

fact that society is constantly changing, and that the only help for it is not to discover specific remedies, but to create a technique and an intellectual method and social machinery by which we can keep pace with change.

Mr. Walsh's faith in legislation is naïve. The early part of his report contains bitter and just denunciation of the way laws are made, interpreted and administered. The end is taken up with the recommending of laws which Congress could not find time to pass in a lifetime, and the government as to-day conducted could never think of administering. It seems content to throw the burden on our legislatures, to create no machinery for investigation, no machinery for invention, but to leave it all to an overworked, uninformed and helpless Congress.

This naïveté is nothing but another aspect of the failure to perceive that what the nation needs now is not specific laws, but a technique for dealing with the whole problem. In intellectual outlook Mr. Walsh is profoundly reactionary. He trusts to denunciation of evil, to the proposal of specific remedies, and their realization by the antiquated method of haphazard legislation. That trust will be disappointed now as in the past. Until there is created for the industrial problem a trustworthy machinery of investigation and permanent organs of representation, until trained men are introduced to invent and formulate, we shall simply muddle along between agitation and complacency.

The Commons Report

THE Report of the Industrial Relations Commission signed by Prof. John R. Commons and Mrs. J. Borden Harriman, and concurred in with some exceptions by Commissioners Weinstock, Ballard and Aishton, will not carry well in the newspapers. It is not spectacular. It predicts no sudden, beneficent transformation. It attacks no one. It is wise but unexciting. It is significant, even revolutionary, and yet humdrum.

We apply the word revolutionary to this Report because it completely reverses our usual attitude towards labor legislation. In the past we have asked what ailed labor, and passed a law to remedy the evil. We did not much concern ourselves with the machinery for enforcing the law, and as a consequence it remained unenforced. But a law unenforced is no law at all. It is less than no law. We have piled up labor laws one above the other, and these laws have run out into perplexing detail. They have been enacted and repealed and re-enacted and declared unconstitutional, or have been left ambiguous and unenforceable, so that the actual protection of the labor law became a flickering, shadowy thing. The confusion of laws is now so inextric-

able that the Commissioners who signed the Commons Report were "forced to the conclusion that it is not worth while to propose any more laws until we have provided methods of legislation, interpretation and administration, by which they can be made enforceable."

At bottom, this fearful confusion, which has brought our legislatures and courts into disrepute, is to be traced to our fundamental theory of labor legislation. We have always believed that a legislature should enter into the details of law-making, and should determine what is to be the rule in hundreds of employments in thousands of different circumstances. But such a method is ludicrously inadequate. The legislators have not the time nor the special knowledge to enter properly into all this detail. Circumstances alter the application of the law, and what is fair in one industry, or in one part of the state or at one time of the year, is quite unfair at another. The legislature cannot make all these necessary adjustments. What is necessary is a continuous investigation of facts, for which the legislature is totally unfitted. All that it should do toward working out a labor policy is to establish the general standards and leave the task of filling in the details, of adapting the law to the circumstances, to an administrative body created specially for that purpose.

The Commons Report calls for such an administrative body, an industrial commission, of which there is to be one for each state and one for the United States, and under which are to be placed all bureaus or divisions dealing with all conditions of labor, including safety and sanitation, workmen's compensation, child labor, industrial education, statistics and immigration. The commissioners are to be appointed for a term of six years by the President or governor with the consent of the senate. In order that these commissioners shall be impartial, and satisfactory to the labor and capitalist interests involved, they are to be appointed only after consultation with the industrial council. This council, which has no veto power, is a coöperative and advisory body, representing employers and employees, and is intended to aid the governor in the selection of the industrial commission and the commissioners in the making of appointments, as well as to guarantee that all rules and regulations, investigations and publications of the commission shall be under the continuous supervision of organized labor and of organized capital. The members of the advisory council should be responsible to the organizations which they represent. The advisory council should resemble the superior councils of labor in France, Italy and Belgium, though with greater authority to participate in the work of administration.

