PROFIT SHARING BETWEEN EMPLOYER AND EMPLOYEE

THE SWEDISH DEBATE IN CONNECTION WITH THE PASSAGE OF THE SWEDISH ACT OF 1895 RELATING TO SHAREHOLDING COMPANIES

BY

CLAES PETERSON

1. INTRODUCTION

During the final decades of the 19th century in Sweden a wide-ranging debate took place among lawyers, economists, businessmen, politicians and others concerning the question of the division of company profits between owners of capital and workers. That the question aroused such interest was mainly due to the increasingly pronounced polarization between employers and employees as industrial development proceeded. The increasing antagonism between capital and labour—labelled in the social debate of the time as "the social issue" or "the labour question", terms which had been borrowed from the doctrines of the German economists—manifested itself in an increase in strike activity among the workers and was interpreted by the propertied classes in society as constituting a serious threat to the existing social, political and legal order. Through the birth of trade unions in Sweden in the 1880s and finally through the formation of the Social Democratic Labour Party in 1889, conditions were created for a labour movement—united in its political and trade union wings—that could offer strong resistance to the employers. The workers' demands were concerned in the first place with shorter working hours and improved wages. The long-term goals were the introduction of universal suffrage and, with the aid of legislation, a democratic reform of society. The association of workers in trade unions and political organizations was seen by many politicians and employers as a further sharpening of the antagonism between labour and capital and in the long run as a development that would lead to the breakdown and final dissolution of the existing social order. Faced with such a threatening prospect voices started to be raised in the Riksdag, as well as in public debate, in favour of social reforms that would reduce the discontent manifested in strikes and demonstrations. The proposed reforms submitted from various quarters varied widely—from the setting up of bodies to encourage self-help among the workers to state intervention through, for example, a statutory obligation to insure workers against industrial accidents. One feature common to most of the measures proposed was that by helping to improve living standards they were intended to result in the neutralization of the political desires of the workers and thus make them less susceptible to socialist ideas. It would in this way be possible to create an atmosphere of harmony and cooperation that would guarantee industrial peace and ensure uninterrupted industrial production. One of the measures advocated was

known as profit sharing, which, briefly, meant that a certain portion of the firm's net profit would be distributed to the workers in the form of an income supplement. Ever since the middle of the century there had been a good deal of interest in this system in the leading industrial countries such as England, Germany and France, so there was a considerable body of literature, mostly German, in this field. This literature came to play an important role in the Swedish debate, and particular attention was paid to the profit sharing system in connection with the drafting of new company legislation in the 1880s. It is this aspect of the larger debate that is the subject of this study.

2. THE COMPANY ACTS COMMITTEE: JUSTICE HERSLOW'S CRITICISM

The Company Acts Committee was set up in 1885 for the purpose of drafting proposals for new company legislation. The Committee devoted itself mainly to questions of legal dogma and ignored the social aspects implicit in the right to operate an enterprise. This was particularly true regarding the Committee's proposals and arguments in favour of a new limited liability company act. When drafting this proposed act the Committee had seen it as its task to devise rules that afforded "adequate security for the general public without imposing restrictions on industry and commerce".[1] The Committee was concerned about the investing public's need to be protected against speculation in shares as well as about the rights of creditors in the event of a limited liability company going bankrupt. The question of the industrial worker was not relevant in this context, so the Committee drafted its proposals in accordance with the strict jurisprudential ideal prevalent in those days. Consequently, the Committee saw it as its task to specify, systematize and analyse the current norms and also to recommend relevant changes within the legal framework. No non-legal items were ever made explicit. The legislative work was greatly influenced by the Secretary to the Committee, Hjalmar Hammarskjöld, Docent and later Professor in Special Private Law at the University of Uppsala, who in his legal writing had been influenced by the German Romanist legal tradition. In other words, concerning the Committee, its legislative work was conducted largely as a jurisprudential study, which explains why very little attention was paid to the social issues.[2]

[1] *Förslag till lagar om enkla bolag och handelsbolag, om aktiebolag samt om föreningar för ekonomisk verksamhet,* Stockholm 1890, appendix, p. 106.

[2] In the Company Acts Committee there was some criticism of the scholarly nature of the work. One of its members, Th. Wijkander, Judge Referee to the Appeal Court, pointed out on one occasion to Hammarskjöld that it was not a teaching manual in law that had to be written. In a letter to Hammarskjöld he wrote that "I want the advantages of strict systematization though I do not wish to take it to absurd lengths. Legislation must equalize". See Hjalmar L. Hammarskjöld's *Lagstiftningssamling,* vol. 13, fol. 112–113 (Uppsala University Library).

When the Supreme Court examined the proposals for the legislation on limited liability companies, Ernst Herslow,[3] at that time a Supreme Court Justice, submitted a long statement criticizing the Committee's proposals. He analysed the company from a social point of view and asserted that the introduction of profit sharing was a way out of the prevailing condition of social polarization between employers and workers. Herslow had already shown his interest in this question through the essay "The Employer's Responsibility for Accidents at Work", published in *Tidskrift for Retsvidenskab* in 1891. In this essay Herslow maintained that the roots of the widening social gap between employers and workers had to be sought in the way modern industry was organized. The personal relationship which had existed between the two parties had been broken and no improvement was to be expected until the link "had been freely reforged in mutual confidence and both sides had learned to regard each other as equal in status and legitimacy". However, Herslow did not go further into the problem he had touched on, but merely concluded his essay by cautiously suggesting that, with the aid of legislation regarding profit sharing, it would be possible "to reinforce the solidarity between labour and capital and eliminate the sharp and irritating class difference".[4]

In his statement on the proposal for a new act relating to the limited liability company Herslow elaborated the points he had touched upon in his essay. He asserted that in the shareholding or limited liability company there existed an effective instrument for the accumulation of large as well as small amounts of capital through which the conditions had been created for the emergence of industrial enterprises of a size not previously possible. At the same time the number of jobs had been increased many times over, and this had benefitted the working class.

However, this type of company as a legal entity also had negative aspects. According to Herslow, the Committee had mentioned only the possibility of profiteering because of "the desire for profits exhibited by a credulous general public". Consequently, the Committee had tried to prevent this possiblity of misuse by giving the general public greater insight into the operations of limited liability companies. On the other hand, the Committee had overlooked the adverse effects which did not have their roots in any misuse,

> but which seem rather to be indissolubly linked with the very nature of the limited liability company and with precisely those characteristics of the company which in certain respects have undoubtedly been of most benefit to it.

One notable feature of economic developments during the 19th century, according to Herslow, was the transition from craft work to large-scale ma-

[3] *Prop.* 1895:6, pp. 115–22.

[4] Ernst Herslow, "Arbetsgifvarens ansvarighet för olycksfall i arbetet", *TfR* 1891, no. 4, p. 447. See also Herslow's statement on *Förslag till lag om försäkring för olycksfall i arbete, Prop* 1891:23, pp. 13–30.

chine-based operations concentrated in large factories. By pushing aside the craft worker and closing the way whereby the individual worker could attain a position as an independent tradesman, the shareholding company had therefore helped to create social class differences. The industrial workers emerged as a class which was firmly opposed to the employers.[5]

In addition, the shareholding company type of enterprise had led to a clear deterioration in the relationship between employer and worker. The personal link which existed in the craft industry between employer and worker had been replaced by an impersonal or more remote relationship as the shareholding company became more and more common. The owners of shares did not personally take part in the running of the enterprise but had handed this over to special bodies. As all personal contact was absent in such a company, it was in Herslow's view more appropriate to describe this form of association as a combination of capital rather than one of people. The shareholding company had "torn to pieces what remained of the bond that used to exist between the worker and his employer". The shareholders were only concerned about the maximum possible return on their investments, and consequently were not interested in knowing how the workers experienced their own situation. In view of this it was not at all remarkable that the workers should pay most attention to improving their own living standards.[6]

It was Herslow's firmly held opinion that both parties lost as a result of this antagonism since capital and labour were essential to each other. If no effective measures were taken there was a real danger that the ever sharper and more marked class antagonism would lead to the destruction of the existing social order.

