

FIRST PROOF.

Any amendments must be sent to the Office in writing forthwith, where they will be carefully considered.

FABIAN TRACT No. 77.

THE EMPLOYERS' LIABILITY PROBLEM.

I.

THE PROBLEM OF THE HOUR AND HOW WE SOLVE IT.

Great Britain, "of all industrial countries, (is) the one in which legislation on liability for accidents is the least favorable to workmen." PROF. DEJACE, International Congress, Milan, October, 1890.

THE present moment seems to afford a favorable opportunity for reviewing the means that have been taken hitherto to deal with industrial accidents. The irregularity with which statistics of these accidents have been kept renders it impossible to say what is being done to diminish the annual "butcher's bill," except in a few industries; but the importance of the matter can be judged readily when it is remembered that in 1895 the very imperfect returns to Government Departments show a total of 27,421 injuries and 4,493 deaths,* whilst in 1896 the totals were 58,229 injuries† and 4,103 deaths.

The policy we have pursued in this country regarding these accidents has been one of prevention simply; and to that end Factory and Workshop Acts, Mines Regulation Acts, and Employers' Liability Acts have been passed. In this work the House of Commons has had the support of the Trade Unions, who have always insisted that the State should use its power to prevent accidents rather than open its own or other people's purses to compensate for them. Mr. Asquith's work at the Home Office was a continuation of that policy. His Factory Act and Departmental

* These returns only include Factory and Workshop Operatives, Miners, Quarrymen, Railway Servants, persons engaged in making, repairing, or working docks, bridges, etc., and a few miscellaneous trades. Even within these limits the figures of injuries are much under the truth. The deaths include Seamen; the injuries do not.

† Seamen are included here, and also Railway Servants injured otherwise than by moving vehicles.



Regulations were attempts to prevent certain classes of accidents by bringing their causes within the jurisdiction of the factory inspector, and his Employers' Liability Bill sought to coerce employers still more effectually into care by extending their liabilities and limiting their legal pleas. Upon the withdrawal of the Bill and the subsequent defeat of the Liberal Government, the question of Industrial Accidents was perforce widened. The Government is opposed to Mr. Asquith's methods, and there is not the same necessity to support a rather ineffective step in advance if better can now be done by a more careful examination of the problem and a fuller statement of its significance.

The Trade Union Contention.

It may be well to state here that, in the opinion of the Society, no scheme dealing with Industrial Accidents can be satisfactory which violates the Trade Union contention that the efforts of the State should be directed primarily to the prevention of injuries. Nothing which weakens the responsibility of the employers, or which removes inducements for greater vigilance and care, can be regarded, whatever its provisions may be, as an advance on present methods. The primary duty of the State is undoubtedly to bring pressure to bear upon employers to safeguard the life and limb of their employees.

Contracting-out.

With this in view, the bulk of Liberal opinion at the moment regards provisions prohibiting contracting-out and extending the rights of the injured workmen under Employers' Liability as being all that is necessary. Employers who start accident funds in connection with their works, compel their workmen to subscribe to these funds, and use this insurance as a reason why they should not be subject to the law of Employers' Liability, are naturally regarded with suspicion by the public and more especially by the Trade Unions. If these insurance funds were really started by the masters in order to compensate their injured men for pains and want of employment, it is difficult to see why contracting-out should be a condition to them. The fact of the matter is that these schemes are started by business men who know that under them they can compel their employees to pay for their own risk of accident, and that their own payments will be reduced first of all by the payments of their men, and secondly by the low scale of compensation which these funds allow, this often meaning that the Guardians have to make good the defects of these scales of compensation. Moreover, the existence of these funds gives the employer an altogether unfair advantage over his men in the event of a labor dispute, because their benefits can be claimed only under conditions which are broken by a lock-out or strike. And, finally, the existence of such funds—actually, if not always nominally, under the control of the employers—by eliminating the uncertainties of the law-court, makes it possible to pay a fixed sum every year in payment of accident-risks, and the matter is done with. So far, contracting-out is a business arrangement which

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places employers at an unfair advantage with their men, and the annual sum paid by such companies as the London and North-Western Railway Company is in no sense a payment in compensation for injuries sustained by its servants, but the price of an exceedingly economical business arrangement. For these reasons contracting-out must be condemned.

But when we come to consider its most frequently talked of effect on accidents, the case against it is not so clear. The alleged facts are familiar. In Durham, where the miners are not contracted-out, accidents are in the ratio of 1 to 878 employed, whilst in Lancashire, where the miners are contracted-out, the ratio is 1 in 502. But the system of dealing with accidents in Durham is practically the same as by workshop funds. The men are insured against accidents in a fund to which the employers contribute; and there has been so little dispute about accident payment that to all intents and purposes they might have been contracted-out. The chief explanation of the figures is to be found in the difference in danger in working Durham and Lancashire coal-fields; and whereas in some districts of Lancashire it is maintained that under similar circumstances contracted-out mines are more frequently visited by accident than non-contracted-out ones, contracting-out may be regarded as the sign and not the cause of carelessness, for it is only the niggardly employer that will resort to these contracts to save capital.

The common appeal, however, of the opponent of contracting-out because it encourages carelessness, is to the railway figures.

The following tables give the accidents which took place on the Midland and London and North-Western lines for the years indicated:—

	London & N.-W.				Midland.			
	Killed.		Non-fatal Injuries.		Killed.		Non-fatal Injuries.	
1877	...	101	...	338	...	72	...	173
1880	...	83	...	323	...	52	...	149
1885	...	55	...	398	...	45	...	76
1889	...	64	...	825	...	44	...	144
1890	...	74	...	925	...	51	...	143
1891	...	53	...	922	...	60	...	94
1892	...	67	...	762	...	52	...	124
1893	...	51	...	640	...	41	...	67
1894	...	47	...	578	...	42	...	88
1895	...	41	...	607	...	48	...	89
1896	...	—	...	—	...	—	...	—

The London and North-Western is notorious as a contracted-out line and the Midland as a line which allows its employees to shelter themselves under the law; and the result is that these figures are used to support arguments in favor of the efficiency of non-contracting-out. Part of these figures, however, bear on the face of them their own answer. The London and North-Western have simply interpreted the term "injured" in a more liberal way than the Midland, and have reported accidents which their rivals have

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passed over in silence. A culpable carelessness on the part of the Board of Trade has allowed this to continue.*

The only figures which can be used for comparative purposes are those in the deaths columns; and in industries like railways where the difference between the causes of fatal and slight accidents are so small and where the least slip may result in a battered head as readily as in a crushed finger, fatal accident statistics may be taken as fairly reliable indications of whether gross carelessness really prevails. At any rate it stands to reason that a railway where there is gross carelessness cannot have a low death-rate or one managed with special care have a high one, unless there are special circumstances connected with the working of the lines.

