

## ECONOMIC RIGHTS

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### *I — The Past*

Traditionally, the law was more concerned with civil rights than with economic rights, and understandably so. Since the sixteenth century, western civilization had been evolving in a context of boundless opportunity, provided by expanding markets, inexhaustible resources and technological progress. The aim of the legal machinery was to free man from the fetters left over by medieval institutions, in order that each person might be at liberty to make the most out of the existing environment. Hence the legislators and lawyers were constantly called upon to fashion and to use legal instruments for the protection and development of civil rights and liberties.

Within such a legal framework, western man reached standards of living undreamed of four centuries previously. But in the process, he had set up institutions wherein the principle of maximum self-assertion by all was eventually to lead to maximum insecurity for many. Economic Darwinism produced a great increment in the wants and needs of industrial man, but not always the means to fulfill them adequately. More and more people began to realize that the concept of civil rights availed them little against such realities as economic exploitation or massive unemployment.

Lawyers were reminded that civil rights were only one aspect of human rights, and that they were living in times when they could ill afford to neglect that other aspect, called economic rights. If the law was to be, as Dean Pound put it, "a continually more efficacious social engineering", it would have to provide a framework from which many of the existing causes of social friction and economic waste would be eradicated, and within which many economic "necessities" would acquire the dignity and authority of "rights". Before this could be done, however, lawyers would have to become aware of the new economic structure of society. It is hoped that the present article might help in inducing such an awareness.

### *II — The Case*

In considering economic rights, it is convenient to distinguish between the consumer and the producer. There may come a time when it will be sufficient to protect the rights of the consumer; but in the present state of economic affairs, consumption depends largely on wages and salaries, and the right of most men

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to consume cannot be adequately protected without guaranteeing their right to produce at fair remuneration.

The case for economic rights might then be stated as follows: Since economic goods are necessary to satisfy the needs of mankind, and since these goods—to become serviceable—must in some way be produced, it follows that every social order should guarantee the rights of man, as a consumer and as a producer. As a producer, man has a right to demand from society that it offer him a market for his useful labour or produce. As a consumer, man has a right to a share of the total production of society, sufficient to enable him to develop his personality to the fullest extent possible.

The present article will briefly examine whether the rights of the Canadian people, as consumers and as producers, are fully respected.

### *III — The Consumer*

Consumer rights, as stated above, imply that no one in the society should be entitled to superfluous or luxury goods until the essentials of life are made available to everyone.

At first glance, that distribution would appear to obtain in Canada. Thanks to our abundant natural wealth and to the techniques of the industrial era, it no longer seems necessary to trample on one another in the scramble for riches. Consequently, most people take it for granted that every Canadian is assured of a reasonable standard of living.

Unfortunately, that is not the case, as is exemplified in the five following instances:

1 — By the figures of the 1951 census, 72% of all wage-earners, and 56% of all heads-of-family wage-earners were making an annual income of less than \$2,500.00, whereas—according to the Toronto Welfare Council—the average Canadian family then needed \$2,678.00 a year to maintain a decent standard of living.<sup>1</sup>

2 — Depressed areas and sub-marginal groups continue to exist: consider the condition of slum-dwellers in large cities, and of the Eskimo and Indian populations.

3 — There does not exist in Canada a comprehensive scheme of social insurance which guarantees—regardless of origin—a decent standard of living to every

<sup>1</sup>Data from the 1961 Census are not yet available. — The reader might want to compare census figures with those collected from time to time by the Dominion Bureau of Statistics in its sample surveys. Besides wages and salaries, D.B.S. figures include other sources of income, such as transfer payments, self-employment, etc.; they also take into consideration the fact that the head of the family may not be the only recipient of income in a given family. Taking such facts into account, the survey for 1951 nonetheless indicated that "44.7 per cent of all non-farm families and unattached individuals (considered as a family of one) had incomes below \$2,500." The latest comparable percentage is 28.1 per cent for the year 1959; by that time, of course, \$2,500 a year had become even more pitifully insufficient as a family income, due to the ever-rising cost of living.

person who is prevented from earning a living wage by sickness, age, loss of breadwinner, disability, or other cause of unemployment beyond his control. (It would be illogical to think that such hardships could be met through personal savings, at least in the cases referred to in the two preceding paragraphs).

4 — The present private enterprise economy is geared to the satisfaction of individual needs, but not to that of collective needs. Consequently there is a gigantic lag in the provision of educational facilities, hospitals, slum-clearance projects, recreational opportunities, highways, and other public services.

5 — The existence of the above mentioned shortcomings makes it impossible for many citizens to exercise their human rights in non-economic fields. For instance, the cost of education and of medical and dental services prevents all citizens from having an equal chance of developing their intellectual and physical capacities. The high cost of litigation, in the absence of a universal system of legal aid, makes a farce out of the right of equality before the law. And the cost of conducting elections nullifies high-sounding platitudes about political equality.

