SCHÄFFLE ALBERT, GERMANY.
LAWS, ETC.

THE THEORY AND POLICY OF LABOUR PROTECTION

Germany. Laws, statutes, etc.

The Theory and Policy of Labour Protection

Germany. Laws, statutes, etc.

The Theory and Policy of Labour Protection / Germany. Laws, statutes, etc. — «Public Domain»,

Содержание

etc. statutes Germany. Laws
The Theory and Policy of Labour Protection

PREFACE

In this book Dr. Schäffle seeks to carry out still further the idea which he developed in his last book (*The Impossibility of Social Democracy*) of the essential difference between a socialistic policy and what he calls a Positive Social Policy, proceeding constructively upon the basis of the existing social order. He emphatically vindicates the Emperor William's policy, as shown in the convening of the Berlin Labour Conference, from the charge of being revolutionary, or of playing into the hands of the Socialists.

The first part contains an attempt to settle and render more precise the use of terms in labour-legislation, as well as to classify the different aims and purposes with which it sets out, and then passes on to what will probably be to English readers the most interesting part of the book – a discussion of the Maximum Working Day in general, and the Eight Hours Day in particular. Here the author commits himself in favour of a legal ten or eleven hours day for industrial work, with special provisions for specially dangerous or exhausting trades, and with freedom of contract below that limit, and brings evidence to show that such a step has already been justified by experience. But after a careful discussion of what it involves, and after disentangling with some care the difficulties with which it is surrounded, he pronounces emphatically against the universal compulsory Eight Hours Day, which he regards as not practicable for, at any rate, a very long time to come.

On the vexed question of the labour of married women, Dr. Schäffle is less explicit, and seems somewhat to halt between two opinions. He will not commit himself to the desirability of an absolute prohibition of it, but it seems clear that his sympathies lean that way.

The discussion of the Social Democratic proposals in the German Reichstag, known as the Auer Motion, is very careful and appreciative, but Dr. Schäffle takes care to disentangle the really Socialistic element in them, and will only support the introduction of Labour Boards and Labour Chambers as consultative bodies, not as holding any power of control over the Inspectorate. He is willing to allow to the working classes full vent for their grievances, but dreads to see them entrusted with the actual power of remedying them.

His plea for more international exchange of opinions and international uniformity of practice is one which must be echoed by all who have the cause of Labour at heart. To that larger sense of brotherhood which extends beyond the bounds of country we must look for the accomplishment of the Social Revolution which is surely on the way. On a task so large, and involving such far-reaching issues to the progress of the world, the nations must take hands and step together if the results are to be of permanent value. The paralyzing dread of war, the competition of foreign workmen, the familiar Capitalist weapon that "trade will leave the country" if the workers' claims are conceded – all these dangers in the way can only be met by the drawing closer of international bonds, by the intercommunication of those in all countries who are fired by the new ideals, and are making towards an ordered Social peace out of the chaos of conflicting and competing energies and interests in which we live.

It cannot but be well to be reminded, as Dr. Schäffle reminds us, of the strong expression of opinion uttered by the Berlin International Labour Conference as to the beneficial results which might be looked for from a series of such gatherings, or to ask ourselves, why should not England be the next to convene a Labour Conference to gather up the experiences of the last few years, which have been so full of movement and agitation in the Labour world, as well as to give to other nations the

benefit of the earnest and strenuous investigations, now nearly drawing to a close, of our own Royal Commission on Labour?

At the request of Dr. Schäffle, the von Berlepsch Bill, which has been brought in by the German Government in order to carry out the recommendations of the Berlin Conference, has been inserted as an Appendix at the end of the English edition.

A. C. MORANT.

BOOK I.

INTRODUCTORY

In past years German Social Policy was directed chiefly to *Labour Insurance*, in which much entirely new work had to be done, and has already been done on a large scale; but in the year 1890 it entered upon the work of *Labour Protection*, which was begun long ago in the Industrial Code, and this work must still be carried on further and more generally on the same lines.

This result is due to the fact that the Emperor William II. has inscribed upon his banner this hitherto neglected portion of social legislation (which, however, has long been favoured by the Reichstag and especially by the Centre), has placed it on the orders of the day among national and international questions, and has launched it into the stream of European progress with new force and a higher aim.

The subject is one of the greatest interest in more than one respect.

It was to all appearance the cause of the retirement of Prince Bismark into private life. Some day, perhaps, the historian, in seeking an explanation of this important event in the world's history, will inquire of the political economist and social politician, whether Labour Protection, as conceived by the Emperor – especially as compared to Labour Insurance – were after all so bold a venture, so new a path, so daring a leap in the dark as to necessitate the retirement of that great statesman. I am inclined to answer in the negative, and to assume that the conversion of Social Policy to Labour Protection was the outward pretext rather than the real motive of the unexpected abdication of Prince Bismark of his leading position in the State. The collective result of my inquiry must speak for itself on this point.

The turn which Social Policy has thus taken in the direction of Labour Protection, raises the question among scientific observers whether it is true that the science of statecraft has thus launched forth upon a path of dangerous adventure and rash experimentation, and grappled with a problem, compared with which Prince Bismark's scheme of Labour Insurance sinks into insignificance. Party-spirit, which loves to belittle real excellence, at present lends itself to the view which would minimise the significance of Labour Insurance as compared with Labour Protection. But this is in my opinion a mistake. Though it is impossible to overestimate the importance for Germany of this task of advancing over the ground already occupied by other nations, and of working towards the introduction of a general scheme of international Labour Protection calculated to ensure international equilibrium of competition, yet in this task Labour Protection is, in fact, only the necessary supplement to Labour Insurance. Both are of the highest importance. But neither the one nor the other gives any ground for the charge that we are playing with the fires of social revolution. The end which the Emperor William sought to attain at the Berlin Conference, in March, 1890, and by the Industrial Code Amendment Bill of the Minister of Commerce, *von Berlepsch*, is one that has already been separately attained more or less completely in England, Austria and Switzerland. It is in the main merely a question of extending the scope of results already attained in such countries, while what there is of new in his scheme does not by any means constitute the beginning of a social revolution from above. The policy of the Imperial Decree of February 4th, 1890, and of the Bill of *von Berlepsch*, in no wise pledges its authors to the Radicals. A calm consideration of facts will prove incontestably the correctness of this view.

However, it is not any politico-economic reasons there may have been for the retirement of Prince Bismark, nor the very common habit of depreciating the value of Labour Insurance, nor yet the popular theory, false as I believe it to be, that the Emperor's policy of Labour Protection is of a revolutionary character, which leads me to take up once again this well-worn theme.

If the "Theory and Policy of Labour Protection" were by this time full and complete, I would willingly lay it aside in order to take into consideration the significance of Bismark's retirement from the point of view of social science, or to attempt to reassure public opinion as to the conservative character of the impending measures of Labour Protection. But this is not the case.

It is true we have before us an almost overwhelming mass of material in the way of protocols, reports of commissions, judicial decisions, resolutions and counter-resolutions, proposals, petitions and motions, speeches and writings, pamphlets and books. But we are still far from having, as the result of a clear and comprehensive survey of the whole of this material, a complete theory of Labour Protection; for the political problems of Labour Protection, especially those touching the so-called Maximum Working Day and the organisation of protection, are more hotly disputed than ever. In spite of the valuable and careful articles on Labour Protection, in the *Encyclopædia*, of von Schönberg and of Conrad, with their wealth of literary illustration, in spite of the latest writings of Hitze,[1] which, for moderation and clearness, vigour of thought, and wealth of material, cannot be too highly commended, there still remains much scientific work to be done. I myself have actually undertaken a thorough examination of all this literary and legislative material, in view of the national and international efforts of to-day towards the progressive development of Labour Protection, with the result that I am firmly convinced that both Theory and Policy of Labour Protection are still deficient at several points, and in fact that we are far from having placed on a scientific footing the dogmatic basis of the whole matter.

We have not yet a sufficiently exact definition of the meaning of Labour Protection, nor a clear distinction between Labour Protection and the other forms of State-aids to Labour, as well as of other aids outside the action of the State.

We have not a satisfactory classification of the different forms of Labour Protection itself with reference to its aim and scope, organisation and methods.

We still lack – and it was seriously lacking at the Labour Conference at Berlin – a fundamental agreement as to the grounds on which Labour Protection is justified, its relation to freedom of contract, and the advisability of extending it to adults.

The discussion is far from being complete, not only with reference to the real problems of Labour Protection, but also and especially with reference to the organs, methods and course of its administration. Many proposals lie before us, some of which are open to objection and some even highly questionable.

