by means of a stamp all goods made under home-work conditions. In practice this stamping was enforced on all manufacturers of furniture. Such goods were to bear the name of the manufacturer, and as it was generally known that there was much under-payment among Chinese employers it was felt that it would be easy for the public to discriminate in their purchases. The results were disappointing.[1] Moreover, this method of stamping or otherwise marking or labelling articles made under conditions where unsatisfactory wage conditions are suspected is quite impossible in the case of many commodities. Cakes, bread and foods served in restaurants are cases in point.

The second method of informing the public of the wage paid for certain articles is that adopted in Massachusetts, where the Board had power to compel the publication, in the daily press, of the names of defaulting firms. The success of this method of informing the public depends on the degree of force which can be brought to bear on the papers to compel them to publish the names of, it may be, some of their chief advertisers. It was generally thought that the Division of the Minimum Wage in Massachusetts had the necessary legal power. But when the Division made considerable use of its power, it was found that the papers were not always ready to publish these names, although apparently required to do so by law. Hence recourse to legal proceedings was necessitated, and although the Division won in the lower court, on appeal it was decided that there was no power to force the paper to print the names of contravening firms. In future the names can only be pub-

[1] See below.

lished in papers not hostile to the activities of the Division. There are therefore very real limitations to this method of informing the public of the wages paid by particular firms.

But it does not necessarily follow that when the public know that a particular firm is contravening the law they will automatically punish it by refraining from buying its goods. In the first place, the consumer may not know that the particular article he buys was made by the contravening employer. The further removed is the manufacturer from the consumer, the more important does this problem become. In the case of retail stores which are well known, the public may, if informed of the firm's contraventions against a minimum wage law, refuse to buy from it. But to announce that some unknown firm or small employer who is not working for direct sale to the consumer has been paying wages less than those required by the law means little to the general buying public. It is difficult for the purchaser of a box of chocolates to know that the manufacturer of the attractive box in which the chocolates are packed has been paying outrageously low wages to the workers in his employment. He may have read in his paper that Messrs. John Boxburg & Co. have not been paying adequate wages, but he does not think of connecting that fact with the particular box of chocolates he has just bought. In the second place, the attractiveness of a cheap article is very strong. The experience of England since the War bears witness to the ease with which the fact of cheapness outweighs other considerations. At the close of the War the average person protested that never again would he purchase German-made goods. The next few years showed that even this strongly-rooted dislike of the methods and characteristics of certain producers was overcome when those producers offered goods at a lower price than home or "allied" manufacturers. The same thing happened in Victoria when the attempt was made by marking the furniture made in Chinese workshops to reduce the demand for the product. It was found that "the public are indifferent as to whether the articles are of European or Chinese make, so long as

they are cheap," and that in the case of Chinese furniture the stamping merely acted as a cheap advertisement.[1] The practice was very quickly dropped.

Finally, the effectiveness of enforcing a minimum wage by reliance on the pressure of public opinion largely depends upon psychological factors. Unless the public feels strongly on the desirability of protecting underpaid workers or is convinced that in the circumstances of the case the contravening employer committed a culpable offence, it will be unaffected when making its purchases by the knowledge that certain firms have been disobeying the law. This means that a strong manufacturers' union, if it has access to the press, could render enforcement on these lines very difficult by creating a feeling of sympathy with employers. This point of view is well expressed by the Executive Committee of Merchants and Manufacturers of Massachusetts. They stated in 1916 that " the threat of black-listing in the newspapers means little to those proprietors who have the courage of their convictions and are prepared to state publicly, if black-listed, just why they are not following the decree. We believe the public would uphold any store, once it hears its side of the story."[2]

All these considerations suggest that there are many pitfalls to be avoided in this method of enforcement. As it is likely to be successful only under very favourable circumstances, it will probably not prove a very useful or efficient method. This conclusion is supported by the experience of Massachusetts, where the system has been in operation since 1912. In the first instance, the Minimum Wage Commission did not publish a list of the firms not complying, but issued instead a list of those who were. In its third Annual Report the Commission stated that the " number and proportion of violations of the decree have decreased materially since the publication of names, and have probably at the present time reached as low a percentage as can be

[1] *Report of the Chief Inspector of Factories, Workrooms and Shops for the year ended December* 31, 1903, p. 18.

[2] *The Minimum Wage: A Failing Experiment.* Published by the Executive Committee of the Merchants and Manufacturers of Massachusetts, Boston, 1916.

expected under any law."[1] In the retail store trade the "white list" was again used, but the results were not so satisfactory. It was indeed not until two years had elapsed that there was anything like compliance. The Commission entertained by then "no hope that these proprietors will voluntarily forego this unfair advantage, and accept a schedule of minimum rates now followed by their competitors."[2] Towards 1919 rising prices put an end to the effectiveness of the legal rates which came to be rather below those generally paid in the industries concerned. This obscured the amount of non-compliance in the clothing trade, where for long the rates had been observed by about half of the trade only. By 1920 the position had again changed. Prices began to fall, and the rates, when adjusted by the Commission to the higher price-level, began to be severely felt. From that time the number of infractions discovered steadily grew, until by 1922 they numbered 5,674, or a little over 13 per cent. of all the firms affected.[3] In general, where these were discovered it was possible to secure compliance by agreement, but it is significant that at this time resort was had to the black list[4] for the first time, in the case of the Paper-Box and Building-Cleaning industry. At the same time as the Commission was advised that where non-compliance was discovered the posting of names was mandatory, it found that newspapers were not always willing to publish the information; while, as has already been mentioned, a legal decision was given that it had no power to enforce publication.[5]

The unsatisfactory nature of this form of enforcement was emphasised by the Division of the Minimum Wage in its 1921 Report. "The experience of the Commission during the last year has demonstrated that this method is unsatisfactory."[6] It places too much reliance upon the co-operation of employers, and the Commission has for some time

[1] *Minimum Wage Commission, Third Annual Report*, p. 26.
[2] *Fourth Annual Report*, p. 18.
[3] *Report for the Division of the Minimum Wage, Massachusetts*, 1922.
[4] i.e., the publication of the names of firms who failed to comply.
[5] Reported in *The Times*, June 9, 1923.
[6] *Report for the Division of the Minimum Wage, Massachusetts*, 1921.

attempted to obtain coercive powers. Nevertheless, a recent Committee of the Massachusetts legislature recommended that the existing system be continued until fairer trial had been given to it. It is, however, difficult to see how the conditions could well have been more favourable to a low rate of evasion. For most of the period of the operation of the Act the wages fixed were very low, while the war period was a time of rapidly rising prices in which selling prices advanced much more rapidly than wages. Under these circumstances, a system which was not adequate for good enforcement, and which had been in operation for over ten years, stands condemned.

The Fair Wages Clauses as they are in operation in various parts of the world provide the most familiar example of enforcement by means of Government contracts. It has already been pointed out that this method was also adopted in the Trade Boards Act of 1909 and in the French Allocations Familliales Decrees for 1922. In all these cases firms tendering for Government work must insert in the tender a clause binding themselves as the case may be to pay the minimum rates fixed under the Act, or to affiliate to a recognised family allowance scheme, or to pay fair wages.[1] Failure to observe this Clause may involve immediate cancellation of the contract and will certainly mean that a firm will not be allowed to tender for any further contract. This method of enforcement, which needs only brief consideration, is subject to several disadvantages. It only affects one section of a particular trade, that interested in Government work. Hence it probably leaves a large part of the industry unaffected, and this section is often that which is paying the lowest wages. Even with regard to the firms bound by the Clause, it is not easy to enforce payment. As a rule no special provision for inspection is made, and the discovery of breaches is left to the workers

[1] Fair wages under the British Fair Wages Clause are defined as wages, "not less favourable than those commonly recognised by employers and trade societies (or in the absence of such recognised wages and terms, those which in practice prevail among good employers) in the trade in the district where the work is carried out." Sometimes the fair wages may be defined as trade union wages.

or their organisations. This in fact means that the weak, unorganised worker is entirely unprotected. Moreover, although sub-contracting is as a rule expressly prohibited unless notice is given, it is in practice difficult to trace and may well exist to a large extent. This means that the original contractor may have the work done by firms which have not bound themselves to pay Fair Wages. Again contracting firms have been known to pay the Government rate to workers when employed on the Government work, but to recoup themselves by paying those same workers very much lower rates on private or civilian work.[1]

It remains to consider enforcement by means of legal action. This may be done in two ways. The law may make it an implied term of every contract that not less than the minimum wage as defined in the Act shall be paid. Where the contract is broken redress may then be obtained by civil proceedings. Alternatively it may be made a crime to pay less than a certain wage. The British Coal Mines Minimum Wage Act of 1912 adopts the first method; the majority of the minimum wage Acts, including the British Trade Boards Acts, adopt the second.

It is clear that the success of enforcement by legal proceedings, either civil or criminal, depends upon the actual extent to which non-complying employers will be prosecuted. Evidence was brought in the first part of this chapter to show that there is great reluctance on the part of workers to make complaints of under-payment, anonymous or otherwise, for fear of victimisation. It is even more probable that they will shrink from putting themselves in such obvious opposition to their employers as would be involved in the taking of legal proceedings. Efforts have sometimes been made to overcome this difficulty by making it a punishable offence on the part of workers to accept less than the mini-

[1] A good statement of the case against the operation of the Fair Wages Clause in Great Britain is contained in the pamphlet entitled *The Fair Wages Clause*, published by the National Joint Council representing the General Council of the Trades Union Congress, the Executive Committee of the Labour Party and the Parliamentary Labour Party. Some of the difficulties met with in enforcing the French Decrees of 1922 are set out in a Circular from the Minister of Labour dated November 3, 1924 (*Bulletin du Ministère du Travail*, October to December, 1924, p. 140).

mum rate.[1] But even so, workers may prefer the risk of a fine to that of unemployment, and the cases of grossest under-payment are often those where the workers are completely ignorant of the existence of any minimum wage law. Hence, unless a trade is so well organised that victimisation of individuals would result in retaliatory action on the part of all workers, cases must be taken not by the workers, but by some third party, if this method of enforcement is to prove successful. In practice this will usually be a trade union or the authority responsible for fixing and enforcing the minimum rates. The practicability of trade union action is limited in two respects. It is, in the first place, possible only where a trade is strongly organised. What may be a useful method of enforcement for the highly unionised miners in Great Britain is entirely unsatisfactory when workers are scattered and unorganised as they are in many of the trades regulated by Trade Boards.[2] In other cases such action on the part of trade unions is prohibited. In Great Britain trade unions cannot prosecute as a trade union. They can only pay the expenses of members.[3] In France the obtaining of redress is left to the workers themselves. Inspectors who discover infractions are merely permitted to point out to an employer his obligations under the Act and to inform the workers of their rights. The balance of wages due is recoverable if claimed within fifteen days, except when the Comité d'Expertise has not fixed a time for making an article, in which case persons other than the original claimant may sue for recovery at any time. In view of the scattered nature of the trade and the fact that the majority of workers were women home-workers, the chances of intimidation were great, and finally the

[1] In Queensland an employee receiving less than the legal rate is deemed to have broken the terms of the award, and is therefore liable to punishment. The *Annual Report for* 1920–1 refers to several prosecutions on this account. Workers can also be punished for receiving less than the legal rate in New Zealand and Tasmania, and it was suggested in 1917 that a similar proviso should be inserted in the Victorian Act.

[2] It was estimated in the *Report on the Administration of the Trade Boards Acts*, 1922–1923, p. 7, that less than 30 per cent. of the workers to whom Trade Board rates apply are organised.

[3] Answer to Questions before the Cave Committee, 462–467.

French trade unions endeavoured to take up cases for their members. In April 1918, however, it was decided that trade unions can only claim that a certain wage shall be fixed and that it shall be applicable to a particular worker. They cannot take action on the part of their members for the recovery of arrears due.[1] The effect of this limitation upon the powers of trade unions has been seen in the relatively small number of cases which are brought before the Courts, compared with the number in which under-payment is actually discovered.

It seems therefore that the only really satisfactory method of conducting proceedings is by action taken by or on behalf of the authority responsible for the enforcement of the Act. This means, in practice, by the inspectors. In some cases, for example in Great Britain, the Trade Boards may themselves institute proceedings through an accredited officer, but there are usually technical difficulties to be overcome, and in Great Britain at least no such action has ever been taken.[2] As a rule prosecutions are taken by the inspectors, who are sometimes assisted by legal advisers. It is probable that criminal proceedings are more effective than civil proceedings. In the former the rôle of the worker is passive. He may be called as a witness, but the initiative does not come from him, and he can plead to his employer that he was not a free agent with regard to the giving of evidence. Under civil proceedings emphasis is usually laid upon initiative on the part of the worker, and, in Great Britain at least, a worker claiming arrears in a civil action must be a party to the action.[3] It is for this reason that the Recommendation of the Cave Committee

[1] The Baillie & Co. case, April 19, 1918. The bearing of this upon the action of trade unions was emphasised in an Order of the Court of Cassation. *Bulletin du Ministère du Travail*, October, 1920.

[2] Answer to Question No. 434 before the Cave Committee. It is probably not altogether desirable to give a Trade Board a free hand to institute legal proceedings which will be paid for by the taxpayers. If irresponsible prosecutions are undertaken by, e.g. the Minister of Labour, they can be controlled through Parliament.

[3] Even under the 1918 Act whereby the minister may institute civil proceedings, these can be taken only *on behalf of and in the name of the worker*. It seems probable that the fear of victimisation would still remain.

that all rates other than the basic minimum should be enforceable by civil proceedings only must be regarded as a retrograde step, accompanied as it is by the suggestion that Trade Boards should be confined to those trades where sweating occurs. For in such industries there are many unorganised workers above the lowest grade of worker, the lowness of whose wage as compared with that in other trades justifies a minimum wage, but who are unable to take the necessary action for themselves.

Criminal proceedings are also probably more effective because the possibility of a fine acts as an additional deterrent to would-be breakers of the law. But for this purpose fines must be adequate, and in some States there has been a tendency to limit the fines so that their practical importance is negligible. In criminal cases a necessary complement to the power to inflict fines is the right to order the repayment of arrears of wages to workers. The experience of the British Trade Boards since the War supports the view that when under-payment is discovered the repayment of arrears should be mandatory and not left to the judgment of the authority trying the case. For where inspection is very inadequate and the chances of being found out are negligible, it is worth while for an employer to under-pay his workers and risk detection if his only punishment is to be a slight fine unaccompanied by an order for the repayment of arrears. It would not be necessary to insist upon this point if the practice of those hearing minimum wage cases were uniform. Unfortunately there is no such uniformity. Even when he is not directly interested in the result of the case, the judge may be so far influenced by the general attitude to minimum wage legislation as to make enforcement by prosecution impossible. A further requirement for satisfactory enforcement is therefore that the authority before whom cases are tried shall be impartial. To refer again to the experience of Great Britain, it is admitted on all sides that much of the difficulty experienced in enforcing minimum rates after 1920 was due to the biased nature of the benches before which the cases were heard. The Justices of the Peace were quite frequently interested

themselves in the operation of the Trade Boards Act, or they were friendly with its opponents, and therefore hostile to attempts on the part of the Government to prosecute offenders. Several witnesses before the Cave Committee testify to the added difficulty of enforcement when the judges awarded negligible penalties and refused to exercise their power to grant orders for the payment of arrears.[1] But this trouble is not confined to Great Britain. It was always very difficult to obtain convictions in Irish cases, and it is significant that the new Northern Ireland Trade Boards Act contains a proviso that where a case is taken before a court of summary jurisdiction "the employer, or the father, mother, son, daughter, brother or sister of the employer, or other person charged, shall not be qualified to act as a member of the court".[2] In North Dakota also difficulty in enforcing the law has been experienced on account of the "lack of co-operation and assistance on the part of the State Attorneys, who neglect to prosecute cases brought before them"[3], and there is evidence that the same difficulty is experienced elsewhere in America.[4]

It seems, therefore, that minimum wage cases should be heard before an impartial bench[5] or by a body specially appointed to deal with such cases. In Australia this latter alternative is fairly common[6]; although it is important to

[1] See evidence of Mr. Counsell, a Senior Investigating Officer, in reply to Questions 12,788 and 12,789. The most infamous example of all was the Portsmouth Dressmaking case in September, 1921. The local dressmaking firms openly defied the Trade Board and refused to pay the legal wages. The Ministry of Labour summoned a number of firms, and the case was dismissed under the Probation of Offenders Act, 1907. Similar difficulties were being met with everywhere at the time, i.e., in prosecutions in the Tobacco and Tailoring trades on July 28, 1920; Sugar and Confectionery on June 14, 1921; Retail Bespoke Tailoring on June 14, 1921; Perambulator on July 29, 1921. See *Cave Committee*, pp. 89–96.

[2] *Trade Boards Act* 1923, Section 22(3).

[3] *First Annual Report of the Minimum Wage Department of the Workmen's Compensation Bureau of North Dakota, for the year ending June* 30, 1920, p. 13.

[4] See, for example, the preface to *Bulletin I of the Industrial Welfare Commission of the State of California, May*, 1917.

[5] i.e., in Great Britain before a stipendiary magistrate and not before Justices of the Peace.

[6] In South Australia the Industrial Court may hear cases dealing with strikes and lock-outs and acts as a Court of Appeal from convictions by Special Magistrates or other justices. In Queensland the Court also

note that the Commonwealth Court has no power to deal with breaches of its awards. There is much to be said for this method, particularly on grounds of uniformity and equity. It might also be possible to reduce expense by the use of some such special court dealing only with wage matters, but it would be necessary to have local sittings owing to the inconvenience of a court which sits only in one place. In Australia these special courts (usually the Court of Arbitration) seem to have worked fairly well, but the weight of tradition would probably be against their introduction into Great Britain.[1]

There has been a tendency in all States to refrain as far as possible from prosecuting offenders.[2] If it has been found possible to obtain repayment for workers and to ensure that the offence will not be repeated without resort to drastic measures, there is much to commend this course of action. Conciliation and agreement is always to be preferred to the use of force, so long as it does not involve a sacrifice of efficiency. Employers are not alienated, and are more likely to assist in enforcing the law if they find that the Department is prepared to take a reasonable view of what may often be involuntary infractions. But there is always a danger in the exercise of this discretionary power. It is particularly dangerous if the ultimate decision lies in the hands of the political head of a department, who may accede to the pressure of opponents of the Act and refuse to prosecute even flagrant instances of deliberate infraction

hears cases itself and acts as a Court of Appeal. A Special Industrial Magistrate is appointed under Section 66 of the Act in New South Wales to hear cases, and in this State also appeal lies to the Court of Arbitration Mr. Justice Higgins has constantly stated that the authority of the Federal Court would be much increased if it had power to take its own cases. Higgins, *op. cit*, p. 110.

[1] They existed of course during the war, in the form of Munitions Tribunals.

[2] e.g. in Tasmania the policy is that "only where other means have failed is recourse had to the law" [*Annual Report* 1921–2]. In West Australia: "As there was no deliberate evasion of the provisions of the Awards there was no occasion for any further action" [*Report for the two years ending December* 31, 1922]. In Queensland firms are only prosecuted where absolutely necessary [*Report for the year ending June* 30, 1922]. The same policy is adopted in the administration of the British Trade Boards Acts [*Annual Report* 1922–3, p. 14], and in Canada [*Canadian Labour Gazette*, November 1924, p. 913].

of the law. It is also unsatisfactory if the existence of the minimum wage system is dependent upon the goodwill of the employers, and if as a result prosecutions are not undertaken for fear of rendering the system unpopular. It is probable that to some extent this is happening in America.

Enforcement under Arbitration.

The problems of enforcement which are common to the attempt to raise wages, and the attempt to ensure industrial peace by State regulation of wages, have now been considered. But with the latter object a new difficulty is introduced. It is not only necessary to enforce a minimum wage payment to all workers; the employees themselves must also be prevented from using force to obtain a wage higher than the legal rate. Thus in those States where the object of wage regulation is industrial peace, the relevant Acts contain prohibitions against strikes and lock-outs in trades where wages are fixed by Government intervention. It has already been pointed out that in the last resort it is impossible to force employers to carry on business at a loss, real or imaginary, and hence a loophole is provided by which the decisions of a Court or Wages Board can be set at naught. For employers as a body may declare that they cannot possibly carry on at the wage fixed and refuse to employ workers. While this attempt in effect constitutes a lock-out, it may be difficult to establish a technical offence. In the same way workers may render the system ineffective by refusing to accept work at the rates fixed. The delicate question of the definition of a strike must therefore be resolved. Some kind of freedom must be allowed to workers with regard to their choice of work. Yet the exercise of that freedom by any organised body of men is a strike. Where is the line to be drawn? Two interesting definitions may be quoted. The first is that of Mr. Justice Sim, who stated that "one worker may be guilty of the offence of striking if, when he leaves his work or refuses to return to it, he is acting in concert with other workers, with a view to enforcing some demand made by the workers upon their employers, and his action is preceded or followed or intended

to be followed by similar action on the part of such other workers or some of them."[1] The other definition is that of Mr. Justice Beeby in New South Wales, who ruled that workers "cannot, except under circumstances provided for, act in combination to compel an employer to abandon any legal offer of employment to others."[2]

Assuming it is possible to certify a strike or lock-out as such, the further point arises whether it is possible to prevent their occurrence in the ways which have been attempted by the various States under consideration. It must be admitted at once that no amount of State intervention will prevent them where employers or workers are profoundly dissatisfied with the existing organisation of society and with its institutions. In fact the prevention of strikes has been a greater problem than the prevention of lock-outs, and attention will therefore be concentrated on this more important practical difficulty. It is probable that there are many other courses open to employers who object to wage regulation. It is possible to enforce the acceptance of a fixed wage upon individuals only if they feel that on balance they have more to gain by submitting to the Award or Determination than by independent action. This is a fact which must be faced, but one which few exponents of State regulation as a step towards industrial peace are willing to recognise. It means that the more strongly organised are the workers and the more vital their trade, e.g., waterside workers, railway men, miners, the greater is the possibility of gain by direct action, and the less therefore is the inducement to submit to the legal wage. The weaker unions, on the other hand, can do less by their own efforts, and therefore find it an advantage to have the backing of the Court in enforcing any wage which may be legally fixed. The importance of the psychological factor is also evident in considering the attitude of the general

[1] *New Zealand Book of Awards*, Vol. IX, p. 544.

[2] *Stove, Piano Frame Moulders and Stovemakers' Employees' Association* v. *Metal Trades Employers' Association*, November 20, 1922. *New South Wales Industrial Gazette*, December, 1922. In this case the payment by the union of a strike fund to the workers was one of the tests of concerted action.

public towards those taking part in a strike or lock-out. With the development of an active press and the increasing size of the areas affected by strikes, the importance of the attitude of the general public is increasing. Even when one side enters on the struggle with a heavy balance of advantage, the public, by organising "strike-breaking" on the one hand, or by the collection of a strikers' relief fund on the other, may well redress the balance and materially reduce the chances of a decisive end in a strike or lock-out. In this respect the mere existence of a Court or Wages Board will do a little to minimise unrest, for there is more chance that the public will know the facts and be able to form a fair judgment if it has before it a reasoning of the Court, than when its only source of information is the biased accounts appearing in partisan papers. It is probably a growing realisation of the importance of enlisting public sympathy which has induced many States of recent years to adopt the system of Courts of Inquiry into the circumstances of impending or existing disputes. On the other hand, where the workers form a large part of the "general public," and where a feeling of dissatisfaction with the Wage Board or Arbitration Court exists, attempts to enforce its authority will meet with little success. This means that it is practically impossible to make any general statement regarding the possibility of enforcing industrial peace by prohibition of strikes and lock-outs from the experience of any two or three countries. It was stated above that workers will not strike unless on balance they will gain more by direct action than by submission to the decision of an outside authority. To some extent therefore it is possible by means of imposing fines and removing privileges if strikes occur, to increase the cost of strikes so that the balance of advantage in favour of striking will be considerably reduced. But the efficiency of this check will of course largely depend upon the size of the fine it is deemed politic to inflict, and the amount of increase in wages which will result from the strike. But that it acts as a deterrent is undeniable. It may therefore be possible to enforce a State-fixed wage upon parties to a dispute and thereby

lessen open industrial warfare. But the problem of enforcement is much easier where it is a matter merely of coercing a minority and where the majority are in agreement as to the desirability of accepting the legal wage. It is then a problem of discovering the best sanction to apply. The expedients which have been adopted include the imposition of fines, imprisonment of defaulting members, cancellation of an Award or preference or registration under the Act which will involve the loss of certain privileges. It will be noticed that the successful application of all these penalties depends very largely upon the state of public opinion.

The method of fines is adopted in all the Australian States, in the Commonwealth legislation, in New Zealand, and Kansas. The fines imposed vary from a fine of £5 per person (New Zealand) to £1,000 (Commonwealth Court). As a rule special and heavier fines are imposed upon unions which can be proved to have taken part in, or indirectly encouraged, the strike, and in some cases (e.g., New Zealand Act of 1913) heavier penalties are fixed for employers than for workers. Picketing and declaring a commodity "black" is sometimes prohibited (South Australia). The success of this method of enforcement depends upon the frequency with which breaches of the Act are punished, the methods adopted to enforce payment, and the heaviness of the fine imposed. It is a characteristic of all the penalties which can be inflicted for participation in strikes and lock-outs that they have never been vigorously enforced. In New Zealand, even with small strikes, the Government has shrunk from putting the penal provisions into force, for public opinion is usually not prepared to support the authorities in extreme measures.[1] Moreover, a weak union was always more likely to be prosecuted than a strong one, while cases have been known in which prosecutions have been dropped on account of an impending election.[2] In New South Wales also Mr. Murphy, the Victorian Chief Inspector of Factories, who in 1915 was sent by the Government of Melbourne to study the

[1] Sir J. Findlay, *op. cit.*, p. 38.

[2] *Report of Chief Inspector of Factories, Melbourne, on Anti-strike Legislation in operation throughout the Australian States and Recommendations regarding such Legislation for Victoria.*

operation of anti-strike legislation in the rest of Australia, found that there was considerable lack of firmness in administration and in enforcing payment of fines,[1] as decisions were left to the Executive who were unavoidably influenced by public opinion. In Queensland there have been few prosecutions, most of the cases going unpunished.[2] In West Australia Mr. Murphy found that the anti-stoppage penalties were easily evaded by subterfuges on the part of employers and workers.[3] In this State the influence of public opinion was very marked. At first the Registrar could commence proceedings on his own initiative. But with a change of Government the position altered, and at the time of Mr. Murphy's visit no action was taken except by express direction of the Minister, who would of course be open to political pressure. Quite early in the wage-regulating history of South Australia, Mr. Bannigan (the Chief Inspector) got into trouble for attempting to enforce heavy penalties on strikers.[4]

This suggests that in many cases the penal provisions of the law are not even put into operation,[5] and this is the burden of the many complaints of employers' federations.[6] Even when fines are inflicted they are quite frequently remitted afterwards. At one time this practice prevailed to such an extent that Mr. Murphy in his Report on strikes even suggested that in this respect the Royal prerogative to pardon should be abrogated! Probably the infliction of a fine upon both union and individual workers is more effective than the punishment of either separately. Payment can be enforced by providing that unions registered under the Act must keep their industrial funds separate from their benefit

[1] He alleged that the proportion of prosecutions to the number of strikes was only 4 per cent.

[2] McCawley, *op. cit.*, pp. 402–405.

[3] He quotes the case of a workers' Union, which called a meeting of all its members at one time. The meeting was then prolonged indefinitely, and had of course the same effect as a strike.

[4] Hammond, *op. cit. Quarterly Journal of Economics*, 1915, p 616.

[5] In fact the number of prosecutions are very small, although it must be remembered that not all strikes are strikes in contravention of the Acts.

[6] e g. All-Australian Employers' Conference, August, 1922. Quoted in *International Labour Review*, January, 1923.

funds, or by giving the Court power to wind up the union and appoint a receiver of assets (New South Wales), or by stipulating that penalties shall be recovered from workers if the union defaults (New Zealand). Payment can be enforced on workers by providing that the fine shall be a charge upon wages (South Australia). Some such provision is clearly necessary if the imposition of fines is to become anything more than a farce. But if little use has been made of the provision as to fines, the power of imprisonment which is found in Kansas and South Australia has been used still less. This is again largely due to the pressure of public opinion, but can in part also be traced to the practical difficulty of imprisoning any large body of workers.

A third type of sanction is the depriving of the members of a union of certain privileges if it engages in a strike. This can be done by cancelling an Award or Determination (South Australia, Victoria and the Commonwealth), registration under the Act (West Australia and Queensland), or the right to preference of employment (New South Wales and Queensland). In all these cases the facts set out above as to the balance of advantage apply. If the benefit to be gained from striking is very large, the cancellation of these rights may be of little or no importance. And in practice the provisions are not often put into force. In the Commonwealth Court Mr. Hughes attempted to obtain the cancellation of registration of a union in 1917. The attempt failed, for it was found that such cancellation did not destroy the award.[1] Probably the most serious deterrent is the power to cancel the right to preference of employment, but this power cannot be exercised in all cases, as not all States have the power to declare preference in the first instance. Moreover, if the unionists comprise practically 100 per cent. of the trade and if the trade is highly skilled, the cancellation of preference means no loss.

In some circumstances strikes against an Award can be prevented by the imposition of special penalties. During a war, for example, acceptance of an Award might be enforced by the threat to cancel exemption certificates and make

[1] *Waterside Workers*, 11 C.A.R.

strikers liable to be called to the colours. There is some evidence that either openly or indirectly this power was used to enforce awards in both England and France during the last war.

It seems probable that the imposition of a heavy fine, both on unions and on workers, is the most satisfactory of all these sanctions. But this power can be used only within the limits which public opinion will countenance. This limitation reinforces our previous conclusion regarding the impossibility of enforcing acceptance of a wage rate, unless the majority of workers concerned feel that more is to be gained by acceptance than by direct action, and unless public opinion as a whole is in sympathy with the terms of the award and the action of the Government.

Conclusions.

The threads of this long chapter must now be collected and woven into a coherent pattern. Its object was to show that no wage-regulating system can be judged until it is known whether it is being well or badly enforced. If the latter is the case, it is useless to blame the principle of the Act for what may be a fault of administration. It has been seen that the majority of States have paid too little attention to this aspect of wage regulation, and have tended to assume that enforcement can look after itself. Nor have the methods adopted for punishing offences been satisfactory. A well administered system would be supplied with an adequate inspectorate unless the workers concerned were well organised, and would enforce payment by criminal proceedings. Cases would be conducted by the inspectorate, and fines, accompanied by orders for the payment of arrears, except in cases where the offence could clearly be proved due to ignorance, would make non-compliance unprofitable. Cases would be tried before an independent legal body or before a special tribunal, while offenders would be prosecuted at all times regardless of political conditions. To the extent to which existing systems fall short of these requirements, their efficiency will be diminished.

Where the more ambitious attempt is made, to prevent

workers from forcibly claiming more than the wage which is fixed, the importance of the general attitude to wage regulation becomes greater. But unless the general feeling is absolutely against the present organisation of society and its accompanying institutions, of which a wage-regulating body would be one, it will be found possible severely to check strikes. Probably the most useful of the several methods adopted is that of heavily fining workers and unions where they can be proved to have played an active part in the strike.[1] But ultimately success in this direction depends on whether unions feel they have more to gain by complying than by striking and risking fines and loss of privileges. The stronger is the organisation among workers, the greater is the likelihood that they will prefer direct action to submission to the findings of a Court or Board, and the smaller is the chance of success. Thus the practicability of ensuring industrial peace is mainly a problem of enforcement. The problem of securing a minimum wage is much more easily solved. But in both cases the part played by enforcement is important, and materially influences the effects of wage regulation.

[1] While such a course is logically desirable, it would meet with immense opposition from the unions in, e.g., Great Britain.

CHAPTER IX.

REGULATION BY WAGES BOARDS.

The Constitution of Boards—The Powers of Boards—The Autonomy of Boards.

BEFORE the relative advantages of the Board and Arbitration methods of regulating wages can be compared, the technical difficulties involved in the use of each must be considered. The ultimate test of the success of any institution is its workability and not its possibilities under ideal but non-existent conditions. In this chapter the Board System will be examined.

In no country where Boards exist do they control the wages of all workers. At least six grounds for exclusion can be found. In the first place, the differentiation is made on the basis of the nature of the work. In the majority of States such trades as agriculture or domestic service are expressly excluded from the operation of any Act creating a Wage Board. Domestic service is excluded in Alberta (under the Act of 1922), in British Columbia, in the District of Columbia, North Dakota, and Texas, and no Trade Board has been set up for domestic workers in Great Britain or in Australia. Farm labourers as such are expressly excluded in British Columbia, North Dakota, Texas and New South Wales, while in Manitoba, Saskatchewan, Arkansas and New South Wales, fruit pickers are excluded by implication. Other special exclusions are cotton mill operatives in Arkansas, nurses, student nurses and other students making their way through college in Texas, and public servants and teachers in certain Australian States.

In all these cases the trades concerned are excluded by name. In Europe it is more usual to exclude certain trades by a careful definition of those trades which *are* subject to

the Act. In Canada, both Nova Scotia and Saskatchewan limit the operation of the minimum wage laws to work done in shops and factories, and Manitoba is beginning to define in considerable detail the trades which are included. In France, which is typical of most European countries, the Act of 1915 is limited to home-workers who are employed in the manufacture of clothing and work ancillary thereto.[1] The desirability of thus arbitrarily excluding certain classes of workers is questionable, whatever may be the object of minimum wage regulation. If it is argued that the object is the fixation of a living wage, and that persons in the classes mentioned are receiving high wages already,[2] there is no need for any special exclusion. But the exclusion of domestic and agricultural workers is almost universal, and it is impossible to argue that these workers are everywhere well paid. In the newer countries, where there is a great demand for domestic servants, it is probable that they are already receiving more than a bare living wage and are better paid than many women workers. But this is certainly not true of domestic servants in older countries who are equally excluded from minimum wage laws. The same reasoning applies to agricultural workers, who may be well paid in Canada and America, but who are probably among the worst paid workers in Great Britain[3] ; and even in Australia farm workers receive lower wages than other manual workers.[4] Where the object of wage regulation is industrial peace, the case for excluding these workers is even weaker. Except for the cynical argument that it is unnecessary to trouble about workers who are on the whole too ill-organised

[1] i.e. it applies to home-workers engaged in the manufacture of clothing, hats, shoes, lingerie of all kinds, feathers, artificial flowers; embroidery and lace sewing, whether ultimately intended for clothing or not; knitted goods, and certain accessory articles of clothing; medals, small jewellery and rosaries.

[2] It was stated by Mr. Riddell, framer of the Acts in Ontario and Nova Scotia, that the exclusion of domestic servants in Canada is based on the fact that they are the best-paid women workers in the Dominion.

[3] It will be remembered that a special Act was necessary before Wage Board machinery could be introduced into agriculture in Great Britain.

[4] Detailed information about the unsatisfactory conditions under which farm hands live in New South Wales is given in *The Report of the New South Wales Board of Trade upon Rural Industries in* 1920–1, pp. 16–18.

to cause a disturbance, there seems no reason for their exclusion. Nor is it true that all agricultural workers are ill-organised.

It seems therefore as if the only justification for this arbitrary basis of differentiation lies in administrative difficulties, or the extreme conservatism which prevails with regard to the industries concerned.[1] The fact that in these two trades workers frequently "live in" cannot be urged as a legitimate objection to regulation, for those same countries which exclude agriculture and domestic labour set up Boards to deal with the wages of hotel employees and shop assistants who frequently "live in." It is probable that an occupation scattered over a very wide field and characterised by the existence of a large number of small employers is not an easy one in which to enforce a minimum wage; but the difficulties are not insuperable, and where other reasons suggest that regulation is needed, it is a poor tribute to human administrative capacity if these difficulties cannot be overcome.

The second basis of distinction is one of sex. In Great Britain, Austria, Czecho-Slovakia and Norway, there is no discrimination against either sex. But in Canada, Arizona, Arkansas, Porto Rico and Utah, the Acts apply to women only, while in the other American States the minimum wage laws apply to females and to males under a certain age, which varies between 15 and 21. In France men are allowed to claim the protection of the Minimum Wage Act only when they are receiving lower wages than the minimum rate fixed for women. Where the object of regulation is the maintenance of a reasonable wage or the prevention of sweating, it may perhaps be argued that the term "woman-worker" is a rough definition of those workers who are likely to be under-paid. This however by no means invariably follows. Although it is more likely that women will be sweated than men, the conditions at Cradley Heath in the Chain Trade, and in the Tailoring and Box-making Trades before the institution of the Trade Boards in Great

[1] In Continental Europe the omission of agricultural workers is probably due to the prevalence of peasant proprietorship.

Britain, show that sweating may exist among men. The exclusion of men is probably sometimes due to a prejudice on the part of men themselves against State regulation of their wages, because it does not achieve enough quickly enough, because it may retard organisation, or because of some supposed stigma.

It has already been shown that in America constitutional difficulties are largely responsible for the confinement of the Minimum Wage Acts to women and minors. Where the object of wage regulation is industrial peace, the case for the exclusion of men falls to the ground, and in all States where this is aimed at, the Acts apply alike to men and women.

There is a third group of States in which the Wages Board Acts apply only to a certain geographical area. In Alberta a certain number of towns (each with a population of over 1,500 !) in which alone Boards can be instituted, are set out in the Schedule to the 1922 Act. Similarly in Manitoba, Nova Scotia and Saskatchewan, the Boards are limited to "any city," though the Governor in council may apply them to other districts by proclamation. In South Australia the Boards in the first instance apply to the metropolitan district, though here too they may be extended to other parts of the State by proclamation. In practice there is now a very large number of Boards outside the metropolitan area, and this limitation is not so important as it seems. It does, however, lead to difficulties. If it is desired to have Boards for separate districts it is easier to provide, as in New South Wales or Victoria, that the Board shall apply to all or any part of the State concerned, than limit it to a specific area and provide for its later extension by proclamation—a process which always involves unnecessary difficulties. In all these cases economic conditions are probably responsible. There are often no industries of any importance carried on in districts excluded by the Act.

With the exception of Great Britain and the Norwegian Commercial Employers Act, all the European States confine the operation of their minimum wage laws to home or outworkers. France provided the precedent for this limitation in the Home-work Act of 1915, which formed the model for

similar legislation in the other countries.[1] Even in Great Britain the Trade Boards Act of 1909 was applied in the first instance to those trades where out-work was specially prevalent. This limitation is not found where the object of minimum wage regulation is industrial peace, and while it is true that sweating is usually identified with home- or out-work, the evil does exist in other forms of work. Hence the limitation of wage regulation to the former is subject to the same objections as the limitation to one sex.

A unique basis of differentiation is adopted in the Trade Boards Act of 1918, which may be applied only to those trades in which, in the opinion of the Minister of Labour, there exists *inter alia* no adequate machinery for the effective regulation of wages. This Act was part of a large scheme which was to bring about an industrial heaven on earth. It reflects the psychological atmosphere of the time in which it was passed. Theories of workers' control, of a new basis for industrial bargaining, of the responsibility of the State to lend its good offices to encourage co-operation and harmony in industry, prevailed. The Whitley scheme grouped industries into those which were capable of self-government and those which were not. For the former Whitley Councils were to be set up; for the latter Trade Boards. As part of such a scheme, the limitation of the application of the Trade Boards Act was justified. How far it is a suitable basis when Industrial or Whitley Councils are no longer popularly regarded as the ultimate industrial ideal, it is more difficult to say. If the Industrial Council is to go, it seems desirable that the cause of industrial peace should be advanced by the setting up of Boards in organised as well as unorganised trades. Where the object is the raising of wages, it may perhaps be argued that the unorganised trades will be more likely to be under-paid than the organised, but it does not always follow that the organised trades are well paid.

The final and probably most logical ground on which workers are included or excluded from the operation of the

[1] In Norway the Act may be applied to factories if their unregulated competition tends to threaten the existence of home-work.

Board system is on the basis of the wage paid. In the United States the Central Commissions may fix wages only if after investigation it is found that the wages paid to adults are insufficient for a reasonable standard of living. Where minors' wages are regulated, the Commissions may act if the wages are found to be "unreasonable." A similar provision is found in the Norwegian Act of 1918 applying to Commercial Employees, and was in the British Trade Boards Act of 1909, which might be applied only if the Minister was satisfied that in the trade under consideration the rate of wages prevailing in any branch was exceptionally low as compared with that in other employments. Even in the Trade Boards Act of 1918 regard must be paid to the prevailing rate of wages. According to the Industrial Code of 1920 the South Australian Boards may not make determinations for persons occupying managerial positions, or for any wages or remuneration in excess of £10 a week. The same proviso appeared in the New South Wales Incorporating Act of 1919, but was afterwards altered, as the "managerial" limitation which was intended as a salary qualification was found clumsy, and in practice excluded several workers whose work seemed properly to fall within the purview of the Boards.

If the object of minimum wage legislation be the abolition of sweating or of unreasonable wages, the exclusion of certain workers on the ground that they are already in receipt of high wages is logical but unnecessary. The position is different when the object is industrial peace. Here it may well happen that it is the highly-paid workers who are most likely to be affected by industrial unrest, and *if* the appointment of Boards is conducive to better feeling,[1] there is no reason why they should not be applied to the highly-paid workers as well as to those less fortunate. A difficulty does, however, arise in respect of managers proper who are intermediary between employers and workers. The solution may be found by a suitable method of representation on the Board, and it is significant that in Great Britain and in other European States, middlemen, i.e. sub-contractors, are

[1] *Vide* Chapter XI, pp. 246 *et seq.*

represented on several Boards in addition to employers and workers.

To sum up, the exclusion of certain classes of workers from the operation of the Board system is usually undesirable if the object of minimum wage legislation is industrial peace, but where the object is more limited, exclusion is in some cases logically justifiable. On the assumption that it has been decided to set up a Board in a particular trade, it remains to inquire how it shall be constituted and what powers shall be given to it.

The Constitution of Boards.

The constitutions of Boards fell naturally into two main groups. On the one hand are those not representative of one but of all trades, workers in general and employers in general being represented. This group includes among others the Industrial Welfare Commission of Texas, consisting of the Commissioner of Labour, the representative of employers of labour on the Industrial Accidents Board and the State Superintendent of Public Instruction; the Minimum Wage Board of Manitoba, composed of two representatives of employers, and two of workers (one of each to be a woman) and one disinterested person; and the South Australian Board of Industry, consisting of a President and four Commissioners, two of whom are to be nominated by the South Australian Employers' Federation and two by the United Trades and Labour Council of the State. On the other hand are those Boards representative of one trade only,[1] or of part of a trade, or of a group of allied trades. An attempt is made to obtain a body of specialists and the membership of the Board reflects this intention. It will contain an equal number of representatives of employers and workers, together with an impartial chairman, and in some cases members of the public as well. Of this type are the British Trade Boards; the South Australian, Victorian and Tasmanian Wages Boards; and the Advisory or Wages

[1] In practice the "trade" may be very widely defined. This is especially true of the United States.

Boards set up by many of the Central Commissions in the United States and Canada.

The relative desirability of these two types depends upon the objects of State intervention in wages. In so far as the only object is the prevention of "unduly low" wages by means of the maintenance and periodic declaration of a living or minimum wage affecting all members of an easily-definable class, such as women and minors, and in so far as there is no attempt to determine apprenticeship rates or to vary the wage with the conditions of an individual trade, or the skill of a particular worker, the General Board is probably satisfactory. It can take a general view, fix the uniform rate, and will be all the better for the inclusion of a certain number of representative business men and workers. Moreover, it successfully advertises the existence of a legal wage. For a non-ambitious programme this type of board is probably quite useful, and the system has been said to work very well in Canada.[1] But in practice it has been found difficult to limit its functions to those which it can suitably perform, and when anything more elaborate is attempted it breaks down or adapts its constitution to the new duties. It may, for example, adopt the expedient of calling in representatives of the trade with which it is dealing to advise and work with it, as is done in Manitoba; it may hold Public Meetings at which interested persons can state their views. The second device is used in Saskatchewan,[2] and the same practice was adopted in Arkansas in the Mercantile Establishments Order for Fort Smith in August 1920. Experience has shown, however, that the Public Meeting as a means of obtaining an expression of the views of workers and employers is almost useless,[3] and even

[1] J. W. MacMillan, Chairman of the Minimum Wage Board of Ontario (*International Labour Review*, April, 1924). A Delegation of the Alberta Federation of Labour on December 10, 1923, asked for a return to the "General" Board, as this was found to fix more satisfactory wages (*Canadian Labour Gazette*, January, 1924, pp. 26–7).

[2] *First Annual Report of the Bureau of Labour and Industries of the Province of Saskatchewan* for the twelve months ended April 30, 1921, p. 26. It is also used on occasion in Manitoba [*Report of Minimum Wage Board*, October, 1920, p. 4], but for the most part no changes are made by the meeting.

[3] See pp. 221 *et seq.*

where *ad hoc* conferences with members of the trade take place, the system becomes little more than an unsatisfactory hybrid between the two kinds of Boards, with most of the disadvantages and few of the advantages of the Board System proper. It will not possess specialised knowledge nor introduce a feeling of responsibility and self-government into the trades regulated—two of the main advantages claimed for the Board System. Where no adaptation of its constitution takes place, the non-representative Board is not a very desirable method of regulating wages. The Commission in Arkansas suggested in 1920 that its constitution should be changed so as to provide for representation of employers and workers because "a Commission thus composed would be better balanced, and would have the confidence of both employer and of labour, and neither could consistently question the findings of the Commission because of any partiality that might be shown in the rulings. Both employer and labour should be represented; both should have confidence in the work of the Commission, and this can best be secured when both have an equal representation."[1] Little information is available with regard to the working of the system in Texas, but the attempted amendment of the law in 1920 suggests that it was not entirely satisfactory. On the whole therefore it is desirable that both sides should be represented directly on the Board dealing with their trade and that the members should be appointed for a term of years, even although the consequent encouragement of a feeling of responsibility and the development of more amicable relations are often bought at the expense of many practical difficulties.

In the first place members of the trade may refuse to serve on the Board.[2] Where the constitution provides that members shall be appointed by the Central Authority on the nomination of persons engaged in the trade, employers may

[1] *Arkansas Bureau of Labour and Statistics—Fourth Biennial Report*, 1919–20.

[2] In Czecho-Slovakia a proviso that all members of the Central Commission must be present before a Determination can be made has prevented the fixing of rates by all but one of the Commissions. Attempts are now being made to alter the law in this respect. Cf. Mr. Sirotek in *Socialni Revue*, No. 2, 1925.

refuse to nominate members. Some power is then necessary in order that the Central Authority dealing with administrative and technical matters may make the appointment itself. Thus in South Australia a special amendment was introduced in 1908 permitting the Government to appoint members to Wages Boards if either side refused to do so. Previously if one side did not wish to come under the Act it could refuse to appoint representatives, and the smooth working of the system had in consequence been impaired. The power of appointing representatives has also been considerably used by the Department of Labour in Tasmania, where employers and workers have been specially lax in availing themselves of their right to appoint members.[1]

The appointment of good workers' representatives is perhaps an even more difficult and important task. For while on the whole self-interest probably encourages the employer to attend meetings and to elect good representatives who will put his case well, especially if he knows that decisions will be made whether his representative is there or not, self-interest for the worker generally pulls in the opposite direction. He fears that attendance at Board meetings or prominence in fighting for higher wages will entail dismissal. This fear of victimisation has two results. In the first place it makes it difficult to get workers to serve on the Board. Thus in Kansas "employees were willing to serve on Wages Boards when the law first came into effect, until it became apparent that they jeopardised their places"[2], and in Washington "considerable difficulty was found in selecting conferees for the early conferences, especially from among the workers, as they seemed afraid that they might lose their positions or suffer disadvantages otherwise because of such participation . . . This fear is not yet wholly dispelled though much less in evidence.[3]

[1] *Reports of the Department of Labour, Tasmania, for the year* 1918–19 *and* 1921–2.

[2] *Bulletin of the Bureau of Labour Statistics*, No. 285, p. 107.

[3] *Ibid.*, pp 197–8. The same difficulty was also experienced in Minnesota, Massachusetts, and Wisconsin, and Great Britain. Cf. *Report on the Administration of the Trade Boards Acts*, 1922–1923, p. 7.

In the second place, fear makes workers reluctant to oppose employers in the discussion of a particular rate. This difficulty becomes more pronounced the more unorganised and badly-paid is the trade under regulation. Hence the majority of instances in which this fear has impeded the working of the Board System occur in America where wage regulation is confined to women and minors.[1] The ignorance of workers often makes them unsatisfactory Board members. In California the "representative value of the employer members" was "felt to be far greater than that of the employees; since the former came from associations where the subjects involved come up for consideration, while the employees usually know only of conditions in the establishment which they represent and are either unable or unwilling to adopt a broader outlook."[2]

Attempts have been made to solve the problem in several ways. Practically all States include in their minimum wage Acts a provision for heavily fining an employer who discharges a worker because she is a member of, or has shown activity in connexion with, a Wage Board. This attempt to protect the worker has not been attended with much success. It is often difficult to prove that victimisation was the real reason for dismissal; the employer can urge very plausible excuses, and even when convictions are obtained they are too few and far between to convince workers that there is no danger. The difficulty of obtaining convictions has been experienced wherever the provision is in force. In Kansas "it seemed quite probable that discrimination had been practised on account of activity in connexion with the law, but the assignment of other reasons by the employer made it impossible to take definite action"; [3] in Minnesota "even though the Commission has felt sure that such discharges have taken place, and even the blacklisting of active employees, the difficulty of

[1] See particularly the cases in Kansas and Wisconsin. *B.L.S. No.* 285, pp. 108 and 222. The same difficulties have been experienced in Australia. See *Aves Report*, 1908, Cd 4167, p. 174, etc.

[2] *B.L.S. No.* 285, p. 61. The experience of Oregon is similar. *Ibid.*, p. 173.

[3] *Ibid*, p. 107.

legal proof has stood in the way of enforcing this provision of the law."[1]

Another solution of the difficulty is the appointment, as representatives of workers, of persons who are not likely to be affected by discriminatory action on the part of employers. Such persons may be workers who are in some way independent, impartial persons not connected with the trade or trade union officials. In Washington the Commission took care to appoint married women or those about to be married, on the theory that they would be less affected by threats of victimisation. This is not a very satisfactory solution. Many married women are just as dependent upon the employer as the unmarried.

The appointment of impartial persons is a more usual expedient. The Appointed Members on a Board frequently become the unofficial spokesmen for the workers' point of view. In Minnesota the Public Representatives on the Board promote the interests of the workers in this way because of the failure of the latter to speak for themselves; ". . . it was only because of their sympathetic understanding that the employees could be said to have been effectually represented on the board."[2] In Ontario the official members of the Board usually conduct bargaining on behalf of workers who are reported to be merely "interested spectators."[3] To the extent, however, that appointed members fulfil this function they lose their position as impartial persons representing the interests of the consumer.

But the most usual device is the appointment of Trade Union officials who can conduct the case on behalf of workers without fear. In Great Britain each Board contains a considerable number of Trade Union organisers, and the same device has been adopted in Wisconsin and other American States. This not only solves the problem of victimisation but ensures that the workers' case will be put by persons experienced in bargaining and better informed of the condition of the trade both in itself and in relation to

[1] *B.L.S. No.* 285, p. 154. Similar difficulties are reported in Massachusetts and Washington.
[2] *Ibid.*, p. 155.
[3] MacMillan, *International Labour Review*, April, 1924.

other occupations. But the greater the number of non-trade members on a Board, the more does it depart from its essential character as representative of the industry, and many of the peculiar advantages of the Board method are lost. This may not matter where the only object is to raise wages, but where it is the maintenance of industrial peace it is a very serious objection. The goodwill which it is hoped the Boards will engender will not materialise. It may even happen that the presence on the Board of professional wage bargainers will have positively harmful effects.

Probably it was this danger which induced certain Australian States (e.g. Victoria) to prescribe that only people engaged in the trade shall sit on a Board. In South Australia all the representatives of employers or workers except one must be engaged in the industry. In Tasmania a little more licence is allowed. "Representatives are to be *bona fide* and actual employees in the trade . . . who have had at least twelve months' experience in such trade acquired within five years immediately preceding the appointment."

The disadvantage of representation by trade union officials is intensified when trades are very weakly organised and where there is no trade union peculiar to the industry concerned. It is then usual to appoint an official of a "general" trade union, who may be a skilled negotiator, but who may fail to appreciate the problems of the particular trade. If the official who is appointed normally deals with skilled workers, he may be incapacitated by the prejudices of his class from understanding the point of view of the unskilled worker, and may even press for rates directly opposed to the interests of those whom he is supposed to represent. While the appointment of trade union officials offers many advantages, it must be admitted that the Board System has not yet solved the problem of the most suitable representative of the workers.

Assuming that satisfactory members have been appointed, the success of the Board is not yet assured. One side or other may refuse to take part in the proceedings when once elected. Where the quorum of the Board is half the total membership or less this is not a matter of importance. The

Board is able to function, and the progress of minimum wage legislation will not be imperilled, although many of the advantages claimed for the Board system will be lost. If employers or workers know that a refusal on their part to attend does not invalidate the decision of the Board, but merely tends to prejudice the appointed members against them, they are likely to remain at the meeting to obtain as good terms as possible.

But the power to carry on in the absence of one side is not always given; and when it is withheld, or where the wording of the Act is ambiguous, a weapon is placed in the hands of the side which as a whole is opposed to the Board and all its works. This difficulty has been experienced in Australia,[1] and in America, where federal constitutional difficulties place the Boards in a weak position.[2]

Finally, either side may attend meetings, but obstruct progress by deliberately delaying proceedings, introducing irrelevant considerations, or refusing to come to a compromise. There is evidence that this is being done in certain American States at the present time.[3] A change of heart would seem to be the only remedy.

[1] In July 1916 the Award of the Implement Makers' Wages Board of South Australia was suspended by the Industrial Court All the employers' representatives were absent at the time when the Determination was made, and the chairman refrained from voting. It was held by the Court in 1917 that as a majority of the members of the Board were not voting, the Determination was invalid, for both sides had not had a chance to express their views. Had the chairman voted, the action would have been declared in order. While this decision shows a laudable desire to preserve the rights of both parties, it indicates a way in which the work of the Boards may be impeded, though it may then have been felt that the possibility of an adverse vote from the chairman would restrain either party from deliberate obstruction by abstention.

[2] In the Paper Box trade in Massachusetts the Commission appointed a Board in the latter half of 1915. The employers' representatives declined to proceed with the work until the constitutionality of the Act had been reviewed by the Courts. This was not done till 1918, so that the work of the Board was held up for more than two years. In 1915 the Corset Wages Board in this State had been sitting for six months, when the Commission accepted the resignation of one of the workers. The Attorney-General declared that it had no power to fill vacancies, and the chairman advised that the Determination of the Board in the absence of full representation would probably be invalid. An amendment in 1919 finally met the difficulty.

