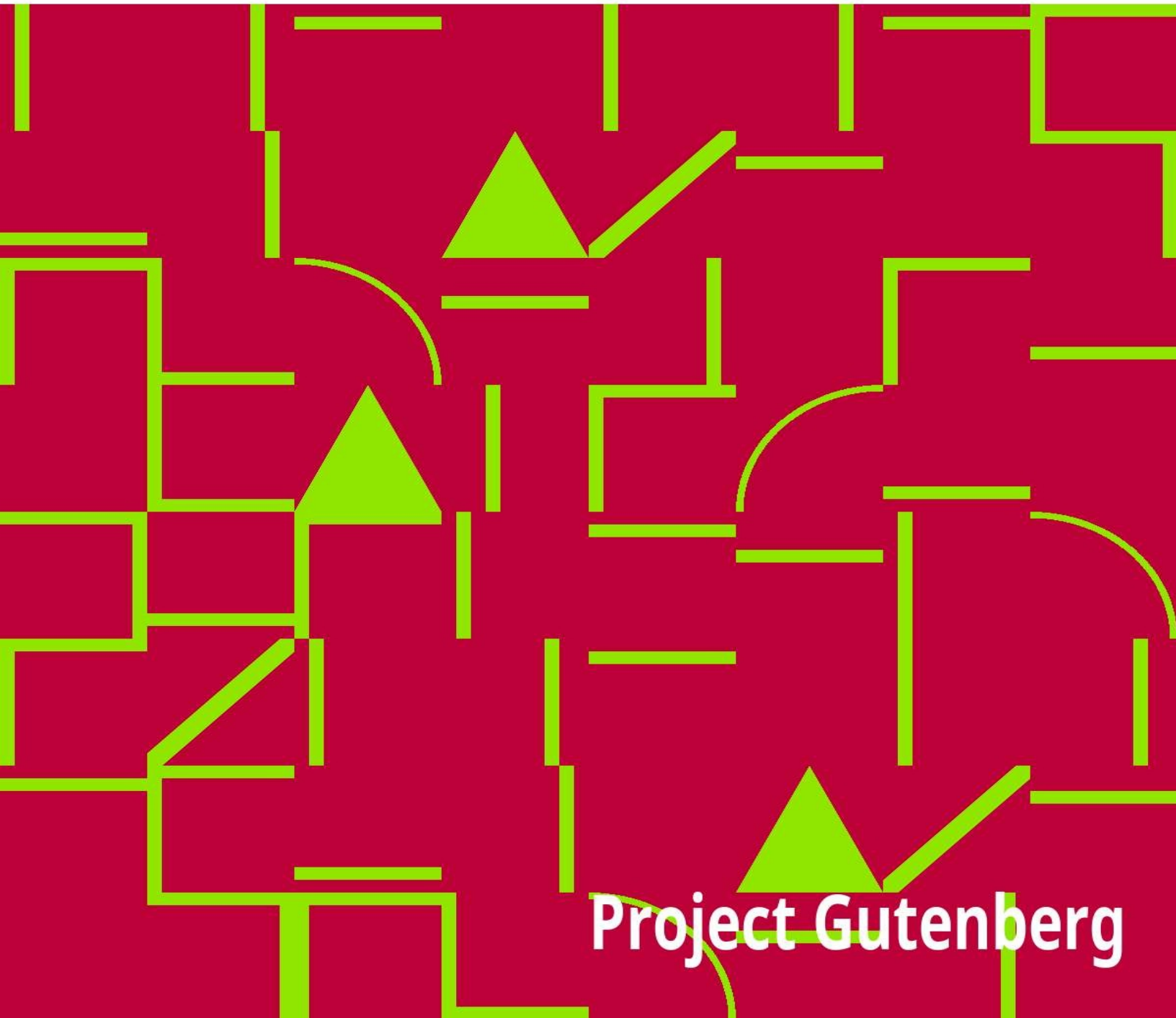
The Theory and Policy of Labour Protection

etc. statutes Germany. Laws et al.



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THE
THEORY AND POLICY
OF
LABOUR PROTECTION
BY
DR. A. SCHÄFFLE

EDITED BY

A. C. MORANT

Translator of Schäffle's IMPOSSIBILITY OF SOCIAL DEMOCRACY, *Leroy-Beaulieu's* THE MODERN STATE, *Laveleye's* LUXURY, *etc.*

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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.

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THEORY AND POLICY OF

LABOUR PROTECTION.

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.

FOOTNOTE:

[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 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).

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.”

FOOTNOTES:

[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.

[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.

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.

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.

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 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.

FOOTNOTES:

[5] Bill, Art. 6 (new § 154).

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

[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.”

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.

It is true that the hygienic factory day, the factory day for women and juvenile workers, and the factory day for men, are wholly or mainly maximum working-days appointed for purposes of State protection, but the maximum working-day may also serve to other ends apart from or in addition to this. In the general eight hours day, for instance, the economic aspect is of equal importance with the protective aspect of the question. Under the socialistic system of national industry, where there would no longer be any question of protection in service-relations, the maximum working-day, together with the possibly more important minimum working-day, directed against the idle, would serve to other important ends; it would, for instance, give more leisure for the so-called general mental cultivation of the people and would prevent new inequalities.

We will consider in the first place the purely protective aspect of the maximum working-day of the present, then the mixed protective and economic aspect of the general maximum working-day.

2. *The maximum working-days of protective legislation: the hygienic working-day, the working-day of women and children, the extended factory working-day.*

And first the *hygienic working-day*.

This is imposed on certain occupations and businesses on account of the dangers to health arising out of the work, and on account of the strength required in the work.

It is no longer opposed by any party. It is fully dealt with in the *von Berlepsch* Bill in the above-mentioned provision of the penultimate paragraph of § 120*a*.

By the insertion of this provision in Section I. of Chapter VII. of the Imperial Industrial Code, the hygienic maximum working-day may be extended by order of the Bundesrath (Federal Council) over the whole sphere of industrial labour, not merely of factory and quasi-factory labour. The Berlin Conference (resolutions 1, 2) demands the hygienic maximum working-day for mining industries.

It is hardly necessary to prove that the hygienic maximum working-day cannot be obtained merely by the efforts of the workers in self-protection or by the general good-will of the united employers, without general enforcement by enactment or regulation. Some employers are unwilling even to maintain the shortening of the normal working-day necessary to health, others who would be willing are prevented by competition so long as the hygienic working-day is not enforced generally and uniformly by enactment or regulation throughout that particular branch of industry. The extension of the hygienic maximum working-day to all occupations dangerous to health throughout the whole sphere of industrial labour, is justified as a necessary measure of Labour Protection.

No nation will suffer in the long run from the full extension of the hygienic working-day. It is probable that the governments will advance side by side in this direction.

The factory working-day for women and juvenile workers.

This has long been enforced. The distress which brought it under the notice of the English legislature has justified it for all time. It is now scarcely contested.

Without special intervention of the State, the considerate employer is not able to grant the ten hours limit, even to women and juvenile workers, on account of his unscrupulous competitors.

Its enforcement with the help of a factory list offers no difficulties.

The grounds for demanding a maximum working-day for juvenile workers are so evident that they need not here be indicated. We may, however, remark in passing that this working-day is economically of no great importance in view of the small number of juvenile workers. In the year 1888, Germany employed in factory and quasi-factory labour 22,913 children (14,730 boys, 8,175 girls)

169,252 young persons (109,788 males, 59,464 females); children and young persons together making a total of 192,165 (124,526 males, 67,639 females). The textile industries alone engaged 17.8 per cent. of the male, and 47 per cent. of the female child-labour, that being the industry which also employs the largest number of female workers.

The maximum working-day for female labour is necessary for all women workers and not merely for married women, and in England it has long been enforced. In the case of girls, work for eleven or twelve hours is highly undesirable from the point of view of family life. “Experience proves,” says a Prussian inspector, “that girls so employed never become good housewives, and that women so employed can never fulfil their maternal duties, and on this account many well-meaning employers will not employ married women after the birth of the first child. The evil result of this appears more plainly the greater the number of women workers; and its bad influence on married life and on the education of children in workmen’s families is very evident and makes itself felt in other spheres of life. Isolated schools of housewifery and working-women’s homes are insufficient to meet the evil, especially as the extension of textile industries and therewith the increase in the number of women employed has by no means reached its highest point.” The more impossible it is to dispense entirely with female labour, the more imperative does it appear to secure to all women workers, at least, the maximum working-day, at best the 10 hours working-day (with 6 hours on Saturday) long enforced in England.

The factory day of 6 hours for children and 10 hours for young persons has already been enforced by the Industrial Regulations in Germany. Its extension to all female workers is one of the most important steps proposed by the *von Berlepsch* Bill. At present the proposal is for an 11 hours day, but the Reichstag Commission ought to succeed in placing the limit at 10 hours.[8]

The Resolutions of the Berlin Conference fix the time at 6 to 10 hours for juvenile workers, and 11 hours for all female workers (III. 6, IV. 2, and V. 2). They further demand that the “protection of a maximum working-day shall be granted to all young men between the ages of 16 and 18.”

The working-day for women and juvenile workers has hitherto been essentially a factory and quasi-factory maximum working day (cf. Bill, § 154). England has, however, in the Shop Hours Regulation Act of June 25, 1886, extended protection to sale-rooms, of course only in favour of juvenile workers, but with strict directions as to outside work. This working-day in commercial business,

amounts on an average to 12 hours in the day (74 in the week, inclusive of meal-times). If the protected person has already in the same day performed 10 hours of factory or workshop labour, only 12 hours less 10 of shopwork are permitted; when the time occupied in outside work amounts to the full workshop and factory maximum working-day, additional occupation in the shop is prohibited. The Act does not apply to those shops in which the only persons employed are members of the family dwelling in the house or are family connexions of the employer. Such intervention in respect of household industry has already been begun but has not yet gone very far.

The general extension of the maximum working-day for women and juvenile workers to all industries, including family industries, has been demanded,[9] but is as yet nowhere enforced.

The specially short working-day for children necessitates alternating shifts, as child labour, as a rule, is inseparably connected with other work. English protective legislation directs in this case that children (from 10 to 14 years) may be employed in one and the same place only for half a day, either for the morning or the afternoon, or else on every alternate day, for the full day; and the order of working-days must be changed every week; in daily (half-day) employment, the actual working time (without intervals of rest) amounts to 6 hours daily, and 30 to 36 hours weekly, in other cases 10 hours daily and 30 hours weekly.

The factory working-day (in the strict sense): factory working-day for adult males.

The extension of protection of hours of labour to adults in factory and quasi-factory labour, by the so-called factory working-day (in the strict sense) has already begun to make way in some countries.

In France it was enforced as long ago as by the Act of Sept. 9, 1848 (Art. I.), in which the limit was still fixed at 12 hours; in Switzerland the limit was fixed at 11 hours by Art. II. of the Confederate Factory Act of 1877; and in Austria by the Act of Mar. 8, 1885. Other countries have not hitherto adopted it. Great Britain and other countries still hesitate to interfere in this way with the freedom of contract for adults. Switzerland, on the other hand, is ready to reduce the hours from 11 to 10, but whether Austria is prepared to do so much is doubtful.

Germany also in the *von Berlepsch* Bill has entered a protest against the extreme length of the factory working-day. Here the course has been strongly urged,

sometimes of adopting an 11 hours, sometimes a 10 hours day, meaning always the time of actual work, without reckoning intervals of rest. In the discussion on the Imperial Industrial Regulations of 1869, Brauchitsch demanded a 12 hours factory day from the Conservative benches, and Schweitzer for all large industries a 10 hours day (*i.e.* a 12 hours day, with intervals of rest amounting to not less than 2 hours).

The necessity for the limitation of the working-day of male adult labourers to 11 or 10 hours, rests partly upon the same grounds as that of the working-day for women and young persons. Hours of leisure, besides the hours of night rest, are a necessity for men also, in order that they may be able to live really human lives. Above all they ought to be able to devote a few hours every day to their family, to social intercourse, self-culture, and their duties as citizens. The economic expediency of the restriction of working hours has been proved by experience. The amount of work executed in the factories has been in no way lessened by the adoption of the 10 hours day for women and children, and moreover in England, wherever the 10 and 11 hours day for men has been adopted without legal enactment, it has proved to be a beneficial measure; this has also been the case in the Alsatian cotton factories.[10] The factory inspectors in Switzerland unanimously report the favourable effect of the 11 hours day on the amount of work executed; and the same thing on the whole may be asserted of Austria.

In Switzerland the proposal that permission for overtime work should be obtainable from the magistrates was several times rejected, “because the employers soon perceived that the increased production scarcely covered the increased expense of light and heating, and that the work was carried on with less energy on the days following overtime work than when the 11 hours day was adhered to.” It is evident that there the 11 hours day is not considered too short. In general the employers in Switzerland very soon declared themselves satisfied with the 11 hours day; the workmen consider it a great benefit, and it has not led to the greater frequenting of public-houses. The adoption of a maximum working-day in Switzerland has put a stop to the practice on the part of manufacturers of taking away their competitor’s orders and executing them by means of overtime work, so that amongst industrial managers also, the tide is beginning to turn against too frequent indulgence in overtime work.

In Saxony even, an examination into the advantages of the maximum working-day shows “that the manufacturers themselves” (see General Report for 1888 of the district inspector at Zwickau), “are opposed to the long protraction of hours of labour; but every employer hesitates to be the first to shorten the hours, fearing lest he should find too few imitators, and be thereby thrown out of competition.” The legal factory working-day removes this fear.

Of course we have no experience to show that the further shortening of the day to less than 10 hours would allow of the execution of as much or more work than

has hitherto been executed in more than 10 or 11 hours. There is a limit to the possible increase of efficiency in machines and in hand-labour, and in the two together. Labour Protection has neither the intention nor the right to prohibit any labour that is not too long to be physically and morally permissible.

At present there seems no necessity from the protective point of view for more than an 11 or 12 hours day as a rule, with special hygienic working-days of less than 10 hours, together with unrestricted freedom of contract in regulating the hours of work below this limit.

Above the limit of 10 or 11 hours the lengthening of labour time seems to diminish rather than to increase its aggregate productivity, and this explains why the 11 and 10 hours day, without any intervention from the State, has been so generally and successfully adopted by custom and contract. It is the general experience, as the Düsseldorf inspector notes in his report, that “those works in which the smallest amount of labour is performed, have as a rule the longest hours of labour; all attempts to increase the amount of labour at favourable periods of the market, by offering higher wages, whilst at the same time maintaining the long hours, have only attained a short-lived success, or have altogether failed; the same result is produced when in certain occupations the usually short hours of labour are prolonged in order to profit by the opportunity of a good market; it is only for the first few days that the increase in the amount of work executed corresponds to the increase in the hours of work, and the old level is quickly resumed; on the other hand, it is frequently affirmed by the managers that the capacity for work of our labourers is in no wise inferior to that of the English.”[11]

The legal 11 or 10 hours day would not be justified if custom and freedom of contract were sufficient to adjust the true proportions of working time. This however is not the case, and the legal working-day is therefore necessary in order to supplement the work of free self-protection.

With regard to the voluntary adjustment of the duration of the working-day, we find that the 10 and 11 hours day already prevails in a large proportion of the German industries: as in Bremen, whence according to the factory report, only 33.8 per cent. of the adult labourers work beyond 10 hours, and only 3.8 per cent. beyond 11 hours, and in Berlin, where in 3,070 firms, 71,465 male labourers work for 10 hours and less; and the same is reported by other district inspectors. But side by side with this we find a longer and frequently a decidedly too long working-day, and nowhere does every firm adhere to the 10 or 11 hours

day. Even in the Lower Rhine Provinces the 12 hours working-day is in force in the smelting houses (Hitze). In Saxony the same number of hours obtains, as a rule, in textile industries, although many manufacturers would prefer the 10 hours day, if all competitors would adopt it. In Bavaria and Baden the 11 to 12 hours working-day prevails widely. In certain separate kinds of work, as in mills and brick kilns, the working hours are even longer.

The advisability of fixing the legal factory day at 10 or 11 hours is not to be disputed. It is just where the 10 or 11 hours day has not been secured by custom that, as a rule, the workmen and such managers as are willing are least in a position to extort it by way of self-help from other competing employers. And where custom has already led to the general adoption of the 10 to 11 hours working-day, it seems quite permissible to enforce it on such firms as have not adopted it.

It is no sufficient argument against the introduction of the extended compulsory factory working-day, to say that the adoption of the working-day for women and young persons would necessarily entail the adoption of the working-day for men without recourse to legal enforcement, since men could not be employed beyond the specified number of hours, while this was forbidden in the case of women and young persons employed in the same business. As a matter of fact, the larger proportion of trades are carried on entirely, or mainly, by male workers, though there may be a certain amount of purely accessory work performed by women and young persons. Hence the adoption of the limited factory working-day (*i.e.* for women and children) by no means necessarily or uniformly entails its general adoption. Even in England this has not been the case generally, and although we find that the maximum working-day for men very largely obtains without legal enactment, this has not been the result of the adoption of the legal working-day for women and juvenile workers, but has been won by the healthy struggle of the trades' unions for the maximum working-day fixed by contract.

Now the question arises whether the 11 or the 12 hours day is to be chosen, and whether the adoption of the factory working-day should be proceeded with in Germany without its being adopted at the same time by England and Belgium.

Several of the German States have recently introduced the 10 hours working-day in their government works. This would point to a preference for the 10 hours day. The proposal made by Switzerland at the Conference for the adoption of this lower limit rests partly on the ground of its agreement with the duration of the 10 hours day for women and juvenile workers.

But here some caution is necessary. Private enterprise is not so free from the dangers of competition as government enterprise; whilst Germany might very well do with the 11 hours day since Switzerland and Austria have been able to introduce it without harmful results.

The adoption of the compulsory 10 hours day might be ventured on without hesitation, if once we had accurate international statistics as to whether the different countries have already adopted the 10 hours day; and, if so, for which branches of industry. We should then be able to see the extent of the risk as a whole and in detail. Was not this very matter, the ascertainment of the customary maximum duration of working hours in separate branches of industry, pointed to as of immediate importance in the resolutions agreed to at the Berlin Conference on the drawing up of international statistics on Labour Protection? The general adoption of the 10 hours day would certainly be hastened by these means. Each country would then be sure of its ground in taking separate proceedings.

German labour protective policy cannot be reproached with want of caution, seeing that it has made no demand in the *von Berlepsch* Bill for the extended factory day, but only for an 11 hours working-day for women.

Lastly, the question arises whether the maximum working-day under consideration can, or shall, be extended beyond factory and quasi-factory labour. Such extension has not as yet taken place.

Should such extension ensue, the limits of duration could hardly be fixed so low for intermittent work, and for less laborious work (both are found in trading industry and in traffic and transport business), as for factory labour and the business of workshops where power machinery is used. England, which is apparently the only country which regulates the hours of young persons even in trade, has adopted for them a 12 hours working-day.

Further examination plainly shows that a simple uniform regulation would be impossible in view of the extraordinary variety of non-continuous and non-industrial occupations and handicrafts.

But in general it cannot be disputed that the need for regulation may also exist in trading and in handicrafts, *e.g.* in bakeries (not machine-worked) no less than in household industry. Here we often find that the working hours are of longer duration than in factories and workshops. In Berlin, figures have been obtained showing the percentage of firms in which the working-day is more than 11 hours; and the percentage of female and of male workers employed for more

than 11 hours.

	Number of Firms.	Of Male Workers.	Of Female Workers.
In wholesale business	4.31	3.51	4.46
In handicraft	18.85	15.52	6.09
In trade	64.77	54.94	—

The necessity for extending protection beyond the factories cannot be lightly set aside; in trade, excessive hours of labour are exacted from workers not belonging to the family, and in continuous and intermittent employments, and in household industry they are probably exacted from the relatives. The same thing occurs in handicrafts. It is not impossible for the matter to be taken in hand; but at present it meets with many difficulties and much opposition. Only the factory and quasi-factory maximum working-day for adults belong to the immediate present.

3. *The maximum working-day of protective policy and of wage policy; general maximum working-day; eight hours movement.*

The general maximum working-day of 8 hours, as demanded since May 1st, 1890, rests admittedly on grounds, not merely of protective policy, but also of wage-policy.

In so far as it is demanded on grounds of protective policy, it would call for little remark. The only question would be, whether on grounds of protective policy the maximum working-day is an equal necessity for all industrial work, and whether this necessity must really be met by fixing 8 hours, and not 11 or 10 hours, as the limits of daily work, a question which, in my opinion, can only be answered in the negative.

The new and special feature which comes to the fore in the demand for the general eight hours day, is the impress which (its advocates claim) will be made by it on the wages question, and this in the interests of the wage-labourer. The universality and the shortness of the maximum working-day would lead, they say, to an artificial diminution of the product of labour.

This second side of the question of the eight hours day, which touches on wages, does not properly speaking come within the scope of a treatise on the Theory and Policy of Labour Protection. We must not, however, omit it here, for the demand

for such a working-day is very seriously confused in the public mind with the purely protective maximum working-day, whereas the two must be clearly distinguished from each other. By discussing and examining the general eight hours day, it must be shown how important an advance it is upon the factory 10 hours day; and it must be shown that the favour with which the factory 10 hours day is to be regarded on grounds of protective policy, need not extend necessarily to the general eight hours day; the one may be supported, the other rejected; protective policy is pledged to the one, but not to the other. From this standpoint we enter upon a consideration of the eight hours day.

The demand is formulated in the most comprehensive manner in the Auer Motion. What is it, according to this demand, that strictly speaking constitutes the general eight hours day, implying two other "eights," eight hours sleep and eight hours recreation? If we are not mistaken in the interpretation of the wording of the demand already given, the "general working-day" means eight hours work for the whole body of industrial wage-labour, admitting of specially regulated extension to agricultural industry and forestry.

The Motion demands the eight hours time uniformly for all civilised nations; without regard to the degrees of severity of different occupations, and the degrees of working energy shown by different nationalities; and without permission of overtime in the case of extraordinary—either regular (seasonal) or irregular—pressure of work.

The Motion demands the eight hours maximum duration without regard to the question whether the performance of labour is continuous or not, hence without exclusion of the intermittent employments which are specially difficult of control.

Moreover, in all probability, the mere preparatory work, which plays so important a part in industrial service, in trade, and in the business of traffic and transport, will be dealt with in the same manner as continuous effective labour. At least we find no indication of the manner in which preparatory work is to be dealt with as distinguished from effective labour.

It does not appear in the text, but it is probably the intention of the Auer Motion to apply the limitation of eight hours not only to work in the same business, but to industrial work in different coordinated businesses, to the principal industry and to the subsidiary industries.

Yet, as we have already noticed, we find no definite information on this point,

nor on the manner of enforcing the eight hours day; nor as to whether it is to be an international measure enforced by international enactment; nor yet as to whether it is to be adopted only by the countries of old civilization, or also by the young nations of the new world, and the countries of cheap labour in the South, and in Eastern Asia.

On the other hand, the *object* of the general working-day is fully and clearly explained. It aims not only at fixing the time of rest for at least eight hours daily, nor merely fixing the time of recreation (pleasure, social intercourse, instruction, culture) for other eight hours; but it also aims at an increase of wage per hour, or at any rate at providing a larger number of workmen with full daily work by diminishing the product of labour.

In judging of the merits of the eight hours day, one must lay aside all prejudices and misconceptions. Hence we repeat that the hygienic working-day may be admissible, even though fixed below eight hours. We repeat, moreover, that the maximum working-day fixed by contract is not to be opposed, even though it fall to eight hours, or below eight hours, at first in isolated cases, but by degrees generally. We also say that it is not impossible that certain nationalities, or all nationalities, should some day attain to such a degree of energy and zeal for work, as would justify the eight hours limit almost universally, and render it economically admissible, as is already the case in certain kinds of work. We are only concerned here with the general legal eight hours day (not with the merely hygienic working-day of eight hours) to be legally enforced on January 1st, 1898, or within some reasonable limit of time.

A few objections are advanced against the eight hours day, the importance of which cannot be overlooked.

The maximum working-day applied only to industrial labour lacks completeness, it is said; all work, even in agriculture and in public business, should be limited to eight hours, if the general maximum working-day is to become a reality. The Social Democrats would, perhaps, meet this objection by further motions.

The general eight hours day is not quashed by the assertion that the united nationalities, or the bodies of labourers of different nationalities would never agree upon the matter. This is, indeed, possible, even very probable; but it remains to be proved what may be effected by international labour-agitation in an age of universal suffrages and of world congresses, and especially in England, which has already become so really democratic; an advance made by this

country towards a reasonable experiment would be decisive. The possibility of attaining a sufficiently uniform, shortened, international working-day will always be conceivable. Moreover, the imposition of protective duties on the nations that hold back is held in reserve as a means towards the equalisation of social policy.

More important are those objections which are raised on grounds of protective policy against the eight hours day, not on account of its shortness, but of its universality. It is affirmed that it is unnecessary and could not be carried out without intolerable chicanery.

I am also inclined to think that the necessity for a maximum working-day, on grounds of protective policy, does not extend much beyond factory and quasi-factory labour (cf. Chaps. V. to VIII.), many wage-workers finding sufficient protection in the force of public opinion, in moral influence and custom.

The universalisation of the measure, it must be admitted, greatly increases the difficulties of carrying it out successfully, especially in non-continuous employments, in subsidiary and combined industries. It would be difficult to carry it out without an amount of espionage and control, intolerable, perhaps, to the sense of individual liberty in the most diligent workers. The supporters of the eight hours day cannot meet this objection by replying that under a real "government by the people," the whole measure would be practicable, and the demand for it intelligible; for this is an attempt to thrust forward a proof having no application to the policy of the present, which has to deal with existing conditions of society; and it unwarrantably assumes that the practicability of a "government by the people" has already been proved.

The supporter of the general legal eight hours day will be more successful in meeting the above objection if he maintains that the importance of so complete a universalization and so great a shortening of the maximum working-day, from the point of view of the wages question, more than outweighs any doubt as to the necessity of the measure on grounds of protective policy, or as to the practicability of carrying it out.

The decision for or against the general legal eight hours day lies therefore in the answer to these two questions: whether the cherished hope as to its effect on wages rests on a sure foundation, and whether the State is justified in so wide an exercise of power in the interests of one class in the present generation.

With regard to the first question, no very strong probability of success has been

shown, to say nothing of certainty.

We need only look at the practical aspect of the matter. By the legal enforcement of a sudden and general shortening of the industrial national working-time, by 20 to 30 per cent. of the working-time of hitherto, higher wages are to be obtained for less work, or at least room is to be given for the actual employment of the whole working force at the present rate of wage!