However, Herslow was critical of the reforms introduced in Germany in order to improve the living conditions of workers since they had not led to any real equality between the classes—indeed they had reinforced class differences. According to Herslow, the measures taken in Germany were based on the belief that the worker was content with his subordinate social status if his economic standing was improved. This was an oversimplification of reality because of the assumption that the cause of the conflict between worker and employer was to be found solely at the economic level. The problem also had a social aspect that had to be included in the analysis. Herslow stated that if the question was viewed from a social as well as an economic viewpoint, each measure taken, if it was to be effective, would have to be designed to bridge the widening social gap between worker and employer and, above all, re-establish the links between them.[7]

[5] *Prop.* 1895:6, pp. 116 f.
[6] *Prop.* 1895:6, p. 117.
[7] *Prop.* 1895:6, p. 118.

Since, as a form of organization, the shareholding company was directly responsible for the emergence of social antagonism, Herslow maintained that it was only right for society to require such companies to be organized in a way that would not jeopardize the security and well-being of the community. The legislator had every reason to consider carefully changes in the Companies Act that would remove these drawbacks.[8]

What Herslow mainly had in mind was the introduction, in the proposed companies act, of a provision requiring the implementation of profit sharing by industrial shareholding companies.

That these words should have been written by a Supreme Court Justice in the 1890s will no doubt come as a surprise. In practice, Herslow's proposal would have meant that the state would be given authority to intervene and decide the terms of the employment contract, a contract that was of a private law nature, which, according to the view of law then prevailing, constituted the private business of the parties to the contract. This was an idea that was strongly objected to by people in non-socialist political circles. Using legislation to force employers to implement profit sharing was incompatible with the liberal idea of a state governed by law (*Rechtsstaat*). The right to own private property and freedom of contract, the very foundations of the free market economy, would be undermined and the door would be thereby opened to a development ending in state socialism. However, it was not Herslow's intention to encroach on freedom of contract, nor had he abandoned the idea of the state governed by law, which he had defended in other contexts.[9] As far as Herslow was concerned the compulsory profit sharing system amounted to a corrective measure that was essential from the point of view of social policy since it would restore the balance in society that had been lost. The aim of saving the prevailing social order from threatened collapse justified, in Herslow's view, the intervention of the state in this case. How such a coercive rule relating to the implementation of the profit sharing system could be incorporated into the private law system, which in other respects rested on the principles of a free market economy, was a problem with implications affecting the theory of constitutional law. Naturally enough, Herslow did not go into this at all.

3. THE CONCEPT OF PROFIT AND THE LEGAL NATURE OF THE SHAREHOLDING COMPANY

During the 19th century the profit motive of capitalism was subjected to severe criticism from socialist quarters. The rapidly increasing industrial profits, all of

[8] *Prop.* 1895:6, p. 118.

[9] See, e.g., Herslow's statement in the Supreme Court's scrutiny of the 1891 *Förslag till lag om olycksfallsförsäkring, Prop.* 1891:23, pp. 13–30.

which went to the owners of capital by virtue of their right of ownership and the risks they undertook, were considered to be a result of the physical labour of the workers and therefore rightfully theirs. However, the workers had to be content with an economic return that was insignificant compared with the returns on capital. Their return took the form of a wage fixed by market forces. This criticism led German economists to devise a concept of profit that would justify the current principles on which the net profits of enterprises were distributed.

According to Adam Smith, profit was the surplus that remained when the wages of workers and the interest on borrowed capital had been paid. He also pointed out that the profit included a remuneration to the entrepreneur for his own work, but he did not analyse the question of how this remuneration for the entrepreneur's work was related to the interest on capital.[10] Similarly, David Ricardo assigned to profit (rent) everything earned by the entrepreneur once he had paid his workers. In his work, he took as his point of departure a unified concept of profit.[11] The profit accrued to the landowner or capitalist by virtue of his right of ownership, and it was essentially from the right of ownership of land or capital that the right to the yield from production was deduced.

However, the German economist Hermann von Mangoldt developed a concept of profit that implied a division of the revenue of the entrepreneur into three main components, namely:[12]

1. *Income from work,* the remuneration the entrepreneur himself earns if he does such work as otherwise would be carried out by someone else in return for an agreed salary.
2. *Income from capital* (interest on capital), which corresponds to the interest the entrepreneur could have obtained, without risk, from his capital if, instead of investing it, he had used it as loan capital.
3. *Company profit,* or the surplus value which, over and above income from work and capital, accrues to the entrepreneur in his capacity as the "responsible representative" of the enterprise, as well as risk-taker.[13]

The entrepreneur could be either working or non-working. The latter category was composed of entrepreneurs who only invested in the entreprise and did not

[10] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations,* Book 1, ch. VI, London 1908, pp. 36–42.

[11] David Ricardo, *The Principles of Political Economy and Taxation,* London 1962, pp. 64–76 (ch. 6, On Profits).

[12] Hermann von Mangoldt, *Die Lehre vom Unternehmergewinn. Ein Beitrag zur Volkswirtschaftslehre,* Leipzig 1855.

[13] Leffler, *Grundlinier till nationalekonomiken,* Stockholm 1881, p. 98. The same understanding of the composition of profit is also to be seen in J. W. Arnberg, "Arbetarfrågan", *Svensk tidskrift för Literatur, Politik och Ekonomi* (eds. Hans Forsell and Carl af Wirsén), 1870, even if he has not explicitly advanced the theory. Se also C. O. Montan's account of the concept of profit in Gustav Schönberg, *Arbetarefrågan,* translated with appendix by C. O. Montan, Stockholm 1877, pp. 79–83.

undertake any of the work (for example shareholders and limited partners in limited partnerships). If the enterprise just covered its costs, the first thing to be reduced would be the company profit, since it was not a result of the entrepreneur's own work but took the form of compensation for his risk-taking. On the other hand, the other parts of the total income of the enterprise, income from work and income from capital, were a just remuneration for the entrepreneur's work and the use of his capital. These would be calculated according to prevailing market prices.

