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METHODS OF WAGE POLICY. II*

MAX RHEINSTEINT

IV

UNDER a system of simple mediation the government does no more than provide for the existence of agencies which can help the parties to settle labor disputes peacefully and which, if the parties so desire, may render an arbitral award. Whether or not the parties shall be bound by such an award is left to their own free will and decision. Minimization of strikes and lock-outs rather than their elimination is all that can be expected from even the most successful system of mediation. Hence, advocates of industrial peace are prone to suggest that, in case of failure of conciliation, mediation agencies should be endowed with the power of rendering an award which should be binding upon the parties even without their voluntary acceptance. Such a provision which changes mediation into arbitration does not necessarily imply the adoption by the country in question of an active wage policy, at least not as long as the arbitration authority is strictly enjoined to fix wages and other conditions of employment in no way other than they would have been determined as the result of a strike or lock-out or, in other words, by the respective bargaining power and fighting strength of the parties. While theoretically the purpose of arbitration is to establish the status post bellum without war, it appears doubtful whether such an end can in practice be achieved. How can the arbitrator know in advance what terms would be the outcome of an eventual struggle? Even at best his judgment in this respect can be no more than an enlightened guess. If circumstances are such that the outcome of an eventual strike or lock-out can be determined in advance with some degree of certainty, the parties will probably reach an agreement and an award will be unnecessary. Except in peculiar situations, arbitration does not become necessary unless the situation is such as not to permit an exact forecast of the outcome of an eventual industrial struggle. In addition, it appears difficult to find arbitrators who are able to banish from their minds considerations other than that of finding the terms which correspond exactly to the respective fighting strength of the parties.89 In

* For the first installment of this article, see 6 Univ. Chi. L. Rev. 552 (1939).
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89 As to those difficulties inherent in a system of compulsory “mediation,” see Weddigten, Einigungs- und Schiedsgrundsatz, 179 Schriften des Vereins für Sozialpolitik (1930); Pribram,
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Germany, where such a system was in force from 1919 to 1933, the arbitrators have been blamed frequently for letting themselves be guided by such considerations as that of raising a wage level deemed too low to allow the workers a decent standard of living, or of lowering a wage level deemed by them too high to allow the industry to compete on the world market. Whenever such considerations enter into an arbitration procedure resort to which has been made compulsory by the government, the wage-policy of the country in question is no longer of the passive but of the active type.

1. It is significant that the beginnings of the German system are to be found in the exigencies of the Great War, when the elimination of labor disputes was imperative in the interest of national defence. Under the Auxiliary Service Act of December 5, 1916, conciliation committees were established for the principal industries. Their awards "were not directly binding, but as the committees were dependent on the War Board, they were not without military authority." After the Revolution of 1918, this war measure was extended by the new government to cover the difficult period of demobilization, the demobilization commissioners replacing the military authorities in the execution of the law. By the Conciliation Regulation of October 30, 1923, formal power to declare awards binding was given to the Minister of Labor. Under this law, the country was to be covered by a network of conciliation agencies, viz., government conciliators.

179 Schriften des Vereins für Sozialpolitik (1932); Kuttig, Problems of Conciliation and Arbitration, 26 Int'l Lab. Office, Conciliation and Arbitration of Industrial Disputes, Studies and Reports, Series A, No. 34, at 25 et seq. (1933); Höngischmid und Grossich, Zwangsscheidsspruch und Schlichtungswesen, 10 Münchener volkswirtschaftliche Studien (1929); Kahn-Freund, Der Funktionswandel des Arbeitsrechts, 62 Archiv für Sozialwissenschaft 146 (1932).

See Professor von Beckerath's report in Bericht über die Verhandlungen der 11. Generalversammlung der Gesellschaft für Soziale Reform (1930); see also Bohnstedt, Wirtschaftlichkeit und Schlichtungswesen, 13 Schriften der Gesellschaft für soziale Reform (1931).

As to the German system, see Fuchs, Collective Labor Agreements in German Law, 15 St. Louis L. Rev. 1 (1929); Fuchs, Protection of the German System of Controlling Employment by Collective Agreement, 17 St. Louis L. Rev. 221 (1932); Reich, Labour Relations in Republican Germany (1938); Lehman, Collective Labor Law under the German Republic, 10 Wis. L. Rev. 324 (1935). See also Int'l Lab. Office, op. cit. supra note 89, at 238 et seq.; Sitzler, The Compulsory Adjustment of Industrial Disputes in Germany, 12 Int'l Lab. Rev. 457 (1925); Ham, The German System of Arbitration, 39 J. of Pol. Econ. 1 (1931).

RGB 1916, at 1333.

Int'l Lab. Office, op. cit. supra note 89, at 239.

Decree on Collective Agreements, Workers' and Employees' Councils and on Conciliation in Labor Disputes, of Dec. 23, 1918, RGB 1923, I, at 1456.

RGB 1923, I, at 1043 (English transl.: Legis. Ser. Ger. 6).
and conciliation boards. Each board was to consist of representatives of employers and employees and an independent chairman. Conciliation was to be attempted in the first instance by the conciliator, and as a second step the board. If the parties could not come to terms, the board was to render an award, which, as a general rule, the parties were free to accept or to reject. If, however, the “adjustment of the interests of both parties as made in the award was just and equitable, and if its enforcement was necessary upon economic or social grounds,” the award could be imposed upon the parties without their acceptance or against their express rejection.\textsuperscript{96} The power to declare an award binding rested with the \textit{Reichs Minister} of Labor or, in matters of local importance, with the regional conciliators who, however, had to follow the general policies and orders of the \textit{Reichs Minister} of Labor.

This German system of combining mediation with compulsory arbitration has been censured not only on the ground that it was a system of active wage policy disguised as an effort to preserve industrial peace, but also because it united two systems of dealing with industrial disputes each of which required a distinctive procedure.\textsuperscript{97} The system of mediation is based upon free cooperation, that of arbitration on compulsion. In mediation, responsibility for the final agreement rests with the parties or their representatives; responsibility for an award rests with the arbitrator. Advance knowledge that an unsuccessful mediation procedure will lead to an award is apt to induce the representatives of both parties to state exaggerated demands. If these demands are not met by the award each representative can still boast to his rank and file how forcefully he has defended their interests. Furthermore, an arbitrator, when he has to make an award, will naturally be inclined to enter upon factual investigations. If, however, a union is compelled to lay open such facts as the extent of its war chest, or if an employer must reveal his rate of profit, the relative fighting strengths of the parties may be influenced decisively. Nevertheless, these faults resulting from a combination of the systems of mediation and arbitration do not appear to be so grave as to render such a combination unworkable. The German system functioned fairly satisfactorily for almost fifteen years and, although unable to prevent industrial warfare entirely, it certainly helped to reduce the number of strikes and lock-outs. Although in many cases arbitrators seem to have been influenced by a desire to correct upward and, sometimes, downward, the wage level which would have been the resultant of the respective fighting strengths of the parties, it can

\textsuperscript{96} Law of 1923, § 6.

