

1939

Recent Developments of French Labor Law

Stefan A. Riesenfeld

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Riesenfeld, Stefan A., "Recent Developments of French Labor Law" (1939). *Minnesota Law Review*. 2334.
<https://scholarship.law.umn.edu/mlr/2334>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

MINNESOTA LAW REVIEW

Journal of the State Bar Association

VOLUME 23

MARCH, 1939

No. 4

RECENT DEVELOPMENTS OF FRENCH LABOR LAW

By STEFAN A. RIESENFELD*

THE present turmoil in Europe will probably raise serious doubts in almost everybody's mind as to whether it is worth while to give any attention to questions of law and administration of justice on the continent. It might seem that almost all governmental machinery there has either fallen into disorder or has been directed in a course which appears abnormal and pathological. Yet generalizations of this kind are seldom correct, and the present writer believes that the recent developments of labor legislation in France are worthy of being known to American readers interested in labor problems. This is true particularly because it can hardly be disputed that the question of the legal¹ treatment of labor relations is one of the most vital and essential modern governmental problems.

*Instructor in law, University of Minnesota.

¹The word "legal" should not be overlooked. The question of how much and in what direction the law should interfere in labor relations, and how much should be left to the free play of economic forces and the good will of the parties to abide by understandings reached, is at the very root of the whole idea of modern industrial democracy. It might be remembered that Dean Lloyd Garrison has recently advanced the following view with respect to this point: "The establishment and maintenance of satisfactory relations between labor and management (given the essential prerequisites of trained, seasoned and intelligent labor leaders, patient and dispassionate managers and a relative equilibrium of the bargaining power) depend upon the following factors: (1) the frank recognition of the right of employees to organize and to select representatives of their own choosing to deal with management, whether these representatives be employees, non-employees or labor unions as entities; (2) the frank acceptance of collective bargaining, which means the honest effort to regularize by agreement wages, hours and working conditions; (3) the reduction of these agreements to writing; (4) the creation of machinery for facilitating the negotiation from time to time of desired changes in the terms of these agreements and (5) the creation of additional and separate machinery for quasi-judicial interpretation and enforcement of these agreements. Garrison, *The National Railroad Adjustment Board: A Unique Administrative Agency*, (1937) 46 *Yale L. J.* 567, 592.

The phase of French labor legislation which will be treated in greater detail on the following pages is the period beginning with the first cabinet of Leon Blum, who formed his government on the night of June 4th, 1936.² Then a new distinct chapter of French Labor Law was initiated, based on the industrial program of the Popular Front. Premier Blum, in his first official radio address on June 5th, told his listeners of three bills which were among those to be submitted to the two Houses and designed to put into effect the principal reforms demanded by labor, namely the bill concerning the forty hour week, the bill concerning collective bargaining, and the bill concerning paid vacations.³ While the first and the last measures, passed on June 21st, 1936⁴ and June 20th, 1936⁵ respectively, were of greatest social and economic significance and have been the object of much discussion in circles concerned with labor issues, the most interesting feature to the legal profession is probably the development of the law pertaining to collective bargaining. It entered into a new stage with the Collective Agreements Act of June 24th, 1936,⁶ a statute which was soon followed by other legislation.

Collective bargaining has recently come to be regarded as the most effective instrument for the preservation of industrial peace, as the manifestation of a "collaboration of classes" instead of "class struggle," and as the means by which a friendly adjustment of industrial disputes arising out of differences as to wages, hours, and other working conditions could be reached and maintained. This is true for the United States⁷ as well as for France. Thus

²See *Le Temps*, Saturday, June 6th and Sunday, June 7th front page. It might be recalled that this government remained in office until June 21st, 1937; it was followed by the first Chautemps Cabinet from June 22nd, 1937, to January 14th, 1938, and the second Chautemps Cabinet from January 18th, 1938, to March 11th, 1938. A second Blum Cabinet lasted from March 11th, 1938, to April 8th, 1938; on April 10th, 1938, the present Daladier Cabinet assumed its powers.

³See *Le Temps*, Saturday, June 6th and Sunday, June 7th, 1936, page 3.

⁴*Journal Officiel*, June 26th, 1936, p. 6699; (1936) *Dalloz*, *Bulletin Législatif*, 410. This statute was greatly restricted in its applicability by four emergency decrees of the Daladier Cabinet on November 12th, 1938, among a total of fifty-eight emergency decrees enacted on that date. They were the cause of the attempt of the *Confédération Générale du Travail* to call a general strike on November 30th, 1938 which was crushed by the government. Cf. *Pic*, *Le Nouveau Statut du Travail et le Redressement National*, *Revue Politique et Parlementaire*, Jan. 1939, 24, 28, 35.

⁵*Journal Officiel*, June 26th, 1936, p. 6698; (1936) *Dalloz*, *Bulletin Législatif*, 408.

⁶*Journal Officiel*, June 26th, 1936, p. 6698; (1936) *Dalloz*, *Bulletin Législatif* 409.

⁷Cf. *National Labor Relations Act*, section 1, *Findings and Policy*, (1935) 49 Stat. at L. 449.

the great significance which the French New Deal of the Blum cabinet attributed to a reorganization of the law with respect to collective bargaining is readily understood, particularly when one remembers that this government was formed in the midst of the well-known French sit-down strikes that started on May 26th.

To be sure, there already existed a legal recognition and regulation of collective bargaining and the resulting agreements before the new legislation. But the latter opened up a new chapter. To grasp its aims and results a survey of its antecedents might be helpful.

PART I.

THE BACKGROUND OF THE NEW LEGISLATION.⁸

1. THE DEVELOPMENT OF THE LEGAL POSITION OF LABOR UNIONS.

No collective bargaining is possible without concerted action of the workers. Thus the history of collective bargaining is intimately connected with the development of industrial organization and trade unionism. French trade unionism or, as it is called in France, syndicalism, has, as in the case of trade unionism in most countries, undergone different stages: first suppression, then mere toleration, followed by official recognition, and finally of late by active encouragement and fostering on the side of the government.⁹

The era of suppression reaches back, strange as it might seem, to the period of the French Revolution. By a statute of March 17th, 1791, the *Assemblée Constituante* (i.e. the constitutional convention) abolished the old craft guilds of artisans (called corporations) which had come down from the Middle Ages in France, as well as in England and Germany. The existence of these guilds with their sharp monopolistic control of industry¹⁰

⁸An excellent picture of the old state of the law is given by Fuchs, *The French Law of Collective Labor Agreements*, (1932) 41 *Yale L. J.* 1005.

⁹Out of the literature on the development of French trade unionism we mention (in the order of date) Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902); Renard, *Syndicats, Trade-Unions et Corporations* (1909); Zévaès, *Le Syndicalisme Contemporain* (1911); Levine (now called Lorwin) *Syndicalism in France* (1914) *Studies in History, Economics and Public Law*, ed. by the Faculty of Political Science of Columbia University 116; Clark, *A History of the French Labor Movement 1910-1928* (1930); see also International Labor Office, *Studies and Reports, Series A, No. 29, Freedom of Association*, vol. 2 (1927), 87 ff. Surveys of the more recent developments in French trade unionism are given by Villey in the *Revue Politique et Parlementaire* under the title "Chronique du Syndicalisme," which began to be published in the January issue of 1925, 128 ff., and have appeared from then on down to date, at irregular intervals.

¹⁰As to the history of the French guilds cf. Renard, *Syndicats, Trade-Unions et Corporations* (1909) part 1. For the control exercised by the

was considered to be in irreconcilable contrast to the *individualistic* spirit of the French revolution and its magic formula of "liberty" was thought to embrace also the "*freedom of work*."

"To begin with next April first every person shall be free to carry on such business or exercise such profession, art or trade as he may think best."¹¹

This "freedom of work" was considered to exclude also all concerted action on the side of the workers, and there was an immediate occasion so to hold. The carpenters had formed a union, reputed to include 80,000 men in Paris alone, demanding higher wages. This led to petitions by the employers to the Assemblée Constituante to put an end to the "disorders," and the final result was the famous Le Chapelier Bill of June 14th-17th, 1791, forbidding workers' organizations.¹² The prohibitions were strengthened first by a statute of 1803 against coalitions and later under the First Empire by the Penal Code of 1810, which in sections 291 ff. rigorously restricted the freedom of association, and in sections 414-416 prohibited concerted action by the workers with the view of changing their working conditions.¹³

The latter restriction was the first to break down. After a strike of the Parisian printers, sections 414 ff. of the Penal Code were amended on May 25th, 1864¹⁴ so as to recognize by implication the right of coalition by outlawing its exercise under certain conditions only, particularly if accompanied by intimidation. The new section 416 still restricted, however, the freedom of coalition quite considerably.¹⁵ The next step in the development was the

English craft guilds see 1 Ashley, *English Economic History and Theory* (10th ed. 1919); Evans, *The Problem of Control in English Medieval Industry*, (1921) 36 *Pol. Sci. Qu.* 610 ff.; Schechter, *The Historical Foundations of the Law Relating to Trade-Marks* (1925) 38 ff.

¹¹Renard, *Syndicats, Trade-Unions et Corporations* (1909) 146; Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 67, 68. Theoretically the freedom of work was established as early as on August 4th, 1789, when the French constitutional convention suppressed all privileges and monopolies.

¹²Cf. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 217; Levine, *Syndicalism in France* (1914) *Studies in History, Economics and Public Law*, ed. by the Faculty of Political Science of Columbia University, 20 ff.; Zévaès, *Le Syndicalisme Contemporain* (1911).

¹³Cf. Levine, *Syndicalism in France* (1914) *Studies in History, Economics and Public Law*, ed. by the Faculty of Political Science of Columbia University 23; Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 188, 220.

¹⁴(1864) Dalloz, *Jurisprudence Générale, Recueil Périodique et Critique de Jurisprudence, de Législation et de Doctrine* (henceforth cited *Rec. Pér.*), part 4, 53 ff.

¹⁵The article was attacked by Jules Favre as being practically a negation of the right of coalition, but it was passed by majority of the legislature. The reporter on the new bill, M. Olivier, pointed out, that the new crime was

announcement by the minister of commerce and public works in May 1868 that, without modifying the law with respect to coalitions or unions, the government would henceforth tolerate workmen's organizations on the same basis on which it had heretofore tolerated organizations of employers.¹⁶ This period of administrative toleration (*tolérance administrative*) lasted until 1884, when it was replaced by the period of recognition.

The first attempt to obtain statutory recognition of labor unions was a bill submitted by M. Lockeroy on July 4th, 1876.¹⁷ But by reason of its provisions establishing strict governmental control, it was opposed by labor itself. On November 22nd, 1880, a new bill was introduced, which after long debates became law on March 21st, 1884.¹⁸ The statute, expanding the idea of freedom of assembly which had formed the object of two previous general statutes of 1868 and 1881, accomplished the legislative recognition of the freedom of organization in the field of labor unions,¹⁹ repealed expressly the *Le Chapelier Bill* and section 416 of the Penal Code as amended by the statute of 1864, and excluded the sections 291 ff. of the Penal Code from being applied to trade unions.²⁰ Freedom to form trade unions without special governmental authorization was expressly granted, provided that they had as their object exclusively the study and defense of economic, industrial, commercial and agricultural interests.²¹ The unions must deposit their by-laws and a list of their officers with the police authorities.²² A union thus formed possessed, under the rule of the statute of 1884, limited legal personality; it had the right to sue and to acquire property, but not real property except such as might be necessary for assembly rooms, libraries and educational purposes.²³ It was expressly provided that each worker had the right to withdraw at any time, notwithstanding a provision in the

not the coalition as such, but the infringement of the freedom of work by intimidation in consequence of a planned concerted action. Cf. the interesting legislative materials on this bill, (reports and debates) printed in (1864) Dalloz, *Rec. Pér.*, part 4, 53 ff.

¹⁶Levine, *Syndicalism in France* (1914) *Studies in History, Economics and Public Law*, ed. by the Faculty of Political Science of Columbia University 38; Zévaès, *Le Syndicalisme Contemporain* (1911) 80.

¹⁷Cf. Zévaès, *Le Syndicalisme Contemporain* (1911) 93 ff.

¹⁸(1884) Dalloz, *Rec. Pér.*, part 4, 129 (again printing also the highly interesting legislative reports and extracts from the proceedings).

¹⁹In other fields the freedom of association was not fully recognized until a statute of July 1st, 1901.

²⁰Statute of March 21st, 1884, Art. 1.

²¹Statute of March 21st, 1884, Art. 3.

²²Statute of March 21st, 1884, Art. 4.

