hours, and under decent conditions. And since, under the existing economy, it is impossible for him to move freely from one job to another, it logically follows that he has the right to work at the particular job at which he is employed, or at least for his particular employer, with decent wages, hours, and conditions.

Having this right, there is necessarily a correlative duty on the part of the employer so to use his property that the worker may enjoy that right, and to refrain from any practices which will in any way infringe upon that right. Certainly the worker thinks so.

"Rights" do not exist in a political or economic vacuum. And no man can assert a right without at the same time asserting it *against* another man. The rights of life, liberty, and the pursuit of happiness referred to in our Declaration of Independence sprang out of the denial of those rights by others. The rights of freedom of speech, press, assembly, worship, became and are rights only because there have been and are attempts at their denial. If we assume, as I insist we must assume, that everyone has the right to security and a decent living, it follows that such right is being asserted by the worker against those who would deny him that security and that decent living.

And so we have a conflict of asserted rights. On the one hand, we have the asserted right of the worker to live, with the accompanying rights which I have indicated. On the other hand, we have the asserted right of the employer to do with his property as he pleases. And when these rights conflict, we have no choice but to take a position favoring the domination of one right over the other, to a degree at least.

The people of America have been gradually taking a position on this conflict. When Congress passed the National Industrial Recovery Act with its Section 7-a presuming to outlaw discrimination against workers, it recognized to a degree the right of the worker to his job. It recognized this right in the Railway Labor Act and in the Wagner Labor Act. This means, certainly, that the worker has the right to that job to the degree, at least, that he cannot be deprived of it by way of discrimination. Similarly, the right of the worker to collective bargaining involves a recognition of a limitation upon the employer in dealing with the worker in relation to his job. And when the Supreme Court of the United States recently held constitutional the provisions of the Railway Labor Act and Wagner Labor Act, guaranteeing collective bargaining and legalizing the majority rule for such bargaining, it then, whatever may have impelled the decision, recognized a right of the worker in his job.

Now, when the worker engages in a sit-down strike, he sits down on his job. Is this an encroachment upon the property rights of the employer? Of course it is. But encroachments upon property rights are not *ipso facto* illegal. The law books abound with adjudications which justify encroachments upon property rights. This is what we lawyers call *damnum absque injuria.*

Let us illustrate. The right to strike is a right asserted against the employer, and a strike obviously works an injury to the employer's property. While it is true that in the past this right usually has been attended by departure from the plant, it is clear that this distinction has no application to the problem we are now discussing. If the employer has the absolute right to run his business without *any* interference on the part of labor, he certainly has the right to run it free from interference by labor outside of his plant as well as inside. The same applies to the right to picket. Picketing certainly is an encroachment upon the property rights of the employer. Indeed, in one sense that is its main purpose.

We see, then, that as the law stands today, it is generally recognized that labor has a right to pursue practices which clearly are encroachments upon the property rights of the employer and which, indeed, may even result in the total loss of the employer's property.

So, to press for a distinction based upon whether the encroachment upon the employer's property rights is effected from the outside or the inside of the plant is only to argue about the degree to which labor should be recognized as having its claimed rights. And I say that under existing conditions, the recognition of labor's right to sit-down in the plant is a recognition of labor's need for the possession of a weapon to protect itself against the tremendous economic and political power of the corporate interests of the country. Labor must have this weapon for use against the employer who continues to say, "My property, may it always be my right to use it as I please; but right or wrong, my property."

A review of the recent series of sit-down strikes throughout the country proves one thing clearly: the sit-down strike tends to eliminate violence. The use of thugs, finks, hired strike-breakers, and bribed workers is made exceedingly difficult. The sit-down strike is labor's weapon of economic self-defense. And I know of no case in which labor has used more force than was necessary to defend itself when attacked.