\textsuperscript{97} See Weddigen, Sozialpolitik 141 et seq. (1933); Kuttig, op. cit. supra note 89.
hardly be denied that, ordinarily, they did their best to act merely as arbitrators. The procedure before the German conciliation boards showed a marked tendency to adapt itself to the requirements of mediation rather than of arbitration, and voluntary agreements were the rule instead of awards.98, 99

On the other hand, those circles which supported the German system and defended it against the continuous attacks of the employers, did so primarily because it enabled the government to influence the wage level in favor of labor.100 Although the conciliators and conciliation boards were independent of higher orders insofar as they had to adjust or decide individual cases, the conciliators were bound to follow those general policies which the Reichs Minister of Labor chose from time to time to lay down in so-called "guiding maxims." These policies were quite definite in ordering the conciliators to prevent wages from falling to too low a standard, especially in periods of recession. Employers were vociferous in pointing out that this policy kept German wages at a level too high to allow German industry successfully to compete on the world market. In the violent propaganda which was carried on against the Republican regime, this argument of the industrialists played a considerable role. When the National-Socialist regime came to power in Germany, governmental jurisdiction was not abolished, however, but strengthened, to be exercised, it is true, primarily for the purposes of promoting exports and armaments and of combatting unemployment.101

2. The new French Conciliation and Arbitration Law of 1938102 ap-

98 Cf. Reichsarbeitsministerium, Deutsche Sozialpolitik 1918-29 (1929); see also Int'l Lab. Office, op. cit. supra note 89, at 273.

99 In Poland arbitration has been combined with conciliation in a way similar to that of the pre-National-Socialist German system, Presidential Decree of October 27, 1933, with Order of January 24, 1934. See 5 Int'l Lab. Office Year Book 399 (1934-5); Legis. Ser., Pol. 6 (1933); and 6 Int'l Lab. Office Year Book 414 (1936). As to other countries, see Int'l Lab. Office, op. cit. supra note 89.

100 See Professor Sinzheimer's report in Bericht über die Verhandlungen der 11. Generalversammlung der Gesellschaft für soziale Reform (1930).

101 On National-Socialist wage fixing, see p. 72 infra.

102 Law of March 4, 1938, Journal off., at 2570, Bull. Légis. Dalloz 134 (1938). For details of the execution of this law see the General Instruction of June 1, 1938 (J.o., at 6252, Bull. Légis. Dalloz 373 (1938)). The law of 1938 is an amendment to the Law of December 31, 1936 (J.o., at 127 (1937), Bull. Légis. Dalloz 1132 (1936), Rec. pér. Dalloz 4.4 (1936)) by which the Popular Front government of M. Léon Blum first introduced compulsory arbitration into the law of France. For an interesting comment on this law, see Debré in Rec. pér. Dalloz 4.4 (1938). Cf. Savatier, L'arbitrage obligatoire des conflits collectifs de travail, in 1938 Rec. hebdomadaire Dalloz, Chronique, 9; Laroque, Les rapports entre patrons et ouvriers (1938); Maurette, A Year of Experiment in France, 36 Int'l Lab. Rev. 1-25, 149-66 (1937); Morin, L'Expérience...
proximates a system of compulsory arbitration more closely than did the 
German law. Voluntary agreement is still the primary aim. The law ex-
pressly prescribes that every collective agreement must establish machin-
ery to adjust collective disputes arising out of the interpretation or ap-
plication of the agreement, or connected with its expiration or with one 
party's desire to modify an existing agreement in some respect. Where no 
conciliation agency has been established by a collective agreement, the 
conflict is to be brought before the general regional conciliation commis-
sion. Only where negotiations and conciliation fail, is the dispute to be 
brought before the arbitration agencies which, in contrast to the German 
system, are not identical with the conciliation agencies. This lack of iden-
tity is apparently designed to counteract the tendency to regard concilia-
tion as a mere preliminary to arbitration and to preserve the distinctive 
character of conciliation proceedings. It is characteristic, however, that a 
conciliation commission must always be presided over by a government 
official, viz., the prefect or his representative or by the Minister of Labor 
himself, and that conciliation proceedings can be initiated by the prefect 
ex officio. If a dispute remains unsettled one week after its submission to 
the conciliation commission, the French statute requires that the issues be 
arbitrated. In such a case proceedings are conducted before two arbitra-
tors, one selected by the employers and the other by the employees. If 
these arbitrators are unable to agree, the case is disposed of by an umpire 
appointed, if necessary, by the prefect. If the conflict is of national impor-
tance, the Minister of Labor, acting upon the advice of the Permanent 
Committee of the National Economic Council, may appeal an award to 
the High Court of Arbitration. This court consists of five high adminis-
trative officials and judges, of two representatives of the employers, and of 
two representatives of the employees. This court may not render an 
award, but can only reverse an award and appoint a new arbitrator to 
whom the case is to be remanded with directions. Arbitration is thus to 
take place in every dispute which cannot be settled by negotiation or con-
ciliation and it seems that the award is as binding upon the parties as if it 
were a collective agreement. The parties are not allowed to resort to acts 
of industrial warfare before conciliation and arbitration proceedings are 
completed. Since every conflict necessarily leads to an agreement or

française des conventions collectives et de l'arbitrage obligatoire, 8 Archives de philosophie du 
droit 100 (1938) (with references). For an instructive description of French labor law see 
Sobernheim and Rothschild, Regulation of Labor Unions and Labor Disputes in France, 37 

award having the force of an agreement, and since no party is allowed to resort to strike or lock-out while an agreement is in force, it seems that strikes and lock-outs are completely outlawed. The elaborate system is not only directed towards the ambitious aim of complete preservation of industrial peace, but it also provides for the arbitral solution of every collective labor dispute. At a first glance, it might seem as if the possibilities of governmental influence upon the policy of wage adjustments were smaller than they were under the German system. However, the presence of the prefect in every conciliation committee, and the power of the Minister of Labor to bring important conflicts before a central agency in which government representatives can exercise a decisive influence, opens the door to the extensive exercise of such wage policies as the government of the day may choose to adopt. During the short period of its existence, the High Court of Arbitration has already been called upon in numerous cases and it seems as if it might develop into an agency which will be instrumental in shaping general policies and principles for the determination of wages and other conditions of labor. Important decisions have been rendered, in particular, on the basis of Article 10 of the law of March 4, 1938, which makes it the duty of the arbitration agencies currently to adapt wages to the changing costs of living. On this basis, the court has already developed a set of rules which not only, in effect, order the arbitration agencies to fix wages according to the principle of the "living wage," but which also fill this rather vague concept with concrete content. The minimum wage must always be sufficient to provide a decent living for every worker and his family, but it must also be different for different classes of workers, taking into regard their different needs and their different status in society. 

