The State and Industrial Arbitration in the United Kingdom

W. F. Frank
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The purpose of this article is to describe the arrangements made by the state in the United Kingdom for the settlement of industrial disputes, to discuss the reasons for the present dissatisfaction with these arrangements and to make some tentative suggestions for their improvement. Where possible, comparisons with American practice will be drawn, though it must be appreciated that in view of the basically different attitude of the state in the United States to arbitration such comparisons are not always easy or indeed relevant.

I.

The intervention of the State in industrial disputes is not a recent development in the United Kingdom. The Statute of Apprentices, 1562,1 had already directed Justices of the Peace to fix wages at their Easter sessions taking into consideration "the plenty and scarcity of the time and other circumstances." The Justices were also instructed to inquire twice a year into the observation of the prescribed rates. For the next two hundred and fifty years the Justices remained the main organ through which Parliament attempted to secure industrial harmony. The further developments up to the end of the nineteenth century have been described so often and so well that no good purpose would be served by going over this well-tilled ground. The main purpose of the author is to discuss those enactments which are still of practical importance today or which are needed to understand the trend of development in the field of industrial arbitration.2

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1. 5 Eliz. 1, c. 4.

2. An excellent account of the history of industrial arbitration may be found in AMULREE, INDUSTRIAL ARBITRATION (1929) (Lord Amulree was, as Sir William Mackenzie, K.C., the first president of the Industrial Court). Another useful study, bringing the story up to the late 'forties of the present century is SHARP, INDUSTRIAL CONCILIATION AND ARBITRATION IN GREAT BRITAIN (1950).
A period of strikes in the late 1880's focussed attention once more on the absence of comprehensive arrangements for the avoidance of labour disputes and a Royal Commission on Labour was set up in 1891 to investigate the problem. Its terms of reference instructed it "to inquire into the questions affecting relations between employers and employed, the conditions of employer and employed, and the conditions of labour which have been raised during the recent trade disputes in the United Kingdom, and to report whether legislation can, with advantage, be directed to the remedy of any of the evils that may be disclosed and, if so, in what manner." The thoroughness of the committee cannot be gainsaid. Its report and minutes of evidence cover 67 volumes. The committee was faced with the undeniable fact that in view of the growing strength of trade unions no imposed legislative solution was possible. It also found clear evidence of the popularity of voluntary arbitration agreements since their number had increased by leaps and bounds. The main difficulty which had been experienced by both sides of industry in settling their differences in an amicable fashion was the not uncommon one of finding suitable arbitrators. It was also recognized that if a third party would intervene at an early stage of a dispute with an offer of mediation, many a protracted dispute could be avoided. After all the effort that had been put into the work of the commission, its final report came as somewhat of an anticlimax. The commission rejected the idea of compulsory arbitration and preferred to pin its faith on an expansion of voluntary arbitration. A few members of the commission suggested that collective agreements should be made legally binding on trade unions, but as they realized that this would entail a fundamental change in the legal status of trade unions the suggestion was not further pursued by them. The commission proposed, however, that discretionary powers be bestowed on the Board of Trade to enable it "to take the initiative in aiding by advice and local negotiations the establishment of voluntary boards of conciliation and arbitration in any district or trade and further to nominate upon the application of employers and workmen interested, a conciliator or board of conciliation to act when any trade conflict may actually exist or be apprehended."

The recommendations of the Royal Commission were taken up and were embodied in the Conciliation Act, 1896. This act

4. 59 & 60 Vict., c. 30.2-(1)(a)-(d).
authorized the Board of Trade to exercise at its discretion any of the following powers whenever a difference existed or was apprehended between any employer or class of employers and workmen or different classes of workmen:

1. to "inquire into the causes and circumstances of the difference;"

2. to "take such steps as to the Board may seem expedient for the purpose of enabling the parties to a difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade . . . ;"

3. "on the application of employers or workmen interest, and after taking into consideration the . . . adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as a conciliator or as a board of conciliation;"

4. "on the application of both parties to the difference, appoint an arbitrator."

Although the Conciliation Act is still on the statute book, its practical effect has been limited. The various steps which the Board of Trade was authorized to take had been taken already by the Board before the passing of the act so that all that had happened was that statutory authority had now been conferred on the Board to follow its usual procedure. One positive effect which followed was the expansion of the Labour Department of the Board of Trade which was eventually in 1916 split off from the Board of Trade and made into a separate Ministry, the Ministry of Labour.

During the first world war the need to safeguard war production led to the passing of the Munitions of War Act, 1915. The application of this act was restricted to specified industries, namely, the manufacture or repair of arms, ammunition, ships,

5. Ibid.
6. New Ministries and Secretaries Act, 1916. 6 & 7 Geo. 5, c. 68.
7. During the second world war this ministry was renamed Ministry of Labour and National Service.
8. 5 & 6 Geo. 5, c. 54.
9. This limitation in the scope of compulsory arbitration resembles that of the Kansas Industrial Court Law, 1920, which was also restricted to industries "affected with the public interest." The National War Labor Board in the United States had also jurisdiction over those labour disputes only which threatened to impede "the effective prosecution of the war."
vehicles, aircraft or other articles required for use in war, as well as the metals, machines or tools required for that manufacture or repair. Power was given to the minister to extend the application of the act to other industries provided that he was satisfied that effective means for the settlement of labour disputes did not exist in the industry concerned. The act was extended in fact to cover also the employment of coal miners in South Wales, card and blowing room operatives in Lancashire and dockers in London, Liverpool, and Wales. Under the act any difference as to wages, hours of work, or conditions of employment which the parties were unable to settle themselves could be reported by either of them to the Board of Trade. The Board’s duty was to promote a settlement by any means which it considered desirable. If the Board considered the dispute one suitable for arbitration, it could refer it to an arbitration board, whose award was legally binding on the parties. Failure to comply with the award was an offense punishable by a fine. Strikes and lockouts were declared illegal unless the dispute had been first reported to the Board and the Board had failed to take action within a period of twenty-one days.

