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Strike Injunctions in the New South

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chinery for the instigation of actions and the trial of cases? These are the questions with which we are confronted. Improved procedure with present personnel will have small chance for success — improved personnel will be hampered, though in a lesser degree, by out-worn procedure. Improvement in both is necessary. But in the demand for change we cannot rely on change alone to be the ameliorating agency of social ills. Too recently we have discovered that the adoption of the direct primary, the initiative and referendum, and similar popular government devices were not the panaceas their makers envisioned them.

The improvement of conditions in law administration will come today in a large measure through legislative activity. Thus books of the character of *Criminal Justice in England* take on an importance of first order; for those who have carefully and with scientific fairness evaluated comparative systems must present to those who enact our legislation a background upon which new experiments may be made with the benefit of past experience. If legislation is to rise to the ranks of a science our laws must be prepared with such books as Mr. Howard's as ready reference in the committee rooms where law is made.

—FRANK E. HORACK JR.

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STRIKE INJUNCTIONS IN THE NEW SOUTH. By Duane McCracken. Chapel Hill, N. C.: University of North Carolina Press. 1931. Pp. xi, 290. \$3.00.

This case study of the labor injunction has come forth in a world so engrossed in keeping its head above water that it may not receive the consideration that it merits. But that is not to say that it is untimely. At a time when the workers are rather fearful of losing what employment they have and the operators' situation is little more enviable, neither labor nor capital is in a belligerent frame of mind.¹ Nevertheless, there has never been a better time for improving the relations of capital and labor. The common experience of industry in its course along the under arc

¹ The depression has not suspended all open conflict. The Supreme Court of Errors of Connecticut has only recently upheld an injunction against picketing. *Levy and Devaney, Inc. v. International Pocketbook Workers Union*, U. S. Daily, March 12, 1932, at 62. And at the present writing a bitter strike is underway in the Hocking Valley coal fields of Ohio.

of the business cycle has impressively demonstrated the real community of interest of employer and employe. This experience is reflected in the disposition on both sides of late to be tolerant and conciliatory. Moreover, unemployment has stimulated thought and experiment along the line of the six hour day and five day week and the wider distribution of available work by the employing of men for less than full time and operating shifts. Whether necessity has bred the mood is not highly important. The mood is none the less here. Thus Congress has finally enacted a federal anti-injunction bill.²

Professor McCracken has devoted about half the bulk of his book to presenting his study and half to appendices, wherein are set out some of the pleadings and decrees in the cases reviewed, summaries of interviews and two statutes, the Senate Substitute for the Shipstead Bill and a Wisconsin act of 1931 limiting equity jurisdiction over litigation in industrial disputes. The first four chapters are a presentation of general material calculated to prepare the reader for the case study. It was a problem, of course, so to condense this phase of the material as not to wear out the reader. But the chapter on "The Injunction as a Legal Remedy" is inadequate. It does not suggest the leading role conspiracy has played in the development of the labor injunction.³ Moreover, it would have been desirable to have presented in brief the subject of federal jurisdiction, though it was not immediately relevant to the cases under review. Again, nothing was said about legislative attempts to cope with the injunction problem.⁴

The two succeeding chapters present the more or less conventional arguments, legal and non-legal, for and against the labor injunction.

Two of the cases studied arose from printers' strikes in North Carolina. The remaining three were concerned with more significant disputes in the textile industry at Marion, North Carolina, Elizabethton, Tennessee, and Danville, Virginia. For his data

² The Senate passed the bill sponsored by Senator Norris, (S. 935), by a vote of 75 to 5 on March 1, 1932. A week later the House passed the substantially similar La Guardia Bill by a vote of 363 to 13. On March 12th conferees from the two houses agreed on a substitute bill smoothing out the differences in the above measures. This bill in final form was passed by Congress and received the President's signature on March 23d. For a discussion of the Senate bill see Christ, *The Federal Anti-Injunction Bill* (1932) 26 LL. L. REV. 516.

³ The author indicates at another point that he is not unaware of this matter. See p. 136.

⁴ See, however, appendices I and XXVIII.

the writer drew chiefly upon the records of legal proceedings, current newspaper reports and interviews both with actual parties to the conflicts, opposing counsel and observers. Each case is treated on a scheme which proceeds from a statement of the factual background of the dispute to the resort to legal proceedings, the form of the injunction, procedural phases of the litigation and the effects of the injunction on the outcome of the strike and on the conduct and social attitude of those enjoined. Apparently the author was not deluded into a belief that interviews furnished reliable data upon the facts of the several conflicts. But that material is useful for its reflection of the attitude of the parties toward the injunction.

Professor McCracken's contribution lies in his resort to special case study. Doubtless no other approach would indicate so effectively the merit or want of merit of the injunction as an agency in adjusting industrial conflicts. In none of the five cases did the injunction break the strike. In three it had no substantial effect. In only one was there a serious effort to enforce the decree. The inevitable effect of such circumstances is to engender disrespect for the courts. Another fact of significance is that in each instance the injunction was granted *ex parte*. This quite common feature of labor injunctions is one of their most vulnerable spots. On the other hand these cases tend to support the thesis that there is no such thing as peaceful picketing. The book does not enable one to generalize safely on the interesting inquiry as to the extent the strikes were influenced by outsiders, particularly union organizers and competing producers in other sections.

The cases do not, and would not be expected to, involve many notable legal developments. Only the least important of them, the two printers' cases, went to the highest state court. In one of them the Supreme Court of North Carolina recognized peaceful picketing as legal.⁵ That court further decided that a union as such was not enjoinable because not a juristic person. The Tennessee and Virginia injunctions in terms enjoined the unions as well as individuals. A desirable feature of the Virginia injunction was a stipulation of what the defendants might lawfully do. It was also unusually mild in its inhibitions.

Labor law is young in the South because industrial conflicts there have come only late in the day due in turn to the lack of

⁵ *Citizens Co. v. Asheville Typographical Union*, 187 N. C. 42, 121 S. E. 31 (1924).

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unity and cohesion among the workers as a group. Thus the first of the cases discussed by Professor McCracken was the first strike injunction proceeding on record in North Carolina. It is interesting to note that North Carolina still has a quaint old statute on her books, which punishes the enticing away of servants as a crime.⁹ If it is possible for the South to profit from the experience of other sections and avoid the evolutionary process it seems that with this recent record of failure of the labor injunction before it that section has a great opportunity to set new standards in the intelligent fashioning of the industrial order.

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⁹ N. C. CODE ANN. (Michie, 1927) § 4669.