But we find scarcely any who advocate the simplification and cheapening of this organisation in connection with the systematised collective organisation of all matters pertaining to labour, together with the separation, as far as possible, of such organisation from the regular administrative organs.

The proposals of Social Democracy with respect to "Labour-boards" and "Labour-chambers," are hardly known in wider circles, and have nowhere received the attention to which in my opinion they are entitled.

The proposed legislation for the protection of labour offers therefore a wide field for careful and scientific investigation. I have prepared the following pages as a contribution to this task.

[1] *Protection for the Labourer!* Cologne, 1890.

CHAPTER I.
DEFINITION OF LABOUR PROTECTION

The meaning of the term Labour Protection admits of an extension far beyond the narrow and precise limits which prevailing usage has assigned to it, and beyond the sphere of analogous questions actually dealt with by protective legislation.

In its most general meaning the term comprises all conceivable protection of every kind of labour: protection of all labour – even for the self-supporting, independent worker; protection in service-relations, and beyond this, protection against all dangers and disadvantages arising from the economic weakness of the position of the wage-labourer; protection of all, not merely of industrial wage-labourers; protection not by the State alone, but also by non-political organs; the ancient common protection exercised through the ordinary course of justice and towards all citizens, and thus towards labourers among the rest. All this so far as the actual word is concerned may be included in the term Labour Protection.

But to use it in this sense would be to incur the risk of falling into a hopeless confusion as to the questions which lie within the scope of actual Labour Protection, and of running an endless tilt against fanciful exaggerations of Labour Protection.

The term Labour Protection, according to prevailing usage and according to the aim of the practical efforts now being made to realise it, has a much narrower meaning, and this it is which we must strictly define and adhere to if we wish to avoid error and misconception. Our first task shall be to determine this stricter definition; and here we find ourselves confronted by a series of limitations.

(1) Labour Protection signifies only protection against the special dangers arising out of service-relations, out of the personal and economic dependence of the wage-labourer on the employer.

Labour Protection does not apply therefore to independent workers: to farmers or masters of handicrafts, to independent workers in the fine arts and liberal professions. Labour Protection applies merely to wage-labourers.

For this reason Labour Protection has no connection with any aids to labour, beyond the limits of protection against the employer in service-relations; it has nothing to do with any attempts to ward off and remedy distress of all kinds, and otherwise to provide for the general welfare of the working classes; its scope does not extend to provisions for meeting distress caused by incapacity for work, or want of work, *i. e.* Labour Insurance, nor to the prevention and settlement of strikes, nor to improved methods of labour-intelligence, nor to precautions against disturbances of production or protection against the consequences of poverty by various methods of public and private charity, savings-banks, public health-regulations, inspection of food, and suppression of usury by common law. Although these are mainly or principally concerned with labourers, and are attempts to protect them from want, yet they are not to be included in Labour Protection in its strict sense. For this, as we have seen, includes only those measures and regulations designed to protect the wage-labourer in his special relations of dependence on his employer.

And indeed we must draw the limit still closer, and apply the word only to the relations between certain defined wage-earners and certain defined employers. Measures which are designed to protect the entire labouring class or the whole of industry, do not, strictly speaking, belong to the category of Labour Protection. Neither can we apply the term to that protection which workmen and employers alike should find against the recent abnormal development of prison competition, although by recommending this measure in their latest Industrial Rescript (the Auer Motion[2]) the

[2] A motion brought forward in the German Reichstag in July, 1885, and again in 1890 in the form of an amendment to the Industrial Code, by all the Social Democratic members sitting there; called after Auer, whose name stands alphabetically first on the list of backers. – Ed.

Social Democrats by a skilful move have won the applause of small employers especially. For the same reason we do not include protection by criminal law against the coercion of non-strikers by strikers, exercised through personal violence, intimidation or abuse; these are measures to preserve freedom of contract, but they have no connection with the relations of certain defined wage-earners to certain defined employers. Furthermore, Labour Protection does not include preservation of the rights of unions, and of freedom to combine for the purpose of raising wages, except or only in so far as particular employers, singly or in concert, by means of moral pressure or otherwise, seek to endanger the rights of particular wage-earners in this respect. It is almost unnecessary to add that Labour Protection does not include the "protection of national labour" against foreign labourers and employers, by means of protective duties, for this is obviously not protection against dangers arising from the service relations between certain defined wage-earners and employers.

But although none of these measures of security that we have enumerated are to be included in Labour Protection, we must on the other hand guard against mistaken limitations of the term. It would be a mistaken limitation to include only security against material economic dangers in and arising from the relations of dependence, and to exclude moral and personal safeguards in these relations – protection of learning and instruction, of education, morality and religion, in a word the complete protection of family life.

Labour Protection does not indeed include the whole moral and personal security of the wage-earner, but it does include it, and includes it fully and entirely, in so far as the dangers which threaten this security arise out of the *condition of dependence of the worker* either within or beyond the limits of his business. The whole scope of Labour Protection embraces all claims for security against inhumane treatment in service-relations, treatment of the labourer "as a common tool," in the words of Pope Leo XIII.

(2) Labour Protection does not include the free self-help of the worker, nor free mutual help, but only a part (cf. 3) of the protection afforded to wage-earners by the State, if necessary in co-operation with voluntary effort.

Labour Protection in its modern form is only the outcome of a very old and on the whole far more important kind of Labour Protection, in the widest sense of the term, which far from abolishing the old forms of self-help and mutual help, actually presupposes them, strengthens, ensures and supplements them wherever the more recent developments of national industry render this necessary. Labour Protection, properly so called, only steps in when self-help and mutual help, supplemented by ordinary State protection, fail to meet the exigencies of the situation, whether momentarily and on account of special circumstances, or by the necessities of the case.

This second far-reaching limitation of the meaning needs a little further explanation.

Labour Protection in its more extended sense always meant and must still mean, first and foremost, self-help of the workers themselves; in part, individual self-help to guard against the dangers of service, in part, united self-help by means of the class organisation of trades-unions.

Side by side with this self-help there has long existed a comprehensive system of free mutual help.

This assumes the form of family protection exercised by relations and guardians against harsh employers, and by the father, brother, etc., in their relation of employers in family industries; also the somewhat similar form of patriarchal protection extended by the employer to his workpeople.

Furthermore it includes that protection afforded by the pressure of religion, the common conscience or public opinion upon the consciences of employers, acting partly through the organs of the press, clubs, and other vehicles of expression, as well as through non-political public institutions, and corporate bodies of various kinds, especially and more directly through the Church, and also indirectly through the schools.

Without family and patriarchal protection, without the protection afforded by civil morality and religious sentiment, Labour Protection, in its strict sense, working through the State alone, would be able to effect little.

Family and patriarchal protection outweigh therefore in importance all more modern forms of Labour Protection, and will always continue to be the most efficacious. The protection of the Church has always been powerful from the earliest times.

Self-help and mutual help, moral and religious, effect much that State-protection could not in general effect, and therefore it is not to be supposed that they could be dispensed with. But they must not be included in Labour Protection, strictly so called, for this only includes protection of labour by the State, and indeed only a part even of this (cf. 3).

(3) For instance, Labour Protection does not include all judicial and administrative protection extended by the State to the wage-labourer, but only such special or extraordinary protection as is directed against the dangers arising from service relations, and is administered through special, extraordinary organs, judicial, legislative and representative. This special protection has become necessary through the development of the factory system with its merciless exploitation of wage-labour, and through the weakening of the patriarchal relations in workshops and in handicrafts. In this respect Labour Protection is the special modern development of the protection of labour by the State.

Labourers and employers alike are guaranteed an extensive protection of life, health, morality, freedom, education, culture, and so on, by the ordinary protective agencies of justice and of police, exercised impartially towards all citizens, and claimed by all as their right. Long before there was any talk of Labour Protection, in the modern sense of the term, this kind of protection existed for wage-labour as against employers. But in the strict sense of the term Labour Protection includes only the special protection which extends beyond this ordinary sphere, the special exercise of State activity on behalf of labourers.

Even where this extraordinary or special Labour Protection is exercised by the regular administrative and judicial authorities, it still takes the form of special regulations of private law, punitive and administrative, directed exclusively or mainly to the protection of labourers in their service-relations. To this extent, at any rate, it has a special and extraordinary character. Very frequently, as for instance in the German Industrial Code, such protection is placed in the hands of the ordinary administrative and judicial authorities, and a portion of it will continue to be so placed for some time to come.

But the administration of Labour Protection, properly so called, is tending steadily to shift its centre of gravity more and more towards special extraordinary organs. These organs are partly executive (hitherto State-regulated factory inspection and industrial courts of arbitration), but they are also partly representative; the latter may be appointed exclusively for this purpose, or they may also be utilized for other branches of work in the interests of the labourer and for the encouragement of national industry, and they bear in their organisation, or at least to some extent in their action, the character of public institutions.