How would an increase of wage, or even the maintenance (and that a continuous one) of the present rate be conceivable in view of a sudden general reduction of working-time by 20 to 30 per cent.? Only, indeed, either by reduction of profits and interest on the part of the capitalists, corresponding to the increase of wage, or by an increase in the productivity of national industry, resulting from an improvement in technique, and progress in skill and assiduity, or from both together.

Now no one can say exactly what proportion the profits and interest of industrial capitalists bear to the wages of the workmen; if one were to deduct what the mass of small and middle-class employers derive from the work of their assistants (as distinct from what they draw from their capital) the industrial rent —in spite of numbers of enormous incomes—would probably not represent the large sum it is supposed to be. Hence it is very doubtful whether it would be possible to obtain the necessary sum out of profits.

Even if this were possible, it is by no means certain that the wage war between Labour and Capital would succeed in obtaining so great a reduction of industrial profits and interest, still less within any short or even definitely calculated limit of time. Some amount of capital might lie idle, or might pass out of Europe; or again, Capital might conquer to a great extent by means of combination; or it might turn away from its breast the pistol of the maximum working-day by limiting production, *i.e.* by employing fewer labourers than before. It might induce a rise in the price of commodities, which would diminish “real” wages instead of raising them or of leaving them undiminished.

But even if Capital found it necessary in consequence of the legal enforcement of the eight hours day to employ a larger number of workers, it might draw supplies to meet this expense partly out of the countries which had not adopted the eight hours day, partly out of agricultural industry and forestry, and after half a generation, out of the increase in the working population. Capital would also make every effort to accomplish in a shorter time more than hitherto by exacting

closer work and stricter control, and by introducing more and more perfect machinery.

With all these possibilities the eight hours day will not necessarily, suddenly, and in the long run, increase the demand for labour to such a degree that the employer will need to draw upon his interest, profits, and ground rents for a large and general rise of wages, or for the maintenance of the former rate of wage. At least, the contrary is equally possible, and perhaps even highly probable.

Such an increased demand for labour would indeed ensue if the growth of population were to be permanently retarded. But that it should be so retarded is the very last thing to be expected under the conditions supposed, viz. a general increase of “real” wages, which would obviously render it more easy to bring up a family.

Hence the assumption that the eight hours day would lead to an increase of wage, or the maintenance of the present rate of wage at the cost of profits and interest, is not proven; so far from being certain, it is not even probable. Therefore, it cannot serve to justify so violent an interference on the part of the State, as the enforcement of the general legal eight hours’ day on January 1st, 1898. Such an interference would be calculated to bring a terrible disappointment of hopes to the very labourers whom it is intended to benefit.

Just as little can it be justified by the assumption that as much would be produced (hence as high a wage be given) in a shorter working-day, through the improvement of technique, and increased energy in work, as in a working-day of 10 or 12 hours.

The increase in productivity could not be expected with any certainty to be general, uniform, and sudden. The success of the experiment which has been made with the 11 hours day, which prevents such excessive work as is not really productive, cannot be advanced to justify the further assumption that the productivity of labour increases in inverse ratio to the duration of time. The increase of productivity through limiting the duration of work does justify the 10 or 11 hours day of protective policy precisely because the latter evidently stops short at that point beyond which labour begins to be less efficient; we have no grounds for assuming that the same justification exists for the eight hours day demanded in the supposed interests of a wage policy. The increase of productivity through the operation of the eight hours day would be more than

ever unlikely if the abolition of “efficiency” wage in favour of exclusive time wage, which is one measure proposed, were to destroy the inducement to compensate for loss of time by more assiduous work, and if a fall in the profits were to curtail industrial activity.

But even supposing it certain, which it clearly is not, that an increase of productivity would take place sufficient to compensate for the shortening of time, it would still be doubtful whether the effect would be felt in a rise or maintenance of the rate of wage, and not rather in a rise in profit and interest. For the steadily increasing use of machinery, which is assigned as one of the reasons why productivity would remain unimpaired in spite of the shortening of hours, and more especially if this should coincide with a rapid increase of population, would actually lessen the demand for labour, and thus would improve the position of Capital in the Labour market. On this second ground also, we are precluded from supposing that the eight hours day would result in an increase of wages.

But if it be granted that the balance would not be restored, either by pressure upon profits and interest or by increased productivity, it then follows that the wages of labour must necessarily *fall* 20 to 30 per cent. through such a shortening of the working-day. And this, as we have seen, is not at all an unlikely issue.

The absorption of all the unemployed labour force, the industrial “reserve army,” in consequence of the adoption of the eight hours day, is an assumption quite as unproven as the one with which we have been dealing.

This result would not necessarily ensue even in the first generation, since production might be limited, and even if the hopes of increased productivity are not quite vain, it is quite possible that more machinery might be employed without necessarily increasing the number of workmen.

It is still more difficult to determine what in all these respects will be the ultimate effect of the eight hours day. The further increase of the working population—and, *ceteris paribus,* this would be the most probable result of the expected increase in the rate of wage per hour—may produce fresh supplies of superfluous labour; but the eventual fall of wages consequent on a decrease in the productivity of national work would necessarily increase the industrial “reserve army,” through the diminished consumption and the consequent restriction of production to more or less necessary commodities.

If a diminution of national production were really to result from the adoption of the eight hours day, it would affect precisely the least capable bodies of workers, and those engaged in furnishing luxuries, for the demand for luxuries is the first to fall off; and the less capable workers finally become the worst paid because they are able to accomplish less in eight hours. Hence it follows that the uniform, universal, and national eight hours day would have very different results on the labouring bodies of each nation, and on the competing bodies of labourers in separate industrial districts in the same nation. Hence the very uniformity of the national and international maximum working-day of wage policy is a matter which calls up very grave considerations, which, however, we are not in a position to pursue any further in this book.

Even the complete prohibition of overtime work for the sake of meeting the accumulation of business, neither ensures a higher rate of wage per hour, nor a lasting removal and reduction of the superfluous supplies of labour. The very opposite result may ensue, at least, in all such branches of industry as undergo periodical oscillations of activity and depression, through the fluctuation of the particular demand on which they depend. If the effect on wages of the legal eight hours day is extremely doubtful, and the advisability of the measure more than questionable, we come in conclusion to ask very seriously whether the State is justified in enforcing more than the mere working-day of protective policy.

Without doubt the State ought to direct its social policy towards securing at least a minimum rate of wage compatible with a really human existence, as it does by Labour Insurance, for instance. It is a possible, though an extremely unlikely, case to suppose that it might take practical steps to realize the “proportional” or “fair” wage of *Rodbertus* (although since the writings of *von Thünen*, theorists have sought in vain a method of determining this ideal measure), but even so, the practicability of such a course would have first to be demonstrated, and in my opinion this would probably be found to be not demonstrable. But surely it has now been fully shown that it ought not to permit the sudden and general shortening of the working day by 20 to 30 per cent., an experiment the effects of which cannot be foreseen.

The State does not possess this right, either over property or labour. It might affect injuriously the rate of wages of the whole labouring class, or, at least, of such bodies of wage labourers as are employed in the production of such articles as are not actual necessaries of life. The labourer might even have to bear the whole burden, since the rate of wages would suffer by this measure if a fall in national production were brought about without being counterbalanced by a

lowering of the rate of profit and interest. The State has to take into consideration those considerable bodies of wage-labourers who (while keeping within the limits of the maximum working-day of protective policy) would rather work longer than earn less, and it will find it hard to justify to them the experiment of the eight hours day of a wage policy; for this would constitute a very serious restriction of individual liberty for many workers, and those not by any means the least industrious or skilful. Still we need not undertake here to work out the matter decisively from this point of view.

Will, however, the experiment be forced upon us? Who can deny this positively, in face of the irresistibly advancing democratic tendencies of constitutional right in all countries? If it be forced upon us, it may, and most probably will, end in a great disappointment of the hopes of the Labour world.

It is perfectly clear that the decision of the matter rests with England. If this country does not lead the way, if she hesitates to enforce it in the face of the competition of American, Asiatic, and soon, perhaps, of African labour, the experiment of a general eight hours day for the rest of Western Europe is not to be thought of. But in England it is precisely the aristocratic portion of the labouring classes—the “old trades’ unionists,” the skilled labour—that has not not yet been won over to the side of the legal eight hours day, and it is doubtful whether it will yield to the leaders of unskilled labour: Burns, Tillett, and the rest. At the September Congress at Liverpool, in 1890, the Trade Unionist party brought forward in opposition to the general legal eight hours day, the eight hours optional day fixed by contract, in the motion of Patterson, if I have rightly understood the proposal. The motion was defeated by a majority of only eight (181 to 173).[12] If the legal eight hours day is rejected, does that preclude for all time the possibility of shortening the time of labour to less than the 10 or 11 hours factory day at present in force? By no means.

The fundamental error in the general legal working-day as it now stands, lies not in the assumption that it will gradually lead to a further shortening of the working-day, but in the assumption that the legal maximum working-day will bring about suddenly, generally, and uniformly results which in the natural course of economic and social development only the maximum working-day of free contract is calculated to bring about, and this gradually, step by step, tentatively, and by irregular stages; that is to say, that so material a shortening of the maximum working-day cannot possibly be attained to generally by any other means than by the shortening by free contract, here a little and there a little, of the maximum working-day within each industry and each country, and this

equally outside as well as within the limits of factory and quasi-factory business. We may at all events be assured that the substitution of the legal eight hours day for the factory working-day of 10 or 11 hours is *not the next step to be taken*, but rather the further development of the maximum working-day of free contract by means of the continuous wage struggle between the organised forces of Capital and Labour to suit the unequal and varying conditions of place, time, and employment, in the various classes of industry.

There is no objection to be offered to this manner of bringing about the shortening of the working-day. No one has any right or even any fair pretext for opposing it. No one need fear anything from the results of a general working-day introduced by this method, even if it should ultimately develop into the legalised maximum working-day of less than 10 hours.

There is the less reason for fear, as the working classes themselves have the greatest interest in avoiding any step forward which would afterwards have to be retraced; the majority will prefer, within the limits of overwork, additional and more laborious working time with more wages, to additional recreation time and less wages.

Least of all does *Capital* need to look forward with jealousy and suspicion to this visionary eight hours day which may lie in the lap of the future, but which will have come about, only gradually through a series of reductions *by contract* of the working-day, each successive rise of wage and each successive shortening of the working-day having been occasioned by a steady improvement in technique, and a healthy increase of population. The sooner some such movement as this of the eight hours day, fixed by contract, ultimately perhaps by legislation, takes a firm hold, the more striking will be the improvement of technique, the more normal will become the growth of population, and the more peaceful and law-abiding will be the social life of the immediate future. Hence, I think we may contemplate the eight hours movement without agitation, and discuss it impartially, provided of course that the Labour Democracy is not permitted to tear down all constitutional limitations upon its sole and undisputed sway.

The most important contribution that this chapter offers to the Theory and Policy of Labour Protection is then to show that the eight hours day of wage policy may be rejected, and may still be rejected, even if the 10 hours day, demanded on purely State protective grounds, is adopted. The foregoing discussion will show conclusively that there is no question of the State pledging itself to Socialism by the purely protective regulation of the working-day.

Even from the standpoint of Social Democracy, the eight hours day as now demanded is not properly speaking a Socialistic demand at all. It may be that some of the leaders of the movement may seek by its means to weaken and undermine the capitalist system of production, but the demand does not in principle deny the right of private property in the means of production. The general eight hours day is an effort to favourably affect wages on the basis of the existing capitalist order. Not only the 11 hours or 10 hours day, but even the eight hours day would be no index of the triumph of Socialism. It may rather be supposed that the leaders of the movement thrust forward the eight hours day in order to be able to conceal their hand a little longer in the promised fundamental alteration of the "system of production." Therefore, we again repeat, even in face of the proclamation of a general eight hours day made at the "World's Labour Holiday," of May 1st, 1890, "There is no occasion to give the alarm!"

4. *The maximum working-day and the "normal working-day."*

What we understand by the maximum working-day—limitation (whether on grounds of protective policy or of wage policy) of the maximum amount of labour allowed to be performed within the astronomical day, by confining it within a certain specified number of hours—might also be called, and indeed used more frequently to be called, the "normal working-day." It is better, however, not to employ this alternative designation. When the word "normal working-day" is used in a special sense, it means something quite different from the maximum working-day; for it is a unit of social measurement by means of which it is supposed that we can estimate all labour performance however varying, both in personal differences and in differences of kind of work, so that we may arrive at a socially normal valuation of labour, and a socially normal scale of valuation of products. It is an artificial common denominator for the regulation of wages and prices which perhaps may be attained under the capitalist system, but which ultimately points to a socialistic commonwealth. The maximum working-day of protective right might exist side by side with the regulation of a "normal working-day," but it has no essential connection with it.

Hence we might pass by this normal working-day which is wholly unconnected with State protection, but we think it necessary to touch upon it. There still exists a confusion of ideas as to the maximum and "normal" working-days. The meaning of the latter is not formulated and fixed in a generally recognised manner. It is quite conceivable, nay even probable, if the Socialist fermentation among the labouring masses should increase rapidly, that the proposal of a maximum working-day, will take the form of the "normal working-day," and that

in the very worst and wildest development of the idea of normal working-time. This alone affords sufficient reason for our drawing a sharp distinction between the maximum working-day of protective legislation and the "normal working-day," and above all for clearly defining the meaning of the latter.

This is no easy task for several reasons.

The determination of the meaning of "normal working-day" includes two points: what we mean by fixing a normal, and what we should regard as "socially normal," *i.e.* just, fair, proportionate, and so on.

The normal working-day would be a State normalised working-day (as opposed to a restricted working-day) adopted for the purpose of preventing abnormal social and industrial conditions, and as far as possible restoring normal relations. This would be the widest meaning of normal working-day.

The maximum working-days of protective policy, and of wage policy, are, or aim at being, normal working-days in this widest sense. Both are working-days legally normalised for the purpose of obtaining by a development of protective policy, or of protective and wage policy combined, more normal conditions of work. But this does not make it advisable to adopt the alternative designation of normal working-day rather than of maximum working-day. There are several kinds of normal working-days in this wide sense, or at least we can conceive of several; even minimum working-days might be looked upon as normally regulated days. The term might designate the *normal* working-day demanded on political, social, or educational grounds, perhaps even the maximum working-day which would secure to the worker every day leisure for the non-industrial occupations above mentioned; moreover it might designate a minimum normal working-day—almost indispensable under a communistic government—which would compulsorily fix a daily minimum of labour, and thereby ensure production adequate to the normal requirements of the whole community; another normal working-day, in the widest sense of the term, would be such a maximum working-day under a communistic government, as should aim at preventing the diligent from working more and earning more than others, and thereby destroying equality. None of these normal working-days (in the widest sense) concern us now; the existing social order does not require for its just and fair regulation the introduction of such normal working-days, and the *cura posterior* of a socialism or communism which as yet possesses no practical programme is not a theoretically fruitful or practically important matter for discussion, at least not within the limits of this book. The normal working-day

with which we need to concern ourselves here—and the term is still frequently used in this narrower sense, though not universally—is, as already indicated, that normal day which should serve as a general standard of a socially equitable—normal or more normal (compared to the old capitalist regulations)—valuation of the performances of labour, and of the products of labour, as a means of reducing the various individual performances of labour to proportional parts of a "socially normal" aggregate of the labour of the nation, and as a social measure of the cost of labour products, thereby serving as a means to a "socially normal" regulation of prices.

Rodbertus is the writer who has most clearly sketched for us the idea of such a normal working-day. We shall best understand what is meant by it, by listening to this great economic thinker. *Rodbertus* sought for a more normal regulation of wages, within the sphere of the existing social order, by the co-operation of capital and wage labour, giving to the wage labourer as to the employer his proportional share in the aggregate result of national production.

As a solution of this problem, he lays down a special normal *time* labour-day and normal *work* (amount of work) labour-day, by considering which two factors he proposes to arrive at a unit of normal labour which shall serve as a common basis of measurement.

In order to bring about the participation of all workers in the nett result of national production in proportion to their contribution to it—hence without keeping down the better workers to the level of the worst, and without endangering productivity—it is necessary, Rodbertus holds, to reduce to a common denominator the amounts of work performed by individual workers, which vary very considerably both in quantity and quality. By this means he thinks we shall be enabled to establish a fair relation between work and wages. The normal *time* labour-day is to furnish us with a simple measurement of the product of labour in different occupations or branches of industry; and the normal *work* labour-day is to give us a common measure of all the varying amounts of work performed in equal labour time by the individual workers.

He points out that astronomically equal working time does not mean, in different industries, an equal out-put of strength during an equal number of hours, nor an equal contribution to society. Therefore the different industrial working-times must be reduced to a mean social working time: the normal *time* labour-day. If this amounts to 10 hours, 6 hours work underground might equal 12 hours spinning or weaving work. Or, which would be the same, the normal *time*

labour-day would be 6 hours in mining, and 12 hours in textile industries; the hour of mining work would be equal to 1-2/3 hours of normal time, the hour of textile work would be equal to 5/6 hour of normal time. The normal *time* labour-day would serve to determine periodically the proportionate relations which exist between the degrees of arduousness in labour of different kinds, with a view to bringing about a just distribution of the whole products of labour according to the normal proportional value of its out-put in each kind of employment, in each department of industry, such proportional value being determined by means of the normal time measure. Also it would lead to the fair award of individual wage, for if any one were to work only 3 instead of 6 hours in coal mining, or only 5 hours in weaving or spinning, he would only be credited with and paid for half a day of normal working time.

The normal time day is not however sufficient to establish a just balance between performance of work and payment; for in an hour of the same industrial time value, one individual will work less, another more, one better, another worse. The combined interests of the whole community and the equitable wage relations of the different workers to each other, demand therefore the fixing of the normal performance of labour within a defined working time, in short the fixing of a unit of normal work. Having normalised industry on a *time* basis, we must now normalise it on a *work* basis. And this is how *Rodbertus* proposes to do it: According as the normal *time* labour-day has been fixed in any trade at 6, 8, 10, or 12 hours (in proportion to the arduousness of the work, etc.), the normal amount of work of such a day must also be fixed for that trade, *i.e.* the amount of work must be determined which an average workman, with average skill and industry, would be able to accomplish in his trade during such a normal time labour-day. This amount of work shall represent in any trade the normal amount of work of a normal *time* labour-day, and therewith shall constitute in any trade the normal *work* labour-day, which would be equal to what any workman must accomplish within the normal *time* labour-day of his trade, before he can be credited with and paid for a full day, that is, a normal *work* labour-day. Hence if a workman had accomplished in a full normal *time* labour-day, either one and a half times the amount, or only half the amount of normal work, he would *e.g.* in the six hours mining day, for six hours work, be credited with a day and a half, or half a day respectively of normal work time; whilst in spinning and weaving, on the other hand, he would in the same way, for 12 hours work, be credited with one and a half or a half-day respectively of normal work time.

In this way *Rodbertus* claims to be able to establish a fair measure and standard

of comparison for labour times, not merely between the various kinds of trades and departments of industry, but also between the various degrees of individual efficiency. Each wage labourer would be able to participate proportionately in that portion of the national product which should be assigned to wage-labour as a whole. If therefore this portion were to be increased in a manner to which we shall presently refer, there would also be a rise in the share of the individual workers, in proportion to the rise in the nett result of national production. This scheme would form the groundwork of an individually just social wage system, a system by which the better workman would also be better paid, which would therefore balance the rights and interests of the workers among themselves, which moreover would ensure the productivity of national labour by variously rewarding the good and bad workers, thus recognising the rights and interests of the whole community, and lastly, which would continuously raise the labour-wage in proportion to the increase in national productivity (and also to the increasing returns of capital, whether fixed or moveable, applied to production).

I may here point out, however, that with all this we should not have arrived at an absolutely just system of remuneration of wage labour, unless we introduced a more complete social valuation of products in the form of normal labour pay instead of metal coinage.

But *Rodbertus* wishes to see his “normal *work* labour-day”—equal to 10 normal work hours—established as a universal measure of product value as well as of the value of labour: “Beyond and above what we have yet laid down the most important point of all remains to be established; the normal *work* labour-day must be taken as the unit of *work time* or *normal time*, and according to such work time or normal time (according to labour so computed) we must not only normalise the *value of the product* in each industry, but must also determine the wages in each kind of work.”

He claims that the one is as practicable as the other. First, with regard to regulating the value of product according to work time or normal work. In order to do this the “normal work labour-day”—which in any trade equals one day (in the various trades it may consist of a varying number of normal time hours), and which represents a quantity of product equal to a normal day’s work—this normal work day must be looked upon as the unit of work time or normal work, and in all trades it must be divided into an equal number (10) of work hours. The product in all trades will then be measured according to such work time. A quantity of product which should equal a full normal day’s work, whether it be the product of half a normal time labour-day, or of two normal time labour-days,

would represent or be worth one work day (10 work hours); a quantity of product which should equal half a normal day's work, whether it be the product of a normal work time or not, would represent or be worth half a day's work or five work hours.

The product of a work hour in any trade would therefore, according to this measure, equal the product of a work hour in all other trades; or generally expressed: Products of equal work times are equal in value. Such is approximately the scheme of *Rodbertus*.

A really normal labour-day—normal *time* and normal *work* labour-day—would be necessary in any regulated social system that sought on the one hand, in the matter of distribution of wages, to balance equally "the rights and interests of the workers amongst themselves"; and on the other hand, in the matter of productivity, to balance equally the "rights and interests of the workers with those of the whole community," by means of State intervention. It would therefore be necessary not merely in a State regulated capitalist society, with private property in the means of production, as *Rodbertus* proposed to carry it out under a strongly monarchical system, but also and specially would it be necessary under a democratic Socialism, if, true to its principles as opposed to Communism, it aimed at rewarding each man proportionately to his performance, instead of allowing each man to work no more than he likes, and enjoy as much as he can, which is the communistic method.

The only difference would be this: that any socialistic system must divide the nett result of production—after deducting what is required for the public purposes of the whole community—in proportion to the amount of normal time contributed, and must make the distribution in products valued according to the cost of their production computed in normal time; whilst *Rodbertus*, who wishes to preserve private property, finds it necessary to add one more point to those mentioned: the periodical normalisation of wage conditions in all trades. He is very clear upon this point. "The State must require the rate of wage for the normal working-day in any trade to be regulated and agreed upon by the employers and employed among themselves, and must also ensure the periodical readjustment of these regulations and the increase in the rate of wages in proportion to the increase in the productivity of work."

But *Rodbertus* clearly perceived the difference between a normalised capitalist system and a normalised socialism, neither communistic nor anarchist. Were the workers alone, he continues, entitled to a share in the national product value,

every worker would have to be credited with and paid for the whole normal time during which he had worked, and the whole national product value would be divided amongst the workers alone. For instance, if a workman had accomplished one and a half normal day's work in his normal time working-day, he would be credited with 15 work hours, and paid accordingly; if he had only accomplished half a normal day's work in the whole of his normal time working-day, he would be credited with only five work hours. The whole national profit, which would be worth x normal work, would then go in labour wage, which would amount to x normal work. But such a state of things, which may exist in the imaginations of many leaders of labour is, according to Rodbertus, the purest chimera: "In no condition of society can the worker receive the whole product of his normal work, he can never be credited in his wage with the whole amount of normal work accomplished by him; under all circumstances there must be deducted from it what now appears as ground rent and interest on capital." Ground rent and interest on capital are, according to Rodbertus, remuneration for "indirect work" for the industrial function of directing or superintending production. "If therefore the worker has accomplished, in his normal time working-day, 10 hours of normal work, in his wages he will perhaps be only credited with *three* work hours, in other words the product value of three work hours will be assigned to him"; for the product value of one work hour would represent perhaps his contribution to the necessities of the State (taxes), and three work hours would have to go towards what is now called ground rent, and another three to interest on capital.

It is impossible here to enter upon a complete critical discussion of the practicability of the capitalist normal working-day, as conceived by Rodbertus; but I may be allowed in passing to indicate one or two points of criticism.

I maintain my opinion expressed above, that the cost of production in terms of normal labour is not the only factor to be considered in the valuation of products and the regulation of wages; hence, I still claim that the social measure of value in terms of the cost of production cannot be applied to labour products or to labour contributions without reference to the rise and fall of their value in use. Should, however, the State eventually interfere in the regulation of wages and prices, then I allow that the normal working-day of Rodbertus would become of importance to us for that purpose. For the rest, I hold that it has by no means been proved that such an exercise of interference could succeed even under a monarchical government based on private property, far less under a democratic government with a socialistic system of ownership. Neither do I regard it as

proved that this method of State normalisation would actually achieve the establishment of a more normal state of affairs than can be arrived at in a social system where freely organised self-help is the rule, *i.e.* where both classes, Capital and Labour, can combine freely among themselves within the limits of a positive code safeguarding the rights of the workers. The direction taken by modern industrial life towards the harmonious conciliation of both classes, by means of the wage-list, the wage-tariff, and the sliding scale with a fixed minimum wage for entire branches of industry, and so forth, promises an important advance towards the establishment of a more normal wage-system.

In considering the question of the working-day as an instrument for affecting wages, it will be found that on the whole perhaps as much, or even more, may be achieved (and with fewer countervailing disadvantages) by the maximum working-day of free contract, varying according to trade, than by the normal working-day in the narrow meaning which Rodbertus has given to the term.

The complete elimination of the capitalist individualistic method of determining wages and prices, in favour of the measurement by “normal time” and “normal work” alone, would be open to grave objections both in theory and practice. Above all there is the practical danger of overburdening the State with the task of regulating and normalising, a task which only the most confirmed optimism would dare to regard lightly. It appears to me exceedingly doubtful at the present whether any State, even the most absolute monarchy with the best administration, would be competent to undertake such a task. I can see no likelihood of satisfaction on this point for some time to come, and must therefore range myself on the side of those who claim a better chance of success for the simpler method of improved organisation for the free settlements of wage-disputes by united representatives of both classes. But these and similar investigations are beyond the range of the main subject under discussion in this book.

My task is to prove that the maximum working-day of protective policy, or of protective and wage-policy, has nothing to do with the normal working-day in its strict sense—whether it be the normal working-day of Rodbertus separately adjusted in separate branches of industry, or the all-round normal working-day of non-communistic socialism. The normal working-day in the precise sense of Rodbertus, or even in the sense of the more rational socialists, affords an artificially fixed unit of value for the equitable determination of wages and prices; but it is neither a regulation by protective legislation of the longest permissible duration of the work within the astronomical day, nor a method of

influencing the capitalistic settlement of wages by the legal enforcement of a much shorter maximum working-day. A normal working-hour would serve as well as a normal working-day for a common denominator for the uniform reduction of the various kinds of work to one normal measure of time and labour, with a view to the valuation of the products and contributions of labour.