Since 1890, the London and North-Western Railway has actually had a lower percentage of fatal accidents than the Midland, and since 1887, its fatal accident curve shows more steadiness than that of the other.

In the absence of statistics which can be regarded as satisfactory for comparative purposes, and in face of those that are available, it is impossible for us to place very great importance upon contracting-out as a preventive of accidents. Our objection to it is real nevertheless, but on the grounds already stated.

Employers' Liability and Accidents.

Indeed, on the wider question of the influence of the Employers' Liability Act on accidents there is a considerable body of opinion based on the most slender evidence, and not a little on no evidence at all.

When first passed, no doubt, the Act was the direct cause of a considerable amount of extra care being taken, because the employers were genuinely frightened as to what might be its effects. They were neither sure of their men nor of the courts; and when Lord Lindsay and others stumped the country, attacking the Bill of 1890 because it was to ruin Lancashire, they were expressing fears which were genuinely held and which made others take extra precautions against accidents. Then the full effect of such an Act was had. But very soon the employers found that the Act was more harmless than they had imagined. It was "a great surprise to employers," said Colonel Burt to the Commission of 1886. Particularly did their fears vanish when the system of insurance came to relieve them of their uncertainties under the Act. From that time all its special virtues as an agent for the prevention of accidents disappeared.

The inclination which some of the prominent Trade Union leaders show to regard the Act as an important factor in the causes that tend to reduce accidents is mainly owing to the alleged facilities which it gives for cases of negligence being taken into court. If that opinion were a valid one the preventive action of Employers' Liability would be great. But it seems that the men have kept to their delusions longer than their masters. In the first place, the number of employers' liability cases is exceedingly small compared with the number

* The figures for 1896, when they are published, will be more complete but it will be impossible to use them for some time to come for comparative purposes.

of actionable accidents, so that the publicity is not in keeping with the need for it;* in the second place, the actions that ought most of all to be brought before a judge are just those that are most frequently settled out of court; and, finally, the influence of Trade Unions, "poor men's lawyers," and vigilance committees of various kinds is to reduce the number of actions whilst increasing the number of compensations. The Act is therefore becoming more and more one for compensating accidents, and less and less one for preventing them.

The Workman and the Law.

It is impossible to place too much emphasis on an obstacle which prevents the Employers' Liability Act being effective either as a prevention or as a compensation for accidents. The difficulty of getting men to take their employers into court is very great, and the difficulty of getting witnesses is still greater.† There is at present no automatic arrangement for taking accident cases into any kind of court, and we have consequently to trust mainly to the action of individual men for a public enquiry. When the fear of losing work is not a factor in the case, most men will think twice before going to law. If they know anything about past experience they will have to explain to themselves why only one case in ten is successful; and if they come to the usual conclusion of would-be litigants that theirs is the tenth case, they will then have to face the further matter of common knowledge, that the costs are generally little short of the award. These deficiencies of Employers' Liability act as a kind of sieve through which only the worst cases go to the courts.

Of course there is the beneficial effect upon the employers of the possibility of having their neglect exposed to a County Court, but to counteract this there is also the knowledge that if the case is very bad a fairly substantial payment will hush it up. In so far, for instance, as the Employers' Liability Law might have acted beneficially upon Durham mine-owners by throwing the shadow of the County Court upon them, it has been a dead letter, because the Durham miners have raised no action under that law, although they are not contracted out of it. This argument in favor of Employers' Liability comes, naturally enough, from the heads of strong Unions. Even from that quarter, it is a somewhat awkward argument, seeing that the tendency has always been to settle with members of strong Unions out of Court. But for all the unorganized workmen in the minor industries, and for women all over, the process that has to be gone through to put an Employers' Liability Law in operation is a particular hardship, and deprives the law of any fear which it may be intended to carry to the criminally careless employer that he may be brought into Court.

Nor must we be too lenient with Employers' Liability in assigning causes for the undoubted decrease of accidents during recent years.

* It is quite impossible here to refer to the frequent breaches of the law made owing to working people's ignorance of the legal steps that have been taken for their protection. This method of evasion is becoming more difficult for employers, but it is still too common, and seriously detracts from the preventive character of the law.

† This objection to Employers' Liability will remain, however wide may be the scope of the measure.

not a public condition, but he was requested sign or leave. He signed.

Since 1802 a series of Factory Acts has been in operation, limiting hours of labor and providing safeguards against dangerous machinery ; since 1842 mines have been subject to special provisions regarding the security of the workmen ; within more recent days Railway Servants have had special protection, and class after class of dangerous trades brought under the regulating influence of the Home Office. One form of carelessness or inefficiency after another that might result in accident has been stamped out by law. The force of public opinion, emphasized by an economic enlightenment convincing masters that it is bad business to be careless of the life and limb of their employees, has tended in the same direction. To separate these and a score of other influences, and give each its own value in the movement of accident statistics is impossible ; to seize upon any one and attribute to it a chief credit for that movement, where it is favorable, is absurd. No doubt, Employers' Liability has been one factor in reducing the accident totals since 1880, but a complete survey of these factors shows that making employers pay for accidents occupies a rather modest place amongst the others.* Certain returns which were laid before the Labor Commission by Sir H. Calcraft, are summarized by him in the following words :

" It will be seen that the rate of loss amongst seamen by all kinds of accident at sea in 1881 was one in 59.96 ; in 1883, the next year for which the figures were prepared on the same lines as those for 1881, which were analysed for the Royal Commission on loss of life at sea (in 1882 the figures were not prepared on the same lines), it was one in 66 ; in 1884 one in 97 ; in 1885 one in 106 ; in 1886 one in 112 ; in 1887 one in 99 ; in 1888 one in 114 ; in 1889 one in 126. The figures for the last two years have not yet been made up ; but there is no reason to suspect that they are not equally favorable. The losses by wrecks and casualties alone were one in 79 in 1881 ; one in 94 in 1883 ; one in 159 in 1884 ; one in 165 in 1885 ; one in 183 in 1886 ; one in 158 in 1887 ; one in 208 in 1888 ; one in 269 in 1889 ; one in 184 in 1890 ; and one in 256 in 1891, so far as reported "† (Fabian Tract No. 46, " Socialism and Sailors " : Minutes Royal Commission (C—675), Group B, p. 269.)