(4) Labour Protection is essentially protection of industrial wage-labour, and excludes on the one hand the protection of agricultural workers and those engaged in forestry, as well as of domestic servants, and on the other hand, the protection of State officials and public servants.

It may no doubt be that special protection is also needed for non-industrial wage-labour and for domestic servants, but the material legal basis, the organisation and methods of procedure, of these further branches of Labour Protection, will demand a special constitution of their own. The regulations of domestic service and the Acts relating to State-service in Germany constitute indeed a kind of Labour Protection, certainly very incomplete, and quite distinct from the rest of Labour Protection, properly so-called. Even if the progress of the Social Democratic movement in this country were to bring on to the platform of practical politics the measure already demanded by the

Social Democrats for the protection of agricultural industry[3] on a large scale, even then protection of those engaged in agriculture and forestry would need to receive a special constitution, as regards the courts through which it would be administered, the dangers against which it would be directed, and its methods and course of administration. Whilst therefore we readily recognise that both protection of domestic servants and a far-reaching measure of agricultural Labour Protection, in the strict sense of the term, may eventually supervene, we yet maintain that this must be sharply distinguished for purposes of scientific, legislative, and administrative treatment from what we at present understand by Labour Protection.

Moreover, even now agricultural labour is not entirely lacking in special protection. The regulations for domestic service contain fragments of protection of contract and truck protection. Russia has passed a law for the protection of agricultural labour (June 12, 1886) in Finland and the so-called western provinces, which regulates the peculiar system of individual and plural[4] agreements between small holders and their dependents, and is also designed to afford protection of contract to the employer.

(5) The industrial wage-labour dealt with by the Industrial Code, and the industrial wage-labour dealt with by State Protection, are not entirely identical, though nearly so.

For on the one hand there are wage-labourers employed in occupations not included in industrial labour in the sense of the Code, who yet stand in need of special protection from the State; while on the other hand there are bodies of industrial labourers dealt with in the Code, who do not need or who practically cannot have this extraordinary protective intervention of the State, being already supplied with the various agencies of free self-help, family insurance, and mutual aid.

When we are concerned with Labour Protection therefore, both in theory and practice, it is evident that we have to deal with industrial wage-labour in a limited sense, not in the general sense in which the term occurs in the Industrial Code, while at the same time we must not fail to recognise that even the older Industrial Acts, in so far as they referred to wage-labour, were already Labour-protective Acts of a kind.

The limits of wage-labour as affected by the Industrial Code, and of wage-labour as affected by State protection, have this in common, that both extend far beyond wage-service in manufacturing business (industry, in its strict sense). For this reason we must examine into this point a little more closely in order to determine the exact scope of Labour Protection.

In our present Industrial Code the terms “industrial labour” and “industrial establishments” are almost uniformly used in the sense given to them by the German Industrial Code of 1869. Industrial labour is wage-labour in all those occupations within the jurisdiction of the Code.

But the Code gives no positive legal definition of the word “industry.” Both in administrative and judicial reference the word is used loosely as in common parlance, and the Code only particularises certain industries out of those with which it deals as requiring special regulations and special organs for the administration of these special regulations.

According to administrative and judicial usage in Germany, corresponding to customary usage, the word “industry” is now applied to all such branches of legitimate private activity as are directed regularly and continuously towards the acquirement of gain, with the following exceptions: agriculture and forestry (market-gardening excepted), cattle-breeding, vine-growing, and the manufacturing of home-raised products of the soil (except in cases where the manufacturing is the main point and the production of the material only a means towards manufacturing, as in the case of sugar refineries and brandy distilleries).

---

[3] For regulating the use of machinery in agriculture. (See the Auer Motion.)

[4] The *artell* system, under which groups of labourers with a chosen leader contract themselves to the various employers in turn, for the performance of special agricultural and other operations.

In spite of this last limitation the meaning of the term "industrial labour," as used in the Code, extends far beyond the limits of wage-labour in the manufacturing of materials. For the provisions of the Imperial Industrial Code for the protection of labour expressly include, either wholly or partially, mining industries, commerce, distribution, and all carrying industries other than by rail and sea.

But the need of Labour Protection is also felt in certain occupations which are indeed counted as industries in common parlance, but which are expressly excluded from the jurisdiction of the Industrial Code; amongst these are the fisheries, pharmacy, the professions of surgery and medicine, paid teaching in the education of children, the bar and the whole legal profession, agents and conductors of emigration, insurance offices, railroad traffic and traffic by sea, *i. e.* as affecting the seamen.

Clearly no exception ought to be taken to the extension of Labour Protection to any single one of these branches of industry, in so far as they are carried on by wage-labourers in need of protection. This ought especially to apply to private commercial industries with reference to Sunday rest, and to public means of traffic, in the widest sense of the term, and to navigation. A fairly comprehensive measure of protection for this last branch of work has already been provided in Germany by the Regulations for Seamen of December 27, 1872.

Furthermore, the need of protection also exists in callings which do not fall under the head of industries even in the customary use of the term. Taking our definition of industry as an exercise of private activity for purposes of gain, we clearly cannot include in it the employments carried on under the various communal, provincial and imperial corporate bodies, at least such of them as are not of a purely fiscal nature, but are directed towards the fulfilment of public or communal services, not even such as are worked at a profit. There is clearly, however, a necessity for protection in government work, and this has already been recognised (cf. the *von Berlepsch* Bill, art. 6, § 155, 2, Appendix).

The legislative machinery of Labour Protection is not confined to the Industrial Code. There are two ways of enacting such protection: extra protection going beyond the ordinary Industrial Regulations may be enacted by way of amendments or codicils to their ordinary protective clauses, or on the other hand it may be lodged in special laws and enactments, to be worked by specially constituted organs. The latter method has to be followed in the case of municipal or State-controlled means of traffic. In Germany, Labour Protection in mining industries is supplied by the Industrial Code, with special additions however in the form of Mining Acts to designate the scope of the protection and the means through which it works. There are, moreover, also special Acts, such as those which apply to the manufacture of matches.

All wage-earners, not only those protected by the Industrial Code, but also those protected by special acts and special organs, are included in that industrial wage-labour which comes within the scope of protective legislation. By industrial wage-earners we mean therefore all such wage-earners as need protection in the dependent relations of service, whether such be enumerated in the Industrial Code or by definition expressly excluded from it.

This is the conclusion at which the Berlin Conference also finally arrived. The report of the third commission (pp. 77 and seq.) states: "Before concluding its task, the third commission has deemed it advisable to define the strict meaning of certain terms used in the Resolutions adopted, especially the phrase 'industrial establishments'" (*établissements industriels*). Several definitions were proposed. First the delegate from the Netherlands proposed the following definition: "An industrial establishment is every space, enclosed or otherwise, in which by means of a machine or at least ten workmen, an industry is carried on, having for its object the manufacture, manipulation, decoration, sale or any kind of use or distribution of goods, with the exception of food and drink consumed on the premises."

The proposal of the Italian delegates ran as follows: "Any place shall be called an industrial establishment in which manual work is carried on with the help of one or more machines, whatever be

the number of workmen employed. Where no engine of any kind is used, an industrial establishment shall be taken to mean any place where at least ten workmen work permanently together."

A French delegate, M. Delahaye, read out the following suggestion, which he proposed in his own name: "An industrial establishment denotes any house, cellar, open, closed, covered or uncovered place in which materials for production are manufactured into articles of merchandise. Moreover, a certain number (to be agreed on) of workmen must be engaged there, who shall work for a certain number (to be agreed on) of days in the year, or a machine must be used."

The Spanish delegate stated that he would refrain from voting on the question, because he was of opinion that instead of using the term "industrial establishment," it would be better to say "the work of any industries and handicrafts which demand the application of a strength greater than is compatible with the age and physical development of children and young workers." According to his opinion no weight ought to be attached to the consideration whether the work is carried on within or outside of an establishment. After a discussion between the delegates from France, Belgium and Holland, and after receiving from the Luxembourg delegate a short analysis of foreign enactments on this point, the Committee unanimously adopted a proposal made by the delegates from Great Britain, and supported by Belgium, Germany, Hungary, Luxembourg, and Italy. The proposal was as follows: "By 'industrial establishments' shall be understood those which the Law regulating work in the various countries shall designate as such whether by means of definition or enumeration."