It may be said that the normal working-day, in the sense of Rodbertus, by virtue of its being a matter periodically fixed and prescribed, is a normal working-day also in that wider sense in which the term may equally be applied to the maximum working-day of protective policy. But it cannot claim the title of normal working-day from the fact of this *fixity* or this *artificial regulation*, but only from the essential fact that it serves the purpose of a valuation of labour products and labour contributions on a scale which is really normal, *i.e. socially just and equitable*.

The importance from a theoretic point of view of a distinction between the maximum working-day and the normal working-day would of itself have justified our dwelling on the foregoing details. But these details are also of practical importance in considering the policy of the ten hours day of Labour Protection, as against the legal eight hours day. One word more on this point: *the eight hours day threatens to ultimately develope, should Socialism as an experiment ever be tried, into a normal working-day of the worst possible kind.*

Democratic Socialism has, hitherto at least, adopted on its party programme no formulary of the normal working-day required by it. It will scarcely find a better formulary than that of *Rodbertus* (omitting the periodical re-adjustment of the whole share of Labour as against Capital, see pp. 123, 124). The normal measure of *Rodbertus* would be an incomparably superior method to that of regarding as equal all astronomic labour time without respect to differences in the arduousness of the labour in the various trades, no attempt being made to determine the unit of normal work per normal time-day or normal time-hour. But would Democratic Socialism have really any other course open to it than to treat all labour time as equal, and so to bring about the adoption of a socialistic normal time of the most disastrous type, viz. the submergence of the *socially normal working-day* in the *general maximum working-day*?

To the enormous difficulties, technical and administrative, inherent in the normal labour time of Rodbertus, would inevitably be added the special and aggravated difficulties arising from the overpowering influence of the masses under a democratic “Social State,” on the regulation of normal time. Social Democracy,

as a democracy, would almost necessarily be forced to concede the most extreme demands for equality, *i.e.* the claim that the labour hour of every workman should be treated as equal to that of every other workman, without regard to degrees of severity, without regard to differences of kind, and without regard to degrees of individual capacity and the fluctuations of value in use. In any case the Social State would probably not dare to emphasize in the face of the masses the extraordinary differences of normal labour in astronomically equal labour time, *i.e.* it might not venture to assign different rewards to equal labour times on account of differences in the labour. And yet if it failed to recognise those differences Social Democracy would be doomed from the outset.

It can thus be easily understood why Social Democracy has hitherto evaded her own peculiar task of precisely determining a practicable, socialistic, normal working-day.

There were two ways in which it was possible to do this: either by merely agitating for an exaggeration of the maximum working-day of capitalist Labour Protection, or by adhering to the communistic view which altogether denies the necessity for any reduction to normal time. And we find in fact among Social Democrats, if we look closely, traces of both these views.

According to the strict requirements of the Socialists, not only a maximum working-day, but also and especially a minimum working-day ought properly speaking to be demanded in order to meet the dire and recognised needs of the large masses of the people. Instead of this, Social Democracy holds out the flattering prospect of a coming time in which the working-day for all will be reduced to two or three hours, so that after the need for sleep is satisfied, at least twelve hours daily may be devoted to social intercourse, art and culture, and to the hearing or delivering of lectures and speeches. No attention whatever is paid to the trifling consideration, that either there might be a continual increase in the population and a growing difficulty in obtaining raw material for the purposes of production; or on the other hand that the population might remain stationary or decrease, and therewith progress in technique and industrial skill might come to an end.

While more and more the hopes of the people are being excited by promises of great results from the progressive shortening of the maximum working-day—through the increased productivity of labour—still we hear nothing with reference to the normal working time, or the regulation by it of values of products and labour. The party has not yet, to my knowledge, committed itself at

all on this point; it is probable therefore that it has not arrived at possessing a clearly worked out conception of this, the very foundation question of the socialistic, non-communistic “Social State”; still less has it any programme approved by the majority of the party.

To represent equal measures of working time of different individuals in different trades by unequal lengths of normal time, or, in other words, to assign unequal rewards to astronomically equal measures of working time, is an idea that goes assuredly against the grain with the masses of the democracy. It is found better to be silent on this point. Hitze, who has taken part in all transactions of protective legislation in the German Reichstag, states from his own experience that the parliamentary wing of the Social Democrats has always had in view the *maximum* working-day, and never the *normal* working-day. He says: “None of those who have moved labour resolutions in the German Reichstag (not even such of them as were Social Democrats) have ever contemplated the introduction of the normal working-day, either as intended by the socialistic government of the future, or as conceived by Rodbertus—but they have always had in their minds the maximum working-day only—the fixing of an upward limit to the working time permissible daily, even though they may frequently have made use of the rather ambiguous expression ‘a normal working-day.’”

It will, however, be impossible for the movement to continue to evade this main point. In spite of all danger of division, in one way or another the party must come to a decision, must formulate on its programme some socialistic normal working-day as a common denominator for the valuation of commodities, and the apportionment of remuneration to all. The result of this would be to destroy all the present illusions concerning the possibility of providing employment for the industrial “reserve army,” and securing a general rise of wage per hour by means of the adoption of an eight hours day.

There are then only three courses open to them; either to develope the normal working-day logically into a socialistic form, perhaps by making use of the proposals of Rodbertus; or secondly, to treat the maximum working-day as the normal working-day, *i.e.* to regard the hours of astronomical working time of all workers as equal in value (without attempting any reduction to a *socially normal* time), and to make this the basis of all valuation of goods and apportionment of remuneration; or, thirdly, the communistic plan of dispensing with all normal working-time on the principle that each shall work as little as he chooses, and enjoy as much as he likes.

The first of these possible courses—the adoption of the views of Rodbertus—is rendered unlikely by the democratic aversion to reckoning equal astronomical times of work as unequal amounts of normal work, to say nothing of the practical difficulties and deficiencies which I have already pointed out in Rodbertus' formulary.

The second course is the one that would more probably be followed by the Social Democrats; viz. the completion of their programme by identifying the standard of normal working-time with the astronomical individual working-time, *i.e.* by assigning a uniform value to all hours of astronomical time. But in this event Social Democracy would alienate the very pick of its present following; for this identification would involve that the more industrious would have to work for the less industrious, and the latter would gain the advantage. It can hardly in any case come to a practical attempt to enforce this view; but even theoretically the strongest optimism will not be able, I believe, to explain away the probability, approaching to a certainty, that such an attempt, implying the grossest injustice to the more diligent and skilful workers, would literally kill the labour of the most capable, and would therefore lead to an incalculable fall in the product of national work, and consequently also in wages. But it would be extremely difficult to convince the masses, among whom the Socialist agitation is mostly carried on, of the truth of this contention. They would undoubtedly demand in the name of equality that the astronomical hour should be treated as the normal working-hour, and this has already shown itself in the demand for a general minimum wage per hour.

It would be no great step from this to the third and most extreme alternative. This would be that there is, forsooth, no need for any normalisation, or for any normal working-day! It should no longer be: "to each according to his work, through the intervention of the State!" but rather, "to each one as much work as he can do, and as much enjoyment as he pleases!" Even that craze for equality, which would make a normal time-measure of the astronomical hour of the maximum working-day, would be superseded, and the identification of the maximum and normal working-days would be set aside by such a view as this. Practically, we need not fear that matters will go to this extreme. But it is interesting to note (and since the expiration of the German Socialist Laws in 1890), it is no longer treading on forbidden ground to point out that this cheap and easy agitation in the direction of pure communism which went on for years even under the Socialist Laws and before the very eyes of the police, has to-day already taken a very wide hold by means of fugitive literature and pamphlets.

It is not my intention to assert that the present leaders of Social Democracy are scheming to treat the astronomical working-hour as the unit of normal time in the event of the introduction of a socialist government. They are not guilty of such madness. As I have shown, the present leaders of the Social Democrats are aiming at the eight hours day only as a protective measure and a means of affecting wages, and they aim at realising it purely on the present capitalist basis. They do not give the slightest indication of desiring that the eight hours day should give to all workers the same wage for every hour of normal or astronomical working-time. Social Democracy still confines its activity entirely within the limits of the capitalist order of society, however much isolated individuals might wish to step forward at once, and without disguise. But would the present leaders be able to hold their own if the masses expressed a desire to have each astronomical labour-hour in their maximum working-day (at present of eight hours, but no doubt before long of six hours) recognised as the normal time-hour?

I trust that in the foregoing pages I have at least succeeded in making this one point clear; that the Policy of Labour Protection has nothing to do with any normal working-day. And for this reason: that it rejects the *"universal" maximum working-day*; and rejects it not merely as a measure of protective policy, but also as a measure affecting wages.

FOOTNOTES:

[8] This has so far not yet been done.

[9] Auer Motion, § 130.

[10] Cf. The Commentary on Dollfuss in Brassey's *Work and Wages*.

[11] Official records for 1885.

[12] The motion of Patterson runs thus: "That, in the opinion of this Congress, it is of the utmost importance that an eight hours day should be secured at once by such trades as may desire it, or for whom it may be made to apply, without injury to the workmen employed in such trades; further, it considers that to relegate this important question to the Imperial Parliament, which is necessarily, from its position, antagonistic to the rights of labour, will only indefinitely delay this much-needed reform."

BOOK II.

CHAPTER V.
PROTECTION OF INTERVALS OF WORK: DAILY INTERVALS, NIGHT REST, AND HOLIDAYS.

1. *Daily intervals of work.*

The uninterrupted performance of the whole work of the day is not possible without intervals for rest, recreation, and meals. Even in the crush and hurry of modern industry, certain daily intervals have been secured by force of habit and common humanity.

Yet the necessity for ensuring such intervals by protective legislation is not to be disputed, at least in the case of young workers and women workers in factory and quasi-factory business. From an economic point of view there is nothing to be urged against it.

In addition to the protection of women and young workers with regard to duration of daily work, England has also enjoined intervals of rest for all protected persons. In textile industries the work must not continue longer than 4½ hours at a time without an interval of at least half an hour for meals; within the working day a total of not less than 2 hours for meals must be allowed. In other than textile industries, women and young persons have a total of 1½ hours, of which one hour at least must be before 3 o'clock in the afternoon; the longest duration of uninterrupted work amounts to 5 hours. In workshops where children or young persons are also employed, the free time for women amounts to 1½ hours; in non-domestic workshops where women alone are employed (between 6 a.m. and 9 p.m.), 4½ hours is the total. The same time is allowed to young persons. In domestic workshops no free time is legally enforced for women; for young persons it amounts to the same time as that for women alone in non-domestic workshops.

I do not wish to deal with the regulations of all countries; I am only concerned to point out that, as compared with the labour protective legislation of England, the foremost industrial nation, German legislation on the protection of intervals

appears to be rather cautious, as even in the *von Berlepsch* Bill it merely secures regular intervals for children within the 6 hours work, and for young persons (from 14 to 16 years) an interval of half an hour at mid-day, besides half an hour in the forenoon and afternoon, and for women workers an interval of an hour at midday (§ 135*f*).

The English law requires simultaneous intervals for meals for all protected persons working together in the same place of business; and such intervals may not be spent in the work-rooms where work is afterwards to be resumed.

The *von Berlepsch* Bill (§ 136, 2) requires only the young workers to leave the work-rooms for meals, and even this with reservation: "During the intervals the young workers shall only be permitted to remain in the work-rooms on condition that work is entirely suspended throughout the interval, in that part of the business in which the young workers are employed, or where it is found impracticable for them to remain in the open air, or where other rooms cannot be procured without disproportionate difficulty."

The lengthening of the mid-day interval for married women or heads of households, to enable them to fulfil their domestic duties, is recommended by the German Reichstag and provided for in the *von Berlepsch* Bill, in the fourth paragraph of § 137, as follows: "Women workers above the age of 16 years, having the care of a household, shall be set free half an hour before the mid-day interval unless this interval amounts to at least 1½ hours. Married women and widows with children shall be accounted as persons having the care of a household, unless the contrary is certified in writing by the local police magistrate, such certificate to be granted free of stamp and duty." This measure indicates a fragmentary attempt from the outside to protect the woman in her family vocation, and as such belongs to the question of protection of married women. The opponents of the measure—and they are many—make the objection that the result will be that women with families will be unable to obtain employment. Whatever may be said for or against the measure, there is no doubt that an interval of an hour and a half at mid-day ought to be granted to every workwoman, to place and keep her in a position in which she can discharge the duties of preparing the family meals and looking after her children. Therefore the injunction of a mid-day interval of 1½ hours in all factory business in which women over 16 years of age are employed would perhaps be a juster, more effectual, and more expedient measure, and would not prejudice the employment of women. But will it be possible to bring about the international uniform extension of the present interval of two hours to two hours and a half (inclusive

of the forenoon and afternoon intervals)? The problem is surrounded by undeniable practical difficulties.

The Auer Motion (§ 106*a*, 2. cf. § 130) demands the extension of protection of intervals of work to all industries. Hitherto it has only been extended to women and young workers, and only to such as are employed in factory and quasi-factory business. We need not here go into the question whether it can be proved to be to some extent necessary in the more irksome and laborious trades and in household industry.

2. *Protection of night rest ("Prohibition of night work.")*

Night rest has long been subjected by force of custom and necessity to very comprehensive measures of protection. Nevertheless it has become more or less of a necessity, even for men, to supplement such protection by extraordinary intervention of the State in factory and quasi-factory industrial trades, in some cases also in handicraft business (*e.g.* in bakeries, in public-house business, and in traffic and transport business). The self-help of the workmen and the moral influence of the civil and religious conscience are no longer a sufficient power of protection.

The entire general prohibition of all industrial night work would go beyond the limits of practical necessity, and the State would have no means of enforcing such a general prohibition.

Exceptions to the prohibition of night work are unavoidable, even in factory and quasi-factory business (cf. Chap. VII.).

The number of women and children employed in night work is not great. It might, however, become greater through the introduction of electric lighting in Germany. Protection of night rest for women and children is, therefore, as practically necessary as ever.

The actual condition of Labour Protection in regard to night work, and the efforts and tendencies to be discerned in reference to it at the present time, are as follows. The resolutions of the Berlin Conference demand the cessation of night work (and Sunday work) for children under 14, also for young persons, of 14 to 16 years and for women workers under 21 years of age.

The *von Berlepsch* Bill (§ 137*i*) altogether excludes night work for women in factory (§ 154) and quasi-factory business.

Of course exceptions may be permitted by order of the Bundesrath (Federal Council). The power of the Bundesrath to grant exceptions is very general and unrestricted (§ 139*a*, 2). “The employment of women over 16 years of age in night work in certain branches of manufacturing industry in which such employment has hitherto been customary, shall be permitted subject to certain conditions demanded by health and morality.”

The Auer Motion demands the exclusion of all women and young persons from “regular” night work.

3. *Protection of holidays.*

Protection of daily intervals secures the necessary intermission of work during the day. Protection of night rest guarantees the necessary and natural chief interval within every astronomical day. Protection of holidays makes provision for the no less needed ordinary and extraordinary intermission of work during entire days, Sundays, and festivals.

Strictly speaking, protection of holidays has long existed. The Church exercised a powerful influence in this respect over legislation and popular custom. Labour protection only seeks to restore this protection in its entirety (and as far as possible in its former extent—hence not merely in factory and quasi-factory business) in the State of to-day, which is practically severed from the controlling influence of the Church. Holidays are a general necessity; not merely a necessity for young persons, not merely in factory and quasi-factory industries, but in all industries.

But England, the greater number of the North American States, Denmark, Holland, Belgium, France and hitherto Germany (with its highly unpractical article § 105, 2, of the Imp. Ind. Code), grant protection of Sunday rest only to their “protected persons,” and only in factory and quasi-factory business; but we must not here forget that there exists also protection of opportunities for religious observances extending over nearly the whole area of national industry, which is enforced partly by law and partly by tradition.

Austria prohibits Sunday employment in *all* industrial work.

An important extension and equalising of protection of holidays in Europe is projected in the resolutions of the Berlin Conference. The resolutions read as follows: “1. It is desirable, with provision for certain necessary exceptions and delays in any State: (*a*) that one day of rest weekly be ensured to protected

persons; (*b*) that one day of rest be ensured to all industrial workers; (*c*) that this day of rest be fixed on the Sunday for all protected persons; (*d*) that this day of rest be fixed on the Sunday for all industrial workers. 2. Exceptions are permissible (*a*) in the case of any business which on technical grounds requires that production shall be carried on without intermission, or which supplies the public with such indispensable necessaries of life as require to be produced daily; (*b*) in the case of any business which from its nature can only be carried on at definite seasons of the year, or which is dependent on the irregular activity of elemental forces. It is desirable that even in such cases as are enumerated in this category, every workman be granted one out of every two Sundays free. 3. To the end that exceptions everywhere be dealt with on the same general method, it is desirable that the determination of such exceptions result from an understanding between the different States."

The *von Berlepsch* Bill ensures a very extensive measure of protection of holidays by the following means: it extends the application of provisions § 105*a* to 105*h* in paragraph 1 of Chapter VII. of the Imp. Ind. Code to all workshop labour, it strictly limits Sunday work in trade and defines the permissible exceptions: moreover, it allows of unlimited extension of this kind of protection to all industry by means of an imperial rescript (§ 105*g*), and finally it foreshadows further protective action in the sphere of common law (105*h*).

The Auer Motion contains a general extension and simplification of protection of holidays (§ 107, 1): "Industrial work shall be forbidden on Sundays and festivals" (with certain specified and strictly defined exceptions).

Protection of holidays serves to four great ends: religious instruction, physical and mental recreation, family life and social intercourse. Protection of holidays has to take special measures to meet these four special ends.

In the first place holidays must be general, for the whole population, in order to allow of instruction in common, and general social intercourse. For this reason even the most "free-thinking" friend of holiday rest will be willing to grant it in the form of Sunday rest and festival days, and will allow it to be so called; in France and Belgium only, as appears from the reports of the Berlin Conference, do difficulties lie in the way of allowing protection of holidays to take the form of protection of Sundays and festival days.

The second end subserved by protection of holidays will be to ensure that only the absolutely necessary amount of work shall be performed on Sundays in those

industries in which there is only a conditional possibility of devoting the Sunday to recreation, family life, and social intercourse, especially in carrying trades, employment in places of amusement and in public houses, in professional business, personal service, and the like, also in all labours which are socially indispensable. We shall return to this question in Chapter VII. (exceptions to protective legislation). The question now arises whether the religious protection of holidays does not already indirectly serve all the purposes of the necessary weekly rest for labour. This question must be answered in the negative. It is true that this does effect something which Labour Protection as such cannot effect, in that it extends beyond the workers and enforces rest on the employers also and their families. But it does not ensure to the workers themselves the complete protection necessary, and it does not fulfil all the purposes of protection of holidays.

The actual condition of affairs in Germany is as follows, according to the "systematic survey of existing legal and police regulations of employment on Sundays and festivals" (Imperial Act of 1885-6). In one part of Germany the police protection of the Sunday rest is in effect only protection of religious worship. In another group of districts, the suspension during the entire Sunday of all noisy work carried on in public places is enforced, but within industrial establishments noisy work is not forbidden. A third group of rules lays down the principle that Sundays and festivals shall be devoted not only to religious worship and sacred gatherings, but also to rest from labour and business.

The rules contained in this group apply especially to factory labour, but in many cases also to handicraft and various kinds of trading business, without regard to the question whether the work carried on in such business is noisy or disturbing to the public, exceptions being granted in certain defined cases. This third group of rules is in force in the provinces of Posen, Silesia, Saxony, the Rhine Provinces, Westphalia, the former Duchy of Nassau, and in the governmental district of Stettin, but in all these only with respect to factory work; also in the former Electorate of Hesse, the Bishopric of Fulda, the province of Hesse-Homburg, and in the town of Cassel; in Saxony, Wurtemburg, Mecklenburg Schwerin, Mecklenburg Strelitz, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwartzburg-Rudolstadt, the old and the new Duchy of Reuss and Alsace-Lorraine.

A supplementary statistical inquiry into the extent of Sunday work in Prussia (not including districts whose official records could not be consulted) shows that Sunday work is carried on:—

In wholesale industries: in 16 governmental districts, by 49.4% of the works, and by 29.8% of the workers.

In handicraft business: in 15 governmental districts, by 47.1% of the works, and by 41.8% of the workers.

In trading and carrying industries: in 29 governmental districts, by 77.6% of the employers or companies, and by 57.8% of the workers.

Hence there can be no doubt as to the necessity in Germany for extraordinary State protection of the Sunday holiday, by means of protective legislation, applying also to handicraft business and to a part of trading and carrying industry.

About two-thirds of the employers and three-fourths of the workmen have declared themselves for the practicability of the prohibition of Sunday work, nearly all with the proviso that exceptions shall be permitted.

The duration of holiday rest practically can in most cases be fixed from Saturday evening till early on Monday morning.

The *von Berlepsch* Bill proposes to enforce legally only 24 hours; the Auer Motion demands 36 hours, and when Sundays and festivals fall on consecutive days, 60 hours.

The shortening of work hours on Saturday evening in factory industries and in industries carried on in workshops of a like nature to factories is a very necessary addition to Sunday rest; provision must also be made to prevent the work from beginning too early on Monday morning if Sunday protection is to attain its object. The shortening of work hours on Saturday evening is especially necessary to women workers to enable them to fulfil their household duties, and it is necessary to all workers to enable them to make their purchases. England and Switzerland grant protection of the Saturday evening holiday.

Legislation will not have completed its work of extending protection of holidays, even when the limits have been widened to admit trading business. Further special regulations must be made for the business of transport and traffic. Switzerland has already set to work in this direction. In Germany, in consequence of the nationalisation of all important means of traffic, much can be done if the authorities are willing, merely by way of administration.

We cannot lay too much stress on this question of the regulation and preservation

of holiday time by means both of legislative and administrative action. For its actual enforcement it is true the co-operation of the local police magistrates is necessary, but the regulation of this protection ought not to be left in their hands. It must be carried on in a uniform system and with the sanction of the higher administrative bodies. We shall return to this question also in Chapter VII.

CHAPTER VI.
ENACTMENTS PROHIBITING CERTAIN KINDS OF WORK.

Besides the mere protective limitations of working time and of the intervals of work, we have also the actual prohibition of certain kinds of work. Freedom in the pursuit of work being the right of all, and work being a moral and social necessity to the whole population, prohibition of work must evidently be restricted to certain extreme cases.

Such prohibition is however indispensable, for there are certain ways of employing labour which involve actual injury to the whole working force of the nation, and actual neglect of the cares necessary to the rearing and bringing up of its citizens, and there are certain kinds of necessary social tasks, other than industrial, the performance of which, in the special circumstances of industrial employment, require to be watched over and ensured by special means in a manner which would be wholly unnecessary among other sections of the community. And thus we find a series of prohibitions of work, partly in force already, and partly in course of development.

1. *Prohibition of child-labour.*

This is prohibition of the employment of children under 12 years of age (13 in the south), of children under 10 years of age, in factory work (see Book I.). Prohibition of child-labour must not be confused with restriction of child-labour (see Book I.), viz. restriction of the labour of children of 12 to 14 years of age, in the south of 10 to 12 years of age. It does not involve prohibition of *all* employment of children under 12 years of age, such as help in the household or in the fields.

The prohibition of child-labour within certain limits is necessary in the interests of the whole nation, for the physical and intellectual preservation of the rising generation, hence it is to the interest also of the employers of industrial labour themselves.

Special Labour Protection with regard to child-labour is indeed necessary. Ordinary administrative and judicial protection evidently are insufficient to

ensure complete security to childhood. Equally insufficient are any of the existing not governmental agencies, such as family protection; the child of half-civilised factory hands and impoverished workers in household industries needs protection against his own parents, whose moral sense is often completely blunted.

Prohibition of child-labour in factory and quasi-factory industries rests on very good grounds. It is not impossible, not even very improbable, that prohibition of child-labour may sooner or later be extended to household industry; the abuse of child-labour is even more possible here than in factory work; the possibility is by no means excluded by enforcement of school attendance. But all family industry is not counted as household industry. The extension of Labour Protection in general, and of prohibition of child-labour in particular, to household industry, raises difficulties of a very serious kind when it comes to a question of how it is to be enforced.

In the main, prohibition of child-labour will have to be made binding by legislation. In its eventual extension to household industry, the Government will however have to be allowed facilities for gradually extending its methods of administration.

The task of superintending the enforcement of prohibition will in the main be assigned to the Industrial Inspectorate. The oldest hands in any business, the "Labour Chambers," and voluntary labour-unions, will moreover be able to lend effectual assistance to the industrial inspector or to a general labour-board. The factory list of young workers may be used as an instrument of administration.

In Germany childhood is protected until the age of 12 years. The extension of prohibition of child-labour to the age of 14 years in factory and quasi-factory business, is, however, in Germany probably only a question of time. The Auer Motion in regard to this represents the views of many others besides the Social Democrats. Switzerland, as I have shown, has already conceded this demand, claimed on grounds of national health. The impending Imp. Ind. Code Amendment Bill places the limit at 13.

An internationally uniform advance towards this end by the equalisation of laws affecting the age of compulsory school attendance, would certainly be desirable.

The widest measure of protection of children is contained in the Austrian legislation, which decrees in the Act of 1885, that until the age of 12 years children shall be excluded from all regular industrial work, and until the age of

14 years, from factory work: “Before the completion of the 14th year, no children shall be employed for regular industrial work in industrial undertakings of the nature of factory business; young wage-workers between the completion of the 14th and the completion of the 16th year shall only be employed in light work, such as shall not be injurious to the health of such workers, and shall not prevent their physical development.”

The resolutions of the Berlin Conference recommended the prohibition of employment in factories of children below the age of compulsory school attendance.

Resolution III. 4 requires: “That children shall previously have satisfied the requirements of the regulations on elementary education.”

Exclusion of child-labour extends beyond the general inferior limit of age, in individual cases where the employment of children is made conditional on evidence of their health, as in England. And here the medical certificate of health comes in as a special instrument of administration in Labour Protection.

In certain kinds of business, prohibition of child-labour extends beyond the general inferior limit of age. England has led the way in such prohibition, excluding by law the employment of children below the age of 11 years in the workrooms of certain branches of industry, *e.g.* wherever the polishing of metal is carried on; of children below the age of 14 years, in places where dipping of matches and dry polishing of metal is carried on; of girls below the age of 16 years, in brick and tile-kilns, and salt works (salt-pits, etc.); of children below the age of 14 years, and girls below the age of 18 years, in the melting and cooling rooms in glass factories; of persons below the age of 18 years in places where mirrors are coated with quicksilver, or where white-lead is used.

2. *Prohibition of employment in occupations dangerous to health and morality.*

Such prohibition seems necessary in all industrial trades. It is however difficult to enforce it so generally, and hitherto this has not been accomplished.