From this it is evident that the Law of Employers' Liability only plays a part, and that one which we are perhaps inclined to over-estimate, with other codes all making for a reduction of accidents.

Employers' Liability and Compensation.

Although it would be disastrous to design the Accident Code simply to compensate the injured, it must partly fulfill that purpose.

* We might instance several cases of striking reductions in accidents from causes other than those brought into operation by the Employers' Liability Law, but the influence of the Load Line and Life Saving Appliance Acts upon accidents at sea will suffice.

† Mr. Steele, General Secretary of the Durham Miners' Permanent Relief Fund Friendly Society, presented to the Commission on Labor the following figures which show a steady decrease of accidents apparently unaffected by the Act of 1880. " The rate of death per thousand between 1862 and 1867 was 3.83 ; the rate between 1867 and 1872 was 2.98 ; the rate between 1872 and 1877 was 1.96 ; the rate between 1877 and 1882 was 2.46 ; the rate between 1882 and 1886 was 2.0 ; the rate between 1886 and 1890 (including 1890) was 1.6."

We have found ourselves unable to join with those who see in a mere extension of the existing law any marked strides towards reducing accidents to a minimum, but on the other hand we have been compelled to regard its effect upon compensation as being of considerable value. It has been well said, that the Act has had a surprising, gratifying and "far-reaching effect in bringing about compromises and settlements." How far, then, can the Act be used for that purpose? Even here its limits are narrow and rigid. If we were to contemplate such an extension of its provisions as Mr. Asquith never dreamt of, so that it would be practically a universal compensations Act, that would bring us to a state of things which would require a special machinery of its own and which we think had better be approached from another direction. Such a state of things we are, indeed, arguing for here.

But we take it that the line between Employers' Liability and universal indemnity must be the line between accidents for which the employer can reasonably be made responsible and those for which he cannot. Owing to the imperfect state of our accident statistics, it is impossible to say what proportion of accidents belong to one class and what to the other. Sir John Gorst said: "If liability is restricted to cases in which it can be proved that the accident was due to negligence, more than three-fourths the accidents which happen in the operations of industry remain unprovided for." This proportion was accepted by the Labor Commission.

The following table of cases tried and compensation claimed and awarded has a slight though uncertain bearing upon the question (Labor Report iii., 152):—

INDUSTRIAL ACTIONS TRIED IN ENGLAND AND WALES UNDER THE EMPLOYERS' LIABILITY ACT. (Compiled from Home Office Returns.)

Year.	Total Number of Cases tried in the County Courts during the year.	Amount of Compensation Claimed.	Amount Awarded.
		£	£
1881	} 443*	73,337*	18,124*
1882			
1883			
1884	99	30,845	8,882
1885	340	49,466	7,356
1886	161	25,559	4,791
1887	170	31,196	6,669
1888	161	25,668	8,069
1889	155	24,551	7,930
1890	191	30,664	8,320
1891	204	28,914	8,730
1892	186	26,898	8,230
1893	250	37,008	9,418
1894	230	33,206	11,343

* Not separately stated for 1881, 1882, and 1883.

The actions cover only that small field of disputed claims and of doubtful blame. The imperfections of an Employers' Liability Law, as a security for compensation and as a means of bringing negligent employers into Court, which are discussed elsewhere, tend to reduce the number of actions. All the most obvious cases are settled out of Court; where there are strong Unions and a friendly understanding between masters and men, as on the Durham coal-field, no accident action is recorded. So that in this country there are no reliable figures on the matter. An investigation was made in Germany, in 1887, which partly dealt with this point; 15,970 industrial accidents were enquired into, with the result that it was found that 19.76 were attributable to the employers' fault, 25.64 to the workmen's and 46.87 to nobody's. In 1891, a similar enquiry was made regarding 19,918 agricultural accidents and it was found that 18.20 per cent. were the blame of the employers, and 24.43 per cent. of the workmen.

From this it appears that, under the most ample Employers' Liability Law, not more than 27 or 28 per cent. of accidents would be followed by compensation. It is estimated that only one accident in twenty on railways comes under the Employers' Liability Act, and that the most stringent provisions of such an Act could not do more than double or treble the proportion. One of the chief reasons why the Board of Trade figures of mining accidents are so much under the truth is that so few come under the Employers' Liability Law. Only 24 per cent. of the accidents reported by employers to the Employers' Liability Insurance Corporation form the basis of claims, half of these are paid and three taken to Court on an average.

We must recognize, therefore, that after every security against accident is made that mortal man can devise, there will still be a terrible total of injury and death piled up year by year on account of the risk which never can be separated from the carrying on of industry. A foot will slip on a plank that is perfectly safe so far as mortal man can tell; a head will get dizzy; a finger will get caught in some machine; a shuttle will fly loose; a strap will break; a boiler will burst; a grindstone will break. Accidents in the literal sense will take place, and they will amount to at least half the present totals when every preventible one has been prevented. It is perfectly obvious that such disablements should have some provision made for them, and they can have no place under the theory or law of Employers' Liability.

Prevention and Indemnity.

We have, therefore, come to the conclusion, that no treatment of the accident problem can be satisfactory unless it is designed both to prevent and indemnify for accidents. People in this country have been asked to reject the possibility of such a scheme owing to the alleged increase of accidents which such a scheme has brought about in Germany. It may therefore, be well to discuss that experience before going further.

II.

THE EXPERIENCE OF GERMANY AND AUSTRIA.

*Compulsion is written large both on liability and compensation. . . .
Austria has adopted a bureaucratic mode of administration
and accordingly . . . its success has been less.* HENRY W.
WOLFF.

Comparative Statistics.