#### IV — *The Producer*

If the modern age in Canada has brought on a vastly increased supply of consumer goods, it has been accompanied by grave encroachments upon the rights of man as a producer, that is to say upon his right to work. That statement can be supported by a quick glance at the condition of (*inter alia*) industrial workers, from four points of view:

1 — The most apparent of the present economic evils is unemployment. For the first nine months of 1961, the unemployed in Canada averaged 7.8 per cent of the labour force: in the face of that fact, it is hardly necessary to dwell upon the reality of cyclical unemployment. But it is important to think a moment about the problem of technological unemployment. Inability to prevent foreseeable disasters such as the mining tragedy in Springhill a few years ago is proof enough that this society has no plan for supplying alternate employment to men whose past occupations either no longer exist, or have become fraught with the risk of sudden death. Consequently, it may well be asked how this economy will manage to deal with the gigantic upheaval of workers which will presently be brought about by the third industrial revolution, based on automation, cybernetics and thermo-nuclear energy.

2 -- Concerning their right to obtain fair wages, reasonable conditions of work and protection against employer discrimination, industrial workers have gone a long way towards helping themselves by uniting into trade unions. That such a movement had to exist for some generations in opposition to the law is of course no tribute to the progressiveness of the members of the legal profession. Nor is it a tribute to their vigilance that, at the present time, union busting in its various forms can continue to be practiced without penalty in this country, where the right of association is supposed to be firmly entrenched.

3 — Even when they do respect trade-unionism, a large part of the Canadian population—including most of the legislators and industrial leaders—do not agree to its full implication. It is a mistake to believe that the mere existence of unions is sufficient to create equality between the employer and the employee. Without the right to strike, there is no equality of status between labour and management, and consequently labour agreements between them cannot be based on justice.<sup>2</sup> In the same way that Capital can say: "Unless we make a sufficient profit in a given area, we will withdraw our investment, and there will be no more employment," likewise Labour must be able to say: "Unless we enjoy reasonable working terms in such and such a firm, we will withdraw and *there will be no more operations.*" In other words, the right to strike must include the right for workers to protect their strike, against strikebreakers and court injunctions. No group of shareholders can break a lock-out by opening up part of a firm where a lock-out is in progress; and likewise no group of workers should be able to operate a firm while a strike is in progress.

4 — But even full recognition of trade-unionism in its present form will not be a sufficient guarantee of producer rights in the industrial age. In the political sphere, men fought for centuries to prove that there is no substitute for self-government. In the economic sphere, it is inevitable that—sooner or later—the same struggle be fought and won. Man does not live by bread alone, and he will never be content until the dichotomy between those who may arbitrarily command and those who must humbly obey is abolished, even in the economic sphere. Industrial democracy will not be reached any more easily than political democracy was, but it must be reached. Even today men are labouring to lay the foundations of a society of equals; and the sooner such problems as price arbitration, and cooperative management or ownership of industry can be seriously discussed, the better this society will be equipped to prevent the industrial revolution from turning into a violent one.

### V. *The Future*

The foregoing statement of economic rights obviously constitutes a large order. But in such matters the service is slow, so it is not unwise to get orders in early.

As long ago as 1793, the Declaration of Rights voted by *la Convention* stated that "society owes subsistence to unfortunate citizens, either by procuring them work or by guaranteeing the livelihood of those who are unable to work." The French constitution of 1848 also affirmed the right to work. And by that time, Proudhon had long been preaching the need of "a 1789" in the economic sphere. Yet nearly a hundred years elapsed between Louis Blanc's demand for "social workshops" and F.D.R.'s Public Works Administration.

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<sup>2</sup>Justice Holmes considered that liberty of contract could not begin until "the equality of position between the parties" had been established. *Coppage v. Kansas*, 236 U.S. 1, 28 (1915).

So progress is slow, and any group of men who foregather to discuss "Social Justice" would be failing in their duty if they failed to affirm the rights of man to the fullest extent. Governments must contend with questions of "how, when and where". But in a Law Journal, it is possible to reach for the ultimate goal.

That goal is not the mere inclusion of certain clauses in a Bill of Rights. For Germany in 1919, Spain in 1931, the U.S.S.R. in 1936 wrote into their constitutions very noble declarations concerning the rights of man. And yet those very rights were soon to be trampled upon by dictators.

It is the minds of men which must be changed, and their philosophies. Economic reform is impossible so long as legislators, lawyers and business men cling to economic concepts which were conceived for another age. The liberal idea of property helped to emancipate the bourgeoisie but it is now hampering the march towards economic democracy. The ancient values of private property have been carried over into the age of corporate wealth. As a result, our laws and our thinking recognize as proprietors of an enterprise men who today hold a few shares which they will sell tomorrow on the stock-market; whereas workers who may have invested the better part of their lives and of their hopes in a job have no proprietary right to that job, and may be expropriated from it *without compensation* whenever a strike or lock-out occurs, whenever they grow old, or whenever Capital decides to disinvest.

That same erroneous concept of property has erected a wall of prejudice against reform, and a wall of money against democratic control. As a consequence, powerful financial interests, monopolies and cartels are in a position to plan large sectors of the national economy for the profit of the few, rather than for the welfare of all. Whereas any serious planning by the State, democratically controlled, is dismissed as a step towards Bolshevism.

Yet if this society does not evolve an entirely new set of values, if it does not set itself urgently to producing those services which private enterprise is failing to produce, if it is not determined to plan its development for the good of all rather than for the luxury of the few, and if every citizen fails to consider himself as the co-insurer of his fellow citizen against all socially-engineered economic calamities, it is vain to hope that Canada will ever really reach freedom from fear and freedom from want. Under such circumstances, any claim by lawyers that they have done their bit by upholding civil liberties will be dismissed as a hollow mockery.