²³Statute of March 21st, 1884, Art. 6.

charter to the contrary.²⁴ For a violation of the prohibitions and impositions of this law a penalty was provided.²⁵ A statute of 1901 establishing freedom of association in general by abolishing section 291 of the Penal Code seems, however, to have altered the law and to have created impunity for any violation of the *formal* requirements, the only legal sanction now being failure to acquire legal personality.²⁶ A statute of March 12th, 1920, finally abolished the restrictions on the legal capacity of the trade unions. They may now acquire by gift or for consideration all kinds of property; the only thing not permitted to them is to engage in business.²⁷

The effect of this statute of 1884 was to give the unions a secured place in the French legal order. On the other hand the above mentioned section 4 requiring publication of the charters and the names of the officers caused apprehension of persecutions. Thus a general congress of Syndicates, as the labor unions were called, was convoked in Lyons in 1886. There the idea of a Federation of Syndicates was conceived, and a resolution was passed founding a National Federation of Syndicates.²⁸ This organization, however, had a comparatively short life. A split in the political socialistic movement affected its existence. Another central organization was founded in 1892, for the very purpose of competing with the National Federation, namely, the Federation of Labor Bourses.²⁹ An attempt to bridge the split and to merge the two organizations was soon made, and a joint congress of syndicates and labor bourses was called at Nancy in 1894.³⁰ But there a new division occurred, caused by the issue of the general

²⁴Statute of March 21st, 1884, Art. 7.

²⁵Statute of March 21st, 1884, Art. 9.

²⁶Cf. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 236, 238.

²⁷(1920) Dalloz, *Bulletin Législatif* 130; cf. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 276 ff.

²⁸Cf. Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902) 262; Zévaès, *Le Syndicalisme Contemporain* (1911) 108; Levine, *Syndicalism in France* (1914) Studies in History, Economics and Public Law, ed. by Faculty of Political Science of Columbia University 62.

²⁹Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902) 265, 286; Zévaès, *Le Syndicalisme Contemporain*, (1911) 120, 122; Levine, *Syndicalism in France* (1914) 64, 76. A labor bourse is strictly speaking neither a trade union nor a federation of trade unions, but an institution created by different local unions for the purpose of placement of union men and the attainment of other labor interests. As to their legal position cf. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 291. The statutes of 1884 and 1920 do not apply to them.

³⁰More details about this congress, where 1662 French trade unions were represented, can be found in Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902) 265 ff, 271 ff; Zévaès, *Le Syndicalisme Contemporain* (1911) 113 ff.

strike. The members of the National Federation itself disagreed violently, and many left the central organization.³¹ The latter gradually dissolved. But the dissenters summoned a new congress at Limoges in 1895, and there a new central organization was created by 700 syndicates: the Confédération Générale du Travail or, abbreviated, C.G.T.³² The Federation of Labor Bourses continued to have a separate existence. This rivalry greatly impaired the strength of the new group.³³ In 1902 unity was finally reached, and after a change in the structure of the C.G.T. the Federation of Labor Bourses was merged in the C.G.T.³⁴ The C.G.T. was from this time on the only significant central organization of trade unions until the end of the world war. In 1919 the so-called Christian Workers, who adhered to the principles of industrial relations laid down in the Encyclica Rerum Novarum³⁵ of Pope Leo XIII, formed the Confédération Française des Travailleurs Chrétiens. In 1920 the Russian revolution had severe repercussions on the socialistic movement. At the Congress of Orleans, in September, 1920, a minority of communistic syndicates left the C.G.T. and formed on December 23, 1921, a top organization of their own, soon styled the C.G.T.U. (Confédération Générale du Travail Unitaire).³⁶ The C.G.T. and the C.G.T.U. remained adversaries until September 1935. Then the *unité syndicale* (united labor unionism) was re-established.³⁷

The growth of unionism as a whole was, in spite of the laws of 1884 and 1920, slow and irregular.³⁸ Even if one should trust

³¹Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902) 274; Zévaès, *Le Syndicalisme Contemporain* (1911) 120.

³²Cf. Levine, *Syndicalism in France* (1914) 91 ff; Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902) 288; Zévaès, *Le Syndicalisme Contemporain* (1911) 126 ff.

³³On this point see particularly Seilhac, *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902) 277.

³⁴Cf. Levine, *Syndicalism in France* (1914) 162 ff; Zévaès, *Le Syndicalisme Contemporain* (1911) 128.

³⁵As to the Christian Workers unions and their national federation see particularly Villey, *Chronique du Syndicalisme, Revue Politique et Parlementaire*, July, 1925, 125; *Revue Politique et Parlementaire*, July, 1932, 117 ff; and Turmann, *Le Syndicalisme Chrétien en France* (1930).

³⁶The best description of this schism which the writer could find is the article "Syndicalisme" by Desgranges in (1923) *Larousse Mensuel Illustré* 221; see also Dulot, *The Present Position in the French Trade Union Movement* (1923) 7 *International Labour Review* 695, and the report of the First Congress of the C. G. T. U., (1922) 6 *International Labour Review* 563.

³⁷As to this reconciliation see Villey, *Chronique du Syndicalisme, Revue Politique et Parlementaire*, September, 1935, 542, December 1935, 528, April 1936, 118.

³⁸It is very difficult to know the exact numbers of the membership in the French labor unions. Since the World War the French Minister of Labor

the claims of the national organizations, which are reputed by some to be exaggerated,³⁹ the numbers were not very impressive until recently. As late as in 1926 the C.G.T. possessed only 553,770 members, the C.G.T.U. about 505,000 members, and the C.F.T.C. around 120,000 members.⁴⁰ But in the spring of 1936 the C.G.T. possessed 1,116,265 members and jumped up to 4,314,740 after the Popular Front assumed power.⁴¹

2. THE EVOLUTION OF THE POSITION OF COLLECTIVE LABOR AGREEMENTS UNTIL 1936.

A. THE ECONOMIC ROLE PLAYED BY COLLECTIVE AGREEMENTS PRIOR TO THE BLUM CABINET.—The statute of 1884 which conferred on trade unions a legal standing resulted not only in a growing unionization of the French workers, but also in giving these unions an increased possibility of improving the working conditions through lawful action, i.e. through collective bargaining. Frequently the conclusion of such collective agreements was the result of the settlement of a strike.

To be sure, collective agreements are not entirely a product of modern times. There are instances of them in the Middle Ages,⁴²

has published official statistics three times, but the distribution of the members over the different national organizations, i.e. the union affiliation, cannot be derived therefrom. All this is pointed out in the excellent report of the member of the State Council, M. Laroque, on the Collective Labor Agreements in France, a lengthy extract from which is printed in 1935 *Bulletin du Ministère du Travail* 13 ff. The three sets of statistics, which are based mainly on information furnished by the unions themselves, are published in 1922 *Bulletin du Ministère du Travail* 147 (as of January 1st, 1920); 1929 *Bulletin du Ministère du Travail* 419 (as of January 1st, 1926); 1932 *Bulletin du Ministère du Travail* 262 (as of January 1930). According to these statistics there existed on January 1st, 1914, 4846 labor unions under the statute of 1884, with a membership of 1,026,302 workers; on January 1st, 1920, 5283 such labor unions, with a membership of 1,580,967; on January 1st, 1926, 6349 such labor unions with a membership of 1,181,297 workers; and on January 1st, 1930, 6666 such labor unions with a membership of 1,237,223 workers. It is to be observed that not all of these unions belonged to the national groups; on the other hand the latter ones embraced also the civil service unions, which were not regular unions. Another statistical table of the growth of unionism in France from 1884 to 1932 is contained in 52 *Annuaire Statistique 1937, Résumé Rétrospectif*, 58. (This table is evidently based on the surveys by the Ministry of Labor.)

³⁹Cf. Fuchs, *Collective Labor Agreements in American Law*, (1924) 10 *St. Louis L. Rev.* 1007. Considering, however, that these numbers include the civil servant groups, the exaggeration does not seem as considerable as Prof. Fuchs asserts.

⁴⁰See International Labour Office, *Studies and Reports*, Series A No. 29, *Freedom of Association* (1927), Vol. 2, 115.

⁴¹See Maurette, *A Year of Experiment in France*, (1937) 36 *International Labour Review*, 1 ff., 149 ff., at 161.

⁴²Thus the wool-weavers of Speyer (Germany) obtained the conclusion of collective agreements in 1351 and 1362. 1 Lotmar, *Der Arbeitsvertrag* (1902) 758, footnote 1.

and there existed some instances of tariffs agreed to by the employers after strikes in France during the 19th century even before the statute of 1884;⁴³ but only after and as a result of this statute did the bargaining agencies have a permanent and secured legal character. It gave a new impetus to the development. This development, however, did not exhibit a rapid and harmonious tempo, but progressed rather on a slow and irregular path.⁴⁴ In two industries, at least, it is true there were comparatively early collective agreements of great significance, namely, in the coal mining and the printing industry;⁴⁵ also in the textile industry, particularly in silk fabrication, they played a considerable role. But in the other industries and especially in commerce, collective agreements before the war were only of extremely limited importance. They had merely a restricted scope and application, frequently applying only to the employees of one particular plant and regulating but specific points, primarily such as had given rise to a strike.⁴⁶ It was not until after the war that a considerable increase of collective labor agreements in the different branches of commerce and industry took place. But even in the post war period, the role played by the collective agreements was not a leading one.⁴⁷ The National Economic Council in a very interesting report of 1934⁴⁸

⁴³Such "tarifs" were agreed upon particularly in the silk industry of Lyons and the printing industry of Paris. Cf. Moissenet, *Étude sur les Contrats Collectifs en Matière de Conditions du Travail* (1903), 48 ff., 54 ff.

⁴⁴A good survey of this pre-war development is given by Mr. Laroque's *Rapport sur les Conventions Collectives du Travail* Journ. Off. Jan. 3rd, 1935 of which a lengthy extract is printed in 1935 *Bulletin du Ministère du Travail*, 13 ff.; for a much more detailed presentation see Raynaud, *Le Contrat Collectif en France* (2nd ed. 1921) part I.

⁴⁵Cf. Raynaud, *Le Contrat Collectif en France* (2nd ed. 1921) part I. 33 ff. 52 ff.; Laroque, *Rapport sur les Conventions Collectives du Travail*. 1935 *Bulletin du Ministère du Travail*, 26, 27. Particularly important are the famous two collective agreements of Arras of 1891 and 1898, which remained for a long time the basic regulation of the working conditions in the mines of Pas-de-Calais.

⁴⁶Cf. Raynaud, *Le Contrat Collectif en France* (2nd ed. 1921) 64.

⁴⁷Cf. Laroque, *Rapport sur les Conventions Collectives du Travail*, as reprinted in 1935 *Bulletin du Ministère du Travail*. 13 ff., 27. For more detail see Raynaud, *Le Contrat Collectif en France*, (2nd ed. 1921) 68 (dealing with the building industry, metal workers, the chemical industry, transportation, agriculture, and commerce). The number of these petty agreements was, however, rather large; the Office du Travail listed 252 new conventions in 1910, 202 in 1911, 104 in 1912, 67 in 1913. Cf. Laroque, *Rapport sur les Conventions Collectives du Travail*, as reprinted in extract form in 1935 *Bulletin du Ministère du Travail* 13 ff., 27.

⁴⁸An excellent survey about the actual practice of collective bargaining in the different branches of French industry, commerce and agriculture between 1918 and 1933 is given in the Laroque report as reprinted in extract form in 1935 *Bulletin du Ministère du Travail*, p. 32, 33 and 44 ff. Most of the conventions are only local in character and on October 15th, 1933, only 7.5 per cent of the workers were benefited by such agreements.

tried to establish the reasons for this.⁴⁹ The report grouped them under three headings, namely, (a) the progress of social legislation, which dispensed in some respects with the necessity of such agreements, (b) the resistance of the employers toward them (owing at least to some extent also to the competition of rival unions), and (c) the lack of strength on the part of the unions,⁵⁰ which was caused, among other factors, particularly those of political nature, in part by the peculiar feature of French industrialism, namely the absence of concentration.⁵¹ Besides, French unionism itself was for a long period adverse to collective bargaining. The program of revolutionary syndicalism was opposed to any cooperation of classes. It was only after the war that the C.G.T. made the extension of collective bargaining one of its aims.⁵²

B. THE DEVELOPMENT OF THE LAW OF COLLECTIVE LABOR AGREEMENTS PRIOR TO 1936.—In spite of the comparatively restricted importance which the collective labor agreements actually possessed, their legal treatment soon became a considerable problem. Until the legal recognition of labor unions in 1884, of course, it was more than doubtful whether such agreements would be valid; and, indeed, in 1876 a lower court declared categorically that a clause in an agreement binding the workers and employers to comply with a wage tariff resulted in "an alienation of individual freedom" and was "absolutely void because of being contrary to the rules of public order."⁵³ But after the statute of 1884, the validity of collective labor agreements was no longer seriously questioned.⁵⁴ The problem from then on consisted rather in

⁴⁹The Laroque report on Collective Labor Agreements in France.

⁵⁰Extract, 1935 Bulletin du Ministère du Travail, 55 ff. Other writers also have pointed to the reasons why collective bargaining did not possess any greater effectiveness. Cf. Tardy, *Le Règlement Amiable des Conflits Collectifs du Travail*, *Revue Politique et Parlementaire*, March, 1929, 425 ff., 443; Colson, *Le Role des Syndicats dans les Conventions et les Conflits Collectifs du Travail*, *Revue Politique et Parlementaire*, April, 1929, 18.

⁵¹Cf. Laroque report, as reprinted in 1935 Bulletin du Ministère du Travail, 63.

