

## REJOINDER

BY

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“When a dispute between Capital and Labor brings on a strike affecting the production or distribution of the necessaries of life, thus threatening the public peace and impairing the public health, has the public any rights in such a controversy, or is it a private war between capital and labor? If you answer the question in the affirmative, Mr. Gompers, how would you protect the rights of the public?”

This question, which was not answered in the debate appearing elsewhere in this volume, was taken up later by Mr. Gompers in a supplementary statement, which also appears as a part of this book. A sur-rebuttal therefore becomes necessary.

His statement, in its essence, once was more picturesquely and pointedly expressed by a railroad baron in these words:

“The public be damned.”

Failing to reply to the pivotal question in the 45 minutes remaining to him, he dismissed it as a “catch question,” and finally, in his supplementary state-

ment, he seeks to class it lightly as "one of countless questions easy to ask," and again evades the point at issue.

The nearest he comes to answering the question is where he says, "The public has no rights which are superior to the toiler's right to live and to his right to defend himself against oppression."

The toiler's right to live is not questioned in this discussion. This right, in fact, is upheld, and upheld strongly, by the governmental power of the Kansas Court of Industrial Relations, as a reading of its decisions and of the law itself will disclose. The real argument concerns the right of an organized minority which has secured control of the human necessities to conspire for the purpose of bringing economic pressure to bear in the form of a fuel famine, a food famine, a transportation famine, upon a defenseless public; whether, in fact, labor's right to start a civil war is superior to the public's right to live and defend itself against oppression. I will not be diverted from that issue.

This entire issue is illustrated very nicely by the recent action of the Transportation Trades Council of New York, which was engineering a strike of 100,000 checkers, weighers, handlers, lighterage men and truckmen, at the very time the debate was held.

This strike did not remotely concern "the toiler's right to live." The purpose of this strike was to control within the hands of union men all products handled by the union men from the time of their

origin to the time of their consumption. For instance, fish received from distant villages were segregated. Fish caught or handled by union men were sent through and delivered promptly. Fish caught or handled by non-union men were left to rot. The public was the sufferer, as usual, and paid the price. Intimidation, violence and destruction of property were employed to enforce the union demands.

Let the reader apply my question to this New York situation and he will see at once that Mr. Gompers has not answered it. And there are many other instances of like nature where great strikes in essential industries have been called—not to protect "the toiler's right to live," as Mr. Gompers sentimentally expresses his vague evasion, but to dictate the terms of life to society.

He declines to recognize the supreme right of the public in a strike which imperils the supply of the necessaries of life. He puts the matter in all its dangerous absurdity when he says, "The public has no rights that are superior to the toiler's right to live and defend himself against oppression."

Thus he begs the whole question. For in no one of the recent strikes that have imperiled the public safety has their action been necessary in order to secure either a living for the workers or freedom from oppression. In every one the wages or conditions upon which the strike was called threatened in no way the ability of the worker to live, even at present costs, and the main object of the strike was

to control the production and transportation of human necessities.

Mr. Gompers knows the provisions of the Kansas Industrial Relations Court Act. He would have no right to plead ignorance. He is, without a doubt, thoroughly familiar with the decisions of the Court. He knows that nothing can be further from the nature, purpose and spirit of the Court than to "deprive the toiler of the right to live and defend himself against oppression." Let the Court speak for itself. In the case of the Topeka Edison Company, the Court says:

"The Court is very desirous to do nothing in this case which will unduly burden the respondent. However, it must be admitted that wages to labor must be considered before dividends to the investor, and that business which is unable to pay a fair wage to its employes will eventually have to liquidate. The Kansas Law imposes upon the court the obligation, so far as it has power to do so, to assure to labor a fair wage and to capital a fair return."

Further, the Court, in differentiating between a living wage and a fair wage, says:

"They are entitled to a wage which will enable them by industry and economy not only to supply themselves with opportunities for intellectual advancement and reasonable recreation, but also to enable the parents working together to furnish the children ample opportunities for intellectual and moral advancement, for education and for an equal

opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age."