The Commons Report also discusses the proper organization of the industrial commission. It should appoint a secretary, bureau chiefs and other necessary employees, all of whom should have passed civil service examinations, in the conduct of which the industrial council should have taken part. The entire value of the commission depends upon the character of the men who are invested with authority, and success is impossible if the employees are political lame ducks or are selected by ill-informed and technically unequipped civil service commissioners. The commission should organize under such bureaus as it thinks proper, but each member should be directly and primarily responsible for a given portion of the work.

So organized, the industrial commission is to make all rules and regulations necessary for carrying into effect the provisions of the labor law. This may be done by retaining the existing laws and allowing the commission to make additional regulations to give them effect, or by repealing all labor laws and establishing certain standards to be attained by action of the commission. Thus the legislature may declare that all places of employment shall be safe and sanitary, and leave it to the commission to determine in each case, subject finally to judicial review, what is safe and what is sanitary. Or the legislature may forbid employers to permit any employee to work for such hours of labor or at such times as to be dangerous to his or her life, health, safety or welfare, with the understanding that in each case such hours or times will be determined by the industrial commission, acting in conjunction with the industrial council.

It is of course conceded that the powers of such an industrial commission, whether it be state or federal, would be very wide, but there are many advantages of this method of labor administration, and safeguards could be provided against abuses. The courts have generally held that the delegation to an administrative commission of the power to make rules is constitutional, and the industrial commissions, which already exist in seven states, are fairly comparable with numerous health, public utility, railroad and other commissions, the constitutionality of which has been established. Moreover, the Commons Report proposes that any person in interest, employer or employee, shall be entitled to petition the commission for a hearing on any order of the commission, and such person in interest shall also be entitled "to bring a special action to test the legality or reasonableness of any provision of the labor laws or of any rules and regulations made thereunder."

But the chief safeguard against an abuse of the large powers vested in these industrial commissions lies in the constant coöperation of the employers

and employees acting through the industrial council. The Commons Report recommends that the federal industrial commission shall make investigations on wages, hours of labor, health, safety, unemployment, insurance and all subjects affecting the welfare of workers and the relations of employers and employees, including strikes, lockouts, boycotts and blacklists, but in all such investigations "no publication is to be made or any rules issued without previously submitting the same to all members of the industrial council, with opportunity for criticism, the latter to be published at the same time."

Upon this question of the veracity and impartiality of investigations, declares the Commons Report, depends the entire success of administration by labor commissions. "Employers, employees, and the general public should be able to rely implicitly for their conclusions on official statistics on wages, hours of labor, health, safety, cost of living, unemployment, costs of production, distribution of wealth, strikes, boycotts, and all other material facts bearing on the relations of capital and labor. All labor legislation, all administration of labor laws, all efforts at mediation and arbitration, all recommendations of public bodies, go back, for their justification, to statistics and investigations."

In short, the whole idea of labor legislation by means of administrative order, issued after thorough investigation by an impartial industrial commission, coöperating with the representatives of all parties, rests upon the assumption that there is a certain basis of common interest between labor and capital. The Commons Report assumes that there is a chronic and permanent class conflict between employer and employee, which conflict is to be fought out in factory and in legislature. There is, however, a common interest of these two parties in the fair and orderly administration of reasonable laws, and once the employer understands that he is dealing with an impartial administrative body, representing no merely hostile interest, once he is invited to help make the law which he has to obey, his former opposition oozes. In all states where the industrial commission system is being tried, the coöperation of employer and employee in the making of the law is the chief guarantee of its successful administration.