⁵²Cf. Laroque report, as reprinted in 1935 Bulletin du Ministère du Travail, 23. Only a few unions, particularly the printers, made collective bargaining one of the union purposes, as early as 1888. Cf. Raynaud, *Le contrat collectif en France* (2nd ed. 1921) 52. In contrast thereto, in Germany collective bargaining became an object of general union policy before the close of the 19th century. Cf., Lotmar, *Der Arbeitsvertrag* (1902) 758.

⁵³Tribunal civil de Saint Étienne, June 29th, 1876 cited by Moissenet, *Etude sur les Contrats Collectifs en Matière de Conditions du Travail* (1903) 130 and by Planiol, note (1903) Dalloz, *Recueil Périodique*, part 2, 25.

⁵⁴Cf. Planiol, (1903) Dalloz, *Rec. Pér.* part 2, 25. The validity was admitted regardless of whether the contracting party was a labor union possessing limited legal personality under the statute of 1884, or a federation

working out their legal effects in detail. Two periods must be distinguished at this stage, namely, first, the period of judicial and theoretical elaboration, and, later, the period of statutory intervention.

I. *The period of judicial and theoretical elaboration, (1884-1919).*—On the continent the arm of the legislature is frequently slow, and it was so in the case of the collective labor agreements. Courts and textwriters had therefore to face alone the job of fitting these new social categories into the traditional framework of the French legal order. Not until 1919 was a statute regarding collective agreements passed. Courts and textwriters, however, were busy with them from the start. It is interesting to note that while in the United States it took until 1924 for collective bargaining agreements to become a legitimate topic of legal literature,⁵⁵ in France the theoretical writers offered their aid almost immediately for the solution of the judicial difficulties.⁵⁶

The questions to be solved were to an amazing degree the same as those which arise today in the American system.⁵⁷ What was

of unions not endowed with these privileges under the statute of 1884; cf. Tribunal Civil de Cholet, February 12th, 1897, (1903) Dalloz Rec. Pér., part 2, 25.

⁵⁵It was apparently Professor Fuchs who first devoted a detailed study to the American law of collective labor agreements in the article, *Collective Labor Agreements in American Law*, (1924) 10 St. Louis L. Rev. 1.

⁵⁶It is impossible to list the whole literature. We mention in the order of time: Lambert, *Du Contrat en Faveur de Tiers* (1893) 354 ff.; Hubert-Valleroux, *De la Capacité Civile des Syndicats Professionnels*, (1898) *Réforme Sociale*, 314; Raynaud, *Le Contrat Collectif de Travail* (1901); Pic, *Capacité Civile des Syndicats Professionnels*, (1902) 1 *Revue Trimestrielle de Droit Civil* 499; Jay, *Qu' est-ce que le Contrat Collectif de Travail*, (1907) *Revue d'Economie Politique* 565; Passama, *Les Conventions Collectives Relatives aux Conditions de Travail* (1908); Nast, *Des Conventions Collectives Relatives à l'Organisation du Travail* (1908); Rouast, *Essai sur la Notion Juridique du Contrat Collectif* (1909); Pirou, *Les Conceptions Juridiques Successives du Contrat Collectif de Travail* (1909); Georgesco, *La Nature Juridique du Contrat Collectif de Travail* (1914); Crépin, *La Convention Collective de Travail* (1919); Louis-Lucas, *Les Conventions Collectives de Travail*, (1919) 18 *Revue Trimestrielle de Droit Civil*, 66; Morel, *Les Conventions Collectives de Travail*, (1919) 18 *Revue Trimestrielle de Droit Civil* 417; Raynaud, *Le Contrat Collectif en France* (2nd ed. 1921) part 1; Pirou, *The Theory of the Collective Labour Contract in France*, (1922) 5 *International Labour Review* 35; Lambert, Pic, Garraud, *The Sources and the Interpretation of Labour Law in France*, (1926) 14 *International Labour Review* 19; Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 873; and the important notes by Planiol, (1895) Dalloz, Rec. Pér., part 2, 553; (1898) Rec. Pér. part 2, 129; (1903) Rec. Pér. part 2, 25, 31; by Capitant (1909) Rec. Pér. part 33; by Nast (1911) Rec. Pér. part 1, 201; (1912) Rec. Pér. part 2, 289; Pic (1925) Rec. Pér. part 2, 1. Noteworthy also is the comparative survey by the International Labour Office, *Collective Agreements, Studies and Reports Series A No. 39*. (1936).

⁵⁷The American problems of the collective labor agreements law are discussed by Fuchs, *Collective Labor Agreements in American Law* (1924)

the nature of the collective agreements, how did they affect the legal relations between the employer and the individual worker, what were the consequences of their violation, who could enforce them, what clauses might they contain and what were the reasons of their termination? Courts and textwriters attempted at first—similarly to the methods of the American courts⁵⁸—to put this new social and economic institution upon the Procrustes bed of individualistic legal concepts, and worked with notions such as agency, contract for the benefit of third persons, negotiorum gestio (a specific civil law devise⁵⁹), and the like. Later, however, the textwriters progressed more or less to the view that there was a new kind of contractual relationship, which had to be explained in terms of collectivistic, not individualistic, notions.⁶⁰ The courts, which were naturally less daring owing to the absence of any statutory basis, tried their best to do justice to the function of the collective labor agreements. They developed the following legal principles:

a) The collective agreement between an employer or an employers association on the one side and a labor union or a federation of labor unions on the other, created a valid contract which was binding on the individual members of such association or union, if they either ratified it expressly or did not withdraw within a reasonable time after its conclusion, or joined the association or union while it was in force.⁶¹

10 St. Louis L. Rev. 1. Rice, *Collective Labor Agreements*, (1931) 44 Harv. L. Rev. 572; Anderson, *Collective Bargaining Agreements*, (1936) 15 Oregon L. Rev. 229; Witmer, *Collective Labor Agreements in the Court*, (1938) 48 Yale L. J. 194; Note, (1938) 51 Harv. L. Rev. 520.

⁵⁸Cf. Fuchs, *Collective Labor Agreements in American Law*, (1924) 10 St. Louis L. Rev. 1. Rice, *Collective Labor Agreements*, (1931) 44 Harv. L. Rev. 572; Anderson, *Collective Bargaining Agreements*, (1936) 15 Oregon L. Rev. 229; Witmer, *Collective Labor Agreements in the Court*, (1938) 48 Yale L. J. 194; Note, (1938) 51 Harv. L. Rev. 520.

⁵⁹See Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law*, (1927) 13 Corn. L. Qu. 190; Hope, *Officiousness*, (1929) 15 Corn. L. J. 25.

⁶⁰Cf. particularly Duguit, *Manuel de Droit Constitutionnel* (1907), 549; Duguit, *Les Transformations Générales du Droit Privé* (1912), 131 ff.; Duguit, *Collective Acts as Distinguished From Contracts*, (1918) 27 Yale L. J. 753; Jay, *Qu'est-ce que le Contrat Collectif de Travail* (1907) *Revue d'Economie Politique* 565; Saleilles, *Note sur le Contrat Collectif de Travail*, (1908) *Bulletin de la Société d'Etudes Législatives* (1908) 79; Rouast, *Essai sur la Notion Juridique du Contrat Collectif* (1909) Pirou, *Les Conceptions Juridiques Successives du Contrat Collectif de Travail* (1909).

⁶¹Court of Cassation, July 7th, 1910, (1911) *Dalloz, Rec. Pér.*, Part 1, 201 (with note by Nast); Court of Cassation, Jan. 15th, 1918, (1918) *Rec. Pér.* part 1, 17. The Court of Appeals of Paris, Feb. 16th, 1911, (1912) *Rec. Pér.* part 2, 289 held, however, that members of an employers association were not bound individually, unless the charter of the association expressly authorized such contract or the individual members ratified it specifically.

b) Outsiders were normally not bound by it.⁶² The French Supreme Court suggested, however, in one decision, that a collective agreement might create a usage which would be binding on outsiders,⁶³ and some lower courts have so held.⁶⁴

c) The employer and employee were at liberty to conclude valid individual contracts contrary to and in violation of the provisions of a collective agreement, unless the particular stipulation disregarded possessed the special sanctity of constituting public policy⁶⁵ (or, as the French say, order public⁶⁶). This was true, even if the nullity of any contrary individual contract was expressly stipulated by the parties to the collective agreement. But the validity of such individual contract between the parties thereto did not necessarily per se preclude that its conclusion constituted (1) a breach of the duty not to negotiate separately and differently from the collective agreement, which might exist between the individual employer or employee and his association or union respectively, and (2) a breach of the collective labor agreement itself, making the employer (as would usually be the case) liable to the labor union. While an affirmative answer to the first problem did not offer any particular difficulties, the second question caused great trouble because its solution depended on the capacity of a labor union to sue upon a collective agreement in general.

d) The Court of Cassation (i.e. the French Supreme Court) in an early decision denied to a labor union the right to sue in its own name for damages resulting from the non-performance of the obligations assumed by an employer in an agreement with the plaintiff;⁶⁷ the court stated that the plaintiff had suffered no damages, but only the individual worker, that the collective agreement in question was concluded by the labor union *not in its own name* as party to the contract, but only as agent for the workers belonging

⁶²Court of Cassation, Jan. 15th, 1918, Rec. Pér. part 1, 17; Court of Cassation, April 1st, 1919, (1920) Dalloz, Rec. Pér. part 1, 45.

⁶³Court of Cassation, Jan. 15th, 1918, (1918) Rec. Pér. part 1, 17; but *contra*, at least partly, *semble*, Court of Cassation, Feb. 22nd, 1926, (1926) Dalloz, Rec. Hebd. 221.

⁶⁴Cf. Morel, *Les Conventions Collectives de Travail* (1919), 18 *Revue Trimestrielle de Droit Civil*, 422, note 3; see also Demogue, Note, (1926) 25 *Revue Trimestrielle de Droit Civil* 763.

⁶⁵Court of Cassation, Dec. 16th, 1908, (1909) Dalloz, Rec. Pér., part 1, 76; Court of Cassation, July 7th, 1910, (1911) Dalloz, Rec. Pér. Part 1, 201; Court of Cassation, August 2nd, 1911, (1912) Dalloz, Rec. Pér. part 1, 76. Professor Raynaud, *Le Contrat Collectif en France* (2nd ed. 1921), 153 cites some lower courts *contra*, but the cases listed do not seem to bear out this proposition.

⁶⁶As to the concept of "ordre public" see Husserl, *Public Policy and Ordre Public*, (1938) 25 *Va. L. Rev.* 37.

⁶⁷Court of Cassation, Feb. 1st, 1893, (1893) Dalloz, Rec. Pér., part 1, 241.

to the union. It was doubtful how far the decision went on general principles, and how far on the particular facts of the case. The American reader ought to remember here that the French judicial technique and the bearing of a decision is not entirely comparable to the common law state of affairs. At any rate it remained the only pronouncement of the supreme court on a damage suit by a union for breach of contract. Since the French Supreme Court later very liberally permitted professional groups and unions to vindicate their "collective interests" by means of tort actions,⁶⁸ the lower courts concluded also that a collective agreement, if, as normally, entered into by the union in its own name, would constitute a sufficient collective interest to be protected by an action.⁶⁹ This departure from or restriction of the principles laid down by the Supreme Court was encouraged by the textwriters.⁷⁰ The lower courts seemed to disagree, however, as to whether the labor union could only sue for a decree commanding performance in the future, or also for damages for past breaches. The courts seem finally to have reached the result that a union could sue for a mandatory decree to compel payment of the back wages and performance of the agreement in the future, and for its own damages if it could sufficiently prove the same.⁷¹ If the agreement was concluded by a federation of unions the federation could not sue, because the statute of 1884 did not give it any standing in court; but the affiliated unions apparently had a right of action under such agreement.⁷² Not only was the individual employer liable in damages, but, as at least some dicta indicate, also the employers association.

⁶⁸The most famous decision in this line of cases is the opinion rendered by the combined civil and criminal divisions of the Court of Cassation, April 5th, 1913, (1914) *Daloz, Rec. Pér.*, part 1, 65. See also the notes by Planiol and Capitant, (1895) *Daloz, Rec. Pér.*, part 2, 553 and (1909) *Rec. Pér.*, part 33.

⁶⁹Cases are cited by Planiol, Note to a decision by the Tribunal Civil de Cholet, Feb. 12th, 1897, (1903) *Daloz, Rec. Pér.*, part 2, 25 (granting a mandatory decree for performance); and by Capitant, Note to a decision by the Court of Appeals of Lyons, March 10th, 1908, (1909) *Daloz, Rec. Pér.*, part 2, 33 (affirming partly a lower court decision by granting a mandatory decree for performance and payment of the back wages to the workers, but denying special damages to the union).

⁷⁰See the notes by Planiol, Note to a decision by the Tribunal Civil de Cholet, Feb. 12th, 1897, (1903) *Daloz, Rec. Pér.*, part 2, 25 and Capitant, Note to a Decision by the Court of Appeals of Lyons, March 10th, 1908 (1909) *Daloz, Rec. Pér.*, part 2, 33.

⁷¹See the note by Capitant to a decision by the Court of Appeals of Lyons, March 10th, 1908 (1909) *Daloz, Rec. Pér.*, part 2, 33, where he states that the disagreement relates rather to the appreciation of damages, and the decision of the Court of Appeals of Lyons, *Daloz, Rec. Pér.*, part 2, 23.