One weak place in Mr. Gompers' armor is the fact that he fails to distinguish between that function of the strike in private industry which is the attempt to secure better wages or working conditions, and that function which attempts to delay or stop production of an essential industry, and thereby coerce the public or bring about such a state of economic pressure or distress as to force a surrender to any demands that might be made. The New York strike just mentioned was of the second kind. He even goes so far as to justify the German political strike, which was nothing but government by direct action. It had nothing whatever to do with the "toiler's right to live," but Mr. Gompers thinks some such thing might become necessary in the United States some time. Thank God we have a government that preserves our constitutional popular rule by much stronger, safer and more permanent means than that of economic direct action through the strike. This is not Germany and this is not Russia. In America we govern by the ballot and not by capitalistic or industrial pressure.

The key to Mr. Gompers' general contention is found in his sweeping assertion that the "state can offer no substitute for the strike, for the struggle is in industry and not in politics." The United States

must be a political government—not economic—otherwise it will not be a republic or a democracy. If its functions, among which is the guarantee to its people of life, liberty and the pursuit of happiness, are usurped by any industrial or economic organization, then we shall cease to be governed politically and there will arise an invisible government within the formal government.

Mr. Gompers says “the language of the question is improper.” He attempts to ridicule the question by imputing to me the statement that “a strike is a private war between capital and labor.” I have not said it was. I asked the question, “Is it?” The State of Kansas has decided that when a strike results in tying up industries used in the production and distribution of commodities necessary to the life, health and peace of society, then that strike loses its right to continue as a private war and becomes a matter of momentous public concern, a subject for state action.

Hence, the Kansas Court of Industrial Relations. The Act which created the Court was adopted by a vote of the Legislature which was almost unanimous. A Court of competent jurisdiction has passed upon the constitutionality of the Act. In the decision of the Court referring to conditions during the coal strike last winter, Judge Curran said:

“At that time traffic was paralyzed, cities were dark, persons in hospitals were suffering from the

cold, schools were closed, means of obtaining food were cut off and generally the state was suffering severely and facing a situation almost beyond description. If the state of Kansas had failed to recognize the perils in that situation, if the state of Kansas had neglected to look after the welfare of the people, and had allowed that condition of affairs to go on unchallenged, if it had taken no remedial steps, it would have been a reproach upon organized government and upon civilization.

“The argument has been raised by the defense,” Judge Curran said, “that the Industrial Relations Court law was in conflict with the bill of rights, with the state constitution and with the Federal Constitution.”

He said, that he failed to find it in conflict with them. The Legislature expressed the will of the people, he said, and any doubt as to the motives of the Legislature, or the economic or sociological reasons for its action must necessarily be resolved in favor of the legislature.

Mr. Gompers would have the public unprotected, or left at the mercy of industrial strife. The state of Kansas has decided that the protection of the public is the public's business, and that no organization within the body politic, whether of capital or of labor, can take the place of the duly constituted authorities of public justice. Would Mr. Gompers have us abandon our constitutional political government and have America ruled by the American Federation of Labor?

Mr. Gompers speaks of employment to the employer being based upon profit, whereas to the worker it is life. He says: "These viewpoints conflict from opposite angles"! and "this conflict will continue so long as industry is conducted for profits alone"; and "it cannot be argued out of existence or legislated out of existence." What does Mr. Gompers have in mind when he expresses a hope for "industries conducted not for profit alone"?

All his life he has opposed the Socialist State; and he is organized labor's leading opponent of the government ownership and operation of industries. Besides, present state ownership and operation does not sustain his position. City, State and National Governments maintain departments that are industrial in character, and none of them are "conducted for profit," and all of them are operated by labor, secured on a quid pro quo basis. The state is not giving anything for nothing, neither to labor nor to the public at large; and labor is not seeking an opportunity to serve the public freely; it rightfully demands compensation for its services. The conflict spoken of by Mr. Gompers exists in the various departments maintained by the Government for the public service, just as it exists in industries owned by private capital, and "conducted for profit alone."

The police department of Boston is maintained for public service and not conducted for profit at all. But the conflict existed there. The police strike of Boston would have wrecked the city if the Gov-

ernor of the State of Massachusetts had not used the military power of the state to safeguard the public.

Mr. Gompers indulges a tendency to draw distinction where distinction is impossible. There are industrial plants "conducted for profit alone," but labor is actuated by anti-social motives as often as capital. He says that employment to employers has been "to secure the best possible terms," but to workers "has been and is vastly different." Why? Are not strikes called for the purpose of "securing the best possible terms" for the workers? Who can determine where selfishness ends and a desire to serve society begins? To attempt to draw this distinction is fruitless and throws no light on the discussion.