The internal friction which resulted in the breakup of the Industrial Relations Commission into a group of factions will perhaps postpone the creation of a permanent federal industrial commission. Sooner or later, however, the nation will be obliged to go over to labor law administration by means of permanent industrial commissions, along some such lines as those which

Commons Report:

A Fund for Social Welfare

IT would be a sheer waste of energy to propose an ambitious social welfare plan for the United States without an accompanying project for financing it. Our current revenues are none too copious for the services already undertaken by the government. Moreover, a governmental social welfare plan presents peculiar features, demanding special financial treatment. Expenditures for military and naval needs, for public improvements, etc., which at present make up a very large proportion of all our federal expenditures, may be permitted to vary widely from year to year. The cost of administration of workmen's compensation and similar laws ought to be fairly constant. The same thing is true of social insurance laws. If, for example, disability and old-age insurance are undertaken by government, the amounts to be paid out will fluctuate very little, except in consequence of changes in rate of benefit permitted by law. A financial policy that would at times be unduly generous to such services and at other times would starve them is not to be thought of. The difficulties of the teachers of New York with their pension fund give some small indication of what hardships might be anticipated from the failure of adequate and certain revenues for social insurance, once undertaken.

Accordingly, the Commons Report of the Commission on Industrial Relations proposes the enactment of a federal inheritance tax law with rates rising from one per cent on the excess of fortune over \$25,000 to fifteen per cent on estates above \$1,000,000, the proceeds of which are to be assigned to social welfare ends. The inheritance tax is practically an undeveloped resource in the United States. At present many of the states levy such taxes, but the aggregate revenue collected amounts to only \$25,000,000. Much larger revenues could be secured from this source, without seriously invading the legitimate expectations of heirs. Some of our states do indeed levy extremely heavy rates on estates going to strangers. California takes thirty-five per cent of an estate of a million or more falling to a person beyond the remotest legally recognized degree of kinship. But estates of a million hardly ever go to strangers. The heavy rates they are required to pay, as the report says, are something of a humbug from a financial point of view. It is through a development of taxes upon inheritances falling to direct heirs that substantial revenues are to be obtained. A progressive inheritance tax levied on all classes of heirs at the same rates that now prevail in Great Britain would yield a revenue of \$240,000,000—almost ten times the yield of the present state inheritance taxes. Such a revenue upon a new organ of social welfare administration

would go far toward providing adequate financial support for social welfare legislation. Moreover, it would be a revenue capable of further development. Without change in the rates it would increase automatically with the growth of wealth; and there is no reason for supposing that rates equal to the British are the maximum that can wisely be levied in future.

The authors of the Minority Report do not conceal their regret that under the Constitution federal taxation of inheritances cannot exclude state taxation. There is something inherently absurd in the attempt of the states to tax large fortunes, the physical basis of which is almost always interstate. Few recognize the legal and administrative complications to which this situation actually gives rise. The whole of an inheritance may be taxed in the state of residence of the decedent, and the several parts of it in a score of other states where the property is situate. A New York lawyer once cited to the writer a case in which he had been compelled to work up the laws and administrative rulings of eighteen state jurisdictions before a modest fortune (or its remnants) could pass from uncle to nephew. The Minority Report proposes to allow a certain federal subsidy, say fifty cents per capita of the population, to states giving up their inheritance taxes or refraining from enacting laws levying such taxes. This plan would reduce the revenue for social welfare purposes by \$50,000,000, but the remainder would probably be ample for the needs at present contemplated in the report.

The feature of the Minority Report most likely to excite attack is the proposal to create a "Federal Fund for Social Welfare." What is proposed is that the proceeds of the federal inheritance tax, in so far as they are not required to cover current needs, shall be placed in trust with the Federal Reserve Board for investment in securities approved by Congress. The income from these investments should be expended by the federal industrial commission for such purposes of industrial and social welfare as Congress might authorize. This would be to create a revenue independent of taxation, which might conceivably grow to such magnitude, under the operation of the law, as to take care of all the social welfare services that the federal government might find it expedient to undertake.

The report does not offer an extended defense of this proposal, but anyone familiar with finance and administration will readily perceive the advantages of the plan. It would be a comparatively simple matter to devise an inheritance tax law that would yield a net federal revenue of \$200,000,000, but it would not be desirable immediately to impose