We must emphasize to begin with that no precise basis, statistical or otherwise, exists for comparison between Germany and Great Britain. No argument as to the probable results of a law in one country can be drawn from the actual results of a similar law in another country, unless these laws deal with facts of the same order and the conditions are identical. England and Germany are wide apart in industrial development. Already, in 1802, the factory system in this country had developed to such a degree that it was necessary for the State to begin that interference with industry which has since gone on uninterruptedly and increasingly up to the present day. In the course of the last century and a half manufacture has settled down into a certain amount of uniformity. There is a separate and largely hereditary class of manufacturers. The present generation of masters and men has at its disposal a vast amount of accumulated experience, partly handed on by tradition, partly fixed in trade rules and Acts of Parliament. In all the great industries except metal-working, the number of persons employed has decreased relatively to the population, and the surplus, together with a large mass of agricultural laborers, have gone to swell the ranks of the transport, building and mining industries.

Germany came into the industrial battle-field at a very much later period. As late as 1881 legislative attempts were made to buttress up the guild system of trade organization which modern ideas were battering down, and even to-day its labor legislation is far from free of mediæval notions. Germany, at this moment, is passing through an industrial revolution similar to that which we underwent more than a century ago. She is passing from an agricultural country to an industrial country, from the stage of small industries and handicrafts to the factory system and production on a large scale. The figures of the German Census of Occupations taken on June 14, 1895, compared with the 1882 Census, show the vast change which has taken place. While the whole population increased 14·5 per cent. in that period, the number of persons engaged in agriculture only increased ·7 per cent., from 8,236,490 to 8,292,692, while the number engaged in industry rose 29·5 per cent., from 6,396,465 to 8,281,230. The agricultural figures are more instructive when it is further seen that the number of males employed has fallen 2·9 per cent., from 5,701,587 to 5,539,538, while the number of females has risen 8·6 per cent., from 2,534,909 to 2,753,154. Taking the figures in another way we find that whereas in 1882 agriculture accounted for 43·38 per cent. of the total "occupied" class, and industry for 33·69 per cent., in 1895 the figures were respectively 36·19 per cent.

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and 36.14 per cent. The growth of the large system of production is also brought out by this Census, for while in 1882 out of every 100 persons engaged in industry, 34.41 were employers, and 65.59 employees, in 1895 there were 24.90 employers, and 75.10 employees.

Thus during the last thirteen years there has been a great flow of unskilled labor into industrial occupations, a transference of labor which cannot in any way be paralleled in England, where the numbers engaged in industry have decreased steadily from 1861 to 1881, and presumably the decrease has continued, although the 1891 figures do not admit of comparison, being made up differently from former censuses. Here, then, we have a fertile cause of accidents, both in the want of skill of the men and the condition of many of the factories, which does not exist in England, and one which explains a considerable proportion of the yearly increase in the number of accidents. This cause is fully recognized by the authorities of the Imperial Insurance Department at Berlin. At the International Congress on Industrial Accidents held at Milan in 1894, Dr. G. von Mayr, formerly Under-Secretary of State, gave, in a report on the working of the Accident Insurance Laws, as one of the causes of the increase of accidents, "the growing activity of industry, which has called forward young and inexperienced workmen. In 1870, for example, and especially in the building industry, the number of contractors who undertook the construction of works without possessing a sufficient technical training, and without knowing the dangers special to their industry [quotation incomplete]. These contractors often omitted to take the necessary precautions in building, scaffolding, &c., and the dangers which resulted from this method of proceeding were increased again by the fact that, being engaged in building very rapidly, they had to concentrate a very large number of workmen at the workplace." A further cause he gave as "the increase in wages has caused the greater use of machines, even in the country, and in tending these machines inexperienced workmen from other trades, or even mere laborers, have been employed." Although this may seem to support the objection taken to insurance, that it leads to the employment of unskilled workmen and unskilled contractors, the main reason undoubtedly lies in the sudden development of industrial Germany.

What the Truth Really Is.

Failing direct statistical evidence as to the effects of insurance on accidents, the opinion of the workmen who have to live under the insurance laws is of chief importance. It is through the Socialist Party that the German workmen find their most efficient organ for the expression of their grievances, and this party is not so well affected towards the employers that it would conceal any charge which could reasonably be brought against them. If, then, the Socialists do not charge the employers with having become more negligent since the passing of the Accident Insurance Laws, it is almost positive proof that that charge, which is so commonly made in England, has no foundation in fact. The Socialists have always submitted these insurance laws to the most searching criticism on all points which offered any ground for attack—the low rate of compensation, the

small share of the workmen in management, the treatment of the injured, the exclusion of large classes of workers—but have never raised the accusation of negligence. Herr Grillenberger, member of the Reichstag, and the insurance expert of the Socialist Party, in speaking on the amended Bill now before the Reichstag, on January 25, 1897, hotly repelled the charge that his party had not co-operated in the elaboration of the Accident Insurance Laws, and blamed the Government because they had not used part of the French indemnity to establish the insurance system in 1874. Urging the extension of the law to handicraftsmen, he said: "I will here assert that in the labor circles which are engaged in handicraft occupations, the wish was not only then (1894) lively, but to-day still continues, *just as among all other wage-workers*, to be brought within the scope of Accident Insurance."

In a letter to a member of this Society, Herr Grillenberger lately said: "*The supposition that the negligence of the employers has increased in Germany since the Introduction of the Accident Insurance Law, is NOT correct.* The employers, on the contrary, have a great interest in *preventing* industrial accidents as far as possible in order that their organizations may have little compensation to pay. Certainly there are still employers, too many for the good of the workers, who are so senseless as not to use the prescribed means for the prevention of accidents, but the Trade Associations themselves take much trouble in attempting improvements in this direction. That in Germany accidents have always increased is due in the first place to the colossal extension of industry which grows every year, and secondly to the more complete registration of accidents, which causes the appearance of a higher percentage than formerly."

Precautionary Measures.

The Trade Associations are not slack in using the powers which the law gives them of employing inspectors, and issuing trade regulations. They can also fine a negligent employer by putting him in a higher danger-class, and cases are known in which they have raised the rate of contribution by the amount of 500 per cent. The law has also led to the application of a great amount of scientific research, and to the growth of a higher moral standard among the employers. Mr. Graham Brooks, in his special report to the Commissioner of Labor in America on "Compulsory Insurance in Germany" (revised edition, 1895, pp. 289, 290), says on these points: "It seems likely that every important university will at no distant date have its lectures upon these and allied subjects. The growth of this practical interest in Germany may be seen from the fact that, in 1890, 140 committees from the trade associations of employers were making special investigations as to preventive methods. In 1890, there were 119 officers employed by the trade associations to look after accidents. In 1891, the number had increased to 168. The way in which these discussions are spread through the press cannot fail to produce its effect upon public opinion. Already a stigma attaches to the employer whose record of accidents is, in the comparative tables, unusually high, just as it is coming to be a matter of pride and honor to show an

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exceptionally low ratio of accidents." In 1890, there were 119 officers employed by the Trade Associations to look after accidents, and it is useful to be reminded that in Great Britain there are only

Factory Inspectors to carry out a much more complicated and ponderous work.

