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ARBITRATION IN AUSTRALIA

BY P. AIREY

SOME fifteen years ago it was loudly proclaimed that Australia and New Zealand had discovered a magnificent solution of their industrial troubles. Pamphlets were written by capable journalists and *littérateurs* (foremost among whom was William Pember Reeves of New Zealand) expatiating on the advantages of this new method, and prophesying that in a few years it would simply revolutionize the world's ways of dealing with labor questions. Commiseration was lavished on countries such as Britain and America that had not yet seen the glad light, and it was joyfully proclaimed that the day of their illumination and conversion would soon be at hand. Yet to-day neither Britain nor America has been convinced; Continental converts are few and far between, and Australia herself is apparently on the verge of wholly abjuring the homage she was supposed to be dutifully paying at the arbitration shrine. It may interest the English reader to follow out the operations of the Acts with intent to find out, if possible, how arbitration failed — and why.

Arbitration was begotten and conceived in the camp of Labor — and Ultra-Labor at that. Capital received the new-born bantling with a scoff, and predicted no good of its future. Australian Socialists hailed the birth with extravagant demonstrations of joy, and asseverated, with ludicrous cock-[illegible], that industrial strife was now [illegible]past and that reason had 'come down to brutish beasts.' It was clearly *Astræa redux* over again. And in theory the thing was excellent. A tribunal was to be created; a judge appointed of unimpeachable impartiality; evidence was to be taken on both sides and a judgment to be given on the facts which no honest men or body of men would dream of contesting. Surely the reign of peace was at hand, and the days of strife and barbarism once and for all ended.

For a while all was well. Arbitration had the luck to be tried in its early days 'on a rising market.' Things were good, business was booming, and when the judge awarded shorter hours, better conditions, or higher wages (as he almost invariably did) the flourishing state of Australasian industries enabled the burden to be borne without undue strain. True, here and there you might find a cynic who wanted to know what would happen when a judge awarded lower wages or slightly increased hours, but nobody took that kind of question seriously. It would be time enough to bid the Devil good day when you chanced to meet him.

Arbitration courts had not been running very long before it was discovered that the new system of settling industrial disputes had some notable blemishes to 'mar the fair face of its still perfection.' It came as a shock to the enthusiasts who had pinned their faith to the image to find that, in spite of the existence of the judicial machinery for settling disputes, the strike

might still be resorted to. When complaints were made with regard to this egregious defect, Australia's leading arbitration judge elucidated the position in pithy phrase thus: 'You may have a strike or you may have arbitration, but you cannot have strike and arbitration at the same time.' But the Australian Labor Unions paid but scant respect to the judicial dicta, and it became no uncommon thing when a trade was discontented with a current award of the court, instead of waiting for its legal expiry, to strike by way of compelling speedier attention to its particular grievances.

Striking during the currency of an award was an offense against the law, but offenses on the part of the unions were seldom, if ever, effectively punished, for it was one thing to inflict fines on a couple of thousand men and quite another thing to collect them. And if you could n't collect them there were not jails enough in the country to confine all the offenders who might be implicated. So it speedily became apparent that Australian arbitration was a very lopsided institution.

No better illustration of the essential defect of arbitration could be given than is afforded by the subjoined answer to a question in the New South Wales Parliament. Mr. Estelle, Minister for Labor, in answer to the then Leader of the Opposition, Mr. T. Waddell, gave the following remarkable statement:

Number of strikes in New South Wales	300
Employers fined for breaches (of the Arbitration Act)	2909
Fines inflicted	$9795.25
Fines paid	$9668.74
Employees fined (including unions)	66
Fines inflicted	Nil

Needless to remark, no employee was imprisoned for making default in the payment of his fine. All the punishments were inflicted on the one side, while the other went off scot-free — doubtless *pour encourager les autres.* Is it to be wondered at that a law administered in this fashion has fallen into contempt? And the most extraordinary feature is that the working class, in whose favor the thing was working ninety per cent of the time, was just the party that came to despise the Act most heartily and to clamor most vociferously for something to take its place. Had there been the paltriest modicum of courage in the Australian Governments (State and Federal) arbitration might possibly have succeeded, but time-serving politicians have been at their old game of emasculating the law, and the result has been pitiful beyond description.

To show how utterly arbitration has failed as a means of abolishing strikes, I cannot do better than quote from the last annual report of Mr. Knibbs, our Commonwealth statistician (July, 1919), who gives the following suggestive table:

Year	Number of Industrial Disputes
1913	208
1914	337
1915	358
1916	508
1917	444
1918	298

The above statement certainly does not look as if Australia had attained her industrial millennium by any means. It is also worthy of note that the majority of these troubles were settled in the good old-fashioned way, by simple, direct negotiations between employers and employees. In 1914, seventy-three per cent were settled by direct negotiation; seventy-one per cent in 1915; sixty-three per cent in 1916; fifty-three per cent in 1917; and fifty-seven per cent during 1918. The percentage settled by reference to State or Federal Arbitration Courts

was comparatively small. There was a strange reluctance on the part of the industrial patient to swallow the medicine his own union industrial doctors had so carefully compounded and so assiduously prescribed. He would persist in 'harking back' to the simpler methods of his earlier days.