This differentiated approach to the concept of profit was undoubtedly a response to the strong attacks by socialists against the profits made by capitalism, which were described as unfair exploitation of the worker. According to the socialist view, production was a result of human labour and for this reason rightfully belonged to the workers. Therefore, the net profit of the enterprise accrued to the entrepreneur by virtue of his right of ownership and not as well-earned remuneration for the work he had done.[14]

From the entrepreneurial side, the advantage of adopting the differentiated concept of profit was that, by invoking the idea of justice, the entrepreneur could claim the bulk of the net profit made by the enterprise as the fruits of his own labour (which was defined very broadly) and in this way counter the criticism of the socialists.[15]

The definition of profit was of central importance for the applicability of the profit sharing system. Consequently, Herslow took as the starting point for his reasoning, the question of the right to the profit made by the enterprise. If the enterprise was a company whose owner was personally responsible, with all his property, for the company's undertakings, then, according to Herslow, there was a legal basis for the entrepreneur taking all the profit, since he alone would have to assume any loss. In such a case there was a real element of risk-taking regarding the entrepreneur. On the other hand, a shareholder in a limited liability company was liable for the losses made by the enterprise only to the extent of the value of his own shares—a principle that could be construed as unjust in view of the fact that for many years the shareholder might have reaped large profits from the operations of the firm in the form of dividends. Herslow was personally critical of this state of affairs and he questioned its legal basis. The idea that the shareholding company is a legal person, distinct

[14] In this connection it is worth noting that much of the socialist criticism was based on the same criterion for the appropriation of profit as that applied by the followers of the Smith-Ricardo School, namely right of ownership. But while the latter legitimized in a positive sense the appropriation of profit with right of ownership as the very foundation of society, the former attacked as most unjust a concept of profit that derived from the right of ownership. On this ground, the differentiated concept of profit was rejected as an attempt to conceal the true relationship.

[15] Theodor Mithoff, "Die volkswirtschaftliche Verteilung", *Handbuch der politischen Oekonomie* (ed. Gustav Schönberg), 3rd ed., vol. I, Tübingen 1890, p. 666.

from the persons of the shareholders, involves a fiction that explains how a mass of capital accumulated for a specific purpose can have separate legal status. This corresponds with the shareholders' freedom from liability for any losses above their investment, but this does not explain their right to share the entire profit among themselves, no matter how large it might be.[16]

Here, Herslow touched on a question that, during the latter half of the 19th century, was the subject of a wide-ranging and at times polemical discussion among German legal theorists, namely the question of the nature of the legal person.[17] Two main streams can be discerned in the German debate on this point. Individualistic jurisprudence, with von Savigny as its leading proponent, maintained that only man in his capacity as a legal subject could be the bearer of rights and liabilities; it took the view that a legal personality must be regarded as an imaginary person, a *persona ficta*. The legal person could therefore be construed as an independent legal subject. A contrary, corporatist theory was formulated by Otto von Gierke. In brief, this implied that the legal person was interpreted as a living organism whose unity was to be found in the multiplicity of physical persons. This unity could certainly have an existence of its own over and above its component parts, but the independent individuals were at the same time taking part in a constant interplay with the unity or were in an organic relationship with it. According to this theory, the legal person could not be conceived of as a being separate from the physical persons. The relationship between the unity and the multiplicity was therefore dialectic in nature.[18]

Although there was no theoretical debate in Sweden similar to the one in Germany, there were differences of opinion among Swedish jurists regarding the legal nature of the shareholding company. Johan Hagströmer, Docent in Private Law and later well-known Professor in Criminal Law at the University of Lund, asserted in his dissertation on the law relating to shareholding companies in Sweden that Swedish law did not recognize the shareholding company as a legal person. According to Hagströmer the shareholders could be regarded as partners. Yet, the principle of joint ownership cannot on its own constitute a shareholding company relationship. In addition, each shareholder must be ascribed a legal claim that rests on the ideal shares of the other shareholders and assumes that they should serve the purpose of the company.[19]

[16] *Prop.* 1895:6, p. 119.

[17] An account of the various theories concerning the legal person is to be found in Hans J. Wolff, *Organschaft und juristische Person. Untersuchungen zur Rechtstheorie und zum öffentlichen Recht*, vol. 1, Berlin 1933, pp. 1–88. See also Fritz Rittner, *Die werdende juristische Person. Untersuchungen zum Gesellschafts- und Unternehmensrecht*, Tübingen 1973, pp. 180–5.

[18] Gerhard Dilcher and Rudi Lauda, "Das Unternehmen als Gegenstand und Anknüpfungspunkt rechtlicher Regelungen in Deutschland 1860–1920", *Recht und Entwicklung der Grossunternehmen im 19. und früher 20. Jahrhundert* (ed. Norbert Horn and Jürgen Kocka), Göttingen 1979, p. 547.

[19] Johan Hagströmer, *Om aktiebolag enligt svensk rätt*, Uppsala 1872, p. 125.

Hagströmer's view was criticized by Knut Olivecrona, Supreme Court Justice and Professor, who maintained that the joint ownership argument created more confusion than clarity and, for this reason, was unusable. He assumed that the shareholding company was a separate legal person in relation to the persons of the physical shareholders. As an independent legal subject with rights and obligations of its own, according to Olivecrona, many of the legal problems "would easily emerge from the confusion".[20] In his capacity as a Supreme Court Justice, Olivecrona was in a position to influence practice directly . In a number of Supreme Court rulings from the 1870s and 1880s, in which Olivecrona developed his view that the shareholding company was to be regarded as an independent legal subject, it is possible to note that the fiction theory had won the support of the Court as a whole.[21]

In the 1890 proposal for an act relating to shareholding companies, and later in the 1895 Act itself, it was finally laid down that the shareholding company was an independent legal subject that could accept obligations, acquire rights and also appear before the courts as a plaintiff and defendant.[22] At the same time, the new Act ended the licence requirement, and specified that the shareholding company was to be accorded the status of a legal subject from the moment it was registered with a state authority set up for this purpose.

As Herslow maintained, the *persona ficta* approach offered juridical legitimacy to the fact that the shareholders bore a limited responsibility for the obligations undertaken by the shareholding company. It was also here that its practical function was to be found. However, when it came to legitimizing the rights of the shareholders to divide the profits among themselves the fiction was less convincing. The link was not logical. On the one hand, the physical persons were pushed into the background as not being responsible legally where the company's debts were concerned—here the company in its capacity as an independent legal subject was alone responsible—while on the other hand the physical persons came back into the picture when it was a question of distributing the profits made by the enterprise. For this reason, the limited responsibility was a privilege conferred on the shareholders by society. Herslow was of the opinion that it would be consistent if at the same time the shareholders' right to profits was limited so as to benefit the employees, especially since the shareholders bore a limited responsibility for the debts of

[20] See Knut Olivecrona's review of Hagströmer's dissertation in *Tidskrift för lagstiftning, lagskipning och förvaltning* (ed. Christian Naumann), 1872, pp. 747–51.

[21] See 1877 NJA 4, 1880 NJA 20, 1883 NJA 31. As early as in the 1850s, in his lectures at Uppsala University, Olivecrona taught his students that the shareholding company was an independent legal subject via-à-vis the shareholders. See *Anteckningar under prof. Olivecronas föreläsningar över den speciella kontraktslären*, by Axel Petersson, spring term 1857 at Uppsala, p. 214 (manuscript in the Stockholm University Library).

[22] *Förslag till lagar om enkla bolag och handelsbolag, om aktiebolag samt om föreningar för ekonomisk verksamhet m. m.*, Stockholm 1890, p. 17.

the shareholding company which made the position of the employees less secure. This was true even though the workers had a prior legal right to the wages they had earned but not received.[23]

Herslow repeated all the well-known arguments for the introduction of the profit sharing system. A "state of harmony" between workers and employers would once again prevail and this would end the "state of overt or covert warfare" that was so crippling where industry was concerned. The workers would be diligent, conscientious and prudent in their work. They would exercise mutual control over each other and would be less inclined to use the strike weapon against their employers. The effect of all this would be to increase the net profits of the enterprise. The shareholders would be amply compensated for that portion of the profit they handed over to the workers, and the workers, too, would be able to develop economically, socially and also morally if they were raised from their status as labourers to become part-owners of the enterprise.