In the following year the Munitions of War (Amendment) Act, 1916, enlarged the definition of “munitions work” by including also industries only indirectly connected with the prosecution of the war. The passing of these two acts did not fully satisfy those who complained about the delay in the settlement of labour disputes. The Munitions of War Act, 1917, permitted therefore any government department (and not only the parties to the dispute) to report a dispute to the Minister of Labour. The act also instructed the arbitration tribunal to which the minister had referred a dispute to make its award as quickly as possible, where practicable within fourteen days. With the end of the war the need for compulsory arbitration was believed to have ceased. The Wages (Temporary Regulation) Act, 1918, was passed, after consultation with employers and trade unions, with the purpose of providing a transitional system from war to peace conditions. The act, which was originally intended to last for

10. There is nothing in British arbitration procedure comparable to the enforcement of arbitration awards by executive action (e.g., by the seizure of plants) as operated, for instance, under the National War Labor Board system in the United States.
11. 5 & 6 Geo. 5, c. 89
12. 7 & 8 Geo. 5, c. 45.
13. 8 & 9 Geo. 5, c. 61.
six months only, was later extended for another six months and expired on November 21, 1919. Apart from repealing the prohibition of strikes and lockouts, the act also abolished the compulsory arbitration of labour disputes, except for disputes as to whether a workman was paid the prescribed rate of wages, this being the standard rate of wages prevailing on Armistice Day.

While the war was still in progress the government had already set up a Cabinet Committee on Reconstruction. In 1916 this committee appointed a sub-committee to investigate relations between employers and employed. The chairman of this body was Mr. J. H. Whitley, then chairman of committees of the House of Commons, and the committee is therefore referred to as the Whitley Committee. In a series of reports published in 1917 and 1918 the committee recommended some far-reaching changes in the structure of industrial relations in the United Kingdom. Briefly, these changes involved the setting up of standing bodies for promoting cooperation between employers and employed, especially in those industries where because of organizational weaknesses on either side the normal process of collective bargaining did not work at all or only with difficulties. The Whitley Committee appreciated, however, that even the best possible machinery for cooperation could not succeed in ironing out all differences and their fourth report outlined ways in which the State could step in where failure to agree threatened industrial peace. This was to be done by providing:

1. means by which an independent inquiry may be made into the facts and circumstances of a dispute and an authoritative pronouncement made thereon but without compulsory power of delaying strikes and lockouts;
2. a standing arbitration council for cases where the parties wish to refer any dispute to arbitration.

The recommendations contained in this report were embodied in the Industrial Courts Act, 1919. This act consists of two parts: the first deals with the Industrial Court while the second is concerned with courts of inquiry.

The Industrial Court is not a court of law; it is, as sug-
gested by the Whitley Committee, a mere permanent arbitration tribunal. The court consists of a permanent president, who has the standing of a High Court judge, of a number of "independent" members and of members representing employers and workmen. The president is appointed in the same way as a High Court judge, while the other members are appointed by the Minister of Labour. The court may sit in divisions, consisting in general of an independent member (or the president) as chairman and representative members taken from the panels of employers and workmen respectively. The representative members are not chosen from the industry involved in the dispute before the court.

In order to understand the jurisdiction of the court it is necessary to examine the definition given to "trade disputes" by the 1919 act. A "trade dispute" is defined as "any dispute or difference between employers and workmen or between workmen connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person." The same section described a "workman" as "any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be it express or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour." The definition of "workman" is wide enough to include all employees, even those who are employed by the Crown or by local authorities. Disputes concerning members of the armed forces of the Crown are, however, expressly excluded from the jurisdiction of the court. Following the procedure which is common to all state-appointed arbitration boards in this country, access to the court is possible only via the Minister of Labour and National Service. The minister may refer a trade dispute to the Industrial Court for settlement provided that both parties agree and provided that he considers this procedure to be suitable for the dispute in question. If, however, in the industry in which the dispute originated there exist special facili-

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Court, 5 INDUSTRIAL L. REV. 104 et seq. (1950). A historical study of the court may be found in Amulsee, INDUSTRIAL ARBITRATION (1929).

19. It is interesting to compare this definition with that occurring in the National Labor Relations Act, 49 STAT. 449 (1935), which defines "labor disputes" as controversies concerning the terms, tenure and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

20. Section 8.
ties for the settlement of disputes, the minister may not refer the trade dispute to the Industrial Court unless the special machinery in the industry has been exhausted and unless both parties agree to the reference. The minister may also refer to the court for advice any matter arising out of or relating to a trade dispute if he considers it desirable that the opinion of the court should be obtained.

Legislation passed since 1919 has made a reference to the Industrial Court the normal method of settlement for trade disputes in certain industries. This procedure has been used particularly in respect to nationalized industries and industries which are in receipt of government subsidies.21

The awards of the Industrial Court are not legally binding on the parties.22 Bearing this fact in mind, the minister will not refer a dispute to the court if he has doubts as to whether the court's award will be accepted by both parties since the reputation of the court would be bound to suffer irreparable harm if a number of its awards were to be rejected by one or both of the parties. This is, of course, unlikely to happen since a reference to the court will not take place unless both sides have agreed to it. Generally speaking, the stronger unions have made little use of the facilities of the court.

Although an award of the court is not binding as such, the award will become an implied term of the contracts of employment of the workmen to whom it applies but only if it is adopted by the parties. In this case it could be enforced as any other contractual term.

When a dispute has been reported to the Ministry of Labour, the Ministry will first attempt through an officer of its industrial relations branch to mediate between the parties and to persuade them to reopen direct negotiations where this is possible. If the mediation attempt fails, the officer of the Ministry may suggest to the parties that their dispute be referred to arbitration and if they are prepared to agree to this, he will help them in drafting the terms of reference. If joint terms of reference cannot be agreed upon, the claimants will present a statement of

21. E.g., the Sugar Industry Act, 1942; the Road Haulage Wages Act, 1938; the Transport Act, 1947; the Civil Aviation Act, 1946.
22. The awards are not enforceable under the Arbitration Act, 1950, as that act does not apply to any reference made by the minister to the Industrial Court. Industrial Courts Act, 1919, § 3.
claim and this, together with the answer of the other party, will take the place of agreed terms of reference.

The Industrial Court has its permanent headquarters in London where also most of the hearings will be held, but from time to time in order to accommodate the parties hearings have been held in the provinces as well. The court gives the parties at least fourteen days' notice of the time and place of the hearing and the parties are also reminded to have ready at the hearing all the evidence which they wish to submit.

The procedure of the court is governed by the Industrial Court (Procedure) Rules, 1920. Subject to these rules the court may control its own procedure. The court, as has been shown already, sits in divisions, each division consisting normally of three members. The president may decide, however, that a dispute should be heard before a single member (taken from the panel of independent members) of the court. He may also, at his own initiative or at the request of the parties, call in one or more assessors to assist the court. Their function is to advise the court on some technical issues raised in connection with a dispute. While they sit and deliberate with the court and may ask questions of witnesses, they are not members of the court and will not sign the award.