[3] In Washington employers in the Manufacturing Conference refused to discuss many of the questions presented at the conference and attempted to obtain postponement of the discussion (*B.L.S. No.* 285, p. 212). In

In addition to the difficulty that representatives may be either unable or unwilling to serve, there is the problem of the way in which they are to be chosen. The most usual method is appointment by the Central Authority on the recommendation of persons engaged in the trade. But it has already been pointed out that either side may refuse to nominate, and that the Central Authority must be given power to appoint without nomination if necessary. Even when both sides are willing, the difficulty of obtaining really representative members is acute. Unless the Central Authority intervenes, it is probable that only the most strongly organised section of the trade will be represented. The dangers of a non-representative Wages Board have already been emphasised. Again, employers if opposed to the Act may ruin the Board by appointing unsuitable representatives. If the Central Authority has no power of initiative employers in a well-organised trade may pack the Board with unsuitable members by nominating only as many candidates as there are vacancies to fill, leaving the Central Authority no choice but to appoint them. This method of obstruction has been used in Victoria and Massachusetts.[1] On the other hand, the arbitrary selection of members by a Central Authority would outrage the feelings of both parties and effectually prevent the spirit of trust and co-operation which is necessary for the success of the Board System. In some cases members of the Central Commission or of the inspectorate suggest

Wisconsin "difficulty was experienced in confining the discussion to the subject in hand, a disposition being shown by employers to discuss the principles of the law rather than to proceed with the duties devolving upon the Board" (*Ibid.*, p. 226).

[1] In Victoria the Minister was ultimately given special power to nominate members because so many of those elected by the trade were pledged to a particular policy [*Victorian Parliamentary Debates*, Vol. 105, p. 116]. In Massachusetts the original Act merely stated that the selection of representatives by the Commission should be from names furnished by employers and workers. Hence by nominating only a few persons, employers or workers could determine the entire representation. This proved to be so unsatisfactory that a special amendment in 1920 gave the Commission power, unless the nominations are twice as many as the places to be filled, to appoint half the persons nominated, and fill the remaining places by direct appointment (*Massachusetts Department of Labour and Industries—Report of the Division of Minimum Wage for the year ending November* 30, 1920, p. 10).

the names of persons whom they have met in the course of their investigations. This procedure is sometimes followed in the appointment of members to British Trade Boards, especially unorganised workers and small employers who are not members of an employers' association. Occasionally public meetings are called at which nominations are received. Thus when the first Chain Trade Board was constituted in Great Britain the members were elected at well-advertised public meetings held at Cradley Heath. In British Columbia a large public conference was held in the early stages of minimum wage legislation, before the appointment of a small and select conference.[1] The utility of this method of constituting a Board varies inversely with the size of the area over which the Board has jurisdiction. Where, as in the British chain trade, the industry is extremely localised, the method is probably perfect.[2] For a much larger area some provision for written nominations is necessary.

It is difficult adequately to represent all sections of a widely-scattered trade without increasing the size of the Board, yet efficiency demands that the Board shall not be unduly large. In most countries the total numbers of the Boards have been kept below twenty—ten is a very usual number—but in Great Britain the desire for adequate representation has led to the creation of some very large Boards. It may hardly be argued that the Grocery Trade Board with a membership of over seventy is a suitable instrument for the regulation of wages. In such a case, if it is proved that the interests of the so-called trade are so diverse, the solution will probably lie in the grouping together of those interests which are most similar and the formation of several distinct Boards. If the interests are not so dissimilar as to warrant this action, then the case for so large a number of representatives falls to the ground.[3]

[1] *Province of British Columbia, Annual Report of the Department of Labour for the year ending December* 31, 1918.

[2] In fact, the early Cradley Heath meetings seem to have been due to a desire to advertise the existence of the Trade Boards Act rather than an attempt to obtain satisfactory workers' nominations.

[3] In the Manufacturing Industry in California the Commission had resort to a Public Meeting, "the wide diversity of interests being regarded as making the form of a Board undesirable" (*B.L.S. No.* 285, p. 83).

It is clear that the Wage Board which is to act as an expert body in fixing wages in particular industries must contain representatives of both employers and employed. It is not so certain that it should also contain representatives of the general public. In fact all Boards have at least one non-industrial person who acts as chairman. He may be one of the impartial Appointed Members (Great Britain), or one of the members designedly representing the public (United States), or a member of the Central Commission (Alberta), or a Justice of the Peace (France), or the Deputy Minister of Labour or other member of a permanent administrative body (Ontario), or a person by definition not of either side but chosen by agreement of members of both sides (Victoria). He is very often assisted by a number of other "independent" or "impartial" persons, or Appointed Members or Public Representatives, as they are variously styled. What is said of the chairman in what follows applies also to these persons.

This universal attempt to obtain at least one disinterested member of every Board is significant. There are several theories as to the functions which a chairman is expected to perform. In all cases he is supposed to act as a conciliator. When members disagree it is for him to endeavour to sift the evidence, to show where in his opinion the right lies, and to get the parties to come to an agreement if possible without taking a definite part himself in proposing and voting upon rates. This function has been performed by the various chairmen with remarkable success.[1] It is also very frequently held that the chairman should act as the connecting link between the different Boards, co-ordinating their activities and working for a consistent policy. The extreme expression of this theory is found in

[1] In the Cave Committee of Inquiry into the operation of the British Trade Boards Act considerable evidence is given on this point. See Questions 10,639, 10,932 and the statements of Mr. Wethered and Professor Hobhouse. In the Brush and Broom trade, of 122 decisions 12 only were taken by vote, and of these only 3 were carried by votes of the appointed members. In the Hair, Bass and Fibre trade, 24 out of 27 decisions were by agreement. In Victoria up to 1913 the Rev. A. R. Edgar, who had been chairman of some Boards since their inception, stated that he had never had to cast a vote (Quoted by Prof. Hammond in the *Quarterly Journal of Economics*, 1915). *Vide supra* ch. III, p. 28.

Tasmania, where all Boards have the same chairman. Elsewhere, particularly in Great Britain, allied trades are grouped together under one chairman.[1] Sometimes the same effect is sought by arranging for conferences between the different chairmen of the Boards.[2] There are very obvious limits to the practicability of this form of co-ordination. With the growth in the number of Boards it becomes impossible for one person efficiently to act as common chairman, especially if the Boards meet frequently.[3]

A third theory of the functions of the Chairman holds that he is there to represent the general public, either as a consumer or as the embodiment of the prevailing humanitarian spirit. It is felt to be unsafe to leave the settlement of a wage rate to a body composed exclusively of workers and employers, as in certain cases they may conspire to obtain high profits and high wages at the expense of the consumer. An attempt is made therefore to secure some check upon their activities by the appointment of one or a number of impartial persons. It must be admitted that there is much justice in this contention, particularly where central control over the activities of the Boards is weak. On the other hand, effective public representation would in the last resort mean endowing public representatives with the right to veto the unanimous decision of a Board, or appointing a number large enough to outvote the rest of the Board. In either case the essential character of the Board will be lost, and in fact most States have shrunk from so drastic a step. For the greater the part played by such members in

[1] Thus Professor Hobhouse was at one time chairman of the following trades, *inter alia*: Dressmaking and Women's Light Clothing (E. and W), Hat, Cap and Millinery (E. and W.), Wholesale Tailoring; Mr. Artemus Jones is chairman of the Stamped and Pressed Metal Wares, the Button, the Pin, Hook and Eye and Snap Fastener and the Perambulator and Invalid Carriage trades The same theory underlay the grouping of trades in the 1912 Industrial Arbitration Act in New South Wales. Boards were formed on a craft basis and grouped under the same chairman as far as possible on an industrial basis.

[2] This has happened in Canada and Massachusetts (*Report of the Division of the Minimum Wage, Massachusetts, for the year ending November* 30, 1921).

[3] This difficulty was very soon experienced in Great Britain, where all the Trade Boards at first had a common chairman who was a Government official. On the death of the original chairman it was deemed advisable to appoint special non-official chairmen to different Boards.

the deliberations of the Board, the less claim has the latter to be regarded as representative of the industry, and the less willingly will employers and workers respect its conclusions. It will no longer be true that "not the least of the advantages of a Trade Board compared with certain other methods of settling wages, is that it fixes the responsibility for reaching a practicable conclusion upon persons who are fond of describing themselves as practical men."[1] Nevertheless in the United States, where the importance of the public representative is specially emphasised, many States (e.g. Colorado, District of Columbia, North Dakota, and Oregon) appoint as many public representatives as there are workers or employers, while all the other American States in which Wages Boards exist (with the exception of California) provide for the appointment of one or more representatives of the public as such. Such representation hardly seems necessary in view of the right of veto always vested in the Central Commission in the United States. In practice, however, it has meant that the Central Commission has been more ready to accept the recommendation of a Wages Board without alteration. Another function of the Appointed Members acting as representatives of the public is to see that advantage is not taken of the weak bargaining power of workers to fix an unduly low wage. This aspect of their work has already been commented upon.

The desirability of having at least a small number of appointed non-trade members is generally conceded. Mr. Tawney, speaking of the British Trade Boards, declares: "It is scarcely too much to say that the appointed members are the pivot upon which the whole system turns,"[2] and other commentators are hardly less sweeping. In Washington "the public representatives have been felt to be a most essential element in the conferences, . . . their services have gone far toward making the law successful. . . ."[3] Their utility is also commented upon in the District of Columbia,[4] Massachusetts [5] and Oregon. The main question turns

[1] R. H. Tawney, *Minimum Rates in the Chain-making Industry*, pp. 31–2.
[2] *Op. cit.*, p. 31.
[3] *B.L.S. No.* 285, p. 199.
[4] *Ibid.*, p. 95.
[5] *Ibid.*, p. 120.

upon their number and the kind of person to be appointed. It has already been suggested that it is undesirable to have a large number, as this destroys the essential character of the Board. Probably a chairman, assisted by two other members, is the most desirable combination. They can effectively bring pressure to bear without taking away too much power from the Boards. It is becoming general to appoint professors of economics or sociology to these posts. Such persons are likely suitably to fulfil most of the necessary duties, for their training fits them to take a wide view of what is chiefly an economic problem. But lawyers and clergymen, at one time popular in New South Wales and Victoria respectively, are hardly so suitable for the position. It has been argued that an official chairman, representing the central authority responsible for the Boards, will prove a more desirable chairman than any of the above. This contention is doubtful. In order to bring pressure to bear upon the parties it would be necessary to give him the power to veto, and there would be a danger that the character of the Board would change. It has been argued that only thus can a convenient check be kept upon Boards which tend to spend too long over their deliberations. This danger, however, is serious only when members receive a relatively high payment for service on the Board.

The Powers of Boards.

The powers given to Boards vary enormously. In South Australia they may deal with any "industrial matter," a term which is very widely interpreted [1]; in France they may

[1] According to the Interpretation of the Act, the term "industrial matters" means all or any matters relating to—

(*a*) The wages, allowances, or remuneration of any persons employed or to be employed in any industry, or the piece-work, contract, or other prices paid or to be paid therein in respect of that employment, including the wages, allowances, or remuneration to be paid for work done during overtime or on holidays, or for other special work;

(*b*) The hours of employment in any industry, including the lengths of time to be worked and the quantum of work or service to be done to entitle employees therein to any given wages, allowances, remuneration, or prices, and what times shall be regarded as overtime;

only determine a time-rate, the basis of which is closely defined. Great variety is possible between these two extremes, and it will be the purpose of this section to discover what matters should with advantage be dealt with by the Boards, subject if necessary to some degree of control.

The power to fix minimum time-rates should obviously be given to a Board. This power is conceded in all States, although not all are given equal freedom as to the basis on which the wage shall be fixed.[1] But in many trades the work is of such a character that a time-rate alone will not afford adequate protection to workers. Hence arises the necessity for powers to deal with piece-work and to regulate the number of hours which shall be worked for a given wage. The power to fix piece-rates, either under any circumstances or "when it appears that any substantial number of women workers are being paid by piece-rates as distinguished from time-rates"[2] is generally given (it is withheld in Texas, Washington and Wisconsin,[3] however), while in France the Wages Committee can only determine a time-rate, the translation of the rate into piece-work terms being done by the separate Comité d'Expertise.

But from the fixing of piece-rates which will just yield the minimum time-rate, the most usual purpose for which

(*c*) The sex, age, qualification, or status of employees, and the mode, terms, and conditions of employment, including the question whether persons of either sex (other than apprentices) shall be disqualified for employment in an industry;
(*d*) The number or proportionate number of apprentices and improvers and juvenile workers that may be employed by an employer in any industry;
(*e*) The relationship of master and apprentice;
(*f*) The technical education or other training of apprentices;
(*g*) The employment of children or juvenile workers, or of any person or class of persons (other than apprentices) in any industry;
(*h*) Any established or alleged established custom or usage of any industry, either general or in any particular locality;
(*i*) The monetary value of any allowances granted to or enjoyed by employees;
(*j*) All matters prescribed.

[1] See Chapter XII.

[2] Section 8 of Chapter 62 of the Acts of 1913, Oregon.

[3] Wisconsin has found the power indispensable and has fixed piece-rates for the Canneries and Tobacco Stemming Trades (see *Order No. 6 Tobacco Stemming*; and *Special Provisions for the Canning Industry*, 1920).

the power is used, it is a short step to the fixing of piece-rates which will govern the industry as a whole and become standard rates. This step has been taken by the British Trade Boards and was one of the subjects of complaint before the Cave Committee. The Act of 1918 permitted the Boards to fix, in addition to a time-rate, general minimum piece-rates, a Guaranteed Time-rate below which piece-workers' wages may not fall, and a Piece-work Basis Time-rate which provided an hourly rate which piece-rates were to yield to the *ordinary* worker.

Until 1918 little use had been made of the power to fix piece-rates, which had been given in 1909. In most of the trades then covered the processes were not capable of easy standardisation and classification, the amount of work involved would have been great,[1] and the advantage to be gained relatively small. After 1918 many of the trades newly covered by the Act were in a higher state of industrial organisation, while the need for economising the administration called for a simplification of the work of the inspectors. The existence of a piece-rate removes the necessity of carrying out elaborate tests of the adequacy of each employer's scale to yield the minimum time-rate.[2]

On the other hand, unless piece-rates are so elaborate as to provide for all the circumstances in which work is carried on by all employers, there is a very real danger that they will check the introduction of improved methods. The ideal piece-rate system should ensure that not only workers but also employers reap the benefits of more economic methods of production for which they may be responsible. The simpler the piece-rate the greater will be the difficulty.[3]

[1] The *Brush and Broom Order No.* 37 contained some 2,000 piece-rates, while 800 rates were fixed by the Boot and Shoe Trade Board (*Orders* 19, 20 *and* 21) and 500 by the Rope, Twine and Net Board (*Orders* 25, 26 *and* 27).

[2] A useful discussion of the advantages and disadvantages of piece-rates is contained in the evidence of Miss Power, Senior Inspector, before the Cave Committee, p. 904 *et seq.* See also evidence of Professor Hobhouse. Question 9473.

[3] Particularly if the area to which the rate applies be wide. For there is then a greater possibility that the efficiency of the "ordinary" worker in one part of the country may differ from that in another. This point was emphasised by Mr. J. J. Stark before the Cave Committee. *Ibid.* Questions 5885–5896.

Yet the problem is not incapable of solution, as the elaborate and successful piece-rate schedules of the Lancashire cotton industry demonstrate.

It is sometimes urged that the fixing of elaborate piece-rates means the establishment of standard piece-rates, and that this is bad. But the standardisation of *wages* is not necessarily involved, and the fixing of a piece-rate will act as a safeguard against rate-cutting which is not justified by any improvement in factory organisation, and may thus encourage employees to put forth greater efforts.

Ultimately the decision as to whether power to fix piece-rates should be given depends on the object of minimum wage regulation. The Cave Committee, in investigating the Trade Boards Acts, declared for a narrow interpretation. In their view, while it was right that the State should intervene "to prevent the unfair oppression of individuals and the injury to the national health that results from the sweating of workers," it was wholly wrong that coercive powers should be used to force employers to pay and employees to accept wages for skilled work at not less than the Trade Board minimum.[1] Acting on this view, they recommended that minimum piece-rates for a worker should only be fixed by agreement between the representatives of employers and workers. Even on their narrow interpretation the Cave Committee had to admit that the power to fix piece-rates was necessary for out-work. It is possible, moreover, to challenge the interpretation of the Committee, and to argue that the function they assign to the Trade Boards is altogether too narrow. If nothing more than a living wage, or a "reasonable" wage is to be fixed, the work might be done by a much simpler system than that of the Trade Boards. A Minimum Wage Board similar to that adopted in America and equally representative of employers in general and workers in general, co-opting if necessary members of any particular trade of which wages were to be fixed, would almost be enough to fix the kind of wages described by the Committee. For in fact the suggestion that piece-rates should be fixed only by agreement means in the less well-

[1] *Cave Committee Report*, paragraph 54.

organised trades that no rates at all will be fixed. It has already been shewn that where workers are in a weak position, as they are in many of the trades concerned, rates have often been fixed only because it was known by employers that if the matter were put to the vote the Appointed Members might vote in favour of the workers.[1] The prevailing tendency in wage determination is towards the collective bargain, and while many may deplore this tendency, it is unlikely that the movement will be checked. A progressive policy would therefore accept the new facts and make the best use possible of them by fostering a spirit of enlightened self-government. The experience of all States has shewn that where permanent Boards are formed, they desire to become more and more responsible. The British Trade Boards are no exception, as is evidenced by their keen struggles for autonomy during the last few years. While it would be futile to point to the relative immunity from strikes of trades covered by the Trade Boards Acts (for they are by definition badly organised and therefore unlikely to support a prolonged or important strike), there is considerable evidence that Trade Boards have in fact promoted greater goodwill between employers and workers.

In these circumstances there is much to be said for making use of the possibilities of the Boards and encouraging them to extend their activities wherever possible. An artificial limitation of rate-fixing powers, such as the Cave Committee proposed, would check this healthy growth. Safeguards must, of course, be provided. The Board must be well constituted and there must be adequate co-ordination and supervision. It may be that the Cave Committee were so impressed by these difficulties that they fell back on a narrowing of the powers of Boards as the easier course. By so doing they sacrificed a large potential good. A little hard thinking as to technical and administrative points would have done infinitely more good to the Trade Boards system.

[1] In 1902 the Victorian Act was amended so that no rate could be gazetted unless it had the approval of two employers voting with the workers and *vice versa*. As a result an agreement was only reached by one Board, and in 1903 the clause was repealed and the Chairman's vote restored.

In other countries the problems have been similar. Wherever the Boards have successfully functioned there has been a tendency to foster their growth and to give them wider powers.

What has been said in favour of giving the Boards power to fix piece rates applies equally to the other kinds of rates which are fixed from time to time. Even on a narrow Living Wage basis, the Guaranteed Time-rate, which ensures a minimum rate of remuneration to piece-workers, is necessary if it is suspected that low earnings are the fault of the employer. Little use has, however, been made of this rate. The Piece-work Basis Time-rate, which gives a minimum time-rate which piece-rates should yield to the *ordinary* worker, and is higher than the general time-rate, aims at ensuring to the worker a higher basic payment because of the additional effort of working at piece-rate speed. Where there is no Piece-work Basis Time-rate and where there are no special piece-rates, the General Minimum Time-rate automatically becomes the Piece-work Basis Time-rate. The guaranteed weekly wage is useful if an attempt is being made to fix a Living Wage, in which case it may be necessary to provide for cases where short time is worked. The importance of this rate will be discussed in the chapter dealing with the technical difficulties of the Living Wage.[1]

In addition to the right to fix different kinds of minimum rates, Boards have also claimed powers to regulate the hours to be worked. If they are empowered only to fix a weekly wage it is useless to hope to stop sweating by this means, unless it is possible to declare for how many hours' work the wage shall be paid. Otherwise workers may be sweated just as much by being forced to work longer hours for a higher wage as they were when earning lower wages for shorter hours.

Certain States (e.g. Minnesota, Wisconsin, Massachusetts, District of Columbia and, until recently, British Columbia), have been given no powers with regard to hours. The Boards have met the difficulty in several ways. One

[1] *Vide infra* Chapter XIV, p. 355 *et seq.*

method is to fix hourly rates, or piece-work prices.[1] In the second place, some Boards have stated in the Wage Order what they understand to be a normal week, and have implied that longer hours must be recompensed by higher pay. In Massachusetts the earlier Orders contained no statement of hours of labour, but from 1918 onwards they nearly all provide that the rates fixed are based on full-time work, by which is meant the full number of hours per week required by the employers and permitted by the laws of the Commonwealth.[2] A third device has been adopted by some American States when the power to fix overtime rates has not expressly been given. It is to fix overtime rates and justify such action on the grounds that the cost of living is inevitably higher to a worker who has to work long hours, because she has to pay for many services which she could otherwise perform herself at home.[3] Finally, in spite of the fact that there is no specific power to deal with hours, some States have disregarded the disability. In both Minnesota and Wisconsin overtime rates have been fixed in certain Orders.[4] Thus in practice, whatever the object of wage regulation, nearly all States which have taken their duties seriously have felt the need for power to deal with hours, and have either devised a means of overcoming obstacles or have risked the consequence of acting beyond their powers. Even in British Columbia, which was ex-

[1] This has been done in the *District of Columbia Hotel Orders* and in the *Wisconsin General Order*.

[2] *Women's Clothing Decree, May* 6, 1920. Compare also the wage of $15 established in the District of Columbia laundry trade "for the full working week of the establishment"

[3] This is argued, for example, in the Wisconsin *Order of June* 27, 1919, and in *Order No.* 10 *of the Commission in Minnesota, July* 5, 1919, which states that "the number of hours per week which a person is customarily employed in performance of work for her or his employer has a direct and substantial bearing on the minimum amount which such person needs and requires as a living wage, in that a person whose time and energy is not substantially consumed in the doing of the work for which he or she is employed may and can do for herself or himself many things which would and do reduce the money cost of living of such person."

[4] The Minnesota *General Order of December* 1, 1920, fixes wages for a working week of not less than 36 or more than 48 hours, and provides overtime rates when more than 48 hours are worked. In Wisconsin the *Special Canning Order of March* 24, 1920, forbade the employment of women for more than 10 hours a day or 60 per week, and fixed overtime rates.

tremely constitutional, there were so many complaints [1] that the power was finally given in the Amending Act of 1919.

The majority of Boards are allowed to determine the number of hours for which a certain wage is to be paid and, if they fix hourly rates, to declare the length of the normal week and to fix high overtime rates for time worked in excess of the normal. Such a power enables Boards to solve the difficulties of ensuring (*a*) that workers are not sweated as to hours and (*b*) that employers are not forced to pay wages for time which the workers have not worked. It also gives them considerable control over the general conditions in their trade.

In a small number of cases the Boards are given absolute power to limit the working week and to forbid the employment of workers for a longer time. This power is given in a number of American States, in British Columbia, Manitoba and Saskatchewan, and is implied in those Australian States where the Boards may regulate any "industrial matter." It has been objected that Boards should not be given this power, which more properly belongs to the Central Government, for alterations in the hours in particular industries very materially interfere with the flow of labour and the volume of production. This argument has some validity in Canada and America, where the Boards are often not truly representative of the trades subject to regulation, but where the true Board System prevails there seems no reason why the power to deal with hours should be withheld any more than the power to fix wages. It is unlikely that alterations in the former will more readily affect the flow of labour than the latter. Moreover, opponents of this extension of the power of the Boards frequently fail to see that it is implied in the right to declare the normal week and fix overtime rates—a power to which exception is not often taken. For it would be easy to declare fixed overtime rates at a prohibitive figure which in fact would mean the imposition of a fixed working week.

The most important powers given to Boards have now

[1] See in particular *Annual Report of the Department of Labour (Province of British Columbia) for the year ending December* 31, 1918.

been considered. There remain others which do not so vitally affect their work, but which are extremely useful where the object of regulation is industrial peace. Such are the powers to deal with minors, learners or apprentices, and to declare preference of employment to unionists.

In addition to the regulation of the wages of minors, learners and apprentices, which is given in nearly all States (in America the power is sometimes reserved to the Central Commission), the Boards may often limit the number or proportionate number of apprentices and learners who are to be employed in any one industry.[1] The method adopted is to enact that learners or apprentices can be employed for a lower rate than the minimum only if they possess a certificate, and the granting of such certificate is withheld if it is found that the employer is exceeding his due proportion of learners to adults.

From one point of view this power is a necessary complement to the rate-fixing activities of Boards. For if they raise the current remuneration for minors there will be a tendency for parents to send their children to work much earlier, while if the rate is fixed at a low level relatively to the earnings of adults firms will tend to take on a large number of juniors at the expense of adults. Either way there will be considerable disorganisation, while in the first case an artificial stimulus to the recruitment of the trade will be given. The power to limit the proportion of juniors to be employed is therefore important. But it is a dangerous power. For in effect it means that the Boards are able to create, if they wish, a monopoly in their trade by limiting recruitment.[2] Yet it is difficult to see how this power can be denied to any keen and active Board. It is a risk which must be faced, and met by more attention to the skilful exercise of powers by the Central Authority and a reliance upon the force of public opinion.

[1] This power is given in Tasmania, South Australia, New South Wales, California and Saskatchewan, and implicitly in Alberta (since 1920), Great Britain (the Trade Boards Acts) and in the United States.

[2] The practical results of this danger appear in complaints of a shortage of skilled labour because the Boards have fixed the proportions too low. See *Report of the Department of Labour and Industry, Tasmania*, 1920.

Finally the decision as to what other powers are to be given to the Boards depends upon the object for which wage regulation was instituted. If it was only the prevention of very low wages, then the powers which have been dealt with so far are adequate. Where it was a means of attaining industrial peace it is difficult to see how their power to regulate the conditions of their trade may be refused if demanded, and if the full ideal of industrial self-government and responsibility is to be attained. This difficulty only makes the problem of the choice of the members and chairman, the constitution of the Board, and the relations of the Boards to themselves and to the Central Authority more important. Something, however, has been achieved if it is realised where the real problem lies.

The Autonomy of Boards.

Of all problems which arise in connexion with the working of the Board System none is more difficult to solve or more often provocative of bad feeling than that relating to the control which should be exercised over the activities of the Boards. If they are to be the parliaments of the industries they represent, if they are to feel a sense of responsibility for their actions and to work out a consistent policy leading to industrial peace, they should be allowed the greatest possible measure of freedom. In so far as they and their staff are maintained at the public expense, and their decisions are enforced by the State, in so far as they are placed in a position of power to act in ways which may be prejudicial to the interests of the general public, either by affecting prices or directing the flow of labour from one industry to another, it is necessary for the State to exercise some form of control. The difficulty is to find a point of adjustment which will satisfy the legitimate demands of the community and at the same time leave the Boards a large enough measure of autonomy.

There are some functions which must necessarily be performed by an authority extraneous to the Boards; there are others where the line of demarcation is not to be drawn so easily. In the first class fall the duties connected with the

setting up of Boards, inquiring whether they are necessary, examining the conditions in various trades, and deciding upon the representation to be given to different sections of a trade. This work obviously cannot be done by the Boards themselves, and the question here is not whether any outside authority should undertake the task but what kind of external authority is most desirable. This question will be dealt with later. Here it is sufficient to note that three kinds have been adopted, a Court of Arbitration (in several Australian States), a Minister of Labour or a Department of Labour (Great Britain and certain Canadian States) and a Commission set up to deal specially with minimum wage questions (the United States). In this group also falls the work of checking the Determinations of a Board from a merely technical point of view. It may and does happen that Boards are unable to appreciate the necessity for careful wording of Awards.[1] As a result Orders may be declared illegal,[2] or confusion may arise as to the exact meaning of a particular Determination. Before publication therefore a competent authority should examine Awards to ensure that they are clear and fulfil the necessary legal qualifications.

There is a second group of functions which are generally agreed to lie outside the scope of the Boards. These refer more particularly to the calling of meetings and the prevention of delay. The right to call meetings should be given to the Boards, but experience has shown that it is not always desirable to rely upon the members of the Board to take the initiative. Employers may wish to put off the evil day; workers may be afraid to act. Nowhere are the evil results of relying upon the initiative of the Boards more evident than in France, where many of the Wages Boards which met in 1915 and 1916 did not meet again for over three years, although prices in the meantime were rising rapidly. The duty of summoning meetings was vested in

[1] This difficulty has been especially felt in Queensland and South Australia (see in particular the *Annual Report for the year ending December* 31, 1918, *South Australia*).

[2] In 1924 the Supreme Court of Alberta declared illegal all the Orders of the Minimum Wage Board on account of careless wording. *Canadian Labour Gazette*, January, 1925, p. 2.

the Prefect, who appears to have left the initiative to the Boards. Frequent and impotent Circulars from the Minister of Labour emphasise the evils of so flagrant a failure to keep pace with changing conditions [1]; but nothing was done, and the 1915 Act became practically inoperative. In 1920 the legal minimum rates were in some districts as low as 17·5 or 18 centimes per hour when the more active committees had fixed rates of 1·25 francs per hour, thus affording no protection at all to the workers concerned.

Supervision is not only necessary to see that a Wage Board meets frequently enough; it is sometimes necessary to prevent it from meeting too frequently or for too long. In Ontario the Board has been charged with meeting too frequently and spending too much public money. In this State the members of the Board are paid, and wherever the payment is appreciable there is probably a tendency to increase the number of occasions on which the Board meets. The same difficulty was experienced in Victoria. In Massachusetts the Men's Furnishing Board sat for twenty months without coming to an agreement, while the Board for Minor Lines of Confectionery and Food Preserving held sixteen meetings. In Kansas the Mercantile Board first sat in the autumn of 1916 and did not give a decision on which the Commission could act till January, 1918. These are clear cases in which public convenience has been sacrificed to the autonomy of the Boards. Had they been made to feel, as they were at a later date in Massachusetts, that unless a quick decision was reached the Central Authority would act independently, they might have worked with more expedition. In Canada the difficulty might be met by the imposition of a financial limit. In South Australia and Queensland the Industrial Court is authorised to carry on the work of the Boards on a report from the Minister that the Boards have failed to function.[2] It would not be diffi-

[1] As late as 1920 there were fourteen committees which had not altered the rate originally fixed—see Ministerial Circulars dated September 11, 1922, September 17, 1920. Delay was also the subject of a special circular in 1924. *Bulletin du Ministère du Travail*, July–September, 1924, p. 109.*

[2] The failure of the Wages Boards in South Africa, under the Apprentices and Improvers Act 1918, has in no small degree been due to the lack of any central element to compel a decision in case of a deadlock.

cult to give the Central Authority carefully defined powers of intervention which would yet reserve to the Boards their independence. It might for example be authorised to summon a meeting or entrust some other authority with the work of fixing a new rate on appeal from a certain number of persons in the trade (as in Kansas, Minnesota, Washington and certain Australian States); or if a fixed period of time has elapsed, and no rate has been fixed (in South Australia the Court may refer a Determination to a Board for reconsideration if it has been in force for more than a year); or, when the object is the maintenance of reasonable wages, if the cost-of-living index has moved a given number of points. This proviso would merely ensure that the Boards took cognisance of current conditions without exercising any control over the actual wage to be fixed.

It is now necessary to survey the ground where the frontier of control is not yet determinate. The first subject in dispute is the adjustment of the scope of the respective Boards and the demarcation of trades. Where, as in America and Canada, the trades for which Wages Boards are set up cover relatively large classes and varied kinds of workers (there are single Boards for the Manufacturing Industry and for the Mercantile Industry), or where, as in the Western States of both these countries, an identical rate is fixed by a large number of Boards, the problem is not important. It assumes dangerous proportions in such a country as Great Britain, where there are a great many Boards regulating closely allied trades and often fixing widely different rates for the same or similar work. Fierce battles may then be waged to decide whether a worker is entitled to the rates fixed by the Ready-made and Wholesale Bespoke Tailoring Board, by the Retail Bespoke Tailoring Board, the Wholesale Costume and Mantle Board, or the Dressmaking Board.[1] Moreover, the position in Great

[1] In addition, there are also Boards for Shirtmaking, Hat, Cap and Millinery; Fur; Linen and Cotton; Handkerchief and Household Goods and Linen Piece goods; Corset-making; made-up Textiles and Ostrich and Fancy Feather and Artificial Flower trades. Probably the most amusing dispute concerned a worker making wax flowers, who was

Britain is complicated by the independent nature of the Boards and the stress usually laid upon their responsibility for regulating wages.

At first sight it appears as if the Boards themselves would be best qualified to make the decision. They possess the necessary technical knowledge of processes, and they are more likely to realise the problems to be met if certain classes of workers are excluded from the operation of their Awards. On the other hand, it must be remembered that two Boards may claim the same worker and that many of the questions of scope are of a semi-legal character demanding specialised knowledge which the Boards do not normally possess. Again, as the Minister of Labour in Great Britain is responsible to Parliament for the operation of the Trade Boards Acts, he will naturally desire to retain some control over the actions of the Boards. At one time decisions on questions of scope in Great Britain were dealt with by the common official Chairman in consultation with an Administrative Committee appointed for the purpose by each Trade Board, and the same method was continued after his death by the permanent Secretary. As the result of a change in 1920 decisions were made by the Minister of Labour's staff which at that time was housed in a different part of London. This led to endless protests on the part of the Boards and engendered ill-feeling which reacted unfavourably upon the operation of the Acts. Matters reached a crisis and a Committee of Inquiry followed a Deputation to the Minister. The Committee, speaking of the interpretation of the Acts and the determination of the scope of the Boards, said: "We feel that it is here that it is most important to define the exact relations between the Minister and the Boards."[1] Although the Recommendations of the Committee were not adopted, the Boards have in practice obtained a considerable degree of control over scope decisions and the problem no longer causes friction.

In other countries the problem of scope has been less

claimed by the Artificial Flower, the Sugar Confectionery and Food Preserving, the Hat, Cap and Millinery, and the Coffin, Furniture and Cerements Trade Boards

[1] *Report of the Trade Boards Administrative Committee*, 1921, p. 6.

troublesome, mainly because of the less independent character of the Boards and because the sub-division of trades is not so minute. In Australia the only States in which any serious difficulty exists are Victoria and Tasmania.[1] Elsewhere the Boards are so subordinated to the Court of Arbitration or Industrial Court that this body almost automatically does most of the administrative and technical work. In South Australia, Queensland and New South Wales the Court can appoint a Special Demarcation Board, usually equally representative of employers and workers, to deal with disputes. But the Boards in all three cases can be appointed or dissolved on the Recommendation of the Court, which therefore exercises very real power. In Victoria and Tasmania the right to adjust powers as between any two Boards rests with the Governor (in practice, therefore, with the department responsible for the administration of labour laws). In Tasmania the smooth working of the system is helped by the presence of a common chairman.

In the United States the appointment of a Wages Board is usually made at the discretion of the Commission, and the Board is in all cases merely advisory. As a rule it only sits for the determination of a particular rate and all the administration is done by the Commission. Although this latter body cannot command the confidence which a real Board in the English sense of the term would inspire, procedure is at least simplified and the problem of authorities and autonomy hardly arises at all. Where Wages Boards exist in Canada (in Alberta and British Columbia) the position is the same. In France the powers of demarcation seem to lie with the Prefect.[2]

The most satisfactory method of dealing with questions of demarcation alone is probably the appointment of joint Boards on which the permanent administrative department

[1] *Report of Department of Industries, Tasmania*, 1919–20. Great difficulty was, however, experienced in New South Wales, where the Board system was actively operating.

[2] On an appeal, the Central Commission stated that it had no power to determine whether workers for whom rates are fixed are in fact home-workers within the meaning of the Act [*Bulletin du Ministère du Travail*, October, 1917]. The later numbers of the *Bulletin* do not state whether the case was carried any further to decide where the real power *did* lie.

would be represented, and to which if necessary a legal adviser could be attached. Such a scheme would enable advantage to be taken of the specialised knowledge of the Boards and would at the same time allow the wider point of view to receive consideration.

A second subject around which the struggle for ultimate control turns is the question of enforcement. Shall the inspectors and administrative staff be responsible to the Boards or to the Central Authority? By whom shall prosecutions be initiated? In practice, as was indicated in the chapter on Enforcement, the decision has usually been against the assumption by the Wages Board of this function, although they have endeavoured to assert their rights from time to time when reluctance to prosecute or enforce on the part of the Central Authority has been suspected.

The most difficult problem of all remains. It refers to the control of the wage-fixing powers of the Boards. Here we meet all the old arguments. If the Boards are to be independent bodies then they must have freedom to fix the rates which seem to them most suitable—the theory of self-government must be carried out in all its implications. If the Boards find that after weeks of discussion the wages fixed by them are liable to alteration by a central authority having no special knowledge of the trade and perhaps unsympathetic to their point of view, their interest in their own proceedings will diminish. They will become mere instruments for the waste of time, or else they will constantly fight with the Central Authority for more freedom and will refuse to accept its modifications. The case on the other side is equally strong. The evil done by indiscriminate and uncontrolled rate-fixing may be enormous. The views of different Boards as to the ideal policy may differ. Some may fix rates which afford no protection to anyone. Others may fix them so high that a large amount of unemployment results, and in countries where the taxpayer contributes towards the payment of unemployment relief he may justly claim to have some voice in decisions which may increase his burden. In spite of the efforts of Appointed Members, some Boards may misuse a monopoly power or may fix

rates much to the detriment of one small section of the trade. By ill-considered and unco-ordinated wage decisions labour may be induced to change from one trade to another, causing immediate dislocation and inconvenience and ultimate unemployment.

This difficulty does not of course arise when the Boards are merely advisory. Of this type are the American and Canadian Wages Boards. Even where their appointment is compulsory, the Central Commission need not accept their advice, although its freedom to amend varies. In practice the suggestions of the Advisory Boards are almost invariably adopted. A careful study of the Orders issued in America from 1912 to 1920 reveals the fact that in only six cases did the Central Commissions do anything but accept the recommendations of a Wages Board.[1] It is on this account that the system in America may properly be called a Board System. No doubt there would be more interference if the American Wages Boards were less conservative than they are, but there could be no struggle, for the final power is placed beyond all question in the hands of the Central Authority. While this sovereignty avoids friction and is probably satisfactory where the aim is merely the avoidance of low wages, it implies a loss of many of the potential advantages of the Board method.

The real conflict occurs with those Boards which are technically charged with the whole duty of wage regulation, and in which the Central Authority is supposed to act merely as a brake. Normally it is expected that the rulings will

[1] These cases were: (1) In Wisconsin in 1919 the General Order was referred back to a Wages Board for reconsideration, and the reconsidered report was adopted [*Industrial Commission of Wisconsin Biennial Report* 1918–20]. (2 and 3) The same fate attended the Laundry Order, 1920, in the District of Columbia and in the 1919 Office Cleaners' Award in Massachusetts [*B.L.S. No.* 285, pp 101 and 136]. (4) In Kansas in 1916 the Laundry Board would recommend no rate and after re-reference by the Central Commission it was finally discharged [*Ibid.*, p. 109]. (5) In Washington in 1915 the Laundry Conference which had recommended a minimum lower than that found by the Central Commission to represent a living wage, was discharged and a new one appointed [*Ibid.*, p. 204]. (6) In Massachusetts the 1918 Award of the Women's Muslin Underwear Board was altered slightly as a result of a Public Meeting [*Ibid.*, p. 132]. In addition, on two occasions when Wages Boards were appointed in California the Commission was forced to fix a rate itself on account of the inability of the Boards to come to an agreement.

be adopted, and Boards are usually prepared to fight for their rights. It is obvious that no hard and fast rules as to the limits of central control can be postulated. Much depends upon the character of the Board members, especially the Appointed Members. Much more depends upon the objects of minimum wage legislation.

The independence of the non-advisory Boards varies considerably. It is usual to appoint some authority which either automatically considers each Determination before it is issued (as in Great Britain) or to which appeal can at any time be made. Much may be accomplished by the chairmen of the Boards, but, as it is not desirable to give them the power of veto, in the last resort they are powerless before the united action of both sides. The measure of control exercised by the external authority then depends on the object of minimum wage legislation. Where it is the provision of a living wage or the prevention of sweating, it is necessary to provide against the undue conservatism of a Board, and the power to veto should probably be given. The greatest danger is that one section of a trade may not be fairly treated, but this risk may be partly avoided by careful selection of members in the first instance. There should, however, be the right of appeal to the Central Authority which might refer the rate back to the Board for reconsideration. The functions of the Board are limited, and there is little harm in submitting them to considerable supervision. But for industrial peace the Boards must be left much freer, and though a lower or a higher rate may be thought desirable it will interfere unduly with the system if any power of veto is given to the Central Authority. Here again it is desirable that there should be the right of appeal and that the rate should be reconsidered. But the final power should lie with the Board. It might be possible for the Minister or other authority in referring back to make public his reasons, but no other pressure should be applied. The importance of allowing Boards the greatest amount of freedom is becoming more recognised in the various States. In South Australia, while a rate may be reconsidered the decision of the Boards is final; and even in Great Britain

the ultimate decision forms the subject of negotiation and agreement between the Board and the Minister.[1] Undoubtedly there are risks in this policy, but they are worth running for the sake of industrial harmony, and publicity is a powerful safeguard.

It has been seen that there are certain functions, such as the establishment of Boards, the checking of the Orders from a technical and legal point of view and the enforcement of rates which should clearly be performed by a Government Department or other body extraneous to the Board. There are others, such as the calling of meetings, the prevention of delay, and the adjustment of the scope of different Boards, which should as far as possible be left to the Boards, but which in the last resort should be secured by an outside authority. There is a third group where the decision as to the autonomy of the Boards depends upon the objects of minimum wage regulation. Where the aim is the narrow one of preventing low wages, there is a strong case for a controlling authority; where it is the wider one of industrial peace, it is probable that the final decision must lie with the Board, although it may be desirable to have some authority to refer cases back for reconsideration, and if necessary to make public reasons for disagreeing with the Boards' decision. Such an authority should, however, have no right to veto.

It remains to inquire what kind of authority is best fitted to

[1] The obvious exception is the Grocery trade, where the Minister refused to accept rates determined by the Board. But as the Board rejected the Minister's suggestions, no rates have been fixed (up to the end of 1925). Unfortunately, very little information is available on this extremely important point, and it is impossible to know how often the Boards have modified their rates on suggestions from the Minister. It seems probable that only in regard to relatively minor points have such modifications taken place, and that where persuasion has failed the Minister has shrunk from an open battle except in the case referred to above. During the years 1922 to 1924 inclusive, the Minister returned rates to the Boards in three cases. In one the Board after reconsideration re-issued the same rates, in one it revised in accordance with the Minister's suggestion. In a third the Board re-issued with some amendments. In all three cases the rates were then confirmed by the Minister. *Report on the Trade Boards Acts*, 1922–3, p. 9; *Report of the Ministry of Labour*, 1923 *and* 1924, p. 177. The Minister's power is merely *negative*.

perform the work. To this question no definite answer can be given, for so much will depend upon the personal relations of individuals, but a survey of those in existence will indicate the relative advantages and disadvantages of each. In many Australian States the work is done by the Arbitration Court, which controls other wage-regulating activities in the States. This plan ensures co-ordination, not only of the work of the Boards but also of the Court, and provided that the Court is suitably staffed (see next chapter), it is probably the best solution in States where Boards and the Court exist side by side. In some cases the Court, in addition to its own powers of initiative, must act on instructions from the Minister; this power of the latter is usually very closely defined. But the suggestion of the Cave Committee that the Minister of Labour in Great Britain should be authorised to refer a rate to the Industrial Court, and if necessary to cause a public inquiry to be held, is unsound. There is no close connexion between the Arbitration authorities and Wages Boards in Great Britain such as exists in Australia where the courts usually carry out all the functions of the British Minister, and to subject Trade Boards to the decisions of the Court would be to place the former in a position of undesirable inferiority without obtaining the advantages of centralisation. It would take away the responsibility of the Boards and hand it over to an authority less capable of understanding the needs of the trade and less likely to inspire confidence. This reasoning applies still more strongly to the suggested public inquiry.

The second method is to entrust the work to a Minister or Government Department. This method has the advantage of simplicity, but it is not desirable that the summoning of Wages Boards and the ultimate power of vetoing a decision should lie in the hands of an authority subject to political pressure. To concentrate revising power in the hands of a single person is to place the system too much at the mercy of the chance personality of individual Ministers. These disadvantages were obvious in Great Britain after 1920, when the final decisions on Trade Board matters were given by

an obviously unsympathetic, if not hostile, Minister.[1] Government departments are notorious for delay and to a business-like Board the length of time sometimes taken by the Ministry to decide upon a rate was very irritating and formed the subject of a recommendation by the Cave Committee.[2] This delay is not confined to Great Britain. It also exists in France.

In the third place some of the work may be done by a Government Department, while appeals may be heard by a special body. In Victoria the work of setting up Boards and enforcing the Act is carried on by a Government Department, but appeals are heard by a special Court of Appeals consisting of a Permanent President together with two other persons nominated by the two sides of the Board concerned. The same method is adopted in France, where appeals are decided by a Central Commission sitting at the Ministry of Labour.[3] For a non-responsible Board this is probably an excellent compromise, for it ensures co-ordination, removes vital decisions from the hands of persons subject to political pressure, and at the same time allows the Wages Board to play a considerable part in the decision.

In the United States the desire to remove the Central Authority from political pressure has led to the creation of independent *ad hoc* Commissions, which are allowed a fixed annual grant and which are in sole charge of all minimum wage work. As the Boards are merely advisory, success depends upon the personnel of the Commission. Where, as in Wisconsin, Massachusetts and California, it is strong, this scheme has worked well; frequent meetings have been summoned, and the limited powers given to the Commission have prevented any danger arising through lack of control.

[1] In Great Britain the efficiency of the Minister of Labour as a centralising authority for the Boards is much reduced by the enormous amount of other work which falls within his department. If he is to continue his wage-revising functions there is a strong case for separating this work from the rest of the Ministry, and making a separate Ministry which could deal with other wage-regulating work at the same time, which is now done by other departments.

[2] It was suggested that the period in which the Minister could consider a rate should be cut down to a fortnight (Recommendation 27). This suggestion was carried out in the New Act of Northern Ireland, 1923.

[3] For the constitution of this body see Chapter V, p. 104.

Where interest in the law is slight, or the Commission is less strong, as in Oregon, Washington, North Dakota or Minnesota, the purposes of the law have not always been fulfilled.

In seven [1] American States the Commission is forced to call a Public Meeting after it has considered the Determination of the Advisory Board, at which the suggested rates shall be discussed and if necessary revised. In Washington and Wisconsin there is no provision in the Act for such meetings, but in practice they have always been held. It seems probable that the original plan was to enable all employers to have an opportunity of coming in person to state their objections to the Act. In practice little use is made of the opportunity. Almost all the Public Meetings have been failures. Either not enough people attended the meetings or a lack of interest in, or a knowledge of, the Orders of the Commission rendered them useless. In California "actual changes in the recommendations of conferences rarely if ever take place because of these hearings," [2] and the position is the same in Washington.[3] As might be expected, the main interest centres round the Conference or Wages Board itself, to which both sides have sent their representatives. In Oregon public hearings are said to be rather perfunctory performances, practically all activities of interested persons being expended on the conferences.[4] Everywhere there is the complaint of lack of interest. In Oregon "all the meetings are open to the public, but the interest except in the first wage conference in 1913 has been almost negligible on the part of the general public." [5] In Minnesota "the meetings have not been well attended." [6] Even in Massachusetts, where interest seems greater, the experience is the same. From March 1920 to May 1922 public meetings were held in respect of eleven Orders. At four of these there was no opposition, in the remainder from one to five employers appeared in opposition. In ten cases the Commission did not alter the proposed rate. In one

[1] i.e California, Colorado, District of Columbia, Kansas, Massachusetts, North Dakota and Oregon.
[2] *B.L.S.* No. 285, p. 61. [3] *Ibid.*, p. 196. [4] *Ibid.*, p. 173.
[5] Letter from the Secretary to author, August 11, 1924.
[6] Letter, August 5, 1924.

(Muslin Underwear) the employers opposed the increase of $1 per week for beginners after four weeks, and the rate was rejected by the Commission (Decree No. 22). The Bureau of Labour Statistics inquiry reported that up to 1920 "it has never occurred that a public hearing has resulted in changing tentative recommendations; although there was a re-reference following the hearing in one instance which resulted in formal re-arrangement of subject matter but no actual change." This is the general experience. When, as is often the case, a rate has been fixed by a Wages Board only with great difficulty, it is easy to see that the Central Commission would have considerable reluctance in re-opening the question unless very strong objections were made; and in fact no objections have been advanced. Moreover, objections cannot usefully be made in a large gathering; both sides hesitate to put the full facts of their case before a meeting open to the general public.

The only result of such meetings then is to cause an undesirable delay between the date of approval of the Wages Board's determination by the Commission and its coming into force; there has usually been far too much delay before the decision is reached in the first instance.

In theory it may be argued that the Public Meeting forms a useful check upon the possible excesses of non-representative or monopolistically inclined Boards. In practice the general lack of interest shown in their proceedings, and the reluctance with which the Central Commission has referred a disputed case back to the Board, have nullified this possible advantage. It must also be remembered that the more attention is paid to the views expressed at a public meeting, the less will be the responsibility of the Board, a responsibility already reduced in America by its subservient relation to the Central Commission. Apart from its possible publicity services, the device of the Public Meeting is a useless waste of time. Constitutional or other special reasons may render its retention desirable in some circumstances, but minimum wage regulation would proceed more easily and rapidly without it.

For the performance of the work which we have seen to

be appropriate to some central authority it seems therefore that a Government Department subject to political pressure is as unsuitable as the Public Meeting, while when the functions of the original Boards are wide, the Central Commission as it exists in America, or such bodies as the Victorian Court of Appeals, are satisfactory only so long as they refrain from action. A tribunal consisting only of Board members, including Appointed Members such as was suggested by Professor Hobhouse and other witnesses before the Cave Committee,[1] would certainly provide an ideal co-ordinating authority. But even if it survived official opposition, which is in itself doubtful, it would be subject, in so far as its wage-fixing activities were concerned, to the same suspicions as the Boards themselves, and the fact that a rate had been revised by it would fail to satisfy those who suspect the Boards of a tendency to prefer the interests of a trade to those of the community as a whole.[2] The Trade Boards Commission proposed by Dr. Sells,[3] which would consist of three members,—namely, a representative of the Ministry of Labour, to be selected by the Minister himself, a representative of the Trade Boards to be selected by the Boards, and an industrial expert who should act as chairman of the Commission, and be selected by a free vote of all the Trade Board members, but should not be one of their number,—is similarly open to objections. In cases of disagreement between the representatives of the Boards and the Ministry, the industrial expert would presumably have the casting vote and thus in fact fix the rate. This practice would tend to alienate active Boards, and in Great Britain at least arouse the opposition of the trade unions to what they would regard as a form of compulsory arbitration. But there is a more fundamental objection to an appeal body which would have the right of absolute veto. For it would detract from the responsibility of the Boards, and prevent them from

[1] *Minutes of Evidence*, p. 669. Cf. a similar proposal by Mr. W. Addington Willis. *Ibid.*, p. 797.

[2] Unless the Boards were universal in scope, in which case it might perhaps be argued that the Central Board did in fact represent the whole of the community. Even then holders of Government stock would not be represented.

[3] Sells, *op. cit.*, p. 265.

properly fulfilling those very functions which, as we have seen, constitute their main *raison d'être*.

It seems therefore that we are in search of a body which will check the tendency of the Boards to adopt a too narrow view, and which will at the same time preserve their most essential feature, namely that the members of the trade itself shall have the greatest say in determining the rate to be fixed. It would be rash to suggest that any one type of authority would be equally suitable for all countries at all times, but it seems that a body which would meet the above requirements would necessarily consist of representatives of the Boards, the general public, and of trained professional economists. If the Boards are to be the instruments to secure industrial harmony and where they exist independently of an Arbitration System, the revising authority might consist, in the absence of an ideal Minister dealing only with questions of wage regulation, of three members elected by the Boards themselves, one or two Members of Parliament, a professional economist, and the chief permanent civil servant responsible for the administration of the Acts. The Chairman of this body should be newly elected at each meeting from among the members. The Boards might elect one representative of the employers' and one of the workers' side, and a representative Appointed Member to serve on the revising authority for a term of two or three years. The two members of Parliament, whose function it would be to represent the general public interest, would as far as possible be chosen from different political parties. Their presence would be a guarantee that the point of view of the community as consumers had at least been considered, and it is important to remember that where, as here, emphasis is laid upon publicity, rather than coercion, an apparently representative body often speaks with as great authority as if it were representative in fact. The professional economist would not necessarily be a person who had previously had close practical experience of industrial problems; indeed it would probably be better for him to be a purely academic expert. For his function of the Committee would be that of the technical

adviser. It would be for him to point out the economic problems likely to result from a particular course of action, and for this purpose his previous experience in dispassionately seeking for cause and effect in the economic sphere and separating essentials from unessentials would be invaluable. In short, he would serve to prevent the revising body from perpetrating economic "howlers." Finally the permanent civil servant should be a member, in order to express the views of his Department, and to point out administrative limitations to suggested schemes. In some countries it might be found possible to increase the "expert" membership by the addition of for example an industrial psychologist, but the body must always remain small enough to accomplish its work, yet large enough to inspire confidence in its representative and corporately impartial character.

More important than the composition of the revising body is the work it would have to do. It should certainly deal with questions of demarcation and scope, where its decisions would be final; the appointment and abolition of Boards would continue to be done by the Minister subject to Parliamentary approval. But its powers with regard to wages would be merely advisory. Proposed rates would be referred to it as they are now referred to the Minister of Labour in Great Britain, and it might also be provided that a defined proportion of workers or employers in a trade could appeal against a rate after it has been in force for a certain period, say one year. It would be the duty of the Appeal Board to scrutinise rates and if necessary refer them back to the Board concerned, with a reasoned recommendation for alteration.[1] There would, however, be no compulsion on the Board to accept its suggested alterations, but it would probably consider them very carefully. For the report of the Appeal Board, when it disagreed with the rate fixed by a Board, or had acted on an appeal, would be submitted to Parliament and made available to the public. Thus the onus would be on the resisting Board to justify its action to

[1] It is interesting to note that in the later Reports on the operation of the Trade Board Acts the Minister of Labour gives his reasons for refusing to confirm particular rates.

the general public, which would at least be supplied with the arguments on the other side. It is possible that some Boards would prove obdurate, and might maintain for long a policy obviously against the interests of the community as a whole. There is undoubtedly a risk in thus leaving the final decision to the Boards, but it is difficult to see how otherwise their responsibility can be maintained. Moreover, it seems not unduly optimistic to suggest that more and more reliance is coming to be placed, and with no small degree of success, on the pressure of an *informed* public opinion. Certainly private semi-monopolistic companies are becoming more sensitive to a public dislike of monopoly, while the appointment, and often the success, of such bodies as Food Councils and Courts of Inquiry indicate that the general opinion of the community is playing, and will play, a larger and larger part in determining the success of private endeavour. Society is coming to see that it should use methods more subtle than it has previously adopted for dealing with its recalcitrant members. But society can do little unless it is well informed of the facts, and the Appeal Board could provide the necessary publicity.

It will also be said that the body will be costly, especially as it would need the services of a statistical and clerical staff, to make available to it the relevant facts and figures. But it is inevitable that schemes of reform will cost something, and this cost should be considered only in relation to the benefits expected. If the Board System is worth retaining the cost of its successful operation must be faced. Undoubtedly there are limits to its universal application, especially if there exists a strong prejudice against any scheme which perpetuates the relationship of employer and employed; but where it is or could be in operation, a body such as that suggested above might provide a solution to many of the problems which invariably arise, without sacrificing the peculiar advantages of the system.

CHAPTER X.

REGULATION BY ARBITRATION.

The Powers of the Court—The Constitution of the Court—Subsidiary Tribunals.

