

The New Spirit in German Labour Legislation

by

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‘THE spirit moulds the body to conform’: these words of a German poet are as true of social economics as they are of other things and apply to economic legislation, to economic action, and to economic institutions. It is the spirit creating and applying such legislation and institutions which gives them life and meaning, which brings them to fruition and endows them with force, and determines their effects.

It will always stand as one of the great achievements of Germany that in the short period between 1884 and 1887 a system of insurance against accidents, old age, and invalidity was created for the benefit of many millions of workers. Friendly societies, funeral clubs, the Liability Act, and various charitable institutions possibly paved the way for this new and imposing organisation, but it was nevertheless a leap into the unknown. The new system wholly abandoned the principle of charitable assistance into which poor relief had lapsed, and substituted that of rights, guaranteed to insured persons and acquired by the payment of contributions. But the Government and Reichstag, who had been the authors of the Act, were too timid to carry their great idea to its logical conclusion. In the administration of accident insurance no voice at all was given to the persons insured, namely, the workers; such administration was placed solely in the hands of associations of employers. In the administration of invalidity insurance workers as well as employers were indeed represented on an advisory council; but here the real management was in the hands of a bureaucracy of officials. Finally, when the insured did succeed in acquiring control of the sickness insurance system, their activities were in practice restricted by the inspection and interference of the authorities. German insurance legislation may have conferred great benefits upon the population, but it forfeited its own moral effect by its distrust of the worker.

(1) *Gesellschaft für Soziale Reform*, the German section of the International Association for Labour Legislation.

This distrust and dislike of the workers' eager collaboration, such an unequal meting out of justice, characterised the whole of the social policy of the old Germany. Consider, for instance, the length of the interval which was allowed to elapse before that cautious and conscientious body of factory inspectors was reinforced by assistants drawn from the ranks of the workers themselves; or again, the extraordinary weakness of the system of conciliation in labour disputes, notwithstanding that imagination saw the 'hydraheaded monster of revolution' in every strike. Consider the want of understanding and support accorded to the movement for collective bargaining, a movement where the parties to the labour contract themselves enter into negotiation and agreement in order to settle their own affairs; or the deep distrust which was felt and shown for trades unionism, at a time when employers' associations were being cordially received at government offices. In the old Prussian provinces, while all employers were freely entitled to enjoy the right of association, large masses of the workers in the transport industry and agriculture were denied that right for defending or improving their wage and labour conditions. The provisions of the penal code were never invoked against employers who tyrannised over other employers or their workers by means of threats or lock-outs, but there are only too many instances of sentences passed on trade unionists guilty of a similar offence. There actually was in existence a persecution clause, Section 153 of the Industrial Code, against those who went on strike, while the trade unions alone, and not the employers' associations, were hampered by the law of association in its bearing on political bodies. The workers were second-grade citizens as much from the industrial as from the political point of view by reason of the Prussian franchise with its three classes, which refused to the poor, merely because they were poor, those rights which it gave to the rich. No labour leader was called to Ministerial office, or to a position in a government Department, or to be a local government official; their voice was heard in Parliament, but not on administrative bodies. The millions of manual and salaried workers never helped to make the laws which they obeyed; in the industrial field they were tools, and not collaborators.

A change began even before the war was over. Political and army leaders came to realise that trade unions are indispensable mass organisations, without which people and state cannot breathe, least of all in times of great danger when issues of life and of death are at stake. Their co-operation, their help, were demanded. They began to be treated with respect and confidence; justice and equality of rights were promised, and the chief restrictions on the right of association removed. The first step in this direction having

been taken, the new spirit of social reform would certainly have won its way to triumph even had the Revolution of 9 November 1918 not taken place. When that day, however, saw the popular leaders seize the reins of government in the new Republic which was proclaimed from the steps of the Reichstag, the first act of those leaders was obviously to sweep away the remaining restrictions depriving the worker of equality of rights. The abolition of all restriction on rights of association and meeting, the termination of all obligations under the Industrial Conscription (War) Act, conciliation committees for industrial disputes, abrogation of all special legislation against the interests of agricultural workers and domestic servants, full protection for the worker, a maximum 8-hour working day, an adequate employment exchange system, unemployment relief, together with equal, direct, secret, and universal suffrage to all public bodies for all men and women over twenty years of age—this proclamation of 12 November introduced a new epoch into the social history of Germany.

The demands were not new; for years they have figured on the programme of those bourgeois social reformers who joined forces with the trade unions in the Society for Social Reform.