⁷²Tribunal Civil de Cholet, Feb. 12th, 1897, (1903) *Daloz, Rec. Pér.* part 2, 25.

if it was the contracting party and had caused the breach. One court indeed went so far as to intimate that an employers association would be liable for breach of contract, even when the individual employers committing the acts complained of were not, because they had not ratified the agreement.⁷³ Upon these principles it was only logical that the conclusion of an individual contract between an employer and an employee contrary to a collective agreement was also held to constitute a cause of action for the union.⁷⁴

e) What was the effect of a collective agreement upon the right to strike, and vice versa of a strike upon the collective agreement? While strikes were penal offenses until 1864, they ceased to be so by virtue of the statute of that year, which changed sections 414-416 of the Penal Code and put limitations only on the exercise of the right to strike in certain disapproved manners. These restrictions were alleviated by the repeal of section 416 in 1884.⁷⁵ Strikes then, as such, undoubtedly ceased to be a criminal offense as well as a tort. It became recognized that unions calling a strike did not incur tort liability, provided that the strike was for the purpose of improving working conditions and not an illegal end.⁷⁶ This did not exclude, however, the fact that a strike always constituted a breach of the individual labor contract terminating the same.⁷⁷ Did this rule have the consequence that calling a strike by the union also constituted a breach of the collective agreement, thereby terminating it and rendering the union liable? In a case where the collective agreement contained a specific "no strike—no lockout" clause, it was held that a strike rendered the party causing it liable in damages.⁷⁸ There was no legal difficulty in reaching this

⁷³Court of Appeals of Paris, Feb. 16th, 1911, (1912) Dalloz, Rec. Pér., part 2, 289, with note by Nast *contra*.

⁷⁴Tribunal Civil de Beauvais, Oct. 20th, 1911, (1912) Dalloz, part 2, 294; *accord* Capitant, Note (1903) Rec. Pér., part 2, 25, 31; Nast, Note (1911) Dalloz, Rec. Pér., part 1, 201.

⁷⁵Cf. supra. p. 411.

⁷⁶Court of Cassation, Jan. 25th, 1905, (1905) Dalloz, Rec. Pér., part 1, 153 with note by Planiol (strike was legal); Court of Cassation, June 22nd, 1892, (1892) Dalloz, Rec. Pér., part 1, 449 (threats of strike in order to effect discharge of worker who had quit the union are a tort); but cf. Court of Cassation June 9th, 1896, (1896) Dalloz, Rec. Pér., 1, 582 (dictum that threats of strike to effect dismissal of foreman for professional reasons would be lawful).

⁷⁷Court of Cassation, May 7th, 1904, (1904) Dalloz, Rec. Pér., part 1, 289; Court of Cassation, March 15th, 1907, (1907) Dalloz, Rec. Pér., part 1, 369; Court of Cassation, July 7th, 1921, (1922) Dalloz, Rec. Pér., part 1, 217, with note by Nast. It may be added that picketing, if done in an intimidating manner, constitutes an offense, Trib. Correctionnel de la Seine, Oct. 26th, 1938, (1939) 2 Droit Social 34.

⁷⁸Tribunal de Mulhouse, June 28th, 1923, (1925) Dalloz, Rec. Pér.,

result. But the Court of Cassation held in another case, even without referring to such clause, that a strike terminated the collective agreement.⁷⁹ It would logically follow that at least in some circumstances, the calling of a strike during a collective agreement would render the union liable in damages, even in the absence of a special no-strike clause.⁸⁰

f) The last point to be mentioned is the closed shop. French law put quite an emphasis on the freedom of hiring and firing contained in the freedom of work. But this freedom was not free from limitations. It was a tort to fire a man merely because he was a union officer,⁸¹ or to refuse to hire union men out of malice against the union.⁸² Conversely a union could not enjoin yellow dog contracts when the employer's motive was not hostility against the union, but his own professional interest under special circumstances.⁸³ Could the employer then on his part assume the duty to hire only union men? The courts were at first reluctant to give effect to such obligation;⁸⁴ later, however, the Court of Cassation permitted such a contract if it was concluded for a limited time and space and in the absence of malice, and denied a tort action by the fired workers against the union.⁸⁵ On the other hand the court declared recently that such agreement would not justify the dismissal of employees hired prior to the agreement because of their non union status and that they could sue the employer for wrongful discharge.⁸⁶

part 2, 5 with note by Pic (damages of 300 francs(!) to the employers' association by reason of a strike called a few days before the expiration of the collective agreement).

⁷⁹Court of Cassation, May 1st, 1923, (1923) Dalloz, Rec. Pér., part 1, 66.

⁸⁰Professor Morel in his article *Les Conventions Collectives de Travail* (1919) 18 *Revue Trimestrielle de Droit Civil* 417, 447, argued, however, that strikes not concerning matters regulated by the collective agreement are no breach thereof and that even strikes for the purpose of altering such agreement are no breach, in case the agreement was concluded for an indefinite period.

⁸¹Court of Cassation, May 27th, 1910, (1911) Dalloz, Rec. Pér., part 1, 223.

⁸²Court of Cassation, March 13th, 1905, (1906) Dalloz, Rec. Pér., part 1, 113. Lower courts considered even the general refusal to hire union men without any malice to be tortious, Tribunal Comm. d'Épernay, February 28th, 1906; Tribunal Civil de Lille, Nov. 12th, 1906, (1906) Dalloz, Rec Pér., part 2, 75.

⁸³Court of Cassation, March 9th, 1915, (1916) Dalloz, Rec. Pér. part 1, 25, with critical note by Planiol (anti-union clause in orchestra contract).

⁸⁴Cf. the decisions of the Justice of the Peace of Bordeaux, August 18th, 1903 and of the Tribunal Civil de Bordeaux of December 14th 1903, (1906) Dalloz, Rec. Pér., part 1, 113.

⁸⁵Court of Cassation, Oct. 24th, 1916, (1916) Dalloz, Rec. Pér., part 1 246.

⁸⁶Court of Cassation, March 9th, 1938, (1938) Dalloz, Rec. Hebdoma

II. *The first period of statutory intervention, (1919-1936).*—The government had planned since 1906 to aid the courts in their task of shaping a law of collective bargaining, but its legislative project of that year.⁸⁷ did not pass the two Houses. It was not until the post-war period that a general statute regarding the collective agreements was passed. This is the law of March 25th, 1919.⁸⁸ It did not make any radical change in the system worked out by the courts; rather it codified the existing law and clarified and developed it on certain dubious questions.⁸⁹ One of the most controversial points in the legislative debates antecedent to the enactment of the statute had been whether the government should have the power to extend collective agreements to outsiders by means of an administrative order.⁹⁰ The bill as finally passed did not adopt this system of compulsory extension of labor agreements, but kept their character as voluntary agreements.

The whole statute was enacted as part of the French Labor Code, of whose first book it formed the second title. It starts out with a definition of collective agreements:

“The collective labor agreement is a contract regarding working conditions concluded on the one side by representatives of a labor union or any other group of employees and on the other by an employers’ association or any other group of employers or several employers contracting individually, or even by one employer alone.”⁹¹

Then follows an enumeration of the conditions under which the officers of a union or employers association are authorized to conclude collective agreements.⁹² To be valid the agreement must

daire 305 (in this case there was the additional fact present that the employer prior to the conclusion of the closed shop agreement had induced the plaintiff to quit the union).

⁸⁷As to this governmental project and suggested improvements, see Colson, *Rapport sur les Conventions Collectives Relatives aux Conditions du Travail*, Reprint from (1907) *Bulletin de la Société d’Études Législatives*.

⁸⁸*Journal Officiel*, March 28, 1919; (1919) *Dalloz*, *Bulletin Législatif* 174.

⁸⁹The statute is commented upon by Louis-Lucas, *Les Conventions Collectives de Travail* (1919) 18 *Revue Trimestrielle de Droit Civil*, 66; Morel, *Les Conventions Collectives du Travail* (1919) 18 *Revue Trimestrielle de Droit Civil* 417; Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 875.

⁹⁰This was proposed by the Senate Commission charged with the study of the bill, but the Senate did not adhere to this proposal, Cf. Morel, *Les Conventions Collectives de Travail*, (1919) 429.

⁹¹Labor Code, book 1, title 2, art. 31, as enacted by stat. March 25th, 1919.

⁹²Labor Code, book 1, title 2, art. 31 b: “The representatives of a union or any other professional organization can contract in the name of the collectivity by virtue either of charter provisions of this organization or a special deliberation of this organization or by special and written authorizations which are given to them individually by all members of this organiza-

be in writing and filed with certain local governmental agencies in the places where it was concluded and where it is going to be applied.⁹³ It cannot be concluded for a period longer than five years.⁹⁴

The most important provisions are those dealing with the persons who are bound by such agreement and the methods of its enforcement. As far as the binding force of the collective agreement with respect to different persons is concerned, the system of the new statute constituted a departure from the old law and established rather fine distinctions. Bound by the collective agreements are, in the first place the signatories of the agreement and persons who gave a special written authorization; second, all persons who are members of the contracting groups, unless they withdraw within a week after the filing of the agreement from the group; in the third place, members of groups which subsequently adhere to the agreement, unless they withdraw under similar circumstances; in the fourth place new members of the organizations which are bound; and in the fifth place employers who later adhere to it individually.⁹⁵ The statute further provided that a person bound by a collective agreement must apply it also to his legal relations with third persons, unless there was a specific clause to the contrary.⁹⁶

In determining the effect of this binding force on the individual labor relations, the statute distinguished two situations. In the first, both employer and employees are bound by the statute. Then the collective agreement can no longer be abrogated by individual agreements, in sharp contrast to the previously existing law.⁹⁷ In the second situation only one of the parties, either the employer or the employee, is bound. Then the party thus bound is only presumed to have applied the agreement, unless he stipulates to the

tion. Otherwise in order to be valid the collective labor agreement must be ratified by a special deliberation of this organization."

⁹³Labor Code, book 1, title 2, art. 31c.

⁹⁴Labor Code, book 1, title 2, art. 31g.

⁹⁵Labor Code, book 1, title 2, art. 31k.

⁹⁶Labor Code, Book 1, title 2, art. 31a.

⁹⁷Labor Code, Book 1, title 2, art. 31g. The Court of Cassation concluded that a collective agreement, being binding on employer and employee, abrogates clauses in a previous individual agreement which are to the contrary, Court of Cassation, Nov. 17th, 1937, (1938) Dalloz, Recueil Hebdomadaire 68. The acceptance of an inferior salary does not estop the worker to claim the balance. Tribunal Civil de la Seine, June 23rd, 1937, (1938) 1 Droit Social 146. The statute was overlooked by the Civil Tribunal of St. Nazaire, July 21st, 1922, (1925) Dalloz, Rec. Pér., part 2, 1, which still applied the old rule.

contrary. But, if he does so, he will be liable in damages.⁹⁸ The system of the statute is consequently that the employer can stipulate in the collective agreement that he wants to apply it only to the members of the contracting union. If he does so, he is free to make individual contracts with outsiders; if he fails to do so, he still can make valid individual contracts in variance from the collective agreement; but he is presumed not to have done so, and if he explicitly has done so, he will be liable in damages for failure specifically to secure this right in the collective agreement. Thus far, consequently, the old system has been preserved.⁹⁹

With respect to the content of the obligation, the statute defines it as "the forbearance to do any act of a nature, so as to compromise the loyal performance of the obligation."¹⁰⁰ A breach entitles the plaintiff to damages. Who can sue? This was a difficult question under the old law. The new statute contains a specific regulation. It distinguishes between a right of action by the union (provided it possesses the capacity to sue)¹⁰¹ and the right of action by the individual.¹⁰² The right of action by the union is quite independent of the right of action by the individual, but—and herein lies a great innovation—the union can also exercise the right of action of any of its individual members, provided that he does not oppose such exercise.¹⁰³

A statute of 1920 finally extended the capacity to sue to the federation of unions, which until then were deprived of this

⁹⁸Statute, March 25th, 1919 art. 1, as enacting Book 1, title 2, art. 31 r. of the Labor Code.

⁹⁹Cf. Morel, *Les Conventions Collectives de Travail* (1919) 18 *Revue Trimestrielle de Droit Civil*, 448, 449. How about a worker who has made a special contract with an employer, bound by a collective agreement, and later joins the labor union? Is his special contract thereby abrogated? The answer is yes. Court of Cassation, Feb. 9th, 1938, (1938) 1 *Droit Social* 144. But if originally neither the employer nor the worker was bound by an agreement, the mere fact that the worker later joined a union which was a party to a collective agreement does not alter the individual contract. Tribunal Civil de la Seine, March 25th, 1937, (1938) 1 *Droit Social* 145. A connected problem is as to whether there is any form required for such contract in deviation from a collective agreement binding only upon one of the parties to the individual contract? The Tribunal Civil de Marseille, Feb. 9th, 1938, (1938) 1 *Droit Social* 144, required writing.

¹⁰⁰Labor Code, book 1, title 2, art. 31s.

¹⁰¹Labor Code, book 1, title 2, art. 31t.

¹⁰²Labor Code, book 1, title 2, art. 31u.