The Powers of the Court.

To some extent the technical problems to be overcome in the Arbitration method of wage regulation are similar to those of the Board system, and much of what has already been said with regard to powers and duties need not be repeated. Thus the decision as to the powers to be given to a Court of Arbitration depends upon the objects for which the Court was instituted. If it was merely to raise wages, then the powers may be narrow. If it was industrial peace, experience has shown that this will not only, though perhaps mainly, be endangered by wages disputes. It will also be affected by questions of working conditions, preference to unionists, hours and other matters. There is therefore a strong case for giving a Court power to deal with all industrial matters, interpreting the term as widely as possible. But while it may be argued that a representative Board is peculiarly fitted to understand the detailed problems of a trade which may lead to friction, this cannot be said of the Court. It is desirable, therefore, that as far as possible the latter should deal with the broad lines of policy (including the granting or refusing of preference of employment), leaving the points of detail to be worked out by the parties concerned. Some States have faced the logic of the situation, and in South Australia, New South Wales and Queensland, the powers of the Court are extremely wide, except that in the first-named State there is no power to declare preference.[1]

[1] But there has been a tendency to suggest that matters of detail should, if possible, be left to Shop or Conciliation Committees. Cf. N.S.W. Act of 1918, S. 24A.

There are, however, certain problems of powers peculiar to the Arbitration System. The first of these is the extent to which Arbitration Courts should be enabled to extend awards from the original parties to the dispute to all persons engaged in the industry in a particular area. This power, subject to differing limitations, is given to the Courts in New Zealand and in Australia with the exception of New South Wales and the Commonwealth.[1] It is clear that the result of settling one dispute by an award may lead to a demand for similar conditions by workers who are not members of the organisations concerned, but who are engaged on similar work, perhaps for the same employer. Moreover, where employers sell in the same market and are subject to similar costs, it is unfair that one group should be forced to pay a higher wage merely because they employ workers belonging to a particular organisation.[2] It seems, therefore, that the interests of industrial peace demand that the Courts should possess power to extend.[3] But the unions applying to the Court may not be representative of the trade as a whole, and in order to avoid unfairness it has usually been provided that Courts may extend Awards only if satisfied that the conditions ruling elsewhere are in fact similar to those for which the award was originally made and after hearing the views of persons interested. This procedure, however, is costly and cumbersome[4] and the difficulties it has involved have made the Courts chary of exercising this particular power.[5]

These considerations suggest that while it is desirable that

[1] Cf. Chapter IV, pp. 80–1.

[2] This point has always been emphasised in New Zealand. Cf. *Awards*, Vol. III, p 104; and IV, p. 1.

[3] In the same way the Courts should be given power to amend awards if they feel that circumstances warrant such action. The lack of it has often jeopardised the success of Arbitration systems. Cf. a vigorous complaint by Mr. Justice Heydon in *A.R.* [1907], pp. 58–9; also Higgins, *op. cit.*, p. 23.

[4] It involves sending out notices to every person concerned, hearing all those who wish to object, and (usually) publishing a long list giving the names of persons who are to be bound. The extended award of the Canterbury Shearers contained twenty-four pages of double-columns of small print, setting out the full name and address of each new party bound. *New Zealand Awards*, Vol. VII, p. 390.

[5] Cf. Evidence of Mr. Kennedy before the New Zealand Labour Bills Committee, July 28, 1920, pp. 4–5.

awards should apply to all employers or workers, the Arbitration Court is not the ideal body to be given power to extend. This conclusion also holds good in part regarding the question of the powers of initiative which should be given to a Court. Where the object is the prevention of sweating and where workers are unorganised and intimidated, it is clear that the Court should be allowed to summon the parties. In fact this proceedure would be very inconvenient, as it would mean summoning all persons engaged in the trade, and, as has been shown, the Court is not usually constituted to perform this function. It would moreover involve considerable expense. When the object is industrial peace, it may be argued that the Court should have very little initiative, since, if alterations in existing rates are needed, the parties themselves can be relied upon to re-open a case, and where no action is taken by them it is well to let sleeping dogs lie. Yet it may happen that in many cases disputes which are imminent could be avoided and settled if a third party intervened before a crisis is reached. The majority of Arbitrators in existence have power, on the outbreak of a strike or lock-out, to summon the parties either before the Courts or to a Compulsory Conference, from which an unsettled dispute will proceed to the Court. In many cases however this power is not enough, for by the time matters have reached this pitch a settlement may be almost out of the question. As a result many of the Arbitrators have claimed and some of them (as in South Australia and the Commonwealth) have been given power to intervene in an "impending" dispute. Mr. Higgins believes that this power to call a conference when a dispute is imminent is very important, and he quotes instances when differences have thus been settled. Frequently the Conference has prevented a threatened local strike or arrangements have been made for carrying on work pending an Award.[1]

Closely allied to the question of initiative is the problem of the extent to which a Court shall refuse to make Awards.

[1] Higgins, *op cit*, p 73. It is the lack of any power to intervene until a dispute seriously threatens the welfare of the community that is now muzzling the Kansas Court.

In New Zealand at least, the Court has exercised this right; in one case because it felt that the industry was not one which could suitably be regulated by an Award [1]; in another because a union had called a strike [2]; and in a third case when it felt that the case had already been fully discussed several times.[3] In such cases and also in regard to its power to give an Industrial Agreement or an agreement reached by a Conciliation Committee the force of an Award it seems the Court should have discretion. It remains to decide whether the Court should be empowered to deal with all kinds of disputes. In Queensland it cannot deal with State Children, domestic servants and persons engaged in agriculture; in West Australia it may not limit the working hours of persons engaged in agriculture or pastoral industries; in Kansas it may intervene only in disputes which endanger the supply of vital services (including food and manufacture); in South Australia the conditions of Government servants may be regulated only on the authority of both Houses of Parliament; the Federal Court may take cognisance of those disputes alone which extend beyond the borders of one State; in New Zealand and the Commonwealth, unless the Court itself intervenes, its assistance can only be invoked by *registered* unions. There seems no reason why what was said with regard to the Boards should not also apply to the Arbitration System: namely, that if the object is industrial peace there is no point in limiting jurisdiction to particular categories of persons, while if it is the raising of wages the only logical exemption should be in respect of persons receiving more than a certain sum. Even this last exception is hardly necessary if the wage fixed is merely a minimum.

The Constitution of the Court.

There remain the technical problems peculiar to Arbitration, the chief of which relate to the constitution of the

[1] *Canterbury Agricultural and Pastoral Labourers' Industrial Union of Workers and the Canterbury Sheep Farmers' Industrial Union of Employers and others. N.Z. Awards*, Vol. IX, p. 517.

[2] *Christchurch Motor Delivery Vehicle Drivers and Livery Stable Hands Dispute, ibid.*, Vol. XIV, p. 1133.

[3] *Gisborne Painters' Award Memorandum, ibid.*, Vol. X, p. 191.

Court and the character and tenure of office of the presiding judge.[1] The obvious qualification for an Arbitrator is that he should be trusted by both sides. This ideal has proved difficult to attain. There is unfortunately a wide difference between a reputation for impartiality and the possession of that characteristic. A series of Awards, given in good faith, but showing a predominant upward or downward trend, will do much to destroy belief in the independent character of the Arbitrator. In New Zealand during the early years of the Arbitration Act, economic conditions, which had been bad, began steadily to improve. As a result most of the early Awards of the Court had an upward tendency. The Court became very popular with the workers, and the Judge was declared to be biased by the employers. More stable conditions, and a series of Awards for the same or even lower wages, led to a change of attitude: employers supported the Court, while workers regarded it as an institution for grinding the faces of the poor. The same difficulty was experienced in Australia, and a study of the popular attitude to Mr. Justice Higgins during his long presidency of the Federal Court supports the conclusion that "it is the best tribute to the judge that each side considers him biased in favour of the other and very obstinate."[2]

While it may be difficult for even the best Arbitrator in the world to acquire a reputation for impartiality, there is no doubt that in many cases the failure of the Arbitration System has been due to the appointment of obviously unsuitable candidates. An Arbitrator should not be closely associated with any political party, if party divisions correspond to the lines of industrial cleavage. One of the early difficulties with which Mr. Higgins had to contend was the fact that he had at one time been intimately connected with the Labour Party. Mr. Higgins' personality helped to overcome that difficulty, but the Kansas Court of Industrial Relations was less fortunate.

"State politics have been played too hard and too long in Kansas to put any appointment beyond the range of cynical

[1] Cf. Pigou, *Economics of Welfare*, 2nd Edn., p. 393.

[2] Article on Justice Higgins (signed J. A. B.) in *Stead's Review*, August 6, 1921, p. 143.

comment, no matter how excellent it may be. And some of those actually made were, to speak moderately, unwisely calculated. One of the first men whom Allen [the Governor] appointed was his former political manager, a fact which itself should have prevented the appointment. Another Allen appointee was a trade unionist whom the movement had repudiated." [1]

A similar difficulty has helped to bring the Arbitration Court of West Australia into disrepute.[2]

The efficiency of an Arbitration System is, in the same way, likely to be impaired when it is suspected that the Arbitrator is not independent, but is working under instructions from the Government of the day. Once again the Kansas Court provides a warning. There was a popular impression that it consulted the Governor on various matters, and this suspicion was to some extent justified by the legal obligation on the Court to obtain the Governor's permission to conduct a general investigation, and by the, perhaps unwise, way in which the Governor constantly spoke for the Court in public.[3] In Great Britain it was felt in 1919 that the Interim Court of Arbitration was acting under orders from the Government, and its Awards were therefore suspect.[4]

In view of the many pitfalls which await an Arbitrator, it

[1] "The Kansas Court of Industrial Relations," by Herbert Feis. *Quarterly Journal of Economics*, August, 1923.

[2] In the Debate on the Second Reading of the *Industrial Arbitration Bill*, January, 1923, it was alleged by Mr. Lovikin that a recent appointment to the presidency of the Court had been made by the outgoing Attorney-General—who appointed himself! The knowledge of such facts is unlikely to give workers and employers much confidence in the efficiency of the Court.

[3] It is significant that the American Bar Association in commenting on the Kansas Court in 1924, suggested that the chief need was "the complete removal of the Court from the influence of partisan politics." —*Canadian Labour Gazette*, August, 1924, p. 632.

[4] *New Statesman*, November 8, 1919, p. 149. "There is a general belief in the world of labour that the Awards of the present Court of Arbitration are at least as much determined by orders or suggestions from the Government, as often guided by political considerations, or by the influence of vested interests, as by a fair and impartial consideration of the case." Cf. also the *Economist*, June 12 and 19, 1920. In New South Wales, in 1917, it was believed that Mr. Justice Edmunds worked under the orders of Mr. Hughes (*Sydney Bulletin*, November 1, 1917). The action of Mr. Edmunds was severely commented upon by Mr. Justice Heydon in *A.R.* (1918), p. 104.

is surprising how great a measure of success has been attained by many of the judges. Yet it is clear that unless the judge is trusted, workers and employers will prefer to settle disputes by resort to direct action.[1] In order to ensure an impartial and efficient Arbitrator several devices have been adopted. As a general rule the need to appoint some one who is not an employer or worker, and who is uninfluenced by party politics has led to the choice of members of the legal profession, chiefly judges, although in some States (e.g. West Australia), the Arbitrator may be a barrister or solicitor of not less than five years' standing. This kind of appointment will certainly ensure that the work is done by a man who is used to weighing up evidence, and who will probably approach the problem with the requisite impartiality of mind. But when, as is generally the case, the law lays down no rules as to the general policy to be adopted, it is possible that mere legal impartiality of mind will not be enough. It may even be a disadvantage. For there will be a tendency to work from precedent, and it has already been seen that in many cases a decision which satisfactorily terminated one dispute might be quite inapplicable to another. Moreover, the judiciary usually adopts a more conservative point of view than that generally prevailing, and it is doubtful how far its members are capable of sympathetically understanding the difficulties and needs of workers who plead before the Court and who are likely to belong to a more radical school. Where the judge is not only a legal expert but is also a social philosopher (as for example, Mr. Beeby, Mr. Higgins or Mr. McCawley), the combination is probably admirable. In order still further to emphasise the impartiality of the Court it has sometimes been provided that cases may be heard by more than one judge. But this provision does not get over the difficulty that something more than impartiality is desired.

Not only must the Arbitrator be free from the suspicion

[1] In New Zealand there was, about 1913, a marked move away from the Court because it was felt by the unions that "many of the judges of the Court are so out of touch with public opinion and with what is fair and reasonable." *Committee on Arbitration Bill, New Zealand*, November 14, 1913.

of bias, he must also be regarded by both parties as a competent person to deal with the particular points at issue. Members of a trade are apt to feel that only a person with technical knowledge of the particular industry can adequately appreciate all its problems and may therefore be trusted to give a sound decision. But it is unlikely that a man so qualified will be found except among either employers or workers. Such a person would be open to the charge of bias. This policy would therefore require the appointment of two arbitrators, one from among employers as an expert in financial and managerial matters, and one from the workers as an expert in the actual work itself and the organisation of the shops. Hence this course had been avoided, especially as it would also involve the appointment of different judges for each dispute and so multiply the difficulties of getting a trusted Arbitrator. As an alternative, Assessors have been appointed. In New Zealand and West Australia the formal Court consists of the president plus two other persons, one each being nominated by employers and workers. These Assessors are to be experts who are to assist the Judge on all technical matters. In South Australia, New South Wales, and in the Federal Court, Assessors may be appointed by request.

In view of the many complaints which have been made, particularly by employers' associations, with regard to the unsatisfactory lack of technical knowledge on the part of the Judge, it is surprising that Mr. Justice Higgins reports that " never in the long history of the Court until November or December, 1920 . . . has there been any application for assessors,"[1] while in other active Courts, where their use is optional, they have not been very frequently appointed.[2] In fact there is little to be gained by the appointment of Assessors. As both sides are free to argue before the Judge and to produce whatever evidence they wish, there seems

[1] Higgins, *op. cit.*, p. 153.

[2] It is significant that New South Wales first tried and then discarded the system of a Court composed of two Assessors plus a Judge, and it has been stated that at one time the chief task of the Judge in West Australia was to keep peace between the Assessors [W.A. *Parl. Debates*, January, 1923. Speech of Mr. Holme].

little reason for the appointment of two additional experts. The question largely turns on the extent to which the points at issue before an Arbitrator do in fact involve a knowledge of technical detail, rather than a decision of principle as between two sets of facts which are frequently not disputed. It seems to be more and more the case that the two sides can safely be left to check the accuracy of the statements of the other, and that the question for the arbitrator is not, for example, whether in fact the industry cannot pay the wage, or whether in fact workers cannot live upon a particular wage, but, granted that there is a measure of truth in each contention, which shall be given the greater weight.[1]

For such a decision the Assessor will be of little help. Many Courts are tending to decide on the principle and leave the detailed application of it to the members of the trade by means of what is essentially the Board method, under which it is possible to make use of the services of experts.

It has occasionally been suggested that the Arbitration authority should in some way be representative of the general public. The suggestion was discussed in New Zealand, where it was finally recommended that the Act should be amended so as to empower the Governor to appoint some impartial person to *appear before* the Court to represent the public when he thinks fit.[2] The suggestion is, however, open to two objections. One is the practical difficulty of selecting a suitable person. The other is that it is probably unnecessary, because the judge himself, if not a member of any trade and if reasonably acquainted with current economic conditions, is as likely as anyone adequately to represent the point of view of the general public which is affected by disputes.

[1] Cf. the statements of Judge Curlewis of the New South Wales Court, that "the calling of evidence is necessary in 10 per cent. of the cases in which it is called," and that "the facts are in dispute much less frequently than might be supposed." (*A.R.* [1918] *in re Iron and Shipbuilding Trades*). So, too, Mr. Justice Higgins. "The disputes turn on the proper limitation to the use of human life—the use of the most valuable asset of the nation, the treatment in industry of the object of all public activities —man; and for the determination of the proper limitations one who is outside the industry is as competent as one who is inside." Higgins, *op. cit.*, p. 153. [2] *New Zealand, Department of Labour Report*, 1921.

The influence of an Arbitrator has been seen to depend upon the extent to which he is trusted and believed to be competent by both sides. A further important point in this connexion is the length of time for which an Arbitrator should be appointed. The appointment of a permanent judge would tend to remove the occupant of the office from the influence of party politics and would obviate the difficulty of constantly finding some new person who possessed the requisite qualities. Moreover it is claimed that permanency, or at least a long period of office, would give the judge greater independence, for he would be in no danger of removal from office for a decision which appeared to him to be just, but which was yet unpopular. At the same time, a permanent appointment is dangerous if the original appointee is unsatisfactory. Before it is possible to remove him he may have destroyed any chance of success that the system might possess. In fact a fairly long period of appointment is most usual. In New South Wales and South Australia, judges are removable from office only for the same reasons as a Supreme Court Judge, that is to say, the appointment is practically permanent, while in Queensland, and the Commonwealth and New Zealand, judges hold office for seven years, and are eligible for reappointment. In West Australia the appointment is for three years only, but of recent years there has been a movement in favour of obtaining a permanent appointment.[1]

There has been a general tendency to prefer the single judge to a Court consisting of several. But the importance of avoiding the delay consequent upon the availability of only one judge[2] has, whenever the work to be done is consider-

[1] See *West Australian Parliamentary Debates* in January, 1923.

[2] In New South Wales the average length of time between the application to the Court and the granting of an award has varied from 1·7 months in 1917 to ·92 months in 1919 (*Reports of the Department of Labour and Industries*, 1918–20). In fact, however, averages are not very useful, since one case of extreme delay will be outbalanced by several unimportant ones which may be disposed of quickly. A more real test is to take individual cases. In the Commonwealth Parliament on the Reading of the Industrial Peace Bill, Mr. Tudor, then member of the Opposition, quoted without contradiction the following examples of delay in dealing with applications before the Court: Institute of Marine Engineers, 12 months; Associated Society of Engineers, 10 months; Waterside Workers, 7 months; Australian Workers' Union, 6 months. The same facts are

able, led to the creation of a panel of judges or the appointment of deputy judges any one of whom can hear cases.[1] In such circumstances it is also usual to provide that an appeal may lie from one judge to the full bench. Elsewhere the decision of a single judge is final.

Subsidiary Tribunals.

One question remains. This is the desirability of having other authorities, such as Conciliation Committees, and special bodies like the Board of Trade in New South Wales and the Board of Industry in South Australia, to work in direct conjunction with the Court of Arbitration.

The first group, the Conciliation Committees, and Compulsory Conferences are undoubtedly a very valuable addition to the system, and are the means of saving much time. In New Zealand all cases must first be dealt with by such a Committee, and each year they settle a very large proportion, often as much as 90 per cent., of the cases submitted to them.[2] This system greatly reduces the amount of work to be done by the Court, and the delay in hearing cases, which is one of the worst features of the Arbitration System. The usefulness of the Compulsory Conference as used by the Federal Court has frequently been emphasised by Mr. Higgins, although here no time is saved, as the President of the Court himself presides over the meetings. It serves rather as a means of bringing together the parties to a dispute and preventing matters from reaching a deadlock. In West Australia the President of the Court has long had the power to call a Compulsory Conference. By the 1920 Act the utility of such a body was recognised by the power given to the Minister to appoint a special Conciliation Commissioner who may require the attendance of any person when he thinks a strike or lock-out is imminent. It is also desirable that the Court may have power to authorise the setting

admitted by Mr. Higgins, a strong advocate of the Arbitration System. Many cases of delay were found by Mr. Aves in 1908 [*Aves Report* 1908, *cd.* 4167, p. 176]. See also cases quoted in West Australian Parliamentary Debates, January, 1923.

[1] The success of the Commonwealth Court was at one time imperilled because of the refusal of the Government to appoint more deputy judges.

[2] See Chapter IV, p 41.

up of a Board to deal with matters arising out of an Award. Such matters, which are frequently merely technical in character, cannot be dealt with in the Award itself, since they frequently concern the interpretation of a section of an Award and would take up much unnecessary time. The lack of power to create such subsidiary bodies for long effectually held up the work of the Commonwealth Court.[1]

The utility of an *ad hoc* body, such as the Board of Trade or Industry, charged with the duty of declaring a living wage is apparent only where the Arbitration Court has definitely adopted a Living Wage policy. In such circumstances it is convenient that the detailed work of calculating the living wage and providing for its change with changing prices should be handed over to a body on which expert statisticians might be represented. Before the creation of such bodies in New South Wales and South Australia an enormous amount of the Court's work was taken up with the piecemeal application of an increased living wage to all trades.[2]

[1] The power to create them was intended in the Act, but careless drafting made it possible effectively to prevent their creation. See Chapter IV, p. 79 *n*.

[2] It is, of course, also necessary that there should be an automatic increase in all Awards on the Declaration of such a body. In New South Wales, 245 out of 330 awards of the Court in 1920 did nothing but adjust wages to a Board of Trade Declaration [*Report of the Department of Labour and Industries*, 1920].

CHAPTER XI.

THE CHOICE OF METHOD.

The Fixed Minimum Wage—The Board and Arbitration Systems—Conflicting Authorities.

The Fixed Minimum Wage.

The relative desirability of the three main methods adopted by different States for the regulation of wages may now be considered. The determination of the wage by the legislature, which has been called the Fixed Minimum Wage method, may be dismissed almost immediately. Whatever the object of State intervention, this method alone is less satisfactory than regulation by the use of a Board or a Court of Arbitration. It in no way promotes industrial peace; it almost invariably fails to protect the underpaid worker; it does not affect workers who are receiving wages that may for various reasons be unsatisfactory though above the level of the wage mentioned in the Law, which may be altered only by legislative enactment. Serious consequences follow from these defects. In the first place, the measure of protection which it gives is limited, for there has been a general tendency to fix the wage at a low level. The four shilling weekly minimum in New South Wales does little to raise the standard of life of even the worst-paid workers, and even in other parts of Australia, where it is in some cases as high as 35*s.*, it is claimed that the Act is practically inoperative on account of the almost universal application of the higher Arbitration Awards.

In a number of cases the Fixed Minimum Wage has varied with the age of the worker or with the length of his experience in the trade, but this differentiation recognises only approximately variations in skill and efficiency. Nor

does this method usually fix different rates for different trades. In Tasmania a special minimum rate has been fixed for the Laundry trade, differing from the general flat rate, but this is exceptional,[1] and the necessity of inserting in the Fixed Minimum Wage Act the rate appropriate to every trade would render it an exceedingly inconvenient instrument. More serious, however, is the difficulty of altering the rate when once fixed. Every time an alteration is necessary,—and whatever the figure originally adopted, some change will in time be needed,—a fresh Act must be passed. Even if there is no pressure of business or strong opposition which renders it difficult to obtain the passage of an Act when required, the method is cumbersome and not without danger. During parliamentary recesses nothing can be done, the process in any case is long, and a fresh opportunity is given to opponents of the measure to renew their activities. The result has been that the Act tends to remain upon the statute book for a period of years in spite of changing conditions and rising or falling price levels.

This has been the experience of the Fixed Minimum schemes in the United States. In Utah the Act of 1913 instituted a minimum wage of $1·25 per day for adults. By 1917 this rate had not been altered, and according to the Industrial Commission "the minimum wage law should be amended to increase both the minimum and the maximum. The wage established by law was inadequate from the beginning. Since the increased cost of living it is pitifully low, and works great hardship on the girls or women who are forced to accept it."[2] A visit undertaken by investigators of the Bureau of Labour Statistics in 1919 to several employers in Salt Lake City disclosed the fact that persons in receipt of only the legal wage were few, while most establishments expressed the view that the law had been lost sight of or was really of no effect. An unsuccessful effort was

[1] In the Argentine it is only the Act of December 29, 1923, which makes any differentiation according to trades. The Act of March 24, 1923, simply prescribes a minimum of 4·20 pesos a day for all employees over 18 years of age in factories and workshops.

[2] *Report of the year* 1917–18, *Industrial Commission of Utah.*

made in the legislature to secure an advance in the rates in 1920,[1] but by 1924 there was still no change and the wage was described by the Secretary of the Industrial Commission as "ridiculously low."[2] In 1920 the Industrial Commission declared: "There is but one just way to establish a minimum wage law, and that is for the legislature to do as other States have done, to give the Industrial Commission the power to establish Wages Boards."[3]

The experience of other American States which adopt this method is similar. In 1915 the law of Arkansas provided a Fixed Minimum Wage of $7·50 for 54 hours, and authorised the appointment of a Commission to alter the rates when the original rate should prove inadequate to meet the cost of living. Three years later the National War Labour Board which was dealing with a dispute in the laundry industry at Little Rock found the 1915 minimum still operative, and in order to bring wages into relation with the cost of living at the time it was necessary to increase them to $11.[4] In Arizona the original wage of $10 which was fixed in 1917 was not altered until 1923.[5] As a result, during the War it ceased to act as a protective measure, and women's work everywhere commanded a higher rate of pay than the legal minimum. Yet again in Porto Rico there has been no amendment of the low minimum wage of $6 a week which was fixed in 1919.

Even therefore if the original figure set out in these Acts had represented a living or adequate wage, it soon ceased to be such, and it is probable that the extension of State wage regulation by this method will be slight. Already Alberta has abandoned it in favour of the Board method. It neither secures for the worker a fixed real wage, nor is it capable of adaptation to meet the varying needs of individual trades.

[1] *B.L.S. No.* 285, pp. 192–3.
[2] Letter to the author, August 6, 1924.
[3] *Report of the Industrial Commission of Utah, July* 1, 1918, *to June* 30, 1920.
[4] *National War Labour Board, Docket No.* 233, Joint Report of Section *In re Employees* v. *Laundry Owners*, Little Rock, Arkansas.
[5] *Monthly Labour Review, May*, 1923, p. 131.

The Board and Arbitration Systems.

We are left with the Arbitration and the Board Systems. Both have their peculiar advantages and disadvantages.[1] From the preceding chapters it has been seen that neither can be preferred to the other on the grounds of expediency. Against the fact that an Arbitrator can give a decision at once, without having to bring the two opposing sides into agreement, must be set the longer time taken, because of the necessity of hearing many employers and workers instead of a carefully selected representative group. But while the Board System enables several cases to be held at once (unless, as in Tasmania, the same Chairman is appointed to all Boards), whereas under Arbitration, cases have to wait until a judge is free to take them, the latter system is more expeditious because the procedure necessary to the fixing of a rate is not so long and cumbersome as that of the Board System with its proposals, its objections and its reconsiderations. There is thus not much to choose between the two. Under both serious delays have occurred, many of which might have been remedied by the adoption of some of the devices indicated in the last two chapters.

It is sometimes claimed for the Arbitration method that there is more likelihood of a uniform policy than there is when the fixing of wages is left to Boards which vary in keenness, activity, aims and intellectual ability. It is, however, questionable whether uniformity of policy is in itself always desirable. Where the aim of regulation is industrial peace, it does not always follow that it will be attained in one trade by the application of a principle which satisfied another. The causes of unrest are numerous, and

[1] Many attempts have been made, particularly in Australia, to compare the systems. One of the best known is the Inquiry conducted by Mr. Murphy, the Chief Inspector of Factories in Victoria, who in 1915 visited the other States and New Zealand with a view to comparing the efficiency of the two methods, and reported strongly in favour of the Boards (Murphy, *op. cit.*).

Mr. Aves, reporting in 1908, although leaning in favour of the Boards, pointed out that "the suitability or unsuitability of a system of industrial settlement will depend largely upon the particular circumstances under which and because of which it is utilised" (Aves, *op. cit.*, p. 122).

demands of workers and employers vary with the conditions peculiar to each industry. Uniformity would more frequently incense than appease. Where the object is the improvement of the conditions of workers, much will depend upon the interpretation placed upon this phrase. If it is taken to mean the application of a universal living wage, Arbitration at first sight seems an obvious simplification of procedure as compared with the Board method, and uniformity is certainly assured. But in so far as Awards most frequently apply only to unions or firms bringing cases before the Court, uniformity would not be assured unless the Court were given power to make an Award universally applicable—in which case a rate might be fixed on the evidence of what might be an entirely unrepresentative group of the trade. In fact in those States where the Living Wage has been an integral part of the system, there has been a tendency to give this power (Queensland), or to take the work of declaring a Living Wage out of the hands of the Court and give it to a special technical body (New South Wales and South Australia). But where the Living Wage is to be adjusted to the standard of living of a particular trade (in Queensland for example, the cost of living is to be fixed "having regard to the conditions of living prevailing among employees in the calling in respect of which such minimum wage is fixed,"[1]) there is much to be said for the Board in preference to the Arbitration System. The Board System affords more opportunity of obtaining information on the actual conditions of living in the trade concerned.

It is further claimed that the Arbitration System is more likely to ensure industrial peace because it binds workers, as well as employers, to accept the wage decided upon. The Board System merely prescribes a minimum wage and leaves workers free to obtain more if they can. It in no way limits their freedom to resort to striking in order to gain their ends. So long as the Boards deal only with the unorganised trades this freedom is unimportant, for the conditions which warrant the institution of a Board at the same time give a guarantee that the community will not be inconvenienced by the

[1] Section 9(3)d. of the 1916 Act.

activities of workers in striking for a higher wage. By definition, the workers are unorganised. It may, however, be argued that the position is different when the Board method is used to regulate the wages of the organised trades, where the fighting power of workers is as strong as that of employers. It is then unfair to bind one party and not the other.

Such an argument overlooks the fact, pointed out in Chapter VIII, that industrial peace will only be maintained so long as the parties concerned are satisfied that the conditions imposed on them are fair, and better in the long run than they could have obtained by resort to force. Moreover it has been shown that in practice it is very difficult forcibly to prevent people from striking or declaring a lockout. It is indeed significant that in Australia the unions which have caused most trouble and which have held aloof from the Courts have been the most strongly organised, and, therefore presumably those whom it is most desirable to bind. The miners and the shipping workers have always refused to be bound by the decisions of the Commonwealth Court, and these two trades have been the main users of the machinery instituted by the Industrial Peace Act, 1921, which provided for the setting up of essentially "Board" methods in cases where disputes arose. Another big Australian union, the Australian Workers' Union, has given only qualified approval to the Federal Court. It argues that at present it is likely to get as much from the Court as by resort to striking, but there is reason to suppose that once the Union is strong enough it will act independently.[1] In New South Wales, although the Board System is provided for, in practice, with one important exception, the work of the Boards is carried on by the Court. The trades are regulated as a whole and not in the piecemeal fashion of Arbitration, but the work is done by the Court. The exception is the County of Yancowinna (Broken Hill), where the Boards still function. This district is also the most strongly organised.

[1] This argument was forcibly put at the Annual Meeting, 1920. Report in the *Herald* (Melbourne), February 6, 1920.

Thus it seems that in exactly those cases where the need to bind workers is greatest, the Arbitration System breaks down. If industrial peace ultimately depends upon the belief that any particular settlement is just, there is reason to believe that the Board System will prove more successful, in that it introduces a measure of self-government into industry. Under Arbitration the parties only meet when feeling is bad. The cause of meeting is the existence of a disagreement. This tends to give both the worst impression of each other and concentrates attention on the wages question as the only point of contact between them. But under the Board System it is possible to have a standing body which can act as the parliament of the industry. Such a body can deal with many other matters besides wages, and will meet not merely in times of stress. Many of the problems which a self-governing industry would have to solve require technical knowledge and inside information about the special needs of the trade. For such purposes a body of experts is preferable to an independent judge.[1]

Much of course depends upon the attitude of the particular employers and workers concerned, but there is at least the possibility of a fuller and franker discussion of common problems, which may lead to a discovery of common interests. If at any future date there is a change in the organisation of industry in the direction of giving workers more control, it is clear that some form of the "round table" method will be necessitated. The experience of the War in European countries and of the wage-regulating systems in Australia, indicates that in future workers are unlikely to be

[1] Of special importance in this connexion is the power to fix wages for learners and minors, and it can justly be urged that only a Board representative of employers and workers can consider the needs of an industry, particularly with regard to recruitment, and adjust the flow of new labour by regulating the wages offered to minors. Yet in spite of this, in only two American States, Wisconsin and Kansas, is the appointment of a Wages Board essential for dealing with the wages of minors, while in Massachusetts, where a Wages Board is compulsory for fixing the wages of adults, the non-representative central authority is specifically given power to deal directly with minors' wages. In North Dakota and Oregon, no mention is made of the wages of minors in the list of duties proper to the Wages Board, and in the other States where the appointment of a Wages Board is optional, when created it has the same powers as the central authority.

satisfied by mere excellence of wage conditions. With an improvement in economic circumstances and the development of education they will be less likely to remain content with a system which takes from them all creative work. And the growing use of machinery indicates that the only way in which this creative instinct can find expression in modern industry is by participation in those functions usually reserved to "management." This desire for control has more chance of satisfaction under the Board System than under Arbitration, particularly if the powers given to Boards are wide. Whether in conscious realisation of these facts or not, there is a tendency of recent years for States to delegate to the Boards wider and wider powers.[1]

Practically all reports on the operation of the Board System in different countries bear witness to the better feeling engendered between the two sides as a result of meeting together, under conditions different from those in the factory.[2] In many cases attempts are made to cement

[1] Thus, for instance, the Trade Boards Act of 1918, in addition to giving the British Boards wider powers with regard to wage fixing, empowered them to make recommendations to any Government Department respecting the industrial conditions in their trade. The Departments were forthwith to take the recommendations into consideration. The use made of this power varies from Board to Board, but when occasion has arisen, Boards, especially that for the Boot and Shoe Repairing Trade, have made recommendations on factory legislation and fiscal and other matters of interest to their trade as a whole. There is also a tendency for other Departments, particularly the Home Office, to seek the advice of the Boards on certain technical matters such as lighting. Similarly recent Canadian Acts have given the Boards additional powers, while there has been a marked tendency in Australia to delegate more functions to the wage-regulating authorities. See particularly the interpretation placed on the term "Industrial Matters" in New South Wales in 1918 and in South Australia in 1920.

[2] See evidence before the Cave Committee of Mr. Wethered (Chairman of several Boards), the representatives of the Co-operative Wholesale Society, Ltd., Mr. Pascall (an employers' representative), Mr. Fraser (Workers' organiser), Professors Hobhouse and Tillyard (both Chairmen of Boards). The Cave Committee itself concluded that "the operation of the system has contributed on the whole to the improvement of industrial relations. . . . The working of the Trade Board machinery, by bringing the two sides together to discuss wages questions "round a table" has, in most cases, enabled each side to understand something of the other's point of view and so has contributed to the growth of more satisfactory relations between the two sides, and has tended to prevent the occurrence of industrial disputes (p. 23).

Moreover the Joint Committee on the Administration of the Trade Boards in 1921 declared that "the Trade Boards have been a potent

this feeling by the organisation of social functions at which the members of the Boards will meet as human beings and not as industrial opponents. The effect of this better feeling is evident, to give merely one example, in the relatively small number of times the Chairman is under the necessity of giving the casting vote of the Appointed Members on the determination of a rate. It must be admitted, of course, that this tendency to an "agreed rate" does not always indicate a large measure of goodwill. It is frequently evidence of shrewd calculation based on previous discussion with the Appointed Members on the part of both sides as to the vote the Chairman would give if a deadlock resulted. But even here the Board method is preferable to Arbitration. The mere fact that both sides realise that the decision of the Chairman, if necessitated, may go against them leads to a greater readiness to accept a compromise and a narrowing of the margin between the rates which the employers are willing to pay and the workers to accept. The evidence of various Chairmen shows that by persuasive methods, and by giving some indication of the wage which they would be prepared to regard as reasonable, agreement may usually be secured, and the use of the casting vote rendered unnecessary. It is probable that a rate thus fixed will prove more acceptable to all parties, and therefore more easily enforceable, than one arbitrarily imposed by an impartial individual. In so far as the Boards can be made to feel a sense of responsibility for the conduct of their trade their influence must be wholly good. For these reasons, therefore it is probable that industrial peace is more likely to be secured under the Board than under the Arbitration System.[1]

means for securing and maintaining industrial harmony in the trades for which they have been established." The "advantages of mutual discussion by those directly concerned in the issue" were noted by Mr. Aves in 1908, and frequently appear in reply to the various questionnaires sent out by him (*Cd.* 4167 Appendix).

[1] Even Mr. Higgins, probably the strongest advocate of the Arbitration method, admits that it is most successful where the essentially arbitration character gives way to conciliation, when he says "the Court brings them [employers and workers] together as round a table, and compels them, in each array, to consider each other's difficulties, and to deal with proposals on lines of reason rather than might" (Higgins, *op. cit.*,

As a means of assisting low-paid workers, Arbitration has obvious disadvantages. Since the machinery may be put into operation only on the initiative of either employers or workers, and since the Judge may intervene only when he thinks that a dispute is imminent, Arbitration for this purpose is possible only in a country where labour is well organised. It is significant that where the original object of minimum wage legislation was the protection of sweated workers the Board and not the Arbitration method has been generally adopted. Workers who are badly paid have as little time and initiative to give to organised bargaining, as they have surplus money to spend on trade-union subscriptions. Attempts which have been made to raise wages by reliance upon methods that depend for their success on the initiative of workers themselves have failed. In Great Britain, after the repeal of the Corn Production Act in 1921 and before the reintroduction of the Wage Board system in 1924, a form of compulsory conciliation was instituted. The result was a steady fall in the level of wages, unaccompanied by a compensating fall in the cost of living. There was a great decline in union membership on the conclusion of the War, and the unions as a result were able to exercise little pressure to prevent the universal tendency to reduce wages, in some cases even below the inadequate pre-war level.[1] By 1923 agreements had been reached only in thirteen out of sixty-five districts.[2]

The same tendency was observed in France, during the War, when, owing to the inactivity of the Wages Committees under the 1915 Act, home workers had to rely upon industrial agreements as the source of enforced wage increases. Many such agreements were made between employers and workers for the adjustment of wages, both on account of the

p. 140). It is also significant that in New Zealand, where Arbitration has been in operation longer, and perhaps more successfully, than elsewhere, it has been suggested that in skilled trades the fixing of a standard rate needs to be done by a Shop Committee or similar institution (*New Zealand Labour Report for the year ending March* 31, 1920).

[1] *The Position of the English Agricultural Labourer*, by Sir Henry Rew, *Manchester Guardian Reconstruction Number*, October 26, 1922.

[2] Report of a Deputation to the Prime Minister in *Journal of Ministry of Agriculture*, April, 1923.

introduction of the "semaine anglaise" and in order to allow wages to keep pace with the increasing cost of living, and in certain districts schedules of wages were drawn up for workers engaged in the manufacture of military clothing; but these rates seldom dealt with home workers.[1] The result was that in 1920 minimum hourly rates as low as 18 c. (hand lingerie in Correze), or 17·5 c. (embroidery in Puy de Dome, cap making in Rhone) were being paid, at a time when the factory rate was usually more than 1·25 francs per hour and even the average legal rate was between 20 and 60 centimes. If further evidence is needed to show that if unorganised workers are left to themselves or to Arbitration machinery little is done, it can be obtained from Australasia, where inspectors of factories in States which have only Arbitration systems point out that no protection is given to unorganised workers and women, who are usually unable to take the necessary steps to obtain an Award.[2]

Thus as a means of assisting low-paid workers Arbitration is probably less satisfactory than the Board System. But just because the latter is so representative there will be a tendency to put the interests of "the trade" before those of the workers in the trade. Those who are most intimately concerned in the working of any institution are in the worst position to take a wide view of it. If the object of regulation is the improvement of the condition of the workers, the results may be very unsatisfactory. It is too much to expect a Wage Board to commit suicide by declaring: "If any particular industry cannot keep going and pay its employees at least seven shillings a day of eight hours it must shut up,"[3] or: "If the industry cannot pay

[1] The *Report on Wage Scales and Agreements*, published by the Ministère du Travail in 1921 shows that (as far as the first three volumes of the Report are concerned) there were only twelve districts exclusive of Paris, in which the agreements applied specifically to home workers.

[2] See e g. *Report of the Medical Health, Factories and Early Closing Departments, West Australia*, 1915. Women were found in receipt of wages from 12*s*. 6*d*. to 20*s*. per week when the Court of Arbitration Award rate (payable to organised workers only) for similar work was 35*s*. In New Zealand no Award benefited women outside the tailoring trade up to 1908.

[3] Mr. Justice Gordon in South Australia, quoted by Professor Hammond in the *American Economic Review*, June, 1913.

that price it had better stop and let some other industry absorb the workers."[1] Yet there are circumstances in which such a course might be desirable (see Chapter XVII).

A further disadvantage of the Arbitration method is the expense incurred in obtaining an award. This is important, whether the object be an improvement in the position of workers or the maintenance of industrial peace. In both cases it means that the Court will be less used than is desirable. When a claim is brought by a union for an increase of wages it is normally necessary to serve notices upon all employers of workers in the union. If the members are widely scattered this requirement involves considerable expense. The Board method, by providing that cases of rate alteration shall be dealt with by a representative committee of all employers, considerably reduces this cost. Workers in Australia also urge that Arbitration is expensive because it is almost compulsory to employ legal advisers. Although the majority of States in Australia do not allow lawyers to plead in the Arbitration Courts, it is claimed that as employers employ counsel to work up a case, workers must do the same, or stand to lose their case by unsatisfactory presentation before an Arbitrator who is himself of the legal profession.[2] There is no doubt that complaints on this score have been exaggerated, but that the cost of Arbitration Awards is relatively great is undeniable.

It seems therefore that whether as a means of protecting workers, or encouraging industrial peace, the Board System is on balance preferable to Arbitration.[3] There are of

[1] Mr. J. Burnside, *W.A. Arbitration Reports*, pp. 17–18.

[2] In the *Herald* of February 23, 1917, it was claimed that the cost to the union of a recent Federal Award in the Meat Industry was over £1,000. Reference was also made to an alleged "tender," from a solicitor who offered to work up the Federated Iron Workers' case for 2,000 guineas. See also Higgins, *op. cit.*, p. 113.

[3] The continued existence of Arbitration in Australia, where for many years the two systems have existed side by side in neighbouring States, may appear to vitiate this conclusion. But there are special circumstances which explain its persistence in Australia. In the various States keen interest is taken in neighbouring experiments, but unfortunately effects are not always attributed to their proper causes. A period of freedom from strikes in a Board-using State will be followed by a demand for Boards in other States; an outburst of unrest will have the opposite effect, and cause a movement in favour of Arbitration. Thus there is a

course those who argue that the Board System is a lure and a deception, a disguised form of Arbitration.[1] But we have seen that in fact the chairmen of the various Boards do not play as great a part as this fear implies, and the major part of the work of wage fixing is done by the trade itself. It is certainly difficult to see how, even under a socialist scheme, industry could run without making use of the committee system,[2] and as such the Board seems to offer enormous possibilities of development. But for an immediately practical scheme which shall give a measure of protection to all workers and at the same time reap the advantages of the Board System, it is suggested that a system of Boards with the addition of some central body (as was suggested in Chapter IX) should be combined with the periodic declaration of a minimum wage for each sex by that central body, and below which no person should be employed.

Conflicting Authorities.

But whatever be our decision as to the best machinery for wage regulation, there is no doubt about the undesirability of a system whereby any group of workers may be subject to more than one authority. The finest example of what to

frequent change from one system to another. Certainly there seems a general trend in favour of the Board method at the present time (cf. the movements to abolish the South Australian Court, and substitute conciliation machinery, and to adopt Boards in West Australia in 1923 [*West Australian Parliamentary Debates*, January, 1923]. At the Premier's Conference, 1921–2, the majority was in favour of a return to the Board System ("the round table method") while employers are adopting the same view [cf. *Annual Reports of the Sydney Chamber of Commerce*, 1918, p. 67.]. But it is doubtful how far this movement will continue. For while it is becoming more and more clear that a unified social policy is necessary, at least for the Eastern States, their independent feeling is too strong to give the Commonwealth the wide powers of regulating industry within their borders, which a Federal Board System would require. It was with the utmost difficulty that the separate States were persuaded to sanction the creation of a Federal wage-regulating body, and their assent was obtained only by a severe limitation of the powers of the Commonwealth Court, e.g. the power to act on its own initiative and to extend Awards to all members of a trade. As a Board System would need these very powers, it seems likely that the Federal system will continue to be Arbitration.

[1] Cf. Hallsworth, *The Legal Minimum*.

[2] Certainly many writers have used it as an integral part of suggested schemes of reform. Cf. Mr. and Mrs. Webb, *A Constitution for the Socialist Commonwealth of Great Britain*; G. D. H. Cole, *Guild Socialism Restated*; H. J. Laski, *A Grammar of Politics*.

avoid is furnished by the existence in Australia of tribunals which fix wages within the area of each State, over and above which is the Commonwealth Court of Arbitration fixing wages in disputes which extend beyond the borders of any one State. But the same kind of difficulty has occurred in those States such as New South Wales, where at one time Boards were set up both for crafts and for industries, and where Industrial Agreements between registered unions of employers and workers could be made, which the Court had no option but to register and give legal force to, if so requested.[1]

The results of such a situation may be easily imagined. In the first place there was, as we have seen,[2] a deplorable lack of finality. It was possible for a case to be carried from Board to Court and from State Court to the Commonwealth, and this process was encouraged by the judicial ruling that the Commonwealth Court could not make a law inconsistent with a State Award, but that to give a higher minimum wage than that awarded by the State was not making an inconsistent Award.[3] This meant that workers had everything to gain and nothing to lose by taking cases to another Court, and that they were "entitled to have the highest minimum . . . selected out of each award, and thus the employer [would find] himself bound by a composite award really made by neither Court."[4]

Secondly, because the Commonwealth Awards apply only to the parties to a particular dispute, while the State Awards often apply to all persons within a particular area, it not infrequently happens that the same employer may have to pay different rates to different workers because some are members of a particular union and some are not, or that employers in the same district and serving the same market, may be paying different wages because some belong

[1] It is thus possible for sectional agreements completely to nullify the effect of an Industrial Award.

[2] Chapter IV, p. 85.

[3] 8 C.A.R., p. 465, and 10 C.A.R., p. 266.

[4] N.S.W. A.R. [1919], p. 200. Cf. the statements of various judges: "The practice of fighting the employer first in one arena and then in another has become a grave scandal." Judge Pickburn in A.R. [1917], p. 43, etc.

to a particular association and others do not. Such a position necessarily leads to friction, and it has often been difficult to know which Award was actually applicable. A further disadvantage is that the possibility of obtaining a Federal Award reduces the effectiveness of State attempts to control unions by the threat of cancellation of a State Award.

The existence of separate jurisdictions would not, however, have these results if the policies of the several Courts were similar, or if the final tribunal refused to hear cases. But unfortunately the Commonwealth Court has often adopted a different policy from that of the State Courts, in regard to the actual money valuation of the living wage,[1] the declaration of maximum hours per week,[2] the maintenance of the margin of the skilled worker,[3] and the allowance made for other factors in the wage bargain. Hence it has usually been possible, deliberately and advantageously, to choose the Court to which a case shall be brought.

Efforts have been made by State Courts and Boards to minimise the difficulty by commenting severely upon the action of the applicant and refusing to award in certain cases,[4] and it has always been a sore point that the Commonwealth has not given more assistance in this policy.[5] Deliberate conflict between Awards is avoided by the immediate

[1] The New South Wales Court held in 1914 that the 7*s*. of Mr. Higgins was too high as a living wage figure.

[2] Cf. Higgins, *op cit.*, pp 115–7.

[3] During the War both the Federal and New South Wales Courts raised the basic wage, but did little to increase the secondary wage. After the war the State Tribunal maintained the same rule, but the Federal Court decided proportionately to increase the secondary wage [*N.S.W. Year-Book*, 1921, p. 581]. Even in 1908 in the boot trade a flat rate of 8*s*. per day was awarded in New South Wales and Victoria, while the Federal Court gave rates varying from 7*s*. to 10*s*. according to skill (A.R. [1908], p. 83).

[4] Cf. N.S.W. A.R. [1911], p. 209; [1914], p. 221; [1917], p. 198; [1919], pp. 170 and 154.

[5] Cf. the complaints of Judges Rolin and Curlewis in N.S.W. A.R. [1919], p. 200, and Judge Rolin in [1922], p. 143. "In the exercise of what no doubt they conceive to be their duty, the Federal authorities apparently disregard the fact that there are State awards." More recently the Commonwealth has declared its intention to exercise discretion "if members of a union are taking the respondents to different tribunals only to get the best award they could," 15 C.A.R., p. 4.

cancellation of a conflicting Award and the provision that where a State and a Federal Award conflict the latter shall prevail,[1] but there still remains the resulting effect upon industrial stability. In Tasmania an Award by the Federal Court is usually followed by the summoning of a Wages Board to adjust all wages [2] and while unfairness between employers and workers is thus avoided, it is undesirable that one authority should in effect dictate the rates to be fixed by another tribunal unless there is some agreed relationship between them.

The failure of these administrative devices suggests that, while something might be done by a system of conferences between the State and the Federal wage-regulating authorities, the most important requirement is a uniform policy on general principles.

The necessity for a federal court arises out of the political unity of Australia and receives further support from the large measure of economic uniformity existing in the eastern States. But if a system which will allow adaptation to local conditions and at the same time provide for the equal treatment of employers competing in the same markets is desired, a central body, either on Board or Court lines, which shall delegate much of its work to local (State) tribunals but which shall be responsible for the general lines of policy, seems indicated. Various alternative suggestions have been made in Australia with a view to putting an end to the existing unsatisfactory position. The favourite principle has been that of strict demarcation of spheres, and the separation of federal from other industries, but a criticism of such a scheme is implied in the habitual addition to it of a suggested tribunal to settle conflicting Awards.[3] Unfor-

[1] N.S.W. A.R. [1922], p. 164. *Cf.* Section 30 of the Commonwealth Act, and Section 49 of the South Australian Industrial Code.

[2] *Report of the Department of Industry*, 1920–1.

[3] Cf. the resolutions agreed to (but never put into effect) at the Conference of Commonwealth and State Ministers in 1921 [*N.S.W. Parliamentary Papers*, 1922, Vol. I]. The chief recommendations were as follows :—

(1) The State Governments were to make laws under Section 51 of the Constitution referring to the Federal Parliament's powers to make laws with respect to :—

tunately political reasons in Australia are too strong at the present time to sanction the sacrifice of State autonomy which a thorough solution would involve. Meanwhile the possibilities of successful wage regulation are imperilled.

(*a*) The establishment of a Court constituted by the Commonwealth and State Judges with jurisdiction to determine the basic wage, and the standard hours of labour as regards any or all industries. (The term "Judges" to include the President, Chairman, or Deputy President or Chairman of any industrial Tribunal.)
(*b*) Industrial matters as regards federal industries.
(*c*) The establishment of an industrial Court of Appeal with jurisdiction to hear and determine appeals from awards, orders, or determinations of Commonwealth or State Industrial Tribunals or authorities where the Court holds that the exercise of jurisdiction is necessary or expedient for the purpose of harmonising conflicting or competing awards, orders or determinations in different States excepting, however, persons employed by a State or by a State instrumentality.

Federal industries in paragraph (*b*) are to denote such industries as the Court provided for in Section (*a*) may from time to time hold to be federal industries.

(2) The Commonwealth is to pass legislation excepting from the jurisdiction of the Commonwealth Court of Arbitration:

(*a*) All employers of a State or State instrumentality.
(*b*) All industries other than federal industries.

PART III.

PROBLEMS OF PRINCIPLE.

CHAPTER XII.

THE BASIC WAGE.

The Legal Basis—The Basis adopted in Practice—Where no Legislative Guidance is given—Where the Living Wage is prescribed by Law—Where Fair Wages are prescribed by Law—Where the Law requires that Wages shall be based on what the Trade can bear—Where several Principles are laid down in the Acts—Conclusion.

The Legal Basis.

If State wage regulation is to do anything except confirm existing rates, some principle of wage fixation other than the existing one of supply and demand must be adopted. One might therefore expect to find in the laws which set up bodies to fix wages a statement of the principles upon which they were to act. At first, however, the need for a new principle was unrecognised. The judges of the Courts in New South Wales and New Zealand were administering Acts which conferred " very extensive powers whilst affording almost no guidance as to the manner in which those powers [were] to be exercised,"[1] and it was not until 1918 that any alternative principles of wage fixation were embodied in the Acts under which they worked. In fact the judges of both these States, and the Commonwealth Arbitration Court, to whom no legislative guidance has ever been given, have evolved principles for themselves. The process, which was long and often attended by painful results, will be described later in this chapter. Certain other States have never given any instructions to their wage-regulating authorities as to the principles on which they are to proceed. The most important of these is Great Britain, where the Trade Boards have been allowed to pro-

[1] Mr. Justice Heydon in *New South Wales Saw Mills* v. *Timber Yard Employees' Association* (A.R [1905], p. 308).

ceed upon such principles as they might severally adopt. The same holds true of Alberta.[1]

The Living Wage is the most widely prescribed wage-fixing principle. It is now embodied in the wage-regulating Acts of New South Wales, West Australia and all the American States which adopt the Board system, except Massachusetts, in Manitoba, Nova Scotia, and Saskatchewan in Canada, and was in the British Corn Production Act of 1917. The reasons for its popularity are many. It has a wide humanitarian appeal, and provides a full justification for State intervention in the wage bargain. If workers are not being paid wages sufficient for a decent livelihood, affairs are obviously unsatisfactory. In the United States, indeed, the non-payment of living wages is the test of the desirability of setting up a Wages Board. Moreover the workers have found it a convenient measure of the fairness of wages. It is hard to resist a claim that wages which provide less than a Living Wage are unjustifiable, once the word "just" is taken to mean anything other than the wage which would be attained by the unimpeded operation of the laws of supply and demand.

A different principle is laid down in France, Norway and Tasmania.[2] It is based upon a conception closely allied to the Fair Wages of Marshall as elaborated by Professor Pigou. Wages in any occupation are fair when, allowance being made for differences in the steadiness of the demand for labour in different industries, "they are about on a level with the payment made for tasks in other trades which are of equal difficulty and disagreeableness and which require equally rare natural abilities and an equally expensive training."[3] The second principle adopted in the laws of wage-regulating States may then be described as the attempt to ensure that wages shall be Fair in this sense. The French

[1] In effect no real instruction is given in Ontario. It is merely inferred that the wage must not be "inadequate or unfair." Section 13(1) of the Act of 1920 as amended.

[2] The same idea underlies the stipulation for the provision of "reasonable" or "suitable" wages to minors in Colorado, the District of Columbia, Massachusetts, North Dakota, Oregon and Washington.

[3] Pigou, *Economics of Welfare*, 2nd Edition, p 520, quoting Marshall. Introduction to L. L. Price's *Industrial Peace*.