V

With the possible exception of France, all systems of governmental interference with wages discussed so far are motivated by a desire either to preserve industrial peace or to establish as the minimum wage for an industry the wage resulting from an otherwise undisturbed struggle between employers and unionized labor, either in an industry as a whole or in the "better" sector of a given industry. They are all to be distinguished from systems of immediate governmental wage regulation intended to fix wages at a level different from that corresponding to the actual fighting strength of the parties.

1. Not all wage fixing laws, however, can be traced to such a clear-cut

motivation. In France, for instance, the statute, upon its face, appears to be an arbitration law pure and simple, designed for no purpose other than that of preserving industrial peace. Yet, the principle of the living wage was read into the law by the High Court of Arbitration, and it can safely be assumed that the sponsors of the law, the parties of the "Popular Front," intended such an interpretation from the outset. In a similar process the arbitration acts of New Zealand and Australia were transformed into wage fixing laws. These two countries, which can now look back over about forty years experience, were the first countries in the modern world to embark upon an active governmental wage policy. In both countries this epochal development was started only half-consciously and as a by-product of what initially appeared to be no more than an attempt to preserve industrial peace through arbitration. The development commenced in New Zealand, where, in 1894, the world's first labor arbitration act was adopted. 105 This bold experiment was caused by the wave of strikes which spread over that country and Australia around 1890, and which culminated in the great maritime strike of that year. The social and economic disturbances of these turbulent years caused thoughtful representatives of independent civic groups to develop a scheme for the peaceful settlement of labor disputes and the defeats labor had suffered in the maritime conflict and in several great strikes in Australia made the trade unions receptive to such plans.

The New Zealand Arbitration Act of 1894 provided for the establishment of a machinery for conciliation and arbitration. In case of a labor dispute the agencies established under the act could be invoked by the respective unions of the employees or employers. If no agreement could be reached before the Conciliation Board, the Court of Arbitration had to issue an award, 106 the terms of which were binding upon the parties and

105 Industrial Conciliation and Arbitration Act of 1894. On the New Zealand System, see Collier, Minimum Wage Legislation in Australasia, 1957 et seq. (1913); Rowley, The Industrial Situation in New Zealand, esp. c. 20-8 (1931); Findlay, Industrial Peace in New Zealand, 4 Int'l Lab. Rev. 32 (1921); Condliffe, Experiments in State Control in New Zealand, 9 Int'l Lab. Rev. 334 (1924). See also the work by one of the fathers of the New Zealand System, Reeves, State Experiments in Australia and New Zealand (1923).

106 The difficulties inherent in any attempt to combine the systems of conciliation and compulsory arbitration (cf. p. 60 supra) were felt in New Zealand at an early stage. While the sponsors of the act had hoped that many, if not most, labor disputes would be settled by conciliation before the regional boards, it soon turned out that the parties usually regarded this stage as a mere preliminary to the rendering of an award by the Court of Arbitration, whose docket soon became overcrowded. By an amendment of 1900, the power to render awards was granted to the boards, each party being entitled to appeal to the Court of Arbitration. This amendment, which combined conciliation and arbitration in the same agency, was not successful. The members of the regional boards were frequently unfamiliar with the conditions
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during the effectiveness of which any strike or lock-out was forbidden and punishable as a criminal offence. Acts of industrial warfare were not absolutely outlawed in New Zealand. Where the respective unions chose not to invoke the conciliation and arbitration agencies, they were free to resort to any sort of pressure short of physical violence or other acts illegal under the general law. As soon as the governmental machinery was invoked, however, by a duly organized union of the employers or of the employees, both parties became compelled to keep the peace and to abide by the decision. Since large groups of labor came to feel that the Court of Arbitration was not unfriendly to their interests, the fact that only unions could set in motion the procedure became a powerful incentive toward unionization.

The New Zealand experiment was followed by the Australian states of New South Wales, Western Australia, and, in 1904, by the Commonwealth of Australia, whose Constitution of 1900 expressly empowered the federal Parliament "to make laws for the peace, order, and good government of the Commonwealth with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." All these statutes were arbitration acts pure and simple. None of them contained any express provisions as to minimum wages. On the other hand, none of them gave any clear direc-

of the various branches of industry they were called upon to regulate. Proceedings before the boards were slow and cumbersome. The general dissatisfaction finally reached such a point that the parties were allowed to start proceedings immediately before the Court of Arbitration. In so many cases did parties avail themselves of this possibility that the boards were practically starved out of existence. They were tacitly abolished by the amendment act of 1908 which reorganized conciliation on a new basis. The act provided for official conciliators who attempted to bring about amicable agreement, either through their own services or through negotiations before a "conciliation commission."

Unlike the defunct conciliation boards, the conciliation commissions were not to be permanent institutions, permanently staffed, but were to be established (ad hoc) and were to consist of representatives of the employers and employees of the industry in question. Proceedings before the commissions were to be as informal, simple, and speedy as possible. It was provided, in particular, that the parties were not allowed to be represented by lawyers. The commissions were not to render any awards, but only to attempt to reach an amicable agreement between the parties. Where such attempts failed, the case was to be brought before the Court of Arbitration for compulsory settlement. Conciliation and arbitration were thus clearly segregated between two different agencies.

110 Commonwealth of Australia Constitution Act of 1900, 63 & 64 Vict., c. 12, § 51, no. 35; as to the following discussion see Evatt, Control of Labor Relations in Australia, 6 Univ. Chi. L. Rev. 529 (1939).
tions to the arbitration authorities as to what standard they were to apply in the arbitral fixation of wages. The New Zealand act gave the Arbitration Court no more directions than the general statement that wages were to be determined "according to the merits and the substantial justice of the case," and a similar provision is found in the Commonwealth Act. The Western Australia act simply provided that the Arbitration Court should, "in all matters before it, have full and exclusive jurisdiction to determine the same in all respects as in equity and good conscience it thinks fit." The New South Wales act was even completely silent on the problem of the standard of decision. Apparently, at this early stage, nobody had a clear idea of the problems and economic and technical difficulties involved in a policy of compulsory arbitration and active governmental wage determination. Furthermore, the draftsmen of these pioneer acts were probably reluctant to bar further developments by hard and fast formulae.

The arbitration courts, left without guidance, were groping in the dark and, more unconsciously than knowingly, tended in their awards to fix wages on the basis of a going wage. It seems, however, that simultaneously, they were inclined from the beginning to use their powers to develop an active wage policy which would favor a general standard of the decent living wage. The legislative history of the arbitration acts, the general ambition to establish Australia and New Zealand as model countries and to make it possible for everyone to live at the "Australian standard of living," and the contemporary political strength of the labor movement and of humanitarian liberalism indicate the cultural milieu from which emerged the active wage policy of the arbitration tribunals. This tendency was particularly influential in New South Wales, where, as early as 1904, the President of the Court of Arbitration, Mr. Justice Heydon, gave forceful expression to the principle of the living wage. It was the very task of the system of compulsory arbitration, so he declared,

to so arrange the business of the country that every worker, however humble, shall receive enough to enable him to lead a human life, to marry and to bring up a family and maintain them and himself with, at any rate, some small degree of comfort. This, which may be shortly defined as the duty to prevent sweating, is, I think, universally recognized in this country.