It is, one must admit, quite possible that, with resolute governments and statesmen worthy of the name, arbitration might have justified itself as an efficient institution. But the unspeakable truckling of Australia's public men, State and Federal, to the lawless element dominating the unions, renders any attempt on the part of a judge at holding the scales of justice, even between conflicting parties, a pure futility. And in this matter the Nationals or anti-Laborites are just about as bad as their opponents. In the year 1917 the coal miners, who were working under an award of the Court, broke it openly and brazenly and came out on strike. They were denounced as law breakers by their critics, but that worried them not one iota. Thereupon, the Federal Government, in defiance of the Arbitration Law, overrode the Court and appointed a 'special tribunal' to adjudicate. The special tribunal promptly conceded every demand to the 'law breakers,' who proclaimed their victory far and wide, and said, with perfect truth, that they had broken the law no more grossly than the government.

Toward the close of 1918 the coal men, utterly regardless of the fact that the existing arrangement would not expire till 1920, came out again, and the acting Premier again swept the Arbitration Act into the gutter and gave the lawless unions all they demanded. Naturally, these illuminating lessons were not wasted on the desert [illegible]1919 the seamen determined to try their luck at law smashing and humiliating governments. Early in the campaign their secretary, Thomas Walsh, announced boldly that in coming out they 'had flouted arbitration and intended to go on flouting it.' The Federal Government with commendable promptitude took up the gage of battle, and declared their intention of upholding the Act and making no compromise with law breakers. At the same time shrewd observers noted that no attempt was made to organize a body of strike breakers, and that the government was apparently quite content to see the merchant vessels which it had chartered lying idle in the bay. The men put their case simply and directly. They wanted no arbitration. They would agree to submit their case to a round-table conference, and would waive any matters that could not there be agreed upon. The Arbitration Court might be graciously allowed to register the agreement when the conference had concluded.

The government talked on valiantly for weeks and months; professed it would never knuckle down to the brazen abrogation of law, and finally, like Byron's Donna Julia, 'whispering she would ne'er consent, consented.' And the result, as everyone anticipated, was that the round-table conference decided that the battling unions should be accorded all they wanted, and that law breaking should be exalted on the pedestal of heroism. The unions and the Federal Government between them dug the grave of arbitration, and jointly intoned its final *Requiescat.* No Labor Government could have handed in a more complete and abject submission. Australia is now waiting for a fresh outburst, fresh demands, and probably a fresh contemptible surrender.

Whatever may be said or thought

of the broad principle of arbitration, it must be confessed that certain of the dicta laid down by judges of the Court, as governing their decisions and guiding their conclusions, were erroneous in the highest degree. Take, for instance, Judge Heydon's judgment containing this much-quoted passage: 'The living wage is based, not on the value of a man's work, but on his requirements as a man in civilized society.'

A statement so startling fairly takes the breath away. Whether a man's daily output is fifty cents or fifty dollars we are told is practically immaterial when his wages are being considered. His needs in civilized society, which may vary from moleskin to broadcloth, from plain bread and butter to champagne and truffles, are to be the bases of his remuneration, and the ability of the industry to pay for those requirements is merely a negligible factor. It was marvelous that Arbitration Courts, built on such a quicksand foundation as this, lasted as long as they did. The Heydonic dogma — if I may so christen it — was highly popular among the Unionists, for it opened up before them such a vista of inexhaustible potentialities as they had never dreamed of in their wildest moments. To be told that neither industry nor energy nor skill mattered when wages were being determined, and that the employer had only to weigh what a man considered to be his 'requirements'— surely here, if anywhere, were the portals of industrial joy and the gates of the millennium.

It is really dubious as to whether the unions in Australia ever loyally, as a body, accepted the principle of arbitration. When the matter would be discussed at their meetings and conventions, there were never wanting those among the more 'advanced spirits' who boldly pronounced in favor of the 'good old strike' methods and prophesied the speedy collapse of this new-fangled judicial system. And it must be remembered, as mentioned before, that for quite a number of years industries were so flourishing that the Courts had only to exercise the pleasing duty of granting the men the bulk of their demands on every possible occasion.

We come now to a phase of the arbitration question that casts a grave doubt on the practicability of the whole system. After the industrial problems of private firms and capitalistic bodies had been regulated for some time by the Courts, the happy idea occurred to certain public servants that recalcitrant or impecunious governments, who were guilty of the enormity of not granting satisfactory increases to their employees, might be brought into line by having to toe the arbitration mark, and having to plead their case in the Judicial Court for Trades Disputations that they themselves had set up. The matter was broached, and certain governments, foremost among whom was the Federal, anxious to dodge and escape their responsibilities, consented. Australia then enjoyed the spectacle of seeing her government departments 'pulled up' before the tribunal by organizations of state employees, and compelled to plead that the financial necessities of the country, drought, civil calamities, falling revenue, would not allow of the granting of such rises as the public servants demanded.