We have, therefore, come to the conclusion that the statistics of German Sick and Accident Assurance, alarming at first sight as they are, do not necessarily show an actual increase of accidents. From other considerations, we have concluded that accidents in Germany have increased, but it is impossible to attribute them to negligence caused by the existence of the insurance funds. On the contrary, we believe it to be indisputable from the facts, that the machinery of insurance has worked steadily towards the reduction of accidents, both by penalties and by investigations in accident preventive methods.

We give the figures in the following table :

	Persons Insured.	Accidents Notified.	ACCIDENT FUND CASES.*				SICK FUND CASES.*	Total Accidents per 1,000 persons insured.
			Deaths.	Total Dis-ablement.	Permanent Partial Dis-ablement.	Temporary Dis-ablement.		
1887	3,861,560	105,897	2,956	2,827	8,126	2,061	89,927	27.42
1888	4,320,663	121,774	2,990	1,899	10,344	3,755	102,786	28.18
1889	4,742,548	140,638	3,457	2,357	12,998	3,958	117,868	29.65
1890	4,926,672	150,483	3,686	1,896	16,399	5,040	123,462	30.54
1891	5,093,412	162,954	3,716	1,604	17,790	5,881	133,963	31.74
1892	5,078,132	166,542	3,382	1,531	18,472	6,061	137,096	32.79
1893	5,168,973	182,120	3,589	1,377	19,740	6,465	150,949	35.23
1894	5,243,965	190,744	3,438	855	20,025	8,479	157,947	36.37
1895	5,409,218	205,019	3,644	780	19,312	9,992	171,291	37.90

The Interpretation of the Statistics.

At first sight these figures are sufficiently startling, for they appear to show a steady rise of accidents every year. But some discounting explanations must be made. The yearly figures up to 1889 cannot be safely used for comparison with those of later years, owing to the extensions of the law made in 1885, 1886, and 1887, and to the more

* The Sick Fund Cases are those accidents which are cured within thirteen weeks, and of which the charge falls on the Sick Funds. Accident Fund Cases are cases where the injured person is laid up for more than thirteen weeks. The two classes together make up the total of accidents notified. The above figures deal only with the industrial accidents treated by the Trade Associations. The statistics relating to agricultural accidents are omitted, because the figures of the agricultural population are not accurately known over this period. The statistics relating to the employees of public authorities are also left out of account.

strict definition of the term "total disablement" made in 1888, yet from 1890 to 1895 there has been an increase in the number of accidents, from 30.28 per thousand workmen insured to 37.90. The figures are sometimes reckoned in another way, and show that while the number of persons insured has risen 9.9 per cent. in the last five years, the number of accidents has risen 36.2 per cent. Opponents of compulsory insurance in England have no doubt as to the reality of these or as to their explanation.*

If instead of accepting figures without examination at their face value, we consider the manner in which the figures are compiled, we will find that a different complexion is put on the matter. For a large portion of the increase is not real, but is due to the more complete notification of accidents in later years—particularly since 1884—than formerly. *Both the trade associations and the police* are insisting more rigidly on the immediate notification of all accidents, however trifling, instead of postponing the notification until serious consequences showed themselves; and another element in the increase has been a rise of 3d. in the notification award. The effect of stricter official regulations in the accident figures is shown by the following extract from the Report for 1894, of Section v. of the Rhenish Westphalian Trade Association for Machine Making and Small Iron Industry: "The not unreal increase of the number of accidents notified must find its explanation in the fact that in consequence of the later orders in Section 76 (b) of the Sick Insurance Law (of 10th of April, 1892), the Sick Funds have the duty of notifying to the Sectional Committee all those cases of accident which have not begun to heal within ten weeks. In consequence of this order a supplementary notice could be required from the employers on a greater number of cases which had not been notified to us." A similar thing has happened in Switzerland, only under an Employers' Liability Act. In the first factory district the number of accidents for 1886-7 was 2,159, in 1888-9 it had risen to 4,354, and in 1890 to 5,972. Of course, as in Germany, the increase is fictitious. "The Inspectors state that these figures do not, however, imply any increase in the number of accidents which have happened, but only show that such cases are now reported with more accuracy than formerly" (Royal Commission on Labour; "Report on the Labour Question in Switzerland," 1893, p. 24).

In many cases, too, the Imperial Insurance Office and the Arbitration Courts have given a wider and more equitable interpretation to the term "accident." To take an example—perhaps an extreme case—from the insurance of agriculturists, the authorities in Bavaria

* Mr. Harford, to a *Daily News* representative (Jan. 5th, 1897), said: "I should expect to find here what I understand has been found in both Germany and Austria, such carelessness and indifference to the causes of accident as to show a terrible increase in the number and proportion year by year." And Mr. James McDonald, Secretary of the London Trades Council, said that as a result of his examination of accident insurance, "Exactly what you would naturally expect to find if you relieve a man of the liability for the results of his greed. The employers' disregard for the lives and limbs of his workers here under the present rotten law is bad enough in all conscience, but in Germany and Austria, under their insurance scheme, it is very much worse. Why, in Germany, from the statistics, it seems that the accidents have increased by more than 20 per cent. since the law of universal insurance came into operation."—*Daily News*, Jan. 9th, 1897.

interpreted the terms of the law so as to construe the presence of laborers in the open field as a special danger against lightning, so that compensation might be paid for accidents from lightning.

In addition to the better administration of the law, the greater readiness of the workmen to claim the benefits of the law has caused an increase in the number of notifications. There are now a number of institutions like the Nürnberg Labor-Secretariat, which make it their business to inform the workmen of their rights and to assist them in their complaints; whilst the Social-Democrats, after the manner of the Fabian Society, have been circulating broadcast leaflets and pamphlets explaining the law to workmen and urging them to make use of it. With the wider knowledge of the provisions of the law, the workmen have shown a greater willingness to report accidents on their own account, and so make up for any neglect on the part of the employers. It will be some time yet before the returns are so exhaustive that an increased knowledge on the part of the workers and vigilance on the part of the employers will be accountable for no increase in the figures that does not correspond to an increase in actual accidents.