The Imperial Industrial Code in the *von Berlepsch* Bill (cf. resolutions of the Berlin Conference, Chap. IV. 4, and V. 4) admits an absolute prohibition of all female and juvenile labour, under sanction of the local authorities (§ 139*a* 1.): “The *Bundesrath* shall be empowered to entirely prohibit or to allow only under certain conditions, the employment of women and young workers in certain branches of factory work, in which special dangers to health and to morality are

involved." The same Bill (§ 154, 2, 3, 4) extends such prohibition over the greater part of the sphere of quasi-factory business.

The last aim of protection of health—the exclusion of such injurious methods of working as may be replaced by non-injurious methods in all industrial work, and for male workers as well as for women and children—must be attained by progressive extension of that administrative protection to which the *von Berlepsch* Bill opens the way for quasi-factory labour (§ 154). It would be difficult to carry out in any other way the Auer Motion, for the "prohibition of all injurious methods of working, wherever non-injurious methods are possible."

The general principle of prohibition might be laid down by law, and the enforcement of such prohibition, by order of a Supreme Central Bureau of Labour Protection, might be left to the control of popular representative bodies and to public opinion. Special legal prohibition, with regard to certain defined industries and methods of work injurious to health, would not be superfluous in addition to general prohibition; such special prohibition is already in force to a greater or less degree.

The success of the prohibition in question depends on the good organisation of Labour Protection in matters of technique and health; on the efficiency of local government organs, as well as of the Imperial Central Bureau, and on the impulse given by the more important representative organs of the labouring classes. All these organs need perfecting. Special prohibition needs the assistance of police trade-regulations in regard to instruments and materials dangerous to health.

The work that has already been done in the way of protection of morality by prohibition is not to be under-valued, although much still remains to be done. No sufficient steps have as yet been taken to meet that very hateful and insidious evil so deeply harmful to the preservation of national morality, viz. the public sale and advertisement of preventives in sexual intercourse, such as unfortunately so frequently appear in the advertising columns of newspapers, and in shop windows. This is not merely a question of protecting the morality of those engaged in the production and sale of such articles, but also of protecting the morality of the whole nation, maintaining its virile strength, and to some degree also preserving it from the dangers to the growth of population, incidental to an advanced civilisation. The powers at present vested in the police and magistrates to deal with offences against morals would probably be sufficient to stamp out this moral canker that is eating its way even into Labour Protection,

without the scandal of legislation. But it is not by ignoring it that this can be accomplished.

The intervention of the State as regards Labour Protection in such factory and quasi-factory work as is dangerous to health and decency, is doubtless justified in its extension to household industry and trading industry of the same kind; for neither is the moral character of the generality of employers and heads of commercial undertakings sufficiently perfect, nor are the discretion and self-protection of the workers sufficiently strong and widespread to render State protection unnecessary and voluntary protection sufficient.

3. *Prohibition of factory work for married women, or at least mothers of families.*

This is a specially useful measure of protection. Modern industrial work has done a great injury to the family vocation of the woman, and thereby to family life; non-governmental agencies of Labour Protection, in its widest sense, have not been able to prevent this evil.

But the exclusion of wives and mothers from all industrial work, or from earning money in any kind of domestic occupation, would be far too extreme a measure. Certain industrial work has always fallen to the share of the female sex, and the absolute prohibition of female employment in any kind of industrial work would render large numbers of persons destitute, especially in the towns, and would thereby expose them to moral dangers and temptation.

The organs and instruments of administration for the protection of married women in factory and quasi-factory work, would be the same as for all other branches of protection of employment of women and young workers.

Prohibition of factory work for married women is advocated in the most decisive manner by *Jules Simon*, *von Ketteler*, and *Hitze*. Even the chief objection to such protection—the danger of the diminution of worker's earnings, tempting them to seek immoral means of livelihood—is combated in the most remarkable and convincing manner by Hitze. This worthy Catholic writer meets the consideration of the loss of the factory earnings of women, with the counter-considerations of the depression of wage caused by the competition of female labour, and of the waste of money at public houses and on luxuries that takes place in such families as are left without a housewife or mother. We must be ready to make great sacrifices in the attainment of so great an object, for no less important a matter is at stake than the restoration of the family life of the whole

body of factory labourers.

Only we must be under no delusion as to the difficulties of the immediate and complete enforcement of the prohibition. The adaptation of motor-machinery to use in the house, enabling the wage-earner to remain at home, might perhaps render it practically possible to carry out the prohibition in question.

It would also be necessary that the measures taken should be internationally uniform, so that separate national branches of industry might not suffer. A practical solution of the problem can only be arrived at after a careful collection of international statistics as to the married women and mothers employed in factory and quasi-factory work. Here especially, if in any department of Labour Protection, does the State require the support of the influence of the Churches, and of the organised, simultaneous, international agitation of the Churches in furtherance of this object. Whoever reads the above-mentioned writings—*Hitze's* pamphlet gives extracts from the powerful writings of Jules Simon and von Ketteler—will derive therefrom some hope of the final success of Labour Protection in one of its most important future tasks. In the present situation of affairs I know of nothing which can shake the validity of *Hitze's* conclusions.

In the meantime, restriction of employment of all female factory labour to 10 hours, as proposed by the commission appointed by the German Reichstag (see below), must be welcomed as an important step in advance. *Hitze* remarks: "The first condition of all social reform is the establishment of family life on a sound and secure basis. But how is this possible, so long as thousands of married women are working daily in factories for 11 and 12 hours, and are absent from their homes for still longer? Can domestic happiness and contentment flourish under such circumstances? And is the danger any less because concentrated in defined districts? For example, in the inspectoral district of Bautzen, in 1884, nearly 5,000 women were drawn away from their family life by factory work. No extended mid-day interval is granted to married women, so far as information on this point is to be obtained. Is it merely accidental that wherever employment of children is customary, there also the work of the mothers is more frequent? And must not the man's earnings be lessened if the wife and child are allowed to compete with him? And is it merely accidental that Saxony, which is precisely the place where female and child labour is most largely employed, should also be the special haunt and stronghold of Social Democracy? Have we any right to reproach the Social Democrats with causing the destruction of family life, if we show ourselves indifferent to the actual loosening of family ties through the regular and excessive work in factories of housewives and mothers?

Ought we to delay any longer in appealing to legislation, when the dangers are so pressing? What will become of the youth and future of our people if such conditions become normal? And in fact, unless legislation interferes, the number of factory women and of factory children will increase, not decrease. What a prospect!”

Separation of the sexes in the workrooms wherever possible, special rooms for meals and dressing, and provision for education in housewifery, are measures which are all the more urgent, if we grant the impossibility of altogether excluding women from factory work. This further protection is above all necessary for girls.

4. *Prohibition of the employment of women during the period immediately succeeding child-birth.*

Whilst prohibition of factory work for wives and mothers is of the first importance for the protection of family life, exemption from work during the period immediately succeeding child-birth of all women engaged in factory and quasi-factory employments, is a measure that is necessary for the health of the mother and the nurture of the newly-born.

The exclusion of pregnant women from certain occupations is another important question; the Confederate Factory Act leaves this in the power of the *Bundesrath*.

Prohibition of the employment of nursing mothers in factories is a measure that has long received recognition in some countries, and lately it has become general.

The resolutions of the Berlin Conference demand that the protection should cover a period of 4 weeks; Switzerland already grants protection for 8 weeks, a period which is recommended in Germany by the Auer Motion; the *von Berlepsch* Bill proposes 4 weeks (instead of 3 weeks as hitherto appointed by the Imp. Ind. Code); the Reichstag Commission proposed 6 weeks, and this will probably be the period adopted.

If it were necessary to enforce exemption from work after childbirth for *all* women engaged in industrial wage-labour, even this would scarcely be found to be attended with insuperable difficulties.

The Auer Motion on this point receives no notice in the *von Berlepsch* Bill.

It would be preferable in itself for such exemption to become general even for factory women, without special protective intervention from the State. But under the existing moral and social conditions legal prohibition of employment can hardly be dispensed with.

The measure may be carried out by the help of the official birth-list, or of a special factory list of nursing mothers. The industrial inspector will not be able to do without the help of the workers themselves.

The economic difficulties of the question are partly met in Germany by the existing agency of Insurance against sickness for all factory workers, which grants assistance during the period of lying-in, as during sickness. The means of help provided by the family and the club have to supply the additional assistance necessary for the nursing period.

The granting of state assistance to women during the lying-in period, without which exemption from work would be a questionable benefit, is vigorously opposed by some on grounds of morality as likely to promote the increase of illegitimate births, and by others from the point of view of the population question.

The question was brought before the German Reichstag, on the representation of Saxony, in 1886. Petitions from twenty-one district sick clubs in the chief district of Zwickau demanded the withdrawal of the legal three weeks assistance of unmarried women after childbirth, on the ground that this was calculated to promote an increase in the number of illegitimate births. The petitions were accompanied by statistics of each club showing that the funds were actually called in to assist more unmarried than married women. No information however was given as to the proportion between married and unmarried women members of the club, an omission which rendered the statistics worthless. Moreover the conditions existing in Zwickau are hardly typical of German industry as a whole.

A general collection and examination of statistics of sick funds must be made, and possibly the necessary information may be obtained by comparison of the numbers of births during the periods before and since the introduction of Insurance against sickness, and especially in such districts as had no free clubs, before the introduction of Insurance, for the assistance of women after child-birth.

Probably it will be found that the increase in the number of illegitimate births is not due to the assistance granted after child-birth by the official sick fund, if we

take into consideration that in the district mentioned the assistance granted during the three weeks only amounted to from 7 to 12 marks, generally to less than 10 marks. “If,” says *Hitze*, “the meagre sum of the assistance granted could lead to an increase of illegitimate births, this fact would be more shocking than the number itself.” I take it that the root of the evil lies, not in the lying-in-fund, but in the destruction of family life and sexual morality by the employment of women in factories.

5. *Prohibition of employment of women and children in work underground.*

This prohibition is claimed in the interests of family life, of morality, and of the care of the weaker portion of the working class.

The enforcement of this prohibition comes within the province of the police in the mining districts, and of the industrial inspectorate.

But it is probably best that it should be legally formulated.

The extension of the prohibition to all women is recommended generally in the resolutions of the Berlin Conference, and the work has already been commenced in the *von Berlepsch* Bill.

The enforcement of the measure will meet with some difficulties in the mines of Upper Silesia, but it will also remedy serious evils.

The force of public opinion is insufficient to prevent the employment of women in work underground. The very necessary demand for prohibition of employment of women in work on high buildings, follows on the prohibition of their employment underground. Such employment is almost completely excluded by custom.

CHAPTER VII.
EXCEPTIONS TO PROTECTIVE LEGISLATION.

All prohibition of employment and limitations of employment are apparently opposed to the interests of the employers. As long as they are kept within just limits, however, this will not be true generally or in the long run.

The just claims of Capital may be protected by admitting carefully regulated exceptions; but wherever and in so far as employment is opposed to the higher personal interests of the whole population, Capital must submit to the restrictions.

As regards the exceptions, these are in part regular or ordinary, in part irregular or extraordinary. We find examples of both kinds alike in the legislation for restricting the time of working and in legislation for protecting intervals of rest.

Ordinary exceptions to prohibition of employment consist mainly of permission by legal enactment in certain specified kinds of industrial work, of a class of labour which is elsewhere prohibited, *e.g.* night work for women and young workers. The greater number of cases of prohibition of employment appear in the inverse form of exceptions to permission of employment.

Ordinary exceptions to restriction of employment are provided for partly by legislation, partly by administration, *i.e.* partly by the Government, partly by the district or local officials.

Wherever in the interests of industry it is impossible to enforce the ordinary protection of times of labour and hours of rest, this is made good to the labourer by the introduction of several (two, three, or four) shifts taking night and day by turns, so that an uninterrupted continuance of work may be possible without any prolonged resting time either in the day or in the night; moreover, the loss of Sunday rest can be compensated by a holiday during the week.

Extraordinary exceptions occur chiefly in the following cases: (*a*) where work is necessary in consequence of an interruption to the regular course of business by some natural event or misfortune; (*b*) where work is necessary in order to guard against accidents and dangers; (*c*) where work is necessary in order to meet exceptional pressure of business.

Exceptions to protection of holidays.

These exceptions are so regulated that in certain industries holiday work is indeed permitted but compensation is supplied by granting rest on working days. The exceptions provided for by the Berlin Conference have already been given. The *von Berlepsch* Bill admits, if anything, too many exceptions. The Auer Motion permits holiday work in traffic business, in hotels and beer houses, in public places of refreshment and amusement, and in such industries as demand uninterrupted labour; an unbroken period of rest for 36 hours in the week is granted in compensation to such workers as are employed on Sunday.

Switzerland wishes to give compensation in protection of holidays in railway, steamship and postal service, by granting free time alternately on week days and Sundays, so that each man shall have 52 free days yearly, of which 17 shall be Sundays.

Exceptions to prohibition of night work.

The Imp. Ind. Code Amendment Bill (§ 139*a*, 2, 3) admits ordinary and extraordinary exceptions. The Auer Motion does not entirely exclude such exceptions, as it provides exceptions in traffic business and such industries as "from their nature require night work." We cannot here enter into details as to the rules on the limitations of exceptions, and as to the enforcement of those rules.

Exceptions to the maximum working-day.

Overtime: *Extraordinary* exceptions to an enforced maximum working-day consist in permission of overtime; *ordinary* exceptions consist in the employment of children, women and men, in certain kinds of business, for a longer time than is usual (see Chapter V.).

The *von Berlepsch* Bill assumes a very cautious attitude in the matter of overtime. *Extraordinary* exceptions in the case of pressure of business are provided for as follows: "In cases of unusual pressure of work the lower courts of administration may, on appeal of the employers, permit, during a period of 14 days, the employment of women above the age of 16 years until 10 o'clock in the evening on every week-day, except Saturday, provided that the daily time of work does not exceed 13 hours. Permission to do this may not be granted to any employer for more than 40 days in the calendar year. The appeal shall be made in writing, and shall set forth the grounds on which the permission is demanded,

the number of female workers to be employed, the amount of work to be done, and the space of time required. The decision on the appeal shall be given in writing. On refusal of permission the grievance may be brought before a superior court. In cases in which permission is granted, the lower court of administration shall draw up a specification in which the name of the employer and a copy of the statements contained in the written appeal shall be entered."

The Auer Motion sets the narrowest limits to admission of overtime, permitting it only in case of interruption of work through natural (elemental) accidents, and then only permitting it for 2 hours at the most for 3 weeks, and only with consent of the "labour-board."

Both in regulation and administration all these exceptions to protective legislation should be dealt with in a very guarded manner. Moreover they must be enforced on a uniform and widely diffused system, and they ought to afford a real protection to the fair and just employer against his more unscrupulous competitors.

Both these considerations—the strict limitation and uniform administration required for these exceptions—render it imperative that the regulation by law should be, so far as practicable, very careful and minute. Moreover it is requisite that the principle on which the administration has to act in dealing with exceptions shall be laid down as definitely as possible, and further that protective enactments shall be interpreted in a uniform manner by the organs of local government (*Bundesrath*), and finally that there should be general uniformity of method, both in the instructions given and in the supervision exercised by the intermediate courts of Labour Protection to the local authorities.

Much may be done in the way of effectual limitation of exceptions by dealing individually with the separate kinds of employment, in the matter of Sunday rest and alternating shifts. In the Düsseldorf district it has been proved by experience that by specialising the exceptions, Sunday rest may be granted to a large percentage of the workmen even in the excepted industries themselves (gas works, brick and tile kilns, etc.).

The special instruments of administration for the regulation of exceptions to this kind of protection are the certificate of permission, the entry in the register of exceptions, and the public factory rules.

The industrial inspector is entrusted with the supervision of the exceptions; but the assistance of the employer is very desirable, and is frequently offered, as it is to his interest that the application shall be just and uniform.

The central union of embroiderers in East Switzerland and the Vorarlberg district, *e.g.* which was formed in 1855, and which now includes nearly all the houses of business, supervises the strict adhesion to the 11 hours rule, by sending special inspectors into the most remote mountain districts, and imposing fines for non-observance to the amount of from 200 to 300 francs (*Hitze*).

CHAPTER VIII.
PROTECTION IN OCCUPATION, PROTECTION OF TRUCK AND CONTRACT.

(A) *Protection in occupation.*

Protection in occupation is directed towards the personal, bodily and moral preservation of wage-earners against special risks incurred during the performance of their work. Protection in occupation is already afforded to a certain degree by Labour Insurance, in the form of Insurance against accidents and sickness.

The bodily and moral preservation of those engaged in business forms no new department of Labour Protection. It has long been more or less completely provided for by the Industrial Regulations and by special labour protective legislation in almost all civilised countries.

Protection in occupation is afforded by the enactments dealing with dangerous occupations, with the regulations of business, with the management of business, with the workrooms and eating and dressing rooms, and with the provision of lavatories. In the Imp. Ind. Code Amendment Bill the task of protection in occupation is formulated thus: "§ 120*a*, Employers of industry shall be bound so to arrange and keep in order their workrooms, business plant, machinery and tools, and so to regulate their business, that the workers may be protected from danger to life and health, in so far as the nature of the business may permit. Special attention shall be paid to the provision of a sufficient supply of light, a sufficient cubic space of air and ventilation, the removal of all dust arising from the work and of all smoke and gases developed thereby; and care must be taken in case of accidents arising from these causes. Such arrangements shall be made as may be necessary for the protection of the workmen against dangerous contact with the machines or parts of the machinery, or against other dangers arising from the nature of the place of business, or of the business itself, and especially against all dangers of fire in the factory. Lastly, all such rules shall be issued for the regulation of business and the conduct of the workers, as may be necessary to render the business free from danger.

“§ 120*b*. Employers of industry shall be bound to make and to maintain such arrangements and to issue such rules for the conduct of the workers as may be necessary to ensure the maintenance of good morals and decency. And, especially, separation of the sexes in their work shall be enforced, in so far as the nature of the business may permit. In establishments where the nature of the business renders it necessary for the workers to change their clothes and wash after their work, separate rooms for dressing and washing shall be provided for the two sexes. Such lavatories shall be provided as shall suffice for the number of workers, and shall fulfil all requirements of health, and they shall be so arranged that they may be used without offence to decency and convenience.

“§ 120*c*. Employers of industry who engage workers under 18 years of age shall be bound, in the arrangement of their places of business and in the regulation of their business, to take such special precautions for the maintenance of health and good morals as may be demanded by the age of the workers.

“§ 120*d*. The police magistrates are empowered to enforce by order the carrying out in separate establishments of such measures as may appear to be necessary for the maintenance of the principles laid down in § 120 to § 120*c*, and such as may be compatible with the nature of the establishment. They may order that suitable rooms, heated in the cold season, shall be provided free of cost, in which the workers may take their meals outside the workrooms. A reasonable delay must be allowed for the execution of such orders, unless they be directed to the removal of a pressing danger threatening life or health. In establishments already existing before the passing of this Act only such orders shall be issued as may be necessary for the removals of grave evils dangerous to the life, health or morals of the workers, and only such as can be carried out without disproportionate expense: but this shall not apply to extensions or outbuildings hereafter added to the establishment. Appeal to a higher court of administration may be made within 3 weeks by the employer.

“§ 120*e*. By order of the *Bundesrath* directions may be issued showing what requirements may be necessary in certain kinds of establishments, for the maintenance of the principles laid down in §§ 120*a* to 120*e*. Where no such directions are issued by order of the *Bundesrath*, they may be issued by order of the Central Provincial Courts, or by police regulations of the courts empowered with such authority, under § 81 of the Accident Insurance Act of July 6th, 1884.”

This formulary may be considered specially successful and almost conclusive.

The insertion of the foregoing clauses in the general portion of chap. vii. of the Imp. Ind. Code Amendment Bill ensures such protection in occupation as is adequate to all necessities of life, to the whole body of industrial work included within the sphere of the Industrial Code.

One item of Labour Protection in occupation might be supposed to consist in guarding against over-exertion, by means of the abolition of piece-work and "efficiency wage." But this claim, in so far as we find it prevailing in the Labour world, is made more on grounds of wage policy than as a necessary measure of protection. The economic advantages to the workers themselves of these methods of payment are so great that the abolition of "efficiency wage" is not, I think, required either on grounds of wage policy or of protective policy. We must, however, pass over the consideration of this question, whilst admitting that there is still a great deal to be done in this direction by means of free self-help and mutual help.

(B) *Protection of intercourse in service, Truck Protection in particular.*

To protection in occupation must be added—as a last measure of the protection of labour against material dangers—protection of the wage-worker in his personal and social intercourse outside the limits of his business with the employer and his family, and with the managers and foremen. In default of a better term, we have called this protection of intercourse in service.

Outside the actual performance of his work, the wage-worker is threatened by special dangers which can only be averted by extraordinary intervention of the State. These dangers affect the person and domestic life of the wage-worker.

Apprentices especially, and all wage-earners living in the same house as the employer, are liable from their position as the weaker party, to intimidation, ill-treatment, and neglect. Provision is made against such dangers by the ruling of the Industrial Regulations on the relations of journeymen and apprentices to business managers and employers.

Special protection has long been afforded in the social relations between the servant on the one side, and the employer and his family on the other. This takes the form of protection against usury, against exploitation of dependents, especially if they are ignorant and inexperienced. This protection in social relations may also be called—involving as it does, in by far the largest proportion of cases, protection against undue advantage derived from payment in kind—"Truck Protection."

The usury in question may take the form of a profit in the way of service, or exploitation of the workman, by forcing him to perform work outside the agreement as well as the work of the business, or instead of it; or again, it may be profit on payment, derived from payment of wages in coin or kind; or it may be profit on credit, loan, hire and sale, derived by compelling the workman to enter into disadvantageous transactions in borrowing, contracting, and hiring, and by requiring him to purchase the necessaries of life at certain places of sale where exorbitant prices are demanded for inferior goods.

To prevent the employer from gaining such unfair advantage over the "members of his family, his assistants, agents, managers, overseers, and foremen," the German Industrial Code has long since interfered by ordering payment in coin of the realm, by prohibiting credit for goods, and by limiting to cost price the charges for necessaries of life, and of work supplied (including tools and materials). Any agreements for the appropriation of a part of the earnings of the wage-worker for any other purpose than the improvement of the condition of the worker or his family shall be declared null and void. The Auer Motion demands also that "compulsory contributions to so-called 'benefit clubs' (savings banks attached to the business) shall be prohibited."

This form of protection, which I have called protection of intercourse, is extended to all kinds of industrial work, as is also the case with protection in occupation, though not with protection by limitations of employment. In Germany this extension is effected by incorporating in the general portion of chap. vii. of the Imp. Ind. Code Amendment Bill the rules for protection in occupation and protection against usury, and also by including non-manufacturing (§ 134) as well as manufacturing work in the rules of the Industrial Regulations against personal ill-treatment and neglect.

Hitherto no special courts have been appointed for the administration of protection of intercourse, which has been left generally to the ordinary administration and especially to the judicial courts. In other cases it is left to the industrial courts of arbitration of the first and second instance rather than to the industrial inspectors. But extraordinary protection is afforded by special rulings of common law on illegal agreements, on nullity of agreement, on escheat of contributions to savings banks made in defiance of prohibition, on failures to complete contracts of apprenticeship and service, etc., etc.

The Imp. Ind. Code provides protection of intercourse in the business of household industry also, in the ruling of the second clause of § 119. The

usefulness of this ruling depends indeed on the improvement of the organisation of Labour Protection which is still imperfect and insufficient in its application to household industry. The compulsory and voluntary assistance of the employers and their commercial agents, with or without control by the industrial inspector, is the aim towards which attention must be directed for the further development of protection of intercourse in household industry. The above-mentioned central union of workers in the embroidery industry in East Switzerland, which is for the most part household industry, shows what may be done by voluntary unions in the way of protection within the sphere of household industry. One inspector says: "The computation of the amount of embroidery done, *i.e.* the basis for the calculation of wages, is determined; the relations between the "middleman," the employer and the workers are regulated; and a place of sale is provided for all work rejected by the employer on account of alleged imperfections. The classification of patterns—*i.e.* the fair graduation of wages according to the ease and rapidity, the greater or less trouble and expense with which the pattern is executed—has for a long time been one of the main objects of the union."

(C) *Protection of the status of the workman (protection of agreement, protection of contract).*

The term protection of contract must here be understood in a wider sense than in that of a mere guarantee of freedom of contract, and judicial protection of labour contracts; hence I have called it protection of the status of the workman.

This protection of the status of labour includes a multifarious collection of existing measures of protection, and impending claims for protection which we may regard as falling under three heads: protection of engagement and dismissal, protection against abuse of contract, and protection in fulfilment of contract.

1. *Protection of engagement and dismissal.*

By protection of engagement we mean protection of the worker against hindrances placed in the way of admittance into service; it is protection in the making and carrying out of agreements, partly protecting the workman against unjust loss of character, and partly giving him the right to claim a character. Protection against loss of character might further be divided into protection against defamation by individuals—foremen or employers—and protection against defamation by combinations of employers.

The Labour world claims protection against loss of character in the demand for the abolition of the labour log, and in Germany where the general log is not

used, in the demand for the abolition of the young workers' log which, however, is still recommended by many from considerations that have no connection with depreciation of work.

Wherever the labour log is still used, protection, against loss of character has long been afforded by prohibition of entries and marks which would be prejudicial to success in obtaining fresh employment.

Protection is demanded, but as yet nowhere granted, against defamation by combination of employers, of workmen who have made themselves disliked, against black lists, circulars, etc. The penalties of such defamation by combination in the Auer Motion are directed against employers and employers only, although in point of fact there are not infrequent cases of combinations among workmen for the defamation of employers. The Motion runs thus: "(§ 153) Whoever shall unite with others against any worker because he has entered into agreements or has joined unions, and shall endeavour to prevent him from obtaining work, or shall refuse to employ him, or shall dismiss him from work, shall be punished by imprisonment for three months."

Another fragment of protection of engagement has long existed in the penalties attached to certain infringements of the right of combination, with reciprocity of course for the employers (cf. § 153 Imp. Ind. Code.)

The guarantee of testimonials has long been afforded—and has met with no opposition—as a means of protection against defamation by individual employers.

Side by side with protection of engagement we have protection in quitting service.

Special protection in quitting service—beyond the ordinary administrative and judicial protection of labour contract against unjust dismissal—consists partly of: protection in dismissal from service, *i.e.* against expulsion by the employer, and partly, of protection in voluntarily quitting service, *i.e.* quitting service for special reasons. Both these measures are applied to the whole of industrial wage labour, and have hitherto generally been enforced by the regular courts of justice and administration, by application, however, of special rulings of industrial legislation on written agreements, on the right of special dismissal from service, and the right of quitting service, and on the length of notice required, etc. The further development of protection in quitting service will probably more and more require the extraordinary jurisdiction of the industrial courts of arbitration.