The decisive step was not taken, however, until Mr. Justice Higgins, the President of the Commonwealth Court of Arbitration, in the so-called

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112 "§ 25: In the hearing and determination of every industrial dispute the Court shall act according to equity, good conscience, and the substantial merits of the case."
113 § 74.
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Harvester case of 1907,\textsuperscript{115} solemnly pronounced the principle of the living wage as the essential foundation of the Australian system of wage determination. Strangely enough, this decision was not rendered in arbitration proceedings but in a case which was concerned with the interpretation of a tax law. By the Excise Tariff Act of 1906 an excise tax had been imposed upon agricultural implements of different kinds, except those which were manufactured in Australia under conditions as to the remuneration of labor which were declared to be “fair and reasonable” by the President of the Commonwealth Arbitration Court. When the manufacturers applied for such certificates to Mr. Justice Higgins, the President of the Court,\textsuperscript{116} he was faced with the task of determining the standard with which to measure the fairness and reasonableness of the wages paid by the applicants. The manufacturers contended that they had satisfied the requirements of the statute whenever they paid the wage rate which the average employer in the industry was paying. To these contentions, Mr. Justice Higgins gave the following answer:

If Parliament meant that the conditions would be such as they can get by individual bargaining—if it meant that those conditions are to be fair and reasonable which employees will accept and employers will give, in contracts of service, there would have been no need for this provision. The remuneration could be safely left to the usual but unequal contest, the higgling of the market for labor, with the pressure for bread on one side, and the pressure for profits on the other. The standard of “fair and reasonable” must, therefore, be something else, and I cannot think of any other standard more appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community. . . .

If instead of individual bargaining one can conceive of a collective agreement—an agreement between all the employers in a given trade on the one side and all the employees on the other—it seems to me that the framers of the agreement would have to take, as the first and dominant factor, the cost of living as a civilized being. If A lets B have the use of his horses, on the terms that he gives them fair and reasonable treatment, I have no doubt that it is B’s duty to give them proper food and water, and such shelter as they need; and as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for employees, means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards. This, then is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as “fair and reasonable” in the case of unskilled laborers.

\textsuperscript{115}Ex parte McKay, 2 C.A.R. 1.

\textsuperscript{116}The economic and social theories of Mr. Justice Higgins, the great leader of Australian Social Policy, are well expressed in his article, Higgins, A New Province for Law and Order, 29 Harv. L. Rev. 13 (1915). See also his book, Higgins, A New Province for Law and Order (1922).
Upon these considerations, Mr. Justice Higgins entered upon an inquiry into the cost of living for a family of two adults and three children upon the standard indicated by him. Since no statistics of costs of living were available at that time, he had to resort to the expert testimony of housewives. As the result of his inquiry, he found that forty-two shillings a week was necessary to secure to a "family of five" a decent living in Melbourne.

A certain Mr. McKay, an employer, who paid his unskilled workers an average of thirty-six shillings a week and to whom Mr. Justice Higgins refused to grant a certificate of fair wage under the Excise Tariff Act, brought the case before the High Court of Australia and had the satisfaction of having the act declared unconstitutional. However, Mr. Justice Higgins continued to rule, as President of the Commonwealth Court of Arbitration, that forty-two shillings a week was the irreducible minimum wage which was "fair and reasonable" to pay a Melbourne worker with a family of five. Whenever the court made an award, it reaffirmed the principle that the living wage in a given community was the minimum wage for unskilled workers residing in that community. The wage received by a skilled worker in a given locality was to exceed the living wage in that locality according to the circumstances to be fixed at variable amounts above that minimum in accordance with the worker's case. The principle that the "living wage" for unskilled labor should equal the "basic wage" for all wage earners was subsequently adopted by the wage fixing authorities of New Zealand and by all Australian states with the exception of Victoria and Tasmania. The wage boards of the latter two states have, however, attained similar results.

Since the Harvester judgment, proceedings before the Commonwealth Court and the other arbitration courts have been concerned either with the determination of differentials between the basic wage and the wages for different groups of skilled or semi-skilled labor, or with the adaptation of the basic wage to changes in the cost of living. In the course of time, the methods used in the determination of the basic wage have been refined. The housewife has been replaced as expert witness by the Commonwealth Statistician, whose index of the cost of living has become more elaborate and more reliable in the course of time. In 1934, the family of five has been

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117 This was 3s. over the average wage in the industry for unskilled labor.
118 Commonwealth v. McKay, 6 C.L.R. 41 (1928).
119 Anderson, The Basic Wage in Australia, 14 Econ. Rec. 48 (1938). See also Anderson, Fixation of Wages in Australia, esp. at 181 (1929); Foenander, Towards Industrial Peace in Australia, esp. at 69–122 (1937).
replaced as the basic unit by the family of four. The principle of the basic wage, however, has remained sacrosanct.\textsuperscript{120}

In actual practice, the nominal basic wage was continuously raised during the period between the Harvester judgment and the post-war depression. Whenever the workers felt that the cost of living had increased, the unions resorted to the Arbitration Court for a new fixation of the basic wage, always to be expressed in an amount in excess of the "Harvester wage." Finally, in 1923, the court decided that the basic wage was to be regularly adjusted each quarter on the basis of the statistician's index figures. During the depression, in February 1931, the court not only adjusted wages to a falling cost of living but also took the courageous step of cutting the basic real wage by ten per cent. During the further course of the depression, other measures were taken in order to refine the determination of the cost of living and the basic wage. It has been stated that this responsiveness of the court to the economic requirements was a major factor in the rapid recovery of Australian industry; thus a return to the pre-depression level of wages could be initiated by the Arbitration Court as early as April 1934, and, in 1937, the court could declare a considerable increase in the basic wage to be justified by the "existing degree of prosperity in the Commonwealth and the satisfactory condition of industry generally."\textsuperscript{121}

Although the Commonwealth Arbitration Court has jurisdiction only in those disputes which extend beyond the limits of any one state, it has obtained a preponderant position among the various Australian wage fixing agencies. It has thoroughly influenced the practice not only of the arbitration courts of New Zealand\textsuperscript{122} and of the two Australian states which have adopted for their intra-state disputes the system of arbitration, viz., New South Wales and Western Australia, but also of those states which have adopted the system of minimum wage determination through wages boards (Victoria, Queensland, South Australia and Tasmania).\textsuperscript{123} Contradictory determinations through federal and state authorities have been and still seem to be not infrequent and the co-existence of state and federal wage fixing machineries has been the cause of much friction and discontent as well as of much skillful legal juggling.\textsuperscript{124}

\textsuperscript{120} "Unless great multitudes of people are to be irretrievably injured in themselves and their families, unless society is perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct beyond the reach of bargaining," stated Mr. Justice Higgins in Broken Hill Case, 3 C.A.R. 1, 32 (1909).