A consideration of the discussions raised in paragraphs 1 to 5 results in the following definition of Labour Protection: *the extraordinary protection extended to those branches of industrial wage-labour which claim, and are recognized as requiring, protection against the dangers arising out of service relations with certain employers, such protection being exercised by special applications of common law, punitive and administrative, either through the regular channels or by specially appointed administrative, judicial, and representative organs.*

The Resolutions of the Berlin Conference, and the protective measures submitted to the German Reichstag early in the year 1890, have, as we shall find, strictly confined themselves to this essentially limited definition of Labour Protection.

It appears as though hitherto no clear theoretical definition of the idea of Labour Protection has been forthcoming. But the necessity for drawing a sharp distinction at least between Labour Protection and all other kinds of care for labour is often felt. Von Bojanowski speaks very strongly against vague extensions of the meaning: "The matter would become endlessly involved," he says, "if, as has already happened in some cases, we were to extend the idea of protective legislation to include all such enactments (arising out of other possibilities based upon other considerations) as grant aid to workers in any kind of work or in certain branches of work, or such as are based on the rights of labour as such, and are therefore general in their application, or such as seek to further all those united efforts which are being made in response to the aspirations of the working population or from humanitarian considerations. This would result either in confounding it with an idea which we ought always carefully to distinguish from it, an idea unknown in England, that of the so-called 'committee of public safety,' or it would lead to more or less arbitrary experiments."

CHAPTER II.
CLASSIFICATION OF INDUSTRIAL WAGE-LABOUR FOR PURPOSES OF PROTECTIVE LEGISLATION. – DEFINITION OF FACTORY-LABOUR

Those forms of industrial wage-labour which are dealt with by protective legislation do not all receive the same measure of protection, nor are they all dealt with according to the same method. This is only to be expected from the constitution of Labour Protection, which is an extraordinary exercise of State interference in cases where it is specially necessary.

All over the world we find that industrial wage-labour requires protection of various kinds, differing, that is, not only in its nature but in the course and method of its application. On account of these very differences, before we can go a step further in the elucidation of the Theory and Policy of Labour Protection, we must divide industrial wage-labour into classes, according to the kind of protection which is needed, and the manner in which such protection is applied by protective legislation. It will now be our task, therefore, to classify them, and to be sure that we arrive at a clear idea of the various classes into which they fall for the purposes of protective legislation, some of which may not perhaps be readily apparent at first sight.

The varieties of protection needed by industrial wage-labour arise, partly out of dangers peculiar to the particular occupation in which the wage-labourer is employed, and partly out of the personal characteristics and position of the labourer to be protected; *i. e.* they are partly exterior and partly personal.

When the protection is against exterior dangers we have to consider sometimes the great diversity of conditions in the different occupations and industries, and sometimes the special manner in which workmen may be affected within the limits of a single occupation peculiar to some special branch of industry. When the protection is of the kind which I have called personal, the need for it arises partly out of the special dangers to which the protected individual is liable *outside* the actual limits of his business, partly out of the special dangers attached to his position *in* that business.

Hence results the following classification of industrial wage-labour, according to the kind of protection required: —

I. Labourers requiring protection against *exterior* dangers:

a. According to the kinds of occupation:

1. Having reference to the different branches of industry:

Wage-labour in mining, manufacture, trade, traffic and transport, and in service of all kinds.

2. Having reference to the special dangers of employment within any particular branch of industry: dangerous – non-dangerous work.

b. According to type of business:

1. Having reference to the position or personality of the employer:

Wage-labour under private employers – wage-labour under government.

2. Having reference to the choice of the labourers by the employer, and the nature of their mutual relations.

Factory-labour,

Quasi-factory labour (especially labour in workshops of a similar nature to factories), other kinds of workshop labour,

Household industries (home-labour),

Family labour.

II. Labourers requiring protection against *personal* dangers:

a. Having reference to the common need of protection as men and citizens.

1. Adult – juvenile workers;
2. Male – female workers;
3. Married – unmarried female workers;
4. Apprentices – qualified wage-workers;
5. Wage-workers subject to school duties – exempt from school duties,

b. Having reference to the need of protection arising out of differences in the position occupied by the wage workers in the business:

Skilled labourers (such as professional wage-workers, business managers, overseers and foremen; or technical wage-workers, mechanics, chemists, draughtsmen, modellers); unskilled labourers.

I. Protection against Exterior Dangers

A glance at existing legislation on Labour Protection, or even only at the various paragraphs of the *von Berlepsch* Industrial Code Amendment Bill, clearly shows the definite significance of all these foregoing classes in the codification of protective right. Each one of these classes is treated both generally and specifically in the Labour Acts.

Mining industries, industrial (manufacturing) work, and wage service in trade, traffic, and transport, do not all receive an equal measure of Labour Protection.

Differences in the danger of the occupation play a great part in the labour-protective legislation of every country.

Labour Protection has therefore hitherto been, and will probably for some time continue to be in effect, protection of factory and quasi-factory labour (I.B. 2, *supra*), but in all probability it will gradually include protection of household industry also. Even the English Factory and Workshop Acts do not, however, extend protection to wage-labour in family industry.

Business managers have hitherto received no protection, or a much smaller measure than that extended to common wage-labourers.

Furthermore, Labour Protection has hitherto been administered through different channels, according as it is applied to professions of a public nature, in which discipline is necessary, especially the military profession, or to professions of a non-public nature.

Lastly, with regard to individual differences of need for labour protection, adult labour has hitherto received only a restricted measure of protection, whereas the labour of women and children has long been fairly adequately dealt with; the prohibition of employment of married women in factory-labour still remains an unsolved problem in the domain of Labour Protection question, but it is a measure that has already received powerful support.

It must of course be understood that Labour Protection is still in process of development. But according to all present appearances, there is no prospect, at any rate for some time to come, of its general extension to all classes of industrial wage-labour, for instance that the prohibition of night work will be extended to all adult male labourers, or that Sunday work will be absolutely prohibited in carrying industries and in public houses. We must even do justice to the Auer Motion in the Reichstag, by acknowledging that it does not go the length of demanding the universal application of such protection.

In the existing positive laws, and in the further demands for protection put forward at the present day, mining industries hold the first place, then all kinds of work dangerous to life and health, household industry, the labour of women and young persons, and the labour of married women. The

reader will easily understand the reasons for this; he only requires to establish clearly in his own mind, for each of these classes of industrial wage-labour, the grounds on which the claim to such objective and subjective protection is based, and wherein they differ from the cases where free self-help and mutual help suffice, or even the ordinary protection afforded by the State. However, this special inquiry is not necessary here; the explanation desired will be found in the study of the several applications and modes of operation of Labour Protection dealt with in the following pages.

But on the other hand it is important that we should now endeavour to form a clear idea of those larger divisions of industrial wage-labour with which a protective code has to deal, in order that we may be sure of our ground in proceeding with our investigations.

Factory-Labour

No small difficulty arises from the question: "What is factory-labour?" And yet it is precisely this kind of wage-labour which has received the most comprehensive measure of protection, and become the standard by which protection is meted out to all similar kinds of employment.

The labour-protective laws of various governments have met the difficulty in various ways; but nowhere is a positive legal definition given of the Factory.

In the case of Germany, especially, it is not easy to form a clear idea of the meaning attached to factory labour by the hitherto existing protective laws, and by the *von Berlepsch* Industrial Bill.

We may arrive at a clearer conception of what a factory really is in the protective sense of the word, by examining first the essential characteristics of such kinds of employment as are placed by the protective laws on the *same* (or nearly the same) footing as factory labour, and then observing the peculiarities of such kinds of employments as are legally *excluded* from factory-labour protection.

The same characteristics in all those points in which it is affected by protection, will be found in the Factory, but the peculiarities of the other contrasted class will be absent from the Factory.

In the Imperial Industrial Code, especially in the *von Berlepsch* Bill, the following four categories of employment are placed on the same footing as the Factory; in the case of the first three the inclusion is obligatory, in the case of the last it is optional and depends on the pleasure of the Bundesrath (local authority):

> 1. Mines, salt-pits (salines), preparatory work above ground, and underground work, in mines and quarries (other than those referred to in the Factory Regulations).
>
> 2. Smelting-houses, carpenter's yards, and other building-yards, wharves, and such brick-kilns, mines, and quarries as are worked above ground and are not merely temporary and on a small scale.
>
> 3. Those work-shops in which power machinery is employed (straw, wind, water, gas, electricity, etc.) not merely temporarily.
>
> 4. "Other" workshops to which factory protection (except as regards working rules) can be extended under the Imperial decree, at the discretion of the Bundesrath.[5]

A common designation is needed which will include all these four categories.