Wages Committees were instructed to fix wages for home-workers equal to the "daily wage generally paid in the district to workers of the same profession, of average skill, working in factories by the hour or by the day, and performing the customary work of the trade."[1] Here the attempt to bring about Fair Wages is clear. It is less obvious but just as real in Tasmania, where the Wage Boards are instructed to take into consideration in fixing wages:—

"(*a*) The nature, kind, and class of work; (*b*) the manner in which the work is to be done; (*c*) the sex of workers and their experience in the trade, and in the case of workers under 21 both their experience and their age; (*d*) whether the work is shift work; (*e*) the hour of the day or night when the work is to be done; (*f*) whether more than six consecutive days' work is to be done; (*g*) whether the work is intermittent; (*h*) any recognised custom or usage in the manner of carrying out the work; (*i*) any matter whatsoever which may from time to time be prescribed." [2]

It is apparent that reflection upon these matters *in vacuo* will produce nothing. It is only by considering the items in relation to what is obtained for similar work elsewhere that the instruction can be given any meaning at all. And in fact, as will be seen later, where this basis is used—and it is much used in fixing the secondary wage in Australia—Boards and Courts often justify the wages they fix by pointing out that work of a similar nature receives a similar remuneration elsewhere. The prescription of higher rates for specially skilled or unpleasant work is quite consistent with the policy of ensuring Fair Wages, for not to take these matters into account would entail the payment of the same rate for work *not* of equal difficulty and disagreeableness, and *not* requiring equally rare natural abilities and an equally expensive training, and by definition an *unfair* wage.[3]

[1] Section 33(*e*) of the Act of 1915.
[2] Section 23(1) of the Act of 1920
[3] Within one trade, this principle is practically identical with the "standardisation" referred to by Mr. Stockett in his *Arbitral Determination of Railway Wages*, and discussed by Herbert Feis in *Principles of Wage Settlement*. "The principle of standardisation is designed to abolish within a given area the multiplicity of rates paid for similar service by the application of one standard rate for each occupation, minor differences in the nature of the work due to varying physical and other conditions being disregarded" (Feis, *op. cit.*, p. 75).

The British Coal Mines (Minimum Wage) Act of 1912 provides another example of a legal instruction to fix Fair Wages. In settling rates, regard had to be paid to the average daily rate of wages paid to the workmen of the class for which the legal minimum rates were to be settled. Its object was to ensure that individual workers should not receive less than the general rate because of "bad places" or causes over which they had no control.

A third wage principle was found in the early laws of South Australia and Victoria. It was a principle which laid especial stress upon the ability of employers to pay a particular wage, and for that reason may be termed the Principle of what the Trade can Bear.[1] In a later chapter the indeterminateness of this phrase will be examined. Here it is sufficient to note that a body adopting this principle would endeavour to fix wages which would not cause any employer to give up his business. In a society where the profits of the marginal employer were very small, this policy would of course lead to fixing rates identical with those arrived at by the free operation of supply and demand. In fact an arbitrary selection among employers has been made, and the principle has been modified into fixing what the more reputable employers in the trade can bear. In this form it is found in the South Australian Factory Act of 1904, Section 4 of which stipulates that the Board "shall ascertain as a question of fact the average prices or rates of payment, piece or time, paid by reputable employers to employees of average capacity. The lowest prices shall not exceed these." The same principle was embodied in the Factory Act of Victoria in 1903 and appeared in the first wage-regulating Act of Tasmania, but the practical importance of the principle in various modified forms was, as will be seen later, much greater than these examples of its use would suggest.

In all the States which have so far been considered only one basis has been prescribed. Several States, however,

[1] This phrase has been adopted not because it is convenient—it is indeed very clumsy—but because it is a phrase very generally used in the same sense in which it is adopted by the wage-regulating authorities.

prescribe more than one wage-regulating principle, and these have sometimes been contradictory. Such conditions are found in Massachusetts, New Zealand after 1918, Victoria, South Australia and Queensland.[1] The same three principles are involved, but the Courts or Boards are instructed to take two or more of them into consideration. In Massachusetts each Board must "take into consideration the needs of the employees, the financial condition of the occupation, and the probable effect thereon of any increase in the minimum wages paid."[2] The Board of Trade in New South Wales, which is charged with the duty of declaring what shall be the living wage, was instructed up to 1922 when considering rural industries to "take evidence on the condition of rural industries and their ability to bear additional burdens and the probable effect upon production, and further [to] take such conclusion into consideration and give effect thereto as far as is reasonable in making its declaration as to living wages to be paid to such employees; [it] may also, if it should think fit, refrain from making such declaration in such occupation." Under the 1922 Act, the Board, when making its wages declarations may not fix a wage less than a living wage, but if it finds, *inter alia*, that serious unemployment has resulted, it may refrain from making an Award.[3] Under the Industrial Arbitration Act of 1921 the New Zealand Court had to take into consideration the conditions affecting trade and industry, and at the same time to fix wages which would enable workers to maintain a fair standard of living. In Victoria the Court of Industrial Appeals is instructed to "consider whether the Determination appealed against has had, or may have the effect of prejudicing the progress, maintenance of or scope of employment in the trade or industry affected by any such price or rate; and if of opinion that it has had or may have such effect, the Court shall make such alterations as in its opinion may be necessary to remove or prevent such effect and at the same time to secure a living

[1] A double basis is also prescribed for the Board of Trade in New South Wales.

[2] *Massachusetts General Laws*, Chapter 251, Section 3.

[3] *New South Wales Industrial Arbitration Amendment Act*, 1922, Section 11.

wage to the employees in such trade or industry who are affected by such Determination."[1]

All these wage-fixing authorities have been instructed to fix wages on the basis both of what the trade could bear and what would be a living wage.[2] Sometimes the Fair Wages basis and the Living Wage are together prescribed. In Norway the rates for commercial employees are to be fixed at such a level that "in view of the standing of the persons affected, and the local conditions they are sufficient to cover the cost of living and maintain the working capacity of the said persons," but "lower rates may be fixed for workers without theoretical training or practical experience, while the Central Council is to see that the rates fixed for separate localities are in reasonable proportion to the rates fixed in other localities".[3] In South Australia also the Boards and the Court must take into account a series of facts similar to those enumerated in the Tasmanian Act of 1920, quoted above, but it is further provided that they "shall not have power, as regards adult employees, to order or prescribe wages which do not secure a living wage."[4]

All three bases are prescribed in Queensland. According to the Act of 1916, "the same wage shall be paid to persons of either sex performing the same work, or producing the same return of profit to their employer," while "the Court shall be entitled to consider the prosperity of the calling and the value of an employee's labour to his employer in addition to the standard of living, but in no case shall a rate of wages be paid which is lower than the minimum declared by the Court."[5]

[1] *Law Relating to Factories and Shops in Victoria*, 1915, s. 175.

[2] The Cave Committee in Great Britain suggested that Trade Boards should aim at "giving protection to the workers in each trade by securing to them at least a wage which approximates to the subsistence level in the place in which they live, and which the trade can bear" (*Report*, p. 28).

[3] Sections 4 and 9 of the Act respecting a minimum wage for lower grade commercial employees.

[4] It seems probable that this same mixture of Fair Wages and a Living Wage is intended in the British Columbia Act, which prescribes that the Board shall fix a wage "proper in the occupation or industry in question, and adequate to supply the necessary cost of living."

[5] Section 8(1) of the Industrial Arbitration Act, 1916. Conflicting instructions are also given in Austria and Czecho-Slovakia, where the Boards have to take into account the difference in local conditions and the mutual competition of different areas in the branch of the industry.

The Basis adopted in Practice.

A survey of the principles which are laid down in the relevant Acts of different countries gives, however, a very inadequate picture of the principles which are adopted in practice. It is quite clear for example that where no guidance has been given the wage-regulating bodies have been forced to evolve their own theories, while in others they have had to choose between conflicting instructions. And even when a single basis is prescribed it has on occasion been departed from. The most important part of our inquiry therefore still remains. But in an attempt to discover the working rules of the various wage-regulating bodies it will be convenient to follow the classifications already adopted.

Where no Legislative Guidance is given.

The most famous of all the wage-regulating bodies which have been given no legislative guidance as to the principles upon which wages are to be based is the Commonwealth Court of Australia. The principles finally adopted by this body are too well known to need detailed exposition. They have been set out in considerable detail by Mr. Justice Higgins, President of the Court from 1906 to 1920,[1] and the widespread influence of the Harvester Decision (see below) and the publicity which has been given to it, have served to focus attention upon the theories governing Awards of the Federal Court.

The first president, Mr. Justice O'Connor, enunciated no clear body of principles, but while not unmindful of the living wage as an influential factor, he tended to emphasise the importance of considering wages paid for similar work elsewhere when attempting to attach a meaning to a "fair and reasonable" settlement.[2] In 1907 Mr. Higgins in his capacity as President of the Court gave a decision under the Excise Tariff Act of 1906, which subsequently governed the

[1] H. B. Higgins, *op. cit.* An excellent account of the early experience is given by Professor Hammond in the *American Economic Review*, 1913, pp. 259–286.

[2] *Merchant Service Guild of Australia* (1 C.A.R., p. 27).

between the basic and the secondary wage, which last would be affected by considerations of what the Trade could bear, and the Fair Wages principle. In fact the Court largely preserved the existing margin between the skilled and the unskilled worker in any particular trade. For a time the Court in practice, if not in theory, abandoned the Living Wage, for after 1911 prices began to rise rapidly, but no corresponding increase was made in the daily wage of 7*s*. During the war some adjustment was made, but until 1920 it was not applied to the skilled worker, whose position therefore in relation to the unskilled grew steadily less favourable.[1]

The present policy of the Court has been set out in thirty-three propositions by Mr. Justice Higgins, many of which are mere detailed elaborations of the general principles. It is a policy of a basic living wage (still determined by reference to the original 1907 decision) plus a secondary wage which is remuneration for " any exceptional gifts or qualifications, not of the individual employee, but gifts or qualifications necessary for the performance of the function, e.g., skill as a tradesman, exceptional heart and physique . . . exceptional muscular training and power, . . . exceptional responsibility."[2] The living wage is under no considerations to be reduced, but the secondary wage may be modified if the economic position of any particular industry justifies such a course.

In New South Wales the Awards of the Court were from the earliest times accompanied by the reasoning which had led to the adoption of a particular rate,[3] and it is thus possible to trace the development of a settled policy, stage by stage. Originally the main care of the Court was to fix a wage which the trade could bear, hesitatingly at first,[4] and later very explicitly. ". . . The first consideration of the

[1] Higgins, *op. cit.*, p. 55. See also *Merchant Service Guild*, 10 C.A.R., pp. 214, 226

[2] Higgins, *op. cit.*, p. 6.

[3] Except for the first few decisions. From September 1902, however, reasons were almost invariably given. Moreover, the reasoning was much more elaborate and detailed than that which accompanied the awards made by, e.g., the New Zealand Court.

[4] A.R. [1903], p. 8; *ibid.*, p. 525.

Court and the vital consideration, is, Do the conditions of the industry permit of an increase of wages?" [1] In 1905 however Mr. Justice Heydon became President, and on his first official appearance he outlined the policy of the Court.[2] He declared that the Court should as far as possible be guided by those considerations which would have influenced the parties under the old system. These considerations he stated to be: the provision of a Living Wage; the value of the work, taking into account "the degree of physical power, or of skill necessary in any particular occupation, the danger to the workman, the unpleasant or pleasant nature of the work"; and "the degree of prosperity existing in the industry in which the dispute occurs." In other words, the Court was to take into account the three principles already discussed, —the Living Wage, the Fair Wage, and what the Trade could bear. In fact however it was impossible that equal weight should be given to all three considerations, and the one which finally triumphed was the Living Wage. This wage was to be the irreducible minimum, and over and above this workers might be awarded an extra amount fixed generally upon the Fair Wages principle. The ability of the trade to bear such wages was considered only in relation to this secondary wage. This policy was continued by the relatively independent Boards during the period 1908 to 1914, after which date they followed the public declarations of the Court until their work was entirely taken over by it in 1917. From 1914 onwards the Court has confined itself to the solution of the problems involved in the application of these principles, the chief being the manner in which the Living Wage is to be adjusted to rising prices, and the margin that is to be allowed to skilled workers.

In New Zealand no principles regarding the basic wage were laid down until 1918. It is therefore necessary to examine the Awards and the reasoning which accompanied them in order to discover what rules were in fact followed by the Court. At first little information was given, but from the end of 1901 onwards the Court began to set out more

[1] Mr. Justice Cohen in the *Marble Workers' Award*, A.R. [1905], p. 219.
[2] A.R. [1905], p. 308.

and more adequately the considerations which influenced it. In common with the Australian Courts, it began by making a very conservative use of the powers. The majority of the early cases consisted of disputes in the organised trades, in which workers asked for increased wages, sometimes backing up their claims by reference to the increased cost of living or to the wages paid elsewhere, while employers urged the inability of their businesses to bear additional wage burdens.[1] As the Court had thus to deal almost entirely with the more skilled and organised workers, the problem of the relation of the legal wage to any recognised standard of living seldom arose. Unless the economic position of the trade rendered such a course undesirable, the Court tended to grant wages based upon the value of the workers concerned as ascertained from the wages paid for the same or similar work elsewhere. In other words, it aimed at awarding Fair Wages except when it could be proved that such action would lead to the extinction of all or a considerable part of the industry. In such circumstances the Court invariably abandoned its Fair Wages theories. Thus in 1901 Mr. Cooper, the then President, announced that the Court was not "justified in so increasing the rate of wages as to destroy or in a large measure cripple an industry upon which so many workers now depend for their livelihood, and in which so many individuals have invested their money."[2] During the next few years this same reasoning was often used by the Court to justify a refusal to increase wages.[3] When fixing a wage for the first time, however, if no question of the ability of an industry to pay was raised, it justified its awards by pointing out that the rate fixed was the same as

[1] See the description of Mr. Broadhead, who was for three years a member of the Canterbury Conciliation Board, and for seven the Secretary of the Canterbury Employers' Association, in his *State Regulation of Labour and Labour Disputes in New Zealand*, p 62.

[2] *The Thames Gold Miners' Case, New Zealand Awards*, Vol. III, p. 15.

[3] e.g. *Auckland Iron and Brass Moulders. Ibid*, Vol. III, p. 84; *Auckland Seamen*, Vol. III, p 90; *Wellington Bookbinders*, Vol. III, p. 346; *Canterbury Woollen Mills*, Vol. III, p. 50; *Waikato Coal Mines*, Vol. IV, p. 99; *Dunedin Seamen*, Vol. VII, p. 50; *Otago Coal Miners*, Vol. VIII, p. 38; *Canterbury Saddlers*, Vol. X, p. 349; *Canterbury Brick and Tile Workers*, Vol XI, p 227; *Canterbury Woollen Mills*, Vol. XIII, p. 177, and *Christchurch Brass Finishers*, Vol XIV, p. 433.

that paid for similar work in other parts of the State. In this respect the Court seems to have been rather an equaliser than a pioneer. In a very large number of cases a certain rate had already been agreed to by employers and workers in a particular district either voluntarily or in a Conciliation Committee, and the Court did no more than extend to workers in other districts the same conditions. Even when the less well-organised and lower-paid workers came before it the Court made little attempt to do anything but fix the rate generally paid elsewhere for the work under consideration. Mr. Justice Sim, President of the Court from 1907 to 1914, is an interview[1] stated that the underlying principle was that of a Living Wage to the unskilled worker. It was assumed that 8*s*. a day was a sufficient wage, and this rate was invariably fixed in the absence of proof of special circumstances. In practice however no attempt was made to analyse what was meant by a Living Wage, or what items the 8*s*. a day was supposed to cover. When any reference was made to the cost of living, it is clear that the Court was not concerned with whether the wage fixed did or did not afford an adequate Living Wage; the award of higher wages when the cost of living in a certain district was higher than elsewhere was merely a necessary part of its attempt to secure that as far as possible the same real wages should be paid for the same service.[2] The 8*s*. a day seems to have been chosen because it was the rate generally paid by non-sweating employers to unskilled workers, and probably because it compared favourably with the 7*s*. adopted by the Australian Federal Court. Over and above this wage the Court allowed about 25 per cent. more for skilled work, the exact amount of the margin depending upon the degree of skill and the economic and other con-

[1] Reported by Professor Hammond in the *Quarterly Journal of Economics*, Vol. 31, p. 426. Professor Hammond's article gives a full account of the early theories of the New Zealand Court.

[2] See, for example, the *Southland Carters. Awards*, Vol. III, p. 691; Vol. VIII, p. 340, etc. In some cases, however, the Court did indicate that it was thinking of a Living Wage rather than a Fair Wage adjusted from place to place on account of the different price levels. These were the *Port Elizabeth Coal Miners*, Vol. XV, p. 534, and *Southland Timber Yards*, Vol. VI, p. 415, and *Canterbury Farm Labourers*, Vol. IX, p. 526.

ditions of the particular industry. While it thus did not award a basic wage bearing a fixed relation to an ascertained standard of living, it did take account of variations in the general level of prices, and in 1912 and 1913 when prices began to rise rapidly it gave increases in wages which allowed workers substantially to retain the same real wages as they had previously received.

The outbreak of war in 1914 was followed by a temporary suspension of the work of the Court, which announced that as far as possible it would refrain from hearing cases until conditions became normal or until it was evident what effect the War would have upon the economic life of New Zealand. In March 1915 it was clear that the Dominion as a whole was singularly free from ill effects, and as employers had refused to make use of the Conciliation machinery since the Court's 1914 Statement, a new Declaration announced that cases would again be heard and that the inability of particular industries to bear additional burdens would be taken into account as previously. The rapid rise in prices had the same effect as elsewhere. It forced the Court to pay much more attention to the cost of living factor, and finally led it to differentiate the lowest grade or 'Living Wage worker' from the more highly paid man, and to adopt a different policy for each. With regard to the former the Court finally and openly adopted a Living Wage standard and the exact amount was stated. In June 1915 it justified an Award given to the Auckland and Suburban Dairymen on the ground that it ensured every worker a reasonable Living Wage,[2] and in the Wellington Marine Cooks' and Stewards' case referred to the wages paid as being "considerably below reasonable living wages according to the standard usually adopted."[3] Later in the same year the Court, in spite of a plea of inability to pay on the part of employers, awarded the lowest-paid employees of the Wellington District Flax-mills an increase of wages on the ground that their existing wage was "inadequate to provide them with a

[1] War Statement, March 26, 1915. *Book of Awards*, Vol. XVI, p. 27.
[2] *Awards*, Vol. XVI, p. 150.
[3] *Ibid.*, Vol. XVI, p. 270.

reasonable living wage."[1] The most important decision was given in April 1916, when in making an Award for the Northern Industrial District Builders' Labourers, the Court again stressed the importance of providing workers with a reasonable Living Wage, and stated definitely that for this purpose they should be paid 1*s.* 3*d.* per hour or £2 12*s.* per week.[2] By the end of 1918 the policy of the basic Living Wage had become so far accepted that when it was proved that many of the Inagahua gold mines were working at a loss and that an increase of wages would certainly close them down, the Court stated its policy thus: "If an industry cannot pay workers a reasonable living wage it is in the interests of the community that it should cease operations"; if its continuance was of national importance the situation should be met by a subsidy.[3]

The old Fair Wages policy of the Court still continued, and when Awards expired it was easy for all industries to obtain the same basic Living Wage. But there was as yet no means of reopening an Award during its currency save by agreement of the parties. The higher paid workers were dealt with in the same way as previously.[4] The Court granted certain increases in the wage either because the cost of living was now greater, or, more frequently, because similar wages had already been awarded in another district, or in a similar trade by agreement, or on the recommendation of a Conciliation Council.[5] The ability of the trade

[1] *Awards*, Vol. XVI, p. 424. See also *Auckland Foremen and Packers*, Vol. XIX, p. 511.

[2] *Ibid.*, Vol. XVII, p. 130.

[3] *Ibid.*, Vol. XIX, p. 1055. Compare the same conclusions reached in New South Wales and South Australia, *infra*, pp. 280 and 291.

[4] i.e., by awarding wages equal to those paid for similar work elsewhere, the Court holding that "nothing is more likely to cause unrest and dissatisfaction than a difference in the wages of workers in the same industry in adjacent districts." *North Canterbury Timber Yards*, etc. *Awards*, Vol. XIX, p. 636.

[5] Cf. *Wellington Private Hotel Workers, N.Z. Book of Awards*, Vol. XVI, p. 21; *Otago Metal Workers, ibid.*, p. 349; *Wellington Laundry Employees*, Vol. XVII, p. 276; *Dunedin Painters, ibid.*, p. 681 (although in this case the Court had regard to the wage paid in the *majority* of districts and not in one particular area where special circumstances had led to the payment of a much higher wage); *Northern District Aerated Waters Employees, ibid.*, p. 1381; *Auckland Tallymen, ibid.*, p. 1387; *S. Auckland Engine Drivers, ibid.*, p. 1392; *Dunedin Electric Workers,*

to bear a particular wage was an important factor in regard to these secondary wages, the Court taking up the point of view adopted by the Australian Courts that increases in prices or bad economic conditions were burdens to be shared by all, but that the lowest-paid wage-earner was least likely to be able to support them and therefore should be relieved as far as possible. Accordingly it often refused an increase to the higher-paid workers but gave it to the lower grade employees.[1] When giving increases which were justifiable only on grounds of increased cost of living, the Court preferred to adhere to the old basic wage, and to give a war bonus, rather than to embody the increase in a new minimum wage.

By 1918 therefore the Court had arrived at a wage policy essentially the same as that adopted by neighbouring Australian tribunals. It fixed a wage for the unskilled worker which was based upon a roughly ascertained standard of living and which was obligatory upon all employers irrespective of their ability to pay. Above this level, wages were to be fixed by reference to the skill of the worker, the conditions incidental to his work, the wages paid to similar workers elsewhere, and the financial position of the industry. From 1918 onwards the State prescribed a new basis which will be dealt with later.[2]

Only one statement may be made with any certainty respecting the wage-fixing policies of the British Trade

Vol. XVIII, p. 155; *Invercargill Tramway Employees*, Vol. XVIII, p. 1189; *Otago and Southland District Tinsmiths, ibid*, p. 1227; *Auckland Provincial Hotel Workers, ibid.*, p. 1275; *Wellington Grocers' Assistants*, Vol. XIX, p 80; *North Canterbury Timber Yards*, etc., *ibid.*, p. 636; *Invercargill Butchers, ibid*, p 683.

[1] Cf. the *Inagahua Gold Miners*, Vol XIX, p. 1055; *Wellington District Flax Mill Employees*, Vol. XVI, p. 349; *Dunedin Soap and Candlemakers, ibid*, p. 460; *Inagahua Gold Dredging, ibid.*, p. 550; *Otago Provincial District Retail Soft Goods Trades*, Vol. XVII, p. 410; *General Male Boot Operatives, ibid*, p 447; *Ohinemuri Gold Mines, ibid.*, p. 954; *Canterbury Drivers, ibid*, p 1120 In one case, *Wellington Saddlers*, Vol. XVII, p. 481, the Court, although the Industry was not expanding, saw no reason why the wages should not approximate to an equality with those in other trades, while it made a new departure in the *Ngahauranga Slaughtermen* (Vol. XVII, p. 966), when it declared that workers should to some extent participate in the increased prosperity which the War had brought to the industry.

[2] See p. 293.

Boards. It is that practically each Board has a different policy, which is very seldom as clear-cut as those we have so far considered. There is for example no accepted Living Wage doctrine as in Australia. Unlike the Boards in New South Wales those in Great Britain have never made more or less elaborate inquiries into the cost of living, and then used the sum so found as an irreducible minimum. No Board has ever proclaimed that if its members could not pay a Living Wage they had better retire from business. And there is no reason why it should. It represents the trade itself, the ordinary members, probably because of their numerical strength,[1] play a much greater part in the deliberations than is elsewhere the case; and both employers and workers are alive to the importance of maintaining the existence of the trade. Moreover, in Great Britain there is no central Court of Appeal which has been forced to elaborate a set of principles to which the Boards must largely conform. The Minister of Labour to whom Determinations are submitted before publication does not hold public hearings, and more attention has usually been paid by him to the effect of the award upon employment and upon the flow of labour as between trades than to the adequacy of the wage to maintain a reasonable standard of life. The Boards have dominated the situation. The cost of living is certainly considered from time to time, but not as a basic factor.[2] That is to say, wages may be altered because of changes in the cost of living, unaccompanied by any inquiry as to the adequacy of the basic wage to support a reasonable standard of living. This distinction between a wage which varies with the cost of living and one which is based on the cost of living is of great importance, but is frequently overlooked.

Much more important is the principle of what the trade can bear. From the evidence of the various chairmen and

[1] Compare, for example, the average membership of a British Trade Board with that of the Australian Boards, e g. 2–4 trade members. Even in Victoria the maximum is 10.

[2] See the evidence of Professor MacGregor before the Cave Committee. "I do not think that any fixation has taken place solely with regard to the cost of living." Question 10,858.

Government officials before the Cave Committee, it is apparent that this is the fundamental consideration. It was indeed suggested by several witnesses that the action of the legislature in prescribing the fixation of wages, trade by trade, necessarily implied that this factor of ability to pay should be paramount.[1] The meaning attached to the term "trade" varied considerably, as will be seen later, but if it was decided that the trade could not bear a particular rate, arguments based upon the cost of living or the wages paid in other trades were unavailing. The weight given to this latter factor varied from Board to Board. According to Professor MacGregor, it received some slight attention,[2] while on the other hand Mr. Addington Willis declared that the Boards of which he was a member always had regard to the rates prevailing in other industries in the district.[3] It is probable that both this factor and that of the cost of living were used to determine, within the limits of what it was thought the trade could pay, the particular wage to be fixed. The character of the deliberations of the Boards is well described in the evidence of Sir A. Hopkinson in describing the procedure of the Cotton Waste Board.[4]

[1] See Evidence of Mr. Wolfe before the Cave Committee—Question 95 onwards. "*Mr. Layton*: Am I right in assuming that you say that the Board did not set itself to fix a rate which could bring the level up to that of other trades, but that it would be based upon what its own trade could bear?—Yes, clearly on what it could bear.

Mr. Layton: In spite of the definition in the Act?—In spite of the definition, but you have to allow for the fact that it was legislating trade by trade, and that in our view indicated that it meant that you had to take that into account." See also the Statement of Prof. Baillie on p. 842, MacGregor, Question 10,859; Lowden, Question 10,157. In replying to questions relating to differential district rates, it is clear that the witnesses always thought in terms of a difference because of differing *trade* conditions rather than because of a differing cost of living. See Sir A. Hopkinson, Questions 10,615, 10,616, 10,628, 10,629; Mr Pascall, 6,764, etc.

[2] *Cave Committee Evidence*, Question 10,861. "So that you have considered both subsistence and the state of the trade?—And the risk of the trade, say in aerated waters, and the skill of the trade.

[3] *Ibid.*, p. 795.

[4] *Ibid.*, Question 10,612. Compare also the evidence of Mr. Wethered, in his statement on p. 812: "While no definite principles have been adopted, there are certain factors which are always in the minds of the Board when considering a rate. These factors may be summarised as follows:—

(1) The cost of living index figure;

(2) The character and economic position of the industry concerned;

"We consider the fact of the cost of living; we consider the rates which are paid in similar employment as near as may be, and all the elements of the case; and then the parties talk it over, and in the result after talking it all over together, we have in that case arrived at what we thought was the fairest minimum rate ultimately adopted by agreement between employer and employed. Then afterwards, when the index figure of the cost of living which had been one element in the case, fell very largely, the point was raised again and the wages have been reduced not exactly in the same proportion, but to some extent owing to the cost of living having been reduced, and also owing to the fact that the trade, instead of being prosperous and well able to pay, had become exceedingly unprosperous. Both elements came in. . . ."

Thus although different weight is given to them by different Boards, the original three considerations which have been found elsewhere are also the most important factors taken into consideration in Great Britain.

In Alberta, while it is stated that the Determinations generally represent a compromise between the views of the interested parties,[1] the same principles play an important part. For example, in 1923, when the wage was reduced from $14 to $12·50 because of the competition of Manitoba and the Eastern Provinces, the Board emphatically declared that "in arriving at this new minimum the question of a living wage was carefully considered, and the Board believe that the principle generally supposed to be involved in fixing a minimum wage, i.e., the provision of a living wage, has not been lost sight of."[2]

In Czecho-Slovakia, where no instructions are given to

(3) Wages paid in other comparable trades;
(4) The nature of the work, and the degree of skill or experience required for its adequate performance;
(5) The relation in which the class of workers concerned stand to other workers in the industry or to comparable workers in other industries;
(6) Whether the workers are customarily piece-workers or time-workers;
(7) The capacity of the industry to pay the rates proposed.
These factors are, however, applied rather as tests of the adequacy or otherwise of the figures proposed, than as strict determinants."
Substantially the same thing is said by Professor Baillie in his Statement on p. 842.

[1] *Canadian Labour Gazette*, February, 1925, p. 96.
[2] *Ibid.*, July, 1923, p. 560.

the Council, the "wage is fixed by a compromise between the parties."[1]

Where the Living Wage is prescribed by Law.

Although in the United States of America the wage-regulating laws require that wages should be based on the cost of living to women workers, the Boards have found in practice that it is difficult to resist the arguments of employers respecting the ability of the trade to pay a particular rate. In accordance with statutory requirements, all the central bodies commence proceedings by an inquiry into the cost of living of women workers in the trade concerned and into the wages actually being received by workers. This information is "taken into consideration" by the Wages Boards. What exactly this phrase implies it is difficult to say. Moreover, the practice of different Boards varies. Sometimes the figures of the Central Authority are accepted, sometimes the members of the Board collect data respecting the desirable Living Wage. In either case the presentation of the figures is followed by a long discussion as to how close an approximation to this rate is possible without "injuring the industry." In other Boards the discussion ostensibly turns on the technical question of what exactly is the cost of living in the particular trade. Both sides will present budgets and usually the variation between them will be considerable.[2] In fact the figures will not be really scientific budget estimates but bargaining figures, and the real discussion turns on what employers say they can afford to pay and what workers, taking into account the attitude of appointed members, declare they are prepared to accept. Where a sacrifice is necessary, the victim is usually the Living Wage, although the fact may not be admitted in so many words. The Board may for example declare that the Living Wage is $12.50 when workers had claimed $15, instead of saying

[1] Letter to author, from the Minister of Social Welfare, September 16, 1925.

[2] In the District of Columbia, for example, the original estimates in the Laundry trade, 1920, were $12 04 (employers) and $19.88 (workers) per week. *Third Annual Report of the Minimum Wage Board for year ending December* 31, 1920.

that the Living Wage is $15 but the state of the industry will not allow a wage of more than $12.50. Even when the cost of living as first suggested by the Commission or some member of the Board is adopted, it is usually only because inquiry has previously shown that it is well within the capacity of the trade to bear it.[1] Yet it would be wrong to assume that the Living Wage is a negligible factor. It undoubtedly gives both parties a *point d'appui*, and prevents the fixing of ridiculously low rates. Moreover, if both parties fail to agree the decision will lie in the hands of the appointed members, who, as non-trade experts, are likely to allow much weight to the considerations underlying the conception of a Living Wage. And it must not be forgotten that behind the Wages Board is the Central Commission with very real powers to intervene when it is not satisfied with the rate fixed by the Wages Board, which is technically merely advisory.[2]

[1] The position in the different countries is shown in the following typical comments upon the Orders fixed. In the District of Columbia the wage in the Printing and Allied Industries was not "a scientific determination based entirely on facts, but rather a compromise of opinion between the two groups, modified as it may be by the opinion of the representative of the public" [*Second Annual Report of the Minimum Wage Board, year ending December* 31, 1919, p. 18]; in California the first tomato rates which were fixed were low because the employers claimed inability to pay [*Bulletin of the Bureau of Labour Statistics, No* 285]. In the telephone and telegraph trade in Texas an agreed living wage finding of $13.60 was reduced to $12 in the final order because employers urged that the higher rate was a threat to the industries of the State; in Minnesota "the cost of living is not the real factor under discussion The wage of $12 now in force . . . was settled upon as a compromise" [Letter from the Superintendent of the Division of Women and Children, Minnesota Industrial Commission, August 5, 1924]; in Wisconsin a rate of 22½ cents was reduced to 22 on the strength of employers' arguments [*Industrial Commission of Wisconsin, Biennial Report*, 1918–20]; in Arkansas, the Order for the Mercantile Industry in Fort Smith fixed a rate of $13 25 "having regard to financial conditions and the probable effect thereon of an increase in the minimum wage paid." The reader who wishes to pursue in more detail the victory of the trade over the living wage will find ample material in the analysis of the various Orders contained in the *B.L.S. Bulletin No.* 285.

[2] Although it usually adopts the recommendations of the Wages Board (see Chapter IX, p. 216), the Commission does intervene when the wage recommended is obviously below the generally accepted living wage standard. Thus in 1920 the Laundry Board of the District of Columbia recommended a minimum of $14.50 at a time when the awards in other trades, based on living wage estimates, were 16·50. The Commission referred the rate back to the Board which finally raised the rate slightly [*Annual Report of the Minimum Wage Board for year ending December* 31, 1920].

In Canada, the Living Wage, where it has been prescribed by law, seems to have been more closely adhered to than in the United States, although here too it is uncertain how far the sum which has been declared a Living Wage is lower than it otherwise would be on account of representations regarding the ability of various industries to bear a particular wage burden. In Manitoba, there was and is still much controversy as to what constitutes a Living Wage, but " when making its findings, the cost of living was the big factor which guided the Board."[1]

In Saskatchewan the wage often bears but a slight relation to any rigid and scientifically ascertained Living Wage. " It is in principle founded upon the capacity of the industry to pay, checked by the cost of living, and allows for the bargaining power of labour to obtain an increased value for services rendered in production and therefore [is] in the nature of a compromise between the parties."[2]

The Living Wage in West Australia and New South Wales, since it has been prescribed by law, has been more strictly adhered to than in the United States. The adoption of a clear dividing line between the primary or living, and the secondary, wage, has made it possible for the Courts firmly to refuse to give any weight to the ability of an industry to pay when the Living Wage is under discussion, while at the same time taking this factor into account when fixing the secondary wage.

For a long time the principle was not called in question, for at least in New South Wales the declared Living Wage approximated to the current wage then being received by unskilled labour. It was during and after the War that the real test came, when prices first rose rapidly and later slumped. In this State the sanctity of the Living Wage was confirmed [3] in 1919 and this attitude was maintained until 1922, by which time the full effects of the trade depression were being felt. In the October of that year the Broken Hill Proprietary Company applied for a reduction in wages

[1] Letter from the Secretary of the Bureau of Labour, June 5, 1925.
[2] Letter from the Commissioner, Saskatchewan Bureau of Labour and Industries, September 3, 1925.
[3] *In re Ferries (Port Jackson and Newcastle Award)*, A.R. [1919], p. 137.

on the grounds that it was making no profits, and reductions were at first allowed,[1] but on appeal the full Court held that no such reductions should have been made, and intimated that if it was impossible for the works to continue to exist and pay a Living Wage, and if it was felt to be of national importance that they should continue, "the workers should not be called upon to pay for the benefit of the community," but the cost should be met by a subsidy out of the proceeds of taxation.[2] Thus the Living Wage as a bed-rock basis remained sacrosanct. Nevertheless as a policy applying to all wages it proved inadequate and had to be supplemented by other principles in fixing the secondary wage.

Where Fair Wages are prescribed by Law.

Instructions to fix Fair Wages, as previously defined, have usually been followed more closely than instructions to fix wages on the Living Wage principle; probably because the basis itself approximates to that unconsciously adopted in unregulated industry, and because the principle allows of a wide variety of interpretation. In France, where it will be remembered that the Committees were instructed to fix wages for home-workers equal to those paid for similar or comparable work in factories, the high prices during the War led some of the more active Committees to question the adequacy of the factory wage and to fix wages which bore some relation to the increased cost of living. These efforts were, however, promptly suppressed. The Minister of Labour directed a special Circular to the Committees pointing out that the customary wage of the district was to serve as the only basis, and that no other consideration was to weigh in fixing the legal wage.[3] Appeals against Awards which disregarded the narrow basis fixed by the Act were always successful.[4] The number of active committees was

[1] *In re Steel Works Employees (Broken Hill Proprietary Company) Award*, A.R. [1922], p. 147.
[2] *In re Steel Employees (Broken Hill Proprietary Award)*, A.R. [1923], p. 14.
[3] Circular dated January 12, 1917.
[4] See my paper on "The Minimum Wage in France," *Economica*, November 1923, p. 242.

very small, and in the majority of Departments the original, and often the only, wage fixed conformed to the limited requirements of the Act.[1]

Little information is available as to the extent to which the Tasmanian Boards take into consideration all the matters mentioned in the Acts (see page 261), but it is significant that a suggestion to set up a central body on the lines of those in other States to declare a Living Wage was rejected. It seems probable that in fixing wages the Boards do in fact look to the value of labour in other occupations as a guide. The same is true of Victoria, although the existence of a Court of Industrial Appeals, which is officially supposed to be guided by the two principles of the Living Wage and the ability of an industry to pay, ensures that to some extent these two factors are taken into consideration. Mr. Murphy, the Chief Inspector of Factories, sums up the position in a footnote to the Act of 1915, where he says (and it is obvious that he is not so much laying down instructions as summarising the operation of existing principles):

"It is the duty of Wages Boards in fixing a minimum wage, and the Court of Industrial Appeals in reviewing their decisions, not to fix the very lowest amount reasonably consistent with existence, but to take the current wages and ascertain what evil exists under that wage, considering the various surrounding circumstances, and then to fix a fair amount. The circumstances to be taken into consideration in fixing a minimum wage must be of a permanent character. The current wage will not be altered for some mere passing temporary or fluctuating cause, such as the operation on the cost of living of a proposed tariff which is being considered by the Legislature at the time. No change should be made in the determination of the Board or the Court, unless on some ground which may reasonably be considered as permanent, or at least likely to last for some considerable time.

"Wages should not be increased in a particular trade where they compare favourably with the wages paid in all other trades in the State, and with those paid in the same trade in other States.

"The Court will not make alterations of any sort in industrial

[1] It is at present impossible to say how far the German Boards have adhered to their instruction to fix wages not lower than those paid for similar work in other localities.

conditions without substantial proof of the existence of some evil, and changes will not be made out of mere benevolence upon conjecture founded mainly on hearsay evidence."

In those American States where the payment to minors of "reasonable" or "suitable" wages is stipulated, an analysis of the Orders which have been published indicates that the meaning attributed to these two adjectives is similar to that placed upon the word "fair" in the phrase "Fair Wages." That is to say, the Boards take into account the opportunities provided by the trade, the possibility of discharge at the end of the period of learnership, the rates paid for similar work in other trades, and all other conditions likely to affect the desirability of the job, and hence the flow of labour into it.[1] For minors' wages cannot be fixed without regard to the future labour requirements of the trade, and it is clearly impossible to know whether a wage is acting as an adequate attraction or deterrent to juvenile labour without considering the wages paid in other trades.

In Ontario the Board is instructed to intervene when wages of any class of employees are inadequate or unfair. In fact, however, the "wage fixed is a living wage set along the line of decent subsistence," and no attempt is made "to directly raise wages in any general fashion."[2]

Where the Law requires that Wages shall be based on what the Trade can bear.

Very few States have instructed their wage-regulating bodies to be guided solely by considerations of what the trade could afford to pay, and in the few cases where this rule has been adopted, the ability of one section only of

[1] Compare the second fundamental principle enunciated by Justice Heydon in New South Wales in 1905 [A.R. 1905, p. 308]: "the Court must keep it [the principle of supply and demand] carefully in view and must apply it so far as it can obtain the necessary information." He then enumerates factors such as skill and other conditions of the occupation "being circumstances which would probably affect the readiness of the labourer to enter on the employment, and which would also be taken into consideration in negotiations between the parties themselves."

[2] Letter to the author from Dr. J. W. Macmillan, Chairman of the Minimum Wage Board, May 22, 1925

the employers, the reputable employers, has been considered. In no case, however, has the principle been retained for long. Introduced into the Victoria system in 1903, it soon proved impossible of administration and was abandoned. It was adopted in the South Australian Act of 1904, but was abolished in 1906, and in Tasmania it remained on the statute book for only one year. This does not mean that the ability of an industry to pay a particular wage is no longer a fundamental principle in many countries; but it is now nowhere the *only* principle prescribed by law.

WHERE SEVERAL PRINCIPLES ARE LAID DOWN IN THE ACTS.

It has been seen that by no means all wage-regulating bodies have adhered to the rules laid down for their guidance in the relevant Acts. When instructions conflict it is obvious that some must be disregarded. In this respect the States now to be considered fall into two classes. In the first of these there is no indication which principle should prevail in case of conflict; in the second conflict is foreseen, and the authorities are advised that "in no case shall less than a Living Wage be prescribed." In this latter group therefore the Acts really instruct the Boards or Courts to fix a Living Wage, together with any addition which they may think justified by the application of other principles.

Of the former class, where the Boards are left to struggle alone with the inconsistencies of the Act and where no instructions are given, Massachusetts is probably the most interesting example. It is here possible to follow up each decision and to trace its history from the formation of the Board to its incorporation in a formal Order, for the Orders are relatively few in number and the Central authority publishes very full accounts of the evolution of each. It will be remembered that the Massachusetts Wage Board was instructed to "take into consideration the needs of the employees, the financial condition of the occupation, and the probable effect thereon of any increase in the minimum wages paid." Only too often did the wage which provided

THE PRINCIPLES ON WHICH WAGES WERE FIXED IN MASSACHUSETTS, 1915 TO 1922.

Board.	Date of Order.	Living Wage for the Industry as agreed by the Board (in dollars).	Wage actually fixed (in dollars).	Discrepancy (in dollars).	Reasons given for the Award.[1]
Brush	1915	8.28	7.75	.53	The Commission was putting into operation a new principle not found in other States.
Retail Stores . .	1915	8.50 "and probably more."	8.50	—	The wage is "as high as stores can pay till present conditions improve."
Laundry	1915	8.77	8.0	.77	The industrial depression and financial conditions were referred to.
Women's Clothing .	1916	8.75	8.75	—	"No evidence being submitted at the public hearing to show that the wages were unreasonable or that the financial condition of the industry forbade such rates, they were established."
Men's Furnishings .	1917	10.45	10.45	—	The employers presented no evidence as to the effect on profits.
Muslin Underwear .	1917	9.65	9	.65	"The industry could not properly be called upon to pay this rate in view of the competition with other States."
Wholesale Millinery	1918	12.50	11	1.50	Unsatisfactory financial conditions were urged.
Men's Clothing and Raincoats	1918	10	9	1	"In the circumstances it would be unwise to impose so heavy a burden upon the industry as the budget determined upon would entail."

Office Cleaners . .	1918	11.54	10.92	.62	Unsatisfactory financial conditions.
Retail Millinery . .	1918	11.64	10	1.64	Trade *could* stand it, but millinery not in a very good condition, and "successful working and justice to employers did not permit of a higher rate"
Candy	1919	12.50	12.50	—	No opposition.
Canning and Preserving	1919	11	11	—	The financial condition said to be able to bear the wage.
Corsets	1920	13	13	—	do.
Men's Clothing and Raincoat	1920	15	15	—	do.
Women's Clothing .	1920	15.25	15.25	—	do.
Paper Box . . .	1920	15.50	15.50	—	It was agreed that there would be no deleterious effect.
Knitted Goods . .	1920	15.30	13.75	1.55	It was found that the existence of competition with other States and the number of firms paying below 15·30 would make the imposition of this rate too abrupt a change.
Office and other Buildings Workers	1921	15.40	15.40	—	The financial condition of the industry would not permit of a *lower* wage, for wages were such a small item in costs.
Minor Lines of Confectionery and Food Preserving	1921	13.50	12.0	1.50	Taking into consideration the amount of unemployment even at the existing wage, it was thought that the industry could not stand the proposed increase.

[1] The quotations in this column have been taken either from the actual Orders to which they refer or from the annual reports on the operation of the Act.

THE PRINCIPLES ON WHICH WAGES WERE FIXED IN MASSACHUSETTS, 1915 TO 1922 (*continued*).

Board.	Date of Order.	Living Wage for the Industry as agreed by the Board (in dollars).	Wage actually fixed (in dollars).	Discrepancy (in dollars).	Reasons given for the Award.[1]
Paper Box . . .	1922	—	13.50	—	Wage determined partly by the cost of living and partly by financial considerations.
Laundry	1922	13.50	13.50	—	" With respect to the financial condition of the industry it is the opinion of the Board that the industry could stand the increase."
Retail Stores . .	1922	14	14	—	No information.
Men's Furnishing .	1922	15	13.75	1.25	Great disagreement on the Board. The fighting ostensibly took place over the cost of a living figure—a compromise award.
Muslin Underwear .	1922	13.75	13.75	—	It was felt that the industry as a whole could pay and that the Board should not consider the few exceptions.
Women's Clothing .	1922	13.97	14.0	—	Evidence as to the financial condition did not permit of fixing a rate *below* the findings of the Board.

[1] The quotations in this column have been taken either from the actual Orders to which they refer or from the actual reports on the operation of the Act.

for the needs of the employees conflict with that which employers declared themselves able to pay. An examination of the Orders made since the inception of the Act proves beyond doubt that in these circumstances the determining factor was the needs of the "industry" and not of the workers. The table on pages 284–6 shows that of the twenty-five Orders issued up to May, 1922, eleven fixed rates of wages from 5 per cent. to 17 per cent. below the cost of living as agreed by the Board, the average being some 10 per cent. below. In all cases the discrepancy was explained by reference to the financial condition of the industry. In thirteen other Orders the agreed cost of living was adopted as the legal rate, but in every case the probable effect of the wage upon the industry was inquired into, and the rate was fixed only when the report was favourable, or when employers presented no evidence of the effect on profits. In one Order (Women's Clothing, 1922), the financial condition of the industry was cited to justify a wage even higher than the agreed Living Wage. The real factor in Massachusetts was undoubtedly the ability of each industry to pay a particular wage; the Living Wage was merely a starting-point, which became the legal wage only if employers could not, or did not wish to, produce proof of their inability to pay it.

The Board of Trade in New South Wales was appointed in 1918 to declare after public inquiry the increase or decrease in the cost of living and the rate of Living Wage for adult employers of each sex in any defined area of the State. No Awards were to be made by the Court of Arbitration for lower wages than the Living Wage thus declared. In 1919 an amending Act required the Board to take evidence upon the conditions of the rural industries and their ability to bear additional burdens in wages and the probable effect of higher wages upon production. This evidence was to be given effect to so far as was reasonable in making a Living Wage declaration, and if necessary the Board could refrain from making a Declaration for rural occupations. This introduced a new principle, which prevented the Board from declaring a Living Wage based wholly upon the needs of the wage earner. Two courses were open. It could

either refrain from making a Declaration, or it could declare a Living Wage modified to suit the economic position of the rural industries. At first it adopted the former alternative, and after holding an Inquiry into the cost of living to employees in these industries in July 1921 it refused to make an Award, partly because of the serious drought and partly because of the difficulty of obtaining adequate and reliable information regarding the cost of living to rural workers.[1] In the following year the Board again opened the question, and in October 1921 declared a Living Wage of £3 6*s*. per week for adult males in rural industries. Three weeks previously the Board had declared a Living Wage of £4 2*s*. for the whole State excluding Yancowinna. As a result of its inquiries it concluded that ". . . if the circumstances now prevailing are sufficient to justify further exemption, then it is apparent that the Board will never be able with any consistency to make a declaration."[2] But although an Award was made, the Board "was forced to consideration of the economic possibilities of a sudden and heavy increase in labour cost of primary production."[3] After a careful examination of the effect of falling prices upon the agricultural community, it concluded that "if wages are kept at their present level while costs decline it must be understood that the standard of life of the wage earner is being improved at the expense of the standard of the community";[4] but "it is inconceivable that it [the Board] should raise the standard of living of a section of employees at the expense of the standard of living of the community generally."[5] Finally a pure Living Wage was abandoned, and the final Declaration aimed "at reflecting, subject to the decline in price levels, the average of the conditions conceded by reputable employers in those (rural) industries.[6] The reason was apparent: "the rate prescribed will not impose a serious additional burden on reputable farmers." Thus the Living Wage was modified to

[1] *Compendium of Living Wage Decisions and Reports made by the New South Wales Board of Trade*, pp. 56–77 and p. 102.
[2] *Ibid.*, p. 104.
[3] *Ibid.*, p. 106.
[4] *Ibid.*, p. 110.
[5] *Ibid.*, pp. 110–11.
[6] *Ibid.*, p. 111.

meet the economic circumstances of the industry.[1] In August 1922 the Board again reviewed the industries but considered the severe drought and the bad harvest prospects a sufficient reason for postponing the making of a new award until the following January. However in November an amending Act took away from the Board the power to make Declarations for rural workers, and the unpleasant decision was avoided.

But the Board, from quite early in its history, realised the probable conflict between any Living Wage it might declare and the ability of particular industries to pay. In its October 1920 Declaration it submitted that it was "bound to consider whether the declaration may react by causing unemployment," and that it could not but be influenced by the relative levels of wages in other Australian States. "While this was not a determining factor, it undoubtedly influenced the Board against any immediate further revision of the standards adopted in arriving at last year's determination."[2] Moreover certain industries, particularly metalliferous mining, made repeated representations as to their inability to pay the declared minimum. The Board was asked to exercise its powers to declare a minimum for the whole or *any part* of New South Wales by exempting certain areas where particular industries were localised from the operation of the rate. This the Board constantly refused to do, insisting that it had no powers to exempt on any but a geographical basis,[3] and referring those industries which claimed exemption to the Court, which in 1922 was authorised to cancel an Award or agreement if it was proved that serious unemployment in an industry would result from its operation. The Board continued, however, to be affected by the economic situation and in October 1921

[1] The Minority Report signed by Commissioners Campbell and McRae declared that "no evidence was tendered during the inquiry as to the actual cost of living." (*Ibid.*, p. 118).

[2] *Ibid.*, p. 33.

[3] See Declaration of October 8, 1921. *Ibid.*, p. 41; Declaration of September 7, 1923, *New South Wales Industrial Gazette*, September, 1923, p 388. From 1920 onwards the only exception to the State-wide award was the county of Yancowinna, and this exception seems to have been due to the cost of living and not to industrial reasons.

reiterated that in addition to evidence of changes in the cost of living it necessarily had regard to "the effect of its determinations and declarations upon the economic balance of industry. . . . The maintenance of a standard relative to a general equilibrium of industrial and economic relations is rather the Board's business, and the intention of Parliament."[1] This interpretation of its functions was reaffirmed in the Declaration of September 1923 in the announcement that "the purpose of minimum wage fixation is the maintenance of a balance in the levels of wages and prices."[2] In fixing a wage of £4 2*s*. the Board made an elaborate survey of the total production of the country and intimated that the standard of the Living Wage would very largely depend upon this factor in the future. In other words, a lower real Living Wage would be declared if the evidence showed that the total production had fallen.

This is a very significant change of policy. It means that the real basic wage of New South Wales is no longer an invariable Living Wage standard adjusted in money values to correspond to the changing level of prices. It is now based certainly on a Living Wage, but that Living Wage is itself dependent upon the economic condition of the country. How low the Living Wage would be allowed to fall in times of depression it is impossible to say. But undoubtedly trade influences in general, but not in particular, will now receive more consideration than previously.

In South Australia a Living Wage had been prescribed by law since 1912. In 1920 the Board of Industry was set up to declare what should be the Living Wage for the whole or any part of South Australia. When the Board had declared a wage, the Industrial Court had no power to fix wages which were less than this sum. The Board of Industry may reopen the question of the Living Wage, when a substantial change in the cost of living, *or any other circumstance*, has in the opinion of the Board rendered such action just and expedient. For the interpretation placed upon these instructions

[1] *Compendium of Awards*, etc., p. 37.
[2] Declaration, September 7, 1923. *New South Wales Industrial Gazette*, September, 1923, p. 388.

it is necessary to review the tendencies of the Industrial Court before 1920, for the president of the Court is also the president of the Board of Industry, and the policy of the two authorities is therefore similar.

It will be remembered that the South Australian system consists of fully operative Boards subject to the appellate jurisdiction of the Industrial Court, and while both bodies are not empowered to award less than a Living Wage, the Boards are instructed also to take into account the determinations of similar Boards in any other State in the Commonwealth and such matters as the skill required for the task, the unpleasantness of the occupation and other similar considerations. The existence of an Appeal Court means, however, that the underlying principles of the system must be sought there and not in the Wages Boards. The double instruction given by the legislature can only imply a basic Living Wage plus any addition which the conditions of the industry and the otherwise determined value of the worker will permit. This theory has in fact been adopted, and the Court has distinguished between the Living Wage and the minimum wage, in the same way as the Commonwealth and New South Wales Courts have done. "The living wage is the bedrock below which the Court cannot go; it applies to all industries irrespective of whether the industry can afford it or not, and, in fact, irrespective of how much such industries can afford to pay."[1] The Court has adhered to this policy and has ruled that where any particular industry cannot afford to pay a wage equal to the national Living Wage standard, no relief can be given as far as the Court is concerned. Like the New South Wales Court, it has adopted the view that the "claims of a struggling industry, which it is desirable to retain in the community, but which cannot pay a living wage, are matters for the consideration of the legislature (or the Government) which in manifold ways may subsidise the industry until it has become established on a sound financial basis."[2] Over and

[1] Judge Jethro Brown, president of the Court and Board in *Australia, Economic and Political Studies*, edited by Meredith Atkinson, p. 203.

[2] *Ibid*, p. 293. Compare the parallel statement by the New South Wales Court in the Broken Hill Proprietary case, quoted *supra*, p. 280.

above this sum a wage may be prescribed which is appropriate to each particular industry, and the matters then considered are those which have been referred to above as the principles of Fair Wages, and What the Trade can Bear. If this were all, it would seem that the real irreducible minimum wage is the Living Wage. In practice the Court has not been unmindful of the economic limitations upon its powers to determine industrial conditions. The Living Wage itself has been subject to alteration. Under the Act the Living Wage is to be based upon the " normal and reasonable " needs of the workers, and the Court has taken the introduction of the word " reasonable " to imply that in declaring a Living Wage it must be affected by variations in the national income. In other words, the reasonable needs of a worker are greater in a community that is prosperous than in one where productivity is low.[1] Thus the policy is the same as that later adopted by the New South Wales Board of Trade, namely a basic Living Wage, enforceable upon all industries, leading, if necessary, to the extinction of some which are unable to pay it, but a Living Wage which is itself related to the total productivity of the whole State.

The Queensland Court in fixing the rate in any calling is " entitled to consider the prosperity of the calling and the value of an employee's labour to his employer in addition to the standard of living, but in no case shall a rate of wages be paid which is lower than the minimum wage declared by the Court." This minimum wage is defined immediately afterwards as a sum " sufficient to maintain a well-conducted employee . . . in a fair and average standard of comfort." It is unnecessary to enter into details respecting the practice of the Court, for the facts have been examined and made available by the Queensland Economic Commission on the Basic Wage.[2] From this Report it appears that the Court has declared two minima, a bedrock [3] Living Wage, which is

[1] See the reasoning of the Court in *The Plumbers' Case*, 1916–18, S.A.I.R. at pp. 120–5.

[2] Part III of the Report.

[3] As elsewhere the Court expressed its willingness in cases of extreme trade depression to rescind or suspend an Award, if employees would agree. But it would not itself force the acceptance of a lower wage.

the same in amount as the Living Wage adopted by the Federal Court, and a minimum wage applicable to industries of average prosperity. This may be departed from if industries are either above or below the average in this respect.[1] The basic wage is therefore a Living Wage plus any addition which the trade can bear.