According to Herslow's profit sharing model a portion of the profit would be paid to the workers only when the enterprise as a whole had made a real net profit. This meant that any losses incurred in previous years would have to be made good before there could be any sharing out of the net profit. It is true that Herslow was not basing his argument on any clearly defined concept of profit, but from the context it is clear that profit was what remained after the running costs had been covered by gross income. Included in these running costs were wages for workers, salaries for management and office staff, the interest payable in the share capital, and depreciation allowances to be deducted in respect of the fixed assets and chattels of the enterprise.

It was Herslow's view that the right to share in the profits should be limited to workers who had been employed for a certain period of time and had proved reliable and suitable in their jobs. He suggested a "mixed" profit sharing system; only part of the workers' share would be paid in cash, the rest being paid into a benefit fund for insurance against sickness, death and old age. If the enterprise ceased to exist the accumulated funds would be used to purchase life annuities for the workers.

A worker who resigned from his job without reasonable cause or was dismissed for good reason by his employer would not only forfeit his share of the current year's profit but would also forfeit his benefits in the various funds from previous years. This was undoubtedly intended to pressure the workers to stay with their employers and give long and faithful service. However, Herslow imagined that the workers who felt they had been unjustly treated by their employers would be able to have the question of whether there was reasonable

[23] *Prop.* 1895:6, p. 120.

cause for their retirement or dismissal considered by three arbitrators in accordance with the 1887 Arbitration Act.[24]

Finally, Herslow asserted that the staff who were entitled to a share in the profits ought to have a right to appoint a representative who would take part in the annual presentation of the company's accounts, so that the employees would not suspect that their employer had withheld from them the true details of the size of the year's profit.[25]

4. THE SOCIAL LIBERAL DEBATE REGARDING PROFIT SHARING: HERSLOW'S PREDECESSOR IN GERMANY

In view of the ideas Ernst Herslow put forward in his statement on the proposed law relating to shareholding companies, there is much to suggest that his political sympathies were with a social liberal outlook. In this connection, mention should be made of the fact that he was a brother of the well-known Liberal member of the Riksdag, the newspaper editor Carl Herslow, who had also supported the idea of the constitutional state (*Rechtsstaat*) during debates in the Riksdag.[26] One cannot exclude the possibility that the two brothers cooperated or at least influenced each other concerning various political issues.[27]

By referring to the freedom of contract, most supporters of the existing system felt that the decision concerning a possible application of profit sharing must be left to each employer. Herslow, on the other hand, wanted the state to take the initiative by including in the Act relating to shareholding companies a provision making the profit sharing system compulsory as far as Swedish shareholding companies were concerned. Even if Herslow was probably alone among contemporary Swedish jurists and economists in holding this view, he had a predecessor in the German constitutional law theorist Robert von Mohl (1799–1875), who was one of the first in Germany to develop the concept of the constitutional state (*Rechtsstaat*) in a social liberal direction.[28] As Herslow's view of the link between large-scale enterprise and social trends coincided in many respects with von Mohl's view of the labour question, there is reason in this connection to examine von Mohl's view of the profit sharing system and its social context.

[24] See *SFS* 1887:83.

[25] *Prop.* 1895:6, p. 121.

[26] See, e.g., the debate in the Second Chamber in connection with the proposed act relating to insurance for accidents at work, etc., AK 1891:50, pp. 8 f.

[27] *Svenskt Biografiskt Lexikon* 18, pp. 732–5, Karl Englund, *Arbetarförsäkringsfrågan i svensk politik 1884–1901*, Uppsala 1976, p. 166.

[28] Hans Hattenhauer, *Die geistesgeschichtlichen Grundlagen des deutschen Rechts*, Heidelberg/Karlsruhe 1980, p. 143. Peter von Oertzen, *Die soziale Funktion des staatsrechtlichen Positivismus*, Frankfurt am Main 1974, pp. 96–104.

As early as 1835 von Mohl had proposed compulsory profit sharing as a measure designed above all to eliminate the antagonism between employers and wage earners, and instead create mutual confidence and a feeling that their interests coincided.[29]

von Mohl was of the opinion that the constantly changing structure of production was the cause of the social problems of his day. The close personal relationship between master and apprentice, which characterized the craft industry, was lost in large-scale industrial operations. Such operations were accompanied by anonymity and mistrust. The feeling of intimacy between worker and employer would thus disappear completely as industrialization proceeded. Against this background von Mohl felt that state intervention in the fixing of workers' wages by the enterprise was defensible since the aim was to eliminate a danger that affected society as a whole. The method recommended by von Mohl was for the state to stipulate by law the application of the profit sharing system as a condition for being granted permission to establish a large industrial enterprise. As far as the existing factories were concerned, von Mohl maintained that they would soon follow suit in order to survive in the competitio for labour that would ensue.[30]

In principle, von Mohl maintained throughout his life the view that the state had the right to intervene in the fixing of wages and to require the implementation of the profit sharing system. The way society was developing also seemed to confirm that von Mohl had made a correct assessment of the consequences of continued industrialization. In 1869, at the age of 70, von Mohl published a wide-ranging work entitled "Staatsrecht, Völkerrecht und Politik" (Constitutional Law, International Law and Politics) in which he once again took up this question. Again, von Mohl noted that the new type of large-scale industry had basically changed the situation of the worker. The worker had been transformed into an "intelligent part of the machine",[31] and industrial workers were in a weak position in relation to their employers. They were judged not according to their individual qualities but were counted as part of the mass. A large firm needed a number of workers for its operations but no particular individual worker. If a worker demanded a wage the employer felt was excessive, or was difficult in other ways, there were others who were ready to take his place. The size of the wage was determined according to the iron law of supply and demand. In the long run, the worker was obliged to accept a wage which only covered his minimum living costs. The one weapon the

[29] Robert von Mohl, "Über die Nachteile, welche sowohl den Arbeitern selbst als dem Wohlstande und der Sicherheit der gesamten bürgerlichen Gesellschaft von dem fabriksmässigen Betriebe der Industrie zugehen", *Archiv der politischen Oekonomie* (ed. Karl H. Rau), no. 2, 1835, p. 173.

[30] von Mohl, *loc. cit.*, p. 181.

[31] Robert von Mohl, *Staatsrecht, Völkerrecht und Politik*, vol. 3, Tübingen 1869, p. 516.

workers had against the employers was the strike, but the effects of this were uncertain since the firm could usually hold out longer. In addition, the strike was associated with great suffering for the worker's family.[32]

Because of its highly-developed mechanized operations and the extreme division of labour required by a large, modern, industrial enterprise, industrial work was monotonous and soul-destroying. The general nature of the work of the craftsman had been replaced by tasks that were strictly limited and one-sided.[33]

However, according to von Mohl, the most adverse consequence of industrialization was the rigid social stratification that seemed to be unavoidably linked with large-scale factory operations. This assessment seemed to apply particularly to the working class, where upward social mobility seemed to have ceased. The worker found it increasingly difficult to work himself up financially and become his own boss. von Mohl regarded this social barrier as an inherent element in the structure of production itself; the more costly the machinery that was used in production, the more difficult it would be for the worker to raise capital in order to become his own boss.[34]

For this reason it was quite natural and human for the worker to be filled with hatred and enmity towards all those who were better off. According to von Mohl, this injustice was experienced most strongly in comparison with one's own employer, whose success and wealth were ultimately a result of the profit produced by the work of the worker and his comrades. With the passage of time, the bitterness and hostility of the workers had become increasingly menacing and dangerous to society, since it provided a breeding ground for all types of socialist agitators.

