

The Labor Injunction (Book Review)

Morris Hillquit

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BOOK REVIEWS

Editor—DONALD J. REDMOND

THE LABOR INJUNCTION. By Felix Frankfurter and Nathan Greene. New York: The Macmillan Company, pp. 228.

In the highly centralized industrial system of our day dealings between employers and workers are generally conducted through organized and collective agencies. The growth of large-scale production under corporate ownership and management has been accompanied, step by step, by the development of powerful organizations of the workers in some of the most vital industries of the country.

The individual labor contracts between "master and servant," which still flourish in our legal textbooks, have in practice become largely obsolete. The modern industrial worker does not bargain over terms of employment with his employer. If he is unorganized he submits to the conditions imposed by the employer. If he is a member of a labor union, he works under uniform standards fixed by the terms of a collective agreement between his union and his employer or an association of employers in his particular craft. So long as collective terms of employment are voluntarily arrived at and substantially performed, peace reigns in the industry. But often a deadlock ensues in negotiations for concluding or extending a collective agreement, or one of the parties refuses to negotiate, and organized warfare breaks out in the industry in the form of a strike, boycott or lockout.

In these conditions our courts have gradually assumed the function of laying down the rules of industrial combat. A new body of law has thus sprung up within the last forty years or thereabouts. It has been fast built up by the courts of equity, mainly in suits for injunctions instituted by employers against striking workers. The story of the development and rapid extension of this new field of jurisprudence in the United States is highly fascinating. A few sporadic attempts to invoke the equitable writ rather than to resort to criminal prosecution were made prior to 1886, but they either failed or attracted little attention, but "In the great railroad strike of 1886," the authors relate, "the injunction met repeated favor. During the remaining years of the century the cases grew in volume like a rolling snowball." They have been growing at an even faster pace since the beginning of the present century. Initiated largely by the Federal courts the practice of issuing labor injunctions has spread to all state courts. The grounds of judicial interference in labor disputes, originally based on the provisions of the Interstate Commerce Act, were soon broadened to include the protection of the employers' property and contract rights in the widest sense of these terms.

On the ever-growing basis of equitable grounds for injunctive relief, the practice has become so frequent and common that injunctions almost invariably accompany all important labor disputes. Organized workers and large bodies of thoughtful citizens outside of the ranks of labor have always viewed this innovation in the law with grave concern. Injunctions almost always operate in favor of the employers and often result in a complete termination of the

controversy adversely to the workers. The practice is practically confined to the United States and rests wholly on judge-made law without statutory support. Its remedies are crude and inappropriate. The intricate and delicate issues of labor disputes present problems of social and human relationship which may be composed by a patient and painstaking process of sympathetic counsel and mediation, but cannot be justly determined by a summary order or judgment of a court.

In view of the growing public sentiment that the evils, both substantive and procedural, inherent in the practice of settling labor disputes by court injunctions, should be effectively remedied, the book of Messrs. Frankfurter and Greene is very timely. In a concise volume of 228 pages of text the authors trace the history of the use of injunctions in labor disputes, discuss the law underlying the practice as it has gradually developed in the Federal courts and in the two most important state jurisdictions, New York and Massachusetts. The volume includes a detailed statement of the procedure in such injunction suits, of the scope and sweep of the typical injunction orders and of their practical effect on the combatants. It collates the attempts of state legislatures to limit the power of the courts to issue injunctions in labor disputes or to reform the procedure in such actions, and concludes with a thoughtful analysis and explanation of the bill now pending before Congress for the reform of the practice and procedure of the Federal courts in labor injunction cases.

Elaborate summaries of reported labor injunction cases in the courts of the United States and the states of New York and Massachusetts are appended to the volume. The book is written in easily readable English and bears evidence of unusually thorough and intelligent research. It will be of great help not only to practicing lawyers but to all persons interested in modern labor problems.

MORRIS HILLQUIT.

New York City.

CRIMINAL JUSTICE IN AMERICA. By Roscoe Pound. New York: Henry Holt and Company, 1930, pp. 225.

Those who fritter away time reading book reviews must be more than familiar with the ill-defined kinship that joins book and season. Still, who would deny to the vexed reviewer this figment of convenience—particularly when words without end might be no more expressive than a casual mention of appropriate weather? To use again the well-worn device, the five lectures of Dean Pound's, now published under the title "Criminal Justice in America" should, it seems, be characterized as cold-weather reading. In fact, though the thought suggests flippancy, late October and early November seem especially suited for the proving of the book's potential value. If only those who at that time crowd out pleasant radio programs in the name of politics would absorb certain of the good dean's paragraphs, their unsocial conduct could be borne