We might use the word "workshops" were it not that the employments enumerated in classes 1 and 2 cannot precisely be included in "workshops," and were it not that class 4 as it appears in protective legislation denotes "another kind" of workshop distinct from that of class 3.

In default of a more accurate expression we will use therefore the term "quasi-factory business" as a general designation for those classes of business which are placed by the protective laws on the same, or approximately the same, footing as the Factory.

[5] Bill, Art. 6 (new § 154).

Factory protection is not extended to those "workshops in which the workers belong exclusively to the family of the employer," therefore not to family-industry in workshops, and still less to family-industry not carried on in workshops, nor to work in the dwelling-houses of the employer, or (as is usually the case in household industry) of the worker (orders of all kinds executed at home, household industry). At least the new § 154 of the Bill does not bring such work into any closer relationship than before with the Factory.

By contrast and comparison the following characteristics (*a* to *i*) will help us towards a fuller conception of the sense of the Factory from the point of view of protective legislation, as understood by the latest German enactments:

> *a.* The Factory employs exclusively or mainly those who do not belong to the family of the employer, and in any case *not merely those who do.*
>
> *b.* The work of a Factory is entirely carried on outside the dwelling of the employer and of the wage-worker.
>
> *c.* The work of a Factory is the preparation and manufacture of commodities (industrial work, including all kinds of printing), not production or first handling of raw material, as in mining industries.
>
> *d.* The work of a Factory is work in which the wage-workers are constantly shut up together in buildings or in enclosures, and is not work in open spaces, or which moves from place to place, as in the case of work on wharves, in building yards, etc.
>
> *e.* The work of a Factory is carried on by power machinery, hence (if this inference *a contrario* be admissible) not only hand-manufacture, and thus it appears to include what I have called quasi-factory business and have mentioned in class 3 (*supra*).
>
> *f.* The work of a Factory is continuous, and *g.* Is carried on on a large scale, and with a large number of workpeople, hence (*f* and *g*) it may be compared to the quasi-factory business of class 2 (*supra*) for the purposes of a protective Code.
>
> *h.* The work of a Factory is carried on in workplaces provided by the employer, not in the rooms of the workers or of a middleman.
>
> *i.* The work of a Factory results in the immediate sale of the commodities produced, and does not consign them to the wholesale dealer to be prepared and dressed, or distributed by wholesale or retail, *i. e.* the Factory has absolute control of the sale of the commodities produced, in contradistinction to household industry.

Thus the Factory as understood by the German labour-protective laws is commercially independent (characteristic *i*), industrial (*c*), carried on on a large scale (*g*), and continuously (*f*), in enclosed (*d*), specially appointed (*b*) work-rooms provided by the employer (*h*), with the help of power machinery (*e*), and by wage-workers not belonging to the family of the employer (*a*).

Purely hand-manufacturing wholesale business should also be counted as factory-labour; for the fact that workshop business carried on with the help of power machinery is declared to be on the same footing as factory-labour means only this: that it presupposes the same need of protection felt in factories where the business is carried on with the help of power machinery, as is the case in most factories; it does not mean that certain kinds of manufacturing wholesale business carried on without power machinery (of which there are very few) should not be counted as factories. We are therefore justified in dropping characteristic *e* of the theoretical conception of the Factory, as understood in Germany.

Let us now look at the Swiss Factory Regulations. The Confederate Factory Act of March 23, 1877, has given no legal definition of the word "Factory," but only of "protected labour." It extends protection to "any industrial institution in which a number of workmen are employed simultaneously

and regularly in enclosed rooms outside their own dwellings." According to the interpretation of the Bundesrath (Federal Council) "workers outside their dwellings" are those "whose work is carried on in special workrooms, and not in the dwelling rooms of the family itself, nor exclusively by members of one family." Furthermore, all parts of the Factory in which preparatory work is carried on are subject to the Factory Act, as well as all kinds of printing establishments in which more than five workmen are employed. The Swiss Factory Act requires that a Factory shall possess all those characteristics assigned to it by German protective law, with the exception, however, of power machinery, and hence it doubtless covers all manufacturing business in which a number of workmen are employed.

According to Bütcher,[6] in the practical application of factory-protection in the Confederate States, any industrial establishment is treated as a factory which employs more than twenty-five workers or more than five power-engines, in which poisonous ingredients or dangerous tools are used, in which women and young persons (under eighteen years) are employed (with the exception of mills employing more than two workers not belonging to the family), and sewing business carried on with the help of three or four machines not exclusively worked by members of the family.

In Great Britain the Factory and Workshop Acts of March 27, 1878, cover all factory labour, and the bulk of workshop business, *i. e.* all workshops which employ such persons as are protected by the Act – children, young persons, and women.

This English Act again furnishes no legal definition of the term. "According to the meaning of the term, implied in this Act," says von Bojanowski, "we must understand by a factory any place in which steam, water, or other mechanical power is used to effect an industrial process, or as an aid thereto; by 'workshop,' on the other hand, we must understand any place in which a like purpose is effected without the help of such power; in neither group is any distinction to be drawn between work in open and in enclosed places."

Under this Act *factories* are divided into textile and non-textile factories. "*Workshops* are divided into workshops generally, *i. e.* those in which protected persons of all kinds are employed (children, young persons, and women), with the further subdivisions of specified and non-specified establishments; into workshops in which only women, but no children or young persons are employed; and lastly, domestic workrooms in which a dwelling-room serves as the place of work, in which no motive power is required, and in which members of the family exclusively are employed."

Domestic work-rooms in which only women are employed do not come under the Act, nor yet factories, such as those for the breaking of flax, which employ only female labour. Bakeries are included among regulated workshops, *i. e.* workshops inspected under the Factory Acts, even when no women or young persons are employed. The Factory, as understood by the English law, is distinguished by most of the characteristics of the German acceptation of the term, without however admitting of the distinction of class *d* (business carried on in an enclosed space), whereby protection is also afforded to what we have termed quasi-factory labour (see p. 36); but on the other hand a special point is made of the distinction of class *e*, viz. use of power machinery. Thus the English idea in defining the factory is to insist, not upon the number of persons employed, but upon the proviso that they are persons within the scope of the protective laws.

Workshop Labour

In the *von Berlepsch* Bill this is dealt with side by side with factory labour. It is sometimes placed on the same footing under the various categories of quasi-factory labour (classes 3 and 4), sometimes it lies outside the limits of factory protection, in cases where the Bundesrath does not exercise his privilege of granting extension of protection, and in cases where the workshop in question is worked entirely by members of one family.

[6] Cf. Conrad's *Encyclopædia*, vol. i. p. 154.

It would be tautology to include in the definition of the workshop all the characteristics of the factory named in classes *a* to *i*. There may be cases in which the workshop practically includes most of the characteristics of the factory, but it is only necessary that it should include the following: business carried on outside the dwelling-rooms (*b*); preparation and manufacture of commodities (*c*); carried on in enclosed places (*d*). With the other classes it is not concerned. According to the English Factory Acts protected workshop labour is not necessarily carried on in enclosed places.

In treating of German workshop labour for the purposes of the *von Berlepsch* Bill, and for future legislation of the same kind, we have to classify it as follows:

> Workshop labour carried on with the help of power-machinery, but not otherwise answering to the conditions of the factory.
>
> Workshop labour carried on without power-machinery, by hand or by hand-worked machines.
>
> Labour in workshops where all three kinds are required, *i. e.* power-machinery, hand-work, and hand-worked machines (*e. g.* modern costume-making in which power sewing-machines are employed.)
>
> The old handicraft labour carried on in special workrooms, either within or outside the dwelling of the worker.

The characteristic peculiar to the three first divisions of workshops, and that which distinguishes them from the factory, although they in some respects resemble it, is that they give employment to but a very small number of workmen outside the limits of the family which maintains them.

The British Factory Acts include under the head of workshops those businesses in which no motive power is used, but in which protected persons (women, children, and young persons) are employed. Workshops of this kind are treated with varying degrees of stringency, according to whether they employ protected persons of all kinds, or only women (no children or young persons), and according to whether they are carried on in domestic workshops (dwelling-rooms) or otherwise.

Household (home) Industry and Family Industry

Household industry, called also “home industry” in the Auer Motion is the industrial preparation and manufacture of commodities, not the production of material, nor trading, carrying, or service industry. It has therefore characteristic *c* (viz. that it excludes the production of raw material and the initial processes in connection therewith) in common with the factory and all workshops, as well as with that part of family industry which is not included in household industry properly so called; the very term Household *Industry*, in fact, indicates this.