The principles and aims of the labour code which was to be established in the new Germany were clearly and definitely laid down in the Constitution of 11 August 1919. Section V, which deals with economic policy, runs: "The organisation of economic life shall be based on principles of justice, with the aim of ensuring to all conditions worthy of a human being. Within these limits the economic freedom of the individual shall be guaranteed (Article 151).....Labour is under the special protection of the Federal authorities. The Federal authorities shall draw up a uniform labour code (Article 157)... The right of free association is guaranteed to all persons and all professions for the purpose of improving their labour and economic conditions. All agreements or measures tending to restrict or interfere with such freedom of association shall be null and void (Article 159).....The Federal authorities shall, with the assistance of insured persons, draw up a comprehensive scheme of insurance for the maintenance of health and capacity for work, the protection of motherhood, provision against the economic consequences of old age, of weakness, and the vicissitudes of life (Article 161). The Federal authorities shall take action to secure international regulation of the legal condition of workers, with a view to ensuring a universal minimum of social rights to the working classes throughout the world (Article 162)".

The introduction to Article 165, known as the "Councils Article" is of special importance. "Manual and non-manual workers shall be called upon to co-operate with employers on an equal footing in the regulation of wages and labour conditions as well as in the whole economic development of production. The organisations of either side shall be recognised".

Reference to equality of rights as between employers and employed is found even in the old Germany. The Industrial Code says that labour conditions shall be regulated by "voluntary agreement", and the Labour Decree of 4 February 1890 recognises the workers' claim to statutory equality of rights, but the real state of affairs has already been briefly described. In the new Germany there is a guarantee that the words of the Constitution will become a practical reality. This guarantee is found in the strong trade unions of manual and salaried workers with their twelve million members; also in the two strongest parties in the Reichstag — the Social Democrats and the Centre — who represent the working masses; further, in the position held by the labour leaders in the government and administration of the Federation, States, and municipalities. In the long run reaction and attempted *coups d'état* can never again fetter the new spirit which has taken deep root among many sections of the bourgeoisie and even in the hearts of the employing classes; its influence increases every day. It is penetrating social reform legislation and getting a grip on the industrial life of the country; it is establishing its reign in the hearts and minds of the nation.

By the beginning of 1918 employers' and workers' representatives had met in joint industrial associations ⁽²⁾ with a view to mastering the difficulties which had arisen owing to the war. An agreement between all the great employers' federations and the trade unions was announced on November 18, and its result was the Central Joint Industrial Association ⁽³⁾, with its sections for the various industries, an association which is still functioning. This agreement provides for the recognition of the trade unions, for employment exchanges on a basis of joint representation, for collective bargaining and an 8-hour day, and further stipulates that employers and workers shall be jointly responsible for providing raw materials and employment, with the object of once more building up the industrial life of the nation and of finding work for the demobilised soldiers. Since then the Central Industrial Association has had to face criticism from more than one quarter. It has been shaken by strikes, and certain unions, such as those of the metal and building workers, have announced their withdrawal. But the conviction that in industry employers and workers must collaborate on terms of equality is constantly being expressed in new ways; profit-sharing, co-partnership, systematisation of industry ⁽⁴⁾, and even socialisation are being discussed; yet all these are nothing more than particular aspects of a joint industrial association in which manual and salaried workers have acquired not merely a voice on wages questions and labour conditions, but also on the general management of industry.

(2) *Arbeitsgemeinschaft.*

(3) *Zentralarbeitsgemeinschaft.*

(4) *Planwirtschaft.*

This is the real and ultimate purpose of the Works Councils Act of 4 February 1920, Section 1 of which reads as follows:—

“In order to protect the common economic interests of employees (salaried and wage earning) in relation to their employers and to support employers in effectively carrying on their businesses..... Works Councils shall be constituted”. Section 66 declares it to be the duty of the Works Council “in undertakings which serve economic purposes to assist the managing body by advice, and thus to co-operate in the achievement of the highest possible standard and of the maximum degree of economy in production,... to co-operate in the introduction of new methods”; finally, to take over the duties of the old works committees (5).

While the employers have had statutory bodies to represent their interests, such as chambers of commerce, of handicrafts, and of agriculture, the workers have hitherto had no similar organisations of their own. Several Bills to establish chambers of labour (6) were rejected, for instance in 1908, 1910, and 1918. But now not only have works councils been set up, but the constitution also provides for district workers' councils and a Federal Workers' Council and, further, for the consideration of matters which are common to employers and employed, for district economic councils and a Federal Economic Council. Such a 'labour parliament' has actually existed in a provisional form since the end of June 1920; one of its functions is to submit proposals for constituting the permanent economic councils. In this way the principle of the equality of interests and the equality of rights as between employers and employed will find statutory expression, from the single industrial establishment right through to the national economic system as a whole. Out of this struggle of the creative forces of production, a compromise will be effected between natural opposites which will lay down the lines along which development shall take place, and this without encroaching on the employer's power of initiative and control, yet awakening in the worker a joy in his work which will transform him into a collaborator in things industrial.