As we have seen, Herslow followed von Mohl in taking the changed organization of work as the starting point for his analysis of the labour question. The parallel with von Mohl is especially striking regarding Herslow's emphasis on how difficult it was for workers to improve their social situation. It is true that, unlike von Mohl, Herslow approached the question from a different angle—that of the legal position of the shareholding company—but his view was essentially the same. Both von Mohl and Herslow regarded the polarization between worker and employer as an inherent structural problem of the industrial society based on capitalism. As previously noted, Herslow proposed profit sharing as a panacea for the alarming developments in society, and von Mohl too had the same faith in the miraculous properties of profit sharing. The bitterness felt by the worker concerning the excessivly large profits appropriated by entrepreneurs and capitalists would be neutralized if he himself were

[32] von Mohl, *op. cit.*, p. 516.
[33] von Mohl, *op. cit.*, p. 518.
[34] von Mohl, *op. cit.*, p. 518.

able to benefit from the income of the firm by receiving a share of the profit. The idea of profit sharing could also be easily defended from the points of view of justice and common sense. Nor was it possible to raise any decisive legal objection to making its implementation compulsory. On the question of the right of the state by means of legislation to encroach on what was felt to be the private commerce of the citizen, von Mohl developed a line of reasoning that came to be used by Herslow some 25 years later, even if it did not take such an explicit form: The state had a duty to intervene for moral reasons by limiting the freedom of contract.

Moreover, von Mohl did not see any reason to prevent legislation being used to steer society in a certain desired direction providing the purpose was justified.

Towards the end of his life, however, von Mohl began to doubt whether it was possible to realize profit sharing. Economic as well as psychological obstacles barred the way to the system being accepted by people in general. One point made by von Mohl was the difficulty of finding a method that would enable the size of the year-end profit to be worked out in a way that would satisfy workers as well as employers. On the one hand, there was a risk that the workers would refuse to accept the profit announced without any evidence at all being produced by the employer, while, on the other hand, the employer could, by referring to the fact that the firm had to protect its business secrets for reasons of competition, refuse to provide his employees with an insight into the firm's books. Furthermore, according to von Mohl, it was not advantageous for the firm to announce a certain profit or a definite loss, something which any firm could incur without necessarily becoming insolvent. It was possible to foresee that such information might lead to incalculable financial consequences for the company in question. Yet another hazard, and one that was not completely without foundation, was that the workers who were entitled to a share of the profit might also demand a share in the management of the firm. In von Mohl's opinion this was out of the question, since no industrial enterprise could be managed by a "parliamentary government".[35]

Against the background of these objections, it was doubtful whether a profit sharing experiment would succeed; von Mohl concluded by stressing that even if the introduction of a profit sharing system were indisputably desirable, there was no doubt that it would meet with resistance from entrepreneurs as well as from capitalists, and for good reasons.[36]

Herslow, however, did not advance any of the doubts von Mohl had entertained concerning the prospects of implementing the profit sharing system in practice.

[35] von Mohl, *op. cit.*, p. 562.
[36] von Mohl, *op. cit.*, p. 565.

Even though von Mohl had pointed to the necessity of a redistribution of the firm's profits for the benefit of the worker with the aim of bridging the social gap between capital and labour—with state backing for such a procedure —he still stuck to the constitutional principle that the state should not be allowed to trespass on private commerce between individual citizens. The West German social historian Eckart Pankoke has aptly described the consequences of von Mohl's contradictory views in this way:

> Although von Mohl agreed with the ideas of the socialists as far as social policy was concerned, he remained faithful to the creed of liberal social policy which said that the "labour question" was a purely "social" matter that was divorced from those of a political nature and consequently could not be dealt with by changing the political system.[37]

This description could also have been applied to Ernst Herslow.[38]

If in the course of the debate in the Riksdag concerning the proposal for a new shareholding companies act Herslow's statement was passed over in silence,[39] the press displayed all the more interest in the thoughts aired by the Supreme Court Justice. In this connection, the press provides an important source of information since it not only tells us about the discussion concerning the profit sharing system, but also throws light on the general political attitudes adopted at the turn of the century regarding freedom of contract and distribution of industrial profits.

5. THE SWEDISH DEBATE ON PROFIT SHARING: THE REACTION OF THE NON-SOCIALIST PRESS

Nya Dagligt Allehanda, a conservative organ, carried an article which examined in detail Herslow's thesis about the link between the shareholding company as such and "the social gap".[40] According to the writer of the article, Herslow's statement was of special interest since it was an exposé of the ideas recently put forward by the "liberal" school concerning the "labour question". What was characteristic of this new "liberal" criticism was that it rested on the same basic view as that of the socialists in their analysis of social conditions.

The article maintained that Herslow's account of the workers' situation was exaggerated and, in certain respects, inaccurate. In the first place, in the context of the relationship between workers and employers, the legal form of the enterprise was of no importance, even though Herslow said it was. In the

[37] Eckart Pankoke, *Sociale Bewegung – Sociale Frage – Sociale Politik. Grundfragen der deutschen "Socialwissenschaft" im 19. Jahrhundert,* Stuttgart 1970, p. 187.

[38] See, e.g., *Prop.* 1891:23, pp. 13–30.

[39] See FK 1895:23, p. 2; 24, p. 1; 33, p. 8; AK 1895:32, p. 2; 33, p. 1; 43, p. 26.

[40] See *NDA* for November 7, 1894. On November 3, this newspaper also printed a detailed report of Herslow's statement.

large enterprise, the position of the workers was the same irrespective of whether the firm was operated by a shareholding company or one single person. The fact that an enterprise as a legal entity was a partnership or a trading company did not therefore guarantee that any personal contact existed between worker and employer. The size of the firm was not dependent on its legal nature, and if there was to be any criticism of working conditions in industry then it was not enough to take the legal form as the starting point. The criticism must instead apply to all enterprises irrespective of whether they were owned by one person or by thousands of shareholders. In addition, the writer of the article doubted that the workers experienced their lack of contact with the shareholders as something negative. Apart from that, as far as the working personnel were concerned, it was a matter of complete indifference whether the persons who had invested money in the enterprise were shareholders or lenders. Herslow's assertion that the shareholding company, as an institution, had contributed to the sharpening antagonism between workers and employers was therefore rejected.

Against the background of the fact that, in his statement on the proposed new act, Herslow had maintained that a "personal bond" was an essential condition for the solution of the "labour question", the writer posed the question of whether Herslow wanted to restore the old patriarchal relationship between worker and employer, and went on to ask Herslow whether he wished to abolish the shareholding company as an institution since he was of the opinion that it was impossible for any relationship of a personal kind to exist within the legal entity constituted by such an enterprise. It was, moreover, difficult to see how the profit sharing system, which Herslow had proposed should be compulsory, could replace the lack of personal contact. What the writer of the article was mainly concerned to demonstrate was that Herslow's reasoning was logically inconsistent.

Herslow's view that the antagonism between worker and employer had sharpened was described as a statement without foundation and one that had no basis in reality. On the contrary, it was possible to observe that the workers' demands had been received with goodwill and great generosity by the employers, and that in recent years the labouring population had experienced a greater improvement in their living conditions than had the other classes in society.