Protection against compulsory dismissal into which one employer may be forced by another employer by intimidation, libel, and defamation, is afforded by special penal Acts, and, like protection against breach of contract, is more particularly protection of the employer and is only indirectly protection of the worker.

2. *Protection of contract, in the strict sense; protection by limitation of the right of contract, by completion of contract, and by enforcing fulfilment of contract.*

Beyond the ordinary judicial protection afforded by the obligations attached to service contract, special guarantees of protection are in part already granted, in part demanded, against abuse of contract, incomplete fulfilment and non-fulfilment of service contract to the disadvantage, as a rule, but of course not in all cases, of wage-labour.

This protection is afforded partly by formal regulations, partly by judicial rulings on special cases. The latter form of protection in contract is closely allied to protection in intercourse (see above); the two overlap each other.

The protection afforded by contract regulations consists in the enforcement of certain formal requirements, and the granting of certain remissions, such as *e.g.* the requirement of written agreements and the remission of duty on written agreements, etc. First and foremost stands the obligation to post up the working rules. *A parte potiori*[13] all protection of contract might be called protection of working rules.

The working rules serve in reality to give the workman himself the control over his own rights, but they also are to the interest of the employer.

The *von Berlepsch* Bill further extends this sort of method to factory and quasi-factory labour (§ 134*a*-134*g*), permitting the workmen in any business to exert a considerable influence upon the drawing up of the working rules. Sections 134*b* and 134*c* read thus: “§ 134*b*. Working rules shall contain directions: (1) as to the time of beginning and ending the daily work, and as to the intervals provided for adult workers; (2) as to the time and manner of settling accounts and paying wages; (3) as to the grounds on which dismissal from service or quitting service may be allowable without notice, wherever such are not determined by law; (4) as to the kind of severity of punishments, where such are permitted; as to the way in which punishments shall be imposed, and, if they take the form of fines, as to the manner of collecting them and the purpose to which they shall be devoted. No punishments offensive to self-respect and decency shall be admitted

in the working rules. Fines shall not exceed twice the amount of the customary day's wage (§ 8. Insurance against Sickness Act, June 15th, 1883), and they shall be devoted to the benefit of the workers in the factory. The right of the employer to demand compensation for damage is not affected by this rule. It is left in the hands of the owner of the factory to add to rules I to 4 further rules for the regulation of the business and the conduct of the workmen in the business. The conduct of young workers outside the business shall also be regulated. The working rules may direct that wages earned by minors shall be paid to the parents and guardians, and only by their written consent to the minors directly; also that a minor shall not give notice to quit without the expressed consent of his father or guardian."

§ 134*d* reads as follows: "Before the issue of the working rules or of an addition to the rules, opportunity shall be given to the workers in the factory to express their opinion on the contents. In those factories in which there is a standing committee of the workmen it will be sufficient to receive the opinions of the committee on the contents of the working rules."

It is further recommended that the factory rules shall include the publication of legal enactments regarding *protection by limitations of employment, protection in occupation* and in *intercourse*, the necessary conditions and limitations of these, the possibilities of appeal, and methods of payment of overtime wage, also of instructions for precaution against accidents, and lastly of the name and address of the club doctor and dispenser, of the company and their representatives, the name of the factory inspector and his office address and office hours.

But we have seen that contract protection is not only afforded by these formal regulations but also by judicial rulings on special cases. These latter have a threefold task: to prevent the drawing up of unfair contracts, to supply deficiencies in the contract, by adding subsidiary rulings suited to the nature of the industrial service relations, and lastly, to secure the fulfilment of service contract; *i.e.* they have to provide protection by limitation and completion of contract and to secure fulfilment of contract.

This kind of protection of contract is of special importance in dealing with contract fines, proportional output ("efficiency work"), the supply of tools and materials of work, and lastly with payment of wage.

Labour Protection seeks to guard against abuse of contract fines, by fixing the

highest permissible amount of fines, and by handing over the proceeds of the fines to the workmen’s provident fund. This is a matter of the highest moment, and must find a place in the drawing up and in the enforcement of the working rules (see above). Hitherto it has only been extended to factory labour.

A second task of protection of contract lies in the protection of "efficiency work," *i.e.* protection of the wage-worker against an undue deduction from his "efficiency wage" on account of the alleged inferior quality of the output, and against neglect to reckon in the full amount of the output in the calculation of wage. This measure of protection has been placed on the orders of the day of the present labour protective movement, by the adoption *e.g.* of the system of checking the weight of the output in mining.

In the third place we come to protection of the workman against loss sustained in buying his tools and materials of work from the employer. This measure of protection in purchase of materials is applied to the whole of industrial labour by means of its insertion in the general rules for truck protection contained in the Imp. Ind. Code.

A fourth point, very closely allied to protection of intercourse, but which has to be dealt with protectively by those judicial rulings on protection of contract, concerns the permanence of rate of wage, the day, place, and period of payment, and by whom, and to whom, payments are to be made. Protection of payment may be more completely secured by the inclusion in the working rules of directions on these points. It must be applied to the whole of industrial wage-labour according to circumstances. The prohibition of payment of wages in public-houses and on Saturdays, the fixing of the wage by the employer himself, not by a subordinate official; the obligation to make the agreement as to "efficiency wage" at the time of undertaking the work, in order that the bargain may not be broken off should it prove specially favourable for the workers; also payment of wage at least weekly or fortnightly; and lastly, the payment of minors' wages into the hands of parents or guardians, which constitutes a measure of educational protection of the minors against themselves—such are the principal requirements of protection of payment of wages, requirements which are already more or less fulfilled.

FOOTNOTE:

[13] That is, *after the largest portion of it*.

CHAPTER IX.
THE RELATIONS OF THE VARIOUS BRANCHES OF LABOUR PROTECTION TO EACH OTHER.

If the various chief branches of Labour Protection are compared with each other after they have all been examined separately, they appear to be indispensable and inseparable members of one system, for no one branch can be spared. But they are very different in nature, and by no means equal in importance.

Protection of truck and contract have long ago reached their full development. Both are almost universal in their extension, and are exercised by the regular administrative courts and petty courts of justice. They are characterised on the whole by legal precision, which affords little room for interpretation and extension at the will of the administration. Protection of contract and protection of intercourse are required less in the immediate interest of the whole State than in that of individuals.

But when we come to protection in occupation, it is altogether another matter.

Protection by limitations of employment, which forms the central point of the latest protective movement, is in all its aims more or less in contrast to protection of contract and intercourse. It is not a matter of universal application. It requires special administrative organs, special methods of procedure with many technical differences of detail adapted to the peculiarities of different trades. Its full development requires general legal enactments, a central authority, and a uniform exercise of administration; it has to deal with the entire working class, nay more, with the whole body of citizens, and with the spiritual as well as the material life of the workers and of the nation, because it constantly affects and influences the lives of larger masses of labourers.

It must not be supposed that any one branch of protection by limitation of employment is more important in itself than all the rest. It is not protection of holidays alone, nor the maximum working-day alone that will restore the workman to himself, to his place in the human family, to civic life, to his family, to the performances of his spiritual duties; but all measures of protection by prohibiting and limiting employment must work together to effect this.

Protection by limitation of employment, as a whole, seeks to ensure those moral benefits so finely emphasised in the preamble of the Confederate Factory Act: “The benefits which may accrue to the country from the factory system depend almost entirely upon its being ensured that the worker shall not be deprived of time or inclination to be the educator of his children, and the head and prop of his family.” The maximum working-day effects this by securing the evening free to all—to fathers, mothers, children, and young people. Protection of holidays works towards the same end by securing to everyone the seventh day free for his own life, the life of his family, and intercourse with his fellow citizens, and for the performance of his spiritual duties. Prohibition of night work also contributes its quota towards the same result. Without all this protection by limitation of employment, the father of the family would lose his family, the child would lose its training and care, the mother and wife would lose her children and husband; and all of them would lose their joint life as citizens, as members of society, and of a religious community.

It is from these considerations that we must justify the immense importance which it is the growing tendency of Labour Protection in the present day to attach to the whole question of protection by limitation of employment.

CHAPTER X.
TRANSACTIONS OF THE BERLIN LABOUR CONFERENCE, DEALING WITH MATTERS BEYOND THE RANGE OF LABOUR PROTECTION; DALE'S DEPOSITIONS ON COURTS OF ARBITRATION, AND THE SLIDING SCALE OF WAGES IN MINING.

The demand for a legal minimum wage, for wage tariffs, and the sliding scale of wages, form no part of Labour Protection. The State cannot, as we have seen, regulate wages directly, but only indirectly, by favouring an adjustment of wages that shall be fair to each side. But even in measures of that kind it does not interfere for the purpose of protecting the persons of the wage earners in their *relations of dependence* on the employer. Politico-social proposals for indirectly influencing the movement of wages, do not for this very reason, belong to Labour Protection, in the sense which I have assigned to the term in this book. Therefore, I shall content myself, on the one hand, with clearing up a misunderstanding concerning the minimum wage and the wage tariff; and on the other hand, with supplementing my former contribution to the subject (*Jahrg., 1889, Die Zeitschrift für die gesammte Staatswissenschaft*) from the reports of the Berlin Conference, having special reference to the regulation of wage in the English mining industries.

These proposals, dealing with minimum wage and the wage tariff, which I shall now introduce into my treatise on Labour Protection, do not aim at enforcing a minimum rate of wage from above, regardless of the individual value of the labour, they merely aim at providing as far as possible a stable adjustment and classification of efforts and rewards between the whole body of employers and the whole body of workers in any branch of industry or industrial district, *i.e.* at substituting *general* for *individual* control, for the protection not of the worker alone, but also of the employer, *i.e.* against exploiting competitors. In Germany the printers have led the way; the number of their followers in other industries is increasing. But this is a matter that must be settled by the two classes, not by the State.

Questions of wage policy, however, even when unconnected with protective policy, are often drawn into discussions on protective policy; and even the Berlin Conference, which was officially designated[14] “an international conference on the regulation of labour in industrial establishments, and in mining industries,” frequently overstepped the limits of questions of purely protective policy. I feel myself fully justified, therefore, in touching upon a few of the further questions dealt with by the Conference.

In an earlier treatise, written before the proclamation of the Imperial Decree of February 4th, 1890, I pointed out the need for the special cultivation of Labour Protection in mining industry, particularly in coal mining, and I expressed an opinion as to the advisability of establishing government mines as a kind of politico-social model to the rest; while, on the other hand, I declared against the necessity for the nationalisation of coal mines.

Pamphlets of an opposing tendency, which circulated freely in the wake of the great coal strike of 1889, have, it is true, brought to light more and more reliable evidence; but hitherto I have found in them nothing to shake my confidence in the correctness of my fundamental contention: as far as I am concerned, I await without anxiety the issue of the latest Coal Trust.

As I pointed out in the same treatise, the special danger of the strike agitation, attacking as it does the very centres of activity and channels of healthy movement in the social body, has unfortunately been only too fully exemplified. The coal strike, and the railway and dock strikes, have become samples, and are triumphantly quoted as typical instances of the success of the method.

In the same treatise I raised the question whether the branches of industry under consideration should be constituted a department of the public service, involving special obligations and special safeguards against breach of contract, but also ensuring special security of work and a good standard of pay. This question has also risen to a high level of importance since that time; it does not, however, belong to the sphere of Labour Protection, and in this treatise I must therefore leave it on one side.

But I consider myself bound to supplement the information given as to the means of avoiding strikes in the mining industry by bringing forward the communications made by the best informed English expert, who sat in the Berlin Conference (session of March 4). The reports read as follows: “Mr. Dale reminded the Conference that about twenty-five years ago numerous and

protracted strikes took place in the north of England (in mining). In consequence of this, the employers met together to discuss means of regulating the wage question. At first they refused to treat with the workmen *in corpore*, but they finally decided on the advice of a few of their number more far-seeing than the rest, to recognise the union of miners belonging to one and the same mining district. This principle once admitted formed the groundwork of the prevailing system of the day for the settlement of all disputes. This method has obtained for twenty years. At first the representatives of the employers and workmen were only summoned to negotiate on special questions. The principle of settlement by arbitration was admitted in all questions, and was applied in the following manner: each party nominates an equal number of arbitrators, usually two, and these elect an umpire; this last office is willingly accepted by persons of the highest standing. Since the questions laid before the board of arbitration mostly concern the relation of wages to the market price of coal, this relation has to be first ascertained from examination of the employers' books by a legally qualified auditor, before a decision can be given. The most important experimental method, which has so far been adopted for regulating the relations between the rate of wage and the market price, has been the sliding scale. The sliding scale aims at the establishment of a numerical ratio between the rate of wage and the price of coal. At first this was sometimes determined by the following method: five consecutive years are taken, in the course of which considerable fluctuations have taken place in the market prices and the price of coal (the latter brought about by strikes, agreements, and arbitration). These five years are divided into twenty quarters; the average price of coal and the average rate of wage for each quarter is ascertained, and by this means the numerical ratio of the two amounts to each other is determined. The average of these numerical ratios is taken to express the normal relation which must exist between the rate of wage and and the market price of coal. Upon the scale thus determined the average market price for all coal produced in the district for the last preceding quarter is reckoned. The required numerical normal proportion between prices and wages is now computed on this basis, and the rate of wage for the current quarter thus determined. This calculation takes place for every ensuing quarter. These calculations are made by two qualified auditors, who are appointed by the labourers' union and the employers' union. The books of all the works are submitted to these experts, who are bound to the strictest secrecy as to the information thus obtained. They confine themselves to the task of attesting: (1) that during the latest preceding quarter, the average price of coal in the district is such and such; (2) that such and such a rate of wage results therefrom. In this way the workmen obtain, without the necessity of negotiation, of strikes, or

arbitration, the same wages which they could not otherwise have obtained except by repeated efforts. The numerical ratio between wages and market prices is generally fixed for two years. After that time each party may give a half year's notice; but during six years, the first sliding scale introduced has only been subjected to very slight alterations. Notice will shortly be given by the employers in Northumberland and the miners in Durham. Mr. Dale believes that this double notice does not aim at the abolition of the system, but only at revision of the existing scale. In the districts where for the moment the sliding scale has been abolished, an attempt is being made to take the nearest conjectural price of the current quarter as the basis, instead of the price of the previous quarter. In this way the workmen would receive official information as to the market prices, which would be a great advantage, for strikes are most frequently caused by the ignorance of the workmen as to the real position of the coal trade. As to local questions which do not affect the whole district, they are settled by so-called 'joint committees,' or mixed commissions formed by an equal number of workmen and employers; either the President of the county court, or some other person of high position, is chosen as chairman. These commissions meet generally once a fortnight; their decisions operate from the date of the complaint. Mr. Dale asserts that the heads of the labour unions are, for the most part, intelligent men, and when this is the case, the relations between workmen and employers are easily arranged; in Durham, *e.g.*, the miners union has four secretaries, who devote their whole time to the affairs of the association. In this district more than 500 disputes yearly are settled by the joint committee."

At the request of the President, Mr. Dale gave some information as to the strike of the past year; it did not affect the northern district where good relations existed, although notice had previously been given on the sliding scale. He further pointed out that former strikes had often been caused by the fault of the foremen, who treated the workmen with undue harshness. "The introduction of joint committees, on which the workmen are equally represented, has had the effect of establishing better relations between the foremen and the miners. Mr. Dale considers this the best system for the avoidance of crises. The decisions pronounced by the board of arbitration, and by the joint committees, are generally accepted; thus the principle of decision by arbitration takes the place of that of decision by strikes."

FOOTNOTE:

[14] Concluding speech of the Prussian Minister of Commerce.

CHAPTER XI.
THE “LABOUR BOARDS” AND “LABOUR CHAMBERS” OF SOCIAL DEMOCRACY.

Of all the problems with which the science of government is confronted in the present and the near future, there are few in the domain of Social Policy of greater importance, or more fraught with serious possibilities in their results, than the establishment on a democratic basis, both in constitution and in administration, of the organs of Labour Protection.

This tendency appears already in the demand for equal representation of both classes in the organisation of Labour Protection. The establishment by local governing authorities of industrial courts of arbitration has been a step in this direction, a step which has not entirely been retraced by recent legislation in Germany, dealing with such courts.

The form which Social Democracy has given to this idea by the proposal of “Labour Boards” and “Labour Chambers,” brought forward in the Auer Motion, is a matter of the highest interest. So far as I know, this form has received very little, or at any rate insufficient, attention in the Reichstag or the Press. This is the more surprising for two reasons, viz., the justice of its attempt at a better protective organisation, and the serious import of its evident tendency to evolve out of the Capitalist System a Social Democratic order of society.

I think, therefore, that just because of this extreme step in organisation which the Auer Motion takes in proposing Labour Boards and Labour Chambers, as instruments of Labour Protection, it behoves me not to pass it by with indifference, but on the contrary to dwell upon it at some length.

In the first place let us construct in our own minds a picture of the new form of organisation proposed in the Auer Motion.

In the place of Art. IX. in the existing Imp. Ind. Code, a new Chap. IX. would have to be inserted, dealing with “an Imperial Labour Board, District Labour Boards, Labour Chambers, and Labour Courts of Administration” (§§ 131-143).

1. *The Imperial Labour Board and the Imperial Labour Parliament.*

The Imperial Labour Board. Its organisation would be determined by special Imperial legislation. Probably equal representation of classes is intended in this Central Bureau, which would act together with the hitherto essentially bureaucratic Imperial Insurance Board. Its duties would consist: first, in supervising so far as possible, the whole system of Labour Protection as demanded in the Auer Bill (§§ 105-125); further, in affording protection against the competition of penal labour; finally, "in enforcing such measures and conducting such enquiries as may be necessary to the well-being of the whole body of wage-earners, including apprentices, in any kind of industry." Its duties would therefore extend far beyond the limits of Labour Protection in the strict sense, and it would be a general Central Bureau of aids to Labour, in which the Imperial Insurance Board would soon become incorporated.

The Labour Parliament (Diet of Labour Chambers). I take leave thus to designate the representative central organ proposed (although of course it is not brought forward in these terms in the heading of the new Chap. IX. of the Auer Bill) since it is clear that the Imperial Labour Board is practically only intended to be the executive organ of this democratic industrial Council of the nation. Sections 140-142 of the Auer Motion require that: § 140 "It shall be the duty of the Imperial Labour Board to summon once a year representatives from the collective Labour Chambers to a general deliberation on industrial interests. To this General Council each Labour Chamber shall send one delegate to represent the employers, and one the body of wage-earners. The choice of the representatives shall be made by each class separately. The chair shall be taken at the Council by a member of the Imperial Labour Board, but he and his colleagues shall have no right to vote. The Council shall determine its own standing orders and the orders of the day; the sittings to be public. § 141. The members of the Labour Chambers shall receive daily pay and defrayment of travelling expenses. § 142. The Imperial Government shall pay the costs of the arrangements enumerated in §§ 131-140; they shall be entered yearly in the imperial accounts."

Thus we should have a national Labour Parliament—formed from the district Labour Chambers—with equal representation of both classes, receiving grants from the Imperial exchequer, undertaking the general supervision of industrial interests and acting as a check on the Imperial Labour Board. By the simple process of throwing overboard the nominees of the employers, this Labour Parliament might at any time become a pure parliament of labourers, or "People's Parliament," and the Imperial Labour Board might resolve itself into

the central ministry of a purely “People’s State.”

Such a state of things would obviously be the realisation of the extreme Social Democratic order of State.

It must be admitted that no secret is made of this fact, nor yet of the *basis* on which the whole edifice is raised.

(2) *Labour Boards and Labour Courts of Arbitration, Labour Chambers.*

The basis of the edifice is formed by Labour Boards and Courts of Arbitration, on the one hand (*i.e.* for executive purposes), and Labour Chambers on the other (*i.e.*, for purposes of regulation). We shall, as far as possible, give the explanation of the matter in the words of the motion.

Labour Boards. On this head the Auer Motion reads as follows: “§ 132*a*. Below the Imperial Labour Board come the Labour Boards which shall be appointed throughout the German Empire, in districts of not less than 200,000, nor more than 400,000 inhabitants, at the latest by Oct. 1, 1891. § 133. The Labour Board shall consist of a Labour Councillor and at least two paid officers; it must pass its rulings and decisions in full sitting. The Imperial Labour Board shall select the labour councillor from two candidates nominated by the Labour Chamber. The permanent paid officers, whose duty it is to assist the labour councillor in his task of supervision, shall be elected by the Labour Chamber, half from the employers, and half from the employed. In districts in which there are a considerable number of works employing chiefly female labour, some of the officials appointed shall be women. The same rules with regard to invalid and superannuation pensions shall apply to the officers of the Labour Boards, as apply to all other imperial officials. § 133*a*. The officers of the Imperial Labour Board, and the labour councillors or their paid assistants, shall have the right at any time to inspect all places of business (whether of State, municipal, or private enterprise) and to make such regulations as may appear necessary for the life and health of the workers employed. In the exercise of such supervision they shall be empowered with all the official authority of the local police magistrates. In so far as the rules laid down are within the official authority of the supervising officers, the employers and their staff shall be bound to render unhesitating obedience. The employer or his representatives shall have a right of appeal to the District Labour Board, to be lodged within a week, against the orders and rulings of individual officials, and a right of appeal against the District Labour Board’s decision, also within a week, to the Imperial Labour Board. The Labour Board

shall be bound to inspect all the works within a district at least once a year. The employers shall permit the official inspection to take place at any time when the work is being carried on, especially also at night. The inspecting officers shall be bound, except in cases of infringement of the law, to observe secrecy as to all information on the concerns of a business obtained by them in pursuit of their official duties. § 133*b*. The local police magistrates shall uphold the Labour Board in the exercise of its authority, and shall enforce obedience to its directions. § 133*c*. The Labour Board shall organize all free labour intelligence within its district, and serve in fact as a central bureau for this purpose. It shall also be empowered to appoint branch bureaux with this object, in such places as may seem suitable, and if there is no industrial union to undertake the duties the local police magistrates shall undertake them. § 133*d*. Every Labour Board shall publish a yearly report of its proceedings, copies of which shall be distributed gratuitously to the members of the Labour Chambers by the Imperial Labour Board and the Central District Courts. The report shall be submitted to the approval of the Labour Chamber before publication. The Imperial Labour Board shall draw up yearly, from the annual reports of the Labour Boards, a general report to be submitted to the *Bundesrath* and the Reichstag. The reports of the District Labour Boards and the Imperial Labour Board shall be accessible to the public at cost price."

The Labour Board of a district of from 200,000 to 400,000 inhabitants would be in the first place a modern kind of industrial inspectorate with offices filled from both classes—employers and employed—with a democratic system of election, and to which women would also be eligible. Even the presidency of this inspectorate would not be freely appointed by the government, which would have only the power of electing one out of two nominees of the Labour Chambers. The primary task of the board would take the form of Labour Protection, of centralization of labour intelligence, and of drawing up reports on matters concerning labour. The Labour Board is intended as the executive organ of the Labour Chambers, the parliamentary administration would therefore be general; even in reporting on industry the Labour Board would be subject to the approval of the Labour Chamber. It is evident that this Democratic organisation of courts, which would be powerless to act so long as both classes obstructed each other, might easily at one stroke, by turning out the nominees of the employers, be changed and developed into purely democratic district courts for the general protection of labour and the control of production.

Courts of Arbitration. The Court of Arbitration as proposed by the Auer Motion,

is, so to speak, the judicial twin brother of the Labour Board. According to § 137-137*e*, the Court of Arbitration would be a court of the first instance, for the settlement of disputes between employers and workmen. It would be formed by each Labour Chamber out of its numbers, and would consist of equal numbers of employers and of workmen. The chair would be taken by the labour councillor or one of his paid assistants. Equal representation of both classes would be required when pronouncing decisions. None but relations, employés, and partners in the business, would be permitted to be present during the deliberations in support of the disagreeing parties. There would be right of appeal to the Labour Chamber. The members of this Court of Arbitration would (like those of the Labour Chamber) (§ 130*a*) receive daily pay and defrayment of travelling expenses. Such would evidently be the working out of this system of combined class representation, of which, indeed, we already have an instance in the industrial courts of arbitration.

Labour Chambers. These would form the foundation stone of the edifice, and they deserve the special attention of all who wish to know how Social Democracy means to attain her ends. I give verbatim the clauses dealing with this: "§ 134. For the representation of the interests of employers and their workmen, as well as for the support of the Labour Boards in the exercise of their authority, there shall be appointed from Oct. 1, 1891, in every Labour Board district, a Labour Chamber, to consist of not less than 24, and not more than 36 members, according to the number of different firms established in the district. The number of members for the separate districts shall be determined by the Imperial Labour Board. The members of the Labour Chambers shall be elected, the one half by employers of full age from amongst their numbers, the other half by workers of full age from amongst their numbers. The election shall be made on the principle of direct, individual, ballot voting by both sexes, a simple majority only to decide. Each class shall elect its own representatives. The mandate of the members of the Labour Chamber shall last for two years, opening and closing in each case with the calendar year. Simultaneously with the election of the members of the Labour Chamber proxies to the number of one-half shall be appointed. The proxies shall be those candidates who receive the greatest number of votes next after the elected members. In the case of equal votes lots shall be drawn. The selection of the polling day, which must be either a Sunday or festival, shall rest with the Imperial Labour Board, which shall also lay down the rules of procedure for the election. Employers and workmen shall be equally represented on the election committees. The time appointed for taking the votes shall be fixed in such a manner that both day and night shifts may be able to go

to the poll. § 135. Besides fulfilling the functions assigned to them in §§ 106*a*, 110 and 121, the Labour Chambers shall support the Labour Boards by advice and active help in all questions touching the industrial life of their district. It shall be their special duty to make enquiry into the carrying out of commercial and shipping contracts; into customs, taxes, duties, and into the rate of wage, price of provisions, rent, competitive relations, educational and industrial establishments, collections of models and patterns, condition of dwellings, and into the health and mortality of the working population. They shall bring before the courts all complaints as to the conditions of industrial life, and they shall give opinion on all measures and legal proposals affecting industrial life in their district. Finally, they shall be courts of appeal against the decisions of the Courts of Arbitration. § 136. The president of the Labour Chamber shall be the labour councillor, or failing him, one of his paid officials. The president shall have no vote, except in cases in which the Labour Chamber is giving decision as a court of appeal against the decision of the Court of Arbitration. Equality of voting shall be counted as a negative. The president shall be bound to summon the Labour Chamber at least once a month, and also when required on the motion of at least one-third of the members of the Chamber. The Labour Chambers shall lay down their own working rules; their sittings shall be public." According to § 139 of the motion, the members of the Labour Chambers shall also be entitled to claim daily pay and defrayment of travelling expenses.

Such are the Labour Chambers according to the proposals of the Social Democrats in 1885 and 1890.