"But," says Mr. Gompers, "this conflict cannot be ended by Statute Law. It can neither be argued out of existence nor legislated out of existence." Well, what kind of law will end it, Mr. Gompers? Trade Union law? If the statute law operating through duly constituted public authority cannot end the harassing attacks upon the life of humanity and protect the rights of society, what is the hope of ending it through a leadership which is not responsible to society unless it be made responsible under the law? Face this question, Mr. Gompers. Would you have us substitute for our present Government, government by organized capital? Of course not! And yet you seek to foist upon the American people government by organized labor. We are opposed to government by organized labor for exactly the same

reason that we are opposed to government by organized capital. The war between labor and capital is anti-social. Both labor and capital through their war upon each other injure the public, and therefore must be controlled in the interest of the public; and this control must be exercised by and in the name of the public, through duly constituted public authorities of public justice.

The industrial world cries out for justice. The worker cries out for justice. The public cries out for justice. The right treatment of men and women by employers and the safeguarding of society's life and welfare by the guarantee of an uninterrupted flow of life's necessities require the giving of justice. Who shall give justice?

Mr. Gompers himself once answered this question to my entire satisfaction, in the *American Federationist* for April, 1920, when he said:

"Justice cannot be the possession of a group because there is no justice until there is justice for all."

And yet, in this debate, and in his supplementary statement, he arrogates to his own class group and his own group leadership, the power to decide, by the use of the forcible strike, what is justice. It is plain that what he wants is not justice, but power.

The war between labor and capital cannot be suddenly suppressed by any kind of legislation. The anti-social character of the war cannot be suddenly ended by a statutory act any more than it could be argued out of existence. But the warring elements

in society can be controlled by the legislative and judicial power vested in the states and the nation. Society must be protected against everything that threatens the public peace and impairs the public health. The wheels of justice move slowly, but they grind exceedingly fine. Those who legislated against theft, arson, assault and battery, rape and murder had no hope of completely abolishing the conflict between good and evil—the lawful and the unlawful. Yet who among us would advocate the abolition of our system of laws in dealing with crime and criminals? When a strike cripples an industry upon the continuation of which depends the life and health of the public, no matter what good the warring groups may see in attaining their objectives, the welfare and the life of the public must be safeguarded. The Kansas Court of Industrial Relations represents the first really constructive attempt, in the United States, to protect the public from the dangerous and destructive conditions arising from and incident to industrial war.

Mr. Gompers has a great deal to say on "the right to strike." He has nothing to say on the right not to strike. He harps on "the right to quit work," but is silent on "the right to stay on the job."

"Every man," he says, "has the right to cease work whenever it pleases him to do so." But he has nothing to say to the converse contention, which is equally true, that every man has the right to continue work or resume work whenever it pleases him to do

so. In this connection Mr. Gompers speaks of "the insincerity of the critic." What shall we say of him? Mr. Gompers knows that the Industrial Relations Court Act says, on this point:

"Nothing in this Act shall be considered as restricting the right of any individual employee to quit his employment at any time, but it shall be unlawful for any such individual employee to *conspire* with other persons to quit their employment *for the purpose of hindering, delaying, interfering with, or suspending the operation*, or to intimidate by threats, abuse, etc.

Any minority which has secured control of a product upon which human life depends and which undertakes, for the purpose of affecting wages or profit, to withhold that product from the public until the public shall freeze or starve has in effect superseded the government and has assumed control of the destinies of human life which government alone may have the power to safeguard.

Mr. Gompers seems to have a misunderstanding about the nature of the public. He says, "Other than those who may be paupers or charges upon the community, every one is either an employer or an employee." Common experience proves the contrary. The great bulk of the women and children, the aged and the sick, are neither employers nor employees, and they constitute the bulk of the public and are in the greatest need of the protection of the

law, and that is the part of the public most severely attacked by strikes and lockouts that tie up socially necessary industries.