An Analysis of the Figures.

So far we have merely dealt with the uncertainty as to the total number of accidents, owing to deficiencies in notification. When the details of the statistics are examined a direct contradiction is found to the lurid statements about the baleful effects of insurance. Taking proportions per 1,000 persons insured, we construct the following table:

	ACCIDENT FUND CASES.				SICK FUND CASES.
	Deaths.	Total Disablement.	Permanent Partial Disablement.	Temporary Disablement.	
1887	·77	·73	2·10	·53	23·29
1888	·69	·44	2·38	·87	23·79
1889	·73	·49	2·74	·83	24·85
1890	·75	·38	3·33	1·02	25·06
1891	·73	·31	3·49	1·15	26·30
1892	·67	·30	3·64	1·19	26·99
1893	·69	·27	3·82	1·25	29·20
1894	·66	·16	3·82	1·62	30·12
1895	·67	·14	3·57	1·85	31·66

Here we find a remarkable steadiness in the number of deaths. Defects of notification are eliminated here, and it would seem as if a measure of the risk attaching to German industry had been arrived at, for the pressure of factory legislation had made but slight alteration in the death-roll. The effects of the adoption of preventive measures is plainly seen in the cases of total disablement. The attention both of factory inspectors and employers is naturally directed first of all to precautions which will prevent the most grave injuries; and it is, moreover, of the most serious dangers that the workman first learns to beware. "Permanent partial disablement" is a category of a more miscellaneous nature, and includes all kinds of injury, from a smashed

finger-joint, which scarcely diminishes the earning capacity, to an amount of damage just short of complete disablement—a comprehensiveness not recognized at first by the authorities, who have gradually increased the number of accidents dealt with under this head. It is also just in this class of injuries that the contrary influences of the factory laws and the influx of agricultural labor can be seen. Nevertheless, we find that the range of variation since 1890 is small, and that it appears to have taken a downward turn. It is important to note that the proportion of serious accidents is actually falling. In 1894 there were 6·254 in every 1,000 insured compensated; whilst in 1895 the proportion was 6·235. Some reliance may be placed on these figures as real indications of what is happening, as they have been led up to by the figures of previous years.

Coming to the minor accidents, we have to deal just with those injuries which most easily escape notification as trifling, and those to which unskilled hands are most liable—two circumstances which explain the rise completely. Upholders of the “negligence” theory will also find it hard to explain why in German coal-mines, where insurance has lasted for centuries, the number of accidents amounted in 1895 to 94·28 per 1,000 workmen insured, while in English mines, under employers’ liability and insurance by the men, the number is estimated by the Chief Inspector of Mines at 100,000 out of 700,284 employed, or 142·79 per 1,000.

The Case of Austria.

The case of Austria need hardly be quoted, as the experience of Germany must be regarded as conclusive. But as the figures even here, when properly understood, do not bear out the conclusions of some Trade Unionists who have been criticising them, they may be given.

ACCIDENTS IN AUSTRIA.

Year.	Deaths.		Permanent Disablement.		Temporary Disablement (over 4 weeks).		Temporary Disablement (under 4 weeks).		Mean No. of Workpeople in year.
	Number.	Per 10,000 ‘Vollarbeiter’ insured.*	Number.	Per 10,000 ‘Vollarbeiter’ insured.*	Number.	Per 10,000 ‘Vollarbeiter’ insured.*	Number.	Per 10,000 ‘Vollarbeiter’ insured.*	
1890	548	6·7	1,593	19·3	4,600	55·9	9,300	113·0	1,231,818
1891	565	6·6	2,151	25·1	6,068	70·8	12,532	146·2	1,369,763
1892	574	6·4	2,530	28·3	6,318	70·7	16,876	188·8	1,380,881
1893	649	6·9	3,244	34·5	7,008	74·5	22,016	234·0	1,466,270
1894	670	6·8	3,701	37·4	8,181	82·6	27,707	279·9	1,598,404

N.B.—Accidents cured within four weeks do not come on the Accident Fund.

* A fictitious figure, representing such a number of workpeople (employed for a greater or lesser number of days during the year), is equivalent to 10,000 workpeople employed for 300 days.

Statistically, the extraordinary thing about this table is, that while the death-rate has kept steady, the "Permanent Disablement" rate has almost doubled. The following table gives another measure of the seriousness of the injuries indemnified, based on the amount of the pensions reckoned in terms of the yearly wages.

	PER 10,000 'VOLLARBEITER.'				
	Up to 20 per cent. of the yearly wages.	From 21 to 30 per cent. of the yearly wages.	From 31 to 40 per cent. of the yearly wages.	From 41 to 50 per cent. of the yearly wages.	60 per cent. of the yearly wages.
1890	9.6	4.5	1.7	2.3	1.2
1891	14.8	4.3	1.6	3.1	1.2
1892	17.6	4.2	2.4	2.8	1.3
1893	21.1	6.2	2.5	3.4	1.2
1894	25.5	5.3	2.6	2.8	1.2

N.B.—60 per cent. is the maximum pension, and is allowed for total disablement. 50 per cent. and under is allowed for partial disablement.

"Permanent disablement" again, covers everything from total disablement to the slightest partial disablement. The second table shows that total disablement has been stationary, that serious cases of partial disablement have varied within very narrow limits, and that it is not till we come to the slighter accidents that we get any great increase.

The reason for this increase is almost entirely due to improved notification. In Austria the employers complain of the duty of notification as a burden, a clear proof that they do not try to make their returns perfect, and that they feel the pressure of the law which enforces performance of this duty.

Insufficient factory inspection is another cause of accidents, as is shewn by the steadiness of the number of accidents acknowledged to be due to the fault of the employers. This is all the more serious as the industrial workers have increased 29.7 per cent. since 1890, showing a strong flux of workers from the country to the town trades. Again, the insurance institutions neither concern themselves so closely with the prevention of accidents as the trade associations of Germany do, nor have they the same powers of inspection which the latter possess. The length of the working-day also plays an important part in causing accidents, and of course is especially destructive in the case of new and unskilled workers.

III. THE REMEDY.

Who goeth a warfare at any time at his own Charges ?

Liability and Insurance.