Parties may be represented by counsel or solicitor provided the court agrees. If such permission is granted to one party it is automatically extended to the other party as well. There is no need to seek the court's permission if a party wishes to be represented by a lay person and the same applies also where a barrister or solicitor appears for a party not professionally, but in his capacity as an official of the organization involved.

The proceedings are conducted in as informal a manner as possible. After the clerk of the court has read out the terms of reference the claimant presents his case first and then produces his evidence. His witnesses, if any, are then cross-examined by the respondent. The respondent then presents his case and evidence, and his witnesses may be cross-examined by the claimant. Most of the evidence is written and even the statements to be made by the witnesses are presented in written form (copies being supplied in advance to the other party), but the witnesses

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23. 1 Abbey Gardens, Great College Street, Westminster, London S.W. 1.

24. The services of assessors are likely to be required in very few instances only. Amulree, Industrial Arbitration 182 (1929).
must be present at the hearing so as to allow the other party to cross-examine them on their evidence. The evidence of witnesses may be taken on oath, but this is not generally done. The court has no power to demand the production of documents or to compel witnesses to attend. Through it is not legally obligatory, the public are generally excluded from the hearings of the court.

The court's award is given in writing and is of course limited to the terms of reference. Though in the first years of its existence the court used to give extensive reasons for its awards, this practice has now been discontinued. The award simply recites the claim and the arguments adduced in favour of it as well as the answer and the arguments of the respondents and concludes with the phrase: "The court, having given careful consideration to the evidence and submissions of the parties, award that..."

An advance copy of the award is sent to the parties by the secretary and the award is subsequently published by H. M. Stationery Office. Unless the award fixes a particular date from which it is to operate, it will be operative as from the date on which it was made.

Part II of the Industrial Courts Act, 1919, authorizes the Minister of Labour and National Service to set up a court of inquiry and refer to it for investigation an existing or apprehended trade dispute. The consent of the parties is not needed for this step, which is usually taken where one or both parties have shown themselves unwilling to accept arbitration and where in the minister's opinion the trade dispute endangers the public interest. The court of inquiry is not concerned directly with a settlement of the dispute; its main function is the ascertainment of the causes of the dispute. The court of inquiry reports to the minister who has to lay the report before Parliament. Frequent-


26. The procedure before the Industrial Court does not appear to differ substantially from the procedure before arbitration boards in the United States. Cf. Torff, Collective Bargaining 311 (1953); Elkouri, How Arbitration Works 11 (1952). There does exist, however, an important difference as to the enforcement of awards. In the United States the award of an arbitrator, once issued, is legally enforceable by going into court for a motion for its enforcement. Torff, op. cit. supra at 314. The difference between British and American practice is doubtless due to the fact that in the United States (unlike Britain) the Arbitration Act applies to industrial arbitration.

27. Although arbitrators in the United States generally give reasons for their awards, there appears to exist no necessity for their doing so. Updegraff & McCoy, Arbitration of Labor Disputes 118 (1946).
ly the report of the court of inquiry contains an outline of the basis on which, in the opinion of the court, the dispute could and should be settled. This suggestion will inevitably have a strong effect on public opinion and it will be difficult for the parties to disregard it. There are no general rules of procedure for a court of inquiry. When naming the members of the court and determining their terms of reference, the minister will also outline their powers, which may include that of summoning witnesses and their examination on oath. The courts of inquiry have proved very useful in dealing with "hard core" disputes not amenable to normal arbitration procedure. Frequently, in fact, the mere appointment of a court of inquiry has led to an immediate return to work of strikers.\(^2\) It may be added that while the minister will not refer a dispute to arbitration by the Industrial Court while a stoppage of work is in progress, a stoppage of work does not preclude the setting up of a court of inquiry.

As has been shown already, the necessities of war led to the passing of the Munitions of War Acts in the first world war and a similar situation prevailing in the second world war had a like result. The Conditions of Employment and National Arbitration Order, 1940,\(^29\) was made under powers contained in regulation 58AA of the Defence (General) Regulations, 1940,\(^30\) which, themselves, were based on the Emergency Powers (Defence) Act, 1939.\(^31\) The main purpose of the 1940 order was the setting up of the National Arbitration Tribunal (to be abbreviated as N.A.T.) which came into existence on August 1, 1940, and which operated until October 1951 when its place was taken by the Industrial Disputes Tribunal (to be abbreviated as I.D.T.). The 1940 order will be discussed here in outline only as the N.A.T. has now disappeared. The order introduced quasi-compulsory arbitration in industrial disputes in that the Minister of Labour and National Service could refer a dispute to the N.A.T. for settlement if the dispute had been reported to him by one of the parties. Even then the minister had the option of referring the dispute to some other body for settlement if such body in his opinion was more suitable for the purpose. The order provided further that an employer should not declare a lockout and a worker should not take part in a strike unless the dispute

\(^2\) E.g., in the recent dispute between BOAC and BEA and the maintenance workers employed by them at London airport.

\(^29\) S.R. & O. 1940, No. 1304.

\(^30\) S.R. & O. 1940, No. 1217.

\(^31\) 3 & 4 Geo. 6, c. 36.
had been reported to the minister and twenty-one days had elapsed since the date of the report without the minister having referred the dispute for settlement in accordance with the order. Under the Defence Regulations it was a criminal offence to organize (as distinct from a mere participation) a strike or lock-out in breach of the above provisions.

The awards of the N.A.T. became implied terms in the contracts of employment of the workmen to whom they related without there existing a necessity for the parties to adopt them.

The continuance of the 1940 order beyond the period of the war was justified by the government on the ground that the post-war economic situation of the country constituted as much an emergency as the war had done so that unnecessary stoppages of work had to be avoided as a luxury which the country could not really afford. At the same time it was recognized that the use of compulsion in the settlement of trade disputes was something which offended against British traditions in the field of industrial relations. The continuation of the N.A.T. was therefore made dependent on the consent of trade unions and employers' organization. Generally speaking, the larger unions were getting increasingly restive, mainly because of the prohibition of strikes while the smaller unions found compulsory arbitration more to their liking. After lengthy discussions with both sides of industry, the minister decided, therefore, in 1951 to replace the 1940 order by a new one which, while retaining the acceptable features of the old one, would also embody some of the changes which had been pressed on the minister by the Trades Union Congress.