> The impartial observer must admit that in this country relations between worker and employer are good and that there is no such thing as a serious conflict between them. And since Mr Herslow seems to imagine that class differences in this country are widening all the time, he appears to be mistaken.

Finally, *Nya Dagligt Allehanda* condemned Herslow's proposal as unsuitable and unnecessary. The practical problems connected with the profit sharing

system were difficult to solve and even if, contrary to expectations, a usable method were to be found, there still remained the question of whether the state could be given the right to intervene in the fixing of wage levels within private industry and commerce. According to the writer, what the answer to the latter question would be was known in advance: any kind of state intervention in the agreement between worker and employer concerning wage levels and terms of employment was reprehensible.[41]

The criticism put forward by the conservatively inclined *Svenska Dagbladet* took a different line. In an article entitled "A Dangerous Experiment", attention was directed mainly to the negative effects that the profit sharing system could be expected to have on relations between worker and employer.[42] According to this newspaper, every employer knew quite well that it was difficult to satisfy the workers, even when they did not expect more than their agreed daily wage. If the workers were given the right to share the profits of the enterprise with their employer then "yet another means of fomenting trouble would be handed to strike instigators and professional agitators". If workers were of the opinion that the profit was too small they would, for example, be able to accuse the employer of not running the enterprise well enough or of trying to cheat the workers out of their fair share of the profit. Instead of functioning as an instrument for equalizing interests, the profit sharing system would lead to ever sharper antagonism between the two sides. For this reason, *Svenska Dagbladet* characterized the profit sharing system as an experiment in social policy that represented a threat to the existing social order; if you gave the worker an inch he would take a mile, and a process would be triggered the consequences of which would be incalculable. Consequently, wrote *Svenska Dagbladet,* a wiser policy would be to refrain from all initiatives resembling the one recommended by Herslow and thereby avoid encouraging the workers to claim more from their employers. The state ought to remain passive and function only as a guardian of the prevailing economic and social order in society.

It is worth noting that, unlike *Nya Dagligt Allehanda, Svenska Dagbladet* never denied the existence of any antagonism between worker and employer. This newspaper did not represent such an uncompromising and dogmatic brand of conservatism as did the former.

In their reaction to Herslow's proposal, both of these newspapers expressed the classical liberal "laissez-faire" spirit, and they also, understandably enough, represented the interests of the employers.

The liberal press, represented here by *Aftonbladet* and *Göteborgs Handels- och*

[41] See also *NDA* for December 19, 1894, "Vinstandelssystemet i England".
[42] *SvD* for November 12, 1894.

Sjöfartstidning, was not as fundamentally hostile to Herslow's ideas.[43] *Aftonbladet* noted that Herslow's description of the advantages and disadvantages of the modern shareholding system was accurate in many respects, though the shareholding company as such could not be blamed for the widening social gap between worker and employer. All that could be condemned was its misuse. Apart from this, the newspaper was of the opinion that the ever increasing discontent among the workers need not be interpreted as indicating that the social gap had indeed widened. However, if it was accepted that social antagonism dangerous to society did exist, and *Aftonbladet* felt that this was the case, then it was not between worker and employer that one should look for this antagonism but rather "between vast wealth, often misused on insane luxuries, and desperate poverty". It is surprising, in this connection, that *Aftonbladet* clearly did not consider the shareholding system to constitute an important source of private wealth.

From the point of view of justice, the inclusion of provisions requiring the introduction of a profit sharing system in the legislation relating to shareholding could, in principle, be defended as being equivalent to the limited liability of shareholders. This newspaper therefore supported Herslow's view that the limitation of liability was a privilege for which the shareholders ought to compensate society by accepting increased social obligations.

Despite this, however, *Aftonbladet* felt that there were insurmountable obstacles to an implementation of Herslow's proposal. What was above all in jeopardy was freedom of contract, since

> a legal requirement that all shareholding companies without exception should apply a profit sharing system must undeniably mean that the legislator has come to the conclusion that the ordinary employment contract does not coincide with the interests of society.

As a logical consequence of the liberal standpoint represented by *Aftonbladet*, the ranks were closed in defence of freedom of contract, which was regarded as an essential condition for a market economy based on individual free will and initiative.

Referring to the realities of business management, *Aftonbladet* declared that coercive legislation related to profit sharing could not solve the "labour question". According to this newspaper, it was public knowledge that far from all shareholding companies yielded the "current rate of interest" on their share capital. Furthermore, there were a number of firms whose net profits could hardly be affected by having the workers intensify their efforts. In these cases the financial surplus earned by the firm would not be increased by the workers being stimulated to display solidarity with the employer. Many firms would

[43] *AB* for December 19 and 20, 1894; *GHT* for November 2 and 3, 1894.

continue to suffer losses in spite of the introduction of the profit sharing system, while some firms would make profits that would only be sufficient to cover the dividends paid to the shareholders, whereas only a few shareholding companies, whose net profits were large enough, would be in a financial position to satisfy the workers' legal right to a share in the profits. In other words, when faced with the reality of the situation of Swedish shareholding companies, Herslow's argument lost all practical relevance, according to *Aftonbladet*.

In conclusion, *Aftonbladet* warned that coercive legislation of the kind that Herslow proposed would at the same time imply that the state was taking it upon itself to ensure that such a legal rule would be observed:

> One need not be intimately acquainted with the secrets of modern business life to realize what a difficult undertaking the state would have to accept on account of the moral obligation to exercise such supervision. If the state could satisfactorily carry this through—well, then we would hardly be able to continue feeling doubtful about the possibility of a complete reorganization of industry and commerce along state socialist lines.

Even though the tone adopted by *Aftonbladet* was "milder" than that of the conservative newspapers cited above, the message was essentially the same. The compulsory introduction of profit sharing in shareholding companies by means of coercive legislation was incompatible with a capitalist system of industry and commerce, which presupposed an inviolable right to own property and legally guaranteed freedom of contract regarding labour.

However, Herslow's criticism of the Committee's proposed shareholding companies act received unreserved support from *Göteborgs Handels- och Sjöfartstidning*, which stressed that:

> it ought to be regarded as natural that not just the financial and legal aspects of the shareholding company system, but also its extremely serious social aspects, find expression in legislation on this point. It is with delight that we note that at least one voice within the Supreme Court—and a very influential one at that—is raised in support.[44]

This newspaper did not go more deeply into any technical or legal details regarding Herslow's profit sharing system, but merely expressed a generally positive view of the state taking various social policy steps in order to solve the labour question.

6. THE SOCIAL-DEMOCRATIC DEBATE ABOUT PROFIT SHARING

The proposal emanating from liberally-minded quarters in favour of social policy or "state socialist" intervention in the business world was the subject of

[44] *GHT* for November 3, 1894.

a heated debate within the ranks of Social Democrats internationally. This debate was concerned with the question of whether liberal economic reform legislation was or was not in keeping with the development towards a truly socialist society. At the German Social Democratic Party Congress at Erfurt in 1891, state socialism was rejected on the grounds that the modern state was an instrument favouring the interests of the ruling propertied classes and that the class lines within this state would not be changed by social reforms introduced on the initiative of the state.[45] Karl Kautsky, commenting on the decision of the Congress, clarified the Party's view of state socialism in the following way:

> When the modern state takes over certain enterprises and functions, it does not bother itself with restricting capitalist exploitation, but with protecting and reinforcing the capitalist system of production or in order to take part itself in this exploitation ... And as an exploiter, the state is superior to the private capitalist since, alongside the economic powers of the capitalist, it also has at its disposal corresponding political ones, namely its own authority.[46]

According to this view the state could only become a socialist community when the working classes had taken over.

