

**A NEW PROVINCE
FOR LAW & ORDER**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649383429

A new province for law & order by Henry Bournes Higgins

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

HENRY BOURNES HIGGINS

**A NEW PROVINCE
FOR LAW & ORDER**

W.E.A. SERIES
ECONOMIC, POLITICAL, AND
SOCIAL STUDIES
WRITTEN IN AUSTRALIA

General Editor:

G. V. FORTUS, M.A., B.Litt.

- No. 1. **DEMOCRACY AND FREEDOM.** By **ERROL MANN, M.A.**, Professor of Psychology and Ethics in the University of Queensland.
- No. 2. **THE NEW SOCIAL ORDER.** A Study of Post War Reconstruction. By Professor **MEREDITH ATKINSON, M.A.**, Director of Tutorial Classes, and Member of the Professorial Board, University of Melbourne.
- No. 3. **HISTORY OF TRADE UNIONISM IN AUSTRALIA.** By **J. T. SULLIVAN**, Secretary to the Federal Government's Basic Wage Commission, 1920.
- No. 4. **MARX AND MODERN THOUGHT.** By **G. V. FORTUS, M.A., B.Litt.**, Director of Tutorial Classes and Lecturer in Economic History in the University of Sydney.
- No. 5. **MODERN ECONOMIC HISTORY.** (With Special Reference to Australia.) By **HERBERT HEATON, M.A., M.Com.**, Lecturer in Economics and Director of Tutorial Classes, University of Adelaide.
- No. 6. **A NEW PROVINCE FOR LAW AND ORDER.** A review, by its late President, of the work of the Australian Court of Conciliation and Arbitration for fourteen years. By **HENRY EDWARDS HIGGINS, M.A., LL.B.**, Justice of the High Court of Australia and President of the Court of Conciliation and Arbitration, 1907-1921.

1/20/22

A NEW PROVINCE FOR LAW & ORDER

BEING A REVIEW, BY ITS LATE PRESIDENT
FOR FOURTEEN YEARS, OF THE AUSTRALIAN
COURT OF CONCILIATION AND ARBITRATION

By

HENRY BOURNES HIGGINS, M.A., LL.B.

JUDGE OF THE HIGH COURT OF AUSTRALIA, AND
PRESIDENT OF THE COURT OF CONCILIATION AND ARBITRATION, 1907-1921

193509
19 11 11

SYDNEY
WORKERS' EDUCATIONAL ASSOCIATION
OF N.S.W.

1922

GENERAL PREFACE

The scarcity of authoritative Australian books on economic, social, and political problems has been severely felt during the development of the Workers' Educational Association in the Commonwealth. On the foundation of the Federal Council of the W.E.A. in 1918, a means of overcoming this difficulty was sought. Among the professors, lecturers, and tutors who have so readily assisted the tutorial class movement, some had collected valuable material bearing on these problems. Through the Federal Council it was thought possible to assemble some of this material for publication in a series of monographs intended for the use of students in tutorial classes and elsewhere. Thus has the W.E.A. series of publications been founded, and it is hoped that its utility will extend beyond the immediate needs of members of the W.E.A. to the growing number of students of social problems in Australia.

The chief aim of the series being to encourage investigation in fields of study hitherto surprisingly neglected in Australia, the W.E.A. does not accept responsibility for the views expressed by the writers therein. Its purpose is to stimulate thought, not to propagate doctrines. A disclaimer of this kind may appear odd in a preface, but our experience of the persistency with which our critics insist on attributing to the Association the opinions of those who happen to be connected with it has convinced us that it is necessary.

G. V. PORTUS,
General Editor.

PREFACE

It has been suggested to me by friends who take an active interest in the solution of the world's industrial problems—friends in several countries—that I should state in book form the results of my experience of nearly fourteen years, now that I have resigned the presidency of the Commonwealth Court of Conciliation and Arbitration. To comply with the suggestion, I think that I cannot do better than collect three articles which I wrote for the *Harvard Law Review* of November, 1915, January, 1919, December, 1920, and then add some supplemental matter and general conclusions. The editors of the *Review* have been good enough to assent to this course. I hope that my friends will not regard it as a device to spare myself effort. There is this advantage, that as the articles appeared at considerable intervals they are really a better indication of the gradual development of standards and practice in the solution of actual problems than any synthetic statement of the present position would be. I had to learn the business, with no book of instructions, no teacher other than experience, no kindly light except from the pole star of justice. It is my hope that this little book will afford some encouragement to men of public spirit who are endeavouring to

bring some order out of the present industrial chaos, for they will see how standards have been created for industrial relations, how the human instruments of industry have had their lives brightened, and how extremely few have been the stoppages of work in disputes within the competence of the Court. The book may also throw some light on certain dangerous rocks which discreet Governments and Parliaments would avoid.

I desire to express my thanks to Mr. G. V. Portus, Director of Tutorial Classes in Sydney and General Editor of the W.E.A. Series, for his encouragement and valuable assistance in preparing this little book for the press.

H. B. HIGGINS.

MELBOURNE,
March, 1922.

CONTENTS

CHAPTER I.

	PAGE
AN ARTICLE CONTRIBUTED TO THE <i>HARVARD LAW REVIEW</i> , PUBLISHED IN NOVEMBER, 1915 - - -	1

CHAPTER II.

AN ARTICLE CONTRIBUTED TO THE <i>HARVARD LAW REVIEW</i> , PUBLISHED IN JANUARY, 1919 - - -	39
--	----

CHAPTER III.

AN ARTICLE CONTRIBUTED TO THE <i>HARVARD LAW REVIEW</i> , PUBLISHED IN DECEMBER, 1920 - - -	73
---	----

CHAPTER IV.

SUBSEQUENT DECISIONS - - - - -	124
--------------------------------	-----

CHAPTER V.

THE FUTURE OF INDUSTRIAL TRIBUNALS - - -	145
--	-----

APPENDICES.

A. INDUSTRIAL PEACE ACT, 1920; ASSENTED TO SEPTEMBER 13, 1920 - - - - -	169
B. STATEMENT MADE IN COURT BY MR. JUSTICE HIGGINS ON ANNOUNCING HIS RESIGNATION (SEPTEMBER 25, 1920) - - - - -	172
INDEX - - - - -	177