The Industrial Disputes Order, 1951,\(^{32}\) was made by the Minister under the same emergency powers which had authorized his predecessor in 1940 to make the Conditions of Employment and National Arbitration Order. The 1951 order set up the I.D.T. to replace the N.A.T. The I.D.T. is not, like the Industrial Court, a permanent body, but is constituted separately for every dispute which is referred to it by the minister. The minister has constituted a panel of "appointed members" and separate panels of persons chosen to represent employers and employees respectively and the tribunal consists normally of

\(^{32}\) S.I. 1951, No. 1376. The order was made by the Minister of Labour and National Service on the understanding that it would be reviewed at once if either side of industry wished it to be discontinued. 491 House of Commons Reports, c. 1628 (1951).
three appointed members (one of whom acts as chairman) and two other members, one being taken from each of the "representative" panels. All members are appointed by the minister. Subject to the provisions of the order the tribunal may regulate its own procedure. The tribunal may sit in as many divisions as the minister may from time to time decide.

The tribunal has two main functions, namely to deal with "disputes" and with "issues" referred to it by the Minister. The order states that "dispute does not include a dispute as to the employment or non-employment of any person or as to whether any person should or should not be a member of any trade union but, save as aforesaid, means any dispute between an employer and workmen in the employment of that employer connected with the terms of the employment or with the conditions of labour of any of those workmen." There exists a substantial difference between the definition of "dispute" under the order and that of a "trade dispute" for the purposes of the Industrial Courts Act, 1919. Disputes as to the reinstatement of an employee or as to whether or not a closed shop may be operated in an establishment are expressly excluded from the jurisdiction of the I.D.T. It has also been held that while the dispute may be one affecting one particular worker only (e.g., as to his grading) the tribunal is not competent to deal with a dispute where the employee in question is the only one of his kind employed by the employer. The definition of "workman" is the same as used in connection with the Industrial Courts Act, 1919.

The minister may refer a dispute to the I.D.T. for settlement only if the dispute has been reported to him in accordance with the order. While under the 1940 order either side to a dispute could report it, now under the 1951 order a dispute may be reported only by an organization of employers on behalf of employers who are parties to the dispute, or by an individual employer where the dispute is one between him and the workmen in his employment or by a trade union on behalf of workmen who are parties to the dispute. Where the dispute is reported by

33. Between 1951 and November 3, 1958, 1160 cases have been referred to the tribunal. Of these 82% dealt with "disputes" and 18% with "issues." 595 House of Commons Reports, col. 1163 (November 19, 1958).
34. Regina v. Industrial Disputes Tribunal, ex parte Queen Mary College [1953] 2 Q.B. 483.
an organization of employers or by a trade union, the employers’ organization or trade union must habitually take part in the voluntary settlement of terms and conditions of employment in that industry (provided that there exists machinery for this purpose) or where there is no machinery for collective bargaining, the employers’ organization or trade union must represent a substantial proportion of employers or workmen in the industry. This limitation on the power to report a dispute was introduced at the request of the Trades Union Congress in order to strengthen the position of the official unions against “breakaway unions” or groups of union members dissatisfied with their union leadership. The minister decides whether the body reporting the dispute is qualified to do so.

When a dispute is reported to the minister, he will refer the dispute for settlement through the machinery for the settlement of disputes existing in the industry where the dispute has originated, provided that such machinery exists and that it has not yet been exhausted by the parties. If no such machinery exists or if it has been exhausted by the parties, the minister may take any other steps which he considers expedient in order to promote a settlement. This may take the form of a reference of the dispute to the I.D.T. Such a reference should be made within fourteen days of the date of the report of the dispute, but the minister may extend this period if he thinks that this would be desirable. The minister must not refer the dispute to the I.D.T. if either party has taken steps to compel the other party to accept a settlement (e.g., by strike or lockout) and the minister feels that in the circumstances it would be undesirable to have recourse to arbitration. If, in such circumstances, the dispute has already been referred to the I.D.T. the minister may stay the proceedings before the tribunal while the action continues. Striking or calling a lockout is, however, no longer deemed to be an offense. The parties to a dispute are free to take whatever action they like in support of their claim, but they cannot have it both ways; they cannot use self-help and arbitration at the same time.

An award of the I.D.T. disposes only of the dispute between the parties directly involved and cannot be binding on those

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36. It may also take the form of a reference to the Industrial Court. The award of the Industrial Court would in such a case be as binding as that of the Industrial Disputes Tribunal.

37. A similar principle was adopted by the National War Labor Board in the United States. *Cf.* BRAINT, LABOR DISPUTES AND THEIR SETTLEMENT 269 (1951).
who were not parties to it. The same applies, of course, equally to collective agreements which, if entered into by an employers' association, cannot be held to commit employers who are not members of the association. The 1940 order had, however, adopted a principle\textsuperscript{38} which was later also embodied in the 1951 order providing for the compulsory extension of arbitration awards or collective agreements to those who were not originally parties to them. The 1951 order lays down that where in any trade or industry (or section thereof) terms and conditions of employment have become established either through arbitration or negotiation and the parties to the arbitration or negotiation were organizations of employers and trade unions, representative respectively of substantial proportions of the employers and workmen engaged in that trade or industry, these terms will be known as "recognized terms and conditions of employment." It is then possible for either an organization of employers or for a trade union, provided that they habitually participate in the settlement of terms and conditions of employment in that trade or industry, to report to the minister as an "issue" the refusal of a particular employer to observe the "recognized terms and conditions of employment." The minister may then refer the "issue" to the I.D.T. If the tribunal is satisfied that "recognized terms and conditions of employment" exist in the industry and that the employer does not observe them, nor does he apply terms and conditions which are not less favorable than the recognized ones, the tribunal may order the employer to observe the recognized terms and conditions of employment.

This part of the order has been the one most cherished by the unions, especially the smaller ones. The unions' tactics have been to come to an understanding with the main employers' association in the industry (whether directly or through arbitration) and then to compel the smaller, non-federated, employers to abide by the same terms. The issue procedure has also on the whole been welcome to the federated employers who feel that in this way their unorganized competitors will be unable to derive a competitive advantage from paying lower wages.