In New Zealand the Court after the 1918 Act regulated wages throughout the Dominion by a series of Declarations. From that date it was possible for Awards to be altered during their currency, and the Court announced every half year what alterations it would automatically sanction if application were made to it and, from time to time, what sums it regarded as basic wages for different grades of workers. The 1918 Act had prescribed two groups of considerations, the cost of living and any alteration in the conditions affecting an industry to which an Award related. The Court interpreted the Act to mean that in the absence of countervailing considerations wages should in future be increased in correspondence with the increase in the cost of living since previous Awards, in contradistinction to its previous policy of granting to skilled workers increases less than proportionate to the increased cost of living.[2] Moreover, in a number of cases it grouped all skilled workers together, and prescribed a flat rate of 1*s.* 7½*d.* per hour, to which was added a bonus of 2½*d.*, which was to vary with changes in the cost of living. The Amending Act was followed by so many applications for alteration of Awards that the Court in April 1919 felt it necessary to lay down some general principles. In order to preserve uniformity, it fixed basic wages for three classes of workers, and added to these a bonus which was to vary according to half-yearly cost of living pronouncements. This scheme was to be subject to modification to meet special cases or unusual working conditions.

[1] In fact the Court has been reluctant to depart from it downwards, and until 1925 only three such cases of importance had arisen: the *Mount Morgan Gold Mining Co.* [Q.I.G., 1922, pp 35–6], *Employees on Cattle Stations* [Q.I.G., 1922, p. 575] and *Employees on Sheep Stations* [Q.I.G., 1924, p. 595].

[2] Statement of Court, March 6, 1919. *Book of Awards*, Vol. XX, p. 166.

In April 1920 the Court made its famous Gisborne pronouncement. Not only was the bonus increased, but new basic wages were also declared, in consequence of a general shortage of labour and the fact that employers in several districts had by agreements with workers raised the basic wage.[1] The Court stated that in making Awards it would, except in special circumstances, fix these rates, and in amending Awards alter current awards so far as practicable to bring them into line with this Determination.

The Act of 1920, which repealed the basic wage provisions of the 1918 Act, instructed the Court to exercise its amending powers only "after taking into consideration any alterations since the date of the award or agreement in the conditions affecting the industry or industries to which such award or agreement related, and any increase or decrease in the cost of living affecting the workers or any class." The Court was to pay particular attention to the probable effect of its Award upon the continuation of industries, but was in no case to award a wage which would not provide a fair Living Wage for the workers. In December 1920 the employers objected to the Court's declaration of a general increase of 2¼*d.* per hour, on the grounds that, *inter alia*, the industrial and financial conditions of New Zealand were such that it would be unjust to grant the increased wage. The Court, while sympathetic to employers, felt that an increase should be given to the workers, but that it should be as low as possible. It therefore did nothing except adjust the amount of the increase on account of a previous error in the calculation of the cost of living.[2] The Court still insisted that its basic wage of £4 11*s.* gave a fair standard of living.[3]

In May 1921 economic and financial stringency was obvious, and although workers were entitled to a bonus of 5*s.* in respect of the increased cost of living during the previous six months, the Court refrained from awarding it and proposed instead to set it against the practically certain reduc-

[1] *Pronouncement re the Cost of Living*, April 27, 1920, Vol. XXI, p. 513.
[2] See Chapter XIII, p. 323 *n.*
[3] *Judgment re Bonus for March-September*, 1920, *N.Z. Awards*, Vol. XXI, p. 2233.

tion which would appear at the next Declaration.[1] On an appeal from the workers the Court reaffirmed its ruling, on the ground that to grant "even a portion of the withheld bonus would tax many industries beyond their breaking point."[2]

In 1921 an Amending Act was passed, which came into force on the first of May, 1922, and again emphasised the double basis. The Court, in exercising its power to amend, was to "have regard to any increase or decrease in the cost of living since the half-year ended September 30, 1920, and to the economic and financial conditions affecting trade or industry in New Zealand, and all other relevant conditions," and might by general order make such increase or reduction in rates of remuneration payable under the provisions of any award or industrial agreement as it thought just and equitable, "having regard to a fair standard of living."[3] Also the Court was empowered to "make such provision as it considers just and equitable for any class or section of workers, if it is satisfied that by reason of special provisions of any awards or industrial agreements affecting such workers, or of the economic conditions affecting any trade or industry or any other relevant considerations, such class or section of workers should be excluded from the operation of any such general order. Provided that the Court shall not reduce the rate of remuneration of any such worker to a lower wage than will in the opinion of the Court enable such workers to maintain a fair standard of living." The Court decided to adhere to its policy of general pronouncements, and until 1923, when the Act expired, it conducted every half-year an inquiry into the cost of living and the amount by which the bonus was to be correspondingly altered, followed by another inquiry a few days later into the extent to which the economic and financial conditions of New Zealand rendered it advisable to embody the cost of living findings in an Award. The power to exempt particular workers or employers was to be exercised with caution, and

[1] *Pronouncement re Cost of Living Bonus*, Vol. XXII, p. 804.
[2] *Judgment re Cost of Living Bonus, ibid*, p. 938.
[3] *Industrial Arbitration Act*, 1921, Section 9.

the Court intimated that it would have to be satisfied that any reduction granted would not "reduce the rate of remuneration to a lower wage than will enable the workers to maintain a fair standard of living"[1]

Until April 1923 the Court granted the reductions which were justified by alterations in the cost of living, but refused the application of employers for greater reductions, on the grounds that these would depress the minimum below a Living Wage.[2] By May 1923 prices had begun to harden, but the cost of living, calculated as it was on the average prices of the previous six months, indicated a reduction of 2*s.* per week. In view of the more prosperous economic conditions and the fact that many employers had not put the last Awards into force, the Court refused to order a general reduction but intimated that individual cases would be considered on their merits. The same course was also adopted in October 1923, when the Court announced that, on the lapsing of its powers to vary wages with the cost of living, in December, it would revert to its old pre-war policy.[3]

Although so much stress was laid on the standard of living, no attempt was made to analyse its content in any detail. The original 1*s.* 3*d.* per hour was raised on account of the generally increased value of labour to 1*s.* 7*d.*, but the Court resisted all efforts on the part of workers to obtain a definition of the conception.[4] But while it refused to award less than this nebulous standard in any particular case on account of economic or financial considerations,[5] it was

[1] *Judgment respecting the Amending Act*, 1921–2, Vol. XXIII, p. 123.
[2] *Pronouncement of May* 8, 1922, *ibid.*, p. 333; *Pronouncement of December* 4, 1922, *ibid.*, p 964.
[3] That is to say, it fixed wages by reference to those already awarded elsewhere, either by agreement or by a Conciliation Committee recommendation. It was a levelling-up body. See *Wellington Builders*, Vol. XXV, p. 229; *General Licensed Hotel Employees' Award*, *ibid.*, p. 301; *Wellington, etc., Plumbers and Gasfitters*, *ibid.*, p. 563; *General Motor and Horse Drivers*, *ibid.*, p. 858; *Canterbury Threshing Mill Employees*, *ibid.*, p 1271; *General Freezing Works and Related Trades*, *ibid.*, p 1277; *Otago and Southland Brick, Tile and Pottery Makers*, *ibid.*, XXV, p. 1302.
[4] See *Pronouncement of March* 22, 1922, Vol. XXIII, p. 123; that of May 8, 1922, *ibid.*, p. 333; *Christchurch Gas Workers*, Vol. XXII, p. 1274.
[5] The rule was, however, abrogated in the *Waihi Gold Miners'* case, when a temporary adjustment was allowed [Vol. XXII, p. 225].

finally forced by the logic of circumstances to declare that the "actual fair standard of living must vary with the prosperity of trade and industry and the degree of efficiency attained."[1]

In hearing claims for wages above the bare Living Wage, the Court openly stated that its object was to put the skilled trades on a similar footing throughout the Dominion.[2] As a general rule it followed the rates agreed on before Conciliation Committees or conceded by a substantial proportion of the employers. Thus in New Zealand, at least after the Act of 1918 which prescribed a double basis, the real factor was the principle of Fair Wages, accompanied by cost of living adjustments of the wages of the workers who were receiving less than a roughly-estimated Living Wage. When the condition of the trade would not be endangered the cost of living increase was also applied to the workers above this minimum.

A double basis is also prescribed in British Columbia, the Board having to fix the "minimum wage proper in the occupation or industry in question and adequate to supply the necessary cost of living." The Board seems to have adhered pretty closely to the Living Wage basis,[3] although the original order fixed a wage of $12.75 per week when the cost of living at the time was said to be about $16.81.[4] Detailed information is, however, lacking.

Conclusion.

The foregoing examination of the principles upon which the various authorities have based wages may be described as a variation upon three themes. Whatever the principles laid down in the Acts, in practice the States have adhered to one or more of the three bases, the Living Wage, the Fair

[1] *Pronouncement on the Cost of Living*, Vol. XXIII, p. 964.

[2] *North Canterbury Tinsmiths*, Vol. XX, p. 283. See also *ibid.*, p. 18, 1333; 1340 and Vol. XXIII, p. 878.

[3] All the orders fixed roughly the same wage (from $14 to $15), and when a higher rate of $15 50 was fixed for the Fishing Industry, the Board expressly pointed out that this was not due to a higher cost of living than elsewhere, but to the skilled nature of the work.

[4] *Annual Report of the Department of Labour (British Columbia) for the year ending December* 31, 1918, p. 58.

Wage, and the Wage the Trade can Bear. Of these the Living Wage is undoubtedly the most popular.

But, as will be indicated in the following chapter, these three terms have not always been given the same significance in the different countries, while attempts to apply them have involved considerable practical difficulties. The Living Wage obviously raises problems of its own. Among these may be mentioned the determination of the standard of living to be adopted, and the number of persons to be maintained out of it, its adjustment to rising and falling prices, whether it is to vary from trade to trade and from district to district, and the expedients to be adopted when short time is worked. Similarly, in the application of the criterion of what the Trade can Bear, the interpretation to be placed upon the words " trade " and " can bear " is of fundamental importance, while a method of testing an industry's ability to pay must be developed. Finally, in the adoption of the Fair Wages principle such problems as the kind of work with which comparison is to be made, the actual measurement of skill and ability, the elimination of all factors which lead to non-comparable conditions require the evolution of a very special technique, without which the principle would be unworkable in practice, however admirable in general terms. Before, therefore, we can discuss their relative desirability as basic principles we must discover how far it is possible to attach a precise meaning to each, and whether the practical difficulties can be overcome.

CHAPTER XIII.

THE LIVING WAGE.

The Standard to be Adopted—Adjustment to changing Price Levels.

In this chapter the operation of the Living Wage principle in the different countries will be investigated to discover how far the difficulties indicated in Chapter XII have been or can be met.[1]

The Standard to be Adopted.

One of the favourite ways of proving the impracticability of the Living Wage as a basic principle in the determination of wages has been to point to the impossibility of giving any real precision to the term. A phrase with such an elastic meaning, it is claimed, must obviously be condemned from the outset. In spite of this objection it has served as the regulating principle in some Australian States for nearly twenty years, and has played a large part in the determination of wages by certain States in Canada and the United States. This persistence suggests that the concept must imply some agreed and ascertainable standard.

It can readily be admitted that the conception of a Living Wage or a standard of living is vague. But so is the theory that large inequalities of income are bad and should therefore be reduced; so also is the theory that some degree of education is a desirable good and that it should be supplied free to all. These ideas bear but an indirect

[1] In fact, the greater part of the evidence is gathered from Australia and New Zealand, where wage regulation on a living wage basis has been in force longer and more consistently than elsewhere. Moreover, the practice of judges to give reasons for their activities makes it possible to obtain a more accurate idea of the difficulties with which they were faced.

relation to existing economic conditions. We cannot easily explain why they are now strongly held nor why they are acted upon. It is possible to relate them to an increase in general prosperity, or to a broad feeling of sympathy with the less fortunately placed members of the community, or to a higher level of civilisation. But we cannot say why greater prosperity should have led to an emphasis on the unequal distribution of that prosperity, nor why the feeling of responsiblity on the part of the wealthier members of the community for their less fortunate fellow-citizens should have grown as it has. Nor in the practical economic world do these things matter. The important fact is that these feelings do exist, and that they are acted upon by those who are in a position to control economic life. Again, while there is a general feeling that less inequality and more education are desirable, there is no agreement as to the degree of the "less" or the "more." Yet at any given time there is a standard which is so far accepted by the majority of the community that it can be carried into effect. The standard may change from year to year, but at any given moment it is real.

Exactly the same is true of the Living Wage conception. We may not be able to trace its origin—it may be based on no logical philosophy; it may not be absolute, unalterable with time or place.[1] But to point to the existence of different standards in neighbouring States is not to disprove the effectiveness of the Living Wage as a wage-regulating principle.

There is then at any given time a generally accepted idea that there is some more or less vague standard below which no member of the community should be allowed to fall, and that this standard should be provided by the lowest wage. We have to discover how this vague idea of a standard may become translated into terms of commodities and prices. The history of Australia supplies the answer. The Acts

[1] Some idea of the widely differing results obtained by scientific and semi-scientific attempts to translate the phrase into money terms can be obtained from a *Memorandum on the Minimum Wage and Increased Cost of Living*, prepared for members of the National War Labour Board and dated July 12, 1918.

which prescribe the Living Wage, and the words of the judges who originally enunciated the general principle, are vague enough. They assume that the phrases used will convey some meaning to the average citizen. Thus in 1905 Mr. Justice Heydon defined the Living Wage as enough to enable the worker "to lead a *human life*, to marry and bring up a family, and maintain them and himself with, at any rate, *some small degree of comfort*",[1] and later in the same year he spoke of a "*fair* living wage" as an idea which conveyed a definite meaning.[2] Even after various attempts had been made to translate the standard into concrete terms, the various Acts preferred to adopt vague phrases which could more easily be adjusted to the prevailing ideas of what constituted "fair," "reasonable" or "comfort." Thus the West Australian Act of 1912 prescribed a Living Wage which would allow the recipient to live in "*reasonable comfort*," while we find a further variation of the same vague idea in the 1912 Industrial Arbitration Act of South Australia, where the Living Wage is defined as a sum "sufficient for the *normal and reasonable* needs of an average employee living in the locality where the work under consideration is done. . . ."[3] In 1916 the Queensland Act referred to a "*fair* and *average standard of comfort* having regard to the conditions of living among employees in the calling." In 1920 the New Zealand Arbitration Act prescribed "a *fair* living wage," and in the following year the Amending Act spoke of a "*fair* standard of living."

Outside Australia the same lack of precision in the legal definitions is apparent. In Canada the Acts have little more than a brief reference to "the *necessary* cost of living," only Manitoba adding that this shall be at least sufficient to maintain workers in health.[4] In the United States the usual definition is little more precise than in Canada. The

[1] *N.S.W. Book of Awards* [1905], p. 308. In all these extracts the italics are mine.

[2] *Sydney and Manly Ferry Employees* v. *Brown, ibid.* [1906].

[3] This definition was reproduced in the *Industrial Code of* 1920.

[4] Cf. British Columbia Act of 1918, Section 7; and the Manitoba Act of the same year, Section 4. In Nova Scotia and Saskatchewan the wage has merely to furnish "the *necessary* cost of living."

Living Wage must be sufficient to " furnish the *necessary cost* of *proper* living and maintain the health and welfare [of the workers.]"[1]

Similar attempts loosely to define standards have been made by social workers and economists from time to time, but the necessity of using relative terms leads inevitably to a lack of agreement as to the exact standard as measured in goods and services.[2] It does however occasionally happen that an arbitrary detailed standard which is drawn up by an individual becomes widely known and is used as a basis of comparison. To talk for example of the Rowntree Poverty Standard [3] is to use a term which conveys a perfectly definite meaning, because it has been related to an ascertainable and itemised supply of goods and services.

In tracing the translation into concrete terms of the general ideas common to these definitions, careful distinction must be made between the standard as it is consciously adopted at any given time, and that which in effect operates. The latter may be higher or lower than the former, according as the level of prices has decreased or increased since the standard was translated into money. We shall have to deal later with the effects of such changes and the methods of counteracting them.

There are two ways in which a living-wage standard might

[1] Cf. Arkansas Act of 1915, s. 10 ; Californian Act of 1913, s. 6.

[2] Even the detailed definition adopted by the Kansas Court of Industrial Relations suffered from this defect. In the extract which follows the relative words have been italicised. " In all fairness they (the workers) are entitled to a wage which will enable them to procure for themselves and their families all the necessaries, and *a reasonable share of the comforts of life*. They are entitled to a wage which will enable them by industry and economy not only to supply themselves with opportunities for intellectual advancement and *reasonable* recreation, but also to enable the parents working together to furnish to the children *ample* opportunity for intellectual and moral advancement, for education and for an equal opportunity in the race of life. A fair wage will also allow the *frugal* man to provide *reasonably* for sickness and old age " [*Docket No.* 3293 *in the Court of Industrial Relations*. State of Kansas, June 15, 1920, p 10].

[3] In his *Poverty*, Mr. Rowntree drew up a detailed budget which showed that the minimum cost of living was 26*s.* 1*d.* per week. In 1918 in his *Human Needs of Labour* he gave a revised and more generous estimate of 35*s.* 3*d.* (1914 prices). These standards have become widely known as the Rowntree Poverty Standard and the Rowntree Human Needs Standard, and, used before Committees and Boards, have supplied a recognised measure by reference to which other suggested budgets may be compared.

be determined. A particular class of workers may be chosen and the actual expenditure of this class adopted as the normal, or a worker in general may be conceived of and an ideal budget constructed item by item according to the prevailing ideas of what constitutes reasonable comfort. The first is the method of the Australian Courts up to 1920; the second is that of the Basic Wage Commission of that year. The first concrete statement of a standard Living Wage in Australia was the famous Harvester Judgment of Mr. Justice Higgins in 1907. He took the budgets of nine working-class households and the evidence of a land agent regarding rents, added thereto a certain sum for miscellaneous expenditure, and justified the figure so reached by a comparison with the wage paid by reputable employers. The 7*s*. a day which resulted was quickly adopted as a standard both in further Awards by Mr. Higgins and in other parts of Australia. Meanwhile independent attempts were being made by the Boards in New South Wales to obtain a standard. A Budgetary Inquiry conducted by the Carters' Board in 1909 led to the award of 42*s*. as somewhat over a Living Wage,[1] and in 1911 the sum of 45*s*. was awarded by Mr. Justice Scholes and was generally adopted as the Living Wage in New South Wales until 1914.[2]

In 1913–14 the New South Wales Arbitration Court undertook an inquiry into the cost of living, which, in regard to the data used, was far superior to the pioneer inquiry of Mr. Higgins. The Court set out to find "the wage which would do neither more nor less than enable a worker of the class to which the lowest wage would be awarded to maintain himself, his wife and two children in a house of three rooms and a kitchen, with food plain and inexpensive, but quite sufficient in quantity and quality to maintain health and efficiency, and with an allowance for other expenses equivalent to that fixed by Mr. Justice Higgins in 1907."[3] In order to obtain the cost of food and groceries, figures were collected from many sources—from the budgets prepared by the

[1] *N.S.W. Arbitration Reports* [1909], p. 96.
[2] A.R. [1911], p. 608; [1913], pp 85 and 131.
[3] A.R. [1914], p. 22 *et seq.*

British Board of Trade in 1904, and by Mr. Rowntree; from hospitals and institutions; from estimates of the total consumption per head of the community; from shopkeepers and from personal budgets. The result indicated that the allowance of Mr. Higgins had been too generous. Rent figures were obtained by reference to Mr. Higgins' figures brought up to date by the application of the Commonwealth statistician's price indexes, from house agents' returns, figures collected by the union secretary, and individual witnesses. The wage determined from the figures approximated to 46*s.* 6*d.*, but 1*s.* 6*d.* was added by the judge, probably because £2 8*s.* more closely approximated to current Award rates. Thus here too the wage was not entirely an ideal Living Wage, but was closely related to the wage being paid by the average employer who was not sweating his workers. Before we can compare this with the Commonwealth standard two allowances must be made. In the first place, the New South Wales figure was for a family of four and not five; in the second place, prices had risen between 1907 and 1914. If the Harvester wage be adjusted to 1914 prices the result would be a wage of £2 16*s.* 5*d.* for Sydney; the New South Wales £2 8*s.* wage increased to provide for a 5-member family[1] becomes £2 16*s.* The standard in total was practically the same; only its distribution differed. Since however both applied to a society where the average family was the same size, the more accurate New South Wales figure gave in practice a somewhat lower standard to the "average" family. It may have been a recognition of this fact which led Mr. Justice Heydon to add 3*s.* a week to the 48*s.* Living Wage found by the Court. The judge also pointed out that "as prosperity increases the standard of living rises and carries the living wage with it." The extra 3*s.* became known as the "prosperity allowance," and although it was always kept separate, its addition did in fact mean an increase in the standard over that previously adopted.

[1] The New South Wales Court worked on the assumption that one child would count for half an adult. The wage was therefore in respect of 6 units, the Harvester for 7.

The Basic Wage Commission determined "reasonable standards of comfort, not by reference to any one type or group of employees, but by reference to the needs which are common to all employees."[1] It attempted to ascertain "section by section and item by item, what are reasonable standards of comfort in the Commonwealth to-day (and) what each of these items costs to provide."[2] In other words, it attempted to construct an ideal standard. It is impossible to give a detailed description of the methods adopted —they are set out at length in the official Report—beyond stating that the Commission felt that an upward limit was imposed by the probability that the cost of living so determined would become a legal basic wage. It referred to the standards and definitions of the various Courts but departed from them considerably.[3] It is easy to scoff at the detailed budgets evolved by the Commission. That they were arbitrary statements of an ideal wage cannot be denied, but serious efforts were made to relate this ideal to current standards of comfort by reference to the actual budgets of various classes of workers. The relatively high standard is merely a reflection of the economic and political conditions of the time.[4]

Alterations in the standards determined by these two methods could take place either by the adoption of the budget of a different class of worker or by a change in the idea of what it was considered reasonable for a particular worker, or the workers in general, to enjoy. The most usual method has been the latter, largely because the standard worker has usually been "the humblest class of worker." In fact the standards have been consciously altered from time to time. It so happened that the last part of the year 1913 was the high water mark of the general prosperity of

[1] *Report of the Royal Commission on the Basic Wage*, 1920, p. 17.
[2] *Ibid*, p. 13.
[3] They adopted, for example, the 5-room house instead of the 4-room house of Mr. Higgins, on the grounds that the latter was no longer consistent with "current standards of comfort." The final wage of £5 16*s*. adjusted to 1914 prices for Melbourne became £3 7*s*. 9*d*., as compared with the Harvester wage of about £2 13*s*. at that time.
[4] In some cases the regimen adopted was even lower than that suggested by employers.

New South Wales. In 1914 extraordinary conditions were brought about by the War, and in November the lapse of the prosperity allowance was officially proclaimed.[1] Thus the standard was definitely reduced. Further reductions took place in 1915 and 1916, when the judge refused to increase the wage in proportion to the change in prices.[2] An attempt was made by the Board of Trade to return to the old standard in 1918,[3] but it was not until the following year, when the Board conducted a detailed inquiry altering both the content of the wage and the method of adjusting it, that the 1914 standard was not only reached but surpassed.[4]

The 1914 standard thus played a big part as representing the "norm" to which it was hoped always to return. In fact, as we have seen, deviations from it were made, but after 1919 the Board of Trade at each new declaration reaffirmed its intention of maintaining the same standard, even though it recognised that future conditions might force its abandonment.[5]

In New Zealand no attempt was made scientifically to determine the Living Wage, the prescribed 8*s*. probably being adopted because it was generally paid by reputable employers and because it compared favourably with the 7*s*. of Mr. Justice Higgins. A rough-and-ready attempt was made to maintain this standard up to 1914 by slight adjustments

[1] A.R. [1914] p. 298, reaffirmed on January 25, 1915.

[2] In December 1915 prices had risen so that the 48*s* wage should have become 54*s*. But by a special pronouncement the Court declared that for the time being the minimum was to be only 52*s*. 6*d* (A.R. [1916], p. 68). Similarly the Living Wage of £2 15*s*. 6*d*., which was declared in 1916, provided at the prices then ruling a standard lower than that adopted in 1914. (A.R. [1916], p. 332.)

[3] It declared a Living Wage of £3 instead of the £2 18*s*. 6*d*. which the application of the price index justified. But as this index was constructed on the average of the last four quarters, it is doubtful whether at the time of the declaration the £3 represented any advance in standard at all, for the trend of prices was still steadily upward.

[4] The Board adopted £3 17*s*. as the standard, although the money value of the 1914 wage at that time was between £3 3*s*. 2*d*. and £3 7*s*. 2*d*., according to the index figures used. *Compendium of Declarations*, etc., p. 10.

[5] In 1920 it raised the wage to 85*s*., a rate below what was required to maintain the 1914 standard on the basis of prices ruling *at the time*. The different methods used by the Board to calculate increases during the next few years to some extent frustrated its efforts to maintain the standard, but it is probable that by 1923 the wage fixed provided an actually higher standard.

of the money wage. During the War it was deliberately reduced by a determined refusal on the part of the Court to adjust money wages to the rising cost of living, and the declaration in 1919 of a wage of 1*s.* 3½*d.* plus a bonus of 2½*d.* was admitted by the Court to be less than adequate to compensate workers for the increase in prices.[1] In the following year the basic wage was increased to 1*s.* 7*d.* plus an additional bonus of 3*d.* It was the intention of the Court that the bonus with the increase in the basic wage should together compensate for changed prices and restore the pre-war standard.[2] In the following years the standard had a chequered career owing to the difficulties experienced by the Court in finding a suitable method of adjustment to changing prices.

During the last few years there has been a change in the conception of the standard. While the 1914 standard has in practice been adhered to, there has been a tendency to emphasise the dependence of the living wage standard upon the total production of the country. Thus since 1916 it has been held in South Australia that the "reasonable needs of a worker in a community where the national income is high are greater than those of a worker in a community where the national income is low."[3] In New Zealand an Act of 1920 forced the Court to take into account the economic and financial condition of the country in declaring a Living Wage, but until 1922 the old standard was sacrosanct. In that year however the Court made more and more references to the inter-dependence of the Living Wage and total production, and finally declared in November that while it would allow no worker to receive less than a Living Wage *as declared*, yet the "actual fair standard of living must vary with the prosperity of trade and industry and the degree of efficiency attained.[4]

The same conclusion was reached by the New South Wales Board of Trade, which from 1919 recognised that "the stand-

[1] *Awards*, Vol. XX, p. 403.
[2] *Ibid.*, Vol. XXI, p. 513.
[3] Judge Jethro Brown in *Australia, Economic and Political Studies*, p. 203.
[4] *Declaration of December* 4, 1922. *Awards*, Vol. XXIII, p. 964.

ard underlying the wage was not a thing which was stationary" and later intimated that it was closely related to the total productivity of the State. In fact, as we have seen, the Board adhered to the method of altering the wage by reference to prices. An adaptation of a different sort took place in Queensland, where the "living wage" was declared annually, but applied only to industries of average prosperity. This wage was not automatically increased with increased prices. But the real Living Wage which was based on the Harvester standard as a minimum,[1] and applied to industries of less than average prosperity, was so adjusted.

Even so, the reality of a Living Wage concept in regulating wages is not destroyed. It is unlikely that variations in total production will be wide in a given short period, and during that time it will still be possible to decree that no person shall receive less than what is, taking total production into account, declared to be the Living Wage. The change is really little more than a frank recognition of the truth we have already referred to: namely, that the concept of a Living Wage is relative and that, in so far as causes of long period changes may be ascertained they are most likely to be due to changes in the general prosperity of a community. The Living Wage can be given a very definite and precise meaning even though the original interpretation be entirely arbitrary. The adoption of a fixed standard by any particular wage regulator invests the idea with a certain concreteness, which makes it possible to compare different standards and to talk of them as being more or less generous. They do in fact become real concepts which may be adopted elsewhere.[2]

Adjustment to Changing Price Levels.

The importance of distinguishing between the Living Wage standard as consciously adopted by wage regulators and

[1] *Report of the Economic Commission*, p. 30.

[2] The Harvester wage was adopted in the Queensland basic wage and in other parts of Australia. The New South Wales standard was used as a test of the adequacy of New Zealand rates after 1914 (*N.Z. Awards*, Vol. XXI, p. 2233).

that which in fact operates has been already insisted upon. The reason is not far to seek. Wage declarations are made for a fixed period, and intervening price variations may prevent the standard which it was the intention of the wage-fixing authority to enforce from becoming effective in practice. Rising prices mean that the same money wage will buy an ever smaller quantity of goods and services, while falling prices have the opposite effect.

It has been seen in the early part of this chapter how the rapid price changes of the war period constantly distorted the standards deliberately chosen by the wage regulators. The table below indicates vividly the effect of these changes in New South Wales, where at one time the declared Living Wage was 10s. short of the amount necessary to preserve the same standard.

EFFECT OF CHANGING PRICES ON DECLARATIONS OF THE NEW SOUTH WALES BOARD OF TRADE.[1]

Period.	Cost of Board's Regimen adjusted to the Statistician's Index Numbers.	Allowance by Declaration.	Excess (+) or Defect (−) of Allowance.
	£ s. d.	£ s. d.	s. d.
4th Quarter, 1919 .	1 14 2	1 11 4	− 2 10
1st ,, 1920 .	1 16 0	1 11 4	− 4 8
2nd ,, 1920 .	1 18 0	1 11 4	− 6 8
3rd ,, 1920 .	2 1 7	1 11 4	− 10 3
4th ,, 1920 .	1 19 9	1 17 0	− 2 9
1st ,, 1921 .	1 18 4	1 17 0	− 1 4
2nd ,, 1921 .	1 14 8	1 17 0	+ 2 4

Similar difficulties were experienced by wage-fixing bodies in other parts of the world. In Massachusetts the wages fixed by the different Boards were supposed at the time to supply a Living Wage to the workers. Certainly they did no more than this; as we have seen, the wage fixed was rarely in excess of the cost of living budgets presented, and quite frequently fell below it, when employers had argued

[1] The figures deal only with the Board's allowance for food and groceries (*Compendium of Declarations*, p. 42).

that their trade could not stand the payment of a living wage. Even assuming that they were adequate to provide a reasonable standard of living when the Orders were first issued, the following table indicates how their purchasing power had fallen after the lapse of some years. The Boards were very conservative and did not favour frequent meetings, even though prices were rising rapidly.

EFFECT OF CHANGING PRICES UPON THE ADEQUACY OF THE LIVING WAGE IN MASSACHUSETTS.[1]

Trade.	Date when Wage came into Force.	Percentage change in Cost of Living between date of Award and February 1921.	Percentage change in Cost of Living between date of Award and January 1922.
Brush Making . . .	1914	95	71
Laundry	1915	91	68
Muslin Underwear . .	Jan., 1918	40	24
Retail Millinery . . .	April, 1918	24	12
Office Cleaners . . .	May, 1918	24	*
Wholesale Millinery. .	Oct., 1918	12	2
Canning and Preserving	June, 1919	11	2
Candy	do.	11	2
Corset	Nov., 1919	1	−7
Knitted Goods . . .	do.	1	−7
Men's Clothing . . .	do.	1	−7
Women's Clothing . .	March, 1920	1	−7
Paper Box	April, 1920	−10	−16
Office and Cleaners .	Dec., 1920	−3	−12

* By 1922 a new wage had been fixed.

It will be seen that by February 1921 the rates fixed by certain Boards were adequate to supply little more than half the quantity of goods they were intended to purchase when originally fixed. The more recent rates show of course a smaller discrepancy, until those fixed after the end of 1919 had, by 1922, a purchasing power of 7 to 10 per cent. more than had been originally intended. It is clear that as living wages the unaltered Brush and Laundry rates, for example, were entirely inadequate. While the abnormal price vari-

[1] Figures obtained from the *Reports of the Department of Labour and Industries, Division of the Minimum Wage*, 1920, p. 35, and 1924, p. 27.

ations of the war period made it impossible any longer to ignore the effect on the standard, the problem had always existed in a lesser degree since the first adoption of the Living Wage policy.[1]

The history of wage-regulating tribunals during the last ten years, at least in Australia and New Zealand, may almost be described as a series of efforts to grapple with this one overwhelming difficulty. It is not a simple one. Undoubtedly the doctrine of the Living Wage requires that periodic adjustments of the money wage should be made if the standard is to be maintained, and that as far as possible they should exactly compensate the worker for the change in prices *at the time when the wage is paid*. The fact that from time to time the standards have been consciously altered suggests that the actual decision to vary has been and must be largely influenced by wider considerations.

It has long been a fundamental principle with the Australian Courts that Awards should not be reopened but should run their course. It was felt that any other policy would interfere with contracts and introduce a further element of uncertainty into an industrial world already too uncertain.[2] These considerations for long served to weight the scales against any automatic increase of the Living Wage, especially as the judges were at first inclined to regard the war price changes as temporary phenomena. When the falsity of this view became apparent, an attempt was made as far as possible to confine the alteration in the money value of the Living Wage to new Awards. This course was followed by the New South Wales Court when it at length decided to alter the money wage in December 1915.[3] But in 1916 on account of the unsatisfactory nature of the existing situation, whereby workers in allied trades did or did not receive a real Living Wage according to the date on which their Award had been made, the Court allowed new Awards to be re-

[1] Thus in Australia the units of food, groceries and house rent which could be purchased in 1911 for 20*s* cost 17*s*. 7*d* in 1901, 17*s*. 11*d*. in 1907, 22*s*. 1*d*. in 1913, and 22*s*. 10*d*. in 1914 (weighted average for the capital cities). *Commonwealth Year Book*, 1923, p. 608.

[2] See New Zealand *Pronouncement, April* 19, 1919. *Awards*, Vol. XX, p. 403, and New South Wales A.R. [1916], p. 332 and A R [1920], p. 31.

[3] A.R. [1916], p. 68.

opened, although the weekly increase given in such cases was 1*s.* 6*d.* below the new Living Wage declaration.[1] This policy was confirmed after 1918, when current wages were altered by reference to the Board of Trade Declarations.

Similar reluctance to vary existing Awards on account of changes in the cost of living characterised the policy of the South Australian Court. Judge Jethro Brown even hinted in 1919 that if a judge knew that a pronouncement of a Living Wage would involve the reopening of existing Awards, such a position could not fail to exert a "depressing effect" upon his pronouncements.[2] But in the following year the Industrial Code set up the Board of Industry to make annual pronouncements as to the cost of living, and any Award which prescribed a lower wage was automatically to be read as if it did in fact fix the Board's figure.

The same tendency towards automatic and periodic adjustments of the money Living Wage is found in the Commonwealth Court and in Queensland. In the former the Court has since 1923 declared quarterly alterations; in the latter a declaration of the Living Wage was made in 1921 and was revised in 1922, the policy of periodic revisions being formally adopted.

In Great Britain, even in those trades where the Living Wage was adopted as a basis, the same difficulty was not experienced. The Trade Board Orders had never been made for a fixed period of time, and it was therefore easy for amendments to be made. Moreover, meetings of the Boards have always been more frequent than in other countries where the Board system is operative. Several Boards however have introduced the principle of automatic variation with a given movement in the general price index figure.[3] In Canada and the United States little attempt has been made to preserve an unaltered real Living Wage, with the result that, as meetings are not very frequent, large

[1] A.R. [1916], p. 332. For the same reasons current awards were reopened in New Zealand, when the Court was empowered to take into account changes in the cost of living. *Awards*, Vol. XX, p. 403.

[2] *Harvard Law Review*, Vol. 32, p. 897.

[3] e.g. The Boot and Shoe Repairing, Brush and Broom, Chain, Coffin Furniture and Cerement Making, Perambulator and Invalid Carriage, Paper Bag and Paper Box Trade Boards.

disparities between the wage and the cost of living have resulted.

The initial reluctance of judges to increase wages in accordance with changing prices at the beginning of the War, was reinforced by the vague but widely prevalent feeling that increased prices were in some way a part of the war burden, and should therefore be shared by all.[1] It is true that changes in prices during and after the War were largely the result of changes in the volume of currency, brought about by various Governments in their attempts to raise money in a not too obvious way. It was in effect an indirect and unsatisfactory form of taxation. There is therefore a strong case for arguing that the burden of taxation should be shared among the members of the community. But when these changes in price became very marked, the Living Wage was so obviously endangered that an exception had to be made in favour of the "living wage worker."[2] This course of action is entirely consistent with the general taxation policy in those countries where progressive taxation with exemption below certain limits is the rule. It may however be argued that the duties of citizenship may be adequately realised only when accompanied by participation in common burdens and responsibilities. A policy which increases wages with prices, when the increase in the latter is a form of taxation, relieves the living wage earner of all such burdens.[3] The desirability of increasing the nominal Living Wage in these circumstances obviously depends upon one's decision on this wider question. It must not however be forgotten that to the extent that a living-wage worker is thus taxed, his wage will fall short of the Living Wage standard formerly adopted.

The attention paid to the taxation aspect of increased prices marks the beginning of a serious attempt on the part

[1] N.S.W. A.R. [1914], p. 34. Cf. also *N.Z. Awards*, Vol. XVIII, pp. 58 and 408.

[2] As from December, 1915, in New South Wales. Cf. *Statement of the New Zealand Court, March* 6, 1919. *Awards*, Vol. XX, p. 166.

[3] The same argument applies of course to increases based not on general prices but on particular commodities consumed by the workers, which are subject to indirect taxation Here, too, an automatic increase in the Living Wage relieves the worker from his share of the burden.

of wage regulators to discover the causes of rising prices and to make adjustments only when these have been taken into account. The most obvious cause of rising prices at least to a post-war world addicted to the cult of the trade cycle, is an increase in the volume of currency issued by Governments, or an expansion of credits and banking facilities made possible by a reduction in proportionate reserves. The effects of this policy are well known. Trade is stimulated since manufacturers are producing on one level of costs and selling on another, and inflated profits are made by the business community at the expense of the fixed-income class and those whose contracts of service are not capable of immediate adjustment. An automatic adjustment of the basic wage to the anticipated increased prices would therefore tend to abolish this illusory sense of prosperity, and by leading to an immediate increase in the costs of production, which would correspond in part at least to the increase of prices, prevent the fatal process of over-production in relation to demand. A policy which thus flattens out the rising curve of the trade cycle, and similarly shortens the period of depression by reducing wages when prices fall, has much to commend it. Selling prices would still be at a higher level than some costs of production, but a great deal of the surplus gain would be eliminated if wages were adjusted to a fixed standard. And we have seen that by 1923 all wage-regulating countries had come to recognise the reasonableness of this point of view. For once the changing level of prices ceased to be regarded as temporary by every one, alterations in wage rates began to take place without the intervention of the Courts. The expansion of business consequent upon the rising prices meant that employers had to offer higher and higher wages to attract workers,[1] while to the latter a strike became worth while if the resulting increase of wages was relatively large; and rising prices and high profits provided the necessary conditions for successful action outside the Courts. Moreover, it was soon

[1] Compare the reference by the New Zealand Court to the higher wages being paid "voluntarily" by employers, in its Declaration of April 27, 1920. *Awards*, Vol. XXI, p. 513.

realised by the judges that even to employers it would be an advantage to have a regular and anticipated periodic adjustment rather than an irregular series of increases conceded as the result of strikes.[1]

But in the second place, changes in the general level of prices may be due to changes in the volume of production, unaccompanied by any change in the quantity of circulating medium. In these circumstances an alteration of the money wage to correspond to the change in prices is tantamount to a guarantee to all workers of a fixed amount of goods and services irrespective of the amount going to the rest of the community. Such a guarantee is of course implicit in the idea of a Living Wage, but certain States have not felt justified in adhering to an unchanged Living Wage standard. By emphasising the dependence of the latter on the total volume of production, they have in effect refused automatically to alter the money wage with price variations, upwards or downwards. It is no doubt felt that when the community as a whole is worse off it is "only fair" that one section of it should suffer equally with the rest. But as we have seen in discussing the taxation aspects of price variations, the less wealthy people are, the greater will be the sacrifice caused by a proportionate loss of income, and in practice the Living Wage man has usually been exempted from further reductions of his already none too adequate wage. Naturally such a proposition as this is affected by the absolute size of the Living Wage and the general level of other incomes in the community. The lower the former, the stronger is the reason for maintaining its purchasing power. If then the law of diminishing marginal utility can be used in support of the unaltered real Living Wage when reductions are suggested on grounds of "fairness" or justice, what case is to be found for a reduction when production falls? The answer must be sought in the causes affecting productivity. Broadly speaking, we can distinguish two main groups of causes, which are respectively

[1] In Australia it became common to insert in contracts a clause providing for an increase in price if the Court declared an increase in the basic wage. Such an arrangement would be possible only where there was a recognised central authority making declarations at regular intervals.

within, and beyond, the workers' control. If on account of a ca'canny policy, or of deliberate strikes or reduction of output, the general level of production falls, there is a strong case for arguing that an immediate reduction in the Living Wage will give a salutary reminder to workers of the close inter-relation between product and enjoyment.[1] A choice has thus to be made between the maintenance of the standard and a fall in production, and the actual decision will depend upon the particular circumstances of each case.

But production may also be affected by causes which are outside the workers' control, and are not remediable by a reduction in his wage. Where, for example, a strong combination of producers is able to force up prices by monopoly action, it is possible to argue that the Living Wage should be adjusted to the higher prices. A reduction in the standard Living Wage cannot be justified on the grounds that it will tend to increase production, for, as we have seen, the decrease is not within the control of the worker.

Two other considerations, which have influenced the decision to adjust wages to prices, remain. The first is the fear of the vicious circle; the second is the effect of increasing the Living Wage upon all rates above it, usually referred to as the "problem of margins." It invariably happens that an increase in the money Living Wage leads to a demand on the part of other workers for a like increase in order to "preserve the margin of skill." While wage regulators may approve an increase in the Living Wage, they may by no means adopt the same attitude towards the permanent maintenance of the same real wages for all other workers, and rather than risk industrial unrest they may prefer to refrain from adjusting the Living Wage.

It is a common objection to suggested adjustments of the

[1] See in this connexion Sir J. C. Stamp's letter to *The Times*, January 18, 1923. Commenting on the letter, *The Times* of January 19, 1923, says: "The attempt to perpetuate any artificial standard of emolument without reference to earnings has the effect of leading workers to believe that they are not concerned with output, and that the national welfare does not affect them." The danger was, however, realised in Australia long before 1923.

Living Wage to prices that such action will lead only to a further increase of prices and so *ad infinitum*. Reflection shows that this is only likely to happen in one or two definable cases. The argument runs that if workers are given higher wages, manufacturers will retort by increasing the price of their product *pro tanto* and that this increase will be obtained because workers have now more money to spend. But there are serious flaws in this analysis. To test the truth of the 'vicious circle' theory we must carefully distinguish price increases which are due to currency changes from those which are due to changes in the volume of production. In the former, if wages are adjusted so that they have a constant purchasing power, an attempt on the part of manufacturers as a whole to put up prices even above their already enhanced level will fail. For workers will only have received enough to buy their old supplies at the price level existing before the *additional* increase is added by manufacturers. As a result they may buy the same amount as before of some commodities, but they will on that account have less to spend on others. The result will be a decrease in the price of those articles for which demand is elastic, which will balance the increase in those where it is inelastic. Because the increased wages have only equalled increased prices, manufacturers will find that they can still obtain the same percentage profits as before the general rise. Indeed they will get more, unless there is an automatic adjustment of rents and other long term contracts as well. The only conditions under which producers as a whole could pass on the increase so that it resulted in a general increase of prices is by monopolistic action and limitation of supply. Even here it is doubtful whether there would be any special advantage in monopoly. Certainly wage adjustments to prices would not make it any more easy or worth while.[1] Thus it seems that only when an increase in the Living Wage to correspond with changes

[1] In Australia, for example, it is probable that the increase in prices which is so often attributed to wage regulation, is only made possible by the existence of monopoly conditions among employers, and which would have raised prices under any circumstances. Cf. Heaton, *Modern Economic History*, p. 216 *et seq.* (*Revised Edition*).

in the cost of living leads to a fall in production, will the result be a further increase in general prices. This would happen when the initial rise in prices was due to a general decrease in production. To give wage earners a fixed supply of goods and services would then necessarily mean a smaller supply for every one else. If this reduction were considerable so that for example the incomes of manufacturers were reduced, it might so happen that, rather than continue to operate for a very small profit, employers would prefer to retire, or to cut down certain of the less productive sections of their businesses. The result would certainly be a further reduction in the volume of production leading to a further increase in general prices. In practice it is probable that profits could be cut down to quite a considerable extent before this happened. That is to say, a redistribution of income within the community might be enforced, but the relatively greater mobility of capital provides a limit to the indefinite extension of the process.

If wages are regulated by cost of living figures which comprise different commodities from those in which the employer is interested as producer, the index numbers of the two may not always move together. Where the former are higher than the latter, to increase the money value of the living wage would tend to restrict business. Whether this result would be good or bad would depend upon the reason for the disparity in the movements of the two price indexes; if it is due to permanent causes affecting the demand for the product or to greater efficiency of foreign producers, the question becomes one of whether or not the Living Wage is to be enforced in all industries irrespective of ability to pay. As such it is discussed in Chapter XVII. If however the disparity is only temporary it may be convenient to adopt a compromise.

It is one thing to decide that it is desirable to adjust the Living Wage to price changes; it is another to devise ways and means. While the use of an index number is clearly indicated, the various indexes available yield different results. Although these are chiefly technical matters for

the statistician, their practical importance may be briefly suggested.

The ideal method [1] would be to calculate the change in price of each article entering into the standard regimen. But this is practically impossible on account of the immense amount of work involved. Two alternatives have been adopted. The first is to apply the index figures relating to the general level of prices to the total amount of the wage. But the Living Wage is constructed from a fixed supply of certain commodities, and it is possible that changes in the general level of prices will by no means be reflected in these.

A second method is to select certain commodities or groups of commodities which enter into the Living Wage regimen, construct an index, and apply it to the whole money wage. This method is popular in Australia. Its desirability depends upon the extent to which the price changes of the commodities chosen are typical of the remainder, and the proportionate expenditure on the different items remains the same. Thus in New South Wales the Court from 1914 to 1918 and the Board of Trade up to 1919 adjusted the Living Wage by reference to the Commonwealth Statistician's combined figures for groceries, food and house-rent. It was assumed that the "Miscellaneous" item in the 1914 Living Wage would vary in the same proportions as the others. In 1919, however, the Board discovered that this assumption was not justified, and that in fact the variation in the cost of at least one big item of the miscellaneous expenditure—clothes—was greater than that indicated by the combined rent, food and groceries index.[2] Accordingly it was decided that the only fair method was to take the increase in the cost of each item, food and groceries, rent, clothing, fuel and light, and miscellaneous, separately. A comparison of the different methods gave the following result :—

[1] But see below

[2] Declaration of October 8, 1919, Schedule I, *Compendium of Declarations*, p. 12.

	£	s.	d.
1914 wage adjusted by the general purchasing power of money tables, based on food and groceries and all house rents	3	3	2
1914 wage adjusted by the index numbers based on food and groceries and house rents of 4-roomed houses only	3	5	11
By index numbers applied to the separate elements .	3	7	2

The difference was therefore important, and in the following Declaration of October 1920, the new method was again adopted by the Board.[1]

The method of working on the basis of the items enumerated in the original Living Wage standard has been criticised on the grounds that it assumes a fixed regimen of expenditure, whereas in practice rising prices are to a large extent met by economy in purchasing and the use of substitutes. This criticism has been urged against the use of the Com-

[1] *Ibid.*, p. 29. The same discovery was made by the Commonwealth Court, which from 1912 adjusted the Living Wage by reference to the Commonwealth Statistician's Index of the price of Rent and Food. By 1921 it was being used "merely for want of a better guide" [15 C.A.R., p. 20]. For after 1914 it became evident that the price of clothing increased at a greater ratio than necessary rent and food. As a result, first employers and then workers came to doubt the reliability of the index figures used. [Cf. *Australian Letter Carriers' Association* v. *The Public Service Commission*, 9 C.A.R., p. 67; *Federated Artificial Manure Trade and Chemical Workers' Union* v. *Cuming Smith & Company and others*, 9 C.A.R., p. 190; *Australian Commonwealth Public Service Clerical Association and others* v. *Public Service Commissioner and others*, 12 C.A.R., p. 534.] Tables showing the difference resulting from the methods of adjusting by reference to two items and to several, and from the changes in the relative proportions spent upon rent and food on the one hand and clothes and miscellaneous items on the other, may be found in the *Supplementary Report of the Basic Wage Commission*, pp. 98–106. Similarly the New Zealand Court found in 1922 that its old method of using the price changes of food, fuel, light, rent (60 per cent.), clothing (13·5) and miscellaneous (26·5) did not give a true picture of the changing cost of living. It accordingly adopted a new series based on five groups, food, fuel and light, clothing and footwear, miscellaneous and household, and rents. These figures were weighted according to the proportion spent on each as revealed by a family budget inquiry 1911–12 [*Awards*, Vols. XXIII, p. 129, and XXIV, p. 887]. A further difficulty was experienced in New Zealand in determining the rent figure. Since 1911 there had been an appreciable increase in the number of persons owning their own houses (only 41 per cent. of all houses were rented). This was a cheapening in the cost of *housing*, although it involved no reduction in rents and rendered no longer representative the old 1911 apportionment of expenditure between rent and other items [cf. Vol. XXIV, p. 887]. The same difficulty arose in New South Wales [Board of Trade Declaration, August 1, 1924].

monwealth Statistician's indexes by the Australian States.[1] In fact it seems to confuse two separate things, the maintenance of a standard and the alteration of a standard in conformity with altered circumstances. It is true that increased prices may cause the careful housewife to economise rather more than usual, and it may force her to substitute margarine for butter, and a lower quality of other commodities for the better quality she had previously enjoyed. But this argument does not prove the undesirability of increasing the Living Wage in proportion to the increase in the prices of commodities in the standard budget. If the Living Wage originally prescribed butter and commodities of good quality, then not to alter the wage so that these can still be obtained is to alter the standard. This course may be desirable for various reasons, but it should be openly recognised for what it is, and should not be supported as being a scientific adjustment of the Living Wage to the cost of living. Once the Living Wage ceases to be anything more than a physiological minimum, it is true that economies may be enforced until it is again reduced to that level. But to argue that each different level of expenditure gives the same standard, is to disregard the real reduction in standards that is taking place.

It is no doubt possible to argue that some commodities are so exactly substitutable for others that the change means no alteration in standards. Where this is so the "regimen" argument has some validity. But as a rule the Living Wage is so constructed as to debar the possibility of such substitution, while the number of *exactly substitutable* goods is in any case small.[2] An increase in the free supply of schooling, milk, transport, etc., which has occurred during the period under review should be allowed for in calculating price increases. But this factor has received very little

[1] Cf. N.S.W. A.R. [1914], pp. 38 and 39; [1916], p. 332; [1917], p. 127; *N.Z. Awards*, Vols XXI, p. 2233; XXII, p. 804. *South Australia Awards*, 1916–18, p. 55.

[2] The New South Wales Board of Trade gave anxious attention to this point, but decided that "any estimate of the savings effected by such readjustment of expenditure without lowering standards must necessarily be conjectural," and pointed out that no tribunal had yet been able to obtain a reliable estimate [*Compendium of Declarations, etc.*, p. 28].

attention. There is no doubt that long-period changes in the composition of even the food budget do take place, and these may be allowed for only by vigorous periodical inquiry into actual budgets. But where the changes are due to sudden price alterations, it is very doubtful whether substitutes do in fact bring the same degree of comfort.

Two important questions remain. What period is to serve as the basis for calculating prices? and how frequently are alterations to be made? With regard to the first point, the main choice is between a price level based upon that ruling in the past, or upon that anticipated for a future period. While the majority of States at first calculated price changes on the basis of prices ruling during the previous year, there has been a marked tendency, for reasons which will appear, to adopt a more and more recent period, and in some cases to alter the Living Wage by reference to the anticipated future price level.

Thus the Commonwealth Court until August 1919 adopted the figures for the average of the previous calendar year, and in 1919 fixed wages on the basis of the figures for the year 1918. But even at that time Mr. Justice Powers, who was then Deputy President, was conscious of the inadequacy of a wage so calculated to meet current needs. He accordingly took the average cost of living for the nearest twelve months before the Award. Rapid changes in prices showed that even this average was inadequate, and from 1921 the figures of the last quarter were used as a basis, while an extra 3s. was given to workers to compensate for any lag which might have occurred. The same reaction away from the figures of a distant past took place in New South Wales and South Australia.[1]

[1] In New South Wales the Court used the average of the last four available quarterly cost of living returns, until October, 1919, when figures relating to the last full half year preceding the Declaration were used [A.R. [1916], p. 93, and [1917], p. 127; *Compendium of Declarations*, p. 14]. Even on this basis wages lagged behind prices, and in October, 1921, the Board adopted the last quarter prior to its Declaration. In the Award six months later, figures referring to the cost of living between the two Declarations were used [I.G., May 31, 1922, p. 1183]. Similarly in South Australia the Board of Industry gives preference to prices over at least a quarterly period, although current prices are regarded as relevant evidence [Declaration of August, 1921].

Wage regulators have long fought shy of attempting to prophesy future price levels, partly because of the technical difficulties involved, and partly because it was felt that "the causes of inflation were temporary and of doubtful valency over the wage-period in contemplation, and that, with the probable failure of those causes at a later date in the wage-year, the rise and fall of the curve of prices over the whole period would give a median level of prices equivalent to the average of prices of the last calendar half year preceding the declaration."[1] But the Board of Trade in New South Wales was finally convinced that this compensating fall in prices did not in fact take place. Moreover, even had the losses and gains exactly balanced, it was clear that a shortage of food and necessary supplies in one period cannot be compensated by a surplus in another.[2] Accordingly in September 1923 the Board fixed the Living Wage not only by taking into account the trend of prices during the previous period but also by making a forecast of what prices would be during the coming period. In fact its estimate proved to be slightly generous.[3] From that time onward the Board has continued to change the Living Wage by cautious speculation on the course of prices in the

[1] N.S.W. *Compendium of Declarations*, p. 42.

[2] This was certainly not realised by the New Zealand Court when, discovering in November, 1920, that a mistake had been made in the calculation of the increase during the previous years, it determined to balance an earlier over-payment by a later under-payment. As compared with the previous period workers were entitled to an increase of 9*s*. a week. But not only was this reduced to 5*s*., because 5*s*. was justified on the correct method of estimating increases since 1914; the Court also deducted a further 2*s*. to balance the payment during the past six months of 2*s*. too much [*Awards*, Vol. XXI, p 2233]. At the next revision an increase of 3*s*. was indicated which, together with the 2*s*. which had been previously withheld, entitled workers to 5*s* But as prices were tending to fall and financial stringency was becoming obvious, the Court refused to award the 5*s*. and promised to set it off against the reduction which it anticipated the September figures would show [Vol. XXII, p. 804]. To the indignant objections of the workers who felt they were losing on both swings and roundabouts the Court replied that they would probably enjoy a larger purchasing power in the future and that stabilisation of the money wage would permanently improve the workers' position [Vol. XXII, p. 938].