¹⁰³Labor Code, book 1, title 2, art. 31v. What acts constitute such opposition? Does the acceptance of a lower salary suffice? It ought not to, because otherwise the rule that stipulations contrary to a collective agreement are invalid would be largely illusory; but see *contra* Tribunal Civil de Saint Nazaire, Statute, March 25th, 1919, (1925) *Dalloz Rec. Pér.*, part 2, 1. At any rate such opposition does not destroy the union's own right of action. Accord, Tribunal Civil de Saint Nazaire, loc. cit., granting damages of 1 franc!

privilege.¹⁰⁴ But all this legislative favor to collective agreements resulted only in a temporary bloom.¹⁰⁵ For the reasons mentioned at the beginning of this chapter, collective bargaining became very retrogressive from 1925 on, and even in the industries where such agreements had existed they disappeared. The French governmental authorities began to be concerned, and the National Economic Council made an investigation into the situation.¹⁰⁶ The reporters made a splendid survey and pointed out that the Council could take one of three points of view, viz.:

1. That the present state of industrial relations could not be improved upon by collective bargaining;

2. That collective agreements voluntarily entered into would constitute a desirable and effective factor for the improvement of working conditions.

3. That the application of collective agreements should be extended and the same transformed into general labor regulations by means of administrative action.

The Council concluded that the *voluntary system* was the desirable one, and that the most important thing to do was to build up a morale of collective bargaining, and to break down the national trait of particularism in industry.

Such was the state of affairs in 1936, when the Popular Front won the election.

PART II.

THE "NEW ORDER"

When Premier Blum took over the power in the midst of the spreading sit-down strikes, his first radio address listed, as has been told in the introduction, the reform of collective bargaining as one of the three chief legislative measures to be taken by the government. Looking back now at the legislation which followed¹⁰⁷ two different stages of it can be distinguished.

¹⁰⁴Statute of March 12th, 1920, (1920) Dalloz, Bulletin Législatif 130.

¹⁰⁵The numbers of the newly concluded labor agreements were: 557 in 1919, 345 in 1920, 159 in 1921, 196 in 1922, 144 in 1923, 177 in 1924, 126 in 1925, 238 in 1926, 58 in 1927, 99 in 1928, 112 in 1929, 72 in 1930, 17 in 1931, 23 in 1932, 20 in 1933. Cf. Laroque, Rapport sur les Conventions Collectives du Travail, reprinted in extract form in (1935) Bulletin du Ministère du Travail 13, at 33.

¹⁰⁶Cf. the extract from the Laroque, Rapport sur les Conventions Collectives du Travail, reprinted in extract form in report to the Council, (1935) Bulletin du Ministère du Travail 13.

¹⁰⁷For the literature on the new phase of French labor law, see Debré, Comment on the Statute of June 24th, 1936, in (1936) Dalloz, Rec. Pér., part 4, 369; Pic, *Autour de la Loi du 24 Juin sur les Conventions Collectives de Travail*, Revue Politique et Parlementaire, September, 1936, 393; the

1. THE FIRST STEP: THE ACCORD OF MATIGNON AND THE STATUTE OF JUNE 24TH, 1936.

Premier Blum's first action was to summon representatives of the Confédération Générale du Travail which was now, after the end of the split with the Confédération du Travail Unitaire, by far the most influential workers' organization, and representatives of the Confédération Générale de la Production Française which was the top organization of French capital.

These representatives reached a famous agreement on the evening of June 7th, 1936, which is called the Matignon Accord after the hotel where it was concluded. It provided, among other things (such as an increase of wages from 7 to 15 per cent and the waiver of any claims resulting from the strikes), that the working conditions for each region and each industry should be established in future by collective agreements freely discussed between the industrial groups, that employers and employees obligate themselves to respect the right and the freedom of organization, and that in any plant employing more than ten workers a representation of the personnel should be instituted.¹⁰⁸ This accord was hailed by Mr. Jouhaux, Secretary General of the C.G.T. in a radio speech of the next day as the foundation of a "new order."

In consequence of this accord¹⁰⁹ a bill was passed on June 24th, 1936, which "modified and completed" the existing law of collective labor agreements.¹¹⁰ It contained two important innovations, namely (a) *governmental promotion* of collective bargaining of a special type and (b) *administrative extension* of agreements thus

same, De l'Accord Matignon à la Loi du 31 Décembre, 1936, sur l'Arbitrage Obligatoire, *Revue Politique et Parlementaire* March, 1937, 446; the same, *Les Nouvelles Lois Ouvrières*, *Revue Politique et Parlementaire*, Nov. 1937, 214; the same, *Le Régime du Travail*, *Revue Politique et Parlementaire*, June 1938, 424; Lautman, *Les Progrès du Facteur Collectif en Droit Français*, *Revue Politique et Parlementaire*, March 1937, 431; Villey, *Chronique du Syndicalisme*, *Revue Politique et Parlementaire*, April 1937, 124; Gignoux, *Le Statut Moderne du Travail*, *Revue Politique et Parlementaire*, February, 1938, 201; Maurette, *A Year of "Experiment" in France*, (1937) 36 *International Labour Review* 1 ff., 149 ff.; Pouillot, *Collective Labor Agreements in France*, (1938) 37 *International Labour Review*, 1.

¹⁰⁸Pic, *Autour de la Loi du 24 Juin 1936*, etc., *Revue Politique et Parlementaire*, September, 1936, 394.

¹⁰⁹It might be mentioned as an interesting historical parallel that the German Collective Labor Agreements Act of December 23rd, 1918, also was preceded by a similar accord of the top organizations of capital and labor on November 15th, 1918. Cf. 2 Hueck-Nipperdey, *Lehrbuch des Arbeitsrechts* (3rd ed. 1932) 36.

¹¹⁰Statute of June 24th, 1936, *Journ. Off.* June 26th, 1936, (1936) *Dalloz Bulletin Législatif* 409.

reached to outsiders. The details of these two new legal institutions are regulated as follows:

(a) At the request of an industrial organization, either of employers or workers, which has a legitimate interest the minister of labor or his representative must summon a mixed commission, with the view to the conclusion of a collective labor agreement having as its object the regulation of the relations between employers and workers of a determinate branch of industry or commerce for a special region or the whole territory.¹¹¹ This mixed commission is composed of the representatives of the industrial organizations, either employers or workers, which are "the most representative ones" for the branch of commerce or industry in the region concerned or in the whole territory, if a national agreement is in question.¹¹² The French system consequently is based on the principle that it did not want to give to the majority union the exclusive monopoly of collective bargaining as the American law does. On the other hand not all the small faction unions should have a voice in the negotiations. Thus the French resorted to the celebrated compromise formula of "the most representative groups" which had been used seventeen years before on the occasion of the organization of the International Labor Conference in article 389 of the Treaty of Versailles¹¹³ for the designation of the employers' and workers' organizations which must be in accord with their governments in the selection of the delegates. The renewed use of this formula for the purposes of the French legislation on conciliation had been recommended by M. Colson, one of the authors of the statute of 1919, as early as 1929;¹¹⁴ it was adopted after some debates in the House and the Senate.¹¹⁵

If the mixed commission does not reach an accord on one or several clauses which are to be incorporated into the agreement,

¹¹¹Stat. June 24th, 1936, art. 1, adding art. 31va to book 1, title 2 of the Labor Code.

¹¹²Stat. June 24th, 1936, art. 1, adding art. 31vd., par. 2, to book 1, title 2 of the Labor Code.

¹¹³(1919) 13 Am. Journ. International Law, Supplement 362.

¹¹⁴Colson, *Le Role des Syndicats dans les Conventions et les Conflits du Travail*, *Revue Politique et Parlementaire*, April 1929, 18, 28. The French Supreme Arbitration Court decided on June 13th, 1938, *Syndicat Patronel du Commerce de la Quincaillerie* (1938) 1 *Droit Social* 303 that age alone does not suffice to attribute to a labor union the qualification of belonging to the "most representative organization" within the meaning of the statute. Other factors such as number of members, etc., and the nature of its activity in comparison with other groups must be taken in consideration. See *Cuche*, *Revue Juridique*, (1939) *Dalloz*, Rec. Hebd. 1, at 3.

¹¹⁵Cf. the report of these debates by Debré, (1936) *Dalloz*, Rec. Pér., part 4, 371.

the minister of labor must intervene on the demand of one of the parties for the purpose of rendering assistance in the settlement of the dispute, after consultation of the appropriate sections of the National Economic Council.¹¹⁶ The minister has not arbitrational but merely mediatorial powers. If the parties do not come to terms even after his intervention, his mission has failed. In case an agreement is concluded, the statute prescribes a list of stipulations which must be incorporated, namely those concerning the duration of the agreement; the recognition of the freedom of organization and of the freedom of opinion of the workers; the establishment of a workers' delegation in plants occupying more than ten workers for the purpose of presenting complaints relating to deficient application of the wage tariffs of health and safety regulations etc.; the minimum wages for category and region; paid vacations; organization of apprenticeship; the procedure by which controversies regarding the application of the agreement shall be settled and the procedure by which it can be revised or modified.¹¹⁷ The collective agreement must be filed with the minister of labor in addition to the filing prescribed under the old law.

(b) The administrative extension to outsiders was probably the most radical alteration of the existing situation. The new statute¹¹⁸ empowered the minister of labor "to render a collective agreement as concluded under the new provisions obligatory upon all employers and employees of the trades and regions covered by the field of application of the collective agreement." It provided that "this extension of the effects and sanctions of the agreement is made for the duration and under the conditions established by the same." The ministerial decree can be rendered only after a previous announcement in the French Journal Officiel of the impending extension, coupled with an invitation to the groups and persons concerned to take action within a period fixed by the minister but not shorter than two weeks. The minister of labor must consult the National Economic Council.

The extension decree ceases to have effect by operation of law, if the contracting parties rescind, revise or modify the agree-

¹¹⁶Stat. June 24th, 1936, Art. 1, as enacting art. 31vb of book 1, title 2 of the Labor Code. The National Economic Council was established by a statute on April 29th, 1926, and reorganized by a statute of March 19th, 1936, (1936) Dalloz Bulletin Législ. 130. It is a consulting body.

¹¹⁷Statute of June 24th, 1936, art. 1, as enacting art. 31vc, of book 1, title 2, of the Labor Code.

¹¹⁸Statute of June 24th, 1936, art. 1 as enacting art. 31 vd, and ve, of book 1, title 2 of the Labor Code.

ment by mutual consent, and the minister can revoke the decree under forms similar to its rendition, if one of the most representative groups announces it or if the agreement no longer corresponds to economic conditions.¹¹⁹

The new statute had a tremendous effect. To be sure, it did not newly introduce collective bargaining. But while until its enactment collective labor agreements were the exception and individual labor contracts the rule, the relationship of the two now became reversed.¹²⁰ The law gave a special status to the collective agreements concluded by the most representative groups for a determined branch of commerce or industry in a certain region. It was its avowed purpose to resort to such collective agreements as the means of *voluntary consensual self-regulation of industrial relations* in the different branches of industry and commerce. Agriculture was not included, but commerce was to be understood in the broadest sense.¹²¹ The collective agreements of the new kind were no longer only instruments for the settlement of certain controversial points, but they had to cover the large range of issues listed by the statute, being veritable labor relations codes or industrial charters on a *contractual* basis.¹²² The intended generalization of collective agreements as voluntary and consensual regulations of industrial relations was further sought to be attained by vesting in the minister of labor the power of extending them to minority groups.

Of course, to this extent the collective agreement ceases to be a convention in the strict sense and becomes transformed into a governmental ordinance; but one must not forget that its *content* is fixed by the most representative organizations in the industry and not by the government itself, and that even its life, as has been mentioned, is dependent upon the continuing existence of the contract which serves as its basis.¹²³ Direct governmental inter-

¹¹⁹Decree of May 2nd, 1936, art. 14, amending art. 31 of book 1, title 2 of the Labor Code, as enacted by stat. of June 24th, 1936, art. 1, (1938) Dalloz Rec. Pér., part. 4, 227.

¹²⁰Cf. Pic, *Autour de la Loi du 24 Juin 1936, etc.*, *Revue Politique et Parlementaire*, September, 1936, 396; Maurette, *A Year of "Experiment" in France*, (1937) 36 *International Labour Review*, 15, 16.

¹²¹See the award of the final arbitrator, Professor Escarra, of December 12, 1937, in the case of the insurance employees of Lille, (1938) 1 *Droit Social* 147 declaring insurance agencies to be commerce within the meaning of the statute. *Accord*, Supreme Arbitration Court, June 29th, 1938, (1938) 1 *Droit Social* 302.

¹²²Cf. Pic, *Autour de la Loi du 24 Juin 1936, etc.*, *Revue Politique et Parlementaire*, September, 1936; Debré, *Comment on the Statute of June 24, 1936*, Dalloz, Rec. Pér., part 4, 372.