When a union or an employers' association reports to the minister, it must be careful to distinguish between a dispute and an issue since if it were to report an issue when it should have

\textsuperscript{38} The principle was, even in 1940, not an entirely new one. It was already contained in the Cotton Manufacturing (Temporary Provisions) Act, 1934. 24 & 25 Geo. 5, c. 30.
reported a dispute (or *vice versa*) the employer in question could obtain an order of prohibition to prevent the tribunal from proceeding on the reference. The Court of Appeal has held\(^9\) that an issue is primarily concerned with whether a particular employer should accept and observe a *general code* of conditions of employment established by negotiation or arbitration between representative organizations of employers and trade unions and covering the whole of the industry. If, on the other hand, a collective agreement or an arbitration award provides for some particular change in existing conditions (e.g., a wage increase) the question whether a particular employer should follow suit is a dispute as to wages, etc. In the dispute, the existence of the national agreement is prima facie relevant evidence but no more.

An award made by the I.D.T. on a dispute or issue referred to it by the minister will become an implied term in the contracts of employment of the workmen to whom the award refers. These implied terms are binding irrespective of the wishes of the parties, but the parties may vary them subsequently by agreement if they wish to do so.

The Industrial Disputes (Amendment and Revocation) Order, 1958,\(^{40}\) has now provided that the 1951 order shall not apply in respect of any dispute or issue not reported to the minister by December 10, 1958. The order itself will cease to have effect as from March 1, 1959, on which day the I.D.T. will go out of existence. The reasons for and the consequences of this change, which will mean the end of quasi-compulsory arbitration in the United Kingdom will be discussed in the second part of this article.

II.

In order to evaluate the intervention of the State in the settlement of industrial disputes in the United Kingdom, it is necessary to start with a brief discussion of the law affecting collective agreements. There is one noticeable difference between collective bargaining in the United States and in the United Kingdom and that is that while in the United States the typical collective agreement is one between a trade union and an employer, in the United Kingdom it is one between a trade union and an employers' association. Furthermore, at least outside the


\(^{40}\) S.I. 1958, No. 1796.
nationalized industries, there exists no legal compulsion on employers to bargain at all with trade unions.

American legal literature has devoted considerable attention to the question whether collective agreements are enforceable in the courts. The doubts as to their enforceability appear to rest mainly on the non-corporate status of trade unions. Though British trade unions are also unincorporated bodies, the Trade Union Acts provide that registered trade unions may sue and be sued in their registered names. Even so, the Trade Union Act, 1871,\(^{41}\) states that no action arising out of an agreement made between one trade union and another may be entertained by a court of law. This provision makes unenforceable all collective agreements between trade unions and employers' associations since an employers' association is legally covered by the definition of a trade union. Section 4 of the Trade Union Act, 1871, does not extend to agreements made between a trade union and an individual employer, but one authority at least\(^{42}\) has argued most convincingly that quite apart from the 1871 act collective agreements are unenforceable since they are not contracts at all. Professor Kahn-Freund has pointed out that a collective agreement may contain two different types of provisions. The "obligatory provisions" are those where the agreement imposes certain duties on the parties directly concerned in its making, e.g., where a trade union agrees not to submit a new claim for a certain period or an employer accepts the principle of a closed shop. The "normative provisions" of a collective agreement are those which regulate the conduct of other persons who were not directly parties to the agreement, such as the wages of the members of the negotiating union. The normative provisions of the collective agreement are generally more important than the obligatory ones. Professor Kahn-Freund contends now that it is a mistake to assume that trade unions negotiate as agents for their members.\(^{43}\) They negotiate on their own behalf, but not with a view to making a contract in the legal sense of the word.

"An agreement is a contract in the legal sense only if the

\(^{41}\) 34 & 35 Vict., c. 31.


\(^{43}\) This approach seems to have gained a measure of approval in the United States. Cf. Mendelsohn, Enforceability of Arbitration Agreements under Taft-Hartley Section 301, 69 Yale L.J. 197, 200 (1959).
parties look upon it as something capable of yielding legal rights and obligations. Agreements expressly or implicitly intended to exist in the 'social' sphere only are not enforced as contracts by the courts. This appears to be the case of collective agreements. They are intended to yield 'rights' and 'duties', but not in the legal sense; they are intended as it is sometimes put, to be binding 'in honour only,' or (which amounts to very much the same thing) to be enforceable through social sanctions but not through legal sanctions."  

Professor Kahn-Freund chooses, therefore, to regard a collective agreement as a form of private industrial legislation by interested parties for the purpose of setting up an "industrial code." If this code is actually applied by a particular employer to his employees, it will become a "crystallized custom" and will thus implicitly be embodied in the relevant contracts of employment, giving the employees a right of action for breach of contract if the employer subsequently fails to observe these terms. Naturally, all that has been stated here as to the indirect enforceability of collective agreements can apply to the normative provisions in them only, and even they can be enforced only if actually adopted by the parties to the agreement. It is the adoption and not the agreement which makes the provisions enforceable. The union has no right of action against an employer, or an employers' association if it should fail to observe either the normative or the obligatory provisions of the collective agreement. The union can only apply economic sanctions to insure compliance with the agreement. The position in the United Kingdom appears to differ significantly in this respect from that prevailing in the United States.

While, then, collective agreements appear to be in one way less effective in the United Kingdom than in the United States,
they are more effective in another respect. Under the system prevailing in the United States it is unlawful in general for an employer to refuse to recognize trade unions or to refuse to enter into bona fide bargaining with them. The employer in the United Kingdom may refuse to recognize a trade union or indeed trade unions in general and he may reject the idea of bargaining collectively, but if he refuses to bargain and a "code" has been set up for the industry, whether by means of an agreement to which the parties were substantial proportions of employers and workmen in the industry or through an arbitration award given in a dispute between such parties, the provisions of this "code" may be compulsorily extended to cover him as well. Thus, in effect, the choice is not really one between bargaining collectively or not bargaining, but rather between being a party to a collective agreement and having the terms of an agreement made by others thrust upon oneself.

What is the relevance of all this to industrial arbitration? Compulsory arbitration has lasted for as long as it did in the United Kingdom because of the very fact that collective agreements are not legally binding on the parties. If they were binding, going to arbitration would be a mere alternative to going to court, just as commercial arbitration is in a different field. As collective agreements are not legally binding, however, the only alternative to arbitration is strike action. Similarly, compulsory arbitration is the only alternative to strike action where an employer or an employers’ association refuses to bargain with a trade union.