Hereupon the Court promptly told the government that it had absolutely nothing to do with the condition of its revenue or the impossibility of raising the money by taxation. It was there to consider the justice or advisability of granting these subordinates their increases. Of course the increases were usually granted. It is so easy for a

public servant to prove his right to a rise, especially if that right be based on his 'requirements.' It is also so easy for an Arbitration Court to grant men everything they want when the Court has not to fulfill the unpleasant duty of finding the money. And now the shrewder men among Australia's politicians are commencing to see that to be logical they ought to allow the Arbitration Court to decide on the taxation of the country, as the said body now settles how much the country shall spend. As an example of what may happen under this crazy system, let me quote a Queensland example. On one occasion, about three years ago, the railway employees decided to take the department before the Court on the question of wages. The Queensland railways had lost in the preceding financial year, roughly, a million pounds — an enormous loss for a country with a population of only six hundred and seventy thousand. Nevertheless, the State Arbitration Court promptly raised wages and improved conditions to the extent of some four hundred thousand, to the great joy of messieurs, the appellants. As to the public, well, in the elegant language of a certain Vanderbilt, 'The public be damned!'; the Arbitration Court was not instituted to consider the case of the public or the woes of the taxpayer. In this way constitutional government has been completely undermined. If any outside body can settle the wages of the state's employees irrespective of the treasurer and the state of the treasury, then why worry about having a treasurer at all? Why should a minister trouble about effecting economies or reforms in a public department when he knows quite well that an exterior power will fix the wages and allowances of the state's officials quite irrespective of the country's income or of its taxable potentialities?

In a word, then, arbitration in Australia has proved a gigantic failure. It has failed because the workers themselves have been disloyal to a great and noble principle. It has failed also because Australia's Governments, State and Federal, have been principally composed of peddling politicians who have never dared and never tried to enforce obedience to law and recalcitrant unions. And, lastly, it has failed in a bigger sense because it has been used as a bludgeon to break down ministerial control and public expenditure. Arbitration was intended to be used as a weapon to protect the weak against the aggressions of greed; to obviate the need for the old barbarous redress of strikes; but it was never designed to be used as a machine to break up the whole fabric of responsible government.

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GALICIA — THE LATEST VICTIM

In the review of his foreign policies, which Mr. Clemenceau lately gave in the French Parliament, he reported that he had secured the removal of the limitations previously placed upon Poland's mandates over Galicia. In pointing out the advantages of this new arrangement, the Premier was not able to repress some glow of satisfaction at this little personal victory. After months of sterile discussion, he has, in fact, been able to triumph over Mr. Lloyd George in this matter. He has thereby won the gratitude of the Poles.

The problem of Galicia is, therefore, settled for the time being. But the question of principle continues as urgent and important as ever. For, in subjecting the country of the Ruthenians to the same sinister and notorious kind of government that formerly reigned in Warsaw, Poland is forgetting utterly the bitter lessons that its own history teaches. Scarcely escaped from slavery itself, it aspires to enslave others. Will the country see its blunder in time, and not invite, sooner or later, the inevitable and implacable revenge of justice?

The fortunes of the Ruthenians of the ancient Austro-Hungarian monarchy are one of the most pitiful chapters in contemporary history. Exploited and oppressed by the Hapsburg Government, exploited and oppressed even more heartlessly by the Polish landed nobility, unable to make their voices heard anywhere, this little nation of mountaineers and peasants has none the less preserved in its deepest misery a profound sense of its national unity and ancient descent. Generous and industrious, the people represent one of the best balanced types of the great Slav family. The grace and charm of its lyric poetry, its native taste and dreamy fervor of sentiment mark a race of exceptional endowment. Having preserved intact its national qualities through centuries of serfdom, it was entitled to hope that it might now have the opportunity of exerting an influence in the progress and culture of Western Europe. The only thing it needed was liberty. That liberty is the very thing denied it to-day for purely strategic and military reasons.

Before the war, the instinctive sympathies of the Ruthenian people allied them in spirit with their close blood kinsmen of Little Russia, who, like themselves, were kept in isolation and ignorance. Repellant as it must have been, they were forced by their governors to take up arms against these brethren. In that respect, they were in much the same position as the Polish peasantry on opposite sides of the border. But the Poles had their representatives to plead their case at Berlin, and Vienna, and Paris. The Ruthenians, however, had no champions at court. Courageous and resigned victims of fate, their only rôle was to be food for cannon.

Then came the erection of a Ukrainian Government in Russia. The effect upon their brethren in Galicia was profound. It was for them the rising sun of liberty — the dawn, still distant, it is true, but, nevertheless, throwing its radiance through their prison bars. Hope returned to their hearts.

Then followed the disintegration of Austria. At once the whole nation rose. It was almost the first to organize and take possession of its native territory. A Ruthenian National Council was organized. The inspiring principles proclaimed by President Wilson aroused in these simple and trusting hearts extraordinary enthusiasm, and you