¹²³Even M. Gignoux, the secretary general of the national employers

ference was thus quite restricted in favor of an industrial self-government. The system was consequently quite different from the Nazi or fascist totalitarian schemes, and much more similar to the pre-Nazi German set-up, or the American NIRA arrangement.¹²⁴ It is, above all, still governed by the idea of the rule of law. Thus the minister of labor is subject to the ordinary judicial control of the Conseil d'État, i.e. the supreme French administrative court,¹²⁵ as to the legality of his extension decrees¹²⁶ which can be attacked by the "writ of exceeding power."¹²⁷ The Minister has made use of his power in a great number of instances; he did so for the first time on November 18th, 1936, with respect to the silk industry of the South East.¹²⁸ The statute gave a gigantic impulse to collective bargaining. On May 31st, 1937,

federation, acknowledged that fact in 1938, by stating:

"The legislation of 1936 was founded essentially upon the notion of contract; it was substituted for what one calls a little pompously the play of forces. This is an extremely interesting view which, according to us, lies on the foundation of any social restoration," Gignoux, *Le Statut Moderne du Travail*, *Revue Politique et Parlementaire*, September, 1936, 207.

¹²⁴Cf. the statement to this effect by Premier Blum in the Senate on June 17th, 1936, *Journal Officiel*, June 18th, 1936, 523; and Pic, *Autour de la Loi du 24 Juin 1936*, etc., *Revue Politique et Parlementaire*, September, 1936, 413. But the NIRA of June 16th, 1933, even though fostering collective agreements and giving the President the power to extend them to outsiders (art. 7b), did not attribute to them all pervading importance, because its main emphasis was laid upon the codes and limited codes of fair competition (art. 3 and art. 7c), which were not founded on a contractual basis. Cf. Fuchs, *Collective Labor Agreements Under Administrative Regulation of Employment*, (1935) 35 *Col. L. Rev.* 493; Gallagher, *Government Rules Industry*, *A Study of the NRA* (1934).

¹²⁵On the French administrative courts and their functions cf. Riesenfeld, *The French System of Administrative Justice—A Model for American Law?* (1938) 38 *Boston Univ. L. Rev.* 48 ff., 400 ff., 715.

¹²⁶Cf. Conseil d'État, July 22nd, 1938, (1938) *Dalloz*, *Rec. Hebd.* 535, where this court, while dealing with the issue of the legality of an extension decree, examined whether the unions, being parties to the agreement extended, were the most representative organizations, whether the plants concerned constituted a "determinate branch of industry" and whether the agreement possessed the content required by the statute. Furthermore the Conseil d'État on May 13th, 1938 annulled a decision of the Minister of Labor which erroneously refused to allow a certain union to participate in the elaboration of a collective labor agreement under the forms of the Statute of 1936, (1938) 1 *Droit Social* 377. However, the Conseil d'État did not admit a writ of review against the appointment of certain persons as arbitrators, stating that so far the Supreme Arbitration Court had exclusive jurisdiction, May 27th, 1938, (1938) 1 *Droit Social* 285.

¹²⁷As to this writ, cf. Riesenfeld, *The French System of Administrative Justice—A Model for American Law?* (1938) 38 *Boston Univ. L. Rev.*, 413 ff.

¹²⁸Cf. Debré, *Comment on the Statute of June 24, 1936*, (1936) *Dalloz*, *Rec. Pér.*, part 4, 369, 374.

there existed 4,282 agreements regulating the working conditions of two million employees.¹²⁹

2. THE LATEST PHASE: COMPULSORY ARBITRATION AND THE ESTABLISHMENT OF A "SOCIAL JURISDICTION"

A. THE FIRST ATTEMPT: THE STATUTE OF DECEMBER 31ST, 1936, AND ITS HISTORY.—The statute of June 24th, 1936, brought a temporary appeasement, but only a short one. The sudden increase of the wage scale and other reasons caused a terrific rise in living expenses and wiped out the gain obtained by the Matignon Accord and the collective agreements. Labor accused capital of the attempt to commit sabotage against the new system. It tried to counteract this obstruction, and from September on the sit-down strikes became very numerous again and threatened to destroy the national economy. The government felt the necessity to intervene. It hoped for a solution from a compulsory arbitration and summoned anew the representatives of the C.G.T. and C.G.P.F. to the Hotel Matignon on September 14th, in order to work out a basis for the new procedure.¹³⁰

France at this period had a statute of 1892 "on facultative conciliation and arbitration in the matter of collective disputes between employers and employees or workers."¹³¹ But this statute, as its title indicated, did not provide for any compulsory conciliation or arbitration procedure, neither did it even set up permanent bodies for the attempted settlement. All it did was to vest the justices of the peace with the power to promote the formation of a conciliation commission chosen by the parties and, in case of its failure, of an arbitration council composed of members likewise chosen by the parties, if and only if the parties agreed to submit their dispute to them.¹³² The justice of the peace could not act on his own initiative except in the case of a strike, otherwise he had to wait until he was asked to act by one of the parties.¹³³ The law at that period did not even permit the parties to stipulate in

¹²⁹Cf. Maurette, *A Year of "Experiment" in France*, (1937) 36 *International Labour Review*, 16.

¹³⁰Cf. Villey, *Chronique du Syndicalisme*, *Revue Politique et Parlementaire*, April 1937, 124; Pic, *De l'Accord Matignon à la Loi du 31 Décembre, 1936, sur l'Arbitrage Obligatoire*, *Revue Politique et Parlementaire*, March, 1937, 446.

¹³¹(1893) Dalloz, *Rec. Pér.*, part 4, 33.

¹³²Even then an arbitral award was devoid of any legal sanction. Only if both parties accepted it, was it transformed into a collective agreement. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930), 937.

¹³³Statute, Dec. 27th, 1892, art. 10, art. 2.

advance for arbitration in case of a difference;¹³⁴ only the statute of 1919¹³⁵ gave effect to arbitration clauses in collective agreements with the result that non-compliance constituted a breach.

It is obvious that such a system was quite feeble, and even though it worked with some success for a certain period, the returns were constantly decreasing¹³⁶ and the necessity for a reform had become more and more urgent for many years.¹³⁷ The first attempt to bring about such reform was a bill introduced by the Ministers Millerand and Waldeck-Rousseau in 1900. It was followed by the re-introduction of the bill by M. Millerand alone in 1906, and by the submission of other bills by Ministers Millerand and Jourdain in 1920, by Minister Durafour in 1925, and by Minister Loucheur in 1929. But none of these bills was passed, the Loucheur Bill being under discussion until the events of 1936.¹³⁸

The representatives of the C.G.T. and the C.G.P.F. met over a long period of time, but they could not reach any accord. Then the government secured an authorization from the Legislature, inserted in the monetary law of October 1st, 1936, to establish by decree a conciliation and arbitration procedure for the adaptation of the wage scale in case the living costs should increase considerably before December 31st, 1936.¹³⁹ It made, however, no use of

¹³⁴Court of Cassation, Jan. 25th, 1905, cited by Raynaud, *Le Contrat Collectif en France* (1921), 230.

¹³⁵Statute, March 25th, 1919, enacting art. 31x of book 1, title 2 of the Labor Code; cf. Fuchs, *French Law of Collective Labor Agreements* (1932) 41 *Yale L. J.* 1027.

¹³⁶Cf. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) 938 ff.; and the statistical table in Raynaud *Le Contrat Collectif en France* (1921), 26.

¹³⁷As to the history of this reform attempts, cf. Pic, *Traité Élémentaire de Législation Industrielle* (6th ed. 1930) op. cit. 942; Tardy, *Le Règlement Amiable des Conflits du Travail*, *Revue Politique et Parlementaire*, March 1929, 425; Pic, *De l'Accord Matignon à la Loi du 31 Décembre, 1936, sur l'Arbitrage Obligatoire*, *Revue Politique et Parlementaire*, March, 1937, 462.

¹³⁸The project Millerand-Waldeck Rousseau provided for arbitration in State enterprises and private enterprises which had agreed in advance to submit to it; it furthermore subjected any strike to a vote by secret ballot; cf. Tardy, *Le Règlement Amiable des Conflits du Travail*, *Revue Politique et Parlementaire*, March, 1929, 436. The project Millerand-Jourdain provided for compulsory conciliation in all industries and optional arbitration, except in public utilities, where the arbitration was to be compulsory. The project Durafour was substantially the same. The Loucheur Bill finally provided for a detailed compulsory conciliation procedure and optional arbitration. Cf. the studies cited note 137, and Anonymous, *L'État et Les Conflits Collectifs*, *Revue Politique et Parlementaire*, Nov. 1936, 256.

¹³⁹Statute of Oct. 1st, 1936, (1936) *Journal Officiel*, Oct. 2nd, 10402; (1936) *Dalloz Bulletin Législatif* 759, art. 15 paragraph 2. This paragraph was the result of a compromise in the legislature in order to avoid a sliding wage scale dependent upon the indices of living costs.

this authorization. On November 26th, 1936, the representatives of the employers realized that owing to the increased vehemence of the attacks against capital an accord could not be reached, and notified the premier of this state of affairs.¹⁴⁰ The government proceeded to draw up a bill of its own, and after many changes in the Senate¹⁴¹ the statute of December 31st, 1936, regarding conciliation and arbitration procedures¹⁴² was passed. It provided that "in industry and commerce the collective disputes must be submitted to the procedures of conciliation and arbitration before any strike or lockout."¹⁴³ It provided further for arbitration by two arbitrators, and in case of their disagreement by one final arbitrator.¹⁴⁴ It made the following regulation for the arbitration:

"The arbitration has as its object to establish an equitable regulation of the working conditions with the view to create, in the places of employment, an atmosphere of collaboration in the respect of the mutual rights of the parties: right of property, right of unionization, individual freedom, freedom of work, freedom of organization."¹⁴⁵

The statute empowered the government to establish by decree the details of the procedure to be followed in the absence of a regulation in the collective agreement, provided, however, that the conciliation and arbitration procedure should be organized "within the framework of the existing laws."¹⁴⁶ This decree should remain in effect, however, only until the end of the legislative session in 1937. The government made use of this authorization on January 16th, 1937, enacting a decree¹⁴⁷ which prescribed first three different attempts at conciliation, and thereafter resort to arbitration. Further details are hardly of interest. It is noteworthy only that the period of the force of this decree was twice prolonged in spite of its original restriction, namely, once by a statute of July 18th, 1937, until December, and again by a statute of January 18th, 1938, until the end of February. It was further modified by a decree of September 18th, 1937. The statute and also the decree were, however, scarcely satisfactory owing to the haste with which they

¹⁴⁰Cf. Pic, *De l'Accord Matignon à la Loi du 31 Décembre, 1936, sur l'Arbitrage Obligatoire*, *Revue Politique et Parlementaire*, March, 1937, 453, where the letter is reprinted in part.

¹⁴¹Cf. Pic, *ibid.* 457.

¹⁴²(1937) *Journ. Off.* Jan. 1st, 127, (1936) *Daloz Bull. Législatif* 1132.

¹⁴³Stat. Dec. 31st, 1936 art. 1.

¹⁴⁴Stat. Dec. 31st, 1936 art. 5, par. 2.

¹⁴⁵Stat. Dec. 31st, 1936, art. 5, par. 3.

¹⁴⁶Stat. Dec. 31st, 1936, art. 3, art. 5, par. 1.

¹⁴⁷*Journal Officiel* Jan. 17th, 1937; printed as amended by decree of Sept. 18th, 1937, in (1938) 1 *Droit Social* 13.

were drawn. There were no sanctions against strike in violation of the statute,¹⁴⁸ no limitations on the "equitable" powers of the arbitrators,¹⁴⁹ no provisions about judicial review of the awards¹⁵⁰ and the question of their enforcement was more than drowned in an ocean of controversies.¹⁵¹ Thus it was no wonder that a new statute was desired.

B. THE PRESENT STATUS: THE STATUTE OF MARCH 4TH, 1938.

1. *The genesis of the new statute.*—Monsieur Blum's Cabinet had meanwhile resigned and Monsieur Chautemps had become Premier of France. The Matignon Accord was to expire by the end of 1937. Labor therefore had expressed its desire to reach a new agreement between capital and labor as early as in August, 1937, but, discouraged by the attitude of the employers, the government took no action and concentrated on its own legislative projects. Finally on January 7th, 1938, it summoned a new conference again inviting the C.G.T. and the C.G.P.F., which had been the parties to the Matignon Accord. But the employers' organization insisted that other labor groups also should be invited, and refused to negotiate with the C.G.T. alone; on January 12th it declined definitely to accept the invitation.¹⁵² So the government reverted to its own projects and tried to attack the problem of industrial relations by itself. It submitted six bills on various labor issues, such as employment and discharge, placement, conciliation and arbitration, collective bargaining, strike, plant representatives,

¹⁴⁸Cf. the criticism of the law for this reason by Pic, *De l'Accord Matignon à la Loi du 31 Décembre, 1936, sur l'Arbitrage Obligatoire*, *Revue Politique et Parlementaire*, March, 1937, 471 ff.

¹⁴⁹Cf. the criticism of the law for this reason by Savatier, *Les Rayons et les Ombres d'une Expérience Sociale: l'Arbitrage Obligatoire des Conflits Collectifs de Travail*, (1938) *Dalloz, Rec. Hebdom.* 9, 11. The author reminds the reader that one of the slogans before the French Revolution of 1789 was "May God protect us from the equity of the Parliaments" (which was the name of the 13 supreme judicial bodies before the revolution), and expresses the fear that it might be revived under the statute of 1936 in the form of "May God protect us from the equity of the arbitrators." See also Blondel, *Nature and Portée de l'Arbitrage Obligatoire*, (1938) *1 Droit Social* 104, 108.