The reason why compulsory arbitration is now about to disappear from Britain’s industrial scene follows naturally from the reasoning used above. Compulsory arbitration as it has worked in Britain for the last eighteen years has been a substitute for collective bargaining and now at last we have come to the conclusion that it is an imperfect substitute. The reasons for this will be examined below:

51. In the United Kingdom there is nothing illegal in either a “yellow dog contract” or in a closed shop agreement. For better or for worse Britain has no Taft-Hartley legislation.

52. Nationalized industries have a duty to consult with representative trade unions and to bargain with them about wages and working conditions. Cf., e.g., Coal Industry Nationalization Act, 1946, § 46(1); Civil Aviation Act, 1946, § 19(1); Transport Act, 1947, § 95(1); Electricity Act, 1947, § 53(1); Gas Act, 1948, § 57(1).

53. American writers seem to have reached this conclusion long ago. Cf. KUHN, LABOR INSTITUTIONS AND ECONOMICS 154 et seq. (1956).
1. Neither British writers nor the draftsmen of the two orders providing for compulsory arbitration have paid attention to the distinction drawn in American literature and practice between disputes as to rights and disputes as to interests. Disputes as to rights are eminently arbitrable while disputes as to interests are not, at least not unless the parties agree on a set of principles to be applied in the making of a new agreement. A discussion of what these principles should be is outside the scope of this article. By endowing arbitration awards with compulsory effect, irrespective of the subject matter of the reference the minister has created a situation which proved to be untenable in the long run.

2. In a semi-managed economy, such as has prevailed in Britain since the war, arbitrators dealing with interest disputes face further difficulties. In such an economy the government has accepted a measure of responsibility for maintaining full employment and for curtailing inflation. In order to deal with these twin objectives some control over wages is needed. From time to time the government or individual ministers have made pronouncements as to the kind of wage policy which should be followed. These pronouncements are generally addressed as

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54. There is a brief discussion of this question in Knowles, Strikes 68-69 (1952).
56. The Industrial Disputes Order does, however, exclude from its definition of “disputes” those dealing with reinstatement and with compulsory union membership, presumably because the clash of interests is deemed to be too great.
58. As far as British conditions are concerned, such a discussion may be found in Rankin, Arbitration Principles and the Industrial Court (1932) and Wootton, The Social Foundations of Wage Policy (1955). For the United States, see, among others, Bernstein, The Arbitration of Wages (1954); Elkouri, How Arbitration Works 91 et seq. (1952); Gitlow, Wage Determination under National Boards (1933).
59. “So long as full employment lasts there are likely to be only relatively brief periods in which the government in power can afford to ignore the inflationary pressures caused by union wage demands, and it is only in these brief periods that the Minister of Labour will be able to devote his energies entirely to conciliation and to spreading goodwill.” Shanks, New Phase in Wage Bargaining, 108 The Banker 151 (1958).
60. Cf. the statement of the Prime Minister on personal incomes, costs, and prices made to the House of Commons on February 4, 1948, and issued subsequently as Cmd. 7321. On the other hand, however, successive Ministers of Labour have gone out of their way to stress the independence of arbitrators. “There will be no tampering with arbitration as long as I hold my office.” Sir Walter Monckton, Q.C., M.P. (then Minister of Labour and National Service) 522 House of Commons Reports, col. 821 (January 19, 1954).
exhortations to those engaged in collective bargaining, but they can hardly be without influence on arbitrators. Now, while in theory arbitrators are supposed to be independent of the government and decide each dispute solely on its merits, it is difficult for them to leave the national interest entirely out of sight. If they are prepared to heed government warnings about the dangers of wage inflation, they will be charged by the unions or by the government's political opponents with having introduced extraneous matter into their awards. In such circumstances the choice of the independent members of an arbitration board may acquire increased importance and the burden that is cast upon the arbitrators is one that it is not fair to expect them to bear. While there are no binding precedents in industrial arbitration, it is still true that in "interest disputes" where new wage rates are at stake a certain "norm" may easily develop from arbitration awards which will subsequently be followed in other awards. This is why trade unions, whenever the annual round of wage claims commences, tend to pick with great care the industry in which the first claim is to be submitted. If this is an industry in which the unions have a particularly good case and the employers' resistance to their claim is likely to be a weak one, it is then possible for other unions to demand similar increases, not on the ground of capacity to pay, etc., but in order to restore differentials which have been disturbed by the original award.\footnote{61}

In order to assess the relative importance of rights disputes and interest disputes, the author has attempted to analyze the awards of the I.D.T. in 1953. In that year 178 awards were made by the tribunal divided as follows:

**Interest Disputes**

- Wage rates for an entire industry or a large section: 49
- Wages of workers in particular firms: 35
- Implementation of "recognized terms and conditions": 31
- Salaries of clerical and professional workers: 12

\[\text{Total: 127}\]

\footnote{61. "This is the 'follow-my-leader' principle, under which arbitrators apparently feel themselves bound to follow precedents set in other industries. This has meant, in effect, that the pattern of wage increases throughout the economy in any given year is determined by a single decision in a single key industry, whether reached by negotiation or arbitration." Shanks, \textit{New Phase in Wage Bargaining}, 108 THE BANKER 154 (1958).}
Rights disputes

The grading of a particular worker 16
Wage rates applicable to particular jobs 6
Interpretation of a collective agreement 3
Working conditions of particular workers 7
Conditions of employment in particular firms 14
Conditions of employment in particular industries 5

A closer study of the disputes concerning wage rates shows that only two demands for increases were rejected outright and this was due to the special circumstances prevailing in the industries involved.62 Where wage increases were awarded the amounts appear to bear little relation to the demands made and fall within fairly narrow limits approximating, if expressed in percentage terms, the changes in the cost of living since the last award or agreement. It is of course impossible to say whether it was this fact which governed the award of the tribunal as the tribunal gives no reasons for its decisions.

It is possible, however, to draw certain general conclusions from the awards:

a. The awards are generally expressed as an increase of so much per week or per hour added to the basic rate, rather than in the form of a percentage increase. This had led to differentials for skill being gradually whittled down in percentage terms.

b. Unions and employers' associations use the same arguments both for supporting wage demands as well as for opposing them. The difference between them lies entirely in their interpretation of the facts. While employers, for instance, refer to the actual changes in the cost of living index, trade unions tend to emphasize the changes in the food section of the index, since that section has gone up by more than the index as a whole.63

c. Trade unions tend to contrast changes in wage rates with changes in the cost of living, while employers prefer to compare changes in earnings with changes in the cost of living.