The peculiarity of household industry (in the technical sense of the term) is that it is carried out merely at the orders and not under the supervision of the contractor. The Imperial Industrial Code, more especially the *von Berlepsch* Bill, in extending truck protection to household industry, understands this term to include all industrial workers engaged in the preparation of commodities under the direction of some firm or employer, but not working on the premises of their employers; and these workers may or may not be required to furnish the raw materials and accessories for their work. The home-workers carrying on this kind of preparation of commodities do so as a rule not in special work-rooms, but in their own dwelling-rooms or houses, or in little courtyards, sometimes in sheds and outhouses, sometimes even in the open air. For the rest, they may be either a few workers out of a family working on their own account, or a whole family working under the superintendence of one of its members. The most important characteristic of household industry is that it is work undertaken at the orders of a third party, therefore that it has no commercial independence, and takes

no part in the sale of its products (characteristic *i* of factory labour); and therefore obviously we have no occasion to consider the other characteristics *d*, *e*, *f*, *g*, *h*, in defining household industry.

A distinction must be drawn between household industry carried on with or without the intervention of middlemen; for it takes a very different form, according to whether the arrangements between the industrial home-worker on the one side, and the giver of orders and provider of materials on the other, are made with or without the intervention of special agencies for ordering, supervising, collecting, and paying (commission agents, contractors, sweaters). The possible removal – or at least control and regulation – of the middleman forms one fundamental problem – hitherto unsolved – of labour protection in the sphere of household industry, and the protection of industrial home-workers against their parents and against each other forms another.

Family Industry

Family industry to a great extent practically coincides with household industry, but not necessarily or entirely so; for family industry – meaning of course the work of preparing and manufacturing commodities – may be the preparation of goods for independent sale, not for sale by a third party in a shop or warehouse, and as a matter of fact this is very largely the case. Family industry sometimes even falls under the head of workshop labour (cf. § 154 of the *von Berlepsch* Bill). Its distinguishing characteristic is that it employs only workers belonging to the same family, hence the exact reverse of the Factory (see characteristic *a*). It includes all those industrial pursuits "in which the employer is served only by members of his own family" (Bill, § 154, par. 3).

II. – Personal Protection

We come now to consider the meaning of the various headings under which *personal* protection falls.

Juvenile Workers. Juvenile workers of both sexes have long been subject to protection, and this kind of protection is gradually spreading all over Europe, and in more and more extended proportions. We must first ascertain what is the exact meaning of the term juvenile workers as used in the labour-protective laws.

In contrast to juvenile labour stands adult labour, or more accurately adult male labour, since adult women – not of course as adults but as women – are placed more or less on the same footing as juvenile workers in the matter of protective legislation.

The distinction between adult wage-labour and juvenile wage-labour, and the subdivision of the latter into infant-labour, child-labour, and the labour of "young persons," is not of importance in all departments of labour protection, but it is of the utmost importance in *protection of employment*, especially in prohibition of employment on the one hand, and restriction of employment on the other. This prohibition and restriction of juvenile employment does not apply to all industries, but only to certain branches of industry and kinds of work, and to specially dangerous occupations.

In order to determine exactly what is meant by infant-labour, child-labour, and the labour of "young persons," we must consider the inferior limit of age below which there is a partial prohibition of employment, and the superior limit of age beyond which labour is treated as adult labour as regards protection, receiving none, or only a very limited measure of it. The inferior limit does not as yet coincide with the beginning of school duties, nor does the superior limit coincide with the attainment of majority as recognised by common law.

"Juvenile labour" – permitted but restricted – stands midway between infant-labour, altogether prohibited in some branches of industry, and adult labour, permitted and unrestricted, or only slightly restricted; and within the inferior and superior limits of age it is divided into child-labour and labour of "young persons."

The industrial laws of northern and southern countries differ in the inferior limit of age which they assign to prohibited infant-labour, as distinguished from child-labour permitted but restricted. In Italy this limit has hitherto been fixed at the completion of the ninth year; in England and France (in textile, paper, and glass industries), in Denmark, Spain, Russia, and in most of the industrial States of the North American Union, at the completion of the tenth year; in Germany hitherto, and in France (in general factory-labour, in workshops, smelting-houses, and building-yards), in Austria, Sweden, Holland and Belgium (Act of 1889), at the completion of the twelfth year; in Germany it is fixed for the future at the completion of the thirteenth year, as it soon will be in France also, in all probability – and in Switzerland at the completion of the fourteenth year.

The proposal of Switzerland at the Berlin Conference to fix the general inferior limit of age at 14 years was not carried. It has hitherto been prevented in Germany by the fact that in Saxony and elsewhere school duties are not exacted to the full extent as late as the age of 14.

The Berlin Conference voted for fixing the limit at the completion of the twelfth year, while agreeing that the limit of 10 years might be fixed in southern countries in view of the early attainment of maturity in hot climates. The limit is fixed higher with regard to protection in certain specified dangerous or injurious occupations: for boys engaged in coal mines the limit of 14 years was laid down by the resolutions of the Berlin Conference.[7]

The superior limit of age of juvenile labour in factories is fixed at 14 years in southern countries (in those represented at the Berlin Conference); at 16 years in Germany, Austria, and France (in connection with the fixing of the maximum duration of labour); and at 18 in Great Britain, Switzerland, and Denmark, and probably soon in France. With respect to night work and dangerous work, the superior limit (especially for women) is placed still higher (21 years), wherever such work is not entirely prohibited.

All wage-workers between the inferior and superior limits of age at which employment is permitted, are called, as already stated, "juvenile workers." In many countries a further division of juvenile labour is made, into children and "young persons." In Germany, Austria, Sweden, and Denmark – and in future probably in all those countries represented at the Berlin Conference – this division falls at the age of 14, and in southern countries at the age of 12 years. "Children," in the meaning attached to the word by labour-protective legislation, are children of 12 to 14 years (in Germany in future 13 to 14, in Great Britain hitherto 10 to 14); "young persons" are juvenile workers from 14 to 16 years, in England of 14 to 18 years. In Switzerland juvenile workers are "young persons" of 14 to 18 years, as none under the age of 14 are employed at all.

Male labour and female labour. Women for the purposes of Labour Protection include all female workers enjoying special or extended protection, not only on account of youth, but also from considerations arising out of their sex and family duties. It is important that we should be clear on this point, in view of the demand now made for careful restriction of the employment of married women in factories, – either for the entire duration of married life or until the youngest child has reached the age of 14, – for the entire prohibition of night labour for women, and of the employment of women in certain trades during the periods of lying-in and of pregnancy.

Just as female labour for our purpose does not mean the labour of all female persons, so male labour does not include all labour of male persons, but only of such male persons as have protection on grounds other than that of youth. Hitherto, male labour has only had practically a negative meaning in protective law, it has been used in the sense of the unprotected labour of adult men. The demand for a maximum working day for all male labourers – at least in factories – and the concession of

[7] *I*, *Ia* and 6, Resolutions of the Berlin Conference: "It is desirable that the inferior limit of age, at which children may be admitted to work underground in mines, be gradually raised to 14 years, as experience may prove the possibility of such a course; that for southern countries the limit may be 12 years, and that the employment underground of persons of the female sex be forbidden."

this demand have given a positive signification to the term male labour, as affected by protective legislation.

In considering the careful determination of the meaning of factory labour, workshop labour, household industry and family labour on the one hand, and child labour and female labour on the other hand, we cannot be too careful in guarding against undue limitations of the idea of Labour Protection. There are many who still take it to mean merely factory-protection, and indeed only factory-protection of “young persons.”

Labour Protection means something more than protection of industrial labour, in that it also deals with labour in mining and trading industry, and it must be extended still further to meet existing needs for protection.

Neither is industrial Labour Protection factory protection alone, nor even factory and quasi-factory protection alone, but beyond that it is also workshop protection, and, especially in its latest developments, protection of household industry, and perhaps even more or less of family industry; industrial home-work especially, from the Erz-Gebirge in Saxony, to the London sweating dens, admits of and actually suffers, from an amount of oppression which calls for special Labour Protection. We call attention to these facts in order to clear away certain still widespread misconceptions before we enter upon the classification of labour with respect to protective legislation. Particulars will be given in Chapters IV. to VIII.

CHAPTER III.
SURVEY OF THE EXISTING CONDITIONS OF LABOUR PROTECTION

In the first chapter we learnt to recognise the special character of Labour Protection in the strict sense of the term. We must further learn what is its actual aim and scope.

Labour Protection strictly so called, represents presumably the sum total of all those special measures of protection, which exist side by side with free self-help and mutual help, and with the ordinary state protection extended to all citizens, and to labourers among the rest. And such it really proves to be on examination of the present conditions and already observable tendencies of Labour Protection.

