

## THE LEGAL ASPECTS OF PERSONNEL AND PRODUCTION ADMINISTRATION

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*Personnel and Production Administration* is the title, if I am properly informed, of one of the core areas of study at Michigan State University's School of Business. Though we at Michigan College of Mining and Technology have no such designation, it is understandable that Mr. Zwarensteyn in setting up a program on the functional aspects of legal study and instruction would pick what is in several institutions a designated area of study.

In any study of the legal aspects of a particular field of business, the question properly arises as to whether there is any particular logical validity to studying the law in this fashion. Is there a special branch of law for the personnel manager? Are there any fundamental principles in this field different from other fields? One answer is that, if there are any special principles, they are more likely to emerge if the subject matter is viewed in a functional manner rather than from the viewpoint of more traditional logical divisions. Secondly, it should be observed that the law arises out of the application of broad general principles to specific functional situations. Thirdly, in terms of teaching business students, we are interested in giving them a practical working tool where this is consistent with a sound, logical, and thorough treatment of the law. There is in the field of personnel and employee relations a broad mass of statutory material which is of daily concern to the personnel manager. These statutes have been in existence for a fairly long period of time and have a considerable degree of permanence and stability.

Furthermore I am going to suggest, if only for purposes of arousing thought or criticism, that there may well be a current of new law underlying these statutes in that our view of man's individual responsibility may to some extent be changing.

At present a course in labor law, for example, seems to be an assembly of principles from contracts, from torts, perhaps also from agency, plus a wide array of statutes, some of which seem to implement these older principles and others of which seem merely regulatory in nature. If we attempt a philosophy to pull these all together, there undoubtedly will be defects in it just as there have probably been defects in any system of law, especially when social change comes into a society. As new problems arise, new mathematics and new logical systems and new premises are introduced to resolve the historical change which has occurred. The volume of logic can act only as a check on the apparently irrational and often violent page of history. Logic and the principles of law are primarily powerful

tools of analysis, not a final truth in themselves. The certainty of the law is not ultimate justice. As the law is but the servant of society in its onward historical process, the life of the law may well be reason but the master remains society with all its needs and desires. As these change, the law must change. If the old reasons and concepts are sufficient, this is all to the good. But we must always be on the lookout for new methods of thought, for new concepts.

Let me then suggest some possible fundamental concepts which underlie much of our statutory law about labor and employment. We have been seeing for many years a decline in the impetus of radical notions of individual responsibility and personal freedom. Calvinism is sometimes given the credit for the full flowering of the free-enterprise laissez-faire capitalistic economy of the nineteenth century. But both in Calvinism with some of its deterministic notions and its notions of duty, and in Adam Smith's belief that there was an ethical duty element in the enterpriser's self-interest, we can see the seeds of this decline.

With the passage of the Clayton Act declaring labor not to be a commodity, supply and demand concepts in the familiar land, labor, and capital framework of economic theory at least needed reaffirmation if not re-examination. Saying a thing is so does not necessarily make it so. A congressional declaration that a military officer is a gentleman does not make him one. But the concept is implanted. When it is then logically followed by limitations of remedies in the Norris-LaGuardia Act, and more importantly by the National Labor Relations Act, the Fair Labor Standards Act, and Fair Employment Practices Acts in many states, and a Full Employment Act, a different notion of employment seems to emerge. In the early Workmen's Compensation Acts, the idea had already arisen of placing certain duties upon management as the risk-bearing agent of society to take care of the laborer on the job. The duty applies to the normal routine when minimum wages and maximum hours are forced upon the employer. Thus society in its governmental attitudes takes on a cooperative aspect so that the adults who make the decisions take care of each other as a public matter rather than as an act of private charity by private associations. We feel therefore the same duty toward adults as we may have felt toward orphans in an earlier period.

A more fruitful view might be simply to look at all this legislation involving labor as simply a branch of public utility law. This would of course remove almost all business completely from the private field, at least in certain aspects of its activities. The public is now interested in whether an employer encourages or discourages union activity. The machinery of collective bargaining is somewhat self-regulatory, merely giving additional powers to a group. As this power gets out of hand in the duopolistic situation of the steel industry and the United States Steel Workers, demands are heard for governmental regulation of wages and their converse, profits. The granting of this collective bargaining power to unions has led directly to the Landrum-Griffin Bill with its restraints on internal union organization.

In many states an employer may not hire or fire because of race or creed. Will we move in the direction of saying that the employer must hire any qualified person on perhaps a first-come, first-served basis? Certainly if the employee is improperly discharged for union activity, he can be forced to offer reinstatement. This remedy is a long way from the notion of employment being a purely personal

relationship, something I myself have frequently asserted when talking of assignments in contract law.

This leads us to the notion of a possible property right in a job even when there is no contract. Perhaps it is a property right in an industry once one has been employed in the industry. Both major political parties assert sympathy and support for the objectives of the sit-ins by Negroes in restaurants. I see in all these attitudes a change from any view that all society need do is give to a man a negative kind of protection or an equal interest in tax-supported jobs and contracts, the rest of his future being left to his own resourcefulness and energy. Now at least it appears that what was traditionally private society can no longer exercise some of its historically private rights and that sometimes when it takes on some duties such as hiring a man to the job, there are limits apart from agreement as to how it can rid itself of this obligation. When a business opens up it has to serve all members of society because as members of society they have certain positive rights beyond merely being secure in their persons and their property. This last, though clearly not yet the law, has many adherents.

Now we cannot leave this field of broad speculation without at least a wave of the hand in the direction of Holmes and a host of others who have pointed out that the law, being universal in its application, must represent the consensus of all right-thinking reasonable people. The law's very strength is that it does not move with each passing wave but represents the deep abiding currents in the ocean of society. Some new currents of abiding strength may have developed or be about to develop, such as the notion that labor must not be regarded as a commodity, that labor has a fundamental right of association, that industry has a duty to the man who has labored in it for any period of time, or that most of business has a public interest and a public duty resembling in some ways the traditional public utility. If some such point of view be taken we can perhaps build a cohesive subject matter around the legal aspects of personnel and production administration.

Finally, there is a more pedestrian way of handling such a study. In this method one would spend his time analyzing the way in which various statutes and common-law principles affect the personnel manager in his everyday job. For example, in hiring and firing, the personnel manager must make sure that he does not consider union affiliation, race, or creed. In management of the firm he must make sure that workers do not work over the eight-hour day even though it may necessitate his asking employees to leave the office. The production manager must report illnesses which occur while the worker is on the job—the examples are endless. They could be tied into the legal requirements so that the student will know where his own judgment as to good business practice comes into play and also where his judgment must stop because the authority of the state through the law has taken charge.

By such a slow, diligent, painstaking approach, more general legal principles would slowly emerge.