\textsuperscript{121} Quoted by Anderson, The Basic Wage in Australia, 14 Econ. Rec. 48, 61 (1938).

\textsuperscript{122} Riches, Fair Wage Principle in New Zealand, 13 Econ. Rec. 224 (1937).

\textsuperscript{123} For details, see Anderson, Fixation of Wages in Australia 123 (1929); Foenander, op. cit. supra note 119, at 29, 38; see also 4 Univ. Chi. L. Rev. 628, 636 (1937).
2. Arbitration laws presuppose, as a necessary condition of their functioning, the existence of labor unions. The machinery of arbitration is set in motion from case to case whenever a dispute exists between a labor union and an employer or a union of employers. The award, on general principles, is binding upon nobody but the parties to the proceedings or, to be more exact, upon those employers who are either themselves parties to the proceedings or members of an employers' union which has taken part in the proceedings, and upon those employees who are members of a labor union which has been a party.

If only a sector of an industry is organized, the same problem arises which has been mentioned before in connection with collective bargaining, viz. the problem of preventing the unorganized sector of the industry from undercutting the wages in the organized sector. Such undercutting can be prevented when the arbitration court or some other authority is vested with the power of declaring the award a "common rule" for the entire industry in question. Such power existed in pre-National Socialist Germany. In Australia, a provision of the Commonwealth Arbitration Act which purported to enable the Commonwealth Arbitration Court to declare an award a common rule has been declared to be ultra vires the legislative powers of the Commonwealth under the Australian Constitution. The unions have found, however, another way to reach similar results through the simple expedient of joining as defendants in an arbitration case all the employers who are engaged in the industry in question within the territory for which a wage determination is sought. This practice has found the support of the Commonwealth Arbitration Court and it seems also to be common in New Zealand. Where, under such practices, an award can be made to apply to an entire industry, the so-called arbitration is practically equivalent to outright governmental fixation of wages.

126 See Rheinstein, op. cit. infra note 135, at 574. As to extension of collective agreements through executive order of the Minister of Labor in France, see Soberne and Rothschild, Regulation of Labor Unions and Labor Disputes in France, 37 Mich. L. Rev. 1025, 1061 (1939).
127 Conciliation Law (Schlichtungsordnung) of October 30, 1923, RGBl. 1923, I, at 1043.
128 § 38 (f) of the Commonwealth Conciliation and Arbitration Act of 1904. This section purported to authorize the court "to declare any award or order that any practice, regulation, rule, custom, term of agreement, condition of employment or dealing whatsoever determined by an award in relation to any industrial matter shall be a common rule of any industry in connection with which the dispute arises."
VI

In the preceding section it has been shown how machineries, which prima facie appear to be designed for the purpose of preserving industrial peace through arbitration, can be and have been used for the purpose of wage fixation. This purpose can also be achieved, however, by the establishment of a machinery designed primarily and openly for that purpose.

1. Whenever a government embarks upon a policy of outright wage fixation, it must necessarily indicate to the authorities entrusted with the enforcement of this policy what standard they ought to apply.\(^\text{33}\) The statement of such a standard can be dispensed with only when the legislature itself undertakes to state a flat wage rate in the statute. This type of legislation is represented for instance, by the American Fair Wages Standards Act of 1938,\(^\text{32}\) in which Congress itself has fixed flat wage rates, subject, however, to some narrowly limited adjustment through wages boards.\(^\text{33}\) It lies in the very nature of a system of immediate legislative minimum or maximum wage determination that it must be general and that it cannot pay much attention to differences between different lines or kinds of employment. Unless combined with a sliding scale, it is also unable to follow changes in the technological or financial conditions of a given industry or in the general level of prices or in the cost of living. Since a group interested in changing, upward or downward, the level of wages as immediately determined by statute, may sometimes find it impossible or inopportune openly to advocate a change of the statutory wage scale, such a law may also result in an invitation to bring about the desired change by tinkering with the currency by means of deflationary or inflationary measures.\(^\text{34}\)

2. By its very nature, a wage fixing law must be adaptable to different and changing conditions. Therefore almost all the countries which have adopted such laws have found it necessary to establish some machinery

\(^{31}\) As to the various possible standards, see Douglas, The Economic Theory of Wage Regulation, 5 Univ. Chi. L. Rev. 184, 195 (1938).


\(^{34}\) Such a danger seems to exist in the United States where, in consequence of the constitutional obstacles against moratoria and other interferences with the obligation of contract, attempts to alleviate the plight of embarrassed debtors have customarily tended towards advocating inflationary measures.
through which different minimum or maximum wages can be fixed for different kinds of employment, or by which wages can be changed from time to time with changing conditions.

Among the various systems of machinery developed for this purpose in different countries, the following two principal types may be distinguished:

First, systems under which the wage fixing agencies are intended to carry out the social or economic policies of the government and where they are, therefore, organized in such a way as to make them dependent in their determinations upon the political authorities, which may be represented by a democratic cabinet as well as by an authoritarian dictator;

Second, systems under which the wage fixing agencies are intended to be independent of the political authorities of the country.

a. Systems of the first type, viz., of political wage fixation, are represented primarily by the authoritarian countries, of whose systems of "totalitarian economics" the fixation of wages is an integral part.335

In National-Socialist Germany the government has complete power to determine the wages to be paid in every branch of employment. The system of state-supervised collective bargaining which had been in effect during the Republican period, was abolished by the Law336 on the Organization of National Labor, of January 20, 1934.337 This law not only forbade strikes and other collective action of the employees, but also purported to restore to the "leader of an enterprise," i.e., the employer, full power to regulate the conditions of labor for his "followers,"338 i.e., his employees.339

It goes without saying, however, that in a totalitarian state the exercise of this power of the employer could not be left free from government supervision and guidance. The Law, therefore, provides for the supervision and regulation of all labor relations through so-called regional labor trustees, who, as field officers of the central Ministry of Labor, exercise this task in submission to the orders and directions of the minister, who, in turn, is subject to the orders and directions of the Fuehrer. Through this machinery the government has, from the very beginning, pursued a policy of wage stabilization. As a general rule, the employers were ordered to continue payment of the wages as they had been determined by the collective agree-
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ments which had been in force when the National-Socialist government took power. When the cost of living began to rise, the compulsory stabilization resulted in that decrease of the level of real wages which was regarded as necessary for the promotion of exports and in the fight against unemployment. When the gradually increasing shortage of labor began to result in a competition of employers for workers, especially skilled workers, the labor trustees were expressly ordered “to take all measures necessary to prevent the development of wage rates or other conditions of labor which would unfavorably influence national armament or the execution of the Four Year Plan.”