The ideal form of industrial peace is that which rests upon mutual understanding and mutual justice between capital and labor. When efforts at negotiation between capital and labor have failed, who is there that is so wise that he can say, "The employer is right," or "The employees are right"? Then it is that the Court of Industrial Relations is offered as a substitute for the strike and the lock-out, for the instrument of the public through government is properly and logically the court of last resort. The Union laborer says, "It takes away my weapon of the strike." As a matter of fact, it gives to labor, in all its just contentions, the weapon of impartial government. Mr. Gompers has no case. Once he thought the strike was the last resort. Now he thinks it is the first. His reply is not a defense. It is a challenge.

A great deal has been said about liberty. It does not well become an advocate of strikes to talk about liberty, for strikes imply compulsion. The strike is a weapon. "It is the only effective weapon," says Mr. Gompers. "It is the tooth-and-claw method," says J. I. Sheppard, counsel for the Kansas Federation of Labor. The strike is the exercise of sheer economic power to compel obedience to the demands of the strikers. The lock-out is the exercise of sheer economic power to compel obedience to the demands

of the employer. Both are therefore foreign to the subject of liberty.

As I have said before, the use of the strike cannot be defined merely as the right to quit work. As time has gone on, bringing new complexities of industry and capital, the definition must be enlarged.

The right to quit work is like the right to earn money. It can be abused. It can be overdone, and by means of combinations and organizations either right can be made into a wrong. Either can be transformed into an instrument of force and terrorism. Cornering labor, and bringing it to bear upon the public welfare, invites disaster precisely the same as cornering money-earning and bringing it to bear upon public welfare invites disaster. It must always be borne in mind that the Kansas law does not restrict the right to quit work as long as it is not used as a combination for the oppression of the public.

"So far as labor is concerned, the right to strike must be and will be maintained, not only as a measure of self-defense and self-advancement, but as a measure necessary to public progress," says Mr. Gompers.

Let us take the testimony of another man well known for his championship of the cause of the laborer—Harry F. Ward, of Boston. He says:

"On our Western frontier years ago it was the custom for every man to 'pack a gun.' Killings were frequent. Then community life developed. Courts were set up, the carrying of firearms was forbidden.

Old frontiersmen said they always had, and always would carry a gun. But they were gradually either disarmed by force and fined by the court, or else were killed in resistance to the officers of the law. The community interfered with their right to defend themselves, because that interfered with others' right to live."

There is no element of progress in the strike. It is reactionary. It is the resort to the cave-man tactics. What civilization needs, as it painfully struggles toward a better day, is to substitute justice for force.

The high standard of American workmanship was not brought about, as Mr. Gompers suggests, by such a negative force as the strike, but the positive effort of the individual. It was that kind of effort that brought forth such giants as Lincoln. The biographies of the great majority of successful American men of affairs shows that they began their lives as poor workers. As a matter of fact, strikes have not produced efficiency. There was never a time when strikes have been so numerous as in these latter days, and there never was a time when labor was so indifferent to the demand for efficiency.

In speaking of the so-called "outlaw" switchmen's strike, Mr. Gompers says that "strikes are ordered by the majority vote of union memberships, they are not ordered by officials at will." Unfortunately this assertion does not always hold good. Scores of strikes in the Kansas coal fields were ordered by the

union officials and the cause was unknown to the miners. The miners were not consulted in the matter at all. They were simply ordered to quit work, and if they refused, they were visited with dire penalties. The divine right to work certainly is greater than the divine right to quit work, yet these men were deprived of the right to work at a time when work meant bread and butter for their children.

A meeting of union leaders was recently held in Chicago to discourage the "unauthorized" strikes of railway workers. What do they mean by "unauthorized"? Has not a man the right to quit work if he pleases?

The union leaders say, "No—his quitting must be authorized by the officials."

The Kansas Industrial Court says, "Yes,—so long as he does not conspire to restrict the production or transportation of essentials."

Mr. Gompers recommends collective bargaining as the remedy for industrial difficulties. Collective bargaining certainly ought to assist in abating the evils of industrial warfare, but what has collective bargaining got to do with strikes? Collective bargaining necessarily implies a peaceful agreement. Strikes mean war. The two things are opposite in every conceivable function. His conception of a collective bargain, when he connects it with a strike, is not a conciliatory or harmonizing function, but a one-sided arrangement whereby the employee dictates to the

employer and lets the devil take the hindmost, which is usually the public.

