CONTENTS

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The Swiss System of Compulsory Extension of Collective Agreements

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The extension of collective agreements to persons other than the parties has been described in an earlier article in the Review *(to which the reader is referred for a general discussion of the subject) as constituting "the first chapter of a new legislative technique, that of legislation by accord".*[1] *The method was first introduced in New Zealand towards the end of the last century, and by degrees the idea has been adopted in various other countries. In Switzerland, national legislation on the subject was first adopted in 1941. The purpose of the following article is to describe this legislation and to examine the various points that have arisen in its application.*

HISTORICAL BACKGROUND

THERE are very few judicial institutions in Switzerland whose history has been as eventful as that of the system providing for the compulsory extension of collective labour agreements to third parties.

According to the ordinary law, collective agreements are binding only on the members of the groups which are parties to the agreement. There are only two ways of imposing an obligation on third parties to observe the agreement: either they can be compelled to belong to the contracting organisations, or else the agreement can be given the character of a general rule which, like an Act, must be observed by the whole people.

[1] Cf. *International Labour Review*, Vol. XL, No. 2, Aug. 1939: "The Extension of Collective Agreements to Cover Entire Trades and Industries", by L. HAMBURGER, p. 194.

The Swiss nation is deeply devoted to the principle of freedom of association and would never agree to compelling an unorganised employer or worker to join a particular group of employers or workers. It was therefore quite natural to prefer the second alternative, that of making collective agreements generally binding. For a considerable period this system was regarded with reserve. In a few cases some provision was made for it in special federal laws, concerning the embroidery industry[1], the observance of the weekly rest[2], and the hotel industry.[3] But the difficulties that began to arise in 1930 led to a change in the situation. Rightly or wrongly, it was believed that certain collective agreements would be terminated unless their observance by all the undertakings in the branch of activity in question could be secured by making them generally binding. It was also believed that the number of collective agreements would not increase if it was impossible to make them binding. In other words, it was felt that the system of compulsory extension of agreements should be made very wide, applicable to any branch of economic activity, and it was decided to take effective action along these lines.

These were the ideas that inspired the Parliament of the Canton of Geneva to adopt a very daring Act on 24 October 1936, known as the Duboule Act after the name of its author.[4] Under this Act the cantonal government was empowered not only to make collective agreements generally binding in the canton, but to impose a model agreement in any particular branch of activity when this was considered necessary in the general interest.

The Geneva example was followed by the Cantons of Fribourg and Neuchâtel, which adopted Acts, dated 2 February 1938 and 17 May 1939 respectively, for the compulsory extension of collective agreements.[5]

The Duboule Act, however, was referred by a workers' association to the Federal Court, which annulled it on the ground that the power to make a collective agreement generally binding rested with the federal authorities alone, and that consequently the Act was unconstitutional.[6] This decision gave rise to much controversy. The Swiss Federal Court has its seat at Lausanne, and the supporters of the Act accordingly compared Lausanne to Byzantium and described the federal judges as mere intellectuals completely out of touch with the most elementary realities.

[1] *Receuil officiel des lois et ordonnances de la Confédération suisse*, Vol. 38 1922, p. 545.
[2] *Idem*, Vol. 50, 1934, p. 479.
[3] *Idem*, Vol. 51, 1935, p. 242.
[4] Cf. *Feuille fédérale*, 1941, p. 325.
[5] *Ibid.*
[6] *Arrêts du Tribunal fédéral suisse*, Vol. 64, 1938, Part I, p. 16.

By degrees, however, the Genevese idea won support in the rest of Switzerland. A considerable movement sprang up, and on 1 October 1941 the Federal Parliament adopted a "Federal Order to make it possible to declare collective agreements generally binding".[1] The period of validity of this Order was limited to two years, but it was extended, with some minor amendments, on 23 June 1943 for a further three years, that is, up to 31 December 1946.[2]

The date 1 October 1941 is an important one in Swiss judicial history since it marks the adoption of a system of great interest and the inauguration of a new stage in industrial relations.

Main Features of the Federal Legislation

The principal provisions of the Federal Orders of 1941 and 1943 are described below.

Competent Authorities

In the first place, it was considered that the twofold power to make a declaration extending the scope of collective agreements and to annul a declaration before its date of expiry should be entrusted not to the legislative but to the executive authority. The reason is that the declaration is regarded as an administrative act, for which the legislative authority is not normally competent. There is another important consideration, however, of a practical nature. To avert an impending dispute it may sometimes be necessary to make a collective agreement generally binding without much delay. On the other hand, it may also be necessary sometimes to put an end without delay to a declaration the effects of which have proved dangerous in practice. It is, of course, impossible to avoid certain formalities or to shorten them; but in spite of all, it is the executive authority that is in a position to take action most speedily or, to be more precise, least slowly.

In Switzerland the federal executive authority, in other words, the Swiss Federal Council, is the sole authority competent to pronounce the general extension of a collective agreement which is to apply to the whole of Switzerland or to several cantons, even against the wish of the cantonal governments concerned.

The cantonal governments may make declarations which are applicable to their respective cantons, but their decisions are not final. If they refuse an application to make a declaration, or if they have misinterpreted the law, the parties have the right of

[1] *Recueil officiel des lois et ordonnances de la Confédération suisse*, Vol. 57, 1941, p. 1141.
[2] *Idem*, Vol. 59, 1943, p. 853.

appeal to the Federal Council. If they agree to make the declaration, this does not come into force until it has been approved by the Federal Council. Federal approval is essential.