Under this decree, the supervision of employers has been tightened and the labor trustees have made it clear that the wages as determined by them are not only minimum but also maximum wages. In effect, the determination of wages and other conditions of labor has been taken out of the hands of the parties, to be treated by the government as a link in the governmental regulation of the entire economic life of the nation.

The same situation exists in Italy, where the actual practice is even less reflected in the letter of the law than it is in Germany. The basic pronouncements on labor relations, viz. the Labor Charter, and the Law of April 3, 1926, on the Legal Regulation of Collective Labor Relations, were conceived in an order of ideas which, though temporarily cherished by the Fascist government, was never put into practice. These laws are expressions of the theory of the corporative state as it was conceived, under the influence of syndicalist ideas, by some of the intellectual leaders of fascism, especially Alfredo Rocco, and publicly enunciated by Benito Mussolini. Under the corporatist theory, the economic forces of the nation were to be organized in self-governing associations of all persons working

140 Decree of June 25, 1938, concerning wages, promulgated by the Agent for the Four Year Plan. RGBl. 1938, I, at 691.

141 See Mansfeld, Zur Verordnung über die Lohngestaltung, 6 Zeitschrift der Akademie für Deutsches Recht 41 (1939). As to National-Socialist Wage Policy in General, see Lederer, Who Pays for German Armaments, 5 Social Research 70 (1938).

142 Carta del Lavoro (April 21, 1927). Originally, it was not a formal statute of the government but a solemn declaration of the Grand Council of the Fascist Party. It was published, however, in the official gazette of the government (Gazzetta Ufficiale, April 30, 1927, no. 100), and it is generally recognized to be the official basis of Fascist labor law. English translations have been published in Legis. Ser., 1927, It. 3; Hill and Stote, The Background of European Governments 495 (1935); and Rappard, Schneider, et. al., Source Book of European Governments pt. III, at 44 (1937). See also the Law of December 13, 1928, n. 2832 (Gazz. Uff. Dec. 24, 1928, no. 298), “Delegating to the Royal Government the Power to Issue with the Force of Law, Norms for the Complete Execution of the Labor Charter.”

in a certain branch of economic life. Each of these organizations, the so-called corporations, were to consist of separate employee and employer organizations, each one made up of local, regional and national “syndicates.” Wages and other conditions of labor were to be determined through collective agreements to be concluded between the syndicates of the employers and employees. In order to facilitate such agreements, the corporations were to provide agencies for conciliation. In case the parties were unable to reach a collective agreement, strikes and lock-outs were forbidden and wages and other conditions of labor were to be determined by “judgment” of the appellate court of the region in question, which was to sit in such a case as a “labor magistrate,” its bench to be composed of three professional judges and “two citizens, who are experts in the fields of production and labor and who are to be appointed from case to case by the President of the Court.”

This system which, in entrusting arbitration to an organ of the judicial branch of the government, was reminiscent of the Australian system, was never actually set to work. The corporative system is based on the existence of self-governing organizations of employers and employees. It turned out to be incompatible with the principle of totalitarianism, which requires that every activity, economic as well as cultural, be regulated by the State. The corporative system was unworkable since the syndicates and corporations were organized not as self-governing associations but as government departments under a new central agency, the Ministry of Corporations. The officers of the syndicates were not elected by and responsible to the members of the syndicates but appointed by and responsible to the government. Negotiations between officers of two syndicates became negotiations between two government officials who were equally subject to the directions and orders of their common superiors, especially the Minister of Corporations. While in the first years a few collective labor disputes were brought before the labor courts, it seems that hardly any such case has been brought before a court in recent years. Wages seem now to be determined by administrative regulations under the guidance and direction of the Fascist Party and the government.

144 It ought to be kept in mind that, in Fascist terminology, the word corporation has a meaning different from the meaning in which it is used in the United States. An American “corporation” is a “society by shares” (società per azioni) or an “anonymous society” (società anonima) in Italian terminology.


146 Cf. Benito Mussolini’s famous maxim: “Everything within the state, nothing outside the state, nothing against the state!” (speech made in Milan on October 28, 1925).

147 See Steiner, The Government of Italy 98 et seq., and at 150 (1939).
b. The principal type of wage fixing agency intended to act independently of the political government is the "wages board." A wages board is a deliberating body whose members are supposed to represent the employers and the employees of a given industry in a certain region. Ordinarily, it is presided over by a chairman who is supposed, as an impartial umpire, not only to direct the meetings and the current business of the board, but also to safeguard the interests of the general public. The personnel of a wages board, especially the chairman, may be chosen in such a way as to give the government some influence over its determinations. Primarily, however, the system is so designed as to achieve the determination of wages through representatives of the interested parties themselves. The wages board was invented and developed in Australia side by side with industrial arbitration. The same wave of keen interest in social improvement and industrial peace and justice which induced New Zealand, the Australian Commonwealth, New South Wales and Western Australia to establish their agencies for conciliation and arbitration caused the State of Victoria to establish its system of wages boards, to which it has adhered ever since. The primary motive was the desire to fight the evil of sweating. Under the Factory and Shops Act, 1896, the first wages boards were established for those industries in which homework and, consequently, the evil of sweating were most prevalent. In the course of time additional boards were established, until finally all industry of the state was covered by a network of wages boards. These boards, which were composed of an equal number of employers and employees and an impartial chairman, were given the power of fixing minimum wages for the various groups of employees of the industry in question, such determination to be binding upon every employer within the region for which the board was to function. Non-compliance with a wage determination was declared a criminal offence; an employee to whom a wage below the minimum wage was paid could sue for the difference in a civil action.

That the primary purpose of the law was the elimination of starvation wages was made evident by an amendment act of 1903 which provided that each board should base its determination of the wage for its respective industry upon the level of the wage paid by "reputable employers" to his employees of average capacity. However, this standard of the reputable employer's wage was subject to the statutory qualification that in case such wage should be found to be insufficient, a higher agency, viz., the Court of Industrial Appeals, should determine the minimum wage of the


149 These industries were baking, bootmaking, clothing, furniture, shirts, and underclothing.
industry upon the basis of the living wage. On the other hand, the court was also empowered to lower the wage determined by a Board, if such determination was found to be too high as to be bearable for the industry.150

In 1907, the "reputable employer's clause" was dropped from the statute.151 It had turned out to be unworkable. How could, among several employers sitting upon a wages board, one accuse another of not being reputable? What test should a board or the Court of Industrial Appeals apply in the determination of the respectability of an employer? Since the abolition of the clause determinations have been vacillating between the principle of the living wage as determined upon the basis of the "Harvester wage" and the "going wage" as determined upon the basis of an industry's capacity to pay.152

In practical effect, the wages board system of Victoria and those other states which have followed its pattern, viz., South Australia,153 Queensland154 and Tasmania,155 has become assimilated to the arbitration system of the New Zealand-Commonwealth type. The similarity between the two systems is particularly close in those industries which are efficiently unionized, and where the members of the wages board are usually the representatives of the respective unions of the employers and employees. These members plead their respective cases before the chairman and the latter decides in a way not much different from that of a judge of an arbi-

150 Victoria Acts 1903, 3 Edw. VII, No. 1857, §§ 14 and 16. The text of these provisions was as follows:

§ 14. (a) The Board shall ascertain as a question of fact the average prices or rates . . . . paid by reputable employers to employees of average capacity.