THE AMERICAN WORKER is breaking his chains. The employer who has forced them would argue with the man in chains about the ethics of the chaining. He brings hoary precedents—and some not so hoary—to prove that ethics and law require that the chains should not be disturbed. And he may think that he is winning the argument, too. But the worker in chains, finding that he has been unable to free himself by argument, breaks the chains. Then the employer protests loudly and indignantly that his chain law has been violated. But it has not been violated. Actually, whether we know it or not, the chain law has fallen with the chains.

The sit-down strike is legal to millions of workers. It will remain legal to them, and to more millions as time goes on. And who dare say that millions of American workers have suddenly become criminals? Edmund Burke once said, "I do not know the method of drawing up an indictment against a whole people." May I presume to add that he who would indict a whole people is himself the criminal?

Law cannot enslave a people in perpetuity. Law should function for the people and not against them. And we should constantly remind ourselves that, as Burke says, "People crushed by law have no hopes but from power. If laws are their enemies they will be enemies to the laws."

We are told that the workers have no respect for the courts. Who tells us this? The fifty-three Liberty League lawyers who announced that the Wagner Labor Act was unconstitutional, and deliberately encouraged its

The Sign

Very early, before spring, a plane
intoning cruised the upland of rare heaven,
while miles below, we ran in a Sunday park, where
boys passed yelping in sharp elastic air.

But if, leaning ourselves on the moist stone
by flaring wind and shadow faced and flanked,
I should turn from you the path of my hand again—

It is since I must, must with the whirring lane
of limousines clean as jewels, the soiled beds compare
of wives who await the pimp's touch on the stair;
and the face of tenements hung with escapes like chain.

Then even in you, serene girl, I see only the companior
of a sanguine future, distant, tense, and distinct
as our monoplane veering still to the glass sun.

DAVID WOLFF.

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violation. They are not seeking respect, they are seeking submission. Respect cannot be forced, it must be earned. Respect springs from free men; submission comes from slaves. If the courts of America are to command the respect of the American people, they must be such courts as the American people will respect.

Remember: that which hinders a people in their struggle for freedom—that is immoral. That which becomes a necessity to a people in their struggle for freedom—that is moral. And that which is moral certainly should be recognized as legal.

They tell us that if the sit-down strike is recognized as legal, our constitution will be gone. They forget that in February, 1935, Mr. Justice McReynolds of the United States Supreme Court said, in the minority opinion in the Gold Clause case, "The Constitution is gone." So it is gone anyway. Why worry about it now?

I suppose no one knows better than a lawyer whose life has been devoted to the labor movement that it is no easy matter to bring about the acceptance of labor's point of view by the judiciary. It is difficult because we live in a society in which our ideas are molded largely by the agencies dominated by the employing class. It is especially true in the field of law that, as a great thinker once said, "The tradition of all past generations weighs like an Alp upon the brain of the living."

But there is evolution in the law, as in all things. There *was* a time when the strike itself was illegal. The first case on the right of workmen to strike was tried in England in 1721. The journeymen tailors of Cambridge went on strike. They were indicted for conspiring to raise their wages. They were found guilty. Here is the reasoning of the court:

> It is not for the refusing to work but for the conspiring that they are indicted, and a conspiracy of any kind is illegal although the matter about which they conspired might have been lawful for them to do, if they had not conspired to do it.

That is what I would call a juicy judicial gem.

The first case in this country was tried in 1806. The boot and shoemakers of Philadelphia were indicted for "conspiring to raise their wages." The judge said:

> A combination of workmen to raise their wages may be considered in a twofold point of view: one is to benefit themselves, the other is to injure those who do not join their society. The rule of law condemns both.

And then he said this:

> If the rule be clear, we are bound to conform to it, even though we do not comprehend the principles upon which it is founded. We are not to reject it because we do not see the reason of it.

Now, *you* ask the American people to "respect" that kind of a decision!

There was a time when peaceful picketing was held illegal by most of the courts of the country. Today it is generally held legal.