It is not without some astonishment that I note the tactical ingenuity displayed by the party even here. Everything that has anywhere appeared in literature, in popular representation, in judicial and administrative organisation, in the way of proposals for the centralisation and extension of labour intelligence, or of proposals for the representation of labour in Labour Protection, and in all agencies for the care of labour,—every scheme that has ever been put forward under different forms, either purely theoretic or practical, as, *e.g.*, "Popular Industrial Councils," and "Industrial Courts of Arbitration"—is here used to make a part of a broad bridge, leading across to a "People's State." Nothing is lacking but the lowest planks, which could not, however, be dispensed with, a Local Labour Board and a Local Labour Chamber, as the sub-structure of the District Labour Boards and District Labour Chambers.

The leaders of Social Democracy in the German Reichstag maintain that they are willing to join hands with the representatives of the existing order in their

schemes of organisation. We have, therefore, no right to treat their scheme as consciously revolutionary. But this hardly affects the question. The question is whether—setting aside altogether the originators of the plan—such an organisation as that described above might not in fact readily lend itself as a battering-ram to overthrow the existing order and realise the aim of Socialism, whether, in fact, it would not of necessity be so used. This question may well be answered in the affirmative without casting the slightest reproach at the present leaders of the party.

The regulating representative organs would have full and comprehensive authority in all questions of industry, social policy, and health, and in inspection of dwellings; and the executive organs, even up to the Imperial Labour Board, might be empowered by the mere alteration of a few sections of the Bill to exercise the same authority, subject to the consent of the majority in the National and District Chambers, and eventually in the Local Chambers.

If these representative and administrative bodies ever came into existence, they would slowly but surely oust, not only the whole existing organisation of Chambers of Commerce and Industrial Councils, but also the Reichstag itself, and the Imperial Government, as well as the local corporate bodies; they would tear down every part of the existing social edifice. By the combined action of the Social Democrats in the Reichstag with the increasingly democratic tendencies of the local bodies, all this might come to pass in a very short space of time.

I do not forget that the organisation is to be based in the first instance on equal representation of classes. On the first two, and eventually on the third, step of the judicial and representative edifice, as many representatives are given to capital as to labour. In so far the organisation is a hybrid of Capitalism and Social Democracy. For the moment, and in the present stage, it is, for this very reason, of special value to the Social Democrats, as it supplies a method of completely crippling the forces opposed to them in the existing order. For it will be sufficient in the day of fulfilment, *i.e.* when all is ripe for the intended change, to give one shake, so to speak, in order to burst open the half capitalistic chrysalis, and let the butterfly of a Social Democratic “People’s State” fly out.

The half capitalistic organisation would, I repeat, be of the greatest value at present, in the early preparatory work of the Social Democrats. First, because the working class would become practically and thoroughly accustomed to co-operation instead of to subordination as hitherto; this is the transition step which cannot be avoided, to the supremacy of the working class over the employers’

class. Then, too, the proposed organisation would offer an excellent opportunity for passing through the transition step by step, by the continued weakening of the capitalist order of society in all its joints. The struggle with capital would have the sanction and the organised force of legislation. It would receive legal organisation, and would even be legally enjoined. This legalised battle would proceed over the whole circuit of industrial activity, including trade and transport, and including also the state regulated portion of it.

In addition to this the organisation would be peculiarly fitted to cripple even the least objectionable bulwarks of capital, even the altogether unbiassed and nonpartisan operation of the local and district, and probably even ultimately of the imperial courts.

The apparently equal coupling of the influence of both classes would lead to the result that the class which had the more energetic representatives and the slighter interest in the maintenance of the “working rules” would be able at any moment and at any point in the national industrial life, to bring everything to a deadlock. The labour councillor would be dependent on the Labour Chambers, and they in turn would be entirely dependent on the leaders of labour. By the provision that the president shall have no vote, and a tie in voting shall therefore count as a defeat, the workmen’s electorate hold in their hands the power to obstruct at will any resolution, and especially to obstruct the issue of the working rules in any business, since the rules must be submitted to the approval of the Labour Chambers.

The function of “supporting the Labour Boards by advice and active help in all questions touching the industrial life of their district,” might very easily, by virtue of the above provision, be so abused by the Labour Chambers as to deprive individual industrial inspectors of all possibility of just and independent action, and hence by degrees to entirely cripple and destroy the value of the inspectorate as a whole; there can, I think be no doubt that before very long these powers would intentionally be used for this purpose.

The action of a positive Social policy would be hopelessly crippled by an equally balanced class representation, while at the same time the existing order of industrial life would be disturbed and shaken down to the very last and smallest branches of industry.

Nor would this be all, for such an organisation would secure fixed salaries for the staff of agitators in the Labour party, since the representatives would receive

daily pay and defrayment of travelling expenses from the Imperial exchequer. Debates and discussions might be carried on without intermission, the pay continuing all the time, for each Labour Chamber would be convened, not only once a month, but also at any time at the request of one-third of the members of the Labour Chamber, therefore of two-thirds of the labour representatives in the chamber. By virtue of the provision which gives them unlimited right of intervention, pretexts for convening frequent meetings would never be wanting.

Hence it is evident that no more effectual machinery could be devised for the legal preparation for leading up the existing social order directly to the threshold of the “People’s State.” The attempt to convert the hybrid Capitalist-Socialist state to a pure Socialist state would be a perfectly simple matter, both in the Empire, the provinces, and the local districts, as soon as we had allowed Social Democracy one or two decades in which to turn the two-fold class representation to their own ends. By a single successful revolutionary “*coup*” in the chief city of the Empire, or in the chief cities of several countries simultaneously, representation of capital in the Labour Courts might be thrown overboard, and the “People’s State” would be ready; the parliament of a purely popular government would hold the field, and the present representation of the nation which includes all classes and watches over the spiritual and material interests of the whole nation, might without difficulty be swept away from Empire, province, district and municipality.

The construction of a complete system of “collective” production would be easy, for it would find the framework ready to its hand, complete from base to summit, fully mapped out on the plan.

Perhaps the leaders themselves are not fully conscious of the lengths to which their proposed organisation may carry them. One can quite understand how from their standpoint they fail to see the end. They have pursued the path that seemed the most likely to lead to their goal of a radical change of the existing social order. The whole responsibility will rest with the parties in power, if they do more than hold out their little finger, which they have already done, to help Social Democracy along this path of organisation.

CHAPTER XII.
FURTHER DEVELOPMENT OF PROTECTIVE ORGANISATION.

In spite of all that can be urged against them, however, we may gather much, not merely negative, but also positive, knowledge from the proposals of Social Democracy. An organisation which shall be equipped with full authority, which shall be independent, complete in all its parts, which shall prevail uniformly and equally over the whole nation; an organisation which shall avoid the disintegration of collective aids to labour, which shall encourage industrial representation and prevent the division of authority amongst many different courts: such is the root idea of the proposal, and this idea is just, however unacceptable may appear to us the form in which it is clothed in the Auer Motion. Nothing is omitted in the Auer Motion except the assignment of their various duties to the various branches of the territorial representative bodies, and the working out of an elementary local organisation. I shall therefore try to work out the idea into a legitimate and possible form of development. In order to do this I must distinguish between the organisation required for executive and for representative bodies.

As regards the executive organs, neither in Germany nor elsewhere is the industrial inspectorate at present furnished with a sufficient number of paid head-inspectors and sub-inspectors. Scarcely any of the sub-inspectors are drawn from the labouring class except in the case of England. Industrial inspection in Germany has not yet attained uniform extension over the whole Empire. The inspectors of the different provinces, and the chief provincial inspectors of the whole Empire require to be brought into regular communication with each other and with a Central Bureau adapted for all forms of aid to labour, including Labour Protection—an organ which of course must not interfere with the imperial, constitutional, and administrative independence of the States of the *Bund*. If the individual inspectors were everywhere carefully chosen, the assembling of all inspectors for deliberation with the Provincial and Imperial Central Bureaux of Labour Protection would in nowise retard, but on the contrary would serve to promote the complete and equitable administration of Labour Protection and all forms of aid to labour. This is the really fruitful germ

contained in the idea of an “Imperial Labour Board.”

A Provincial Labour Board might effect much in the same direction. We are not without the beginnings of a uniform constitution of this kind: England has an Inspector-General, Austria a Central Inspector; in Switzerland the inspectors hold regular conferences; in France a comprehensive scheme of inspectoral combination is projected.

The choice of persons as head and sub-inspectors, which is a matter of such great importance, might be subject to nomination by the united provincial inspectorate, coupled with instructions to direct particular attention to the selection of persons of practical experience, without social bias, well versed in knowledge of technical and hygienic matters, and suited to the special needs of the several posts.

But the mere development of the inspectorate would not be the only step in the progress of the organisation of Labour Protection. We must go much further than this. The combined interests of economy, simplicity, efficiency, and permanence of service, point to the necessity of relieving as far as possible the regular governmental courts of the Empire, of the province, and of the municipality, of the extra burden of judicial and police administration involved in special branches of Labour Protection, and in all other special forms of aid to labour. The same considerations involve the necessity of gradually developing a better organisation of associated labour boards, an imperial board, and provincial, district, and municipal boards. We should thus get rid of the present confusion of divided authority without entirely depriving Labour Protection, both individual and general, of the assistance of the ordinary administrative courts. This is the task that I have repeatedly insisted upon as imperatively requiring to be taken in hand in connexion with Labour Insurance. The Auer Motion attempts to meet this necessity.

Much also that is very just and very practical is contained in the idea of extending the sphere of operations of the Imperial Labour Board and of the District Boards so as to embrace not only Labour Protection but every form of aid to labour. Complaint is made that the organisation of Labour Insurance, in spite of all caution, has frequently proved a unpractical and costly piece of patchwork administration. Would it not then be more to the point, and would it not more easily fulfil the object of Labour Insurance and Labour Protection, and later on also of dwelling reform, inspection of work, etc., to create municipal district and provincial boards, with a great Imperial Central Bureau at the head?

In order that each special branch of protection might receive proper attention, care would have to be taken in appointing to the offices of the collective organ, to insure the inclusion of the technical, juristic, police, hygienic, and statistic elements, and it would be necessary to group these elements into sections without destroying the unity of the service. There would be no lack of material, and it would not be difficult to secure a good, efficient, and economical working staff.

No less reasonable is the idea of a "guild" of the eldest in the trade, or of a factory committee for the several large works with representation of both classes to appoint the district, provincial, and imperial labour councils. So far from being extreme in this respect, the Auer Motion is rather to be reproached with incompleteness, and a lack of provision for local Labour Councils and Labour Chambers, a point which we have already mentioned. But the representative bodies would have a significance extending far beyond the limits of Labour Protection—following the example of Switzerland the *von Berlepsch* Bill admits factory labour-committees for dealing with matters concerning the factory working rules—they would be agencies for the care of labour, for the insurance of social peace, the protection of morality, the settlement of disputes and the maintenance of order in the factory, for the instruction and discipline of apprentices, for the control of the administration of protective legislation, for dealing with the wage question, in a word for softening the severe autocracy of the employers and their managers by the co-operation and advice of the workers. And in this case I have nothing further to add to what I have already said on the matter in a former article.

But the supporter of even the most comprehensive scheme of labour representation does not stand committed to any such system of parliamentary management of industry by democratic majority as is proposed in the Auer Motion. The appointment and the working of the Labour Councils and Labour Chambers seems to me to introduce quite another element into the scheme.

The regular, not merely the accidental and occasional, meeting of the inspectors with the body of employers and workers is a recognised practical necessity; a less bureaucratic system of industrial management is demanded on all sides. Regularly appointed ordinary and special meetings with the Labour Chambers would no doubt accomplish much. The inspector ought to be accessible to the expression of all wishes, advice, and complaints; but, on the other hand, he should not yield blind obedience to the rulings and representations of such organs. The industrial inspector must be, and must remain, an officer of the

State, capable of acting independently of either class, appointed by government; only under these circumstances can he perform the duties of his office with firmness and impartial justice; in his appointment, in his salary, and in the exercise of his official duties he should be furnished with every guarantee to insure the independence of his judgment. It is nowise incompatible with this that he should be open to receive representations, whether in the way of advice, information, or complaint. The more he lays himself open to such in the natural course of work, the more important will his duties and position become, both on his circuits and in his office. The right of appeal to higher courts can always be secured to the Labour Chambers in cases of complaint. But how should representative bodies of this kind be formed?

In answering this question care must be taken above all not to confound such public Labour Chambers as are suggested in the Auer proposals with voluntary joint committees of both classes. Each of these representative organs requires its own special constitution.

The voluntary unions appoint committees for the security of class interests, and especially for the purpose of making agreements as to conditions of work. The election of these representative bodies ought to be made by both classes with unrestricted equal eligibility of all, including the female, members of any union, and without predominance of one class over the other, or of any section of one class.

I have already in a former article (see also above, Chap. V.) laid great stress upon the development of this voluntary or conciliatory representation of both classes as a means of union which can never be replaced by the other or legal form of representation.

The need for a representative system in the organs of the different forms of state-aid to labour is quite another matter.

Their tasks require special, public, legalised representation, with essentially only the right of deliberation; but they may also decide by a majority of votes questions which lie within the sphere of their competence.

As regards this public representation, it seems to me that joint appointment by direct choice of all the individuals in both classes, and out of either class, tends to the preservation of class enmity rather than to the mutual conciliation of the two classes and to the promotion of their wholesome joint influence on the boards. This kind of appointment might be dispensed with by limiting direct

election as far as possible to the appointment of the elementary organs of representation; but for the rest by drawing the already existing authorities of a corporate kind into the formation of the system of general representation. Herein I refer to such already existing organs as those of labour insurance, Chambers of Commerce and Industrial guilds, railway boards, local and parliamentary representatives; and other elementary forms of corporate action might also be pressed into the service. A thoroughly serviceable, fully accredited *personnel* would thus be secured for all Labour Boards.

This system might even be applied to the election or appointment by lot of the Industrial Court of Arbitration. If the Labour Chambers were corporate bodies really representative of the trade, then the Industrial Courts of Arbitration, both provincial and local, might be constituted as thoroughly trustworthy public organs—without great expense, free from judicial interference, competent as courts of the first and second instance, and not in any way dependent on the communal authorities—either freely elected by the managers of the workmen's clubs and the employers' boards or companies, or chosen by lot from the *personnel* of the already existing corporate institutions above referred to. The system of direct election by the votes of all the individual workers and employers would thus be avoided, and, more important still, this method would meet the difficulty which proved the crux of the whole question when the organisation of Industrial Courts of Arbitration was discussed in the last Reichstag: the distinction between young persons and adults would not enter into consideration, either in the case of Labour Chambers or of the Courts of Arbitration proceeding therefrom.

There would be no need, under this system, that electors of either class should be required to limit their choice of representatives to members of their own class. Each body of electors would be free to fix their choice on the men who possessed their confidence, wherever such might be found. This would further help to stamp out the antagonisms which are excited by the separate corporate representation of both classes. Men would be appointed who would need no special protection against dismissal. But the representatives of the workers when chosen out of the midst of the working electorate might still receive daily pay and defrayment of travelling expenses. If this were entered to the account of the unions which direct the election through members of the managing committee, and if charged *pro rata* of the electors appointed, a sufficient safeguard would be

provided against the temptation to protract the sessions or to bribe professional electors.

The foregoing sketch of the executive and representative development of the organisation of Labour Protection in the direction of united, simple, uniform, specialized organisation of the whole aggregate of aids to labour, ought at least to deserve some attention.

Provided that the upward progress of our civilisation continues generally, this quite modern, hitherto unheard of, development of boards and representative bodies, even if only brought about piecemeal, will eventually be brought to completion, and will effect appreciable results in the State and in society. Some of the best forms of special boards, *i.e.* special representative bodies are already making their appearance, *e.g.* the “Labour Secrétariats” in Switzerland, the American “Boards of Labour,” and the Russian “Factory Courts” under the governments of St. Petersburg, Moscow, and Vladimir (Act of June 23, 1868).

CHAPTER XIII.
INTERNATIONAL LABOUR PROTECTION.

Years and years elapsed before the first supporters of international protection received any recognition. Then immediately before the assembling of the Berlin Conference, the idea began to take an enormous hold on the public mind. Switzerland demanded a conference on the subject. Prince Bismark refused it. The Emperor William II. made an attempt towards it by summoning an international convention to discuss questions of Labour Protection.

The inner springs of the movement for international Labour Protection are not, and have not been, the same everywhere.

With some it is motived by the desire to secure for wage labour in all “Christian” States conditions compatible with human dignity and self-respect. This was the basis of the Pope’s negotiations with the labour parties and with certain of the more high-minded sovereigns and princes. Others demand it in the combined interests of international equilibrium of competition and of Labour Protection, believing that these two may be brought into harmony by the international process, since if industry were equally weighted everywhere, and the costs of production, therefore, approximately the same everywhere, protected nations would not suffer in the world’s markets. The first, the more “idealist” motive prevails most strongly among Catholics, and contains no doubt a deeper motive —namely, the preservation of the social influence of the Church. At the International Catholic Economic Congress at Suttich, in September, 1890, this view prevailed, with the support of the English and Germans, against the opposition of the Belgians and French.

The light in which international Labour Protection is viewed depends upon whether the one or the other motive prevails, or whether both are working together.

Two results are possible. Either limits will be set to the right of restricting protection of employment and protection in occupation by means of universal international legislation, or the interchange of moral influence between the various governments will be brought about by means of periodical Labour Protection Conferences and through the Press, which on the one hand would

promote this interchange of influence, and on the other hand would, uniformly for all nations, demand and encourage the popular support of all protective efforts outside the limits of the State.

Before the Berlin Conference it was by no means clear what was expected of international Labour Protection. Since the Conference it has been perfectly clear, and this alone is an important result.

The international settlement which Prince Bismark had opposed ten years before did not meet with even timid support at the Berlin Conference. England and France were the strongest opponents of the idea of the control of international protective legislation. This can be proved from the reports of the Berlin Conference.

The representative of Switzerland, H. Blumer, in the session of March 26, 1890, made a proposal, which was drawn up as follows:—

“Measures should be taken in view of carrying out the provisions adopted by the Conference.

“It may be foreseen on this point that the States which have arrived at an agreement on certain measures, will conclude an obligatory arrangement; that the carrying out of such arrangement will take place by national legislation, and that if this legislation is not sufficient it will have to receive the necessary additions.

“It is also safe to predict the creation of a special organ for centralizing the information furnished, for the regular publication of statistical returns, and the execution of preparatory measures for the conferences anticipated in paragraph 2 of the programme.

“Periodical conferences of delegates of the different governments may be anticipated. The principal task of these conferences will be to develop the arrangements agreed on and to solve the questions giving rise to difficulty or opposition.”

Immediately upon the opening of the discussion on this motion, the delegates from Great Britain moved the rejection of the proposal of Switzerland, “since, in their opinion, an International Convention on this matter could not supply the place of special legislation in any one country. The United Kingdom had only consented to take part in the Conference on the understanding that no such idea

should be entertained. Even if English statesmen had the wish to contract international obligations with respect to the regulation of factory labour, they would have no power to do so. It is not within their competence to make the industrial laws of their country in any way dependent on a foreign power." The Austrian delegate suggested that it be made quite clear "that the superintendence of the carrying out of the measures taken to realise the proposals of the Conference is exclusively reserved to the Governments of the States, and that no interference of a foreign power is permitted." The Belgian delegate "considers it advisable, in order that the deliberations of the Conference may keep their true character, not to employ the word 'proposals,' but to substitute for it 'wishes,' or 'labours.'" M. Jules Simon, the French delegate, states that he and his colleagues have received instructions which "forbid them to endorse any resolution which either directly or indirectly would appear to give immediate executive force to the other resolutions formulated by the Conference." And M. Tolain adds that "it is true that the French Government had always considered the meeting of the Conference exclusively as a means of enquiring into the condition of labour in the States concerned, and into the state of opinion in respect to it, but that they by no means intended to make it, at any rate for the present, the point of departure for international engagements."

The idea of an international code of Labour Protection could not have been more flatly rejected. Hence the opposition to the idea manifested by Prince Bismark was fully borne out by the Conference. This opposition has everything in its favour, for it is clear that a uniform international code of Labour Protection would supply boundless opportunities for friction and for stirring up international commercial quarrels. If it were desired to establish Labour Protection guaranteed by international agreement, it would be found that there would be as many disturbances of international peace as there are different kinds of industry, nay, I will even say, as there are workmen. The countries whose administration was best and most complete would be the very ones that would be most handicapped: seeing that they could expect only a very minimum of real reciprocity from those other contracting powers whose administration was faulty, and where a strong national sentiment was lacking in the workers, owing to their miserable and penurious condition in the absence of effective protection for labour. Accurately to supervise the observance of such an international agreement we should require an amount of organisation which it is quite beyond our power to supply. But even on paper, international labour legislation has no significance beyond that of creating international discontent and agitation, and of supplying political animosity with inexhaustible materials for arousing

international jealousy. The Berlin Conference has negatively produced a favourable effect by the protest of England and France, if one reflects how fiercely the scepticism of Bismark's policy was attacked before the meeting of the Conference. Repeated readings of the reports of the Conference have confirmed me in the impression that Prince Bismark was fully upheld by the Conference in his opposition to the establishment of Labour Protection by international agreement. But I have felt it necessary to clearly establish the grounds on which the opposition to this form of protection is based.

The moral influence of the international Conference, however, has been on the other hand something more than "vain beating the air." This is already shown in the increased impetus given to the improvement of national labour-protective legislation.

The conclusions arrived at by the Conference as to the international furtherance of Labour Protection are, it is true, of the nature of recommendations merely, and are in nowise binding on the governmental codes of each country. But even as recommendations they are practically of the greatest value. None of the nations represented will venture, I think, to disregard the force of their moral influence. All the means recommended by the Conference have promise of more or less success. Some of the proposals, for instance, are: the repetition of international Labour Protection Conferences, the appointment of a general, adequate, and fully qualified industrial inspectorate, the international interchange of inspectors reports, the uniform preparation of statistics on all matters of protection, the international interchange of such statistics, and of all protective enactments issued either legislatively or administratively.[15]

But what of the proposal for the appointment of an international commission for the collection and compilation of statistics and legislative materials, for the publication of these materials, and for summoning Labour Protection Conferences, and the like? And what would this proposal involve?

None of the objections which can be urged against the enforcement of an international code of Labour Protection would apply to this. The commission would be well fitted to help forward the international development, on *uniform lines*, of labour protective legislation, without in any way fettering national independence. Its moral influence would be of great international value.

What it would involve is also easy to determine. Such a commission would be an international administrative organ for the spread and development of Labour

Protection on uniform lines in all countries; a provision by International Law for the enforcement of the international moral obligations arising out of protective right.

That is really what the Labour Protection Conferences would be if they met periodically as suggested At the Berlin Conference this at least was felt when it was said that the Conference was indeed less than a treaty-making Congress, but more than a scientific Congress. “International Conferences may be divided into two categories. In the first the Plenipotentiaries of different States have to conclude Treaties, either political or economic, the execution of which is guaranteed by the principles of international law; to the second category belong those Conferences whose members have no actual powers, and give their attention to the scientific study of the questions submitted to them, rather than to their practical and immediate solution. Our Conference, from the nature of its programme, and the attitude of some of the States good enough to take part in it, has a character of its own, for it cannot pass Resolutions binding on the Governments, nor may it restrict itself to studying the scientific sides of the problems submitted to its examination. It could not aspire to the first of these parts; it could not rest content with the second. The considerations which have been admitted in the Commissions relative to all the questions contained in the programme have been inspired by the desire of showing the working population that their lot occupies a high place in the attention of the different Governments; but these considerations have had necessarily to bend to others which we cannot put aside. In the first place, there was the wish to unite all the States represented at the Conference in the same sentiment of devotion to the most numerous and the most interesting portion of society. It would have been grievous not to arrive at the promulgation of general principles, by means of which the solution of the most important half of the social problem should be attempted. It was evidently not possible to arrive at once at an agreement on all its details. But it was necessary to show the world that all the States taking part in the Conference were met in the same motives of humanity.”

The proposal of a commission for summoning repeated conferences, international, uniform gatherings of representatives of all non-governmental agencies of Labour Protection, for the purpose of dealing uniformly with the requirements of a progressive policy in national labour-protective legislation, was a summing up of the demands urged by the Conference for a strong, international, administrative organisation for the furtherance of Labour Protection by the international exchange of moral persuasion, but without the

enforcement of a code of international application.

From a scientific point of view it is of the highest interest to observe how international right, and even to some extent an international administrative right, is here breaking out in an entirely new direction. Treaties between two or more, or all, civilized States have hitherto mainly been treaties for combined action in certain eventualities (treaties of alliance), or territorial treaties for defining spheres of influence. Or else they have been treaties for the reciprocal treatment of persons or of goods passing between or remaining in the territories of the respective contracting States: migration treaties, commercial treaties, treaties concerning pauper aliens, tariff treaties and other treaties. Or they have been treaties for the prevention of the spread of infectious diseases. The exercise of international activity in the creation, development, and regulation of an international uniform Social Policy would be quite a new departure. Probably the idea of Switzerland has not been thrown out altogether in vain.

FOOTNOTE:

[15] Proposals VI., I*a-d*, and II. I*c* is as follows: “All the respective States, following certain rules, for which an understanding will have to be arrived at, will proceed periodically to publish statistical reports with respect to the questions included in the proposals of the Conference.”

CHAPTER XIV.
THE AIM AND JUSTIFICATION OF LABOUR PROTECTION.

The aim and justification of Labour Protection have I think become sufficiently clear in the course of our inquiry. It is now only necessary to recapitulate.

Labour Protection, especially protection by limitation of employment, and protection in occupation, is first and foremost the social care of the present and of all future generations, security against neglect of their spiritual, physical, and family life through the unscrupulous exploitation of wage-labour. Hence Labour Protection is indirectly protection also of the capitalist classes of the future, and therefore far from being unjust, it even acts in the highest interests of that part of the nation which by virtue of the fact of property or ownership is not in need of any special Labour Protection.

In fulfilling its purpose, Labour Protection even goes beyond the work of upholding and strengthening national labour, when it takes the form of internationally uniform Labour Protection such as was lately projected at the Berlin Conference, and such as is becoming more and more the goal of our efforts.

This international Labour Protection is a universal demand of humanity, morality and religion, especially from the standpoint of the Church, like that of international protection of all nations against slavery, but it is also no doubt demanded in the interests of international equilibrium of competition.

The aim of Labour Protection for the worker individually lies far beyond mere industrial protection. Protection of labour extends to the person of individual labourers and their freedom as regards religious education, instruction, learning, and teaching, social intercourse, morality and health, and especially does it afford to every man security of family life.

In this social and individual aim lies its justification, subject to certain conditions. These conditions we have already examined.