These are hopes and schemes for the future, nor will it be Germany alone who will decide whether they shall be carried out; the decision depends on other and mighty forces. But no forces can undo the fact that Germany's new social legislation is inspired by a new spirit. This spirit will appear in the reform of the insurance code, now in progress. The serious financial position of the country may make it uncertain whether benefits can be raised, but what can and must be arranged is a greater co-ordination of all the separate kinds of insurance, the removal of bureaucratic influence from insurance administration, the abolition of official control,

(5) *Arbeiterausschüsse.*

(6) *Arbeitskammern.*

and far more self-government so as to give a preponderating part to the insured themselves; further, the principle of prevention rather than cure is becoming more and more generally recognised; the prevention of illnesses and accidents, and the struggle against the great plagues of tuberculosis, syphilis, and drunkenness are the best forms of insurance, promoting the general welfare and at the same time removing the causes of poverty at their source. A very promising sign for the future is the tendency to transfer welfare work in general, including poor relief, to the field of social legislation, and thus again to replace charity and alms by the acquisition of rights.

The democratic principle of the equality of rights of every citizen is apparent in every Bill dealing with labour. As long ago as the beginning of May 1919 a committee, of which the present writer is a member, was constituted at the Ministry of Labour for the purpose of drawing up a new and uniform labour code. The function of this committee is not merely to systematise existing legislation on the employment contract and the protection of labour—scattered through some dozens of Acts and Decrees—in other words to codify the present law, but actually to create new law of an up-to-date type. In every Bill which has been drafted by the committee, as in those on collective agreements, domestic service, home work, labour tribunals, as well as in those on industrial conciliation and arbitration and on employment drafted by the Government, the principle of equal representation of employers and employed and their co-operation is strictly observed. Both sides were consulted by the authorities and took a very influential and active share in the preparation and preliminary discussion of these Bills, and they will be similarly called upon to play a very important part in carrying them out. Here is a wide field for that self-government which every industry ought to exercise in managing its own affairs. The number of public authorities should be cut down to the lowest possible limit, and these few should be centralised and should give sympathetic support to the self-governing bodies in the various industries, or, where these fail, should be ready to take their place as appeal bodies to which employers and employed can readily apply for information and decisions. The whole system is conditional on the existence of strong, well disciplined, and wisely led organisations both of employers and employed, who recognise their wide identity of interests and are ready to settle their disputes by discussion and agreement rather than by open warfare.

In this sketch of modern German legislation—the legislation which is springing up as part of the very growth of the new democracy itself—a serious omission would be made were all reference omitted to Germany's part in the 'international labour code' which is to be created by the International Labour Organisation. It may be asserted without arrogance

that in this sphere Germany has no need to seek new inspiration or to adopt new methods, for from the very outset she has taken a prominent part in seeking to secure the realisation of an international labour code. Witness the Berlin Conference of 1890 ; the foundation and activities of the International Associations for Labour Legislation, on Social Insurance, and on Unemployment and the International Anti-Tuberculosis Association. It would be unfair to judge the work of these societies by their legislative results only. They have done invaluable educational work, and their pioneer work in international labour legislation will always be a bright page in the history of social reform. The great work of international labour legislation is now to be built up on a broader and stronger basis than can be provided by private associations; Germany only remains true to her old traditions when she gives her willing co-operation in so far as she is allowed. A large part of the Conventions of the first two conferences of 1919 and 1920 at Washington and Genoa are already on the statute book in Germany. We do not doubt but that the rest will be incorporated in her legislation, for they are the incarnation of the spirit by which labour legislation in the German commonwealth is inspired.



Industrial Peace in New Zealand

by

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ON the accepted principle that circumstances alter cases and that you cannot accurately judge the case without a knowledge of the circumstances, so you cannot properly estimate the inherent value and practicability of a state experiment without some adequate information as to the conditions which have led to it and under which it has been tried. State activities, interferences, and enterprises which work satisfactorily, for example, in New Zealand might well be disastrous in countries differing in size, climate, race, population, and standards of life and civilisation. A few words, therefore, as to the area, physical conditions, and other relevant factors of New Zealand seem a needful preliminary to a scientific examination of the state experiments I am about to discuss.

This Dominion is commonly referred to geographically as the antipodes of Great Britain, but its most northern point—the North Cape, the warmest—is in the latitude in the southern hemisphere corresponding to one hundred miles south of Spain, and the most southern—the coldest—is in the latitude corresponding to that of the north of Switzerland. In Wellington, the capital city, about half-way between the extreme north and south of the Dominion, snow never falls and even mild frosts are rare. New Zealand enjoys, therefore, a climate that is one of the healthiest in the world, and this helps to create in its people a vigour and energy which have long been conspicuous in many fields of action and enterprise.

The total area of the country is 103,581 square miles, or nearly the size of the United Kingdom. In natural resources it is scarcely inferior in any respect to the United Kingdom and in some important respects considerably richer. The richer land is subdivided very extensively into comparatively small holdings, and its chief products are wool, meat, butter, cheese, skins, and other pastoral products. Of foodstuffs it produces several times as much as it consumes, and it is only to a trivial extent a manufacturing nation. It has a total population of less than a million and a quarter, including