(b) The lowest prices or rates as fixed by any determination shall in no case exceed the average prices or rates so ascertained.

(c) Where the average prices or rates so ascertained are not in the opinion of the Special Board sufficient to afford a reasonable limit for the determination of the lowest prices or rates which should be paid, they may so report to the Minister [of Labor], who shall in such case refer the determination to the consideration of the Court [of Industrial Appeals], and the Court in that event may fix the lowest prices or rates to be paid without having regard to the provisions of subsection (b) . . . .

"§ 16: The Court shall 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 the opinion that it has had or may have such effect the Court may 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 wage to the employees in such trade or industry who are affected by such determination."


152 Collier, op. cit. supra note 105, at 1929 et seq.

153 Industrial Code 1920, with several amendments.


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tration court. Where, as in Victoria, an appeal lies from the determination by a wages board to a Court of Industrial Appeals or a similar, court-like agency, the proceedings before the board are likely to assume the character of conciliation proceedings, analogous to the conciliation stage which generally precedes arbitration in the states which have adopted the arbitration system, the subsequent proceedings before the court appearing as an analogue to the proceedings before an arbitration court.

Nevertheless, there remain some important differences between wage fixation through the determination of a wages board and through the award of an arbitration court. The atmosphere in which the round table meetings of a wages board are held is less solemn and more conducive towards a friendly, mutual understanding than the atmosphere of the courtroom of an arbitration court with its flavor of litigation, legalism and formalism. The arbitration system, especially that of the Australian Commonwealth, has often been blamed for its tendency to follow the cumbersome procedure of a common law action. A procedure which has been developed for finding the true facts in a dispute between two individual parties is hardly adapted to the task of finding the complicated social facts upon which a general regulation of a quasi-legislative character must be based. Such an attempt to apply to a legislative enquête the methods developed for the settlement of past facts disputed between two individual parties must necessarily result in discrepancies. The Australian system has repeatedly and justly been accused of involving long delays and of being extremely expensive. In periods of economic instability, wages must be adapted quickly to changing conditions. In Australia, applications for a re-determination of wages have often been pending for several years, however, and the organizations of workers and employers have found themselves not only compelled to retain the most highly priced barristers, but also to maintain permanent staffs for the conduct of their practically never ending wage determination cases.\footnote{See Foenander, op. cit. supra note 119, at 32.}

Unions naturally have preferred the system of arbitration which cannot be set into motion without effective unionization, while wages boards have proved themselves especially appropriate for such industries or groups of workers as cannot be efficiently unionized. Wages boards have, therefore, not infrequently been established for this type of work in those countries which have otherwise left the determination of wages to the free interplay of the economic forces, either through individual or through collective bargaining. In post-war Germany, for instance, where the determination of wages was generally achieved through governmentally supervised collec-
tive bargaining, the wages of home workers were fixed through wages
boards.\textsuperscript{157} Similarly in the United States the Wagner Act, which assures
to industries which are capable of unionization, efficient guarantees for
effective collective bargaining, is supplemented first, by the Fair Labor
Standards Act, whose wages boards will become important primarily for
the non-unionized industries. This group of industries is further covered
by the numerous state minimum wage laws, under which wages for women
and minors, i.e., a hardly unionizable group of workers, can be determined
by wages boards.\textsuperscript{158}

VII

1. The wage policy measures which have been adopted by the various
modern industrial countries appear to be divided into the following three
groups:

a) Measures of a “passive” wage policy, designed for the purpose of
permitting collective bargaining and of providing agencies for the peace-
ful solution of collective labor conflicts through voluntary conciliation;

b) Measures of an “active” wage policy, designed for the purpose of in-
fluencing or modifying the wage level that would exist on the basis of free
collective or individual bargaining;

c) Standing halfway between these two systems, the system of compul-
sory arbitration which, although primarily designed for the purpose of
forcibly preserving industrial peace, can hardly avoid determining wages
on some level different from that of the “going wage.”

The classical countries of voluntary collective bargaining aided by gov-
ernment-created conciliation agencies are Great Britain and Sweden.\textsuperscript{159}
Long experience in collective bargaining between strong unions of employ-
ees and strong unions of employers seems to have resulted in each side be-
ing willing to understand the other’s point of view and to cooperate in a
spirit of common responsibility. Strikes and lock-outs are not outlawed,

\textsuperscript{157} See Rheinstein, op. cit. supra note 135, at 576.

\textsuperscript{158} As to the numerous minimum wage laws enacted in the several states of the union, and
as to the constitutional difficulties encountered by the states with respect to such legislation,
see Commons and Andrews, Principles of Labor Legislation 43 et seq. (1936) and Taylor, Labor
Problems and Labor Law 336 et seq. (1938). For an instructive table showing the chronologi-
cal development, see Nichols and Bacchus, Minimum Wages and Maximum Hours, The Hand-

\textsuperscript{159} See Rheinstein, op cit supra note 135, at 566, 568, 574. As to Great Britain see, in ad-
dition to the works cited ibid at 569, n. 56–7, the following: Sells, The Settlement of Industrial
Disputes in Great Britain, 5 Law & Contemp. Prob. 321 (1938); Mitchell, Industrial Rela-
tion Laws of Great Britain, Canada, Australia and New Zealand, 22 Minn. L. Rev. 921
(1938).
nor are they actually absent from the British or Swedish scene. But it seems that they are not fought with that bitterness and passion which so often prevail in industrial warfare elsewhere. This is, perhaps, due to the fact that in both countries that type of strike or boycott which involves the greatest amount of bitterness, the strike for unionization, is a thing of the past. Furthermore, the strike as a weapon in the strife between rival unions is rare.