The first condition is, that special protection shall only be used to guard against

distinct dangers arising out of employment in service. Next, Labour Protection is only justified in dealing with such dangers as cannot or can no longer be adequately guarded against by any or all of the old forms of protection, viz., self-help, family protection, private agencies and non-governmental corporate agencies, or the protection of the regular administrative and judicial authorities, and even with such dangers only so far as is absolutely necessary. And lastly, the extraordinary State protection contained in the several labour-protective enactments must be adapted to the suppression of such dangers altogether.

Bearing in mind these conditions, it will be found on examination of the several measures of Labour Protection, as they appear in the resolutions of the Berlin Conference and in the *von Berlepsch* Bill, that not one of them oversteps these limits. The labour protective code as already existing, and as projected by government, nowhere stretches its authority beyond the specified point, either in its scope, extension or organisation; at present it rather errs on the side of caution, and in many respects it does not go nearly so far as it might. This also I claim to have shown in the foregoing pages. This fact alone fully justifies the policy of Labour Protection as at present projected by the German government.

It is in nowise intended (as shown in Chaps. IV. to X.) by this protective policy to supplant and replace free self-protection and mutual protection, or the ordinary State protection of common law.

No addition to Labour Protection will be permitted except where special need exists.

In no case shall a larger measure of protection be afforded than necessary. There is no question of treating all and everywhere alike the various classes of industrial wage-labour needing protection. But rather that complete elasticity of treatment is accorded, which is required in view of the variety of needs for protection and of the different degrees of difficulty of applying it; it is this variety which necessitates extraordinary State intervention, extraordinary alike in scope, basis and organisation.

Labour Protection has not, it is true, by any means reached its full development either in aim and scope or in organisation. None of those further demands, however, from various quarters, which I have treated in this book as within the range of discussion overstep in any essential degree the limits imposed on Labour Protection, regarded as special and supplementary intervention of the State.

Even the Auer Motion when carefully examined—if we set aside the general eight hours day and certain special features of organisation, in particular its claim to include in its scope the whole of industry—is not really as extravagant as it appears at first sight; for although indeed it demands complete Labour Protection for all kinds of industrial work, it requires only the application of the same special measures as are also demanded in other quarters, and as I have shown to be justified, except in a few special cases where it calls for more drastic measures.

We have seen also that the policy of Labour Protection does not involve a kind of State intervention hitherto unknown. The State has long afforded regular administrative and judicial protection to the work of industrial wage-service, and has even interfered in a special manner in the case of children, young men, young women and adult women; and for still longer in the case of adult men, by affording protection in the way of limitation of employment, truck protection and protection in occupation, and by affording protection of contract through the Industrial Regulations, applied to non-factory as well as to factory labour. The application of protection by limitation of employment is thus far from being the first exercise of State interference with the hitherto unrestricted freedom of contract. Nothing will be found in the developments of protection here dealt with, that has not long ago been demanded and granted elsewhere, chiefly in England, Austria and Switzerland.

The economic burden imposed upon the nation by Labour Protection, when compared with that of Labour Insurance, which we have already, will be found to be comparatively small. Those measures which call for the greater sacrifices —protection of married women, and regulation of the factory ten hours working-day—are recommended on all sides by way of international uniform regulations.

Freedom of contract will not be impaired, since such adults as are included under Labour Protection stand in special need of protection, and are as incapable of self-defence as minors in common law; we have discussed and proved this contention point by point. This will certainly soon be recognised generally, even by England and Belgium, whose representatives at the Berlin Conference laid such stress on freedom of contract for adults.

An international and internationally administered code for the whole of Labour Protection is strictly to be avoided.

The wider measures of Labour Protection demanded by the Berlin Conference,

and the *von Berlepsch* Bill,[16] I conclude therefore to be nothing more than a fully justifiable and harmless corollary and supplement to the Social Policy of the Emperor William II. and of Prince Bismark.

By following in the paths already trodden without ill results by separate countries, long ago by some, only lately by others, in paths therefore which have to a certain degree been explored, this policy will need to be subjected to fewer alterations than that great and noble policy of Labour Insurance which has struck out in entirely new paths, and too often worked in consequence by somewhat unpractical methods.

FOOTNOTE:

[16] See Appendix.

APPENDIX.

INDUSTRIAL CODE AMENDMENT BILL (GERMANY).

[*June 1st, 1891*].

We, William, by the grace of God Emperor of Germany, etc., decree in the name of the Empire, by and with the consent of the Federal Council and Reichstag, as follows:—

Article I.

After § 41 of the Industrial Code shall be inserted:

§ 41*a*.

Where, in accordance with the provisions of §§ 105*b* to 105*h*, employment of assistants, apprentices and workmen is prohibited in any trading industry on Sundays and holidays, no industrial business shall be carried on on those days in public sale-rooms.

This provision shall not preclude further restrictions by common law of industrial business on Sundays and holidays.

Article II.

After § 55 of the Industrial Code shall be inserted.

§ 55*a*.

On Sundays and holidays (§ 105*a*, 2) all itinerant industrial business, so far as it is included in § 55 (1) 1-3, shall be prohibited, as well as the industrial business of the persons specified in § 42*b*.

Exceptions may be allowed by the lower administrative authorities. The Federal Council is empowered to issue directions as to the terms and conditions on which exceptions may be allowed.

Article III.

Chapter VII. of the Industrial Code shall be amended as follows:—

CHAPTER VII.

Industrial workers (journeymen, assistants, apprentices, managers, foremen, mechanics, factory workers).

I. General Relations.

§ 105.

The settlement of relations between independent industrial employers and workers shall be left to voluntary agreement, subject to the restrictions laid down by imperial legislation.

§ 105*a*.

Employers cannot oblige their work people to work on Sundays or holidays.

This, however, does not apply to certain kinds of work mentioned further on. Holidays are determined by the State Governments in accordance with local customs and religious belief.

§ 105*b*.

There shall be no work on Sundays and holidays in mines, salines, smelting works, quarries, foundries, factories, workshops, carpenters' yards, masons' and shipbuilders' yards, brick-fields, and buildings of any kind.

For every Sunday and holiday the workpeople of such establishments must be allowed a rest of at least 24 hours, for two consecutive holdings of 36 hours; and for Christmas, Easter and Whitsuntide of 48 hours. The period of rest must be counted from midnight, and in the case of two consecutive holidays must last till 6 p.m. of the second day. In establishments where regular day and night gangs are employed, the period of rest may commence at any time between 6 p.m. of the preceding week-day and 6 a.m. of the Sunday or holiday, provided that the work is completely suspended for 24 hours from such commencement.

The assistants, apprentices and workpeople in small trades and handicrafts must not be employed on Christmas Day, Easter Sunday and Whit Sunday; on other Sundays and holidays they must not be employed for more than five hours.

By statutory regulation of the parish or municipal authorities, such Sunday work can be further restricted or entirely prohibited for particular branches of trade. For the last four weeks before Christmas, and for particular Sundays and holidays, which, owing to local conditions call for greater activity in trades, the police authorities may order an extension of the hours of work up to ten. The hours of work must be so fixed as to admit of attendance at Divine worship. The hours may be variously fixed for the different branches of trading industry.

§ 105*c*.

The provisions of 105*b* do not apply:

1. To work which must be carried on without delay in cases of necessity and in the public interest;

2. To the work of keeping the legally prescribed register of Sunday labour;

3. To the work of watching, cleaning and repairing the workshops, required for the regular continuance of the main business or of some other business, nor to any work on which depends the resumption of the full daily working of the business, wherever such work cannot be carried on during working days;

4. To such work as may be necessary in order to protect from damage raw materials or the produce of work, wherever such cannot be carried on during working days;

5. To the supervision of such work as is carried on on Sundays and holidays, in accordance with the provisions of clauses 1 to 4.

Employers must keep an accurate register of the workmen so employed on each Sunday and holiday, stating their number, and the hours and nature of the work. The register must be produced for examination at any time at the request of the local police authorities or of the official specified in § 139*b*.

If the Sunday employment exceeds three hours, or prevents the workpeople from attending Divine worship, a rest of 36 hours must be given to such workpeople every third Sunday, or they must be free every second Sunday from 6 a.m. to 6 p.m.

Exceptions to the above may be allowed by the lower administrative authorities, provided that the workpeople are not prevented from attending Divine worship

on Sundays, and that a rest of 24 hours is granted to then on a week-day in lieu of Sunday.

§ 105*d*.

The Federal Council may make further exceptions to the provisions of § 105*b*, 1 in certain defined industries, especially in the case of operations which do not admit of delay or interruption, or which are limited by natural causes to certain times and seasons, or the nature of which necessitates increased activity at certain times of the year. The regulation of the work permitted in such business on Sundays and holidays, and the regulation of the conditions on which such work shall be permitted, shall be uniform for all business of the same kind, and shall be in accordance with the provision of § 105*c*, 3.

The regulations laid down by the Federal Council shall be published in the *Imperial Law Gazette*, and shall be laid before the Reichstag at the next session.

§ 105*e*.

Exceptions to the restrictions of work on Sundays and holidays may also be made by the higher administrative authorities in trades which supply the daily necessaries of life to the public, and in those that require increased activity on those days; also in establishments the working of which depends upon the wind or upon the irregular action of water power. The regulation of these exceptions shall be subject to the provision of § 105*c*, 3.

The procedure on application for permission of exceptions in the case of establishments employing machinery worked wholly or mainly by wind or by the irregular action of water power, shall be subject to the enactments of §§ 20 and 21.

§ 105*f*.

In order to prevent a disproportionate loss or to meet an unforeseen necessity, the lower administrative authorities may also allow exceptions for a specified time to the provision of § 105*b*, 1.

The orders of the lower administrative authorities shall be issued in writing, and must be produced by the employer for examination in the office of the business at the request of the official appointed for the revision. A copy of the orders shall be hung up inside the place of business in some spot easily accessible to the workers.

The lower administrative authorities shall draw up a register of the exceptions granted by them, in which shall be entered the name of the firm, the kind of work permitted, the number of workers employed in the business, and the number required for such Sunday or holiday labour, also the duration of such employment and the grounds on which it is permitted.

§ 105*g*.

The prohibition of Sunday work may be extended by Imperial Ordinance, with consent of the Federal Council, to other trades besides those mentioned in the Act. These ordinances shall be laid before the Reichstag at the next session. The provisions of §§ 105*c* to 105*f* shall apply to the exceptions to be permitted to such prohibition.

§ 105*h*.

The provisions of §§ 135*a* to 105*g* do not preclude further restrictions by common law of work on Sundays and holidays.

The Central Provincial Court shall be empowered to permit departures from the provisions of § 105*b*, 1, for special holidays which do not fall upon a Sunday. The provision does not apply to Christmas, Easter, Ascension Day or Whitsuntide.

§ 105*i*.

The provisions of §§ 105*a*, 1, 105*b* to 105*g* do not apply to public houses and beerhouses, concerts, spectacles, theatrical representations, or any kind of entertainment, nor to carrying industries.

Industrial employers may only exact from their workpeople on Sundays and holidays such work as admits of no delay or interruption.

§ 106.

Industrial employers who have been deprived of civil rights shall not, so long as they remain deprived of these rights, undertake the instruction of workers below 18 years of age.

The police authorities may enforce the dismissal of workers employed in contravention of the foregoing prohibitions.

§ 107.

Unless special exceptions are made by Imperial Ordinance, persons under age shall only be employed as workers on condition that they are furnished with a work register. At the time of engaging such workers, the employer shall call for the work register. He shall be bound to keep the same, produce it upon official demand, and return it at the legal expiration of service relations. It shall be returned to the father or guardian if demanded by them, or if the worker has not yet completed his sixteenth year, in other cases it shall be returned to the worker himself.

With consent of the local authorities of the district specified in § 108, the work register may also be handed over to the mother or other relation, or directly to the worker himself.

The forgoing provisions do not apply to children who are under compulsion to attend the national schools.

§ 108.

The work register shall be supplied to the worker by the police authorities of that district in which he has last made a protracted stay; but if this was not within the limits of the German Empire, then it shall be free of costs and stamp duty in any German district chosen by him. It shall be supplied at the request or with the consent of the father or guardian; and if the opinion of the father cannot be obtained, or if the father refuses consent on insufficient grounds, and to the disadvantage of the worker, the local authorities shall themselves grant consent.

Before the register is supplied it must be certified that the worker is no longer under compulsion to attend school, and an affadavit must be made that no work register has previously been supplied to him.

§ 109.

If the work register is completely filled up, or can no longer be used, or if it has been lost or destroyed, another work register shall be supplied in its place by the local authorities of the district in which the holder of the register has last made a protracted stay. The register which has been filled up, or which can no longer be used, shall be closed by an official mark. If the new register is issued in the place of one which can no longer be used, or which has been lost or destroyed, the same shall be notified therein. In such case a fee of fifty pfennig may be charged.

§ 110.

The work register (§ 108) must contain the name of the worker, the place, year and day of his birth, the name and last residence of his father or guardian, and the signature of the worker. The register shall be supplied under seal and signature of the magistrate. The latter shall draw up a schedule of the work registers supplied by him.

The kind of work registers to be used shall be determined by the Imperial Chancellor.

§ 111.

On admission of the worker into service relation, the employer shall enter, in the place provided for that purpose in the register, the date of admission, and the nature of the employment, and at the end of the term of service, the date of leaving, and if any change has been made in the employment, the nature of the last employment.

The entries shall be made in ink, and shall be signed by the employer or by the business manager authorised thereto by him.

The entries shall contain no mark intended to attribute a favourable or unfavourable character to the holder of the register.

The entry of a judgment upon the conduct or manner of work of the worker, and other entries or marks in or on the register for which no provision is made in this Act, shall not be permitted.

§ 112.

If the work register has been rendered unfit for use by the employer, or has been lost or destroyed by him, or if signs, entries, and marks have been made in or on the register, or if the employer refuses without legal grounds to deliver up the register, the issue of a new register may be demanded at the cost of the employer.

Any employer who in defiance of his legal obligation has not delivered up the register in due time, or who has neglected to make the requisite entries, or who has made illegal signs, entries or marks, may be forced to compensate the worker. The claim for compensation expires if no complaint nor remonstrance is made within four weeks.

§ 113.

On quitting service workers may demand a testimonial setting forth the nature and duration of their employment.

This testimonial may, at request of the workers, bear evidence as to their conduct and manner of working.

Employers are forbidden to add irrelevant remarks concerning the workmen other than those required for the purpose of the testimonial.

If the worker is under age, the testimonial may be demanded by the parent or guardian. They may demand that the testimonial shall be handed to them and not to the worker. With consent of the local authorities of the district, specified in § 108, the testimonial may be handed directly to the worker himself, even against the will of the father or guardian.

§ 114.

At the request of the worker the local police magistrate shall confirm the entries in the register and in the testimonial handed to the worker, free of costs and stamp duty.

§ 115.

Industrial employers shall be bound to reckon and pay the wages of the worker in coin of the realm.

They shall not credit the workers with goods. But they may be permitted to supply the workers under their care with provisions at cost price, with dwellings and land at the customary local rate of rent and hire, with firing, lighting, board, medicines and medical assistance, also with tools and materials for work, at the average cost price, and to charge such to their account in payment of wage.

Materials and tools may be supplied for contract work at a higher price, provided the agreement be made beforehand, and the price do not exceed the customary local prices.

§ 115*a*.

Wage payment and payments on account shall not be made in public-houses or beer-houses or sale-rooms, without the consent of the lower administrative authorities; they shall not be made to a third party on pretext of legal claims thereto, or on production of documents showing legal claims, such being legally

void under § 2 of the Appropriation of Work Wage or Service Wage Act of June 21st, 1869 (*Federal Law Gazette*, p. 242).

§ 116.

Workers whose claims have been dealt with in a manner contrary to § 115 may at any time demand payment in accordance with § 115, and no objection shall be urged against such claim on the ground that they have already received something in lieu of payment. The first payment, if it still remains in the hands of the recipient, or if he is still deriving advantage therefrom, shall be handed over to the workers' provident fund, or, in default of such, to such other fund existing in the locality for the benefit of the workers, as shall be determined by the local authorities, or, in default of such, to the local poor fund.

§ 117.

Agreements made in contravention of § 115 shall be void.

The same shall apply also to agreements between industrial employers and their workpeople as to the supply of goods to the latter from certain shops, and to agreements as to the appropriation of the earnings of the latter to any other purpose than to contributing to schemes for the improvement of the condition of the workers or their families.

§ 118.

Claims for goods supplied on credit in contravention of § 115, can neither be sued for by the creditor, nor charged to account, nor otherwise made good, whether the transaction was made directly between the parties, or indirectly. Such claims shall be appropriated to the funds specified in § 116.

§ 119.

The expression "industrial employers," as used in §§ 115 to 118, includes members of their families, their assistants, agents, managers, overseers and foremen, and other directors of industry in whose business any one of the persons here mentioned directly or indirectly takes part.

§ 119*a*.

Retentions of wage reserved by the employer of industry as security for compensation for loss arising from illegal dissolution of service relations, or as a

stipulated fine imposed in such a case, shall not exceed a quarter of the usual wage in single wage payments, and the nett amount shall not exceed the amount of the average weekly wage.

By statutory provision of a parish or any larger corporate union it may be determined for all industrial trades, or for certain kinds of the same:

1. That wage payments and payments on account shall be made at certain fixed intervals, which shall not be longer than one month, and not shorter than one week;

2. That the wage earned by workers under age shall be paid to the parents or guardians, and only with their written consent or voucher for the receipt of the last wage payment directly to the young workers themselves;

3. That industrial employers shall give information within certain fixed periods, to the parents or guardians as to the amount of wage paid to workers under age.

§ 119*b*.

The workers specified in §§ 115 to 119*a* include also such persons as are employed by certain specified industrial employers, outside the work places of the latter, in the preparation of industrial products, even if the raw materials and accessories are furnished by the workers themselves.

§ 120.

Employers of industry shall be bound in the case of workers under eighteen years of age who attend a place of instruction recognised by the local authorities or by the State, to grant them for such purpose the requisite time, to be fixed by the appointed authority. Instruction shall only take place on Sundays, provided that the hours of instruction are so fixed that the scholars may not be prevented from attending Divine Service or any special services appointed by the spiritual authorities of their respective denominations. Exceptions to this provision may be granted by the Central Court until October 1, 1894, in the case of existing educational schools, attendance at which is not compulsory.

Educational schools, as understood by this provision, include establishments in which instruction is given in female handiwork and domestic work.

By statutory provision of a parish or any larger corporate union (§ 142)

obligation may be imposed on male workers under eighteen years of age to attend an educational school, where such obligation is not imposed by common law. In the same way necessary provisions may be made for the enforcement of such obligation. In particular, statutory provisions may be made to ensure the regular attendance at school of such children as are under the age of compulsion, and to determine the obligations of the parents, guardians and employers in this respect, and directions shall be issued for the insurance of order in the school and of the proper behaviour of the scholars. Such persons as attend a guild school or other educational or technical school, shall be released from obligation imposed by statutory provisions to attend an educational school, where such guild or other educational or technical schools are recognised by the higher administrative authorities as fitting substitutes for the instruction of the general educational schools.

§ 120*a*.

Employers of industry shall be bound so to arrange and maintain their workrooms, business plant, machines and tools, and so to regulate their business, that the workers may be protected against dangers to life and health, so far as the nature of the business may allow.

In particular, attention shall be paid to the supply of sufficient light, a sufficient cubic space of air and ventilation, to the removal of all dust and dirt arising from the work, and of all smoke and gases developed thereby, as well as to any risks inherent in it.

Also such arrangements shall be made as are necessary to protect the workers against dangerous contact with the machines or parts of the machinery, or against other dangers proceeding from the nature of the place of business or of the business itself, especially against danger arising from fire in the factory.

Lastly, such orders shall be issued for the regulation of business and the conduct of the workers, as may be necessary to ensure freedom from danger in work.

§ 120*b*.

Employers of industry shall be bound to make such arrangements and to issue such orders for the conduct of the workers as may be necessary to ensure the maintenance of decency and good morals.

In particular, separation of the sexes in their work shall be enforced so far as the

nature of the business may permit, where the maintenance of good morals and decency cannot be otherwise ensured in the arrangement of the business.

In establishments where the nature of the business renders it necessary for the workers to change their clothes and wash themselves after their work, sufficient separate rooms for dressing and washing shall be provided for each sex.

Sufficient lavatories shall be provided for the number of the workers, and they shall be so arranged as to meet all requirements of health, and to allow of their being used without offence to decency and morality.

§ 120*c*.

Employers of industry employing workers under eighteen years of age shall be bound in the arrangement of their places of business, and in the regulation of their business, to take such precautions for the security of health and morals as may be required by the age of the workers.

§ 120*d*.

The appointed police authorities shall be empowered to issue orders for separate establishments for the carrying out of such measures as may seem necessary for the maintenance of the principles laid down in §§ 120*a* to 120*c*, and such as may seem practicable according to the nature of the establishment. They may order that suitable rooms, heated during the cold season, be placed free of charge at the disposal of the workers, in which the meal times may be spent outside the workrooms.

A sufficient delay must be granted for the carrying out of the measures ordered, unless they be directed to the removal of some pressing danger, threatening life or health.

In the case of establishments already existing at the time of the proclamation of this Act (not including extensions and outbuildings since added), only such requirements shall be demanded as may seem necessary for the removal of grave evils endangering the life, health or morals of the workers, and only such as may seem practicable without disproportionate expense.

The employer shall have right of appeal within two weeks to the higher administrative authorities against the order of the police magistrate; and within four weeks to the Central Court against the decision of the higher administrative authorities. The decision of the Central Court shall be final. If the order is

contrary to the directions issued by the authorised trade guild for precautions against accidents, the president of the trade guild shall be empowered to use the afore-named remedies within the period granted to the employer.

§ 120*e*.

By decision of the Federal Council, directions may be issued, showing what requirements shall be sufficient in certain kinds of establishments for the maintenance of the principles laid down in §§ 120*a* to 120*c*.

Where such directions are not issued by decision of the Federal Council, they may be issued by order of the Central Provincial Court or by police regulations of such courts as are empowered to issue the same. Before the issue of such orders and police regulations, opportunity shall be given to the presidents of trade guilds or of sections of trade guilds, to express their opinion thereon. The provisions of § 79, I. of the Insurance against Accidents Act of July 6, 1884, do not apply to this.

In the case of those industries in which the health of the workers would be endangered by the excessive duration of daily work, orders may be issued by decision of the Federal Council as to the duration, beginning and ending of the time permitted for daily work, and as to the intervals to be granted; and the necessary orders may be issued for the enforcement of these directions.

Directions issued by decision of the Federal Council shall be published in the *Imperial Law Gazette*, and shall be laid before the Reichstag for discussion at the next session.

II. Relations of Journeymen and Assistants.

§ 121.

Journeymen and assistants shall be bound to obey the orders of the employer with respect to the work entrusted to them, and to comply with domestic arrangements; they shall not be obliged to perform domestic work.

§ 122.

Working relations between journeymen or assistants and their employers may be dissolved by notice given fourteen days previously by either party, unless agreement to the contrary has been made. If other periods of notice have been agreed on, they must be equal for both parties. Agreements made in

contravention of this provision shall be void.

§ 123.

Journeymen and assistants may be dismissed before the expiration of the contract time, and without notice:

1. If, in concluding the contract of work they have deceived the employer by producing a false or falsified work register or testimonial, or if they have deceived him as to the existence of some other working relation in which they already stand;

2. If they are guilty of theft, appropriation, embezzlement, deceit or immoral living;

3. If they have quitted work without permission, or have otherwise persistently refused to fulfil the obligations imposed upon them by the contract;

4. If, in spite of warnings, they carelessly carry about fire and light;

5. If they are guilty of violence or abuse towards the employer or his representatives or towards the relatives of the employer or of his representatives;

6. If they are guilty of wilful and illegal damage to the injury of the employer or of a fellow-worker;

7. If they lead or seek to lead relatives of the employer or of his representatives or of their fellow-workers into illegal or immoral courses, or if they unite with relatives of the employer or of his representatives in committing illegal or immoral acts;

8. If they are incapable of continuing work or are afflicted with serious illness.

In the cases mentioned under Nos. 1 to 7, dismissal shall no longer be permissible if the grounds thereof have been known to the employer for longer than one week.

In the case mentioned under No. 8, it shall be determined in accordance with the contract and with general legal enactments, how far claims for compensation

may be preferred by the party dismissed.

§ 124.

Journeymen and assistants may quit work without notice before the expiration of the contract time:

1. If they become incapable of continuing work;

2. If the employer or his representatives are guilty of violence or abuse towards the workers or their relatives;

3. If the employer or his representatives or their relatives lead or seek to lead the workers or their relatives into illegal or immoral courses, or if they unite with relatives of the workers in committing illegal or immoral acts;

4. If the employer does not pay the wage due to the workers in the manner prescribed, if, under the piece-work system, he does not provide them with sufficient employment, or if he is guilty of illegally over-reaching them;

5. If, by continuing the work, the life or health of the workers would be exposed to a demonstrable risk which was not apparent at the time of entering into the contract.

In the cases mentioned under No. 2, quitting service without notice is no longer permissible if the grounds thereof have been known to the workers for longer than one week.

§ 124*a*.

Besides the cases specified in §§ 123 and 124, each party may, in cases where urgent reasons exist, demand to be released from working relations before the expiration of the contract time and without observing the due period of notice, if the contract is for longer than four weeks, or if a longer period of notice than fourteen days has been agreed upon.

§ 124*b*.

If a journeyman or assistant has quitted work illegally, the employer may claim compensation for the day of the breach of contract and for each following day of the contract time or legal working time, during one week at most, to the amount of the local customary daily wage (§ 8 of the Insurance against Sickness Act of

June 15, 1883; *Imperial Law Gazette*, p. 73). This claim need not rest upon proof of loss. When thus made good, claim for fulfilment of contract and further compensation for loss is precluded. The journeyman or assistant shall enjoy the same right against the employer, if he has been dismissed before the legal ending of the working relations.

§ 125.

Any employer inducing a journeyman or assistant to quit work before the legal ending of working relations, shall himself be liable to the former employer for loss arising, or for the legal compensation claim under § 124*b*. In the same manner an employer shall be answerable if he takes into his employ a journeyman or assistant who to his knowledge is still contracted to any employer.

Any employer shall also be liable under the foregoing sub-section if he employs a journeyman or assistant, who to his knowledge is still contracted to another employer, throughout the duration of such term; the claim expires after fourteen days from the date of the illegal dissolution of working relations.

The persons specified in § 119*b* shall be accounted as journeymen and assistants as understood by the foregoing provisions.

III. Apprentice Relations.

§ 126.