62. One applied to the building industry in which wages are already, by agreement, subject to automatic adjustment on the sliding scale principle, while the other referred to the cotton textile industry which in 1953 was just recovering from a slump.

63. See note 70 infra.
d. Trade unions have made more use of the facilities provided by the I.D.T. than employers. Of the 178 awards of the I.D.T. made in 1953 only four resulted from disputes reported to the minister by an employer or an employers’ association. 64 It is interesting to note in passing that while the trade unions had to be persuaded in 1940 by such of their leaders as the late Ernest Bevin to accept the principle of compulsory arbitration, the abolition of it in 1958 was hotly opposed by the entire trade union movement. 65

3. The main reason for the dissatisfaction of employers with compulsory arbitration has been its onesidedness. In theory, awards of the I.D.T. are binding on both sides. If an employer refuses to comply with an award where he has been himself a party to the proceedings, the individual workmen employed by him could treat this as a breach of contract. If the employer has not been a party to the dispute reported to the minister, there exists the possibility of the union raising his non-compliance with the terms of the award as a separate “issue.” If, on the other hand, the union or its membership refuses to accept an award, no means are available to enforce its application against the unwilling union membership. 66 Naturally, the effectiveness of compulsory arbitration would be compromised if awards were to be frequently disregarded 67 and the suspicion has grown that when arbitrators consider their awards they are less concerned with the merits of the case and more with the likelihood of the award being acceptable to the union. 68 Indeed, it has been suggested that the award is based on the estimate of

64. “The scales in arbitration are therefore heavily weighted against the employers and this has been reflected in the increasingly cavalier attitude taken towards it by the unions. It is by no means unknown for unions to boycott session of the Disputes Tribunal, or to announce in advance that they will ignore awards which do not satisfy them.” Shanks, New Phase in Wage Bargaining, 108 The Banker 153 (1958).

65. Cf., the debate in the House of Commons on November 19, 1958.


67. “One serious difficulty which permanent boards face is that their effectiveness may be reduced if they hand down a decision resented by one of the parties.” Taft, Economics and Problems of Labor 771 (2d ed. 1948).

68. “[T]he tribunal has always had an incentive to lean a little more towards inflation because it has laboured under the awful shadow of not knowing what on earth it can do (apart from look silly) if a union turns down one of its ‘legally enforceable awards’ and goes on strike anyway. So its constant effort has been to make recommendations which will avoid this embarrassment.” The Economist (London) 303-304 (October 25, 1958).
the arbitrators as to the minimum which it would pay the union to accept rather than to come out on strike.69

4. As has been pointed out already, there exists no direct evidence as to the considerations which influence the arbitrators.70 There exists, however, some indirect evidence. The reports of the courts of inquiry set up from time to time by the minister of Labour and National Service to inquire into trade disputes contain detailed reasons for their recommendations. The members of the courts of inquiry are generally chosen from among the small group of persons who also are called upon to sit as members of arbitration bodies. If we consult, for instance, the report of the court of inquiry which investigated the wage dispute in the engineering industry in 195471 we find there the following statement of general principles:

"We inquired of those who appeared before us whether there was any common ground as to the principles which guide them when wage adjustments in the industry are under consideration. From the answers that we received it seemed to us that there was no mutually accepted formula and no expressed common assent in regard to guiding principles. At the same time it seemed to us that there was a considerable measure of underlying and implicit agreement. As so often happens, difficulties arise not so much in the recognition or statement of broad principles as in their application. For

69. "[T]he arbitrator's job is to find a settlement which the disputants can with advantage accept." HICKS, THEORY OF WAGES 150 (1935). "Any arbitration tribunal, therefore, which sought faithfully to abide by the rule that it is only an 'auxiliary to collective bargaining' would have to dismiss nearly all the argumentation to which it has to listen as irrelevant." WOOTTON, THE SOCIAL FOUNDATIONS OF WAGE POLICY 99 (1955). This view seems to be held also by American writers on arbitration. "[H]e is often obliged to consider not only the equities shaping the issues but also the parties' relative bargaining power. If he fails to do so, he may undermine his basic function — keeping the peace." Bernstein in KORNHAUSER, DUBIN & ROSS, INDUSTRIAL CONFLICT 306 (1954). Is appeasement really the arbitrator's basic function?

70. "Nobody who studies the awards made over the past few years by the Disputes Tribunal, the Industrial Court, ad hoc courts of enquiry or any of the standing arbitration bodies for particular industries . . . can claim that they follow any logical or consistent pattern. So far as can be seen the criteria adopted for wage awards have been one or more of the following:

"(1) Wages have been increased by just enough to offset the rise in the retail prices since the last awards;

"(2) Wages have been raised by the same amount as in other industries;

"(3) Wages have been increased by the difference between the original union claim and the employers' counter-offer or, if there is no counter-offer, by round about half the original claim." Shanks, New Phase in Wage Bargaining, 108 THE BANKER 153 (1958).

71. Cmd. 9084 (1954). The chairman of the court was Lord Justice Morris and the other members were Mr. C. J. Geddes, Sir Harold Howitt, Mr. Hugh Lloyd-Williams and Sir Robert John Sinclair.
example, there is no agreement that wage movements should be linked in any way directly with movements in the cost of living though there seemed to be general acceptance that fluctuations in the cost of living form one element to be taken into account in any general review. Similarly though there are no general arrangements on the basis of profit sharing it seems to be recognized that in any wage review the general prosperity of the industry should be considered. . . ."\textsuperscript{72}

The report also deals with the effect of higher wages on inflation and states: "to refuse, because of the perils of inflation, to recognize the claims of those whose wage rates have relatively to the wage rates of others materially fallen behind, would be difficult to defend."\textsuperscript{73}

It appears from this report that the arbitrators are fully aware of the effects on the national economy of any award which they may make but that they feel that it is not their task to deal with conflicting economic arguments as to the causes of inflation and the best ways of dealing with it. Indeed, the court of inquiry recommended that "an authoritative and impartial body [be] appointed . . . to give advice and guidance as to broad policy and possible action." This suggestion has been taken up and a Council on Prices, Productivity and Incomes has been appointed\textsuperscript{74} under the chairmanship of Lord Cohen\textsuperscript{75} with Sir Dennis Robertson\textsuperscript{76} and Sir Harold Howitt\textsuperscript{77} as members. The Council has published so far two reports,\textsuperscript{78} but their conclusions and recommendations have been severely attacked by the trade unions as not being impartial.