However, the debate did not end with the statement of principle issued by the Erfurt Congress. In 1892 a violent argument broke out between the Social Democratic theorists Georg von Vollmar and Wilhelm Liebknecht as a result of an article in which Vollmar had referred in comparatively favourable terms to the ideas of state socialism. Liebknecht was irreconcilably opposed to Vollmar and asserted that Social Democracy must firmly reject all forms of state capitalism, which he regarded as a form of capitalism that was particularly dangerous to the working class. The German debate aroused great interest among Swedish Social Democrats. In a series of articles in *Social-Demokraten,* Hjalmar Branting, chairman of the Social Democratic Party and later Prime Minister, gave an account of the ideas that were developing in Germany.[47] Branting himself represented an undogmatic point of view and felt that one should not commit oneself to any particular principle, but should test each individual case as to whether or not Social Democracy could support a suggested "state socialist" reform. The politically pragmatic approach of Social Democracy to reform legislation, with a "state socialist" label, was explained by Branting in the following terms:

> Here in Sweden, such matters as the insurance of workers are definitely considered to be within the sphere of state socialism, and to the extent that our Party also

[45] The concepts "Kathedersozialismus" and "Staatssozialismus" do not coincide exactly. The difference between them is explained as follows by Dieter Lindenlaub in *Richtungskämpfe im Verein für Sozialpolitik,* Wiesbaden 1967, pp. 93 f.: "Der Begriff 'Kathedersozialismus' kennzeichnet alle die nationalökonomischen Hochschullehrer, die das Prinzip der Sozialreform bejahten. Der Begriff 'Staatssozialismus' degegen konkretisiert alle Sozialreform als staatliche Sozialreform."

[46] Karl Kautsky, *Das Erfurter Programm in seinem grundsätzlichen Theil,* Stuttgart 1892, pp. 129 f.

[47] Hjalmar Branting, *Tal och skrifter i urval,* vol. 1, Stockholm 1926, pp. 225–43.

> seeks to encourage this more up-to-date form of poor relief we cannot avoid being included among the state socialists. But let it always be held to the credit of Social Democracy that it unreservedly gives the masses *its* reasons for this or that reform, not because these would preserve something now existing, but to the extent they would *hasten* and *smooth the way towards* the state of affairs we are striving for—we work for small changes.[48]

Branting's pragmatic solution of the problem, which was also supported within the Party,[49] may be seen as an expression of the reformist ideas developing within Swedish Social Democracy at that time.[50]

One "state socialist" reform which, on the other hand, the Social Democrats rejected outright was the profit sharing system, since they felt it was against the interests of the working class. In 1887, *Social-Demokraten* had printed an article under the heading "A Social Reformer or How Best to Exploit the Workers".[51] This article gave advance warning of the negative attitude the Social Democrats would later adopt towards the profit sharing system. In September, 1894, two months before Herslow's statement was issued, Hjalmar Branting returned to this subject in *Social-Demokraten* and pointed out that the profit sharing system was a "backwards" reform to which he could not give his approval. There were, said Branting, two respects in which the system was unacceptable as far as the workers were concerned: on the one hand, it was designed, "in return for the promise of a small tip", to extract as much profit from the workers as possible and, on the other hand, it would split workers within the same trade group, since they would "side with capital against their brothers and the whole of their class—and against their own best interests". For this reason, the profit sharing system would sap the strength of the working class in the struggle against the employers.[52]

Branting's statement provided a mirror image of the arguments presented by the supporters of the profit sharing system: the economic and political benefits, which from the point of view of the entrepreneur were expected to follow from the profit sharing system, were seen as entirely negative from the workers' point of view.

Herslow's proposal for the introduction of a compulsory profit sharing system within the framework of a law relating to shareholding companies

[48] Branting, *op. cit.*, p. 241.

[49] Hilding Nordström, *Sveriges Socialdemokratiska arbetareparti under genombrottsåren 1889–1894*, Stockholm 1938, pp. 385–8.

[50] For a critical historiographical survey of ideological trends within early Swedish Social Democracy, see Christer Winberg, "Tingstens idékritik och den tidiga svenska socialdemokratin", *Scandia* 1980, no. 46, pp. 97–116. See also Lars-Olof Ekdahl & Hans Erik Hjelm, "Reformismens framväxt inom svensk arbetarrörelse", *Teori- och metodproblem i modern svensk historieforskning* (ed. Klas Åmark), Stockholm 1981, pp. 228–62.

[51] *Soc-Dem* for November 26, 1887.

[52] *Soc-Dem* for September 13, 1894.

occasioned no fewer than four detailed articles in *Social-Demokraten,* which is evidence of the importance it attached to making its readers aware that the profit sharing system could not be considered compatible with the interests of the workers.[53]

According to *Social-Demokraten,* Herslow had supplied what was in principle a correct description of economic developments and their social consequences. In addition, the legal aspects advanced in his statement concerning the shareholding company as an institution were worth considering, even though Herslow had recoiled in the face of the conclusions to which his observations must, of necessity, lead. Instead of trying to see the connections involved in the social problem, Herslow, said the newspaper, had

> wishfully turned his gaze on the most utopian dream of our days, eliminating the gap between worker and employer and restoring the bond between them. Our Supreme Court Justice is one of those apostles of harmony who cling to such dreams and, while recognizing that the legislation on protection and insurance has not provided the worker with crumbs large enough to make him feel satisfied and content, he seizes on the palliative of profit sharing, even before legislation giving protection and insurance has been seriously implemented, least of all in Sweden.[54]

This newspaper had uncovered a contradiction in Herslow's reasoning. On the one hand, Herslow described the economic and social development in Sweden in a way that was in broad agreement with socialist values, yet proposed a reform that would be carried through on terms that would be wholly determined by the capitalists. However, added *Social-Demokraten,* Herslow's contradictory presentation could not be ascribed to a lack of awareness or to credulity since he explicitly argued in favour of the interests of those who owned capital. Consequently, Branting wrote in *Social-Demokraten,*

> we can now see that Mr Herslow has been fully aware of every little ingenuity whereby astute employers are able to exploit the profit sharing system, and so fetter their workers, when we observe how he systematically inserts small rules designed to reduce the apparent sacrifice for a just principle to devious speculation that will give the coupon holders more than they could expect to receive under the old system—and at the same time we witness the complete disappearance of the only halo to which our liberal social reformer could otherwise have laid claim and which could have been furnished with the motto: He did not know any better, but at least he meant well![55]

As a result of Herslow's statement in the Supreme Court, Branting gave an interview which was published in *Social-Demokraten.* When asked by a journalist

[53] *Soc-Dem* for November 3, 7, 9 and 14, 1894.
[54] *Soc-Dem* for November 3, 1894.
[55] *Soc-Dem* for November 9, 1894. The newspaper *Arbetet* also pointed to the contradictions in Herslow's ideas. After a long report on the statement the writer bursts out in surprise: "However, the Justice ends not by proposing any socialist reforms but by proposing the compulsory introduction of the profit sharing system." *Arbetet* for November 5, 1894.