We are, therefore, of opinion that the field of accidents in this country, uncovered by any possible liability law, may be covered by insurance without any risk of increasing danger to the life and limb of the workman. We do not propose to abolish the individual responsibility recognised by the existing code of industrial laws. Insurance is not an alternative but a supplement to Employers' Liability, Factory and similar Acts, and from the point of view of practical politics, we must insist upon a tightening of the accident prevention laws all round simultaneously with those compensation provisions which we recommend. We had, indeed, better abandon all idea of being able to deal with prevention of accident by measures which nominally compensate injured workmen. Prevention must be regarded as the task which an enlightened Parliament will set to itself in a straightforward way and by Acts aimed directly at that end. Hitherto the State has pursued this policy by means of Factory and like Acts and by erecting a machinery to administer them properly. That still remains the only satisfactory way of dealing with prevention ; no further method can be suggested for the future than that that method should be pursued, that the Factory Law should be widened, and that more effective steps be taken to carry it into effect. German figures show that 50 per cent. of the industrial accidents and 65 per cent. of the agricultural ones can be prevented by regulation and inspection, and everyone who has experience of factory life in this country knows that the same state of things prevails here. A point reiterated again and again by Trade Union leaders to the Labor Commission, was that inspection was insufficient, and the Commission reported accordingly.

Upon Whom will the Premiums Fall ?

It is a nice economic point to decide who will ultimately bear the burdens of a general accident compensation. If, as in the German Old Age and Sickness and Accident Funds, or the London and North-Western Insurance Society, any part of the premiums is a direct deduction from wages, it is safe to say that as that part will be so small that it will not materially affect standards of living, it will be borne by the workmen. Any such scheme would be impossible in this country, however, and need not be discussed. If, as in Germany, the greater part of the compensation funds were levied from the employers, the economic results would be more difficult to trace. In the more backward industries, where Trade Unionism is weak, part of it would be thrown upon the shoulders of the workmen, but on the whole, the Unions would successfully prevent that. In some cases, the incentive which such an impost would give to employers to exercise more care in their works, would result in an increased efficiency of labor which would in itself be an adequate compensation ;

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in others, attempts would undoubtedly be made to shift the burden upon the consumer. To discuss the conditions under which this would be successful would be to traverse familiar economic ground, and we need not do it here. We object to this method mainly on practical grounds. If the total cost of compensation is to be averaged over the whole country, and employers have to pay in proportion to the men they employ, it would be a matter of infinite difficulty and endless expense to find out accurately what each employer's liability is, and what premium he should pay. It is one of the necessities of the Austrian system that the authorities should know exactly the number of men each employer has, and it is one of its most unsatisfactory aspects. The objection to making the employers in safe trades responsible for the compensations required by unsafe trades would be even more serious in this country than it is in Germany, on account of the absence of militarism with all its registrations and regulations, in our industrial life. Moreover, by removing from the employer all effective control of the expenditure so that his individual care would decrease his insurance payments, and at the same time failing to put the fund in charge of an authority specially interested in making the demands upon it as light as possible, the system would be dangerously like one which would lead to carelessness, and so promote accidents. If the German or Austrian system were adopted, and attempts were made to classify trades according to degree of danger attached to them, and then group them locally where necessary into trade associations, each association having to be responsible for its own funds, and being under the inspection of a Government auditor and actuary, some of the obvious objections to the simpler scheme for the whole country would be avoided. But this more discriminating proposal presents difficulties of its own. An estimate of risk attached to any industry must always be an uncertain thing, and a thing, moreover, ever changing owing to new inventions, new Acts of Parliament, and new processes of industry. The complications of such a variable basis of premium must be a serious objection which the practical politician may well shrink from facing. Where separate areas are fixed, within which trades may be grouped for insurance purposes, the boundaries must be at best fixed in an arbitrary fashion. The result would be that the chemical-works at St. Helens would pay indemnity rates determined mainly by the accidents in the South-West Lancashire coal-mines, whilst similar works in London would have to pay levies fixed by the number of accidents at the docks. In this scheme also, we have a recurrence of the old difficulty of finding the exact liability of the employer and checking his returns of men in his service, and the further economic objection of rating trades according to their degree of danger.

The State and Dangerous Trades.

That every trade should bear the expense of its own accidents is a peculiarly flagrant social and economic individualist heresy. Suppose that the impost could be put upon the employers, in so far as it could be shifted by them on to wages and prices, its economic effect would be that of an indirect tax. It would have to be paid for by the bearer with an accumulation of interest added, and its

incidence would be not upon those who can afford to bear national burdens, but upon those who require to use the particular products bearing the tax. It is both just and expedient in every way to make an employer pay for the needless danger which he imposes upon his workpeople ; but it is a different matter when we are dealing with trades which must be risky from their very natures. These trades by reason of their risks do not carry with them a special profit to capital from which an extra tax can be conveniently drawn ; indeed, some of the least risky trades, like ready-made clothes manufacturing and wholesale provision dealing, are the most profitable to capital. It is a mistake to withdraw capital from such dangerous trades as the community requires, and that will be the unquestionable result if we impose burdens of extra weight upon them. If these trades are socially necessary, as they are, the policy of the State is not to impoverish them but to assist them to better conditions. The enlightened legislative policy regarding dangerous trades is one which by wise regulations and consideration will induce them to adopt methods which will lessen risk. A heavy impost for insurance funds will have an opposite effect. The trade, if it be grouped with others, will not pay its own premiums but will be assisted by them ; if not grouped with others, it will likely become a prey to foreign competition, or be starved. Generally, the nature of a trade ought not to be made the basis of its fiscal burdens, unless it can be shown that profit and danger vary directly with each other, so that danger in work might be regarded as similar in its effect to extra fertility or advantage in situation in land. But underlying every one of these schemes is the final objection that you cannot dragoon English employers into insurance societies. This admission on the part of the *Daily Chronicle* seems to us to be fatal to the proposals with which it closed its series of articles on Employers' Liability.

Society and Accidents.

The only method equally just and practicable is to regard those accidents, varying with every industry, which are not preventible, as belonging to social and not individual or trade responsibilities, and to make their compensation part of the national charges. Society not only profits by, but partly creates the modern system of industry, which with its bustle, its speed of production, its temptation to workmen to be careless, its devouring strength of machinery is so fertile a source of accidents.

Machinery.