We shall only arrive at a clear and exhaustive theory and policy of Labour Protection both as a whole and in detail by examining separately and collectively all the phenomena of Labour Protection.

This will necessitate in the first place a comprehensive survey of the existing conditions of Labour Protection, and to this end a regular arrangement of the different forms which it takes.

In sketching such a survey we have to make a threefold division of the subject; first, the *scope* of Labour Protection, in the strict sense of the term; secondly, the various *legislative methods* of Labour Protection; and thirdly, the *organisation* of Labour Protection (as regards courts of administration, and their methods and course of procedure). In considering the scope of Labour Protection we have to examine the special measures adopted to meet the several dangers to which industrial wage-labour is exposed.

The following survey shows the actual field of labour protective legislation, as well as the wider extension which it is sought to give thereto.

I. Scope of Labour Protection

A. Protection against material dangers.

1. Protection of employment; and this of two kinds, viz.: —

(i.) Restriction of employment;

(ii.) Prohibition of employment.

a. Protection of working-time with regard to the maximum duration of labour:

General maximum working-day.

Factory maximum working-day (unrestricted in the case of adults – restricted in the case of “juvenile workers” and women).

b. Protection of intervals of rest:

Protection of daily intervals – of night-work – of holidays – Sundays and festivals.

2. Protection during work:

Against dangers to life, health, and morals, and against neglect of teaching and instruction, incurred in course of work.

3. Protection in personal intercourse: —

In the personal and industrial relations existing between the dependent worker and the employer and his people (truck-protection).

B. Protection of the status of the workman (protection in the making and fulfilment of agreements) which may also be called:

Protection of agreement, or contract-protection.

1. Protection on entering into agreements of service, and throughout the duration of the contract:

Protection in terms of agreement and dismissal,
Protection against loss of character.

2. Regulation of admissible conditions of contract, and of legal extensions of contract.

3. Protection in the fulfilment of conditions after the completion of service agreements.

II. Various Legislative Methods of Labour Protection

Compulsory legal protection – protection by the optional adoption of regulations.
Regulation under the code – regulation by special enactment.

III. Organisation of Labour Protection

1. Courts by which it is administered:
A. Protection by the ordinary administrative bodies —

Police,
Magistrates,
Church and School authorities,
Military and Naval authorities.

B. Protection by specially constituted bodies,

1. Governmental:
a. Administrative:
Industrial Inspectorates (including mining experts),
“Labour-Boards,”
Special organs: local, district, provincial, and imperial;
b. Judicial:
Judicial Courts,
Courts of Arbitration.

2. Representative: (trade-organisations):

“Labour-Chambers,”
“Labour Councillors,”
Councils composed of the oldest representatives of the trade,
Labour-councils: local, district, provincial, and imperial.

II. Methods of Administration and Administrative Records

a. Methods:

Hearing of Special Appeals,
Granting periods of exemption,
Fixing of times,
Regulating of fines,

Application of money collected in fines, etc.

b. Records:

Factory-regulations,
Certificates of health,
Factory-list of children employed,
Official overtime list,
Labour log-book,
Inspector's report (with compulsory-publication and international exchange),
International collection of statistics and information relating to protective legislation and industrial regulations.

The foregoing survey may be held to contain all that is included under Labour Protection, actual or proposed. But of the measures included within these limits not all are as yet in operation; and the actual conditions are different in the various countries.

With regard to the scope of protection, those measures affecting married women, home-industrial work, work in trade and carrying industries, are still specially incomplete.

With regard to the organs of administration of Labour Protection, one kind, viz. the representative, has at present no existence except in the many proposals and suggestions made as to them; this however does not preclude the possibility that in the course of a generation or so a rich crop of such organs may spring up. It is not improbable that special representative bodies ("labour-councils") – after the pattern of chambers of commerce and railway-boards, etc. – and "labour-boards" may develop and form a complete network over the country. Perhaps the separate representative and executive organs may be able to amalgamate the various branches of aids to labour, forming separate sections for Labour Protection, Labour Insurance, industrial hygiene and statistics, with equal representation of the administrative, judicial, technical and statistical elements; and thus the ordinary administration service may be freed from the burden of the special services which a constructive social policy demands.

Again, the organisation of protection is not by any means the same everywhere.

According to the foregoing classification (III. 1), the duties of carrying out Labour Protection are divided between the ordinary and extraordinary judicial and administrative authorities. The arrangements, however, are very different in different countries. Such countries as have not a complete system of authorised administrative boards and petty courts of justice, will avail themselves more freely of the special organs, particularly of the industrial inspectors, than will those countries with administrative systems like those of Germany and Austria; in comparing the spheres of operation of inspectors in various countries, one must not overlook the differences in the action of the ordinary administrative organs. Moreover, all civilized countries already possess special organs of protection, and it follows in the natural course of development of all administrative organisation, that the special administrative and judicial legislation which is springing up and increasing should possess special judicial and administrative courts, so soon as need for such may arise from the necessity for a wider application of special law in the life of the citizen.

Finally, we must guard against a further misconception. Neither labour-boards nor labour-chambers must be confounded with those voluntary representative class organisations, and joint committees in which both classes meet together for Labour Protection, and for objects quite outside the sphere of Labour Protection. The labour-boards indicated would be special organs of a public nature, regulated by the State; labour-chambers would also be organs recognised and regulated by the State, working in consultation with the labour-boards, and exercising control over the labour-boards. The voluntary organs of association, on the other hand, with their secretaries and joint committees, are free representative, executive, and arbitrative organs of both classes. A distinction must be drawn between the public and voluntary organs. It is of course not impossible in all cases

that the free “labour-chambers,” in their ordinary and special meetings might exercise extraordinary powers, besides acting as regular and general organs of conciliation and arbitration. The Unions and other trade organisations of to-day can in their present form hardly be regarded as the last word in the history of labour organisation.

In the second chapter we had to guard against the error of looking on Labour Protection merely as factory protection, and protection of women and juvenile workers; we must with equal insistence draw attention to the fact that Labour Protection is not confined in its scope to protection of employment, or in its organisation to the machinery of industrial inspection. This will be shown in Chapters IV. to VIII.

The foregoing survey of the existing conditions and tendencies of Labour Protection makes it clear that Labour Protection in scope, legislative methods, and organisation, is only a means of supplementing and supporting in a special manner the already long established forms of State protection of labour (in the widest sense), and the still older forms of non-governmental Labour Protection (in its widest sense) the necessity for which arises from the special modern developments of industry.

Labour Protection equally with compulsory insurance, from which it is however quite distinct, does not preclude the voluntary efforts which are made in addition to legal measures, nor the help rendered by savings-banks, by private liberality and benevolence, by family help, and by various municipal and state charitable institutions; and it does not render unnecessary the exercise of the ordinary administration, and the co-operation of the latter in the work of establishing security of labour. The general impression derived from a study of this survey will be confirmed if we further examine into the scope, legislative methods, and organisation of the separate measures of Labour Protection, in addition to the classification of industrial wage-labour, as dealt with by protective legislation, which I attempted in Chapter II., and if we bear in mind the great differences in the degree of protection extended to the separate classes of protected workers.

CHAPTER IV.
MAXIMUM WORKING-DAY

In considering the question of protection of employment, we must first touch upon the restrictions of employment. These restrictions are directed to granting short periods of intermission of work, *i. e.* to the regulation of hours of rest, of holidays, night-rest and meal-times; also to the regulation of the maximum duration of the daily working-time, inclusive of intervals of rest, *i. e.* to protection of hours of labour.

Protection of times of rest, and protection of working-time, are both based on the same grounds. It is to the interest of the employer to make uninterrupted use of his business establishment and capital, and therefore to force the wage-worker to work for as long a time and with as little intermission as possible. The excessive hours of labour first became an industrial evil through the increasing use of fixed capital, especially with the immense growth of machinery; partly this took the form of all-day and all-night labour, even in cases where this was not technically necessary, and partly of shortening the holiday rest and limiting the daily intervals of rest; but more than all it came through the undue extension of the day's work by the curtailment of leisure hours. Moral influence and custom no longer sufficed to check the treatment of the labourer as a mere part of the machinery, or to prevent the destruction of his family life. A special measure of State protection for the regulation of hours of labour was therefore indispensable.

Protection of the hours of labour is enforced indirectly by regulating the periods of intermission of labour: meal-times, night work, and holidays. But it may be also completed and enforced directly by fixing the limits of the maximum legal duration of working-hours within the astronomical day. This is what we mean by the maximum working-day.

The maximum working-day is computed sometimes directly, sometimes indirectly. Directly, when the same maximum total number of hours is fixed for each day (with the exception it may be of Saturday); indirectly, when the maximum total of working-hours is determined, *i. e.* when a weekly average working-day is appointed.

