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## ADEQUACY OF STRIKE INJUNCTIONS

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### ADEQUACY OF STRIKE INJUNCTIONS

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

This book is a useful contribution to the literature of strike injunctions, written from the point of view of the social economist rather than the legal technician. The first 46 pages are a review of the traditional legal and social arguments for and against the use of injunctions in labor disputes, and the remainder of the book is chiefly devoted to an intensive study of five recent industrial disputes in North Carolina, Tennessee, and Virginia, the earliest occurring in 1921 and the latest in 1930. In each case the author analyses the form of the injunction issued by the trial court, and the procedure followed, and then by personal interview undertakes to determine the effect of the injunction on the outcome of the strike, on the conduct of the persons enjoined, and on their "social attitudes." As to the form of the injunctions, there are to be found examples of

most of the abuses described at length in Frankfurter and Green, *The Labor Injunction*, such as the use of vague and sweeping prohibitions, and the inclusion of persons not parties to or interested in the controversy. As to the procedure followed in trial courts, the author found that in all five cases temporary injunctions were issued *ex parte*, through the use of affidavits. The prevalence of this practice in strike cases is of course well known, though the new Norris Act and state acts built on the same model may in the future bring a change. It is only in his inquiry as to the effects of injunctions that the author, as he himself asserts in the preface, has made an original contribution. This inquiry produced results that can certainly not be proved by exact, or even statistical methods. At every point it was necessary to rely on opinion evidence, collected from a variety of sources and influenced by the partisanship and prejudices of the witnesses. The only guaranty for the substantial accuracy of the results lies in the evident effort of the author to achieve impartiality and to consult all available sources of information.

As to the effect of injunctions on the outcome of the five strikes considered, the author found that in no case did the injunction directly break the strike, in three cases the evidence indicated clearly that the injunction had no effect on the strike whatever, and in the other two it hampered the activities of the strikers and indirectly affected the outcome. As to the effect of the injunctions on the conduct of the strikers the evidence was not so clear. It would be safe to conclude, however, that in four of the cases the issuance of an injunction made many of the strikers more cautious and exerted some pressure against doing the acts specifically enjoined. But in the strikes where feeling was already running high, the grant of an injunction simply exasperated the more courageous groups of strikers and their sympathizers. In one case the author is satisfied that the injunction delayed a settlement and had no effect whatever on the conduct of the strikers. The author's conclusion as to the effect of the injunctions on the "social attitudes" of the persons enjoined is the least satisfactory. At this point he relies almost entirely on the testimony of the workers themselves, who asserted very freely that the issuance of the injunction decreased their respect for the law, and increased their bitterness toward their employers. Even if resentment is as widespread as these statements would indicate, one may still doubt whether it is directed specifically against courts of law rather than against an industrial system in which the odds are still overwhelmingly against success by isolated groups of strikers. This doubt is reinforced by the author's main conclusion as to the ineffectiveness of the injunction as a weapon for employers in the particular strikes discussed, though its futility may be no index of the employees' resentment. It should be observed that in the higher ranks of labor organizations there is a clearer realization of the hampering effect of injunctions in attempts to unionize on a national scale. The pronounced resentment in this quarter is entitled to serious consideration. We must also consider, sooner or later, whether on the whole the intervention of courts in industrial disputes has advanced the larger social and economic interests of our industrial society. But the evidence presented here is inadequate for any judgment on a question so large as this. Perhaps the only conclusions that can be drawn with safety from these data are that the reforms in procedure which were recently imposed on federal courts by the

Norris Act are long overdue; and that much of the criticism that courts have still to face could have been forestalled if they had been more scrupulous to avoid the appearance of partisanship which is reflected in some of these cases.

It is too much to hope that reforms in procedure will altogether remove the courts from this field, for which their machinery must always be unsuited; or that, as Dean Van Hecke suggests in a preface, the inadequacy of the injunction as a device for settling industrial disputes will induce employers to refrain from seeking its protection. The testimony collected by Professor McCracken indicates a common belief among representatives of the employing classes in the efficacy of the injunction as a means of coercion. So long as this belief survives, resort to the courts must be expected. Nor is it an answer to say that in these five cases, or in a majority of strike cases, the injunction does not break the strike. Most courts would disclaim any such purpose. The function of the injunctive decree is commonly said to be to lay down certain minimum standards of conduct, for the protection not only of the employer but of society at large. If it could be shown that injunctions are wholly ineffective even for this purpose because of difficulties of enforcement or because of their aggravating effect on the temper of the workers, then a strong case would be made for eliminating them altogether. But no such case has yet been made for the great mass of strike litigation. Of the five cases here discussed, only one will clearly support this thesis. In the others the injunctions had *some* effect, though certainly not the intended effect. The arguments for and against the use of strike injunctions must remain, therefore, on the higher plane of social policy, where the evidence collected here must receive patient attention but the larger purposes of collective action must ultimately be decisive. The first question is whether on the whole the courts, by the use of judicial machinery, have succeeded in their effort to promote industrial peace or even to lay down the conditions for industrial warfare. But back of that lies the central question, how far should agencies of government interfere to cut away or to reinforce the economic power of organized groups in society. It has been said that "To proclaim . . . the supreme interest of the state in preserving order in times of strike, is already to make it take sides. The supreme interest of the state is in justice, and it does not necessarily follow that justice and order are in perfect correlation" (Laski, *Authority in the Modern State* 385). On such questions no unanimous agreement can be expected, now or in the future. And it must also be clear that this high debate must continue to be based on fragmentary and inconclusive data, since a careful and scientific survey like Professor McCracken's has not produced results so clear as to exclude interpretation and inference.

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