A DISSERTATION. LABOR LAWS OF MARYLAND

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THE LABOR LAW OF MARYLAND

BY

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A DISSERTATION

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1917

BALTIMORE

1919

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PREFACE

This monograph needs little preface. The method of study is local and intensive, but I have endeavored to draw some general conclusions from the specific subject-matter treated. The book, as its title implies, is neither a text book nor a reference book, though it may serve to a slight degree in the latter capacity, but a dissertation.

I take this means of expressing my gratitude to Prof. W. W. Willoughby, who served as my inspiration and rendered me much assistance in the preparation of this monograph, and also to Prof. George E. Barnett and to Miss Anna Herkner, former Assistant-Chief of the Maryland Bureau of Statistics. Various others to whom I am indebted are mentioned throughout the text.

The monograph was completed towards the end of 1916 and, because of the author's participation in the war, it has been impossible to bring it up to date in many particulars.

M. H. L.

THE LABOR LAW OF MARYLAND

CHAPTER I

INTRODUCTION

The Problem of the Labor Law.—The labor law of a state is a peculiar combination of unwritten and statute law. It differs from most law in that it is not merely an evolution of the customary law of a community, but is a definite attempt by the community to solve, now by the common law, now by statute, an acute social problem. It does to a degree reflect the customary morality of the community, but this not unconsciously, as, for example, in the case of commercial law, but as a conscious adoption of an ethical principle for a political norm. A complete understanding of labor law requires, therefore, not merely a delving into jurisprudence, but also into political theory. We must study, not merely the law itself, but the law as an expression of the relation of the state to its citizens; the labor law in truth is one of the most interesting media in which to study the extent to which the state can justify its interference in the private life of individuals. Accordingly, although this study will be primarily a critical analysis and description of actual laws in practical operation, there will necessarily be in it an undercurrent of speculative political theory.

The state, then, in its labor law sets out to solve a very definite social problem, the problem of industrial unrest, the problem of reconciling and placating labor and capital. The history of this activity of the state stretches back six or seven centuries, and the policy of the state has varied from complete aloofness to intimate intervention.

Logically and perhaps historically the first instrumentality made use of by the state in meeting the labor problem is the common law. This results, not from an active intent on the part of the state to solve any problem, but from a quiescent attitude towards an unimportant phenomenon. The common law is turned to before the labor problem assumes any special characteristics of its own, and the various cases are settled according to the general principles of the common law as laid down in cases between individuals who are in no special relation to each other. If, in the beginning, as is usually the case, no economic question obtrudes into the case, but the matter is one of pure law, the decision based on former precedents will work substantial justice. When, on the other hand, the relative economic position of the two parties is of importance, decisions based on pure law will not be adequate and will often entirely fail to settle the question at bar. When, as always happens, the economic status of the parties does not merit attention until after the deciding of cases involving similar matters, but not calling into question the economic relation, it is practically impossible for the judges when the economic question is presented to them to disregard the precedents and to dispense economic justice and not justice according to law. Common law does, as is often said, progress and grow with the times, but more often legislation is necessary to make it entirely adequate. Thus the common law of negligence did not meet the requirements of industrial accidents, and employers' liability and compensation laws were the result. Thus the common law of individual bargaining and competition does not seem to meet the requirements of collective bargaining, and legislation recognizing the validity of unionism is being demanded.

A more serious inadequacy of the common law, however, as a means of solving the labor problem arises from the inherent characteristic of that law as a system of jurisprudence. The common law is remedial, compensatory; labor conditions call for regulation, prohibition. The com-