If all is said and done, the fact remains that whatever principles are adopted in interest disputes, the decision is a political one dealing with the fair distribution of the national income.\textsuperscript{79}

\textsuperscript{72} Paragraph 110, p. 40.

\textsuperscript{73} Paragraph 111, p. 41.

\textsuperscript{74} The terms of reference read: "Having regard to the desirability of full employment and increasing standards of life based on expanding production and reasonable stability of prices, to keep under review changes in prices, productivity and the level of incomes (including wages, salaries, and profits) and to report thereon from time to time."

\textsuperscript{75} Lord Cohen is a Lord of Appeal in Ordinary.

\textsuperscript{76} Sir Dennis Robertson is professor emeritus of political economy at the University of Cambridge.

\textsuperscript{77} Sir Harold Howitt is a prominent chartered accountant.

\textsuperscript{78} The first report was published in February 1958; the second in August 1958.

\textsuperscript{79} "The question that surprisingly few people seem to ask themselves is whether this most crucial controversy of British economic policy is really one that
Either this decision is left entirely to the forces of the market or it is made by the government in pursuance of a national wages policy. What is impossible in the long run is, to adapt a famous saying, to have a wage system which is half free and half planned and this is exactly what has happened in the United Kingdom under the system of compulsory arbitration.

5. Two final points must be made. Compulsory arbitration has been used as a weapon against splinter unions by depriving them effectively of the possibility of joining in bargaining and arbitration. Such a step is wrong in a free society. Compulsory arbitration has also stood in the way of an extension of voluntary collective bargaining. After all, why should the negotiators on either side risk unpopularity with their own members if the blame for inevitable concessions to the other side can be placed on the broad shoulders of the arbitrators?

It is not easy to predict what will happen when compulsory arbitration has gone for good. The author claims no qualities of prophecy; all he can do is to set out the principles on which, in his opinion, industrial arbitration should be based in Britain's present circumstances:

1. As it is generally agreed that a collective agreement is always preferable even to the best arbitration award, collective agreements should be made legally binding on both parties. This might necessitate some changes in trade union law; but as this branch of English law is already in dire need of revision, this should not prove to be an insurmountable obstacle. All disputes ought to be decided by anything from three to five haphazardly appointed gentlemen sitting in some arbitrational court room." Ordeal by Arbitration, The Economist (London) 749 (November 30, 1957).

80. The arbitrator may, of course, aim at an award reproducing the settlement which, in his opinion, the parties would have reached by voluntary bargaining. Cf. Braun, Labor Disputes and Their Settlement 181 (1951). Whether this would satisfy at least one of the parties is another question.


82. "[T]he existence of compulsory arbitration discourages collective bargaining. The negotiating parties often hesitate to make reasonable demands or offers or to agree to any concession during negotiations for fear that the other side will be able to use counter offers as a springboard for securing a still better settlement under compulsory arbitration." Lester, Labor and Industrial Relations 335 (1951). See also Braun, Labor Disputes and Their Settlement 272 (1951). Australian experience also supports this conclusion. Laffer, Problems of Australian Compulsory Arbitration, 77 International Labor Rev. 421 (1958).

83. "The whole basis of our industrial system is voluntary negotiation and agreement between the two sides." Per Iain Macleod, M.P. (Minister of Labour and National Service), 595 House of Commons Reports, col. 1172 (November 19, 1958).

arising out of the application or interpretation of these agreements should be compulsorily arbitrable by the Industrial Court, whose awards would have to be made legally binding for this purpose, except where both parties agree to accept as binding the award of some other arbitration body.

2. As the author does not believe in a full-scale national wages policy which would be contrary to the principle of voluntarism that has prevailed for so long in industrial relations in this country, interest disputes should not be subject to compulsory arbitration. Parties to such disputes should be, however, given the opportunity of having their differences settled by arbitration, provided that they are able to present to the arbitration body terms of reference which contain some agreed statement of principles on which the dispute may be determined.\textsuperscript{85}

3. The principle of compulsory extension of "recognized terms and conditions of employment" may well be maintained. It has worked on the whole fairly well and there have been few complaints from either side of industry.\textsuperscript{86}

4. The Industrial Court as well as the Industrial Disputes Tribunal have at present a tri-partite composition. There appears little that can be said in favor of the presence of members representing employers and workpeople,\textsuperscript{87} and their removal might streamline proceedings.

5. In view of the limits which have been proposed for the types of disputes that may go to arbitration, arbitration boards should be requested once again to give reasons for their awards.\textsuperscript{88}

\textsuperscript{85} "\textit{[E]ven with agreed upon points of reference the discretion of the arbitrator can be expected to be quite broad. 'Interests' arbitration as a part of the collective bargaining process is essentially dynamic and fluid.}" \textsc{Elkouri, How Arbitration Works} 24 (1952).

\textsuperscript{86} The Minister of Labour and National Service in the House of Commons debate on the abolition of the Industrial Disputes Tribunal gave a broad hint that something would be done to retain the "issues" procedure.

\textsuperscript{87} The argument generally adduced in their favour is that they may help in mediation. \textsc{Bernstein, The Arbitration of Wages} 310 (1954). Mediation is, however, not one of the functions of permanent arbitration bodies in the United Kingdom. Even in the United States the tripartite system has been on the decline in recent years. \textit{Cf. Davey, Labor Arbitration: A Current Appraisal}, 19 \textsc{Ind. & Lab. Rel. Rev.} 37 (1955).

\textsuperscript{88} This used to be the normal practice of the Industrial Court during the early years of its existence. Its first president put the argument in favor of giving reasons very clearly when he said: "Appeal to a tribunal which keeps its counsel wholly to itself and announces its decision without any explanation must appear to parties to be a speculative proceeding." \textsc{Amulree, Industrial Arbitration} 184 (1929).
6. Arbitration, as so many other good things of life, is most valuable when used sparingly.\textsuperscript{89} If we tend to overload the machinery with functions for which it is not really fitted it is bound to break down completely and that would be more harmful to industrial peace in the long run than any partial and voluntary curtailment of the use of arbitration.\textsuperscript{90}


\textsuperscript{90} "[C]ompulsory arbitration should not be regarded or relied upon as the final solution of the industrial problem of the country. It should be contemplated rather as being in the nature of a halfway house or accommodation on the road to an ultimate full freedom of genuine collective bargaining." Foenander, The Achievement and Significance of Industrial Regulation in Australia, 75 International Labour Rev. 116-17 (1957).