The master shall be bound to instruct the apprentice in all branches of the work of the trade forming part of his business, in due succession and to the extent necessary for the complete mastery of the trade or handicraft. He must conduct the instruction of the apprentice himself or through a fit representative expressly appointed thereto. He shall not deprive the apprentice of the necessary time and opportunity on Sundays and holidays for his education and for attendance at Divine Service, by employing him in other kinds of service. He shall train his apprentice in habits of diligence and in good morals, and shall keep him from evil courses.

§ 127.

The apprentice shall be placed under the parental discipline of the master. He shall be bound to render obedience to the one who conducts his instruction in the place of the master.

§ 128.

Apprentice relations may be dissolved by the withdrawal of one party during the first four weeks after the beginning of the apprenticeship, unless a longer time has been agreed upon.

Any agreement to fix this time of probation at longer than three months shall be void.

After the expiration of the time of probation the apprentice may be dismissed before the ending of the apprenticeship agreed upon, if any one of the cases provided for in § 123 applies to him.

On the part of the apprentice, relations may be dissolved at the expiration of the time of probation:

1. If any one of the cases provided for in § 124 under nos. 1, 3 to 5 occurs;

2. If the master neglects his legal obligations towards the apprentice in a manner endangering the health, morals or education of the apprentice, or if he abuses his right of parental discipline, or becomes incapable of fulfilling the obligations imposed upon him by the contract.

The contract of apprenticeship shall be dissolved by the death of the apprentice. The contract of apprenticeship shall be dissolved by the death of the master if the claim is made within four weeks.

Written contracts of apprenticeship shall be free of stamp duty.

§ 129.

At the termination of apprentice relations, the master shall deliver to the apprentice a testimonial stating the trade in which the apprentice has been instructed, the duration of the apprenticeship, the knowledge and skill acquired during that time, and also the conduct of the apprentice. This testimonial shall be certified by the borough magistrate free of costs and stamp duty.

In cases where there are guilds or other industrial representative bodies, letters or certificates from these may supply the place of such testimonials.

§ 130.

If the apprentice quits his instruction under circumstances not provided for in

this Act, without consent of his master, the latter can only make good his claim for the return of the apprentice, if the contract of apprenticeship has been drawn up in writing. In such case the police magistrate may, on application of the master, oblige the apprentice to remain under instruction so long as apprentice relations are declared by judicial ruling to be still undissolved.

Application is only admissible if made within one week after the departure of the apprentice. In case of refusal, the police magistrate may cause the apprentice to be taken back by force, or he may compel him to return under pain of a fine, to the amount of fifty marks, or detention for five days.

§ 131.

If the parent or guardian acting for the apprentice, or if the apprentice himself, being of age, shall deliver a written declaration to the master, that the apprentice wishes to enter into some other industry or some other calling, apprentice relations shall cease after the expiration of four weeks, if the apprentice is not allowed to leave earlier. The grounds of the dissolution must be notified in the work register by the master.

The apprentice shall not be employed in the same trade by another employer, without consent of the former master, within nine months after such dissolution of apprentice relations.

§ 132.

If apprentice relations are severed by either party, before the appointed time, the other party can claim compensation only if the contract has been made in writing. In the cases referred to in § 128, 1, 4, the claim will only hold if the kind and degree of compensation has been specified beforehand, in the contract.

The claim is void unless made within four weeks of the dissolution of apprentice relations.

§ 133.

If apprentice relations are dissolved by the master, because the apprentice has quitted his work without permission, the compensation claimed by the master shall, unless some other agreement have been made in the contract, be fixed at a sum amounting for every day succeeding the day of breach of contract, up to a limit of six months, to the half of the customary local wage paid to journeymen and assistants in the trade of the master.

The father of the apprentice shall be liable for the payment of compensation, also any employer who has induced the apprentice to quit his apprenticeship, or who has received him into his employ, although knowing him to be still under obligation to continue in apprentice relations to another employer. If the one who is entitled to compensation has not received information till after the dissolution of apprentice relations, as to the employer who has induced the apprentice to quit his work, or who has taken him into his employ, claim for compensation against the latter shall expire if not preferred within four weeks after such information has been received.

IIIA. Relations of Business Managers, Foremen, Skilled Technical Workers.

§ 133*a*.

The service relations of such persons, as are employed by directors of industry for certain defined purposes, and are charged, not merely temporarily, with the conduct and supervision of the business, or of a department of the business (business managers, foremen, etc.), or are entrusted with the higher kinds of technical service work (experts in machinery, mechanical engineers, chemists, draughtsmen, and the like), may, if not otherwise agreed, be broken off by either party at the expiration of any quarter of the calendar year, after notice has been given six weeks previously.

§ 133*b*.

Either party may, before the expiration of the contract time, demand dissolution of service relations without observing the due period of notice, provided sufficiently important reasons exist to justify the dissolution under the circumstances.

§ 133*c*.

Dissolution of service relations may be demanded, in particular, of the persons specified in § 133*a*.

1. If at the time of concluding the contract, they have deceived the employer by presenting false or falsified testimonials, or if they have deceived him as to the existence of another service relation, to which they were simultaneously bound;

2. If they are unfaithful in service or if they abuse confidence;

3. If they quit service without permission, or persistently refuse to fulfil the obligations imposed upon them by the service contract;

4. If they are hindered in the performance of service by protracted illness, or by long detention or absence;

5. If they are guilty of violence or insult towards the employer or his representatives;

6. If they pursue an immoral course of life.

In the case of No. 4, the worker's claim for the fulfilment of contract, by the employer, shall remain in force for six weeks, if the performance of service has been hindered by some unavoidable misfortune; but in such cases the claim shall be limited to the amount that is legally due to the claimant as insurance against sickness or accident.

§ 133*d*.

The persons specified in § 133*a* may demand dissolution of service relations, in particular:

1. If the employer or his representatives are guilty of violence or insult towards them;

2. If the employer does not provide the work agreed upon in the contract;

3. If, by the continuance of service relations, their life or health would be exposed to demonstrable danger, which was not apparent at the time of entering into service-relations.

§ 133*e*.

The provisions of §§ 124*b* and 125 shall apply to the persons specified in § 133*a*, but not the provisions of § 119*a*.

IV. Relations of Factory Workers.

§ 134.

The provisions of §§ 121 to 125 shall apply to factory workers; if the factory workers are apprentices, the provisions of §§ 126 to 133 shall apply to them.

Owners of factories in which, as a rule, at least twenty workers are employed, shall be prohibited, in the case of illegal dissolution of working relations by the worker, from exacting forfeiture or withholding wage beyond the amount of the average weekly wage. The provisions of § 124*b* shall not apply to employers and workers in such factories.

§ 134*a*.

In every factory in which, as a rule, at least twenty workers are employed, *working rules* shall be issued within four weeks after this Act comes into force, or after the opening of the business. Special working rules may be issued for separate departments of the business, or separate groups of workers. The rules must be posted up (§ 134*e* [2]).

In the working rules must be set forth the time at which they are to come into operation and the date of issue. They must bear the signature of the person by whom they are issued.

Alterations in the contents can only be made by the issue of supplements, or by the issue of new working rules in the place of the existing rules.

Working rules, and supplement to the same, shall come into operation at the earliest, two weeks after issue.

§ 134*b*.

Working rules shall contain directions:

1. As to the beginning and end of the time of daily work, also as to the intervals provided for adult workers;

2. As to the time and manner of computing and paying wage;

3. Where legal provisions are insufficient, as to the period of notice due, also as to the grounds on which dismissal from work and quitting work is permissible without notice;

4. Where fines are enforced, as to the kind and amount thereof, the method of determining them, and, if they consist in money, as to the manner of collecting them, and the purpose to which they shall be appropriated.

5. Where forfeiture of wage is exacted in accordance with the provisions of § 134 (2), by the working rules or by the working contract, as to the

appropriation of the proceeds.

Punishments destructive of self-respect, or dangerous to morals, shall not be admitted in the working rules. Money fines shall not exceed the half of the average daily wage, except in cases of violence towards fellow-workers, grave offences against morality, and contempt of directions issued for the maintenance of order in the business, for security against dangers incidental to it, or for carrying out the provisions of the Industrial Code, where money fines to the full amount of the average daily wage may be imposed. All fines shall be devoted to the benefit of the workers in the factory. The right of the employer to claim compensation for damage is not affected by this provision.

It shall be left to the owner of the factory to insert in the working rules, together with the provisions of sub-section (1) from 1 to 5, further provisions for the regulation of the business and the conduct of the workers employed in it. With the consent of the standing committee of workers, directions may be inserted in the working rules, as to the conduct of the workers in the use of arrangements, provided for their benefit in the factory, also directions as to the conduct of workers under age, outside the factory.

§ 134*c*.

The contents of the working rules shall be, unless contrary to law, legally binding on employers and workers.

No grounds shall be agreed upon in the contract of work, for dismissal from work, other than those laid down in the working rules or in §§ 123 or 124.

No fines shall be imposed on the workers other than those laid down in the working rules. Fines must be fixed without delay, and information thereof must be given to the worker.

The money fines imposed shall be entered in a register which shall set forth the name of the offender, the day of imposition, the grounds, and the amount of the fine, and this register shall be produced for inspection at any time, at the request of the officer specified in § 139*b*.

§ 134*d*.

Before the issue of working rules, or of supplements to the same, opportunity shall be given to the workers of full age, employed in the factory or in the departments of the business, to which the rules in question apply, to express their

opinion on the contents of the same.

In factories in which there is a standing committee of workers the requirements of this provision shall be satisfied by granting a hearing to the committee, on the contents of the working rules.

§ 134*e*.

The working rules and any supplement to the same shall, on communication of opinions expressed by the workers, provided such expression be given in writing or in the form of protocols, be laid before the lower court of administration in duplicate, within three days after the issue, accompanied by a declaration showing that, and in what manner the requirements of the enactment of § 134*d* have been satisfied.

The working rules shall be posted up in a specially appointed place, accessible to all the workers to whom they apply. The placard must always be kept in a legible condition. A copy of the working rules shall be handed to every worker upon his entrance into employment.

§ 134*f*.

Working rules or supplements to the same, which are not issued in accordance with these enactments, or the contents of which are contrary to legal provisions, shall be replaced by legal working rules, or shall be altered in accordance with legal enactment, by order of the lower court of administration.

Appeal against this order may be lodged within two weeks, with the higher court of administration.

§ 134*g*.

Working rules issued before this Act comes into force, shall be subject to the provisions of §§ 134*a* to 134*c*, 134*e* (2), 134*f*, and shall be laid before the lower court of administration in duplicate, within four weeks.

Sections 134*d* and 134*e* (1) shall not apply to later alterations of such working rules, or to working rules issued for the first time, since January 1st, 1891.

§ 134*h*.

The expression “standing committees of workers,” as understood by §§ 134*b* (3), and 134*d*, includes only:

1. The managing committee of the sick-clubs of the business (factory), or of other clubs existing in the factory, for the benefit of the workers, the majority of the members of which are elected by the workers out of their midst—where such exist as standing committees of workers;

2. The eldest journeymen of such journeymen's unions as include the business of any employers not subject to the provisions of the Mining Acts —where such exist as standing committees of workers;

3. Standing committees of workers, formed before Jan. 1st, 1891, the majority of the members of which are elected by the workers out of their midst;

4. Representative bodies, the majority of the members of which are elected out of their midst by direct ballot voting of the workers of full age in the factory, or in the departments of the business concerned. The choice of representatives may be made according to classes of workers or special departments of the business.

§ 135.

Children under 13 years of age cannot be employed in factories. Children above 13 years of age can only be employed in factories if they are no longer required to attend the elementary schools.

The employment of children under 14 years of age must not exceed 6 hours a day.

Young persons between 14 and 16 years of age must not be employed in factories for more than 10 hours a day.

§ 136.

Young workers (§ 135) shall not begin work before 5.30 in the morning, or end it later than 8.30 in the evening.

On every working day regular intervals must be granted, between the hours of work. For children who are only employed for six hours daily, the interval must amount to half an hour at least. An interval of at least half an hour at mid-day, and half an hour in the forenoon and afternoon must be given to other young workers.

During the intervals, employment of young workers in the business of the factory shall be entirely prohibited, and their retention in the work rooms shall only be permitted, if the part of the business in which the young workers are employed is completely suspended in the work rooms during the time of the interval, or if their stay in the open air is not practicable, and if other special rooms cannot be procured without disproportionate difficulties.

Young workers shall not be employed on Sundays and festivals, nor during the hours appointed for regular spiritual duties, instruction in the catechism, preparation for confession and communion, by the authorized priest or pastor of the community.

§ 137.

Girls and women cannot be employed in factories during the night, between the hours of 8.30 p.m. and 5.30 a.m., and must be free on Saturdays and on the eves of festivals by 5.30 p.m. The employment of women workers over 16 years of age must not exceed 11 hours a day, and on Saturdays and the eve of festivals must not exceed 10 hours.

An interval between the hours of work of at least one hour at mid-day must be allowed to women workers.

Women workers over 16 years of age, who manage a household, shall at their request be set free half an hour before the mid-day interval, except in cases where this amounts to at least one and a half hours.

Women after childbirth can in no case be admitted to work until fully four weeks after delivery, and in the following two weeks only if they are declared to be fit for work by a duly authorized physician.

§ 138.

The owners of factories, in which it is intended to employ women or young persons, must make a written announcement of the fact to the local police authorities before such employment commences.

The notice shall set forth the name of the factory, the days of the week on which employment is to take place, the beginning and end of the time of work, and the intervals granted, also the kind of employment.

No alteration can be made except such delays as are temporarily necessitated by

the replacement of absent workers in separate shifts of work, before notice thereof has been given to the magistrate. In every factory the employer shall, in the workrooms in which young workers are employed, provide a register of young workers to be posted up in some conspicuous place; the same shall contain information as to days of work, beginning and end of time of work, and intervals allowed.

He shall likewise provide in such workrooms a notice board, on which shall be posted up, in plain writing, an extract, to be determined by the Central Court, from the provisions for the employment of women and young workers.

§ 138*a*.

In case of unusual pressure of work, the lower court of administration shall be empowered, on application of the employer, to permit for a fortnight at a time, the employment of women workers over 16 years of age up to 10 o'clock in the evening (except on Saturdays), provided that their daily working time does not exceed 13 hours.

Such extension cannot be allowed to the employer during more than 40 days in any one year.

Further extension beyond the two weeks, or for more than forty days in the year, can only be granted by the higher court of administration, and by it, only on condition that in the business or in the department of business in question, the total average number of hours per day, calculated over the whole year does not exceed the legal limit.

Application shall be made in writing, and must set forth the grounds on which such extension is requested, the number of women workers affected, the amount of employment, and the length of time required.

The decision of the lower court of administration on the application shall be given in writing within three days. Appeal against refusal of permission may be lodged with the superior court.

In cases where the extension is granted the lower court of administration shall draw up a schedule, in which shall be entered the name of the employer, and a copy of the statements contained in the written application.

The lower court of administration may permit the employment of such women workers being over 16 years of age, as have not the care of a household, and do

not attend an educational school, in the kinds of work specified in § 105 (1), 2 and 3, on Saturdays and the eve of festivals, after 5.30 p.m., but not after 8.30 p.m.

The permit shall be in writing, and shall be kept by the employer.

§ 139.

If natural causes or accidents shall have interrupted the business of a factory, exceptions to the restrictions laid down in §§ 135 (2), (3), 136, 137 (1) to (3), may be granted by the higher court of administration, for a period of four weeks, and for a longer time by the Imperial Chancellor. In urgent cases of such a kind, and also where necessary, in order to guard against accidents, exceptions may be granted by the lower court of administration, but only for a period of fourteen days.

If the nature of the business, or special considerations attaching to workers in particular factories, seem to render it desirable that the working time of women and young workers should be regulated otherwise than as laid down by §§ 136 and 137 (1), (3), special regulations may be permitted on application, by the higher court of administration, in the matter of intervals, in other matters by the Imperial Chancellor. But in such cases young workers shall not be employed for longer than six hours, unless intervals are granted between the hours of work, of an aggregate duration of at least one hour.

Orders issued in accordance with the foregoing provisions shall be in writing.

§ 139*a*.

The Bundesrath (Federal Council) shall be empowered:

1. To entirely prohibit or to attach certain conditions to the employment of women and of young workers in certain branches of manufacture which involve special dangers to health or morality;

2. To grant exceptions to the provisions of §§ 135 (2) and (3), 136, 137 (1) to (3), in the case of factories requiring uninterrupted use of fire, or in which for other reasons, the nature of the business necessitates regular day and night work, also in the case of factories, a part of the business of which does not admit of regular shifts of equal duration, or is from its nature restricted to certain seasons;

3. To prevent the shortening or the omission of the intervals prescribed for young workers, in certain branches of manufacture, where the nature of the business, or consideration for the workers may seem to render it desirable;

4. To grant exceptions to the provisions of § 134 (1) and (2), in certain branches of manufacture in which pressure of business occurs regularly at certain times of the year, on condition that the daily working time does not exceed 13 hours, and on Saturday 10 hours.

In the cases under No. 2, the duration of weekly working time shall not exceed 36 hours for children, 60 hours for young persons, 65 hours for women workers, and 70 hours for young persons and women in brick and tile kilns.

Night work shall not exceed in duration 10 hours in 24, and in every shift one or more intervals, of an aggregate duration of at least one hour, shall be granted.

In the cases under No. 4, permission for overtime work for more than 40 days in the year may only be granted, on condition that the working time is so regulated that the average daily duration of working days does not exceed the regular legal working time.

The provisions laid down by decision of the Bundesrath (Federal Council) shall be limited as to time, and shall also be issued for certain specified districts. They shall be published in the *Imperial Law Gazette,* and shall be laid before the Reichstag at its next session.

V. Supervision.

§ 139*b*.

The supervision and enforcement of the provisions of §§ 105*b* (1), 105*c* to 105*h*, 120*a* to 120*e*, 134 to 139*a*, shall be entrusted exclusively to the ordinary police magistrates, or, together with them, to officials specially appointed thereto by the provincial governments. In the exercise of such supervision the local police magistrates shall be empowered with all official authority, especially with the right of inspection of establishments at any time. They shall be bound to observe secrecy (except in exposing illegalities) as to their official knowledge of the business affairs of the establishments submitted to their inspection.

The settlement of relations of competence between these officials and the ordinary police magistrates, shall be subject to the constitutional regulation of the separate States of the Bund.

The officials mentioned shall publish annual reports of their official acts. These annual reports or extracts from the same, shall be laid before the Bundesrath and the Reichstag.

Employers must at any time during the hours of business, especially at night, permit official inspection to be carried out in accordance with the provisions of §§ 105*a* to 105*h*, 120*a* to 120*e*, 134 to 139*a*.

Employers shall further be bound to impart to the officials appointed or to the police magistrate, such statistical information as to the relations of their workers, as may be prescribed by the Bundesrath or the Central Provincial Court, with due observance of the terms and forms prescribed.

Article IV.

Chapter IX. of the Industrial Code shall contain the following clauses:

CHAPTER IX.

Statutory Provisions.

§ 142.

Statutory provisions of a borough or wider communal union shall be binding in regard to all those industrial matters with which the law empowers them to deal. After they have been considered by the directors of industry and the workers concerned, the statutory provisions must receive the assent of the higher court of administration, and shall then be published in some form prescribed by the parish or wider communal union, or in the usual form.

The Central Court shall be empowered to annul statutory provisions which are contrary to law or to the statutory provisions of a wider communal union.

Article V.

Sub-section 2 of § 93*a* (2*b*) shall contain the following clause:

b. The supervision by the union of the observation of the provisions laid down in §§ 41*a*, 105*a* to 105*g*, 120 to 120*e*, 126, 127.

Article VI.

The penal provisions of Chapter X. of the Industrial Code shall be altered as follows:

1. Section 146, (1) 1, 2, and 3, shall contain the following clauses:

1. Directors of industry, acting in contravention of § 115;

2. Directors of industry, acting in contravention of §§ 135, 136, 137, or of orders issued on the grounds of §§ 139 to 139*a*;

3. Directors of industry, acting in contravention of §§ 111 (3) and 113 (3);

2. The following sub-section shall be added to § 146:

Section 75 of the Constitution of Justice Act shall apply here.

3. After § 146 shall be inserted:

§ 146*a*.

Any person who gives employment to workers on Sundays and festivals, in contravention of §§ 105*b* to 105*g*, or of the orders issued on the grounds thereof,

or any person who acts in contravention of §§ 41*a* and 55*a*, or of the statutory provisions laid down on the grounds of § 105 (2) shall be punished with a money fine to the amount of 600 marks, or in default of the same, with imprisonment.

4. Section 147 (1) 4 shall contain the following clause:

   4. Any person who acts in contravention of the final orders issued on the grounds of § 120*d*, or of enactments issued on the grounds of § 120*e*;

5. After § 147 (1) 4, shall be inserted:

   5. Any person who conducts a factory, in which there are no working rules, or who neglects to obey the final order of the court as to the substitution or alteration of the working rules.

6. Section 147 shall contain at the close the following new sub-section.

   In the case of No. 4, the police magistrate may, pending the settlement of affairs by order or enactment, order suspension of the business, in case the continuance of the same would be likely to entail serious disadvantages or dangers.

7. Section 148 shall contain the following extensions:

   11. Any person who, contrary to the provision of § 134*c* (2), imposes such fines on the workers as are not prescribed in the working rules, or such as exceed the legally permissible amount, or any person who appropriates the proceeds of fines or the sums specified in § 134*b* 5, in a manner not prescribed in the working rules;

   12. Any person who neglects to fulfil the obligations imposed upon him by §§ 134*e* (1), and 134*g*;

   13. Any person who acts in contravention of § 115*a*, or of the statutory provisions laid down on the grounds of § 119*a*.

8. Section 149 (1) 7 shall contain the following clause:

   7. Any person who neglects to fulfil the obligations imposed upon him by §§ 105*c* (2), 134*e* (2), 138, 138*a* (5), 139*b*;

9. Section 150(2) shall contain the following clause:

2. Any person who, except in the case prescribed in § 146 (3), acts in contravention of the provisions of this Act with respect to the work register;

10. Section 150 shall contain the following extensions:

4. Any person who acts in contravention of the provisions of § 120 (1), or of the statutory provisions laid down in accordance with § 120 (3);

5. Any person who neglects to fulfil the obligations imposed upon him by § 134*c* (3).

Common law enactments against neglect of school duties, on which a higher fine is imposed, shall not be affected by the provision of No. 4.

11. Section 151 (1) shall contain the following clause:

If in the exercise of a trade, police orders are infringed by persons appointed by the director of the industrial enterprise, to conduct the business or a department of the same, or to superintend the same, the fine shall be imposed upon the latter. The director of the industrial enterprise shall likewise be liable to a fine if the infringement has taken place with his knowledge, or if he has neglected to take the necessary care in providing for suitable inspection of the business, or in choosing and supervising the manager or overseers.

Article VII.

The following provisions shall be substituted for § 154 of the Industrial Code:

§ 154.

The provisions of §§ 105 to 133*c* shall not apply to assistants and apprentices in the business of apothecaries; the provisions of §§ 105, 106 to 119*b*, 120*a* to 133*e*, shall not apply to assistants and apprentices in trading business.

—The provisions of §§ 105 to 133*e* shall apply to employers and workers in smelting-houses, timber-yards, and other building yards, in dockyards, and in such brick and tile kilns, and such mines and quarries worked above ground, as are not merely temporary, or on a small scale. The final decision as to whether the establishment is to be accounted as temporary, or on a small scale, shall rest

with the higher court of administration.

—The provisions of §§ 135 to 139*b* shall apply to employers and workers in workshops, in which power machinery (worked by steam, wind, water, gas, air, electricity, etc.), is employed, not merely temporarily, with the provision that in certain kinds of businesses the Bundesrath may remit exceptions to the provisions laid down in §§ 135 (2), (3), 136, 137 (1) to (3), and 138.

—The provisions of §§ 135 to 139*b* may be extended by Imperial decree, with consent of the Bundesrath, to other workshops and building work. Workshops in which the employers are exclusively members of the family of the employer, do not come under these provisions.

Imperial decrees and provisions for exceptions issued by the Bundesrath, may be issued for certain specified districts. They shall be published in the *Imperial Law Gazette*, and laid before the Reichstag at the next ensuing session.

§ 154*a*.

The provisions of §§ 115 to 119*a*, 135 to 139*b*, 152 and 153 shall apply to owners and workers in mines, salt pits, the preparatory work of mining, and underground mines and quarries.

—Women workers shall not be employed underground in establishments of the aforementioned kind. Infringements of this enactment shall be dealt with under the penal provisions of § 146.

Article VIII.

Section 155 of the Industrial Code shall contain the following clauses.

—Where reference is made in this Act to common law, constitutional or legislative enactments are to be understood.

The Central Court of the State of the Bund shall make known what courts in each State of the Bund are to be understood by the expressions: higher court of administration, lower court of administration, borough court, local court, lower court, police court, local police court, and what unions are to be understood by the expression, wider communal unions.

—For such businesses as are subject to Imperial and State administration, the powers and obligations conferred upon the police courts, and higher and lower

courts of administration, by §§ 105*b* (2), 105*c* (2), 105*e*, 105*f*, 115*a*, 120*d*, 134*e*, 134*f*, 134*g*, 138 (1), 138*a*, 139, 139*b*, may be transferred to special courts appointed for the administration of such businesses.

Article IX.

The date on which the provisions of §§ 41*a*, 55*a*, 105*a* to 105*f*, 105*h*, 105*i* and 154 (3) shall come into force, shall be determined by Imperial decree with consent of the Bundesrath. Until such time the legal provisions hitherto obtaining shall remain in force.

The provisions of §§ 120 and 150, 4 shall come into force on Oct. 1, 1891.

—The rest of this Act shall come into force on April 1, 1892.

—The legal provisions hitherto obtaining shall remain in force until April 1, 1894, in the case of such children from 12 to 14 years of age, and young persons between 14 and 16 years of age, as were employed, previous to the proclamation of this Act, in factories or in the Industrial establishments specified in §§ 154 (2) to (4), and 154*a*.

—In the case of businesses in which, previous to the proclamation of this Act, women workers over 16 years of age, were employed in night work, the Central Provincial Court may empower the further employment in night work of such women workers, in the same numbers as hitherto, until April 1, 1894, at the latest, if in consequence of suspension of night work, the continuation of the business to its former extent would involve an alteration which could not be made sooner without disproportionate expense. Night work shall not exceed in duration 10 hours in the 24, and in every shift intervals must be granted of an aggregate duration of at least one hour. Day and night shifts must alternate weekly.

Delivered under our Imperial hand and seal.
Given at Kiel, on board my yacht *Meteor*, June 1, 1891.

WILLIAM.
VON CAPRIVI.

Butler & Tanner, The Selwood Printing Works, Frome, and London.

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