[3] It fixed a wage of £4 2*s*., which was 4*d* a week more than the wage shown to be necessary when the cost of living figures were published at the end of the period.

future. In this process the movement of past prices is but one of many factors to be considered.[1]

There is little doubt that an intelligent anticipation of future prices is the most satisfactory basis on which to adjust the money value of the Living Wage. In Australia the experience of the war showed how unsatisfactory was the method of adjustment by reference to a past period, even when this past period was very recent.[2] While the quarterly average was more satisfactory as more likely to approximate to the price level of the future quarter, it was apt to prove unreliable because it unduly emphasised seasonal fluctuations in prices. In fact from 1914 to 1924 seasonal price variations were probably negligible as compared with the secular trend, but in a time of greater stability they become important. The essential fact remains that under any system of adjustment by reference to past prices workers either do not receive a Living Wage at any given period, or, if prices are falling, the wage is more than adequate to supply the old standard.[3]

We have already seen that from a wider point of view adjustment of wages by reference to expected future prices will have a favourable result in evening out the curves of the trade cycle. The more closely wages may be approximated to their old purchasing power, the greater will be the effectiveness of this policy. The anticipation of future prices is not easy, especially when in fact they will to some extent be influenced by the wage actually fixed. Exact accuracy cannot be expected, but modern economic knowledge with its more detailed studies of the trade cycle and its business barometers and bureaux should simplify the task of the wage regulator.

[1] Board of Trade Declaration, March 3, 1924

[2] Indeed, the various alterations in the method of calculating the changes were relatively disadvantageous to the workers. When prices were rising a distant period was adopted with the result that wages were slow in rising; when prices fell it so happened that a shorter period was being used, and thus wages fell much more rapidly than they had risen.

[3] Cf. also the calculation of the British Civil Service bonus. In October 1920 the Ministry of Labour index-figure was 164; the bonus was calculated on a figure of 135. By June 1921 the index-figure had dropped to 119, but the bonus was calculated on 165. Under this method of adjustment the bonus rises in summer when the index falls, and falls in winter when the index rises.

Just as there has been a tendency to take a more and more recent basic period for determining changes in the money living wage, so wage regulators have come to adjust wages more frequently. It was only to be expected that the initial reluctance of the Courts to alter wages during the currency of an award should have weighted the scales in favour of infrequent alterations. The experience of the war period finally proved the necessity of adjusting the Living Wage at least once a year if it was to have any real meaning.[1] But even an annual revision which was adopted in the Commonwealth and New South Wales became unsatisfactory about 1920, and efforts were made to adjust money wages more frequently, in order to relieve workers and to prevent the violent changes in wage rates which had characterised past Determinations.[2]

Thus in New South Wales the Judges of the Court made practically annual Declarations during the War, as did the Board of Trade from 1918 to 1921. But in that year the Board announced its intention of declaring the living wage every half year, and asked for and in 1922 obtained power to make quarterly adjustments. In fact the intervals between recent Awards have been about six months. In 1920 the Industrial Code made an annual revision of the money wage legally obligatory in South Australia, and a special Amending Act in 1921 shortened the period to six months. Similarly in the Commonwealth the approximately annual alterations were replaced in December 1921 by quarterly adjustments of the Harvester Wage, as suggested by the Basic Wage Commission.[3]

[1] As late as December, 1916, Mr. Justice Scholes refused to make an Award for less than two years, although the effect of prices on the cost of living was urged as a reason for a twelve months' Award (N.S.W. A.R. [1916], p 506). In the following March, Mr. Justice Pickburn refused to admit that three years was too long a period (A.R. [1917], p. 73).

[2] In New Zealand from 1918 to 1923 half-yearly cost of living declarations were made by the Court. After 1923 the Court reverted to the old policy of refusing to amend Awards during their currency except with the agreement of both parties

[3] *Report*, p 56. The Queensland Commission of 1925, on the other hand, suggested an annual period on the grounds that it would avoid the too frequent raising of fundamental issues, that it would avoid seasonal fluctuations, and because the majority of the statistics used were only compiled annually (Section 26).

CHAPTER XIV.

THE LIVING WAGE (*continued*).

Is there an Average Family?—Should the Living Wage vary from District to District?—Should there be a Living Wage appropriate to each Trade?—The Problem of Irregular Work—The Problem of Piece Work.

Is there an Average Family?

Before any exact meaning can be attached to the phrase Living Wage, before it can be translated into monetary terms, the number of people who are to be maintained by it must be determined, for it is clear that a Living Wage for a single man represents a widely different sum from that necessary to support a married man with several children. This problem to which so much attention has recently been paid was raised as early as 1894, when attempts were made by puzzled clerics to interpret the Papal Encyclical of the previous year. If the wage earner was entitled to receive enough to support him "in reasonable and frugal comfort," did this include the comfort of a wife, and of possible children? The question was a delicate one. It was referred by the Pope to Cardinal Zigliaria, who unhelpfully replied that though an employer who paid less than a "family" wage would not violate justice, yet such action might sometimes be contrary to charity or to natural righteousness. No further solution came from the Church. Meanwhile secular Governments were finding that too much trust should not be placed in the charity and natural righteousness of employers, and that the Living Wage as an administrative principle needed careful definition. Once again it was in Australia that the work was done.

The famous Harvester Living Wage was supposed to supply the needs of "a home of about five persons," but, as we

have seen, this wage seems in reality to have been less a Living Wage than an approximation to the wage paid by reputable and non-competing employers,[1] modified by a very rough-and-ready calculation of the cost of living to workers. Hence the size of the family was not of very vital importance, and became so only when a more exact calculation of the Living Wage was attempted.

There were two clearly defined stages in the growth of an appreciation of the problem. The first was the attempt to attach a meaning to the term "normal family," and the discovery that in fact the average family was much smaller than the number assumed by Mr. Justice Higgins and adopted by other wage regulators. The second was the discovery that from the point of view of fixing a real Living Wage, the conception of a normal or average family was unsatisfactory, for so few families exactly corresponded to the arithmetical average—particularly when the resulting figure was fractional! This meant that to pay an average wage to every one was to over-pay or under-pay the majority of workers. The unsoundness of taking as a basis the family of three children was recognised in 1914, when Mr. Justice Heydon, as President of the New South Wales Court, undertook an elaborate Living Wage inquiry. Figures were quoted from eight different sources showing that the average number of dependent children per family in New South Wales varied from 1·65 to 1·90.[2] The Court therefore concluded that "to take the average dependent family at two children is to run no risk at all of putting it too low."[3] The average family of the Harvester Award

[1] "I find that the public bodies which do not aim at profit, but which are responsible to electors or others for economy, very generally pay 7*s*." (Higgins, 2 C A R, p 6).

[2] The figures were:

Census (whole population of the Commonwealth) . . .	1·79
Mr. Trivett (State Statistician) figures for children of deceased males in N.S.W. . . . . less than	1·65
Mr. Knibbs' Inquiry. Families in the Commonwealth " "	1·80
Mr. " " " receiving £200 and under " "	1·80
Mr. " " " " £150 " " " "	1·90
Mr. Trivett's occupational table . . . . " "	1·72
Private Houses Inquiry . . . . . " "	1·78
Mr Connington's (Union Secretary) Inquiry	1·76

[3] N.S.W. A.R. [1914], p. 29.

had at least been shown to be too great. In New South Wales wages were based on the unit of the two-children family, until 1914, when the question was raised before the Board of Trade. The workers' representative in urging an increase in the declared Living Wage claimed that the average family should be taken as consisting of three children. As a result the Board re-opened the matter, but came to the conclusion not only that the average family in 1911 (for which date Commonwealth Statistics were available) consisted of 1·80 children, but also that it was "highly probable that the average family under fourteen had decreased in 1918 by nearly 0·2 persons, so that in 1918 the family under fourteen was perhaps about 1·6 persons."[1] The family of two dependent children was therefore a generous estimate. Meanwhile the family of three children continued to serve as the basis of Commonwealth Awards, and the principle was reiterated in 1916 in the Industrial Arbitration Act of Queensland.[2]

The realisation of the unsatisfactory nature of *any* average wage was due rather to fear of paying too much than to consideration for the workers who might be receiving too little. It was indeed a direct outcome of the high prices of the war period, which necessitated big increases in the money value of the Living Wage. In 1918 the Board of Trade in New South Wales declared a wage which was 17s. in advance of the previous minimum. In order to avoid this general wage increase the Government of the day introduced an ingenious Bill which was to separate the Living Wage payment for a man and his wife from that which was to maintain any children. The former sum was to be paid to all workers, the latter to each worker only in proportion to the actual number of his children. The general plan of the Bill is by now well known.[3] The estimated cost of

[1] *N.S.W. Compendium of Living Wage Declarations*, p. 16.

[2] This Act prescribed a minimum wage which should be sufficient "to maintain a well-conducted employee of average health, strength and competence and his wife and family of three children in a fair average standard of comfort."

[3] See Piddington, *The Next Step*; Rathbone, *The Disinherited Family*. The best account, however, is given by Paul Douglas in his recent book, *Wages and the Family*, pp. 155 *et seq.*

keeping a child was to be multiplied by the number of children actually existing in the State. The sum so obtained was to be divided by the total number of employees (males and females were treated separately), and the quotient paid weekly to a central fund by each employer in proportion to the number of his workers. The central fund would be administered by the State and payments made on a sliding scale varying with the income of the parents.

Such a scheme would avoid paying for non-existent children, and thus lessen the total burden to be borne by employers, while at the same time it would ensure that all workers with more than the average number of children would receive a wage which really was a Living Wage. The Bill, however, failed to pass. The somewhat similar Bill which was unsuccessfully introduced two years later was really very different in principle and scarcely concerns the student of wage regulation. It provided for a payment out of State funds to all children in excess of two, while the Board of Trade wage was to continue to be based upon the two-children family. Thus, while the position of the large family would have been materially improved, payment was still to be made in many cases for numbers of non-existent children, and the burden upon employers would remain nearly as great as ever.

So long as prices were constantly rising and the Living Wage computed on the basis of two or three children was not very great in monetary terms, employers were able to pay and did pay without very much protest. But when in 1920 the Basic Wage Commission was instructed to discover the cost of living for a man and his wife and three children and found this cost to be £5 16*s*., the storm broke. Much abuse has been directed against the findings of this Commission and it is therefore important to note that it was very severely limited in its work. It was not instructed to declare a Basic Wage, as is sometimes supposed. It had merely to discover what was the actual cost of living to a particular kind of family. Nor did it fix the size of the family itself. In spite of the very considerable evidence then available, Mr. Hughes still accepted the three children family as normal. Moreover, the cost of living as found by

the Commission, judged by the wages then being paid, was not so absurdly high as is sometimes claimed. Nevertheless the idea of a living wage of nearly £6 caused consternation. The Report of the Commission was at once transmitted by the Commonwealth Premier to Mr. Knibbs, the Government Statistician, who reported that the total annual production in Australia did not suffice to pay such a wage. It is possible to criticise the figures of Mr. Knibbs on several grounds. His figures were based on 1918 data and prices had risen considerably in the meantime. It is also doubtful whether they included the value added by wholesale and retail trade, by banking, insurance, transport, building and construction, and by factories employing less than four persons. The accuracy of some of these charges is, on account of the confidential nature of the Memorandum, difficult to determine, but the underlying difficulty was bound to arise sooner or later. If the average family be assumed sufficiently large, and if it be decided to pay a wage sufficient to maintain this large family to all workers irrespective of their actual obligations, a time may come when the total wage bill thus arrived at will exceed the total production of the country.[1]

Yet it does not follow that for this reason the Living Wage principle is entirely unpractical. It does suggest, however, that a means must be sought of avoiding the payment for many non-existent families. The resulting difference in 1920 in the total wage bill in Australia is evident from the following figures :—

I	II	III	IV
Total Wages payable per Week on the assumption that each worker has three children.	Total Wages payable per Week assuming that every man is married.	Total cost per Week of keeping the existing children in Australia.	Total of Columns II and III.
£5,800,000	£4,000,000	£600,000	£4,600,000

[1] Cf. the calculations of Professor Douglas in *Wages and the Family*, Part I.

The actual number of dependent children in Australia was about 900,000, whereas the three-children family wage assumed the existence of some 3 million. As a result payment was being made for over 2 million non-existent children. A redistribution scheme would mean a saving in the weekly wages of £1,200,000, or a reduction in the average wage paid by each employer from £5 16*s.* to £4 10*s.* 9*d.* Such a scheme, as we have seen, had already been suggested in New South Wales, and this was revised and popularised by Mr. Piddington, the Chairman of the Basic Wages Commission. He suggested that the basic minimum wage of £4 per week, which the Basic Wage Commission had declared to be the cost of living for a man and his wife, should be paid by every employer to each worker, and that a separate payment of 12*s.* per child should be paid from a central fund to the workers or their wives. Employers were to contribute to the central fund 10*s.* 9*d.* weekly, a sum obtained by dividing the cost of keeping the actual number of children in the State by the total number of workers. The scheme, although affording a solution to the problem how to pay a real Living Wage to each family without unduly increasing the total wage bill, was not accepted by Mr. Hughes. It was however introduced almost immediately into the payment of Federal Government officials, who were given a basic wage of £4 and in addition 5*s.* per week in respect of each child. Of more importance is the gradual realisation everywhere of the unsatisfactory nature of the flat average wage. In the Commonwealth Court Mr. Justice Powers, although refusing to introduce family endowment without legislative sanction, declared that if adopted it would "remove the greatest cause of industrial discontent and misery, namely, the inability of many workers to feed their children properly and clothe them decently, however hard they work."[1] The same point of view was adopted by the Judges elsewhere. The late Mr. Justice McCawley, President of the Queensland Court, expressed his approval, but felt that the introduction of the principle was a matter for the legislature and not for the Court. At an earlier date

[1] *Commonwealth Reports*, No. 135 of 1920, pp. 33-35.

the Queensland Government had offered to adopt the scheme in the payment of its employees, but the offer was refused, mainly, it seems, because the unions were hoping that the Arbitration Court would adopt the basic five-person wage for all industry. The recent Economic Commission on the Queensland Basic Wage recommended discrimination according to family needs, partly because of the strain of a non-differentiated wage upon national resources, partly because of the desirability of providing for the worker with more than the average family.[1]

In New Zealand the necessity for some such scheme has also been realised, although here the main consideration has been to adjust the wage burden to the ability of industry to pay. Thus in his Living Wage Pronouncement in May 1922, Mr. Justice Frazer pointed out that to pay all the 375,000 workers on the assumption that each had three dependent children, would involve paying for 672,000 non-existent children.[2] As the average number of children in New Zealand was 1·57 per family, and only ·94 per adult, the existing system of paying on the basis of two children per worker was clearly unsatisfactory. Moreover, it met the exact needs only of the 42,000 adult males who had two children. Of the remainder, 273,000 were either unmarried, childless or parents of only one child, and were therefore receiving more than a Living Wage, while 59,500 had more than two children and were thus not receiving an adequate sum. The only remedy, declared the Judge, was that proposed by Mr. Piddington, but this would require legislative sanction.[3] After pointing out certain administrative diffi-

[1] "The principle that the needs of the wage-earner should receive adequate consideration is firmly embedded in Australian practice. The fact that production is at present inadequate to supply all wage earners with the full requirements of a family of five has also been established. . . . Moreover, even if industry could pay . . . it does not follow that a flat rate, ignoring differences in needs, would be either just or economic" (*Queensland Economic Commission* [1925] *Report*, pp. 84–5.) In May 1925 the Premier of Queensland announced in Parliament that: "The Cabinet decided in favour of the principle of child endowment, and a sub-committee will now proceed to formulate the scheme."

[2] *New Zealand Arbitration Reports*, Vol. XXIII, p. 333.

[3] In the South Australian Court Mr. Jethro Brown in 1920 arrived "at the general conclusion that . . . the living wage should be such as

culties and suggesting the formation of a joint conference to discuss ways and means, His Honour said no more about it either then or in later pronouncements.

There is no doubt that a logical application of the Living Wage doctrine necessarily implies some form of differentiation on a family basis, and it will probably be only a matter of time before the principle is adopted in Australia. In Europe and America the necessity has also been pointed out by various writers, of whom Miss Eleanor Rathbone and Professor Paul Douglas are the most prominent. The former approaches the problem from the point of view of the inadequacy of the average wage to meet the needs of the individual, pointing out that in England, for example, of the total men workers over twenty, only 13·3 per cent. have two dependent children, and 8·8 per cent. have three. Thus a wage based on either of these two families as normal exactly meets the needs of very few cases. In fact, some 68·3 per cent. would be over-paid and 9·9 per cent. would receive less than sufficient to maintain their more than three dependent children.[1] These figures point the same moral as those quoted by the New Zealand judge, and similar facts are disclosed by Mr. Piddington.[2] Professor Paul Douglas also emphasises the error of taking the family of five as typical, and gives much evidence from English conditions in support of his contention.[3] But he also urges the differential wage as a means of paying a real Living Wage to

to support a family of five." He added that while this might mean payment for non-existent children, the only alternative was some scheme of pooling responsibility for children, and this could only be done by legislative enactment [*South Australian Industrial Reports. Printing Trades Case.* Vol. III, pp. 251–9].

[1] Eleanor Rathbone, *The Disinherited Family*, p. 16. Cf. also Rowntree, *Human Needs of Labour*, Chapter I.

[2] Piddington, *The Next Step*, p. 18. Cf. also the objections of the Dockers' Commission to the "typical" family of three children: "A minimum . . . so fixed is one under which a bachelor workman at the one end of the scale and a workman with one or two of his family in employment at the other end of the scale, would stand very largely to gain" [*Cmd.* 936 1920, p. viii].

[3] Paul Douglas, *Wages and the Family*, p. 26 *et seq.* In particular he quotes figures collected by Dr. Bowley from various sources which indicate that the family of five persons represents 11 per cent. of working-class households, while only 8·4 per cent. of workers had three children under 14 years dependent on them.

all workers without placing an impossible burden on industry.[1] During the last few years the technique of the schemes advocated in Australia has become familiar to all through the growth of the Family Endowment movement in Europe. Reasons have already been given why this movement has little direct bearing upon the problems of wage regulation, except as proof that the suggested schemes can be put into practice if necessary. And all the evidence indicates that it is necessary. The difficulties, however, should not be minimised, but they are probably less when the scheme is part of a vast system of wage regulation than when family endowment alone is adopted. They will be but briefly indicated here.[2] It is possible that an automatic increase in pay for each additional child may unduly stimulate the birth rate. But even this result is uncertain, and the theories of the causes affecting the size of families have become less crude and less confident with the diffusion of the practice of birth control and our increasing knowledge of human psychology. More real are the administrative difficulties, the unequal burden which would be thrown upon employers according to whether their labour costs were a large or small proportion of their total costs, and the danger of State control of private life. On the other hand, many of the arguments against such a system lose their validity when it is applied alike to all trades. Thus there would be no question of movements away from or towards particular trades. The really important thing is that exponents of the Living Wage should realise, as they are beginning to do, that such a policy necessarily involves some form of Family Endowment with all its attendant advantages and disadvantages. Were the inevitability of facing them more closely realised, more attention might be directed to the solution of the essential difficulties.

So far nothing has been said of countries other than Australia. This is because they either do not adopt the

[1] Paul Douglas, *Wages and the Family*, p. 10 *et seq.*

[2] For a fuller consideration of them see Paul Douglas, *op. cit.*, and my paper on the "Economics of Family Endowment" in *Economica*, June, 1925.

Living Wage as a basis, or where they do, the law is confined in its operation to women and hence the problem is not so acute. Nevertheless it exists. The theory that women have no dependents and that the majority live at home and merely work almost for pocket-money until they are married, is so well accepted that it is frequently advanced as an explanation and even as a justification of the low wages paid to women. But if this is the position in the majority of cases, there are yet exceptions where the wages received are as far from being a Living Wage to the individual recipient as is the Australian basic wage for two persons to the man with ten children.

The existence of many women who have dependents to support is shown by the table on pages 336–7, which is constructed from the scanty material available.

The wide variation of the percentages in the American figures probably corresponds to a difference in the care with which the figures were collected and in the phrasing of the questionnaires. Thus in some States account was taken only of those "entirely" supporting some one else; in other States all those "contributing to the support of others" were enumerated. This last phrase may be interpreted in a variety of ways, and it seems probable that in Massachusetts where the percentages are very high, a number of girls who live at home and are supported mainly by parents, but who make some small contribution to the family expenses, would describe themselves as "contributing to the support of others." These objections do not apply to the carefully collected figures of Miss Hogg, which show a remarkable uniformity in the percentages. Whatever the exact figure, it is undeniable from the above table, that there is everywhere a considerable percentage of women (probably between 20 and 30 per cent.) who, because they contribute to the support of others, will receive less than a Living Wage if the standard of the single woman is adopted.[1] Nevertheless the latter basis is in fact used by the majority

[1] Mr. Rowntree made a private investigation in 1917–18, arriving at a percentage of 16·7 of 516 organised workers who were maintaining others, wholly or partially (Rowntree, *The Human Needs for Labour*, pp. 110–114).

DEPENDENTS ON WOMEN WAGE EARNERS.

Area.	Trade.	Number of Women Examined.	Number contributing to the support of others.	Percentage of the Total.	Date.	Source of Information.
Washington . . .	—	3,256	834	25	1918–19	Third Biennial Report of the Industrial Commission, 1919–20.
Oregon	—	13,494	2,419	18	—	Ninth Biennial Report of the Bureau of Labour, Oregon, 1919–20.
Massachusetts . . .	Paper Box	573	334	58	1919–20	Division of Minimum Wage, Massachusetts Bulletin No. 22.
Massachusetts . . .	Corset	610	393	62·8	1919	do. Bulletin No. 21.
Massachusetts . . .	Food Preparations	251	131	52	1919–20	do. Bulletin No. 23.
District of Columbia .	—	600	129	21	1918	U S. Department of Labour, Monthly Labour Review, Jan., 1918, pp. 5–6.
California	Dry goods	4,810	552	11·48	1915–16	California Industrial Welfare Commission, Second Biennial Report.

Kansas	All	5,000	—	6·1	—	U.S. Department of Labour. Women's Bureau. Bulletin No. 17. May, 1921.
Minnesota	All	51,361	28,683	55·8	1919–20	Women in Industry in Minnesota in 1918. Investigation by Council of National Defence and Minnesota Bureau of Women and Children.
Washington . . .	Manufacturing	988	425	43	1919–20	Industrial Welfare Commission. Bulletin No. 2, April, 1920.
Northampton, England	All	351	105	30	—	Article by Margaret Hogg in *Economica*, Jan., 1921.
Warrington, England.	All	199	69	35	—	Figures obtained from the cards of the inquiries by sample into the Economic Conditions of Working-class Households by A. L. Bowley and A. R. Burnett Hurst.
Stanley, England . .	All	15	4	30	—	
Reading, England. .	All	231	80	35	—	
Bolton, England . .	All	2,029	676	33	—	

of States.[1] Indeed the real discussion has turned not on whether a woman should be assumed to support others, but whether she even supports herself. In other words, should the standard be a self-supporting woman, or one receiving contributions from other sources?

In this respect it has always been assumed that the position of a girl or woman differs vitally from that of a man. In the words of the New South Wales Board of Trade "when a girl is old enough to work, she has learnt that in all probability she will marry. Her work will be only an episode in her life. . . . The consequence is that the mass of female workers are young, unskilled and their work has relatively little importance in their eyes. . . . The great majority live with their parents. . . ."[2] These two facts, but especially the custom whereby many girls live at home and are not self-supporting, has led many people, including Professor Taussig,[3] to argue that a lower wage than that necessary to support an independent woman should be fixed. It seems highly probable that the number of semi-dependent women is decreasing and even now the number of women who are forced to be entirely self-supporting is a considerable proportion of the whole. The Table opposite, compiled from the special inquiries conducted by the authorities quoted, indicates that the percentage of self-supporting women in America varies from 39·1 in California to 69 per cent. in Massachusetts, while the average is about 55·9 per cent. This number is much larger than the number of those living

[1] In California the Commission "adopted as the basis for the fixing of the minimum wage the wholly self-dependent woman with no dependents" (*Industrial Welfare Commission*, 1922). The same standard is adopted in Arkansas, California, Massachusetts, and the majority of the other States The Australian Courts adopt a similar standard. The New South Wales Board of Trade, with its usual thoroughness, faced the problem in December, 1918, and decided that it would not lower the basic wage "for the woman who lives at home, or raise it for the one who has to keep her husband." Its standard was therefore "the adult female worker of the poorest class maintaining herself, but having no other responsibility and living away from home in lodgings." The same standard is adopted in Queensland and in the Commonwealth Court, and appears to be generally used in Canada, although the 1921 Report of the British Columbia Department of Labour emphasises the increasing tendency for women and girls to have to contribute to the support of a family.

[2] *Compendium of Declarations*, pp. 48–9.

[3] Article on "Minimum Wages for Women" in *Quarterly Journal of Economics*, Vol. XXX, p. 411.

State.	Trade.	Number interviewed.	Living at Home.		Living Away.		Wholly Self-supporting.		Source of Information.
			No.	%	No.	%	No.	%	
Arkansas . .	All	2,561	2,126	83·8	435	16·2	—	—	Bureau of Labour and Statistics, Biennial Report, 1917–18.
California . .	Retail Dry Goods	4,810	2,928	60·9	1,882	39·1	1,882	39·1	California Industrial Welfare Commission Report, 1915–16.
District of Columbia .	—	600	414	69	186	31	328	55	U.S. Bureau of Labour Statistics. Monthly Review, Jan., 1918, pp. 4–6.
Kansas . .	—	5,000	—	84·3	—	15·7	—	—	U.S. Dept. of Labour. Women's Bureau, Bulletin 17, 1921, and Kansas Industrial Welfare Commission Report, 1915–17.
	Laundries and Retail Stores	1,121	—	—	—	—	869	76·6	
Massachusetts	Corset	726	669	92·1	57	7·9	—	—	Minimum Wage Commission Bulletin 21, November, 1919.
		628	—	—	—	—	433	69	
do.	Minor Lines of Confectionery	268	246	91·8	22	8·2	—	—	Division of the Minimum Wage, Bulletin 23, November, 1920.
		253	—	—	—	—	150	59·3	
Do.	Paper Box	649	582	89·7	67	10·3	—	—	Division of the Minimum Wage, Bulletin 22, Sept., 1920.
		578	—	—	—	—	378	65·4	

away from home, which varies from 39·1 in California to 4·3 per cent. in the Massachusetts candy trade. This variation is not surprising. As social and economic conditions vary from State to State and trade to trade, so will the habits of workers differ. Moreover a large number of married women with families to support would no doubt class themselves as "living at home."

But the fact remains that while the majority of wage-earning women live at home and are probably not self-supporting, there is a considerable minority who are dependent upon what they can earn.

What standard then should be adopted for the Living Wage of women? Should it be reduced because of the social habits of the majority, or should it provide for the needs of the self-supporting minority? The answer depends upon the object of the legislation. If indeed an attempt is made to substitute for the unsatisfactory distribution of a system of payment according to value of service one of payment according to need, the logic of the situation demands that the needs of those in the least favourable position should be met. In other words, the standard should be based on the self-supporting woman. Anything less than this means a failure to attain the object of the legislation. Moreover it is quite possible that many of the workers who are classified as not self-supporting are such only because their salaries are insufficient without help from other sources. There is no proof that were the salary larger these workers would not become independent. A somewhat similar point of view was adopted by the Ontario Minimum Wage Board which held that the principle of the Living Wage required that a worker should be an independent and self-supporting member of her household, and that any gift to her from her father or relatives should be for herself and not be handed on to her employer.[1]

But a second difficulty remains. Even if the self-supporting woman be taken as the standard, is her cost of living to be based upon that of an independent worker living at home or living away? The two costs may differ considerably, for the saving of living at home, even when a full

share of all expenses is borne, is less than the cost of living out. Once again the answer turns upon one's object, and it seems that a comprehensive scheme which substitutes the principle of payment for need could do no other than adopt the standard which involves the higher wage.[1] The only logical alternative is the adoption of some scheme similar to Family Endowment, but differentiating between women on the basis of their residential habits. The disadvantage of such a scheme and the practical impossibility of its administration remove it from the sphere of serious consideration.

In practice, the standard taken by the wage-fixing bodies has everywhere been the "adult female worker of the poorest class maintaining herself and having no other responsibility," while the majority, including Massachusetts, North Dakota, New South Wales and South Australia,[2] also work on the assumption of a woman living away from home. In some States, e.g., District of Columbia, a compromise figure is reached; while in others the self-dependent woman is particularised without any detailed reference to the conditions under which she lives.[3] In Queensland the Act ingeniously provides that the Living Wage for an adult female shall "enable her to support herself in a fair and average standard of comfort *having regard to . . . the conditions of living prevailing among female employees in the calling in respect of which such wage is fixed.*"

Should the Living Wage vary from District to District?

We have now to consider whether a cost-of-living basis alone requires a variation of wages from district to district. In so far as nothing but a choice between equal money

[1] It will be observed that no reference has here been made to the effects upon industry of paying all workers such a Living Wage. This will be discussed in a later chapter.

[2] Jethro Brown in *Australia: Economic and Political Studies*, p. 224.

[3] In Saskatchewan the Bureau of Labour speaks of "a girl dependent on her own earnings"; in Arkansas the standard is "a self-supporting woman of ordinary ability"; the Californian Reports refer to "a minimum food standard for a self-dependent woman." Mr. Higgins in the Commonwealth Court fixed the wage on the basis of "the average cost of maintaining one who supports herself by her own exertions."

and equal real wages is involved, there is no doubt of the answer. If the cost of living varies from place to place the money value of the Living Wage should vary correspondingly. But unfortunately, not only do other considerations arise; it is often difficult, if not impossible, to compare the cost of living in two different areas. In particular is this true of the comparison so often made between the town and the country. If the standard of the town dweller be taken as a basis, it will be found that there are many items which enter into his budget of which there is no equivalent in the country. Also the quality of the commodities consumed by him may differ widely from that of goods which are called by the same name in the country. Is the country worker then to receive a lower wage because it costs him less money to buy these inferior goods and services? He may not have to spend so much on travelling to and from his work. But if he wishes amusements, he must go to the town, as he must if he wishes to buy clothes of an urban cut and quality. In either case he is involved in travelling expenses. The standard of housing in the country may be much lower than that in the town. To take the rents of the four or five-roomed house in the country and compare it with the charge for a house of similar description in the town might perpetuate in the country a lower standard.[1]

These difficulties have been sufficiently serious to prevent some States from attempting any differentiation whatever. In others, more or less rough investigations have warranted the assertion that "no appreciable difference exists in the cost of living between the small town and large city in the matter of living essentials."[2] If we assume however that

[1] It was on this ground, *inter alia*, that the New South Wales Board of Trade refused to grant sectional wages in its Declaration of September, 1923 [*Industrial Gazette*, September, 1923, p. 388].

[2] *U.S. Bureau of Labour Statistics. Monthly Labour Review, Minimum Wage Law of Texas*, January, 1921, p. 125. A later investigation, however, indicated that the differences in different parts of the State were considerable [*Report of the Industrial Welfare Commission of Texas*, December, 1922]. In Oregon differences in local conditions were disregarded after 1919, as a result of a report by the State Labour Commissioner that the cost of living was higher in some smaller towns than in Portland [*Bulletin of the Bureau of Labour Statistics, No.* 285, p. 175].

it is possible to overcome the difficulties of measuring and comparing two such different standards of living, and if it be further assumed that the money cost of living can be shown to be lower in one part of a country than in another, does it follow that the money Living Wages should correspondingly differ in the two areas?

The practice of the wage-regulating States has differed considerably. This fact is not surprising, in view of the enormous differences in economic conditions that prevail. Moreover, the decision has often been made on grounds which have little or nothing to do with the Living Wage.

In Texas and California no difference has been made between town and country, and at first the same uniformity was adopted in Washington, Wisconsin and Kansas. In Washington protests by the smaller manufacturers eventually led to the adoption of differential wages, but the object of the change was not the provision of an equal real Living Wage, but the relief of particular employers. Since 1921 both Wisconsin and Kansas have followed the example of Washington, probably because more careful collection of cost of living figures indicated that differences did exist between the prices of different areas. Lest it be assumed that this differentiation is a general tendency in the United States, it must be added that many States have adopted the opposite course. We have already seen that Oregon after 1919 reverted to a uniform rate. Minnesota is showing the same tendency.[1] The Orders of this State from 1914–18 fixed different rates for three classes of districts: Duluth and St. Paul, all other towns, and the State outside the cities. Since 1919 the distinction has been merely between districts with a population of more or less than 5,000. Arkansas originally worked on a district basis, but since 1922 has adopted uniform rates.[2] A similar diversity in practice prevails in

In Kansas the Laundry Board (1918) decided that there was no valid reason for differentiating between rural and urban localities, as differences roughly counterbalanced each other [*ibid.*, p. 108].

[1] In the *Third Annual Report of the Commission* in North Dakota it was suggested that in order to obtain the co-operation of employers the laws should be revised to meet local conditions.

[2] This, however, must mean that the cost of living has been found to vary but little, for the Solicitor-General ruled that in each industry in

Australia. In New South Wales the Board of Trade[1] originally divided the country into four districts for the purposes of its Living Wage Declarations. But an attempt was very soon made to acquire powers to declare a uniform Living Wage for the whole State, and in 1921 a Declaration was made for the whole State except the county of Yancowinna. From April 1923 no differentiation has even been made for Yancowinna. Repeated attempts on the part of employers to obtain a lower wage for that district met with no success. The Board from time to time gave several reasons for its preference for a uniform Living Wage for town and country. In making its first State-wide Declaration in 1923, it pointed out that only a lack of adequate scientific data had prevented it from adopting such a course earlier.[2] In fact, during the preceding two or three years, its Orders, although for separate districts, had prescribed almost identical Living Wages. The Board also expressed the opinion that in " the fixation of a minimum dependent on averages, the accuracy of determinations increases in proportion to the wideness of the area furnishing the data." These arguments were based on the cost of living alone. But in 1920 the Board had realised that wider problems were involved. Recognising the attractiveness of a high money wage, and feeling that the lower country wage often also meant a lower real wage, the Board voiced its opinion that " the development of the State has been retarded by the assumption that local employees must necessarily accept a lower standard of comfort and receive less wages than those of the metropolis and large industrial towns. The distinct decline during recent years in primary production, and the failure of urban [i.e. non-city] areas to maintain the same rates of

each town the minimum must be fixed in proportion to the surrounding expenses of living.

[1] Before the institution of the Board, the Court was very loth to award district rates (cf. A.R. [1910], p. 530), and usually gave uniform Awards, declaring that those who wished for local differentiation would have to prove there was a difference in the cost of living between that area and Sydney (A.R. [1916], p. 186). As the Board's Declarations could be put into effect only by the Court, the Sydney Declarations were at first applied to the whole State (A.R. [1919], p. 187).

[2] *N.S.W. Industrial Gazette*, April, 1923, p. 825.

increase in population as the large cities, also contributed to the Board's decision not to further deal with the minimum from a sectional point of view."[1]

While New South Wales has thus moved away from district variation and towards uniformity, the Commonwealth Court has tended to go in the opposite direction. This is hardly surprising, for the area with which the Court has to deal is very wide, and the chances of the existence of very different costs of living are great.[2] It has been one of the cardinal principles of Mr. Justice Higgins that where there is a difference in the cost of living between one locality and another, it will be reflected in the minimum wage, except where it is the general desire that there should be no variation. In that case the minimum was to be based upon the mean Australian cost of living.[3] Since 1914, however, the practice of granting differential rates based on differences in the cost of living has increased, probably as a result of the greater accuracy and reliability of the available cost-of-living figures.[4]

In Great Britain the possibility of district variation of rates on a cost-of-living basis has often been discussed by the Trade Boards but almost invariably rejected on the grounds that the practical difficulties were too great. Where differentiation has been attempted at any time [5] the underlying reason has rather been the state of trade or competition than the difference in the cost of living. The Cave Committee examined the possibilities in some detail, but though witnesses were ready to admit that living costs did vary

[1] *Compendium of Declarations*, p. 30. This danger has also been recognised in Wisconsin, where it was at first felt that local differentiation might lead to rural depopulation.

[2] These differences have, for the capital towns at least, become much smaller in recent years. In 1901 the variation in the index figures for groceries, dairy produce, meat and rent was from 769 (Brisbane) to 1,027 (Perth). In 1913 it was 969 (Brisbane) to 1,178 (Sydney); in 1916, 1,188 (Brisbane) to 1,394 (Sydney); in 1919, 1,420 (Perth) to 1,580 (Sydney).

[3] Rules 21 and 22, Higgins, *op. cit.*, p. 10.

[4] In 1915 both the Tramway and Gas Industry disputes were settled by differential awards; in October, 1916, Mr. Higgins granted a differential award to Melbourne on cost of living grounds (*Australian Meat Employees' case*).

[5] As by the Milk, and at one time the Laundry, Rope and Twine, Ready-made Tailoring and Cotton Waste Boards.

considerably, none recommended district variation.[1] This is the more remarkable since District Committees have been provided for from the date of the first Trade Boards Act. In their Final Report the Cave Committee decided against differential rates except in special circumstances, but their reasons were entirely based on *trade* considerations.[2]

What conclusions, then, can be drawn from the experience of the different States? Only this, that the enforcement of equal real wages may so upset the existing equilibrium of industry that it is probably wiser not to differentiate at all unless the difference in price levels between different areas is considerable. Even then, while the Living Wage doctrine logically requires equal real wages and therefore unequal money wages when local prices differ, the decision to vary or not in each particular case can be made only after taking all other relevant circumstances into account, especially the general standard of wages in the district. Again, if workers are determined upon a uniform wage, their opposition to a money differentiation may lead to worse results than the payment of equal money wages. It will be easier and probably desirable to enforce local differentiation if the employer is serving a local market, as in the laundry and some sections of the dressmaking trades, for the differentiation on a Living Wage basis will then correspond to a difference in the selling price of the product. So too even if all employers serve the same market, local differentiation may be practically possible if the efficiency of labour in the

[1] See Evidence of Sir A. Hopkinson, Question 10,613 *et seq*., who emphasised the difficulty of obtaining reliable figures and avoiding anomalies in individual cases. Mr. Pascall (Question 6,764) also disapproved of district variation in a cost of living basis for national trades, because of its effect upon the ability of country employers to compete. Mr. Layton opposed on the grounds that in fact variations in the cost of living were negligible (Question 4,026). Professor Tillyard referred to the workers' dislike of differential rates and the danger that it might lead to migration from district to district (Q. 12,483 and 12,484). Mr. David Little (Q. 4,024) felt that the difference in cost of living between town and country was much less than is generally supposed.

[2] *Cave Committee Report*, pp. 31–3. The provision of District Committees under the Mines and Agricultural Wages Regulation Acts will probably occur to most, as the obvious example of district differentiation in Great Britain. As however the different district rates are not based on cost of living, but on the prosperity or otherwise of the industry in the locality, they do not concern us here.

district receiving lower money wages is less than in the others, or if the employer has to bear heavy transport charges to send his goods to the common market. In all these cases no clash of interest occurs; the differentiation on a Living Wage basis corresponds to one determined by existing economic conditions. But where efficiency of workers is the same and where the costs of production other than wages are largely similar for all employers supplying the same market, local differentiation on a cost-of-living basis will give a competitive advantage to the employer paying the lower money wages. In the long run the prevailing lower money-wages may tend to attract more industries to the area and the competition of employers for workers will tend to force up money wages until there is no further advantage in transference. But such a course may be felt undesirable, and the immediate loss in disorganisation and in the process of adjustment may be very heavy. In these circumstances it may be desirable not to differentiate. The Living Wage theory would require the payment of the wage based on the district where the cost of living was higher, for less than this would not provide a Living Wage to all workers. And in the circumstances we have outlined its effect on industry will not be disastrous. Finally it must not be overlooked that the practical difficulties of demarcation between areas are considerable, while the possible anomalies and injustices as between neighbouring employers may cause more friction than the enforcement of a uniform money Living Wage.[1]

Should there be a Living Wage appropriate to each Trade?

In considering whether the doctrine of a Living Wage implies that a different Living Wage should be fixed for different trades, two questions arise. Is it true that the cost of living for a worker in one trade is higher than that in another? And is it desirable to take account of this difference if it exists?

[1] Cf. the evidence of Sir A. Hopkinson before the Cave Committee *Minutes of Evidence*, Questions 10,613 *et seq.*

While a common cost of many items may be conceded, especially if by the cost of living we imply just enough food, clothes and shelter to keep alive, there are certain trades which by their nature involve the employee in higher costs. Thus it may be claimed that the office worker has to spend more on clothes than the worker in the factory, or that some trades involve much heavier expenditure on travelling than others. From time to time the various States have had to make decisions on these matters, and in America, at least, the prevalence of the Board System at first encouraged the adoption of different living standards for the different trades. But more recently there has been a tendency to argue that these differences are either negligible or compensatory, and to ignore them. The Californian Board negatived trade differentiation on the grounds that even if "the requirements of the different trades are not identical they are nevertheless compensatory. Office and mercantile employees must dress better than laundry workers, but the latter wear out their shoes more rapidly and the perspiration destroys their clothing."[2] The same view was held in Washington and Wisconsin.

The changing attitude in America and Canada is reflected in the progressive uniformity of the Orders. Although starting with a series of differing costs of living the majority of States are now fixing one rate for a large number of trades or arranging conferences between different Boards so that the same rate shall be fixed by all.[3] The exception to this

[1] Some occupations may necessitate a heavier expenditure on food than others. Thus even the minimum computed by physiologists (see Mottram, *Food and the Family*, pp. 160–2) is not a fixed content applying alike to all. Certainly the minimum is greater for men than for women.

[2] *Bulletin of the Bureau of Labour Statistics, No* 285, p 65. Accordingly, since 1919, although the rates have been fixed by different Boards, the same rates have been fixed for all at any one time. In 1919 the weekly wage fixed by all Boards was $13.50, in 1920 and 1922 it was $16.

[3] In Oregon separate rates are fixed for each trade, but after 1918 there was great uniformity, practically all trades having a rate of $11.61 in 1918 and $13.20 in 1920 The same tendency is to be observed in Texas, Minnesota (since 1920), Wisconsin (since 1921) and the District of Columbia, while the Pacific Conference which was held in 1919 and attended by Oregon, California, British Columbia and Washington agreed that the Living Wage should be the same in all industries. The same tendency is evident in the Canadian States. Although at first all trades were dealt with separately, the later Orders in Manitoba have grouped many indus-

tendency is North Dakota, where occupations have been divided into two classes. In the first class are such workers as mercantile employees, office and clerical workers, waitresses and telephone operators, whose occupation demands that they shall be well dressed. In the second are laundry workers, chamber-maids, factory workers and kitchen helpers, who by wearing other apparel during working hours can save considerable expense. The former class received a wage 75 cents per week higher than that of the latter, the differentiation being entirely based on the cost of clothing.[1]

In Australia also the tendency has been towards the uniform living wage for all classes and trades. The higher payment accorded to various workers in particular industries has been based on principles other than the Living Wage. Thus in New South Wales the various Boards conducted, during the first years of their existence inquiries, of differing value and efficiency into the cost of living to the adult male in individual industries. An immense amount of time and money was wasted on these inquiries, and the results frequently led to confusion.[2] Different Boards placed different interpretations on the terms used, with the result that workers in similar circumstances were awarded different basic Living Wages. By the end of 1913 the unsatisfactory nature of the separate Living Wage for each trade was so apparent that the President of the Court decided to hold an elaborate inquiry and to declare what was the cost of living *to the humblest class of worker*. The sum so found was to serve as a basis for the awards of those Boards which adopted the Living Wage principle. This tendency to a

tries together; (in 1921 a rate of $11 was fixed in one Order for the following industries: abattoirs, cigars, confectionery and biscuits, creameries, drugs, groceries, macaroni and vermicelli, paper box, pickles, soap, yeast). The 1925 Orders, although issued separately for beauty parlours and hairdressing establishments, for laundries and dyeing and cleaning works and for departmental stores and mail order houses, fixed a uniform rate of $12 for each. The later Orders in Ontario, another Living Wage State, also fix the same wage for women in widely different occupations. See Orders Nos. 21, 25, 27, 28, 29 and 30.

[1] *North Dakota. Compensation Bureau, Bulletin No.* 1.

[2] The Evidence given before the *Royal Commission on the Arbitration Act*, 1913, gave ample proof of this statement.

uniform Living Wage irrespective of trade was strengthened during the next few years by the progressive weakening in the importance of the Boards and by the knowledge that appeals could be made to the Court to rectify any departures from the declared living wage figure. It was of course still possible for the Boards to award higher wages on other than "living wage" grounds. When at the beginning of the War the Boards ceased their activities and awaited instructions from the Court, the supremacy of the latter was assured, and from 1917 onwards it took over all the wage-regulating work in New South Wales. Even had the Court wished to depart from its policy of one minimum for all classes, such a course was made almost impossible by the necessity of frequent adjustment of the Living Wage to the rising price level. It would have enormously increased its work and caused an immense amount of confusion if it had been necessary to work out the effect of a change in the level of prices on the cost of living peculiar to each trade. The simplest and probably the only method was to adopt one basic Living Wage for all classes, to vary with the change in general prices. The annual declaration of the cost of living by the Board of Trade, and the proviso that it was to serve as the basis for the Living Wage, was but the last step in the disappearance of the Living Wage which varied from trade to trade.

The same tendency may be observed in other parts of Australia. In 1907 the President of the Commonwealth Court made his famous Harvester declaration of the Living Wage for the humblest class of worker, and in subsequent years this rate was adopted for all trades when wages were awarded on a Living Wage basis. Differentiation was made in what became known as the secondary wage, but this sum has always been carefully distinguished from the Living Wage and has been determined on different principles. It is true that Mr. Higgins, in setting out the principles on which the Court acted under his presidency, stated that "the Court gives weight to existing conventions and prescribes extra wages for masters and officers who have an appearance to keep up," but the operation of this principle

was not obvious in practice, and the reasoning which led to its adoption was probably based more on the principle of Fair Wages than on that of the Living Wage. Certainly the effect of the War has been to turn more and more attention to the one basic Living Wage, and since 1921 Mr. Justice Powers has adopted the principle of the old uniform Harvester wage, with automatic quarterly adjustments based upon the general price level. In fact therefore the uniform Living Wage for all trades is even more firmly adhered to than it was at the time of Mr. Justice Higgins' famous declaration in 1907.

In Queensland, as we have seen, the Living Wage was prescribed since 1916 by a law which appeared to envisage variations from trade to trade.[1] Until 1921 no formal Living Wage declaration was made, although in fact the Harvester basic wage was usually awarded for all trades in which the Living Wage was considered.[2] The annual declaration since 1921 of a basic wage applicable to all industries of average prosperity was not in fact based upon the cost of living alone, but took into account the ability of the trade to pay. The real basic *living wage* has remained the Harvester wage, uniform for all classes, below which the Court will not award, irrespective of the economic conditions of the industry.[3] The apparent differentiation between industries in Queensland is not, therefore, based upon Living Wage considerations at all but upon other factors, and it will be discussed in a later section.

In South Australia the most important body has been the Court, whose policy has therefore governed the situation. Here too the War reinforced a tendency to uniformity, which was finally made permanent by the creation of the Board of Industry in 1920. It will be remembered that this body was charged with the periodic declaration of the Living Wage and no Award of the Court or a Board might be made in

[1] Cf. also the Norwegian *Commercial Employees Act* of 1918; cf. Section 4, which prescribes that wages shall be fixed at such a level that "*in view of the standing of the persons affected*, and the local conditions, they are sufficient to cover the cost of living and maintain the working capacity of the said persons." (My italics.)

[2] *Report of the Economic Commission*, 1925, p. 30.

[3] *Ibid.*, pp. 30–34.

terms of a sum lower than that declared by the Board. Thus in effect there is one Living Wage for all trades. Variations above that sum may be made, but on other principles.

In New Zealand we find that by the end of the war the Court had been forced into the adoption of one basic Living Wage for all classes, below which it refused to award, but above which variations might occur from trade to trade. But such variations were made on the grounds of ability to pay or special skill on the part of the worker, etc. In 1919 the Court by its declaration of fixed basic wages for all workers grouped into three classes according to their skill, and by its later declaration that the minimum for the lowest or unskilled class was a fair standard of living, virtually adopted the one Living Wage for all trades.[1]

The tendency towards the uniform Living Wage with no differentiation for the needs of different classes is undeniable. On the grounds of economy of administration and ease of ascertainment it has everything in its favour, and the rapid alteration in wages necessitated by the rising prices of the war did but hasten its adoption. It must also be admitted that the experience of the United States has shown that where differences do exist between the Living Wage needs of different trades they are much less than is generally suspected. But on the other hand, American minimum wage laws deal almost entirely with women, and accordingly have only to take account of a much narrower range of occupations and classes. The apparent similarity between trades in respect of the Living Wage would also be increased by the American and Canadian habit of grouping a very large number of widely different occupations together under the heading of one trade. The resultant cost-of-living figure, which can be little better than a rough average, is unlikely to differ widely from the similarly obtained figure for another "occupation." Nevertheless the uniform Living Wage does seem to be more satisfactory than a number of differing Living Wages based upon the needs of different trades. It is quite true that the Living Wage to the humblest worker is

[1] *Declaration of April*, 1919, *and December*, 1920, *N.Z. Book of Awards*, Vol. XX, p. 403, and XXI, p. 2233.

not a Living Wage in any real sense to the professional man. But we must realise that the Living Wage is itself an abstraction, the concrete interpretation of which is ultimately a matter of opinion. To fix the Living Wage at that which will yield the standard of living customarily enjoyed by a particular class is to work in a circle, and leads to the adoption of the wage actually being paid under unregulated conditions, since it is that which determines the standard of living.[1] We have therefore to invent an ideal or average worker and fix the Living Wage for the class accordingly. To do this for all grades of industry from the agricultural labourer to the managing director would perpetuate class distinctions in an intolerable manner. The innovation could not even be justified by claims of necessity. But that claim does hold with regard to the lowest paid workers. For them it is possible to conceive of a standard below which a civilised community would not willingly allow any of its citizens to fall. It is in response to this need that the idea of a Living Wage has been evolved and there seems no good reason why more than one standard should be adopted.

The Problem of Irregular Work.

It is one thing to declare that a certain sum represents the cost of living to a worker for a week. It is another to ensure the regular payment of this sum, year in year out, to workers in all branches of industry. The character of the trade, the state of demand, the organisation of the work of individual firms, may all prevent workers from receiving a regular weekly payment, while where the wage is an hourly one or is based upon piece work rates, it is often difficult to secure that the total wage received is not less than the minimum as declared. The dilemma is obvious. If, for example, forty-eight shillings per forty-eight hour week be taken as the Living Wage, it cannot be claimed that the worker is receiving a Living Wage if he in fact

[1] Cf. the instruction to the Queensland Court in the Act of 1916 to fix a wage sufficient to maintain a man and his wife in "a fair and average standard of comfort, *having regard to the conditions of living prevailing in the calling in respect of which such minimum wage is fixed.*" (My italics.)

received but twenty-four shillings because the firm has been working only for twenty-four hours. May it be said that a shilling an hour is a living wage, or is the conception comprehensible only in terms of weekly wages? Is it indeed enough to think only of weekly wages? Does a worker who receives forty-eight shillings per week for thirty weeks in the year receive a Living Wage if the work he is engaged upon is so seasonal that for the remaining twenty-two weeks he is out of work? Where do the reasonable and logical requirements of the Living Wage end?

The problem, which most States have recognised but very few have solved, is really twofold. In the first group are those trades where less than a Living Wage is paid because the trade is highly seasonal. Such trades are fruit-packing and canning, certain kinds of millinery and dressmaking, hotel employment in resorts with a limited season, etc. Secondly, less than a Living Wage may be paid each week because not a full week is worked. The most familiar and universal example in this class is the laundry trade, but certain kinds of restaurants and hotels are also affected. The irregularity may be due to the wish of the workers themselves; it is often said for example that many married women with families prefer work which occupies but a few days of the week. It may be due to the nature of the work, as for instance in the laundry trade, where the habits of customers lead to an excess of work at the beginning of the week and a shortage at the end for all except the delivery men. Yet again it may be due to mere bad organisation of a particular firm; an inefficient method of distribution and routing of the work may prevail.

The first class is probably the most difficult to tackle, and the majority of States have left it severely alone. A real solution involves a comprehensive scheme of dove-tailing various industries. Unfortunately it is not always possible to find industries whose slack seasons exactly coincide with the busy seasons of others, and in which it is relatively easy to transfer the workers from one trade to the other. Yet to some extent the transfer is possible as is demonstrated by the Luton hat trade, in which many workers alternate between

the making of straw and of felt hats. Only in such a way can a permanent cure be found for seasonability which is inherent in the very nature of the work. But it calls for powers which no Minimum Wage Board or Court by itself could exercise. It is a big problem requiring the co-operation of many authorities, and it is not surprising that the annual Living Wage is still not secured to many workers. But while a permanent solution may be found only in this way, efforts have been made, with more or less success, to compensate workers for the irregularity of their work. Thus in California a higher wage was prescribed for general and professional office workers who were employed only for a short time. This provision however was not a serious attempt to solve the problem of the annual wage, for it applied only to employment of less than two weeks, and gave no assistance to the worker who obtained continuous work for more than two but less than fifty-two weeks. Another device has been adopted in Wisconsin, where an Order in 1919 provided that in seasonal industries, operating for only a few months per year, no learning period should be recognised, and all workers were to be paid the full adult minimum from the beginning of employment.[1] In both these States nothing more than a half-hearted attempt to give some rough compensation to the seasonal worker has been attempted, and elsewhere even that little has been left undone.[2]

Many more experiments have been tried in connexion with the problem of the weekly wage.[3] The favourite device is to compensate the worker and penalise the employer by enforcing the payment of a higher hourly rate when less than a certain number of hours are worked. Thus in Massachusetts the Board which fixed rates for office cleaners pro-

[1] *Wisconsin Industrial Commission, Order No.* 1. *All Industries*, Section 4. The same proviso was repeated in the General Order No 8, August, 1921, and was adopted in the later Canning Orders in California.

[2] In Queensland the Court prescribed a higher daily and weekly rate for the seasonal industries of sugar and shearing (McCawley, *op. cit.*, pp. 400–1).

[3] It should be noted that the introduction of a minimum wage may even encourage the growth of part-time employment if it forces an employer to pay for all time which workers spend on his premises. But this means greater freedom for the worker.

vided that, where the number of hours worked yielded at the current hourly rate less than a reasonable Living Wage, the hourly rate should be increased so that when multiplied by the number of hours actually worked it would yield a Living Wage.[1] Similarly in Washington nine hours is declared to be the normal day's work, and if less than six hours are worked a higher hourly rate must be paid, while the same expedient is adopted in California.[2] The Commonwealth Court of Australia has long accepted " the usual practice of making rates for casual employment higher."[3]

The same principle underlies the enforcement of a fixed sum every week irrespective of the number of hours actually worked. Indeed the two methods are identical if the hourly rate be increased so as exactly to compensate for the reduction in the number of hours worked. The Laundry Trade Board in Great Britain adopted this method in the first Laundry Order, which was declared *ultra vires* on the grounds that the Act gave power to fix a *rate* of wages but not a *wage*.[4] In Minnesota in 1919 and 1920 flat weekly rates were fixed.[5]

[1] *Division of Minimum Wage, Office and other Building Cleaners' Decree*, December, 1920.

[2] No person is to be employed for less than $10 for a 48-hour week (21 cents per hour). If any employer does not provide the full 48 hours of employment in any week, he must pay to all workers not less than 25 cents per hour for time worked [*Monthly Labour Review*, Vol. 8, No. 2, p. 192]. Similarly the Mercantile Order, 1919, raised the normal rate of 28 cents per hour to 35 cents where short time is worked, while in Fish Canning, Laundry and Dry Cleaning the hourly rate for intermittent work was 4½ cents above the normal rate. The same arrangement is made in Oregon.