¹⁵⁰The Court of Cassation declared a writ of review to be inadmissible on Dec. 7th, 1937, (1938) *1 Droit Social* 20. Whether there could be a writ of review to the Supreme Administrative Court was in dispute. Cf. Note by Teitgen, (1938) *1 Droit Social* 104, 111.

¹⁵¹Cf. Savatier, *Les Rayons et les Ombres d'une Expérience Sociale: l'Arbitrage Obligatoire des Conflits Collectif de Travail*, (1938) *Dalloz, Rec. Heb.*, 13; Pic, *Le Régime du Travail*, *Revue Politique et Parlementaire*, June, 1938, 428; Note by Savatier, (1938) *1 Droit Social* 20; Note by Reuter (1938) *1 Droit Social* 111.

¹⁵²See Pic, *Les Nouvelles Lois Ouvrières*, *Revue Politique et Parlementaire*, November, 1937, 228; the same, *Le Régime du Travail*, *Revue Politique et Parlementaire*, June, 1938, 435 ff.; Gignoux, *Le Statut Moderne du Travail*, *Revue Politique et Parlementaire*, February, 1938, 202.

combining them under a name of public appeal: the "Modern Charter of Labor."¹⁵³ The project concerning conciliation and arbitration became law, after certain changes, on March 4th, 1938.¹⁵⁴

II. *The provisions of the new statute.*—The statute applies, as its predecessor did, to the settlement of collective disputes in commerce and industry. Agriculture is expressly reserved to a future law.¹⁵⁵ The progress consists rather (a) in a simplification of the conciliation and arbitration process in general, (b) in a restriction of the powers of the arbitrators and (c) in the enactment of rules for the enforceability and control of the awards.

a. With respect to the general rules pertaining to conciliation and arbitration procedure, the new statute distinguishes again between two different kinds of procedure, namely (a) that which is controlled by the collective agreements concluded under the conditions of the statute of June 24th, 1936, i.e. by the most representative organizations for a determined branch of commerce or industry in a determined region (conventional procedures), and (b) that which is not controlled by these agreements and must therefore be regulated by a governmental decree provided for by the statute (decree procedure).

(1) *The conventional procedures.* The statute of June 24th, 1936 had provided that the collective agreements concluded under the conditions of that statute must provide for conciliation and arbitration procedures. The new statute adds that these procedures should cover all collective labor disputes between the parties.¹⁵⁶ The statute furthermore gives certain specific rules.¹⁵⁷ With respect to conciliation it prescribes that the collective agreement must provide for a conciliation commission composed of an equal number of employer and employee representatives meeting under the chairmanship of a Prefect, i.e. a high official in local government. With respect to arbitration the new statute prescribes that each party to the collective agreement has to designate one arbitrator nominated for the duration of the agreement and some substitutes. The collective agreement must furthermore contain a list of "final arbitrators" made up by accord of the parties. If the

¹⁵³Cf. Note on "Le Statut Moderne du Travail" (1938) 1 *Droit Social* 128, and the articles by Gignoux and Pic., *Revue Politique et Parlementaire*, February, 1938, 202; *Revue Politique et Parlementaire*, February, 1938, 228; *Revue Politique et Parlementaire*, June, 1938, 435 ff.

¹⁵⁴(1938) *Journal Officiel*, March 15th, 1938, (1938) 1 *Droit Social* 101.

¹⁵⁵Statute, March 4th, 1938, Art. 7, Par. 3.

¹⁵⁶Statute, March 4th, 1938, Art. 1.

¹⁵⁷Statute, March 4th, 1938, Art. 2, 3, 4, 5.

parties cannot agree on such a list, the chief justice of the Court of Appeal of the respective region will furnish it. If the two arbitrators cannot reach a settlement of the dispute, then they have to choose a "final arbitrator" from the list; if they cannot even agree upon the person of the final arbitrator, the prefect or the minister himself must select him.

(2) *The decree procedure.* In cases where no such conventional procedure is available, the statute provides that a procedure should be elaborated by governmental decree. The government performed this duty and enacted a decree on April 20th, 1938.¹⁵⁸ The decree establishes (1) one departmental conciliation commission in each Département (i.e. a French administrative district headed by the Prefect), consisting of an equal number of employers and employees and being presided over by the Prefect; and (2) national conciliation commissions connected with the departments of the different ministers, likewise consisting of an equal number of employers and employees. The selection of the members of the departmental conciliation commissions is made by the prefect in compliance with ministerial orders. The departmental commission becomes active on submission of the dispute to it by the prefect, who in his turn acts either on his own initiative or on the demand of the party. The prefect can, however, in disputes of particular importance, submit the same to the competent minister, likewise either on his own initiative or on the demand of a party, and the minister thereupon and after consultation with the minister of labor can refer the dispute to the national conciliation commission in his department. The parties must appear in person.

If no accord is reached, the matter goes to arbitration. The parties are invited to designate either one arbitrator for each or one common arbitrator. If they fail to do so, either the minister or the prefect (depending upon which conciliation commission acted) will appoint two arbitrators. The prefect must choose one from a list of employers and the other from a list of employees, which lists are both made up by the chief justice of the Court of Appeal in the respective region on advice of the prefect and after consultation with the most representative workers and employers' organizations. The minister picks his arbitrators from two lists of employers and employees selected by the National Economic Council. If the arbitrators do not agree, a final arbitrator takes

¹⁵⁸Journal Officiel, April 21st, 1938, (1938) 1 Droit Social 141.

the case, nominated either by the arbitrators or, if they cannot agree upon any person, by the competent minister after consultation with the minister of labor.

b. The statute further defined the powers of the arbitrators somewhat more strictly by providing:

"The arbitrators and final arbitrators pass, according to the rules of the common law, on all collective labor disputes of legal character, i.e. on disputes regarding the performance of collective agreements and the observation of labor law and decrees. The arbitrators and final arbitrators pass in equity on all other collective labor disputes, particularly such of economic nature."¹⁵⁹

c. The most significant innovations of the new statute deal with the *enforceability and the judicial review of the awards*. The new statute prescribes expressly that no appeal shall lie to the Court of Cassation or the Council of State,¹⁶⁰ and that the awards should be directly enforceable after rendition, communication to the parties, and mere filing with the civil tribunal.¹⁶¹

The statute introduces, however, a writ of review (cassation) from the awards (which must be rendered with reasons like judgments¹⁶²) to a newly established *Supreme Court of Arbitration*. This writ is no appeal, but a writ of review on the law only, based on three classical grounds for such writ:¹⁶³ lack of jurisdiction, exceeding the power, and violation of law.¹⁶⁴ An interesting feature is that not only the aggrieved party, but also the minister of labor, can ask for a review of the award by the Supreme Court of Arbitration on the same grounds.¹⁶⁵ He has, however, also the additional right of a true appeal. If he thinks that public interest demands it, he can, on advice of the National Economic Council and the minister in whose department the dispute falls, ask the court to render a new decision on the merits.¹⁶⁶

The Supreme Court of Arbitration was organized by decree of April 3rd, 1938.¹⁶⁷ It is composed of the vice president of the Council of State as its president, one division president of the Council of State, two councillors of state, two judges of the or-

¹⁵⁹Statute, March 4th, 1938, Art. 9, Par. 2 and 3. One could say that France thus returned to the famous maxim that equity follows the law.

¹⁶⁰Statute, March 4th, 1938, Art. 13, Par. 2.

¹⁶¹Statute, March 4th, 1938, Art. 15.

¹⁶²Statute, March 4th, 1938, Art. 13, Par. 1.

¹⁶³The writ of cassation to the Supreme Court in ordinary civil cases results likewise in a review on points of law only, and can be based on similar grounds.

¹⁶⁴Statute, March 4th, 1938, Art. 13, Par. 3.

¹⁶⁵Statute, March 4th, 1938, Art. 13, Par. 4.

¹⁶⁶Statute, March 4th, 1938, Art. 13, Par. 4.

¹⁶⁷Journal Officiel, April 5th, 1938, (1938) 1 Droit Social 138.

dinary courts of justice in high positions, and two other high ranking public officials. For the appeals on the merits in the public interest, two worker representatives and two employer representatives belonging to the Permanent Commission of the National Economic Council are added. An equal number of councillors of state, judges, public officers and worker and employer representatives are appointed as substitutes.¹⁶⁸ The Arbitration Court shows a strong personal tie up with the Council of State (which has the function of a supreme administrative court), and also has its seat in the locality of the latter. The procedure before the Supreme Arbitration Court resembles likewise in many respects French administrative procedure.¹⁶⁹

The statute of March 4th, 1938, completed substantially the present French system of collective agreements and arbitration. Mention might be made of a decree of November 12th, 1934,¹⁷⁰ which added some provisions strengthening the legal effect of the awards and improving upon the procedure, and of article 17 of a statute of May 2nd¹⁷¹ which strengthened the effect of collective agreements or awards rendered obligatory on outsiders by decree of the minister, by declaring it a criminal offense to pay inferior wages.

III. *The effect of the new statute.*—The significance of the new statute is extraordinary. It creates for the collective labor disputes which, in so far as legal issues were involved, until the statute of 1936 had been within the competence of the not always collectively spirited¹⁷² ordinary courts of justice, an entire new branch of judicial administration headed by the Supreme Court of Arbitration. On the side of the traditional two branches of the French judiciary, i.e., the ordinary courts and the administrative courts, stands now a third one which has been called "social juris-

¹⁶⁸The individual appointments were made by decrees of Apr. 4th, 6th, 7th, and 27th; cf. (1938) 1 *Droit Social* 141.

¹⁶⁹The procedure is regulated by decree of April 3rd, Articles 8 ff., (1938) 1 *Droit Social* 138. On the French administrative court procedure in general see Riesenfeld, *French System of Administrative Justice—A Model for American Law?* (1938) 38 *Boston Univ. L. Rev.* 48 ff., 400 ff., 715.

¹⁷⁰*Journal Officiel*, Nov. 13th, 1938, (1938) 1 *Droit Social* 364.

¹⁷¹*Journal Officiel*, May 3rd, 1938, (1938) *Dalloz*, *Rec. Pér.*, part 4, 225.

¹⁷²One might read for instance the bitter remark of a lower court judge (*Tribunal de Commerce de Béziers*, June 14th, 1937, *Bouzat v. Société des Docks Méridionaux*, (1937) *Dalloz*, *Rec. Hebd.* 420, saying, "Considering that the freedom of work still constitutes, at least legally, as so many other liberties consecrated by the Constitution and the laws of the Republic, an imprescriptible right of men. . . ."

diction" (jurisdiction sociale).¹⁷³ The new Supreme Arbitration Court has built up quickly a highly interesting body of modern industrial relations law, mostly pertaining to the right of collective bargaining and the circumscription of the arbitral jurisdiction and powers.

(a) The most difficult question is perhaps the one as to what constitutes a "collective labor dispute" subject to conciliation and arbitration.¹⁷⁴ The statute does not offer any definition, but leaves it entirely to the judicial process of inclusion and exclusion. For instance, does the discharge of a single worker amount to a collective dispute? Generally speaking it does not.¹⁷⁵ Neither does the simultaneous discharge of several workers constitute a collective labor dispute, even if the union intervenes.¹⁷⁶ However, if the legality of the dismissal or not rehiring is questioned on the strength of a stipulation in a collective agreement, the controversy assumes collective character.¹⁷⁷ The discharge of a single worker will furthermore be a collective dispute, if it is caused by union activity of the dismissed man or his conduct as workers delegate.¹⁷⁸

¹⁷³Cf. the opinion of Mr. Laroque, commissioner of the government at the Supreme Arbitration Court in the case of *Chambre Syndicale de l'Industrie du Pétrole à Paris*, (1938) 1 *Droit Social* 255, 256: "In our view the final arbitrators are neither administrative judges nor judicial judges. They form a third branch of jurisdiction, constituted in a still incomplete way, which we like to characterize as "social jurisdiction," and which today has a Supreme Court of its own, the Supreme Arbitration Court, a counterpart to the Court of Cassation and the State Council." See also the article by Professor Scelle, *Limites du Règlement Arbitral* (1938) 1 *Droit Social* 404. It might be added that the Tribunal of Conflicts which is a special tribunal for the decision of jurisdictional conflicts between the ordinary courts of justice and administrative agencies (cf. Riesenfeld, *The French System of Administrative Justice—A Model for American Law?* (1938) 18 *Boston University Law Review* 48, 69) decided on December 12th, 1938 that the arbitrators designated by the government could not be held liable in damages by the ordinary courts of justice for mistakes committed in their arbitral functions. (1939) 59 *Gazette du Palais* 141.

¹⁷⁴Cf. the comments by Teitgen, (1938) 1 *Droit Social*, 9, 106, and Raoul G. (1938) 1 *Droit Social*, 293.

¹⁷⁵See Supreme Arbitration Court, May 16th, 1938, case of *Sieur Costa*, (1938) 1 *Droit Social* 247, and Note by Raoul G. (1938) 1 *Droit Social*, 293.