2. The opposite system of compulsory wage determination is primarily represented on the one hand by the totalitarian countries of Europe and on the other hand by Australia, New Zealand, Pre-National-Socialist Germany, and France. In New Zealand and Australia it has now been in force for almost a half century. Opinions are divided as to whether compulsory wage determination has been necessary and as to whether it has been effective in preserving industrial peace. Strikes and lock-outs have been outlawed effectively only in National-Socialist Germany and in Fascist Italy, where an omnipotent government holds equal power over both capital and labor. Where, as in Australia, the government depends on the parliamentary support of labor or where the government is loath to incur the wrath of politically organized labor, it is little inclined to apply against labor unions, their officials or their members, all the punitive measures with which the laws penalize an illegal strike. Acts of industrial warfare have, therefore, not been infrequent in Australia; they have, indeed, occurred so frequently that Australia has been called one of the most strike-ridden countries of the world. Such statement is exaggerated. Employers have been vociferous in expressing their opposition to the restrictions which the Australian system imposes upon their freedom of action, while labor has voiced the opinion that the workers, or at least the skilled workers, would often have obtained higher wages if the arbitration

160 See p. 72 supra.
161 See p. 63 et seq. supra.
162 See p. 61 et seq. supra.
163 Cowper, Toward Industrial Peace in Australia, 14 Econ. Rec. 14, 17 (1938).
164 See the statistical data in Int'l Lab. Office, op. cit. supra note 89, at 629 et seq., where the interesting statement is also made that a relatively small proportion of strikes and lock-outs in Australia can be ascribed to wage disputes. While in most other countries such disputes accounted for two-thirds to three-fourths of all strikes and lockouts, the percentage in Australia, between 1913 and 1926, was only 23 to 45 per cent. It is also mentioned in this article "that the great majority of stoppages of work, workers affected and days lost, are accounted for by New South Wales. In this state the mining industry, although forming only a very small percentage of the total employed population (under 5 per cent) accounts for some three-quarters of the number of stoppages and workers affected, and about two-thirds of the total number of days lost."
courts had not laid so much emphasis upon the ends of stabilization and capitalization of wages. Yet, whenever a serious attempt was made to abolish the Australian system, employers and employees united in its defense.165 In New Zealand, it is true, compulsory arbitration was abolished during the last depression,166 only to be reintroduced four years later.167

The most recent reviewer of the Australian system, Mr. Cowper,168 states that most of the employers' opposition seems to have been directed, not so much against compulsory arbitration and wage fixing as against unionization and collective bargaining. He asserts, however, that Australian employers have now learned that the era of individual bargaining and of the employer's sole mastery is everywhere past; and that the Australian system has contributed much toward easing the tensions which may so easily disrupt the industry of a country during the years of infancy of collective bargaining. According to Mr. Cowper, the Commonwealth Court has also gained prestige through its handling of the wage problem during the depression. He implies that the court distributed the burdens of the depression more equitably among employers and employees and their various groups, and that its rulings were a material factor in Australia's speedy and spectacular recovery.

3. While the purpose of modern measures of passive wage policy is simply that of preserving or promoting industrial peace, the purpose of an active wage policy is the more ambitious one of forcing the free wage level upward or downward in accord with the political ideals of the country in question.

However, only nominal wages can be affected by such measures. The extent to which measures of active wage policy adopted in Australia, New Zealand and other countries have actually resulted in changes of the level of real wages, has not yet been definitely ascertained. It has been said that a program of wage fixing has never accomplished a change in real wages

165 Cf. Cowper, op. cit. supra note 163; see also Int'l Lab. Office, op. cit. supra note 89, at 633, where the following statement is made: "So far as can be seen, at almost any time there is a strong feeling against the actual system in operation, coupled with a fairly persistent faith in compulsory arbitration as a method. Resolutions both by workers' organizations and by employers condemning the existing methods are relatively frequent, and opposition to the compulsory features is frequently voiced by employers' organisations. But for all this, no strong movement would appear to exist having as its object the abolition of what would now appear to be an established feature of industrial life in Australia."


168 See note 163 supra.
 unless it has been supplemented by other measures such as a protective tariff or price fixing. The Australian experiment has, indeed, been carried on behind the walls of a protective tariff, and it has been observed that in that country advances in the wage level and increases in the tariff rates have succeeded each other in a vicious circle. In New Zealand, it seems, wage fixing did not become feasible until it had been supplemented by price fixing. In Germany and Italy, likewise, the wage policies of the respective governments have been aided by a policy of price and rent regulation. While these illustrations outline the problem, no attempt can be made here to state generally the conditions under which a change in nominal wages amounts to a change in real wages.

It must be remembered here, however, that real wages can be influenced not only by measures of direct wage policy, but also by a large variety of other governmental activities, e.g., by measures of currency policy. It must be noted, furthermore, that measures of wage policy do not necessarily affect the wages of all workers. New regulations may be intended to change, upward or downward, the wages of certain groups of wage earners only; for instance, those of skilled workers, or of workers in a particular industry (e.g., in mining or railroading), or those of a particularly depressed group (e.g., share croppers, home workers, workers in sweat shops, or unskilled workers in general). It may also happen that a measure taken for the benefit of one class of wage earners results in the deterioration of the real wages of another group.

4. Measures intended to raise the general wage level are part of the wider field of social policy (Sozialpolitik).

In all industrial countries social policy has come as a reaction to the injustices and tensions of the machine age. It is still true that in the United States conditions are more flexible and opportunities of individual success more propitious than in the older industrial countries of Europe. On the other hand, it can hardly be denied that since the disappearance of the frontier, class stratification has shown a tendency to become more rigid

169 Cf. Cowper, op. cit. supra note 163, at 18: "The professed aim of the Arbitration Court has not been to raise wage levels, but to adjust nominal wages so that the level of real wages established by the Court in 1907 shall be maintained."

170 Sutch, Price Fixing in New Zealand, 11 Econ. Rec. 62 (1935); Wise, Price Fixation and Control in Non-Export Trades in New Zealand, 13 Econ. Rec. 60 (1937). See also, 7 Int'l Lab. Office, Year Book 298 (1936-7).

171 In this respect, see Douglas, The Economic Theory of Wage Regulation, 5 Univ. Chi. L. Rev. 184 (1938) and the works cited in Rheinstein, Methods of Wage Policy I, 6 Univ. Chi. L. Rev. 552, at 554, n. 2 (1939).

172 See Rheinstein, op. cit. supra note 135, at 557.
and individual success is no longer secured to everyone who is able and willing to work.

Since similar causes lead to similar results, not only the measures which this country had to adopt are by and large the same as those taken earlier in other countries, but also the arguments advanced against social policy have been everywhere the same, and everywhere have they been equally futile. The breakdown of production which had been everywhere predicted as the inevitable result of wage regulation, social insurance, unemployment relief, and other measures of Sozialpolitik has occurred nowhere. It should be remembered, also, that such measures have been opposed not only by the representatives of capital, but also by the leaders of politically organized labor who feared that the revolutionary spirit of the proletariat would be dulled by measures of social policy. That an elaborate system of Sozialpolitik can be found in the totalitarian countries, especially Germany and the Soviet Union, is no justification for decrying such measures as fascist or as "steps toward fascism" or "communism." Measures of social policy are to be found in all modern industrial countries, in democracies, such as France, Australia, Great Britain, Switzerland, or Sweden, no less than in Germany, Italy, or the Soviet Union. They could be found in Italy and, especially, Germany long before Fascism and National-Socialism had even been heard of, and the contention that they have helped pave the road for these modern "Isms" is, to say the least, unproved. To judge measures of Sozialpolitik, by general, nebulous labels, instead of weighing the arguments for and against them on their respective merits and demerits, helps little in solving those social problems with which every industrial country of the world has been compelled to cope.