[3] Higgins, *op. cit.*, p. 9. The same policy is adopted elsewhere in Australia (N.S.W. A.R. [1910], p. 530; [1916], p. 321; [1917], p 75; [1919], p. 35) and in New Zealand (*Awards*, Vol. XXIV, pp. 5 and 416). (See McCawley, *International Labour Review*, March, 1922, pp. 400–1.)

[4] In British Columbia the same attempt was made, and with the same result. [*The Minimum Wage in Canada*, by Kathleen Derry and Paul Douglas *Journal of Political Economy*, April, 1922, p. 171.]

[5] In Kansas the Laundry Order of 1922 enforced the payment of the full minimum wage ($11), provided the employee avails herself of the full working time offered. In Tasmania a Wages Board is now empowered, by unanimous decision, to determine a weekly wage to be paid to any special class of workers irrespective of the number of hours worked. The same method was adopted in the Californian fish canning trade in 1918, and the weekly wage has been prescribed in certain sections of the building trade in Queensland, to offset intermittent employment. The Shaw Commission in Great Britain in 1920 recommended a daily wage of 16*s*. to Dock Labourers, and approved of the principle of " maintenance " [*Cmd.* 936, Section 45].

The assumption underlying these provisions is that short time is the fault of the employer, and that by forcing him to pay workers either the full rate irrespective of the hours worked, or a higher hourly rate if less than a full week's work is given, he may be stimulated to a reorganisation. And such reorganisation has often taken place. It has been found, for example, that many improvements have been effected when employers who previously kept workers on the premises waiting for work were forced to pay for all time thus spent by the workers. Most States have accordingly introduced some provision to this effect, and have often combined with it an attempt to ensure that the employer shall arrange as far as possible for consecutive employment for all workers so that they may have time free to do other work. Thus in Oregon the employers need not pay more than the hourly wage for the number of hours of actual employment, if they arrange consecutive hours of continuous employment so that the employee can get other work, and in Washington in 1915 a regular schedule of hours was to be arranged between employers and workers with the same object.[1] While an appeal to the self interest of the employer is probably the simplest way of inducing him to mend his ways, this device is only a cure for irregular or short time when this is due to bad organisation. In fact, as we have seen, the trouble may be due to several other factors. If it is the wish of workers to work less than a full week, as is sometimes said to happen in the laundry trade, it is unfair to penalise an employer for an arrangement which is as advantageous to his workers as to himself. In Minnesota special care has been taken to insert a clause whereby the fixed weekly wage shall *not* be paid irrespective of the number of hours worked, if an employee works intermittently to please herself. But the test of whether a worker is working

[1] *Washington Industrial Welfare Commission, General War Emergency Order*, 1918. The same proviso was contained in the 1921 Laundry Order. In North Dakota the Orders for the public housekeeping, manufacturing, mercantile and laundry trades permitted the usual hourly rates where short time was worked only if the employer "shall so arrange consecutive hours of continuous employment that such employee may have a fair opportunity for securing such employment as will enable her to earn a full week's wage."

under certain conditions to please herself or not is often difficult to apply, and many workers when faced with half-time work and pay or a threat of unemployment if full-time rates have to be paid would choose the former and declare that it was to "please themselves." If, however, it can be stated with certainty that the short time is voluntary and if the worker is free to seek other work or engage in other pursuits for the rest of the time,[1] it seems not inconsistent with the Living Wage doctrine to pay a proportionate share of the weekly Living Wage in respect of such time as is actually worked. Where, on the other hand, the work calls for special skill, the exercise of which precludes workers from obtaining work elsewhere, or where the nature of the trade [2] requires the regular employment of workers for only half a week even if they wish to work longer, then the theory of the Living Wage demands that such work should carry as its reward a sum sufficient to maintain the worker in the standard currently accepted as a living standard. In these circumstances the higher hourly wage should be enforced, and as it is due to a cause common to the industry as a whole (unlike the case quoted above where bad organisation may be a peculiarity of a particular firm), the burden will more probably be thrown upon consumers as a whole. The effect of the increased price upon the demand for the product will be considered in Chapter XVII. We have here merely to discover what are the logical demands of a Living Wage doctrine and whether they can be translated into practical terms. The answer is unequivocal. If a trade cannot

[1] In Wisconsin even when short time is not the wish of the worker, it has been held that a *pro rata* hourly wage is justifiable because the shorter hours of work leave the worker free to do many things for herself which she would otherwise have to pay for. In other words, her cost of living is actually lower [*Wisconsin Industrial Commission, Annual Report*, 1920]. There are, however, obvious limits to the extension of this theory. A worker may with more free time make her own clothes, cook her own food and do her own housework. But no amount of free time will of itself provide her with the money to buy the materials and the food, and to pay the rent.

[2] It is sometimes possible to reduce irregularity by "educating consumers." Thus in British Columbia the Commission persuaded people to send their washing on days other than Monday with the result that there was greater regularity of employment in the Laundry Trade [*Washington Industrial Welfare Commission, Fourth Biennial Report*].

afford to pay a Living Wage it must go under or receive a subsidy from public funds.

Finally, short time per week may be due to general slackness caused by monetary or other external changes and affecting all trades alike, or to a temporary and unexpected change in demand in one trade occasioned by conditions which are unlikely to recur. There will be no doubt that the trade is likely to continue in the future at something like its old strength, but a temporary emergency has to be met. The choice then lies between perhaps the employment of half the staff on full time and pay, or of all the staff for half the time on half pay. In these circumstances it may be desirable to abandon the Living Wage doctrine until the emergency has passed, as being the best way of tiding over a bad time with a minimum of suffering. No infraction of the fundamental principles is involved, for it is no question of permanently redundant workers. It is probably a recognition of this limitation to the indiscriminate enforcement of the Living Wage that has led the judges in certain of the Australian courts to act in what at first sight appears an inconsistent way. While insisting on the one hand that if a trade cannot pay a Living Wage it must go under or receive support from a State subsidy, they have in particular cases allowed less than the Living Wage to be paid if both workers and employers come to such an agreement. On examination it will be seen that the difference in treatment corresponds to a fundamental difference in conditions. When a departure from the Living Wage is allowed it is because the inability of the firm to pay is due to a temporary emergency the effects of which are likely to disappear in a short time. But when the Living Wage is insisted on, it is felt either that a fundamental reorganisation and possibly a curtailment of the service is needed, or that the trade will never be able to pay its way, and that it should close down or receive such support from consumers at large (i.e., from taxation) that the burden of its continuance will not be thrown upon the workers.

The problems of casual work are brought into greater relief if we consider the application of the Living Wage

principle to the most notoriously casual labour of all—dock labour,—where the policy clearly depends upon the causes which are finally held to account for the peculiar conditions under which the industry is carried on. To some extent the nature of the work necessitates a large and fluid supply of labour. The uncertain times and number of the arrivals of ships and the importance of having the work done speedily, suggest that a big reserve of labour is necessary. This argument is usually put forcibly by the employers. On the other hand, there are many who hold that the scramble for jobs is often unnecessary and that a determined effort on the part of employers in the various ports might very largely decasualise the labour employed. It may be replied that the casual nature of the work largely responds to the wishes of those engaged in it, and that the Living Wage need not therefore be paid to all persons irrespective of how long they work. But it is doubtful how far such workers alone are sufficient to supply the needs of the industry.[1]

In New South Wales Mr. Justice Heydon studied the problem in 1905[2] in an attempt to discover whether the conditions of employment could not be regularised. At that time there were over 1,250 men on the books of the companies in a year. The judge worked out the number of men employed on different days and discovered that more than 800 men were employed on only fifteen days in the year. During the rest of the time the work was done by considerably less than that number. He concluded that there was an excess of nearly 500 men in the occupation. On the assumption that an industry should pay at least a Living Wage to all those workers who are vitally necessary to the performance of the work, the total wage bill of the industry would be about 800 times the Living Wage. The problem was to distribute this sum among the 1,250 who

[1] An interesting discussion of the problems involved and possible remedies may be found in Lascelles and Bullock, *Dock Labour and Decasualisation*, Chapter XV onwards.

[2] *Wharf Labourers' Union* v. *Interstate Steamship Owners' Association and Coastal Steamship Owners' Association* (N.S.W. A.R. [1905], p. 381. See also the *Coal Lumpers' case* [1906].

were scrambling for the work. It became clear that to apply the Living Wage doctrine to this occupation involved a determined attempt to reorganise the methods of recruitment. In fact at that time there were in New South Wales certain "preference" workers who usually had the first choice of whatever work there was, and it was implied rather than suggested that their number should be extended. But very little was done.

If some such scheme could be introduced the number of workers who endeavour to obtain work for a short time would automatically be reduced, for it would be known that preference would be given to the regular employees and that the docking industry was no longer a convenient common employment to which all who had failed to obtain other work could resort and have an equal chance with the older hands of obtaining work. But while the Living Wage theory demands a Living Wage only for each worker whose co-operation over any period is deemed vital to the continuance of the industry in question, it is possible that the enforcement of a weekly Living Wage payment to each worker, irrespective of the number of hours for which he is employed, would give a tremendous impetus to stabilisation. While stabilisation would lead to an immediate increase in the number of people without work, the long run result would undoubtedly be good, for it is desirable that no more workers should be attached to an industry than it can maintain in full time employment. The remainder are set free to enter other work instead of being permanently attached to a trade which can never offer more than a very inadequate and precarious livelihood. But the transition period is a painful one and the palliatives cannot be provided by a wage-fixing authority. The operation must be the work of co-operating bodies and must be carried out as part of a carefully thought out scheme.[1]

[1] Cf. the scheme introduced by the New Zealand Court in the *Waterside Workers' Case*, 1922. *Awards*, Vol. XXIII, p. 1002, and XXV, p. 1570. The Shaw Inquiry into the Cost of Living of British Dock Labourers recommended a system of registration, and estimating that the average half days worked by the labourers were eight out of a possible eleven, recommended a daily wage of 10s. [*Cmd.* 936, p. VIII, *et seq.*].

The Problem of Piece-Work.

We have considered the difficulty of applying the Living Wage doctrine to trades where seasonal or short time work prevails. One further problem remains. This is the application of the Living Wage to piece-work. How is a worker to be treated when his earnings on piece-work rates are less than the declared Living Wage? Two main expedients have been adopted. The first is to declare that piece-rates must yield the Living Wage to all workers, and to force the employer to make up the difference to his workers if they do not. This is tantamount to abolishing piece-rates so far as the Living Wage is concerned and making use of the power conferred upon British Trade Boards to fix a guaranteed time rate for piece-workers, but a weekly and not an hourly rate.[1] The other method is to face the fact that some workers will not receive a Living Wage and pronounce the employer's piece-rates satisfactory if they yield the minimum to a certain proportion of his workers. Thus in California the time-rates fixed by the Fruit and Vegetable Canning Order No. 3 were to be secured to at least 50 per cent. of the workers. In Wisconsin, so long as the employer's piece-rates yield the legal time-rate to 57 per cent. of his adult employees, he does not have to make up the difference to those who fall short. In Ontario the corresponding percentage is 80. Which of these methods is preferable? Once again the answer largely depends upon the cause of the low earnings. If it is due to sheer inefficiency or laziness on the part of capable workers, the effect of a guaranteed time rate will be disastrous. The whole object of the piece work system will be missed, and other workers whose earnings approximated to the bare minimum will be discouraged from putting forth any effort when they know that the Living Wage will be paid even if they do little. To adopt the other method would certainly retain the advantages of the piece-work system, but it would involve a sacrifice of the Living Wage as

[1] Thus the *Manufacturing Order, No.* 13, in Kansas provides that the weekly earnings of piece-workers "shall net (*sic*) the minimum wage provided the employee has availed herself of all work offered."

regards the voluntarily inefficient workers, but it is a sacrifice that will probably have to be made when the balance of advantages and disadvantages is taken into account.[1] If the inadequate yield is due to inefficiency on the part of the individual employer or to out-of-date machinery, etc., the Living Wage can be insisted upon with every advantage, for only the inefficient firm will be penalised and an appeal to the self-interest of the employer is likely to be effective.

The greatest difficulty arises with the feeble, infirm or disabled, who, so long as other workers are available, will be dismissed if an endeavour is made to enforce the payment to them of a Living Wage. Almost all States have admitted the impracticability of the attempt and have introduced a system of Permits,[2] or expressly excluded them from the workers to whom the piece-rates must yield a Living Wage.

[1] It may be noted here, however, that from another point of view there are dangers in the percentage method, for where a firm consists entirely of ordinary and super-ordinary workers the test of the fairness of the employer's piece-rates as compared with those of another employer is difficult to apply. The only safeguard would be to insist that the minimum rates must be yielded to *all* the workers if they are " ordinary " workers.

[2] Under the Permit system licences are granted to individual employers to engage certain specified workers at less than the minimum rate. Usually the rate to be paid is set out in the Permit and is fixed by the Central Authority or Inspector granting the Permit, by reference to the disabilities of the worker. As a general rule, therefore, Permits are not granted unless the candidate himself has been interviewed.

CHAPTER XV.

FAIR WAGES.

The Meaning of Skill—The Monetary Valuation of Degrees of Skill—Equality of Wages *versus* Equality of Total Advantages—Conclusion.

It will be remembered that the Fair Wages principle has been prescribed and adopted in France, was used in New Zealand up to 1918, and has played a large part in regulating the secondary wage in Australia and the rates fixed by certain British Trade Boards. It seems, at first sight, to involve few difficulties. Wages in a given trade are to be roughly equal to those in trades which involve equal difficulty and disagreeableness, and which require equally rare natural abilities and an equally expensive training. The task of the administrator would seem to be merely that of intelligent inquiry and comparison. In fact much more is needed. Skill has to be defined and particular kinds of work have to be examined and compared by reference to their possession of this characteristic. But it follows almost immediately from the Fair Wages principle that work of less or more skill should not receive the same remuneration. It is possible, moreover, that there may be no comparable work. It may happen, for example, that the trade under regulation is one which is recruited very largely from the dregs of other industries. As a result, the natural abilities and skill of the workers may be in no way comparable with that of workers in other equally unskilled trades. It would be impossible to adopt the general unskilled rate for such workers, for this would involve unfair wages as between them and the superior class. It is therefore also necessary to grade all kinds of work by reference to the skill, natural abilities and training required for their performance. A similar complexity is involved in the attempt to determine

what is a Fair Wage for any one occupation. The Fair Wage principle does not go far enough in merely asserting that as far as possible the same skill, etc., shall receive the same wage. For where two rates are being paid for similar work, equality might be obtained by reducing the one or by raising the other. It is generally assumed by workers that the lower wage will be raised to the level of the higher, but judges administering the principle have refused to be bound by this interpretation,[1] and the agitation in Great Britain in 1924 and 1925 for a reduction in the wages of the sheltered trades shows how strongly the opposite view may be held. Not only therefore does the Fair Wages principle involve the equalising of unequal wages; it necessitates also the adoption of a particular wage as proper to a particular kind of work, and the fixing of wages above and below this on the basis of the differing skill required. The other conditions which enter into the remuneration of work, such as its agreeableness or the reverse, accompanying privileges, holidays, pensions, permanence, etc., must also be evaluated. Little reflection is needed to show that these tasks are far from simple, and involve for their performance a reference to other and supplementary principles.

The Meaning of Skill.

Unfortunately there is no general agreement as to what is implied in the term "skill." It is a concept so complex that at most we can but isolate large groups of workers who may be classified as relatively skilled and relatively unskilled. The standard definition of skill as the "capability of accomplishing something with precision and certainty; practical knowledge in combination with ability,"[2] gives no help, for our difficulties arise largely because the "something" itself differs. Thus a man may be expert in performing one particular job, but he may rank as less skilled than a less expert performer of a task which is regarded as more difficult. The line between skill and efficiency is an

[1] See the New South Wales Court's rebuke to workers who frequently supported claims by reference to the higher wages paid elsewhere (A.R. [1920], p. 81).

[2] *New English Dictionary.*

almost impossible one to draw. A writer in the *Quarterly Journal of Economics* has pointed out that there are in fact two current interpretations of skill, based on the variety of processes on the one hand, and a knowledge of the capabilities of materials on the other.[1] These capacities may have no common factors, and in fact "every decade has been one of change in the particular elements which made for skill."[2] The necessity of comparing and grading all trades has led to an emphasis upon the craft aspect of work done, and even in some cases to the use of an "effort expended" test. But even when processes and occupations are thus isolated, they are very seldom in any way comparable. The fact of apprenticeship has been adopted by most Courts as a rough test of what trades are to be regarded as skilled,[3] but we are then left with the difficulty of grading workers *within* the apprenticed or unapprenticed groups. Little has been done to elucidate the concept of skill, but it is clear that the more precise one endeavours to make it, the more do difficulties arise. These difficulties are less serious when only one or a number of very similar trades are under regulation. It is then possible to compare the work done and to adopt easily recognisable and comparable standards. It is probably for this reason that the operation of the Fair Wages principle in France has caused relatively so few difficulties. It was laid down in the Act that the Wages Committees should fix wages for home-workers in the clothing and allied trades equal to those paid for similar work in the same trades carried on in factories in the same district. Thus no technical difficulties arose in comparing the work done, such as would be encountered in an attempt to compare the relative skill of a boilermaker and a bespoke tailor. It was foreseen that there might be no identical work carried on by factories in the district. In such a case the Com-

[1] A. Bezanson, "Skill," *Quarterly Journal of Economics*, August 1922, p. 626 *et seq.*

[2] *Ibid.*, p. 635.

[3] Compare Judge Jethro Brown in the *Tinsmiths' Case, Industrial Court*, 1916, p. 2. "Custom has prescribed and Australian Courts have approved and many reasons of expediency have sanctioned a higher rate of wages than the living or minimum wage, where the work is of a skilled character, involving, it may be, long years of apprenticeship and training."

mittees were instructed to take as a basis the wage paid for similar work in the same, or a neighbouring, district. Where there was no similar work the basis was to be the average daily wage paid to unskilled workers who visit the houses of their employers and are engaged in housework, sewing, mending, washing, etc.[1]

To grade workers according to skill in the same or similar trades may not be altogether easy, but it can probably be done. The outcome is more doubtful when an attempt is made to compare on this basis the work done by employees in all industries. Whatever the definition of skill adopted, its application to such differing conditions involves a detailed knowledge of the processes of a trade in their relation both to each other and to similar processes in other trades. This has at times called for such technical knowledge that wage regulators have refused to apply the principle themselves but have devolved it to trade experts.[2] Even where this devolution is not necessary a very full and sometimes onerous investigation into all the circumstances of the industry is required.[3] Moreover, similar occupations may be called by different names in different trades, and the same name may be given to entirely different work. The organisation of work in various factories also vitiates comparisons in many respects.[4]

The Monetary Valuation of Degrees of Skill.

Assuming that some kind of classification of workers on the basis of skill has been reached—and, in fact, a two- or three-fold grouping into skilled and unskilled, or skilled, semi-skilled and unskilled has been adopted by States where the Fair Wages principle is in use—we have yet to discover how the rate proper to a particular group has been determined. We have, in other words, to go behind the often reiterated statement of the New Zealand Court, that wages

[1] Ministeral Circular, July 24, 1915.
[2] Cf. *New Zealand Awards*, Vol. XXI, p. 1380.
[3] There are cases in which an inadequate appreciation of the dissimilarities between two kinds of work led judges to fix a common rate which was later cancelled.
[4] N.S.W. A.R. [1922], p. 181.

have been fixed at a particular sum "so as to bring them into conformity with other skilled trades,"[1] and ask how this standard sum was arrived at.

The custom of the New Zealand Court to allow claims to rates of wages which it had already fixed in another Award, if it could be proved that the degree of skill was similar,[2] requires further examination. For these early Awards themselves were largely fixed at such rates, agreed by the parties at a Conciliation Committee or by an industrial agreement, *as the Court chose to embody* into an Award. That is to say, even here the Court exercised discretion as to the rates which it would regard as normal or proper, and in some cases refused to embody an agreement in an Award on the ground that to raise the existing rate "would disturb the relative position of workers in this industry to workers in other equally skilled employments."[3] There was thus a selective process at work. After the classification of work, one particular rate had to be declared appropriate to one particular kind of work.

The test adopted by the Judges may only be inferred, for very little information is available. It seems that they have endeavoured to interpret Fair Wages in relation to the needs of a community for a particular service. The fixation for example of a higher wage for a particular kind of skill has been justified by reference to the necessity of attracting a sufficient supply of labour to the occupation in question.[4] Judges have tended to identify this wage with the valuation actually put on such work by the community under unregulated conditions.[5] But this identification involves a conflict

[1] *Tailors' Award*, Vol. XV, 291; see also Vols. XII, 591; XVI, p. 97; XVII, 481; *ibid*, 1,381; XX, 18; *ibid*., 269, 283, 1,073; XXV, 1,105; XXIII, 878. Compare the similar reasoning of the New South Wales Court (A R [1912], pp. 9 and 66; [1913], p. 201; [1914], p. 121; [1915], pp. 1, 93, 205, [1916], pp. 22, 158, 191, 277; [1917], p. 58, etc.).

[2] Cf., for example, *N.Z. Awards*, Vols. X, 738, 745, 797; XI, 36, 246; XII, 912; XVII, 1,381, 1,387, 1,392; XIX, 80, 636, 683; XXI, 1,365; XXII, 836, 861, 1,208, 1,266; XV, 1,233, 1,271, etc. The N.S.W. Court speaks of its *prima facie* rule that award rates which are arrived at by agreement or imposed by the Court are to be considered as proper wage rates (A.R. [1923], p. 169).

[3] *Dunedin Painters. Awards*, Vol. XVII, p. 684.

[4] *New Zealand Awards*, Vol. XX, p. 734.

[5] Compare Mr. Justice Rolin in the N.S.W. Court: "The basis of our

with the Fair Wages principle when a skilled trade is in a declining state. For the current value is determined by conditions of supply and demand for a particular service, while the element of skill, on the basis of which a classification is made, is but one of the influences affecting but one side of the balance. Hence the New Zealand Court in 1916 and 1918 found itself forced to choose between its method of evaluating the Fair Wages and the general policy of ensuring equal wages for work of equal skill. The saddlers' trade was in a declining state owing to the competition of motor cars. The work was highly skilled, but the community's need of that particular kind of high skill was small.[1]

It is not even always easy to discover what is the general rate. It is indeed sometimes possible to state with certainty that "1s. 6*d*. is the standard rate payable to bricklayers in this district for some time past,"[2] or it may be "generally admitted that the minimum wage now ruling in the district is £2 15s."[3] But often there is no recognisable general rate, and a choice has to be made between the different rates which are being paid for the same work. It may be that in one section of a trade employers for special reasons have conceded higher rates to certain of their employees, or that a specially well-organised group of skilled workers may succeed in obtaining wages far higher than those paid to workers in another trade, engaged on similar occupation. In such circumstances the New Zealand and other Courts have preferred to regard such rates as exceptional, and not to be taken into account.[4] The common standard is gen-

wage system as settled by the Courts and Boards is and must have been the wage which the Courts and Boards found existing in the community. That is to say, there was a sort of recognised labourer's wage, a sort of recognised artisan's wage, and so on" (A.R [1920], p. 129; see also *ibid.* [1923], p. 104).

[1] In fact a compromise was reached, the wages being increased but not quite up to the level of skilled trades (*Awards*, Vol. XVII, p. 481, and XX, p. 1,073). Similarly Mr. Justice Higgins in 5 C.A.R., p. 72, refused to "prop up a falling system (and) to encourage an antiquated process by prescribing a higher minimum rate for it."

[2] *New Zealand Awards*, Vol. III, p. 742.

[3] *Ibid.*, p. 791.

[4] In 1913, the New Zealand Court ruled that "the fact that plasterers in Dunedin *can get* 1s. 7*d*. is no valid reason for fixing wages at that rate" (Vol. XIV, February 15, 1913); similarly special rates conceded by a

erally the "ruling rate," although some Judges do not adopt this view.[1]

While the problem of determining appropriate differentials for degrees of skill may be solved at any given period the mere progress of time with its accompanying changes in the processes of industry necessitates a revision of the standards if they are based upon the needs of a community for particular services. It is possible for example that there is now, and has been for some time, a decline in the relative demand for the skilled worker. The introduction of machines may have put skill at a discount. In such cases, while the absolute difference in skill between two different kinds of work may remain the same, the "fair" payment for this difference should vary. Skill would be graded as before but the corresponding wage differentials would be less. It is thus possible that the abuse of the Australian Courts for their reduction of the skilled workers' differential should be replaced by praise for their recognition of this ultimate trend.

The same kind of problem arises when for some reason or other there is a rise in unskilled wages. An automatic application of the Fair Wages principle would mean a proportionate increase in the wages of all higher-paid workers. In practice many other factors have to be considered. This difficulty arose in Australia during the War, in those States where the Lowest or Living Wage was periodically increased to correspond to changes in the cost of living. At first there was a general feeling in favour of confining the increase to Living Wage workers unless strong reasons to the contrary should be shown.[2] In New South Wales this policy was

small section of employers were disregarded (Vols. XXI, 1,238, and XX, p. 235). The difficulty is especially acute in an Arbitration System which aims at stopping strikes, for the ruling rate may not have been obtained by lawful means, yet judges may have to adopt it and thus "legalise" an illegal action (A.R. 1922, p. 203).

[1] Thus in New South Wales Mr. Justice Edmunds held against the rest of the Court that the "lowest relevant rate" should be the basis (A.R. [1922], p. 55).

[2] Compare Judge Jethro Brown in an article on the "Effect of an Increase in the Living Wage by a Court of Industrial Arbitration upon Vested Rights and Duties under Existing Awards" (*Harvard Law Review*, June, 1919, p. 898).

adopted as early as 1911,[1] it being held that the Living Wage "often represents a gift by the community to the worker in excess of the actual value of his work made because such actual value would not keep him in proper conditions. When his wage can keep him in proper conditions there is not that reason, at any rate, whatever others there may be, for making him a gift."[2] The man who asked for a maintenance of his margin above the Living Wage worker "must also show that the value of his work is greater than the living wage."[3] During the War the principle of Fair Wages, which had been adopted as a means of determining the wages above the Living Wage, was largely abandoned on the grounds that the loss in purchasing power which led to an increase in the money value of the Living Wage was a war burden which the more highly paid skilled workers might fairly be asked to bear.[4] In New South Wales the famous Margin Judgment of 1916 officially inaugurated a new policy.[5] Until 1919[6] industries were divided into two classes, those which had benefited from the War and those which had been adversely affected. In the former group the fact of war conditions was disregarded and all wages were to be increased by the same amount that was added to the Living Wage. In the latter group the increases were to be subject to a diminishing scale disappearing altogether above a certain point.[7] Thus the Fair Wages principle was abandoned in two ways. Workers of equal skill in trades of differing prosperity would receive unequal wages,[8] while in any given trade above a certain level the

[1] In the *Milk Carters' Award*, A.R. [1911]. The policy was confirmed, in A.R. [1912], p. 218; [1913], p. 85; [1914], p. 14.
[2] In *re Furniture Trades Award*, A.R. [1912], p. 162.
[3] In *re Milk Carters' Award*, A.R. [1911].
[4] *Living Wage Pronouncement*, A.R. [1916], p. 450.
[5] The *Margin Judgment* was repealed in relation to new awards in May, 1919 (A.R. [1919], p. 73).
[6] Cf. *New Zealand Awards*, Vol. XIX, p. 1,055, and XVIII, p. 58.
[7] The Court gave a sample scale showing how the increases might be made to disappear above a certain point, and this scale was adopted in practically all the later awards.
[8] In fact the diminishing scale became the general rule, for the Court intimated that if the proposed Excess Profits Duty were applied it would bring all but very exceptional cases within the second group, and the duty was imposed in 1917.

same wage would be paid irrespective of the degree of skill. It was not until 1920 that all classes were given an immediate right to an increase in wages equal to any declared increase in the Living Wage. Even so the increase was only an absolute amount and was not proportional. But both here and in New Zealand the abandonment of the Fair Wages principle led to dissatisfaction.[1] For it was accompanied by no satisfactory substitute, nor was it a logical change in accordance with the changing need of the community for different kinds of workers. The resulting industrial unrest therefore occasionally led to a reversion to the old principle [2]; occasionally, as in New Zealand, to a revaluing of the relative positions of skilled and unskilled workers, and a rough attempt to maintain the money differential between them.[3]

Equality of Wages *versus* Equality of Total Advantages.

It was soon realised by those administering the Fair Wages principle that wages are not the only factor to be taken into consideration, and judges have been forced by the logic of facts to interpret the principle to mean not an equalisation of money earnings for similar work, but an equalisation of all the advantages of similar occupations.

In New South Wales Section 26 of the Arbitration Act obliged the Court not to fix the wages of Government or other public servants lower than "those paid to other employees not employed by the Government or its Departments doing substantially the same class of work, but the fact that employment is permanent or that additional privileges are allowed in the service of the Government or its Departments shall not of itself be regarded as a substantial difference in the nature of the work." In other words, the

[1] In Great Britain also there has been since the War considerable dissatisfaction among skilled engineers with regard to the relatively high rates fixed by the Trade Boards for unskilled workers in the metal trades.

[2] *N.Z. Awards*, Vol. XVIII, p. 408; N.S.W. A.R. [1920], p. 31.

[3] *Awards*, Vol. XX, 116 and 403; XXI, 513 and subsequent Living Wage Pronouncements. In the Federal Court, on the other hand, it has always been the policy that "the secondary wage as far as possible preserves the old margin between the skilled and unskilled workers" (Higgins, *op. cit.*, p. 7).

Court was to fix the wages of Government servants solely on the basis of a money interpretation of Fair Wages. This clause proved so difficult to work that it was finally given up. It was often impossible to obtain exactly comparable work. Engine drivers or moulders in Government employment were sometimes given slightly different work from that done by engine drivers and moulders outside.[1] But, and this is what chiefly concerns us here, the Court found that it could not disregard privileges and permanence without putting the public servant in a much more favourable position than workers outside the service. It pointed out that "permanency has a money value"[2] and that it was impossible to compare the work with outside work which was not permanent.[3] Moreover the various privileges such as payment during time of training, holidays, etc., were similarly endowed with a money value.[4] Hence outside the service where permanency or privileges were found they were accompanied by a lower wage, and to give the Government servant a wage equal to that paid when there was insecurity was to give him a double advantage. The repeal of the Section at the end of 1922 left the Judges free to take all the relevant facts into consideration, as they had previously done in fixing the wages of workers other than public servants. In taking this step the New South Wales Court, in common with others administering the Fair Wage principle, has always regarded casual work as a disadvantage to be compensated by high wages, and permanency as one of the privileges of particular kinds of work to be offset by a lower money payment.[5] In the same way the Courts

[1] N.S.W. A.R. [1921], p. 63. Cf. also the difficulties over the wages of storemen in A.R. [1922], p. 181.

[2] *Ibid.* [1913], p. 77.

[3] A.R. [1921], p. 63.

[4] *Ibid.*, p. 189.

[5] Compare also the allowances made by the *New Zealand Awards*, Vol. XIII, p. 177; XIV, p. 416; XV, 1,277; XVI, 103, 163, 180; XXV, p. 1,105 and 1,224. Mr. Justice Higgins has always adopted "the usual practice of making rates for casual employment higher than the corresponding rates for continued employment" (Higgins, *op. cit.*, p. 9). The Majority Report of the Shaw Dock Inquiry in Great Britain used this argument to refute the claim of the Minority that a minimum of 10*s.* a day would involve unfair wages as compared with other trades and so promote industrial unrest.

have considered whether or not the industry provides a career, and whether or not there is a graduated increase in wages with period of service.[1] As regards dirty, unpleasant or dangerous employment there is no consensus of opinion, the main disagreement centring round the question whether such conditions do or do not have a money value. Thus Mr. Justice Higgins holds that it is undesirable to "prescribe extra wages to compensate for unnecessary risks to the life or health of the employee, or unnecessary dirt. No employer is entitled to purchase by wages the right to endanger life or treat men as pigs."[2] But in the State Courts higher wages have been prescribed on account of dirty or dangerous work.[3] In New South Wales indeed the Court has interpreted its functions very widely and declared that in fixing the wages of, for example, coal miners it would take into account "the nature of the employment, the extent of responsibility, the disadvantage and risks of working underground and the inconvenience and deprivation of social intercourse involved in the liability to work on Sundays and during night time for a considerable part of the year."[4] Similarly long hours have been taken into account.[5] The attempt to obtain equal real wages, rather than equal money wages, is seen in the attempt of various Courts to differentiate the money wage according to the relative purchasing power of the district in which it is earned. It is interesting to note that both in this respect and with regard to the payment for casual work the same practice is adopted by administrators of both the Living Wage and the Fair Wage

[1] A.R. [1914], p. 183, etc.

[2] Higgins, *op. cit.*, p. 10. Cf. also C.A.R. 13, p. 455.

[3] See N.S.W. A.R. [1913], p. 131; A.R. [1914], p. 183: "Classed solely according to the effort required for the proper performance of their work, tube cleaners . . . should receive not more than 8*s.* 9*d.* per day. But the work is hot and dirty, and calls for an increase." See also *N.Z. Awards*, Vol. XIII, 79; XIV, 1,055; XXI, 1,536; XXIII, p. 1,324.

[4] N.S.W. A.R. [1922], p. 46; Higgins, *op. cit.*, p. 10; *N.Z. Awards*, Vol. III, p. 691; VIII, p. 340.

[5] N.S.W. A.R. [1921], p. 211. A similarly wide interpretation is placed upon the Fair Wages principle in Kansas (*Docket No.* 3293 *in the Court of Industrial Relations, State of Kansas*, June 15, 1920] and in Victoria and Tasmania. The Boards in South Australia are instructed to take into account a similarly wide range of conditions [Section 183 of the *Industrial Code*, 1920].

policy. But the reasoning which justifies the differentiation is different in each case.

Conclusion.

A review of the practical difficulties involved in the attempts to apply the Fair Wages principle as a basic wage brings into relief certain facts. In the first place wage regulators have found it impossible to confine themselves to a narrow interpretation. A certain limited amount of wage regulation might be carried on by ensuring that all workers in the same industry received the same wage, and this process of standardisation might be very important in a country such as the United States, where geographical and economic conditions differ over a wide area.[1] But where, as in New Zealand and Australia, it has also been used as a basic principle for fixing the wages of large and diverse groups of workers, its meaning has been extended. An attempt has been made to discover the proper or fair payment for different grades of work, and this attempt has resulted in the ultimate interpretation of the Fair Wage as that which will ensure to the community the supply of any particular kind of labour which it needs.

Moreover the administrators of the principle have been forced to take into consideration all other factors affecting the total advantageousness of an occupation. To regard wages as the only factor has proved to be impossible. In this wage regulators have had regard to the spirit rather than the letter of the Fair Wages principle, and their interpretation coincides with that of the average man, who does in fact take all the advantages of an occupation into account and does not only look to wages.

[1] Cf. Herbert Feis, *Principles of Wage Settlement*, pp. 1–91, and *The Settlement of Wage Disputes*, pp. 121–177.

CHAPTER XVI.

THE WAGE THE TRADE CAN BEAR.

The Definition of the Trade—The Measurement of Ability to Pay—Conclusion.

In despair at the practical difficulties involved in the attempt to fix living or fair wages, and governed by a habitual distrust of State intervention, business men and others have claimed that the only satisfactory basis is to fix a wage "which the trade can bear." This formula they feel will provide a definite test; this will most closely approximate to unregulated conditions. But such hopes are baseless, for it will be seen that this principle involves as many difficulties and calls for the exercise of judgments as arbitrary as do either of the two already considered.

The Definition of the Trade.

In particular it is necessary to attach a meaning to the words "trade" and "bear." The first of these has been taken to mean different things by different wage-regulating bodies. It has sometimes been used to mean all the trades of a particular country. A wage which the trade can bear has then implied a wage adjusted to the total productivity of industry. Thus the Queensland Economic Commission of 1925 concluded that "the capacity of all industries taken together to pay wages depends primarily upon their net aggregate production. . . ." Similarly the decision of the New Zealand Court to take into account economic and financial conditions when declaring a Living Wage has in fact meant that the capacity of all industries to pay a certain wage is considered; while the determination of the South Australian Court that the reasonable Living Wage should

vary with the prosperity of the community has had the same result.

In the second place, the test of what the trade can bear has had reference only to individual trades. But serious difficulties at once arise. There is no convenient definition of any trade, and the varying organisation of different trades makes any uniform interpretation impossible. Few industries consist of a number of firms equal in size, all in the same stage of industrial efficiency, all using the same kind of capital equipment, and managed by employers of similar ability. More usually we find great diversity. Firms of widely differing size, efficiency, capital equipment and costs of production exist side by side. The profits of the one may be greater than those of the other, but both may supply the same market. A wage which is normally paid by the better organised section of the trade may be beyond the capacity of its less efficient competitors. In such circumstances a choice has to be made as to which sections or units are to be taken into account, if the wage fixed is not to be identical with that ruling under unregulated conditions. Different solutions have been adopted by different wage regulators. In Great Britain the Trade Boards of which Professor Macgregor is a member do not accede to the request that they should fix a rate which should be paid by the worst or least efficient employer in the worst location [1] and this attitude seems to be general. But where is the line to be drawn? Professor Macgregor says "that an ordinary efficient employer in the country should be the one to be considered," and other witnesses before the Cave Committee talk of the "ability of a reasonably equipped factory to pay,"[2] "well managed shops,"[3] and even of the "weakest business which it is socially desirable to maintain in existence in the weakest district."[4] These

[1] *Cave Committee Minutes of Evidence*. Question 10,864.

[2] *Ibid.* Mr. S. Pascall in answer to Question 6,761.

[3] *Ibid.* Mr. Wethered in answer to Question 11,439. Cf. also the instructions to the Kansas Industrial Court to fix wages such as to enable industries to continue with reasonable efficiency (Section 8 of the Act).

[4] Mr. Wethered's statement on p. 810 of *Minutes of Evidence* It is noteworthy that the Cave Committee, although paying much attention to the principle of what the trade can bear, seems to have been very easily

tests are in practice the same as those adopted by administrators of the Fair Wages Policy, and indicate how far from precise the principle of what the trade can bear really is. In Australia and New Zealand "the trade" was at first given no exact meaning. In 1901 the New Zealand Court spoke of the undesirability of destroying or in a large measure crippling an industry, thus indicating that it had some standard in mind; but no uniform policy was adopted.[1] In the early years of wage-regulation in New South Wales the Court inclined to take as a standard the best employers in the trade,[2] and frankly recognised that "to wait till no one would be injured would be to wait for ever. . . . The industry must be looked at as a whole."[3] At a later date the Court changed its emphasis and paid more attention to the small or marginal employer. If he was in a struggling position, the industry was held to be in a bad way and unlikely to be able to afford a general wage increase.[4]

The "reputable" or "reasonably efficient" employer was adopted as the test in the Victorian Act of 1903. The Boards were to ascertain as a question of fact the average prices paid by reputable employers to workers of average capacity and to fix wages no higher than such rates. But the clause was found difficult to administer and became very unpopular. The task of distinguishing reputable from non-reputable employers was an invidious one, and there was a temptation to assume that the reputable employers were those who paid relatively high wages. The stigma on the remaining employers was bitterly resented, particularly in cases where the organisation of the trade made it possible

satisfied with the answers it received, and did not press witnesses to analyse their standards. See, for example, its failure to press Professor Hobhouse to amplify his statement that the "object of the Trade Board system is to discover a rate of wages which will provide a reasonable livelihood for the worker *without causing dislocation in the industry*." (My italics.) Question 9,428.

[1] *N.Z. Awards*, Vol. III, pp. 15, 25, 346 and 501. In 1915 it endeavoured to preserve the marginal or worst employers. *Awards*, Vol. XVI, 424.

[2] *Milk and Ice Carters' Award*, A.R. [1907], p. 84.

[3] *Shop Assistants' Award*, A.R. [1907], p. 139.

[4] A.R. [1915], p. 198; [1916], p. 47.

for one section to pay much higher wages than another.[1] These difficulties led to the withdrawal of the clause in 1907, but in the meantime it had been adopted in South Australia in 1904, and was later introduced into the Tasmanian Act from 1910 to 1911. It appeared again in 1921 in New South Wales when the Board of Trade justified its rates for rural workers on the ground that they would "not impose a serious additional burden on reputable farmers."[2]

The fact that one so-called trade on account of geographical and other conditions serves different markets must also be taken into account. This factor is particularly important in those industries supplying goods capable of great variation both in quality and style, and which are in no sense of the word standardised. It may well happen that a wage easily borne by one section of the trade will prove impossible for the other. Thus the dressmaking trade of Great Britain supplies two very different markets. On the one hand high-class goods made by very skilled and specialised workers are sold to consumers who are largely members of the wealthy classes and whose demand for clothes is relatively inelastic. At the other end of the scale is the small dressmaker in the country or in the poorer districts of any city supplying an article of inferior quality to purchasers with very low incomes, to whom clothes are the item of an already limited budget which can most easily be economised.

The work actually done by the employees may differ in the two cases. A skilled dressmaker in the large town will do and have the opportunity for doing much finer and better work than a worker who has served an equally long apprenticeship in a section of the trade dealing with a poorer *clientèle*. Such differences mean that the trade is not really homogeneous and that a wage which one section can bear will be either more or less than the other section can support. Unless the trade is split up the wage fixed is

[1] It may easily be seen that, for example, many tobacco firms in Great Britain may be reputable, but may be unable to pay the wages offered by the Imperial Tobacco Company, which possesses advantages due to large scale production.

[2] *Compendium of Living Wage Declarations*, etc., p. 112.

that which *one section* can bear.[1] Such separation is not easy, for it is not as a rule possible to differentiate on a purely geographical basis. Even within one town high and low class work is found,[2] while an attempt to differentiate on the basis of the grade of work or the *clientèle* would be almost impossible to administer. It is sometimes possible to draw a sharp distinction on this basis, as for example between trades which manufacture for export and those which do not; but even here it is more usual to fix a rate which can be borne by the exporting section than to treat the two parts separately and have different rates adjusted to the ability to pay of each.

Thus we find that the interpretation placed upon the word "trade" is quite arbitrary, and that in this respect at least the fixing of a wage the trade can bear is something other than the automatic application of an unvarying rule. The choice itself as to whether "the trade" shall mean all trades or one trade, and if the latter, whether it shall mean the best, the worst or the average member of that trade, is influenced by such factors as existing organisation, but is ultimately made by reference to the supply of the commodity which it is felt desirable for various reasons to ensure. That is to say, motives other than economic play an important part. Once the fluid content of the term "trade" is perceived it is clear that the wage the trade can bear may be great or small according as the trade is limited or expanded. For it is improbable that the fixing of a particular wage will result in driving every employer out of business. The effect will generally be to increase or decrease the numbers of persons or firms engaged in that industry. Short of fixing a wage which makes it impossible for any single individual to continue to produce (because there will

[1] It has been held by some authorities that while the "only satisfactory basis for a differential wage district by district is a distinct differentiation in the class of trade for which the employer caters," "in the case of manufacturing industries this difference rarely, if ever, exists under modern conditions of trading." Mr. Wethered, *Statement to Cave Committee*, p. 811.

[2] So that the practice of the British Dressmaking and Hat, Cap and Millinery Trade Boards, of differentiating according to the population of different areas, does not provide a complete solution.

be no demand for even a minute quantity at the resulting high price), if the trade is made small enough it can be forced to bear almost anything, and a choice has to be made as to the size at which the industry is to be maintained. There is no logical reason why the trade as it exists at the moment should be taken as the standard. A lower wage than that paid under unregulated conditions, if it were possible to secure the labour, would be equally justified.[1] The choice has in fact been one of convenience, but the result has been that almost any wage may be described as the wage the trade can bear.

The Measurement of Ability to Pay.

Even when a meaning has been given to the term 'trade', it remains to solve the problem of the measurement of ability to pay. If total production be taken as the criterion, some means of measuring it must be found. This problem is mainly statistical, but various suggested solutions may be indicated. The Queensland Commission referred to the total amount of income per head of population, but found that in order to estimate this it was necessary to combine Income Tax returns with wage rates, unemployment and census results.[2] Difficulties were, however, encountered because the later figures were not accessible in a very convenient form, while the necessity of awaiting the annual Income Tax report meant that all figures were at least fifteen months out of date. The importance of obtaining up-to-date figures led the Queensland Commission to seek alternative measures, of which the value of material production is the most important. Here too the difficulties are largely

[1] The instruction to the Victorian Court of Industrial Appeals to consider the amendment of any Determination "which has had or may have the effect of prejudicing the progress, maintenance of or scope of employment in the trade or industry affected" is unsatisfactory for this very reason. For any rate will to some extent prejudice the scope of employment in that trade, since employment offered would be greater if a lower rate were fixed. The Court has, therefore, to decide at what point it is desirable that employment in particular industries should be restricted.

[2] Details of the method used may be seen in paragraphs 56 ff. of the Commission's Report.

of a technical and statistical nature.[1] Still greater is the difficulty of estimating future capacity to pay and hence the future productivity of industry. Some such estimate is clearly necessary if the wage is to bear any relation to capacity at the time it is actually due. Only a rough estimate is possible, and the general plan has been to assume that "by taking a number of influences into account, the tendency of one error will be to cancel another if there is no general bias in one direction."[2] The Queensland Commission suggested that it would be possible to arrive at an estimate of the probable volume and value of the forthcoming season's production of staple primary industries during the winter months. Further indications of future production could be gleaned from attention to the prices of industrial stocks and shares and the loan policy of banks. It was suggested that "a rise or fall in business shares, which is greater or less than the change in value of short loans or of Government stocks will reflect something other than interest. When the shares are taken as a whole, this difference will be due mainly to changes in prospective profit, which depends chiefly upon the volume of business in prospect."[3] Finally, "in order to give equal weight to past and future conditions," it was suggested that "the mean of the two index numbers of past conditions, income, and production should be added to the index number of future production."[4] A similar plan has been adopted by the New South Wales Board of Trade and the New Zealand Arbitration Court in their attempts to relate the Living Wage to the prosperity of the country. The former body from September, 1923, has taken into account the dividends payable on ordinary shares, the annual reports of companies, the plentifulness of money, stock exchange movements, etc., the prices of metals, live-stock returns and figures relating to imports and exports and the production of wool and wheat. The latter, in November 1922, while not making so positive an effort to forecast future conditions, took into

[1] A detailed description of the difficulties encountered and the methods adopted is found in the Commission's Report, Part 5.
[2] *Ibid.*, Section 61. [3] *Ibid.*, Section 65. [4] *Ibid.*, Section 70.

consideration figures relating to banking activities, the prices of primary products, especially wool, beef and butter, and the current trade balance.[1] But the problem of measurement is by no means solved, although the future holds forth hope in the shape of business bureaux, the development of accurate forecasting and a greater use of the services of trained statisticians.

But when the productivity of a country has been determined and measured, it is still necessary to apportion the total between wage-earners and other claimants. The theory of what the trade can bear gives no help unless it be taken to mean the payment of a wage which will not discourage the supply of the other factors of production and so reduce total produce. This investigation involves immense practical difficulties, but might even now be carried much further than it is. It is also clear that to adopt an average figure for industry as a whole necessarily fails to tackle the problems of trades whose prosperity is above or below the average. To interpret "the trade" to mean industry as a whole fails therefore to fit the circumstances of more than a very small number of trades; and the exponents of the "trade can bear" principle have no definite ideal of policy to justify the dislocation which the interpretation of their theory would necessarily involve.

Similarly when it has been decided which employers in a given industry are to be considered, satisfactory tests of their "ability to pay" must be devised. A great deal depends upon the possibility of obtaining from employers figures on which to base a judgment. As a general rule employers have been extremely reluctant to supply this evidence, and when information has been furnished it has been too fragmentary to be of much use. It is inevitable that a tearing asunder of the veil which hides the mystery of company finance should be resisted. But it is not reasonable that employers who plead inability to pay should expect Boards and Courts to take their word without more ado. This inability to obtain or to insist upon the production of figures has hindered the work of more than one

[1] *N.Z. Awards*, Vol. XXIII, p. 964.

Board or Court.[1] Moreover considerable technical knowledge is often necessary for the proper interpretation of balance sheets when they are obtainable. In 1922 the Broken Hill Proprietary Company appeared before the New South Wales Court and asked for a reduction of wages on the grounds of trade depression.[2] Figures were produced which purported to show a nominal loss of £684,000. But it was pointed out by the Union representative that certain items in the list were wrongly charged, that the company had charged to depreciation a much bigger sum than usual, that in the past bad management had not provided a sufficient reserve, that no allowance was made for the reduction of other costs which were to take effect if wages were reduced, that not all products of the company had been taken into account, and that on much of their expenditure the company should not expect a return since it represented recently invested capital. Moreover it was claimed that the company failed to show the profits made on its by-products. Such arguments show how far it would be possible deliberately to give a false impression of the financial position of a particular trade.

Various tests of ability to pay have been adopted. One of these is the selling price of the product. If this falls, it is assumed that the trade cannot bear so high a rate. This test has become increasingly popular in New Zealand of recent years [3] and is familiar to British readers in the form of the sliding scales of the iron industry. It is not always a reliable test. Much depends upon the elasticity of demand for the article. If this is great, and if costs of production are falling, a lower price may mean a much greater profit and therefore a bigger possibility of paying higher wages. Moreover it may happen that the selling price is deliberately kept low in accordance with some special purpose.[4] Other

[1] Cf. Professor Macgregor's complaints before the Cave Committee, Question 10,932. See also N.S.W. A.R. [1918], p. 116; *N.Z. Awards*, Vol. VII, 268; *Massachusetts Minimum Wage Commission, Bulletin No. 7*, and Sells; *op. cit*, p. 263.

[2] N.S.W. A.R. [1922], p. 147.

[3] Cf. *N.Z. Awards*, Vol. XXIII, pp. 35, 225, 541, 1,624.

[4] In 1916 the New South Wales Court pointed out that if it was the State policy to encourage mobility of goods and men by charging uneco-

authorities have used the cost of materials as a criterion of ability to pay. If it can be proved to have increased then the ability of employers to pay is presumed to be less.[1] This criterion also is open to criticism. Its reliability depends upon the reason why the cost of materials increased. If it was due to a general rise in prices then the probability is that selling prices will have increased in a similar degree.

Another method of gauging ability to pay is to adopt the rates which have been agreed to by a large majority of the employers, the presumption being that if the majority agree to pay the rate it must be one which every one can reasonably be expected to bear. Thus as early as 1902 the New Zealand Court fixed a certain rate for timber-yards and saw-mills on the grounds that its acceptance by 90 per cent. of the employers "is sufficient ground for determining [that] the rate shall apply also to dissentient mill-owners."[2] Such a test is probably roughly satisfactory when the trade is homogeneous in character. But when it consists of units of varying sizes and very different efficiency, its reliability is less.[3] Judging ability to pay by reference to the rates fixed by competitors is another variety of this general method.[4] Employers who engage in foreign trade are apt to quote wages paid abroad (if lower than those at home) as a proof of the limit to the wages they can pay. This criterion overlooks all differences of organisation, availability of resources, and efficiency of labour, which very greatly affect the wage it is possible to pay.

Nor is it easy to measure the extent to which a certain wage is above or below a trade's ability to pay by reference to the amount of unemployment brought about or likely to

omically low fares, the resulting low profits could not be put forward as an argument in favour of low wages. In *re Government Tramways Award*, A.R. [1916], p. 93.

[1] This test was considerably used in the early days of the war. Cf. *N.Z. Awards*, Vol. XVII, pp. 954, 1,120.

[2] *Awards*, Vol. III, p. 699. Cf. also Award of July 19, 1918, and Vols. XXII, p. 1,828; XII, p. 320; XIV, p. 933, and the *Report of the Cave Committee* in Great Britain, Section II.

[3] This fact has been recognised in some, though not all, cases by the Courts. Thus in 1915 the New Zealand Court refused to fix for ships' tally clerks a rate which had been conceded by an employer who employed more workers than all the others together (Vol. XVI, p. 445).

[4] Cf. *N.Z. Awards*, Vol. XVI, 460; XVIII, 1,275.

be brought about by its imposition.[1] Quite apart from the fact that the evil can only be found out after it is done, and the difficulty of isolating all other factors which might contribute to an increase in unemployment, this method is open to the objection that it is within the power of employers, if they think it worth while, artificially to increase employment for a time after the fixation of a particular wage. In these circumstances there is a tendency for the ability of an industry to pay a given wage to be taken at the employers' valuation.[2]

The rate of profits does not provide a very satisfactory criterion. The devices of watered capital and bonus shares make a reduction in the rate of profit a very unreliable guide to a firm's capacity to bear a particular wage, while variations in profits may also be due to organisation and other factors. Moreover in allied industries, or industries controlled by an individual or group of individuals, it is possible to drain off the surplus profits of one concern into another not subject to regulation.

All the methods of testing ability to pay which have been so far discussed have assumed that the rate of profit must not be reduced and that the fixing of a particular wage will have no effect upon the organisation of factories or the efficiency of employers. But a satisfactory inquiry into the ability of a trade, however defined, to bear a particular wage would take these factors into account. It would be necessary to inquire *inter alia* into the elasticity of demand for the product, for on this would depend the extent to which employers could transfer the burden of the increased wage to consumers. It would also be necessary to inquire how far the enforced payment of a higher wage would lead employers

[1] It has, however, occasionally been attempted (*N.Z. Awards*, Vol. XVI, p. 302; XXII, 804). Under the 1922 Act the Board of Trade in New South Wales may refrain from making an Award if it is proved that serious unemployment has resulted. In California the object of the Executive Commissioner has been "to keep the highest minimum wage that industry can bear consistent with keeping women employed" (*Industrial Welfare Commission Statement of April 22, 1922*).

[2] Cf. the evidence of Professor Baillie before the Cave Committee, p. 842. There is some evidence that in Massachusetts the wage fixed is that which employers *say* they are able to pay.

to tighten up organisation and so pay the higher wage without difficulty.[1] This result has been achieved in many cases and is an important factor. Similarly it frequently happens that an enhanced wage increases the efficiency of the lowest paid workers; the resulting increase in production should be considered in conjunction with the elasticity of demand for the commodity before the ability of a trade to pay can fairly be judged.

Again, unless what the trade can bear be held to imply that in no circumstances should the existing rate of profit be reduced, there is no reason why attempts should not be made to discover how far it is possible to force employers to bear the burden of an increased rate without driving them out of business. This would involve an investigation into the elasticity of supply of capital and organising ability in that particular trade, and thus an inquiry into the rate of profits in other industries, the ease with which transferences might be made, the possibility of similar wage regulation extending to other trades, and the probability of the export of capital and organising ability, etc.

Conclusion.

We thus see that the principle of fixing wages which the trade can bear provides no precise criterion. What the trade is and what it can bear, are relative matters, to be determined only after taking into account a large number of factors, of which the size of the trade it is worth while to maintain, is the most important. Moreover there has been a tendency to apply the principle rather as a reason for making downward adjustments than as justifying an increase. That is to say, it has been accompanied by an underlying theory of minimum profits, below which none of the chosen employers should be allowed to fall. As a general rule administrators have been reluctant to allow exceptional prosperity as a reason for increased wages (although more

[1] This has, in fact, been considered by some authorities, cf. *Massachusetts Minimum Wage Commission, Bulletin* 3; cf. also Mr. Wethered before the Cave Committee, Question 11,442.

recently there has been a reaction).[1] The reason usually given is the effect likely to be caused by the payment of different wages for similar work.[2] Such "profit sharing" in New Zealand was rejected on the grounds that it would involve different rates as between employers.[3] It was not, however, so clearly seen that this objection applied equally to the whole principle of fixing wages which the trade could bear.