The latter regulation is in force in England, where 56½ hours are fixed for textile factories (less half an hour for cleaning purposes), and sixty hours (or in some cases fifty-nine hours) for other factories. In Germany and elsewhere the direct appointment of the maximum working-day is more usual: except in the *von Berlepsch* Bill (§ 139*a*, 3) where provision is made for the indirect regulation of the maximum working-day, by the following clause: "exceptions to the maximum working-day for children and young persons may be permitted in spinning houses and factories in which fires must be kept up without intermission, or in which for other reasons connected with the nature of the business day and night work is necessary, and in those factories and workshops the business of which does not admit of the regular division of labour into stated periods, or in which, from the nature of the employment, business is confined to a certain season of the year; but in such cases the work-time shall not exceed 36 hours in the week for children, and 60 hours for young persons (in spinning houses 64, in brick-kilns 69 hours)."

1. *Meaning of maximum working-day in the customary use of the term*

In the existing labour protective legislation, and in the impending demands for Labour Protection, the maximum working-day is variously enforced, regulated and applied. In order to arrive at a clear understanding of the matter it will be necessary to examine the various meanings attached by common use to the term working-day.

Let us take first the different methods of enforcement.

It is enforced either by contract and custom, or by enactment and regulation. Hence a distinction must be drawn between the maximum working-day of contract and the legal (regulated) working-day. Now-a-days when we speak of the maximum working-day we practically have in mind the legal working-day. But it must not be forgotten that the maximum duration of labour has long been regulated by custom and contract in whole branches of industry, and that the maximum working-day of contract has paved the way for the progressive shortening of the legal maximum working-day.

Even the party who are now demanding a general eight hours maximum working-day desire to preserve the right of a still further shortening of hours by contract, generally, or with regard to certain specified branches of industry; the Auer Motion (§ 106) runs thus: "The possibility of fixing a still shorter labour-day shall be left to the voluntary agreement of the contracting parties."

Certainly no objection can be raised to making provision for the maintenance of freedom of contract with regard to shortening the duration of daily labour. The right to demand such freedom in contracting, is, in my opinion, incontrovertible.

Next we come to the various modes of regulating the maximum working-day.

It may either be fixed uniformly for all nations as the regular working-day for all protected labour, or it may be specially regulated for each industry in which wage-labour is protected; or else a regular maximum working-day may be appointed for general application, with special arrangements for certain industries or kinds of occupation. This would give us either a regular national working-day, or a system of special maximum working-days, or a regular general working-day with exceptions for special working days.

The system of special working-days has long since come into operation, although to a more or less limited degree, by the action of custom and contract. The penultimate paragraph of § 120 of the *von Berlepsch* Bill, admits the same system – of course only for hygienic purposes – in the following provision: "The duration of daily work permissible, and the intervals to be granted, shall be prescribed by order of the Bundesrath (Federal Council) in those industries in which the health of the worker would be endangered by a prolonged working-day."

The mixed system would no doubt still obtain even were the regular working-day more generally applied, since there will always be certain industries in which a specially short working-day will be necessary (in smelting houses and the like).

The labour parties of the present day demand the regular legal working-day together with the working-day of voluntary contract.

By maximum working-day we must, as a rule, understand the national and international, uniform, legal, maximum working-day.

Thirdly, we come to the various aspects which the maximum working-day assumes according to whether it is given a general or only a limited sphere of application. In considering its application we have to decide whether or not its protection shall be extended to all branches and all kinds of business, and degrees of danger in protected industry, and further, whether, however widely extended, it shall apply within each industrial division so protected to the whole body of labourers, or only to the women and juvenile workers.

The maximum working-day is thus the "general working-day" when applied to all industries without exception. When this is not the case, it is the restricted working-day, which may also be called the factory maximum working-day, as it really obtains only in factory and quasi-factory labour. The term factory working-day is further limited in its application in cases where its protection extends, not to all the labourers in the factory, but to the women and juvenile workers only, or to only one of these classes. Hence a distinction must be drawn between the factory working-day for women and children, and the maximum factory working-day extended also to men. We shall therefore not be wrong in speaking of this as the working-day of women and juvenile workers, nor shall we be putting any force on the customary usage, if by factory working-day we understand the working day prescribed to all labourers in a factory.

We shall find a further limitation of the meaning in considering the aim of the protection afforded, for in certain cases the maximum working-day, even when extended to all labourers employed in a factory, is restricted to such occupations in the factory as are dangerous to health. In such cases, it might be designated perhaps the hygienic working-day.

The maximum working-day, in the sense of the furthest reaching and therefore most hotly contested demands for regulation of time, means the uniform maximum working-day, fixed by legislation nationally, or even internationally, and not the maximum working-day of factory labour merely, or of female and child-labour in factories, nor the hygienic working day. This working-day is authoritatively fixed – provisionally at 10 hours, then at 9 hours, and finally at 8 hours – as the daily maximum duration of working-time, in the Auer Motion (§ 106 and 106*a*, cf. § 130). Section 106 (paragraphs 1 to 3) runs thus: "In all business enterprises which come within this Act (Imperial Industrial Code), the working-time of all wage-labourers above the age of 16 years shall be fixed at 10 hours at the most on working-days, at 8 hours at the most on Saturday, and on the eve of great festivals, exclusive of intervals of rest. From January 1st, 1894, the highest permissible limit of working time shall be fixed at 9 hours daily, and from January 1st, 1898, at 8 hours daily." According to the same section, the 8 hours day shall be at once enforced for labourers underground, and the time of going in to work and coming out from work shall be included in the working-day. "Daily work shall begin in summer not earlier than 6 o'clock, in winter not earlier than 7 o'clock, and at the latest shall end at 7 o'clock in the evening."

We have still two important points to consider before we arrive at the exact meaning of the general maximum working-day. The first point touches the difference between those employments in which severe and continuous labour for the whole working-time is required, and those in which a greater or less proportion of the time is spent by the workman in waiting for the moment to come when his intervention is required. The second point touches the inclusion or non-inclusion, in the working day, of other outside occupation, of home-work, or of non-industrial work of any kind, besides work undertaken in some one particular industrial establishment. With regard to the first point, the question may fairly be raised whether in industries in which a large proportion of time is spent in waiting unoccupied, the maximum working-day is to be fixed as low as in those industries in which the work proceeds without intermission. And it is a question of material importance in the practical application of the maximum working day whether or not work at home, or in another business, or in sales-rooms, or employment in non-industrial occupations, should or should not be allowed in the normal working-day.

The labour-protective legislation hitherto in force has been able to disregard both these points, for with the exception of the English Shop Regulations Act (1886) it hardly affected other occupations than those in which work is carried on without intermission. But there are points that cannot be neglected when the question arises of a general maximum working-day for all industrial labour, or all industrial wage-service alike – as in the Labour agitation now rife in the country.

The Auer Motion, for instance, ought to have dealt with both these questions in a definite manner; but it did not do this. With regard to those occupations in which a large proportion of the time is spent in merely waiting, *e. g.* in small shops, public-houses, and in carrying industries, there is no proposal to fix a special maximum working-day, except perhaps in the English Shop Regulations Act (12 instead of 10 hours for young persons). With regard to outside work, the Auer Motion does not determine what may be strictly included within the eight hours day. The question is this: is the maximum working-day to be imposed on the employer alone, to prevent him from exacting more than eight or ten hours work, or on the employed also, to prevent him from carrying on any outside work, even if it is his own wish to work longer; the more we cut down the general working-day, the more important it will become to have a limit of time which will affect not only the employer but also the employed, as otherwise the latter might, by his outside work, be only intensifying the evils of competition for his fellow-workers. The Auer Motion (§ 106) only demands the eight hours day

for separate business enterprises; therefore, according to the strict wording, there is nothing to hinder the workman from working unrestrainedly beyond the eight hours in a second business enterprise of the same kind, or in any industry of another kind, in which he is skilled, or in non-industrial labour, and thus being able to compete with other workmen. Does this agree in principle with the maximum working-day of Social Democracy? Is this an oversight, or a practically very important “departure from principle”? We are not in a position to fully clear up or further elucidate these two points. For the present we may assume that the action of the Labour parties was well calculated in both these respects, viz. in neglecting to draw a distinction between continuous and intermittent labour, and in excluding outside labour from the operation of the eight hours working-day.

Lastly, in accurately defining the meaning of the term we must not overlook the fact that neither in respect to aim nor to operation the maximum working-day is confined to the question of mere Labour Protection. It has no exclusively protective significance.

Конец ознакомительного фрагмента.