Just as the strike, once held illegal, is now held legal, and just as picketing, once held illegal, is now generally held legal, so should the sit-down, now being held illegal, come to be held legal. Courts are agonizingly slow to change, but they *can* change. This is shown by the recent decision of the United States Supreme Court upholding the Washington minimum-wage law and over-ruling its earlier decision. Note well a reason given for the change. I quote from the opinion:

> The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community.

The opinion refers to this as "economic conditions which have supervened" and as a "compelling consideration which recent economic experience has brought into a strong light."

We are told that if labor does not like the law, it ought to cause the law to be changed. The answer is that labor has already caused the law to be changed. Now we await only the acceptance by the courts of the change which has already been made.

We members of the bar, traditionally conservative, must break out of our mental straitjackets. I know it is not easy. I have tried to liberate a number of judges in sit-down injunction cases. The results have been uniform —failure. I have urged upon them the application of the doctrine of unclean hands. But their minds have been completely closed. Judges with no mean local reputations as "legal minds" simply do not hear you when you argue. So shocked are they by the mere thought of the employer being temporarily deprived of his property that their decisions are irrevocably made before you even enter the court-room, let alone begin to argue. Indeed, in some cases I have observed that the very books from which the judges have later quoted to support their decisions were lying on their desks before I had commenced my argument.

Bear in mind, fellow lawyers, the words of Oliver Wendell Holmes, Associate Justice of the United States Supreme Court:

> The life of the law has not been logic, it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

The situation of counsel for the workers would indeed be discouraging were it not for his knowledge that, outside of the court-room, irresistible economic and social forces, impelled by great masses of the American people, are breaking through the barriers erected by the big business interests of the country. These same forces must shatter the conservatism of the judiciary and, by their impact, ultimately compel recognition of the sit-down strike as legal.

However difficult our task may be, those of us in the legal profession who have some understanding of the powerful forces at work in our society, those of us who are determined that the fascists in our midst shall not impose their damnable regime upon the American people, we who have a vision of an American people truly liberated and truly happy, those of us who agree with Lincoln when he said, "The people are the rightful masters of the courts"—we must have courage in times like these. We must continue to pound away, insisting, as Lincoln insisted, that "this country, with its institutions, belongs to the people who inhabit it."

"This is my favorite hobby." Jack Walters

What Do You Mean, Housing?

New Deal measures and pending legislation are analyzed in terms of their real utility

By Sidney Hill

THE present Congress has before it a number of housing bills. Much speculation is going on, particularly among housing experts, or "housers," as they are beginning to call themselves, concerning the fate of the most important of these measures, namely, the Wagner-Steagall bill and the Scott bill. In this article, we intend to analyze these bills on the basis of our discussion two weeks ago. But before we go on to discuss specific housing programs and legislation, it will be of value to glance at several of the general aspects of the question.

It is a commentary on the limited political and economic understanding of the average "houser" that he tends to weigh all social problems in terms of slum clearing and housing. For example, the New York City Housing Authority, in a recent publication, states:

> Housing is one of the many ways in which to forestall the bitter lessons which history has in store for us if we continue to be blind and stiffnecked. As I see it, it is a question of housing—or else. Housing or else increased squalor; housing or else a mounting crime and insanity rate; housing or else disease, blighted and wasted lives. The problem is so pressing no one dare ignore it.

According to this organization, which is a well-known advocate of slum clearance and low-rent dwellings, our fate hangs in the housing balance. Leave the slums alone and anything (do they mean revolution?) might happen. Demolish the slums and build new homes, and you eliminate or ameliorate the social evils.