[1] Cf. *N.Z. Awards*, Vol. XVII, p. 966; X, 142; and N.S.W. A.R. [1923], p. 14.
[2] N.S.W. A.R. [1914], p. 137. [3] *Awards*, Vol. VII, p. 50.

CHAPTER XVII.

CAN THE PROBLEM BE SOLVED?

Wage Determination under Free Competition—Wage Regulation as a Remedy against Low Wages—Wage Regulation as a Cure for Industrial Unrest—Wage Regulation and Economic Welfare—Conclusion.

Wage Determination under Free Competition.

Under unregulated conditions, those wishing to sell a commodity and those willing to buy it arrive at a price determined by the supply and demand for the commodity in question. This process, dignified by the title of an economic law, does no more than adjust the relations of buyers and sellers; when the latter are relatively numerous, the price is lowered to induce more buyers to come forward; when buyers preponderate an increase in price restores equilibrium. It is a rough and ready method of rationing. It ensures that existing disposable supplies shall be distributed among those who are willing to give the highest price for them, and it usually assumes that the highest bidder is he to whom the article is most useful. In this way the law of supply and demand has been credited with serving the best interests of society. This claim is exaggerated. The law accepts conditions as they are and suggests one direction in which equilibrium may be sought. It is not concerned with the question why demand and supply are what they are, nor even whether equilibrium is desirable. Moreover it is not the only method of obtaining equilibrium. It is only the shortest. Prices can be settled on this basis automatically. It may, however, be felt that a price so determined, just because of its acceptance of existing conditions of supply and demand, does not bring the maximum social advantage, either because the price is so low as to

cause a loss of economic welfare to the poorest section of the community, and hence to the community in general, or because the process of bargaining is so long involved and bitter, that work is interrupted by constant strikes and lock-outs. If then an attempt be made, not to alter the conditions and so alter the price, but to alter the price and so alter the conditions, two problems arise. The first is the formulation of an alternative principle; the second is the method of dealing with the disturbances which will arise from the removal of the old principle of adjustment.

The new principle will not regulate production and distribution in the same way. If, as the result of fixing a certain wage, some workers are thrown out of employment, the new system will have to deal with them. And the task will be the more difficult because most other adjustments in the economic world are still effected in the old way.

We have seen that wage regulators have tended to adopt three main principles for determining the rate of wages. The discussion of the practical problems involved in their application has indicated that these bases may be widely interpreted and that in themselves they do not provide rules uniformly or universally applicable. There are definite limits to the use of each. Thus the level of the Living Wage which can be fixed and paid to all workers in a country is finally limited by the total productivity of that country, although within different trades its level may be higher if regulation is to be only partial. Similarly, the Fair Wages principle, which would ensure an equal wage to all workers performing work of equal skill and difficulty, has but a limited use since it leads no further once wages are so adjusted. It gives no guidance as to the absolute level at which all wages should be fixed. It provides no help in deciding the monetary weight to be attached to different degrees of skill, and, like the Living Wage, cannot itself direct the flow of labour from industries where it is less wanted, to those where it is in demand. It is a relative and not an absolute principle. In the same way there are limitations to the utility of the principle of fixing wages which the trade can bear. We have seen that this phase

has no clear meaning, since by altering its size a trade can be made to bear very different wages. An arbitrary choice has to be made, and in deciding which employer's ability to pay shall be considered and what interpretation is to be placed on the word "trade," no guidance is given by the principle of "what the trade can bear."

At some point therefore each of these principles has to be supplemented by others and by considerations of expediency. Yet there are occasions upon which it may be good or desirable to adopt one or the other. Good implies utility to some end, and we must therefore be clear as to the criteria that we are adopting. There are two possibilities. We can ascertain what were the objects that State wage regulation was intended to achieve, and consider how far any basic principle is suitable for attaining them. Or we may use a wider test, and judge each principle by the extent to which its application results in a net gain to economic welfare. In this chapter we shall first discuss the three basic principles from the former point of view, and then proceed to make certain conclusions regarding the latter. In Chapter II it was pointed out that the immediate objects of regulation have been two; the abolition of sweated wages, which later expanded into a general attempt to improve the position of all relatively low-paid workers, and the maintenance of industrial peace. It is thus impossible to deal with the effectiveness of any wage basis without discussing the causes of low wages and industrial unrest, the two evils which it is hoped to remedy.

Wage Regulation as a Remedy against Low Wages.

Under present conditions workers receive low wages because their value is low. It should be noted that this is not to say that the value of the product which their work creates is low. For they may help to create a product which sells for a relatively high price but, because the number of workers anxious to obtain that kind of work is large, the price paid to the performer of the work may be low. Special circumstances may prevent the migration of

employers into, and of workers out of, the trade.[1] On the other hand output may be unaltered, but a change in demand may reduce the value of the product and so of the worker creating it. When considering the conditions of supply and demand which cause an individual's labour to be of small value, it must be remembered that the level of production of the community in which he works is one of the biggest factors in determining his wage, for it is the most important element affecting the demand for his labour. A wealthy community will pay a high price for labour that would be but poorly remunerated in a country where the general level of production is low.

Low general productivity, resulting in a low general level of wages, may be traced to a number of causes, very few of which can be ameliorated by minimum wage legislation. In some cases the productivity of a community is low because of the poor qualities of soil, natural resources or climate. It is clear that in these circumstances the mere enactment of a minimum wage can be of no assistance whatever. Something more radical is required, and it is as foolish to hope to cure a fundamental evil in this way, as it would be to expect to set up a prosperous agricultural community in the middle of the Sahara desert by the mere issue of a decree to that effect.[2]

Low general productivity may also be due to poor quality of the labour supply, due either to inborn characteristics or to environment. It is not always easy to distinguish between these two cases, and much psychological and biological research is needed before it will be possible to assess with any exactitude the help which might be given by minimum-wage legislation. But it seems probable that much inefficiency, both mental and physical, results from unduly low wages. It seems clear, for example, that workers who are not adequately fed are incapable of accurate and effective

[1] See *infra*, pp. 400–4.

[2] Professor Cannan has pointed out that poor natural resources are not in themselves an important cause of low productivity, since people will avoid the district. But if a population were attracted to an otherwise barren spot by some special geographic factor such as mineral deposits, which later gave out, the problem might arise, for it would take a large population some time to leave the area.

work, and that their children are often stunted both physically and mentally. The worker who is constantly worried by the uncertainty of supplying his barest needs, and often those of his family as well, is likely to be inefficient. In such cases the payment of a higher wage prescribed by law might materially assist.[1] Not all of the three basic principles, however would, prove equally helpful. To adopt the Fair Wages principle would lead nowhere, for the case here considered presupposes that the wages are fair, as compared with other wages being paid in that community for work of similar difficulty. A fair wage would only fix the same wage as is already being paid, and would not ensure the worker either a larger supply of food or a less troubled life. The same reasoning applies to the payment of a wage which the trade can bear. By definition the trade, *at the moment*, cannot bear a higher wage than is being paid: existing productivity makes it impossible. It is in this case, *where the low productivity is a result of a low wage*, that the conception of the Living Wage provides a useful basis. For a scientifically determined Living Wage would at least ensure that workers were "adequately" fed and clothed, and placed in a position where they were able to derive advantage from technical instruction. But it must be emphasised that this judgment applies only where low wages are due to the existence of low productivity, itself traceable to the poor quality of the workers.

In the third place, low general productivity may be due to a relative lack of capital equipment. Wage regulation alone would be unlikely to improve such a position.[2] But when it is due to a low standard of organisation and business ability among employers as a whole, it is possible that the introduction of a Living Wage (for we have seen that the Fair Wages or the Trade can Bear principles would lead to no change in the wage payable) might prove effective. By increasing the wage to be paid it might force employers,

[1] Provided, of course, that there is any margin at all out of which such a higher wage could be paid. It might, for example, be paid out of such sum as is put aside for saving.

[2] Except in so far as employers were encouraged to take a short view, and not use machinery by the extreme cheapness of labour.

who at the moment feel that low wages render efficient organisation unnecessary, to choose between economic extinction or better management. But it is probable that when the level of ability of all employers is so low as to result in a low general productivity, the trouble will be too deep-seated to be eradicated by this means.

Finally, the low productivity of an entire community may be due to a state of over- or under-population. The possibilities that any permanent good will result from wage regulation would then depend, apart from its effect on capital and organisation, upon its influence on the numbers of the people. A basis which resulted in the payment of an increased wage might encourage births or increase the rate of survival, and so accentuate an existing state of over-population. Alternatively it might increase production per head by remedying a state of under-population. But we know little of the relative parts played by economic and other factors in determining the size of families.

While the general level of production in a country thus plays the biggest part in determining the general level of wages, much will depend on the particular trade to which a worker belongs. He may be a member of a trade in which relatively low wages are paid. This low value of labour may be due to several causes. Thus it is possible that the trade may consist almost exclusively of a poor class of worker, for the less capable and efficient tend to gather in certain trades. The result is a low average physical productivity. If this low efficiency is due to low wages it is possible that the fixing of a higher wage might, as explained above, by increasing health, increase working capacity. The only basis which would be likely to lead to this result would be the Living Wage. For the Fair Wage, as we have seen, would be difficult to apply, since there would be no exactly comparable work, while the trade may already be paying as much as it can bear at the existing level of productivity. But it is highly probable that very little improvement will be effected, especially if the trade is one in which the naturally less efficient workers have tended to collect. The consequence of fixing a higher wage will then be a reduction in the numbers em-

ployed until the resulting increase in price of the now limited supply covers the new wage, except in the improbable case of an absolutely inelastic demand for the commodity. It may even happen that the trade will cease to exist if the demand is extremely elastic. It is possible that some of the workers may be absorbed in other trades, but this is unlikely, since the reason for their congregation in the low paid trade is usually inability to find employment elsewhere. So long as the effect of this absorption is not to reduce wages in other trades below the level of the legal wage in the regulated industry, the process may continue with only good effects on wages. But there will almost certainly remain a surplus, and the solution of the problem of low trade wages, due to low efficiency of all workers in a trade, must include some provision for dealing with the unemployables by means of maintenance or training. In such circumstances it will be impossible for any basic principle to raise the wages of all persons previously employed in the trade.

In the second place, it may be that the low wages of all members of a particular occupation are due to the low productive capacity and inefficiency of employers *as a whole* in that trade. This inefficiency would tend to lower productivity per unit of labour in the trade and hence to lower wages. Such cases are probably rare, for the mobility of employers is as a rule greater than that of workers, and it is always possible for a better organiser to enter the trade and ultimately to under-sell the less efficient.[1] But there are certain peculiar economic and other conditions which foster the preservation of inefficient employers in trades as a whole. British farming is probably a case in point, and it is certainly in such trades as agriculture, where the chances of movement are slight and exact knowledge as to profits is unavailable, where the business is usually transferred from father to son and information respecting improvements and experiments elsewhere is hard to come by, that one would expect to find a relatively low general level of business

[1] See the limitation to this on pp. 403–4.

ability.[1] These circumstances are combined with conditions which render the mobility of labour particularly difficult. The introduction of a wage based upon what the trade could bear would leave the existing wage unaltered, or but slightly improved. Thus no ameliorating forces would be set to work. If the workers were performing work equal in skill and difficulty to that receiving a higher rate elsewhere, as is probably the case with agricultural workers,[2] the application of the Fair Wages principle would certainly necessitate the raising of wage rates (and this might also happen if the Living Wage were higher than the wage actually being paid—as it probably would be on our supposition that the trade is relatively less well organised than the average). The chance of permanent amelioration would then depend upon the effect of the enforced payment of a higher wage on the organising ability of employers. That the introduction of an increased wage often results in an overhauling of business methods, and more attention to the problems of internal organisation is undeniable. Dr. Sells, who visited a large number of firms in the course of her investigation into the operation of the British Trade Boards system, quotes numerous cases in point,[3] while the Cave Committee of Inquiry reported that " . . . in some instances the enforcement of higher rates of wages has acted as a stimulus to improvement in working methods "; and referred to cases in which " improvements in machinery and organisation so brought about have increased production, and thus have enabled the earnings of piece-workers to reach the statutory basis without any increase in the actual piece-rates paid."[4] But if employers are incapable of better management, and if no others rise up to take their places, the industry will be restricted[5] and the economic effects of

[1] *Vide* Lennard, *English Agricultural Wages*, pp. 53–60.

[2] Cf. Sir A. D. Hall, *A Pilgrimage of British Farming*, p. 443: " Considering the comparatively skilled character of his work, he [the agricultural labourer] is much more underpaid than his fellows in any other industry."

[3] Sells, *The British Trades Boards System*, pp. 224–242.

[4] *Cave Committee Report, Cmd.* 1645, p. 23. *Vide* Tawney, *Minimum Rates in the Tailoring Industry*, pp. 142–151; Bulkley, *Legal Minimum Rates in the Box-making Industry*, pp. 50–53.

[5] Unless the higher wage is accompanied by a subsidy.

intervention will be doubtful. Much would then depend upon the ease with which workers, when faced with unemployment, could turn to other work without bringing the wage in the chosen trade below what they had previously received. But if the effect is to direct more attention to management and organising problems, the results on production will be good, although the exact distribution of the gain would depend on the elasticity of demand for the product.

In the third place, the value of the produce of labour in a particular occupation may be low because it is a decaying industry.[1] The price of the product would fall and with it the value of the services rendered by the worker participating in its production. Such decay is usually a sign that the products of the trade are not wanted, either because of a change in taste, or on account of a new process or a substitute which renders them no longer necessary. From the social point of view, the quickest possible elimination of the industry is to be desired, but in such a way as to cause the minimum of suffering to those at the time engaged in it. Under unregulated conditions the price of the product will tend to fall, and profits and wages will be reduced, thus discouraging the entrance of new capital and labour into the industry. Unfortunately this process of disappearance is slow, and there are many workers and employers who will remain in a dying industry in the vain hope that it will recover, or because they do not possess the energy or resources to seek or train for work elsewhere. In these circumstances the introduction of a minimum wage may hasten events, but is unlikely to raise wages *in the trade concerned*. The results will largely depend on the type of wage that is fixed.

A wage based on what the trade can bear, however the trade be interpreted, will only prolong the agony, and will in any case mean the fixing of a wage which steadily becomes lower and lower. Thus not only will the immediate aims of those who wish to raise wages be frustrated, but also

[1] This might also account for the low level of wages in a country as a whole. But it is less likely that there will be a sudden shrinkage in demand for *all* the products of a particular community.

no *additional* stimulus to movement will be given. If the result of the decrease in demand has been the payment of a wage below that normally paid for similar skill elsewhere, or below the current Living Wage, the introduction of the Fair Wage or Living Wage principles will have important effects. There may be a demand for a small supply of the commodity at the old price, and the aim of the wage regulator should be to discover its magnitude. But it is more probable that the reduction in supply will be large and the amount of unemployment correspondingly great, for producers will be unable to pay the higher wage, and the demand for the article being almost negligible, it is not likely that the reduction of quantity will appreciably raise the price that consumers are willing to pay. Thus far wage regulation does not seem to have proved very successful in raising wages. But it must be remembered that the trade was in any case a declining one, because of the introduction of new methods or the adoption of new tastes. It is therefore probable that the wages of other workers in these more prosperous trades will have risen, and that there will be an increased demand for labour. The object of the reformer who wishes to raise wages should then be to transfer from the dying or dead trade to the live one. It may in fact be stated in general terms that so long as it is possible to transfer workers from a trade where wages are low, because of low value of product, to trades where wages, even after the introduction of these new workers, are higher, wage regulation, which forcibly causes an exodus from the low paid trade, will indirectly have raised wages. Unfortunately of course it is not always possible to find these higher paid trades, but the case we are considering probably offers as much hope as any. The transfer will also be assisted by the better provision of information as to opportunities existing in other trades, and of centres where the necessary training can be obtained.

The dicta of various wage-regulating bodies, that any trade which cannot pay a Living Wage should go out of existence, must be judged from this point of view. If the inability is due to permanent causes resulting in low productivity,

and if there is no other trade capable of absorbing the workers who have been rendered unemployed by the closing of the original trade, and of paying a Living Wage after such absorption, if in fact the general level of productivity is such that it is impossible to pay the Living Wage to all persons, then Courts and Boards must face the difficulty, and not give Awards which will merely lead to unemployment, without in any way increasing the wages bill.

It remains to consider the case of the individual worker who receives a low wage because he is less efficient than other workers in his trade or community. Once again a higher wage may to some extent diminish his inefficiency, if it is due to inadequate food, etc. But the naturally inefficient and those whose peculiar skill is no longer in demand, remain, and much will depend upon the degree of their inefficiency. Where the difference between them and other workers is glaring, it is probable that the enforced payment of a higher time-wage would lead to unemployment. Wage regulators have two alternatives. They must admit the impossibility of raising these wages, and institute the Permit system,[1] or, on the ground that the competition of such workers must not be allowed to depress the wages of other workers, they must force them out of the trade and deal with them by other means.

Thus it appears that in so far as low wages are due to low physical productivity, wage regulation will be effective to the extent that it encourages better organisation and management or greater efficiency. The exact effect of this increased productivity on the part of either employer or worker will depend upon the elasticity of demand for the product. Where demand is elastic, it is probable that the same number of workers will be retained in the trade because the increased stock can be disposed of with only a slight reduction in price per unit, so that the employers' profit remains unchanged. But where demand is inelastic, the

[1] This is the course generally adopted. In some States slowness is made a ground for a Permit, but this is dangerous because of the difficulty of defining an ordinary worker and the possibility that an employer may take too high a standard of speed. Sometimes the problem is met by allowing such workers to be paid at piece-rates.

result may be that only the same total amount as before will be supplied, but it will be supplied by less labour or organising ability. In the long run this result will be good, for labour will be freed to make other products. In the short run it means unemployment and uncertainty. This dislocation is not so important a factor in the first and the last causes of low wages which we have discussed, as it is in the second, where low wages were traced to the low productivity of a particular trade.

So far we have discussed only the question of demand. We must now ask why the supply of labour is not checked by the low price. A worker may continue to receive a small share in the product which his labour creates because, for various reasons, the forces which unregulated supply and demand are supposed to set to work do not in fact operate. He may be receiving lower wages than are paid for similar work by other firms in the same district or elsewhere.[1]

The existence of wide variations in the wages paid at any given time, even by neighbouring firms, is not difficult to prove. In Massachusetts and Ontario special attention has been paid to this phenomenon, and the evidence obtained shows, in the words of the Ontario Board, that "you may find two business establishments which seem to duplicate each other, handling the same goods, buying in the same market, selling in the same market, getting their labour from the same labour-market, using the same machinery, and situated within a stone's throw of each other; and yet the one establishment is paying wages 10 per cent., 20 per cent., and even in a rare instance, 100 per cent. higher than the other."[2] This means that the low-paying employers are

[1] We cannot speak of this as a case in which the worker does not get his *value* as the term is used in economics, for that is only the price at which the available supply is adjusted to demand, and workers are getting this. What we want to know is why the value continues to be low, while the price of the product is relatively high.

[2] *Report of the Minimum Wage Board*, 1922, p. 14. Confirmatory statistical evidence is given in later pages of the same Report and in the 1921 Report. In Massachusetts, the great diversity in wages paid by similar and competing firms is illustrated in *Bulletins No.* 3 (Brush Trade); *No.* 18 (Candy Factories); and *No.* 23 (Food and Confectionery). Cf. also evidence of Professor Tillyard before the Cave Committee, Q. 12,485, and *Monthly Labour Review*, June, 1919, p. 199 *et seq.*

obtaining, *relatively to their skill as organisers*, a greater profit than other employers in the trade, or, if we assume a general level of profits, in other trades.

It is generally supposed that such a state of affairs cannot last long. It is argued that potential employers will see that there are extra profits to be made in the trade concerned, will bring new organising ability and capital resources into it, and by increasing the demand for labour will tend to raise the general level of wages in that trade. At the same time, the process will normally be hastened by the transference of the more progressive workers to other employers or parts of the trade as soon as it is realised that higher wages are to be obtained elsewhere for work of the same difficulty. Hence the opponents of minimum wage legislation have argued that it is an unnecessary interference with a process which will naturally take place if left to itself, and its supporters must prove that the process either does not in fact ensue in many cases, or that it operates so slowly that some external stimulus is needed to hasten it. They must show, in short, why workers continue to remain in a particular district or with a particular firm, although they are obviously getting less than they could obtain for similar work elsewhere, and why potential employers do not flock into the trade, or the better-paying firms squeeze out their competitors.

Home workers, as compared with workers in factories, often receive a lower wage for the same product, and it seems surprising that there is not more movement into factories. In part, the reason for this lack of response to wage differentials is a definite preference for home work by many of the workers. Women who have domestic duties, or who are not strong enough to stand the strain of factory life, may prefer to work at home, even though they earn less than they would do for a similar output in factories. This probably accounts for much of the low-paid home work that exists. Moreover, there is usually a large amount of ignorance among workers as to the market value of the work they perform and, even if they are aware of it, lack of contact with fellow-workers, and inability to take joint action,

due to their relative isolation and poverty, render them unable to take advantage of such knowledge as they possess.

Again, it is possible that the higher wages are being paid in a district some distance away from that under consideration, and that the workers concerned may be tied to the original district by special circumstances. This is, for example, the case in the East London clothing trade, where many of the employees are the wives of men engaged in the docks or other local employments. So long as the family income receives more from the labours of the man than of the woman, it is unlikely that the family would move to another part of the country where the women's clothing trade is better paid, if such movement means the sacrifice of the husband's employment. In all cases, therefore, where both heads of a family are wage-earners, there is likely to be less geographical fluidity of labour than is generally supposed, since transference means the finding of *two* new jobs. In such trades, where the labour force is subject to these conditions of "joint supply," it is possible to pay workers less than their labour would fetch elsewhere, without much reducing the supply of workers.[1] Finally, adjustment by transference of workers may be prevented by special circumstances which operate to reinforce the worker's natural disinclination to leave the district in which he lives, and in which he has centred all his interests. Such a hindrance is found in a housing shortage, and is reinforced by the operation of Rent Restriction Acts which put a premium upon immobility. A similar check to movement lies in high costs of transport.

Where these conditions lead not merely to relatively but also to absolutely low wages, a vicious circle may result if workers are forced to work so hard to earn enough to maintain themselves that they have no time or energy to in-

[1] "Pocket-money" workers are another case in point. The fact that to obtain higher wages it may be necessary to move away from the family, means a positive money loss to be set against the resulting money gain. Moreover, the spur to movement may be decreased when the necessity of earning more is not urgent, and this tends to maintain the supply of labour in the trade.

vestigate the chances of betterment elsewhere. Moreover, their necessities may not allow them to bargain. They cannot afford to wait. Of their attitude towards wages it may truly be said that "Half a loaf is better than no bread."[1] The position of the employer is strengthened if there exists a monopoly in the trade in question. It is the more easy to keep workers in ignorance of the market value of their labour, when there exist no other firms with whom comparisons can be made.

Similarly the mobility of employers is often less than is generally assumed. They are particularly inmobile in an industry where the unit of production is large. The prospective employer is then faced with very heavy initial expenditure, to recover which he will have to be able to dispose of a relatively large output. It may well happen, however, that this large increase of supply will force down the selling price of the product, so that, even allowing for the special advantage he will obtain from cheap labour, he may find the proposition not worth while. As there is a general tendency toward an ever-growing scale of production, it seems probable that this condition may become more common, so that considerable numbers of workers will no longer be able to rely upon the check of the competition of other employers as a safeguard against "exploitation." Furthermore, the influence of relatively cheap labour in persuading potential employers to enter a particular trade, will assume less and less importance as the proportion of costs represented by wages, relatively to that represented by machinery, declines.

Nor is it always safe to assume that the more efficient employers, who will normally be those paying the higher wages, will undersell the less efficient, and gradually take over the whole of the trade. The payment of low wages, as the term is here used, may to some extent counterbalance bad management and enable the less efficient to continue in the industry. It is for this reason that wage regulation is

[1] Cf. the conditions under which some home workers in Great Britain were living before 1909, as described by Meyer and Black in *Makers of Our Clothes*, and by Clementina Black in *Sweated Industry*.

often welcomed by the better class of employer.[1] If the "exploited" wage was being paid only by a part of the trade, an enforcement of the wage paid by reputable employers might protect the latter from the subsidised competition of the less efficient organisers, and so enable them to extend their business. This extension would help to absorb those workers discharged because their employers could not pay the wage, and so raise the general level of wages in the trade. If the conditions we have discussed are typical, not of a part of the trade but of the whole, so that it can be described as one of inelastic labour supply allied to practical monopoly among employers, the application of either the Fair Wages Principle (or the Living Wage if, as a result of their position, workers are receiving less than the declared Living Wage), will involve an increased wage. Since employers will be unable to obtain more favourable labour conditions in any other trade, it will tend to force them to pay more attention to problems of management, or, if the management is already equal to the average, it will tend to prevent greater profits being made at the expense of workers.

But if the trade exists only because it is possible to pay low wages, an application of either of these principles (for to fix what the trade could bear would cause no alteration), will result not in an increase of wages but in a diminution of employment, and will force workers to seek employment elsewhere. Unless their entry pulls down the rate in other trades the effect will be wholly good. But it may be that owing to *general* poverty of organising ability or capital this will not be possible. The case then is one of low wages due to low productivity, and is subject to the considerations already discussed. But it will have been disguised because the burden of the low productivity has been thrown upon the members of a particular trade instead of being spread over the whole community.

[1] Cf. the *Cave Committee* (p. 23): ". . . Trade Boards have afforded protection to the good employer, able and willing to pay a reasonable rate of remuneration to his workers, from unscrupulous competitors prepared to take unfair advantage of the economic necessities of their workers." Cf. also the pamphlet, *Minimum Wage Laws are Good Business*, which is a collection of opinions of employers published by the National Consumers' League, New York, in 1920.

WAGE REGULATION AS A CURE FOR INDUSTRIAL UNREST.

But an increase of wages has not been the only object of wage regulation. It has also been advocated as a means of promoting industrial peace. In so far as unrest is due to the payment of absolutely low wages these two aims are identical, and action which raises wages also ensures industrial peace. But it is probable that low wages are a relatively unimportant cause of active industrial unrest. The worst paid workers are usually the least organised, and they have as a rule neither the resources nor the energy to engage in a strike, although there are sporadic outbreaks from time to time.[1] Certainly a mass of discontented, temporarily powerless workers provides fruitful soil in which to plant the seeds of class war, and the better paid workers occasionally strike on behalf of their less well paid comrades. But the main causes of industrial unrest are more fundamental, and may be only slightly affected by adjustments of wages.[2] One of these is an underlying dissatisfaction with the existing economic organisation, and an attempt to provide another on communist, syndicalist or socialist lines. Workers holding these views regard the capitalist system, and its methods of valuation, as positively harmful, and desire to abolish wages as such. Wage regulation upon any principle whatever will come into conflict with these ideas, for it will be merely assisting in the perpetuation of the hated regime. But this fact has not always been remembered, and wage regulation in Australia has frequently been anathematised because it has not done what could be effected only by a radical alteration of society itself. In so far as open dissatisfaction with the existing system is due to purely economic reasons, wage regulation which increases wages may contribute its quota to industrial peace. But it is probable that the causes are more subtle and deep-seated. In particular, a greater attention to psychological problems indicates that "where there is continued unrest, there is fundamentally a

[1] Cf. the Dock Strike and the Match Workers' strikes in the early nineties, and the strikes of agricultural labourers in Great Britain after the War.

[2] In fact the proportion of strikes for wages claims alone has considerably decreased during the last twenty years.

sharp clash of instincts responsible for it; till this conflict is resolved, there can be no enduring peace."[1] Modern industry is said to result in a repression of many of man's most fundamental instincts, of which the creative and self-assertive are perhaps the most important, while the circumstances of the relation of the employer to the worker foster the growth of an inferiority complex on the part of labour. Thence arise suspicion, resentment, occasional apparently irrational irritation, assertiveness and a demand for a measure of control in industry. In so far as this is a true analysis of the problem, it is clear that wage regulation alone leaves the underlying causes untouched, and it is significant that it is on the whole among the most highly paid workers that the demand for positive control is greatest.[2] There is, however, a further cause of industrial unrest, which assumes considerable proportions at the present time. It exists when a group of workers, usually the relatively skilled and well organised, feel that they are not getting the full value of their contribution to production, perhaps because the trade is exceptionally prosperous. They may be obtaining a Living Wage and perhaps also a Fair Wage as compared with work of a similar nature elsewhere, but, because they possess special skill which has little value elsewhere, and because the loss involved in transferring to other work would probably more than balance any gain, it is possible for employers to pay them less than they would be prepared to pay rather than be deprived of their labour. It will be seen that this is a special case of the general position discussed on page 403. An application of the Fair Wages

[1] Frank Watts, *An Introduction to the Psychological Problems of Industry*, p. 146.

[2] During and immediately after the war, when wages were high, the workers in Great Britain strongly pressed, in a few cases successfully, their demand for positive control in management. Since 1920 little has been heard of this claim (cf. Carter Goodrich, *The Frontier of Control*, pp. 258, 261, 266). It is important, however, as Mr. Goodrich insists, not to confuse craft control exercised as an ancient privilege by old and exclusive unions, with the active control "newly and consciously won by aggressive, propagandist, usually industrial, unions in the great organised industries fighting not to resist encroachments but to make them" (*ibid.*, p. 260). The intensity of the demand for control must be measured in relation to the latter and not the former types of control.

policy would give no assistance, for it would probably involve the fixing of a wage no higher than that already paid. The application of the principle of what the trade can bear shows where the real difficulty lies—namely, in obtaining an agreed measure of ability to pay, or of apportioning shares in gain. If there are monopoly conditions such as were discussed on p. 403, if, for example, the firm is a mining company, the ordinary checks on excessive profits do not apply. There is no means of knowing what is a Fair Wage, and some new valuing principle must be introduced.[1]

Finally, industrial unrest may be caused by the payment of unequal wages for equal work or of equal wages for work which previously received unequal wages. In 1917 Mr. Churchill provided a striking instance of the operation of this cause. He granted a bonus of 12½ per cent. to certain categories of fully-skilled time-workers in the engineering and foundry trades. The result was completely to upset the relationships determined by awards and agreements in allied trades, and within six months the 12½ per cent. "became an advance of wages which all trades claimed and many secured. Designed in the first place to allay industrial unrest, this disturbance of comparative rates was a principal cause of much labour unrest."[2] The unrest in Australia which followed the increases in the basic Living Wage during and after the War is another case in point. It will be remembered that in their efforts to ensure at least a Living Wage to all workers and at the same time disturb industry as little as possible, the Courts at first endeavoured to confine cost-of-living increases to the lowest paid workers. But the rapid increase in prices soon brought the wage of the

[1] In Great Britain the Tobacco trade furnishes a good example of this type of conjuncture, in which wage regulation is useful. A considerable monopoly and the fact that wages are a very small item in costs of production have enabled tobacco workers to share in monopoly profits and receive wages higher than those paid to similar workers in other trades in Britain (cf. table of rates in *Labour Gazette*, September, 1925, p. 309).

[2] Askwith, *Industrial Problems and Disputes*, p. 432. Cf. also the arguments in the Minority Report of the Shaw Inquiry, which point out that a big increase in the wages of dock labourers will lead to demands for similar increases on the part of other labourers (*Cmd.* 936–1920, pp. xix.–xx.).

unskilled worker very close to that of the skilled, and the resulting dissatisfaction finally forced the Courts to abandon their attempt to confine cost-of-living increases to one class of workers. In the circumstances it was possible to give the increase to both without disastrous results, but the situation brings out clearly the way in which a principle which may solve the problem of low wages may at the same time create industrial unrest. If it is not possible further to increase the wage of the previously more highly paid, the only alternative may be to reduce the lower wage again.

Wage Regulation and Economic Welfare.

This brings us to our second inquiry: whether it is possible to determine the effect upon economic welfare in general of the application of these principles.

Here we can do little more than suggest possibilities. For the broad economic results of the introduction of a new regulating principle will depend upon a balance of its effects on production and distribution, and it is impossible quantitatively to compare the two. We have already indicated a number of circumstances under which one principle or the other may increase production by leading to an increased efficiency on the part of employers and workers. Even this increase may be counterbalanced. For as we have seen, the wages of a group of workers may be raised only at the expense of a previously more highly paid group. The reduction of this differential may lead to a dissatisfaction which will result in unrest or less intense application to work. The advisability of adopting the principle which led to increased wages would then depend upon the lowness of the wage in the first instance, and the degree of unrest likely to result, and these factors would differ from country to country, and from time to time.

Similarly, the application of a general Living Wage might involve considerable uniformity of remuneration among large groups of employees. Such a position might lead to reduced production, and might also cause the more efficient workers to make no effort to enter the previously more highly paid groups. But here again it is impossible exactly to

balance the distributive gains against productive loss. One community may feel that the economic gain accruing to those whose wages have been increased more than counterbalances the reduced production. Another may come to the opposite conclusion.

It must not be forgotten that wage regulation may have indirect, but none the less real, good effects on production, and so on economic welfare in general. For the psychology of workers may be such that they are unwilling to continue regular production without some guarantee that wages have either been scrutinised by some third party, or until they have satisfied themselves that there is in fact some fairly close correlation between output and remuneration. Thus those who dislike wage regulation may have to regard it as one of the necessary costs in the present organisation of industry.

From the point of view of distribution the adoption of a particular basis may lead to an increase in the wages of certain trades, which are paid out of a higher price charged to the consumer. Unless it is possible to state with any certainty that the consumers are members of a higher income class than the wage earners concerned, it is impossible to say whether the effects on economic welfare are good or bad. Nor is it safe to condemn the application of any particular basis because it causes unemployment, until we know whether it is better to have all of a group earning a low wage, or to have a smaller member employed, a smaller total produced, with such workers as are employed earning "reasonable" wages and the rest maintained by other means. It may be one of those cases where distributional gains may outbalance productive loss, but the answer is indeterminate because of the lack of quantitative analysis. More often it is impossible to say with any confidence whether the unemployment which may accompany wage regulation is due to the latter or to some other cause operating at the same time.[1] How far the reduction in the number

[1] During the campaign against the British Trade Boards it was frequently alleged that the Dressmaking and the Laundry Boards had by their rates caused much unemployment. While there was a measure of truth in the assertion, it is probable that the dislocation directly due to

of recruits to the skilled trades, which has so often been the subject of complaint in Australia, is due to wage regulation, and how far it is due to a long-period change in the organisation of industry, it is impossible to say. It is at least conceivable that industry of the future will need fewer skilled artisans, but a small number of extremely skilled experts, who will direct the labours of numbers of workers, who with the aid of machines will turn out products on a large scale.

Conclusion.

Our answer to the question whether there is a general solution of the wage problem must therefore be negative. Everything depends upon the objects it is hoped to attain and the causes of the evils it is hoped to remedy.[1] In the first part of this chapter we indicated in what circum-

wage regulation was much less than was claimed. In both trades there were special circumstances which in part at least accounted for the reduction in employment. It was a time of general depression, and both were trades in which it was particularly easy for the consumer to supply his own wants, at least for a time. He, or rather she, could make clothes herself or refrain from buying, and do more washing at home. In addition both trades were to some extent undergoing an industrial revolution. In the dressmaking trade a change of demand in favour of cheaper ready-made garments, as against the more expensive bespoke trade, has for some time been placing the small individual firms at a disadvantage as compared with the large firms producing with the aid of considerable machinery. Similarly, in the laundry trade there has been a movement towards the introduction of machines and larger scale production. In both cases these movements would have tended to the discharge of workers, and, what is particularly important in the dressmaking trade, to a disinclination to train apprentices. Dr. Sells (*The British Trade Boards System*, p. 192 *et seq.*) gives an interesting analysis of the effect on the Trade Board rates upon the dressmaking trade.

[1] It is important to remember this in discussing the problem of women's wages. It is impossible, in other words, to say what wages women *ought* to receive. If it is desired to keep them in employment and even to extend the field open to them, by making them serious competitors with men, there is a strong case for fixing their wages much lower than those received by men. But if at a later stage the prejudice against the employment of women as such declines, and men and women compete freely, it may be possible to insist on equal pay for equal work without narrowing the field of employment. If a Living Wage were introduced, the question of the relation of the wages of the two sexes would depend upon whether or not a system of family endowment were also introduced. The Courts have been fully alive to this aspect of the problem in fixing the wages of women. Cf. *Australia: Economic and Political Studies*, article by Jethro Brown, p. 223; and Higgins, *op. cit.*, p. 11.

stances the application of one basis or another might raise wages, by leading to an increase in the wages of all persons in the trade, or by raising the wages of some and forcing others into a trade where their entry would not reduce wages below the legal minimum. Where low wages are due to economic friction, wage regulation may be a means of forcing the movements which, for the various circumstances considered in this chapter, the laws of demand and supply have failed to bring about. In the same way there are some causes of industrial unrest which may be remedied by the application of one basic principle or another.

But because the causes of low wages and industrial unrest differ from time to time and place to place, it is impossible that any one principle should always have the same effect. As we have seen, there are some conditions which no wage principle could influence.

It is also true that from the point of view of economic welfare in general there is no universally applicable basic wage. The decision must be made afresh in each case, for the importance attached to the evils to be remedied and the evils which regulation may cause will differ. In practice considerations other than economic will often turn the scale. It may be that for some communities the Living Wage, for example, will be the soundest basis, because it fits in with a conception of civic rights which is felt to be worthy of maintenance at almost any cost. In such circumstances economic reasoning is of little avail, for the judgment on the goodness or badness of a particular basic wage then involves a choice between economic and non-economic welfare, and on this the economist is no more competent to pronounce than other men.

CHAPTER XVIII.

PROBLEMS OF THE FUTURE.

The Future Extension of State Wage Regulation—The Absence of Reliable Tests of Success—The Lessons of Experience.

The Future Extension of State Wage Regulation.

State regulation of wages has developed to an extent unforeseen, and perhaps unhoped for, by those who took the first steps in New Zealand and Australia thirty years ago. Its future growth will probably be less rapid, but it seems unlikely that the movement will suffer any serious check. Two influences will contribute to its persistence. On the one hand, it is undeniable that society is becoming more solicitous of the welfare of its less prosperous members. Whether this be a sign of the evolution of a social conscience, or merely a far-sighted and cynical move on the part of the more fortunate to consolidate their position by mitigating the worst grievances of the less fortunate, matters not. The fact remains that there is a disposition to support movements claiming to remedy the grosser forms of economic inequality, and this tendency is strengthened by the evolution of a body of professional social workers. Such agitations as those carried on in Great Britain in 1905, in Massachusetts in 1912, and in Australia in the early years of the century, may scarcely be regarded as sporadic outbreaks, unlikely to recur should occasion arise. It seems probable that the sweated worker will always be sure of support for his claim to a minimum wage.

On the other hand, the strength of organised Trade Unions, the growing political power of Labour, and the realisation by the general public of the inconvenience to itself of open

industrial warfare, render it unlikely that any Government will revert to the old freedom of industry, at least in those countries where a State-enforced wage has been introduced to check industrial unrest. These general conclusions are supported by the available evidence as to the trend of opinion in various parts of the world.

In Australia an attempt was made to abolish the Arbitration Courts in 1921 and 1922, and this attempt, in South Australia at least, came very near to success. But there, as in other States, the attempt seems to have been a political move, which only served to show how large a measure of support State Wage Regulation could count upon. It was significant that at the Conference of Premiers in 1921, where the overlapping of State and Federal awards was discussed, no suggestion for the abolition of the system came from anyone but Sir Henry Barwell, who was then leading the movement for repeal in South Australia. By the other Ministers regulation was taken for granted. This acquiescence seems to be typical of Australian opinion. The laws are accepted, though grudgingly; discussion and criticism turn on the desirable machinery, and the ideal basic wage.[1] Employers, it is true, are not enthusiastic, but the conservative policy adopted by the Judges during the war, and indeed throughout the whole period of administration, has done much to reconcile them to a system which probably prevented wages from rising as they would have done under unregulated conditions,[2] and which certainly introduced a measure of stability for definite periods in a time of rapid

[1] Cf. the Resolutions on the Basic Wage passed at the State Conference of Queensland employers, held in Brisbane, January 28, 1922, and reported in the *International Labour Review*.

[2] The New Zealand Court stated in 1922 that wage regulation had "placed checks on the operation of individual bargaining and prevented the violent rises in wages that took place in some trades in other parts of the world" (*Awards*, Vol. XXIII, p. 346). Similar statements were made by Judges in the New South Wales Court. It has also been claimed that this was the effect of the Arbitration machinery in Great Britain during the war. ". . . The demand for labour was greater than the supply, and State intervention was promptly resorted to in order that labour should not take advantage of its strong position. When the supply of labour once more exceeded the demand, however, State intervention ceased" (*Industrial Negotiations and Agreements*, published by the Trade Union Congress, p. 9. *Vide supra*, Chapter XIII, p 324 *n*.

changes of prices.[1] Employers probably accept compulsory arbitration only because it is the lesser of two evils.[2] The attitude of workers in Australia is similarly determined by the chance of obtaining greater benefit under any other system. Thus the unorganised and sweated workers are unanimously in favour of the retention of wage regulation; the more organised workers, who in Australia assume great importance, regard it merely as a palliative,[3] which should be made use of only so long as labour is not strong enough to introduce more drastic changes. On the other hand, there has been a tendency during and since the war, for non-manual workers, who previously held aloof, to seek registration under the Arbitration Acts.[4]

In America constitutional difficulties render the retention of State regulation more uncertain. Already the District of Columbia law has been declared unconstitutional by the Supreme Court, as have the laws of Wisconsin and Porto Rico by their respective State Courts. The fear that employers may be moved to bring a test case in other States has put a brake on the activities of the local administrative authorities, which are adopting a conciliatory policy towards recalcitrant employers. Until there is a change in the composition of the Supreme Court,[5] this fear will continue. Much, however, will depend on the attitude of employers, workers, and the general public. From such evidence as it has been possible to obtain,[6] it seems that the general

[1] Cf. Chapter XIII, pp. 314–5.

[2] Cf. Mr. Pryor, Secretary of the New Zealand Employers' Federation, before the Labour Bills Committee in 1920. *Question*: "Would the employers like to abolish the Act altogether?" *Answer*: "We want to know what would be put in its place."

[3] In the words of the *New Outlook* of October 27, 1923, p. 166: "It deceives the unthinking into a belief that society is making a real effort to deal with the problems of distribution, and it furnishes the Legislature with an excuse for inactivity." The same view was expressed more vividly by an ex-trade union organiser of Brisbane, who said to me: "The worst of this Arbitration is that it makes the workers so damned satisfied with the existing industrial system."

[4] Especially teachers, journalists, bank officers, life assurance clerks and agents, etc. (*N.S.W. Department of Labour and Industry, Annual Report for* 1920).

[5] Cf. Chapter VI, p. 136.

[6] The following are typical replies received in answer to specific inquiries: "There is considerable grumbling in regard to the minimum wage law

public is either disinterested or passively favourable, prepared to support without enthusiasm the activities of social workers who demand a minimum wage to remedy glaring evils. The attitude of employers varies from State to State. As an organised body they are strongly opposed; individually they grumble, but submit. In California and Oregon they even approve of the law as a means of eliminating undesirable competitors. Organised labour supports State wage-regulation so long as it is confined to women, and to non-trade unionists.

In Canada minimum wage laws seem more popular than elsewhere. Although there are exceptions, employers as a whole are favourable, and it seems unlikely that a movement for the abolition of State regulation would receive strong support.[1] But it should be remembered that the laws are relatively narrow in scope.

In Europe wage regulation appears well established. The scope of the law in France has recently been widened,

on the part of employers. Workers are grateful for the law and the efforts made by the Commission to enforce it; organised labour is satisfied, the general public is disinterested" (Letter from the Superintendent, Division of Women and Children, Industrial Commission of Minnesota, August 8, 1924). "We have very little opposition from the employers. . . . They are glad to be free of the competition in wages which allows the unscrupulous to take advantage of the necessity of the workers. While organised labour co-operates with the Commission, it is no secret that as a principle they are opposed to minimum wage legislation as it weakens the necessity for organisation. The general public is friendly, of course, but exhibits no interest until concrete cases arouse it" (Letter from the Secretary-Inspector Industrial Welfare Commission of Oregon, August 11, 1924). Cf. also *Bulletin No. 285 of the U.S. Bureau of Labour Statistics*, pp. 87, 113, 149–50, 162, 218.

[1] The following replies have been received from the various State Commissions. "From the start organised labour gave its support to minimum wage legislation, and whilst a large number of employers did not at first look favourably on it, I feel that at the present time 90 per cent. are in accord with its objects, as they realise that it is one of the factors which will eliminate cut-throat competition, and place employers on an equal basis" (Letter from the Secretary, Bureau of Labour, Winnipeg, June 6, 1925). "The attitude of all parties in the province, generally speaking, is very good towards this legislation. We did have some trouble at the initial stages from certain sections of employers, but the attitude of these people appears to have changed, and our provisions are now universally accepted with approval" (Letter from the Commissioner of Labour, Alberta, September 22, 1925). "Organised labour requested the Government to pass this legislation. The employers are to a large extent acquiescent, and the public in general favour it" (Letter from the Commissioner, Bureau of Labour Statistics, Saskatchewan, September 9, 1925).

while there seems to be no active opposition in either Austria or Czecho-Slovakia.[1] After 1920 there was a reaction in Great Britain, which was strong enough to obtain the abolition of the Agricultural Wages Board, and for a time to threaten the existence of the Trade Board system. But within three years the Agricultural Wages Board was re-established, though with many of its teeth drawn, and the appointment of the Cave Committee checked the campaign against the Trade Boards. Moreover, its Report showed that opposition was directed rather to the machinery of the Acts than to the idea underlying them. For while opinions differed as to the Act of 1918, nearly all the witnesses "desired the retention of the Act of 1909, directed to the prevention of sweating."[2] The idea of a minimum wage unaccompanied by restrictions on bargaining for more, is so far accepted by organised and political labour in Great Britain that in 1921 a special Trade Boards Advisory Council of the Trades Union Congress General Council was appointed, and in 1925 the Independent Labour Party attempted to persuade the Labour movement to adopt the slogan of a universal Living Wage as one of its major battle cries.

The Absence of Reliable Tests of Success.

This broad survey of the position in widely separated countries suggests that State wage regulation is an institution with a degree of permanence worthy of the attention of economists. It must not be dismissed as a temporary aberration. But it is not easy to form positive judgments on its effects. In the preceding chapter it was seen how the lack of quantitative measurement vitiates conclusions regarding its effects upon economic welfare in general. Only when there is a large and obvious difference between the positive and negative effects, may any confident statement be made. Even when we inquire how far wage regulation

[1] In Norway the position is more uncertain; cf. Voss, *op. cit.*

[2] *Cave Committee Report*, p. 12. Later in the Report the Committee reiterated that "the employers represented before us were wholly opposed to the sweating of labour, and were desirous that it should be prevented by legislative action" (*ibid.*, p. 24).

has attained its immediate objects, tests of success are not easy to find. It is useless, for instance, to attempt to measure the effect of wage regulation upon industrial unrest by a comparison of the number of strikes and lock-outs before and after its introduction. Open conflict is not the only form which industrial unrest can take; it may also be expressed in 'ca' canny', large labour turnover and other subtler and less measurable forms. Even if it were found that stoppages had increased or decreased, the difficulty of isolating this factor from all others makes it impossible to say whether the change observed is due to wage regulation, or to other causes. Thus it cannot be inferred that the Australian Arbitration systems have failed in their immediate object because stoppages still occur. They might well have been even more frequent but for the existence of an Arbitration system. Nor is it possible to compare, during a given period, two areas, of which one has and the other has not, a system designed to prevent open industrial warfare. For conditions may be so dissimilar as to invalidate all such comparisons. Attempts have often been made to compare New South Wales and Victoria in this way. As the former has virtually clung to Arbitration, while the latter has persistently adopted the Board System, it has seemed as if a very pretty comparison of the effect of the two systems on industrial unrest might be made. It is true that the number of workers engaged in industry in the two States is roughly the same.[1] But the sex distribution differs considerably. In New South Wales the proportion of women to men employed in factories was slightly more than one to three; in Victoria it was more than one to two.[2] Further there are six times as many people engaged in mining in New South Wales as in Victoria.[3] As the majority of disputes of recent years have occurred in the mining industry, which tends to attract a more independent type of worker, the likelihood of stoppages is much

[1] In 1918 the average number of factory employees was 120,554 in New South Wales, and 118,241 in Victoria (*Commonwealth Year Book, No.* 13, 1901–19, p. 491).

[2] *Ibid.*, p. 502. [3] *Ibid.*, p. 485.

greater in New South Wales than in Victoria. Therefore the inference that the Board system is more conducive than Arbitration to industrial peace because in Victoria the numbers of disputes and workers involved are much smaller than in New South Wales,[1] is invalid.[2]

When it is sought to discover whether a wage-regulating system has succeeded in its immediate object of raising wages in a trade, further difficulties appear. If higher wages are in fact being paid in a trade, we want to know whether it consists of the same workers as before regulation, or whether these have been displaced by a superior type. Again, the higher wage may have been obtained at the expense of workers who were previously receiving more than the average, or it may be accompanied by an increased intensity of work or the withdrawal of privileges in kind. The farmer in Great Britain, for example, is tending to make use of his right to deduct from the legal wage the "official" value of the cottage and farm produce supplied to his men, thus partly offsetting the higher money wage.

Even if, in spite of such counterbalancing conditions, an increased money wage does in fact mean an increase in real wages in a given trade, we cannot always attribute the increase to wage regulation. It may have been accompanied by a general rise in prices which would have tended to increase money wages in any case, and this possibility cannot be discounted by adjusting the new wage rate to the change in the level of prices. Trades are not equally affected by general price variations. Some are stimulated while others suffer a set-back. To assume that the percentage change in prices exactly measures the change in prosperity of each industry is therefore unjustifiable. Even were it possible to allow for the effect of price changes, it is still possible that the increase of wages might be due to some cause

[1] From 1916–1919 disputes in New South Wales numbered 1,037 and affected 390,460 workers. The corresponding numbers in Victoria were 202 and 62,112 (*Ibid.*, p. 1,082).

[2] Dr. Sells in an article in the *International Labour Review* of December 1924, makes the same kind of error in comparing the Arbitration system in Australia with Trade Boards in Great Britain, much to the advantage of the latter. As the kind of worker dealt with is not the same, a comparison is not legitimate.

other than wage regulation, such as an increase in the demand for the products of the trade or a rise in the general prosperity of the community. It is impossible to say how far the increase in wages which occurred in Australia and New Zealand during the early years of this century was due to wage regulation, and how far it was merely the result of an undeniable growth of wealth accompanied by natural and artificial limitations on emigration, which would have raised wages in any case.

The Lessons of Experience.

If then the economist cannot give an unequivocal answer for or against wage regulation, except in a few individual cases, it may well be asked whether he can reach any useful conclusions on the subject. Although he cannot make sweeping judgments, he may yet play the part of expert adviser. By showing how existing systems have operated, he can force society to realise, in some degree at least, the problems which lie below the surface and the magnitude of the tasks it has undertaken. Such lessons will be more cogent if supported by concrete examples which may be obtained from a study of the experience of wage-regulating bodies over a period of years.

As a result of such a study it is possible to point to certain problems which remain for future solution. The first of these is that of enforcing a State-fixed wage. If society endeavours to protect workers, an adequate inspectorate and effective means of detecting offences and punishing offenders must be devised. As was shown in Chapter VIII, many States have neglected this problem altogether; others have made only feeble efforts to solve it. If however society is using wage regulation to prevent strikes and lockouts, the fundamental problem is to discover some sanction to apply to those who stand to gain more from dislocations than from adherence to the terms of an Award. Unless such a means be found, the most elaborate structure will collapse at the first shock. It is this bitter truth which has been brought home to Australians during and since the War.

A second serious problem relates to the constitution of the wage-regulating authority. Too little effort has hitherto been made to relate the constitution of such a body to the conditions of the area in which it has to operate, and the functions which it has had to perform. It was shown in Chapter IX how many systems have been rendered for long ineffective by neglect of simple points of detail. Nor when a selection between two systems has been made, have States always realised what their choice involves. The successful operation and practical utility of the Board System, for example, depends upon two matters of fundamental importance; the choice of members who are thoroughly representative of the trade subject to regulation, and the determination of the degree of autonomy to be given to the Board. If these points are incapable of settlement, some other body must be found to perform these functions, for which we have seen that a well-constituted and responsible Board is peculiarly appropriate. If only a limited degree of regulation is desired, there is ground for believing that the Board System is too fine and complicated a mechanism for the performance of so simple a task. There has been a tendency to shirk the problem of harmonising the interests of trades, as expressed by the Boards, with those of the community, by limiting the Boards' powers and responsibilities. Thus the opportunity to utilise them for bridging the gap between irresponsible and disorganised, and responsible and self-governing industry, has often been missed. Before deciding to set up more Boards, States would do well to ask themselves what functions Boards are to fulfil, and how best to fit them for that purpose.

But perfect enforcement and a perfect wage-fixing body are not enough. Still more difficult is the choice of a principle which is to replace the existing method of determining the price of labour. This is undoubtedly the most fundamental problem of all. Its solution is inseparable from a clear idea of the objects which it is hoped that wage regulation will attain. No principle will be appropriate for every purpose and for all circumstances. From the

experience of different countries the economist can warn wage regulators that some suggested principles are useless, while others are much more complicated than they seem. He can reveal the emptiness of the principle of fixing a wage which a trade can bear, and can point to the limitations of the Fair Wages criterion. Attempts to apply these principles have exhibited their hollowness, and have led to the substitution of some other principle, or to a reversion to the old method of valuing labour. Certainly the Living Wage has not been open to these objections, and this probably accounts for its widespread popularity. But the Living Wage has its own disadvantages, while experience shows that before it can become a reality it must be accompanied by other devices, in order to adjust it to differences in the size of families, and to changes in the value of money. Moreover it is significant that the two States which have made the most careful and serious attempt to apply the doctrine of the Living Wage have found it necessary to institute a special body to fix its content, while several others have found its statistical determination no light task. Nor must we forget that, as has been pointed out in the last chapter, there are some industrial and economic evils which are incapable of amelioration by mere changes of wages.

Some of the fundamental problems involved in the question of wage-regulation are therefore outside the sphere of the economist. Nevertheless, if the State in the future is destined to play as great a part in the determination of wages as it does at the present time, the economist may perform some service in indicating the range of choice and the implications of each course. By making available the experience that has already been gained, he may prevent the mistakes of the past from being repeated, and save time and effort from being wasted in confronting afresh difficulties that have been already overcome.

BIBLIOGRAPHICAL NOTE.

THE list of Books, Articles and Official Papers which is given below does not pretend to be a complete Bibliography on the subject matter of this book. I have endeavoured as far as possible to select those references which bear directly upon the operation of wage-regulating laws in different parts of the world, and have omitted all references to the purely theoretical discussions. Reference is made to other works throughout the text. The object of this Note is to give the reader who desires to follow up some of the problems raised in this book, some indication of the most readily accessible material. The list is arranged geographically.

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