He says, "The workers will not sacrifice human progress for an abstraction which is called public welfare." Why does he not use his terms in straightforward manner, and argue on the question? What he really means, when he drops the artificial and studied cant of the stump speech is this: "The workers will not sacrifice their right to strike for an abstraction called public welfare." If he does not mean that, he means nothing. If he does mean that, it is plain he holds to "the public be damned" policy, for public welfare is anything but an abstraction.

It must be borne in mind throughout this discussion that the Kansas Industrial Court is a corrective of undue economic pressure, no matter from what direction the pressure comes. To say that it is directed against labor is to ignore and deny some of its most essential and outstanding provisions.

Profiteering has come to be a great evil in the United States. It is a manifestation of the misuse of economic power expressed by combinations of capital and interlocking organizations of business interest that permit exorbitant charges for commodities and small wages for labor.

The Kansas Industrial Court is a step toward the curbing of profiteering, for it retains the functions of the old Public Utilities Commission and has the power to investigate the profits of certain corpora-

tions. It has the power to remedy bad working conditions and order wage increases. As the law develops in its functions it will indirectly and gradually accomplish results in the direction of price fixing, although all economists agree that this is a very difficult and delicate process, because of constitutional and other natural limitations. The court is in the interest of the public, however, and will operate to safeguard the interest of the public against capital as well as labor, striving to maintain the proper balance between profits and public welfare. In times of industrial depression, when there is a surplus of labor, the court will prevent the greed of capitalism, and insure stabilization. In times, like the present, when there is a tendency toward profiteering, the effect of the Kansas Court again will be toward stabilization of prices through its power to prevent closing down of industries or the shortening of production.

The spirit of ruthless compulsion has been all too evident on the part of both capital and labor.

In the last two decades organized labor seems to have taken the cue from organized capital, and some of the wholesome concepts upon which organized labor was founded have been supplanted by strange doctrines. In 1903 John Mitchell advocated unionization by compulsion, saying that the principle should be the same as that of school attendance.

Continuing into the present era, we find that compulsion is put forward and collective bargaining is relatively neglected. Compulsion is used not only

against employers and the public, but against the workers as well. There are innumerable instances of men earnestly desiring to work on account of dire necessity, but not daring to do so, because of the compulsion to strike that comes upon them against their own wishes. Under radical labor leadership, compulsion has steadily grown and consequently liberty has approached the vanishing point.

The Mitchell-Gompers conception of the labor union seems to be that of a distinct government which in several important respects displaces the functions of state and national government. If there is to be compulsion and interference with liberty, shall such interference come from civil government or from an administration having no connection with civil government? Gompers says it is wrong to interfere with what he calls "liberty," but it is perfectly all right for union leaders' government to interfere with that same liberty. Can anything be more absurd? Can anything be more destructive of Americanism?

Throughout Mr. Gompers' presentation there runs a note which makes it plain that his first appeal is in behalf of union leadership. This is especially evident in his closing of the Carnegie Hall debate. Secondly, his appeal is for that part of the labor ranks which is organized. To unorganized labor he accords no consideration. To the public he makes no appeal, for he stresses only his group interest and group antagonism.

I fear that he and his like-minded lieutenants in

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the labor movements have become too deeply immersed in their fight to remember the paramount rights of the public and the fundamental truths of American liberty. Their fault is not of motive but of perspective.

As civilization becomes more complex, of course the individual must surrender some of that which he calls liberty, in order that we may have a workable system of society. The only absolute liberty is that which is found on the desert island. The American people, complying with the profound truths of the fathers, have been willing to surrender certain activities called liberties when those liberties have been found to interfere with the common good. But they steadfastly and instinctively refuse to surrender their liberties to organized groups not connected with civil government. To do so would be to become intangled in a system of government alien to Americanism and American institutions.

Manhood is not degraded by yielding to the power of a righteous government founded by a majority rule and controlled by the system of checks and balances which our constitution provides. It is only by such yielding and by such a respect of public good that a democracy is made possible. Manhood is degraded by a surrender to autoeracy, whether that autoeracy be of royalty, of the mob, of organized capital or of organized labor.

It is obviously to the interest of the public that

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labor be given a square deal. The instrument of the public never goes permanently wrong. In the long run the people govern well. The day of tooth-and-claw industrial relations is passing. There is a better way and a better day.