whether it was not a remarkable sign of the times that Herslow had submitted such a radical proposal, Branting replied:

> Ten years ago it would have been unthinkable; now, however, the vaccine of state socialism is fashionable, though to be sure it is more talked about than acted upon. Even so, Herslow's whole outlook is more legalistic than is acceptable even for a Supreme Court Justice. What he wants to do is saddle Swedish legislation relating to shareholding companies with most of the blame for the fact that large-scale production has got the upper hand and for the social consequences that have followed therefrom! This legislation may have made is easy for large-scale capitalism to swallow up the class of independent entrepreneurs, but at the most it merely lent a helping hand to this development—it was never its cause. Thus, [Herslow] is being legalistically utopian to an extreme degree, if he expects his little reform to turn back the clock and save the craftsman.[56]

7. THE IDEOLOGIES BEHIND THE REACTIONS OF THE PRESS

Judging from the reaction of the press, Herslow could hardly expect much immediate support for this proposal, since the conditions that would imply sufficient political backing for the profit sharing system did not exist. The conservative newspapers *Nya Dagligt Allehanda* and *Svenska Dagbladet,* which argued from a more classical liberal standpoint, were fundamentally opposed to the state being allowed, by means of legislation, to intervene in private economic activity. The interests of the workers were best served when economic forces were left to operate freely without any restrictions imposed by the state. Free enterprise was a precondition of increased production, and this in turn would lead to a gradual improvement in the worker's living conditions. What was referred to as the "social question" would dissolve of its own accord and would never become an acute problem. In a market economy that was functioning completely rationally, one could therefore expect social harmony to prevail. According to this view, which was most clearly expressed by *Nya Dagligt Allehanda,* the state-society dichotomy would be rigorously maintained. In practice this meant that the state, which was the organization of bourgeois society, would exclusively guarantee the preservation of law and order. In other respects bourgeois society would function according to its own principles without any intervention by the state.

The socialist newspapers *Social-Demokraten* and *Arbetet* took a similar, fundamentally negative view of Herslow's proposal. What the socialist criticism concentrated on above all was the fact that the profit sharing system was designed to encourage the individual worker to feel solidarity with his employer, with the consequence that the labour movement would be divided. For this

[56] *Soc-Dem* for November 14, 1894.

reason, from a socialist point of view, Herslow's compulsory sharing of profits could only be characterized as an attempt to take the sting out of the workers' trade union struggle for better working and living conditions. Therefore, in socialist circles as well, freedom of contract regarding employment was defended. As long as the state reflected bourgeois, capitalist values it had to be treated with great suspicion by the workers and thus kept out of the wage agreements arrived at with the employers.

The liberal newspapers *Aftonbladet* and *Göteborgs Handels- och Sjöfartstidning* represented the middle-of-the-road view, according to which experience had demonstrated that the social problem that had emerged in industrial society could not be solved in accordance with a "laissez-faire" economic programme. What, above all, reinforced this view was the fact that social polarization remained in spite of continued industrial expansion. Increased production therefore did not automatically lead to equalization of interests and to the social harmony associated therewith. In order to prevent a sharpening of class antagonism, which in all probability would jeopardize the existing social order, it would be necessary to find a middle way of bridging the state-society dichotomy without infringing on the right to own property and freedom of contract. The answer was social reforms that would be carried through as a result of state initiative. In this way the interests of the workers would be met at the same time as the freedom and continued existence of private enterprise was guaranteed. A stipulation to the effect that all shareholding companies had to apply a profit sharing system could not, however, be regarded as bringing these interests together. On the contrary, the compulsory profit sharing system conflicted with the freedom of contract, which was regarded as the very foundation of the industrial capitalist order. On these grounds, these newspapers felt they were unable to support the proposal for compulsory profit sharing, even if they sympathized with its social aims. If the workers were to receive a share of the profits of enterprises, this would have to be the result of a voluntary undertaking by the employers. This view was most clearly expressed in *Aftonbladet,* which otherwise took a positive view of proposed liberal social reforms, while *Göteborgs Handels- och Sjöfartstidning* spontaneously welcomed Herslow's initiative, though without reflecting on its technical and legal implications.

8. PROFIT SHARING IN PRACTICE AT THE TURN OF THE CENTURY

The issue of the extent to which profit sharing was implemented in practice is something which we know very little about. There has been essentially no

research done in this field. However, one can guess that the implementation of profit sharing was very limited in Sweden.

One of the few major industrial enterprises that introduced it was *Nya AB Atlas*. At the statutory annual general meeting of this company in 1891, it was decided that 20 per cent of the firm's net profit after deductions for overheads, interest charges and depreciation of fixtures and fittings should be distributed to the workers in the form of shares of the profit. The initiative regarding the introduction of profit sharing, taken by the managing director, Oscar Lamm, at the time *Nya AB Atlas* was formed in 1890, must be viewed against the background of the unrest existing that year on the labour market. It was in 1890 that the newly-formed Social Democratic Labour Party held its first May Demonstration, and the main demands put forward by the demonstrating workers were for an eight-hour day and higher wages. That same month a strike involving 700 workers broke out at Bolinders engineering works in Stockholm. At the time, this was an unusually large strike. From 1880 to 1909 there were very few strikes involving more than 75 workers,[57] although the number of strikes in Stockholm during this period was very high.[58] There is no doubt that people in many quarters experienced these events as a sharpening of the antagonism between capital and labour. In addition, the socialist threat had taken concrete form through the formation of the Social Democratic Labour Party.[59] It was in this historical context that the Atlas shareholders unanimously voted for an experimental introduction of the profit sharing system. It is probable that they were hoping that the system, as its theorists and proponents promised, would effectively prevent labour disputes at the newly-formed firm. Until 1903, manual workers and office workers had received 314 000 kronor and 77 000 kronor respectively, which may be compared with the 775 000 kronor distributed to shareholders as dividends during the same period. However, because of labour disputes the Atlas company suspended the distribution of profit shares in 1904, and in 1907 the whole system was finally ended.[60] In other words, practical experience had shown that the profit sharing system was not an effective guarantee against strikes. It may be that the main reason why the profit sharing system did not succeed in Sweden was the emergence of a strong trade union movement which encouraged workers to take up the struggle for shorter working hours and higher wages. Until these

[57] Jane Cederqvist, *Arbetare i strejk. Studier rörande arbetarnas politiska mobilisering under industrialismens genombrott. Stockholm 1850–1909*, Stockholm 1980, pp. 95, 112.

[58] Cederqvist, *op. cit.*, p. 156.

[59] Nordström, *op. cit.*, pp. 157–74.

[60] Torsten Gårdlund *et al.*, *Atlas Copco 1873–1973. Historien om ett världsföretag i tryckluft*, Örebro 1973, pp. 56 f., 368 f. See also Torsten Gårdlund, "En företagsledare med socialt intresse", *DN* for August 24, 1974. Atlas, which was founded in 1873, became one of Sweden's biggest engineering industries producing pneumatic power tools and compressors.

aims were achieved, all attempts by the employers to introduce profit sharing were to be rejected.[61]

[61] In other countries, too, the practical experience acquired from the introduction of the profit sharing system did not measure up to the employers' hopes of improved productivity. See the report of an English investigation carried out in 1894 in *Handel och industri* for December 15, 1894, p. 268, and David F. Schloss, *Methods of Industrial Remunerations*, 3rd ed., London 1898, pp. 279–85.