We have, then, come to the conclusion, that both justice and administrative necessities require us to divide accidents into two classes, preventible and trade accidents, and that the former should be a charge on the individual employers responsible while the latter should be a burden on the national resources. We have also decided that under preventible accidents should be included all accidents for which an employee, if he were an outsider, could recover compensation under the common law. An employer would be held responsible for the acts of his servants or of sub-contractors and would be

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prevented from pleading contract or contributory negligence, or common employment as a bar to compensation. Negligence would also include failure to observe any statutory provision or to comply with any recommendation of the factory inspector. Moreover, our experience of the Employers' Liability Act has led us to the conclusion that the lawyers must have as little to say as possible in the operation of this code of laws. At present all accidents sufficiently serious to cause absence from work for five hours in any of the three days after the accident must be reported to the inspector of the district and to the certifying surgeon in some cases. The skeleton of the machinery necessary if the State is to take full responsibility is already at hand. All that is wanted to complete it is an increase in the staff of factory and workshop inspectors and this must be done with or without this further work, wherever we make up our minds to administer efficiently in ordinary factory laws. In the first instance, the inspector should decide whether the case is one of employers' liability or of compensation, and any appeal against his decision can be made to the County Courts. This would both free workmen from the onus of being the prosecutor in liability actions, and also secure a much wider publicity than is now given to the causes of serious accidents. It is worth while laying special emphasis upon this latter point. Nothing more effectually stops an employer's carelessness than that its results should appear in open day. This can never be secured adequately so long as the onus and expense of this exposure lies upon a workman who probably desires to return to his work, even when the workman belongs to a Trade Union. The grossest forms of carelessness are found in those industries where Trade Unionism hardly exists and where the employee is absolutely in the hands of the master. In these industries, evasions of the law are the rule; accidents are not properly reported, and when they are their seriousness is often missed because the workpeople are glad to seize upon any small compensation offered to them. We can only hope for the purifying light of day falling upon these blotches on our industrial life when factory and workshop inspectors are better equipped by the law.

In disputed or doubtful cases the State will be responsible for the compensation, and can always recover against the employer if necessary. A public enquiry should be held on every serious accident, and at these enquiries anyone appointed by the workman should have the status of an advocate. Criminal proceedings against employers could be instituted upon the finding of this enquiry, or in certain cases on a report by the factory inspector. This system of divided responsibility will maintain the necessity of an enquiry into every accident; and, with the right of first decision vested in the factory inspector (whose obvious interest it is to blame the employer as much as is reasonable), and an undoubted interest on the part of the State to define even more narrowly the term "preventable accident," the preventive results will be greater than can be obtained by any other system.

This method of dealing with accidents will tighten rather than loosen individual responsibility. Whilst under it the good employer will have nothing to fear, the industrial "rake's progress" will begin

with fines for the breach of the Factory Law, whether there has been an accident or not, will continue with orders for severe compensation-payments to workmen injured by reason of his negligence, and end with twelve months in jail for manslaughter.

The Cost.

We need not pursue details further. The question of how payments are to be made need cause no trouble so long as there is a banking department connected with the Post Office, or a branch of an ordinary bank in almost every village; and so long as an actuary remains and a record of Friendly Society payments is kept, there can be no difficulty in fixing scales of payments.* It may be suggested here, however, that so far as the immediate application of our proposals is concerned, the practical politician will be content to limit them to those industries which are already subject to Government control and inspection, with a clear understanding that the field will be widened at the earliest and on every possible occasion.

Socialism and Compensation.

We are conscious that this criticism of the shortcomings of Employers' Liability, even amended as Mr. Asquith proposed, and this suggestion of a more comprehensive scheme for dealing with industrial accidents, is not altogether in accord with the opinions of the progressive party in general, or of some of the most reputable Trade Union leaders in particular. But it has been the task of practical Socialists during the past twelve years to purge progressive politics of imperfect and mistaken proposals by applying Socialist ideas to popular programs. Thus we found some years ago that the Radical, carrying on his old traditions, proposed to solve the land question on the individualist lines of Leasehold Enfranchisement and Free Trade in Land. It was one of our first tasks as Socialists to convince him of the errors of his ways and convert him to the Socialistic proposals of Taxation of Ground Rents and the ownership of land by public authorities for remedying the grievances upon which he and we were agreed. We found him as a municipal reformer vainly struggling to reduce rates by petty and often unwise savings of odd pounds, enlightened again by the memory of Joseph Hume and his fellow-Radicals, and we had to persuade him to abandon his old light, and be guided by ours of municipal ownership of paying concerns, such as gas, water, trams, &c. Now we find him in the same darkness regarding the problem of industrial accidents. He insists upon regarding these misfortunes as matters regarding special trades and

* The total cost will depend on administration and scales of payment, but it is useful to know that the German scheme cost 1/4 of what was paid in wages in 1895. If the same proportion would suffice in this country, the cost of the whole undertaking, administration included, would be about £6,000,000 per annum. This sum it must be remembered is gross, and is not the exact charge of an insurance scheme. The saving on Poor Law charges would be particularly marked. The German Society for the Promotion of Poor Relief and Charity, investigated the movements of Poor Law payments a few years ago, and the results were very significant. In Augsburg the rate had fallen 2/20 marks per head; in Mannheim '90 marks; in Barmen '20 in two years; and the Report says: "There can be no doubt that accident assurance has contributed materially to this result."

special employers ; we regard them as the risks, capable of large reduction but incapable of complete extinction, which the life of modern society imposes upon its industrial armies. After every precaution is taken there will be a corps of halt and maimed and blind turned from our factories and workshops every year. These are legitimate charges upon the national income ; they are part of the cost of a flourishing industry, of a national efficiency in production, of civilization itself ; and any method of treatment which does not recognize that their claim is upon society and not upon an employer (who has exercised due care), nor upon a trade, must receive little favor from us, because it is bound to be inadequate and ineffective for its purpose. The practical advantage for us of such a scheme is that it will undoubtedly lead to further and further control of industry by the State. If the State is to make itself responsible for accidents which cannot be brought home to employers, it will not only take special precautions that employers shall have obeyed every injunction of the Factory Inspector, but that the code of Liability Laws and regulative orders shall be as stringent and complete as conditions will permit. The State will then have entered into a relation with the owners of factories and other industrial undertakings similar to that which the Government now propose to place upon the taxpayer and the managers of voluntary schools. The logic of both relationships is the same. If the receipt of public subsidies by voluntary schools involve popular management, so we shall be forced to take further and further steps in the public control of industry by making the State responsible for the unpreventable accidents.