¹⁷⁶Supreme Arbitration Court, June 13th, 1938, case of *Maison Descourtieux*, (1938) 1 *Droit Social* 292; see also Supreme Arbitration Court, July 12th, 1938, case of *Société André Citroën*, (1938) 1 *Droit Social* 293 (dismissal of several workers for acts of violence.)

¹⁷⁷Supreme Arbitration Court, June 13th, 1938, case of *Maison Descourtieux*, loc. cit. supra note 176; Supreme Arbitration Court, July 4th, 1938, case of *Société des Établissements Santos*, (1938) 1 *Droit Social* 292; Supreme Arbitration Court, July 11th, 1938, case of *Société France-Transports Domicile*, (1938) 1 *Droit Social*, 352.

¹⁷⁸Supreme Arbitration Court, June 15th, 1938 case of *Compagnie d'Électricité et de Luminescence à Paris*, (1938) 1 *Droit Social* 308; Supreme Arbitration Court, May 18th, 1938, case of *Chambre Syndicale des Industries Métallurgiques du Rhone*, (1938) 1 *Droit Social* 210.

However, the mere fact that the discharged worker was a delegate will not suffice, particularly not, if the union does not intervene,¹⁷⁹ and even the threat of strike as a reprisal for the discharge does not change the nature of the dispute,¹⁸⁰ even though the strike itself will give rise to arbitration.¹⁸¹

(b) If it is established that a collective dispute subject to arbitration exists,¹⁸² the powers of the arbitrators with respect to its settlement become an important problem. The statute distinguishes here, as has been mentioned, between collective disputes of legal character, to be decided according to the rules of the French common law, and other collective labor disputes to be settled in equity. Where is the line of demarcation and what are the limits of this equity? The Supreme Arbitration Court has developed the following principles: If there exists a statute, a decree or a collective agreement the arbitrators must apply it. All they can do in the enforcement¹⁸³ of collective agreements is to construe them and to examine their validity.¹⁸⁴ They cannot modify existing clauses or provisions.¹⁸⁵ But so far as issues are concerned which are not regulated by agreement the arbitrators may add a new equitable regulation of them.¹⁸⁶ In this case, however, they exercise their equitable powers, as they do, when they establish a regulation of all the working conditions in case the parties cannot reach a collective agreement. Such award cannot compel the

¹⁷⁹Supreme Court of Arbitration, August 26th, 1938, case of *Sieur Rassaut*, (1938) 1 *Droit Social* 353.

¹⁸⁰Cf. Note by Raoul G., (1938) 1 *Droit Social*, 293, citing the case of *Salpa Française*, June 1st, 1938, and *Société Faure*, June 15th, 1938.

¹⁸¹Supreme Court of Arbitration, May 16th, 1938, case of *Sieur Costa*, (1938) 1 *Droit Social*, 247.

¹⁸²A strike, even though being unlawful, if begun before arbitration, does not bar the arbitration procedure. Supreme Arbitration Court, May 16th, 1938, case of *Sieur Costa*, (1938) 1 *Droit Social*, 247.

¹⁸³In contrast to the Court of Cassation, the Supreme Arbitral Court has not permitted the arbitrators to impose fines in their original award which would be collectible in case one party fails to perform the obligation established by the award. Supreme Arbitration Court, Oct. 26th, 1938, *Société à Responsabilité Limitée Pasquet*, (1938) 1 *Droit Social* 380. The emergency decree of November 12th 1938, however, authorizes the arbitrators to impose a fine of not more than one thousand francs in a supplemental award if a person or organization does not perform the obligations imposed by the original award. Section 6, (1938) 1 *Droit Social* 364.

¹⁸⁴Supreme Arbitration Court, May 18th, 1938, *Société Alésia-Taxis de Paris*, (1938) 1 *Droit Social* 257.

¹⁸⁵Supreme Arbitration Court, August 5th, 1938, *Syndicat Confédéré de la Sellerie*, (1938) 1 *Droit Social*, 345. The Court intimated that a modification would be admissible in case of unforeseeable changes of fundamental character, which view is in accord with general principles of French public law.

¹⁸⁶Cf. the case Supreme Arbitration Court, August 5th, 1938, *Syndicat Confédéré de la Sellerie*, (1938) 1 *Droit Social*, 345.

parties to *stipulate* accordingly, but the award itself constitutes the regulation of the labor relations.¹⁸⁷

If the parties are bound by a collective agreement, in general, the arbitrators cannot substitute another one, but, if an existing agreement was not concluded by the "most representative industrial groups for a determinate branch in a determinate region" or if now an agreement for a larger district is required, the Supreme Arbitration Court has permitted to a certain extent the equitable intervention of the arbitrators.¹⁸⁸ The limits of the equitable powers are defined by the formula that the purpose of the arbitration is "the reconciliation of the collective interests and rights of the workers with the freedom and authority of the employer."¹⁸⁹ Thus the arbitrator in particular may order the reinstatement of workers, and this not only if their dismissal or not rehiring was a violation of a statute or a clause in a collective agreement,¹⁹⁰

¹⁸⁷Supreme Arbitration Court, May 18th, 1938, *Usine des Cycles Helyett*, (1938) 1 Droit Social 251; Mai 16th, 1938, *Chambre Syndicale des Constructeurs etc., de l'Arrondissement du Havre*, (1938) 1 Droit Social, 252; July 12th, 1938, *Chambre Syndicale de l'Habillement de la Somme*, (1938) 1 Droit Social 295; July 4, 1938, *Union Locale des Syndicats de Bellegarde*, (1938) 1 Droit Social 296; July 6th, 1938, *Établissement Pigier, à Paris*, (1938) 1 Droit Social 297; cf. Note by Teitgen, (1938) 1 Droit Social 297. Instead of establishing a regulation immediately, the arbitrator may impose upon the parties the duty to make another attempt to reach an agreement. Supreme Arbitration Court, July 6th, 1938, *Établissements Pigier*, (1938) 1 Droit Social 297.

It is to be noted that in the regulation of labor relations by arbitral award frequently the question is of importance, whether the dispute exists between the most representative groups for a determinate branch of the industry or commerce in a determinate region; then the arbitrators have to decide whether these conditions are fulfilled and can review on this occasion the decisions rendered by the Prefects or the Minister of Labor with respect to the composition of the commissions for the elaboration of a collective agreement. Cf. Supreme Arbitration Court, July 4th, 1938, *Union Locale des Syndicats de Bellegarde*, loc. cit; December 20th, 1938, *Chambre syndicale des Employées de la région parisienne* (1939) 2 Droit Social 30. This issue can also be the very object of a collective dispute. Cf. Supreme Arbitration Court, June 22nd, 1938, *Union des Syndicats Patronaux de Boulogne*, (1938) 1 Droit Social 303; October 24th, 1938, *Syndicat Chrétien des Employées et Techniciens d'Algérie* (1939) 2 Droit Social 29. As to the elements to be considered cf. *supra* note 114.

¹⁸⁸Supreme Arbitration Court, June 22nd, 1938, *Union des Syndicats Patronaux de Boulogne*, (1938) 1 Droit Social 303 (demand by two unions to conclude a collective agreement in the forms of the statute of June 24th, 1936, even though the employers' association was bound by an agreement with two other unions); Supreme Arbitration Court, July 4th, 1938, *Chambre Syndicale des Entreprenuers de Moulins*, (1938) 1 Droit Social 296 (demand of a convention for larger territory is reason for arbitration, but the award cannot abrogate the local convention).

¹⁸⁹Supreme Arbitration Court, June 29th, 1938, *Syndicats des Grandes Pharmacies*, (1938) 1 Droit Social 346; June 15th, 1938, *Compagnie d'Électricité et de Luminescence*, (1938) 1 Droit Social, 309.

¹⁹⁰Supreme Arbitration Court, July 4th, 1938, *Société des Établ. Santos*, (1938) 1 Droit Social, 293; June 15th, 1938, *Compagnie d'Électricité*, (1938) 1 Droit Social 309.

but also in other collective disputes.¹⁹¹ The arbitrators cannot, however, as a matter of principle limit the right of the employer to cut down the number of employees for economic reasons.¹⁹² But the Supreme Arbitration Court permitted arbitral jurisdiction in one case where the union required redistribution of work instead of discharge.¹⁹³

(c) By drawing these lines under the writ of cassation the Supreme Arbitration Court has exercised quite a far reaching control over the arbitral awards, and as a consequence the distinction between law and equity has become a matter of degree only.¹⁹⁴ It is assumed that the court will examine even the exactness of material facts upon which awards are based.¹⁹⁵ Thus the Supreme Arbitration Court has undoubtedly contributed greatly on the one hand to build up a whole system of "labor-relations equity"¹⁹⁶ and on the other hand to reconcile the system of an arbitral regulation of labor conditions with the idea of the supremacy of the law.

CONCLUSION

Looking at the development of French labor law, as described in the foregoing pages, one can hardly deny that it reveals many trends and features which are of greatest interest to the student of industrial relations and their law. Particular attention should be given to the rapid shift of the underlying principles. Collective bargaining is the way by which the insignificant bargaining power of the individual is increased and a better balance of the economic forces of capital and labor in industrial relations can be reached. Originally the collective agreements were little more than the means by which workers, acting collectively, could obtain a settlement of certain controversial issues and improve certain aspects of their working conditions. From this the idea was conceived that col-

¹⁹¹Supreme Arbitration Court, May 16th, 1938, *Sieur Costa*, (1938) 1 *Droit Social*, 247; May 23rd, 1938, *Société de Louvres*, (1938) 1 *Droit Social* 261; June 29th, 1938, *Syndicats des Grandes Pharmacies*, (1938) 1 *Droit Social* 346.

¹⁹²Cf. Supreme Arbitration Court, June 29th, 1938, *Syndicats des Grandes Pharmacies* (arbitrator cannot forbid in advance the discharge of employees by an employer who wants thus to adjust his greater production costs resulting from an award imposing higher wages.)

¹⁹³Supreme Arbitration Court, Oct. 5th, 1938, *Établ. Robbe*, (1930) 1 *Droit Social* 320.

¹⁹⁴Note by Teitgen (1938) 1 *Droit Social*, 297, 302.

¹⁹⁵Cf. Note (1938) 1 *Droit Social* 260.

¹⁹⁶Professor Cuche in (1939) *Dalloz. Rec. Hebd.* 2 speaks of a "true pretorien labor law for the purpose to supplement the civil law" ("*véritable droit prétorien du travail, juris civilis complendi causa.*")

lective bargaining could be used as the means by which an industrial self-government founded on a consensual basis could be worked out. But the cleavage between capital and labor had grown too deep.¹⁹⁷ The increase and protection of the bargaining power of labor did not result in a fruitful cooperation through the bargaining process. Left holding the bag was neither labor nor capital, but the general public. The state had to intervene. Thus the system of an industrial self-government on a consensual basis was replaced by what one could call "industrial government by arbitration," complemented by the extension decrees of the Minister. This, to be sure, is still a far cry from wholesale fixing of labor conditions by administrative ordinance as practiced in the Nazi-state, but on the other hand it is a definite step beyond an industrial system based on collective bargaining as such. Whether this system of compulsory arbitration is workable, is a question which cannot be answered conclusively as yet. So far it seems to have been quite successful.¹⁹⁸

This experience in France ought not to be taken too lightly. In 1920, Professor Hale of the Columbia Law School wrote a short but pungent article called *Law Making by Unofficial Minorities*,¹⁹⁹ in which he emphasized that the recognition of collective bargaining as such leaves the factor of mutual coercion in the economic system, and does not effectuate a balance of power. Collective bargaining is an important instrument of industrial peace only if it is resorted to by responsible groups in a spirit of collaboration. If it is abused, the general public will suffer.

It might be that the development inevitably and necessarily drifts toward regulation by arbitration, or even outright regulation by administrative decree. Mr. Hale seems to assume that. The French experience might at least be a warning that either the process of collective bargaining must by *law* and even more so by *morale* be made a workable scheme, or compulsory arbitra-

¹⁹⁷Cf. Blondel, *Nature et Portée de l'Arbitrage Obligatoire*, (1938) 1 *Droit Social* 98, who stated: "The rupture of the equilibrium was such, however, that the regulation by contract, i. e. an accord freely discussed and concluded between employer and workers, seemed to be a thing of the past."

¹⁹⁸Cf. The high praise bestowed on the work of the Supreme Arbitration Court by Professor Savatier, *loc. cit. supra.* note 149. Also Professor Pic, an eminent authority on French labor law and ardent critic of the statute of Dec. 1937, seems no longer to object to the new system. Cf. his most recent article *Le Nouveau Statut du Travail et le Redressement National*, *Revue Politique et Parlementaire*, Jan. 1939, 24 ff. where the preservation of the arbitration system is apparently taken for granted.

¹⁹⁹Hale, *Law Making by Unofficial Minorities*, 20 *Columbia L. Rev.* (1920), 451.

tion will necessarily be introduced as a remedy against industrial anarchy and a protection of the general public. The question is whether one could stop even there. It might well be that on the success of collective bargaining is hinged the fate of industrial democracy and democracy in general.