The fallacy in the Housing Authority's premise will become evident upon reviewing briefly our previous article. We observed, from actual experiences in England and elsewhere, that slum clearance and the construction of new dwellings do not by themselves bring better health, less crime, and brighter lives to the poor. The reason for this is that the evils in question extend their roots into the very fabric of our social and economic system. Housing is only one aspect of a problem which includes such inter-related factors as poverty, social and family maladjustments, and insecurity. The danger of the slum-breeds-disease-and-crime theory is that it tends to obscure the real cause of illness and crime. Moreover, we saw that under the stress of their wretched living conditions and under the influence of false theories, the workers of England, Austria, Germany, and other European countries accepted slum clearance and housing schemes which in reality failed to benefit them. In most cases, the new houses which replaced the slums were occupied by middle-income groups, the former slum dwellers merely being dumped into neighboring slums. The few low-income families who were actually re-housed by these schemes frequently found themselves worse off than they were before, because the higher rents in the new houses left less money for food, clothing, medical attention, and other necessities. Similar experiences are even now occurring in the United States.

We do not argue from these disillusioning experiences of the past that it is dangerous for the people to support a slum clearance and low-rent housing program. After all, the slums in which one third of the population is forced to live should be abolished, even if they do not breed disease and crime. The value of a clear understanding of European housing history is that it helps us in formulating our own housing program, a program which is closely related to the political and economic demands of the labor movement and which really provides housing for the low-income groups at rents they can safely pay.

ANY CONSIDERATION of current housing proposals in this country must begin with the New Deal administration. When Roosevelt took office early in 1933, the United States was on the brink of economic collapse. As unemployment increased and private industry proved unable to cope with the situation, the idea of a federal public works program, with housing as a major part, suggested itself to the administration as the solution best calculated under the circumstances to satisfy all interests. In one of his famous radio talks, the President told his audience that he sought "the security of the men, women, and children of the country." "That security," he said, "involves added means of providing better homes for the people of the nation." In other words, the building of homes under the New Deal was to be more than a kindly gesture to the poorly housed slum dwellers; this time it was to be an important part of the recovery program itself.

We know today that since 1933, there has been considerable "pump priming" through public works, but practically no public housing. Only about twenty thousand families will be accommodated by federal housing projects in the United States after four years. This must seem astonishing to the average person. New Deal surveys showed that one third of all our dwellings were unfit to live in, that the construction industry was flat on its back, and that millions of workers in the home-building field were unemployed. Nevertheless, while billions were spent on the construction of roads, dams, and other P.W.A. projects, less than one hundred million dollars were expended on housing for the low-income groups.[1]

The administration was not nearly so stingy with the owners of real estate and with the mortgage institutions. Few people realize that during the same period in which public housing was suffering one set-back after another, the real-estate interests of the country received the handsome gift of some five billion dollars, through the Home Owners' Loan Corp. and the Federal Farm Mortgage Corp.

The H.O.L.C. was created in 1933 "to save the distressed urban home owner whose home is mortgaged from losing it through foreclosure." The H.O.L.C. relieves the distressed home owner in the following manner: first, it gives the mortgage holder (the bank) its good 4-percent negotiable bonds in exchange for the defaulted mortgage. This old mortgage is then replaced by a new one, the net result of which is that the home owner is now indebted to the H.O.L.C. instead of the bank.

John Fahey, president of the H.O.L.C., reports that about three billion dollars have been paid out to take over the mortgages of nearly one million small homes, and that "more than 90 percent of this money has gone to the commercial banks, savings banks, insurance companies, building and loan associations and mortgage companies, and has had the effect of strengthening their resources in a very important way."

Frank Davidson

With homes being foreclosed at the rate of a thousand a day after the great crash, the government eased the bankers out of a tight spot by taking over their sour mortgages. In exchange, it gave them good, interest-bearing, negotiable bonds. As for the miserable home owner, he is no better off than he was before. It is true, of course, that foreclosure was temporarily delayed, but he finds it just as difficult to meet H.O.L.C. payments as he did the payments to the bank. The proof of this is

[1] See *Housing Under Capitalism*, by Sidney Hill, International Pamphlet No. 46, for more detailed discussion.