The Swiss system is interesting on this point. The Confederation has been given intercantonal competence, but the cantons retain internal cantonal competence subject only to federal approval. Thus the cantons have not been deprived of all power. Orthodox federalists regret, of course, that the central authority should be able to override the objections of a cantonal government, and would have preferred such objections to have had the character of a veto. However, this point of view did not prevail.

As regards the federal approval, this may be of great value in certain cases. Suppose that a canton makes a declaration which, if applied, would prevent the undertakings of other cantons from working on its territory. Since cantonal autarky is contrary to Swiss constitutional law, the Federal Council would refuse its approval and the declaration would not come into effect.

Conditions of Extension

The legislation lays down the principle that only those collective agreements can be declared generally binding which are already binding for the majority of the workers and employers in the branch in question, or which have been approved by such a majority. Furthermore, the majority of employers must employ the majority of all the workers in the branch of activity in question. By requiring this threefold majority, the legislature has seen to it that only agreements with a large area of support are made generally binding.

The declaration is not applicable solely to collective agreements as a whole, that is to say, agreements comprising all the usual clauses of a labour contract. There is nothing to prevent the declaration from relating to a special clause on a particular point: for example, the rate of cost-of-living bonus applicable in an occupation. It is considered that declarations of limited scope are sometimes quite as useful as those of a general character.

If a clause of a collective agreement is contrary to binding provisions of federal or cantonal law, its extension cannot be made compulsory. This was an obvious requirement, but, as a celebrated diplomat once observed: "It is sometimes better to say what goes without saying." Perhaps international law ought to have been mentioned as well as Swiss federal and cantonal law; but the reason for not doing so was no doubt that in this field international law has been incorporated in Swiss federal law. The reference here is to the three Conventions adopted by the International Labour Conference in Washington in 1919 which relate to the minimum

age for admission of children to industrial employment, the night work of young persons in industry, and the night work of women. These three Conventions, in so far as their provisions were not already embodied in Swiss labour law, formed the subject of the Federal Act of 31 March 1922 on the employment of women and young persons.

In order that the legislation may not give rise to unnecessary extensions of collective agreements, it provides that no declaration can be made unless it meets a real need. If a proposed declaration is not indispensable for preserving the existence of a collective agreement already concluded, or for making the conclusion of an agreement possible, the authorities must decline to make it. It is considered that if a collective agreement is capable of unaided existence, there is no occasion for official intervention.

Before a collective agreement can be declared generally binding, it must be ascertained that it pays due regard to variations in conditions of operation and to regional differences. The discussions in the Federal Parliament show that it was feared that the new system might tend to equalise conditions of work in town and country, with the result that rural undertakings might be closed down. Hence the demand that existing differences should be respected.

The authorities must refuse to make a declaration which is contrary to the general interest. In the writer's opinion, this means that they must reject all applications that are deemed to be inexpedient for political, social, or economic reasons.

In very few countries does the idea of equality before the law play so great a part as in Switzerland. In the name of this principle the Federal Court has constantly intervened to annul the provisions of cantonal laws and regulations or judicial and administrative decisions of the cantons. The value of the principle is not merely theoretical. It is a living fact which dominates the whole of Swiss life. It is therefore not surprising that the Federal Orders of 1941 and 1943 should have provided that clauses of a collective agreement contrary to the principle of equality before the law could not be made generally binding. In other words, if a collective agreement is to be extended, it must contain no clause establishing "an inequality of treatment — or an equality of treatment — that is not justified by factual differences of a decisive character for purposes of judicial distinction".[1] It is in this sense that the Federal Court has in practice interpreted the idea of equality before the law.

Further, the extension of any provisions of an agreement which are contrary to the principle of freedom of association is prohibited.

[1] *Arrêts du Tribunal fédéral suisse*, Vol. 49, 1923, Part I, p. 4.

It follows that no employer or worker can be made, directly or indirectly, to join an organisation party to the agreement, against his will. As already stated, the Swiss nation is particularly sensitive on this point, and no other regulation would have been accepted.

The Federal Orders also provide that no employer or worker can be deprived of the right of appearing before his "natural judges" in consequence of the extension of a collective agreement. In Switzerland the disputes to which an agreement may give rise are divided into two groups: collective and individual. Collective disputes are those which involve either the two organisations party to the agreement, or one organisation and an employer or worker. These disputes come before the cantonal conciliation offices, which have the necessary authority to bring about a settlement, provided that the parties in question recognise their competence. Individual disputes, on the other hand, are those between a single employer and a single worker and do not concern the associations party to the collective agreement. They are referred either to the ordinary civil courts or to the special courts set up to deal with them, frequently known as "probiviral" courts.

In a general way the Swiss collective agreements do not deal with individual disputes. They do not even mention them and merely leave their settlement to the natural judges. Their attitude towards collective disputes is different. Many of them have set up joint boards, which not only take the place of the cantonal conciliation offices for purposes of amicable settlement, but sometimes also give awards. It is true that a recalcitrant party might one day contest the authority of a joint board to give such awards, and it is not yet very clear what kind of decision the courts would take if an appeal of this kind were made.

The question arises whether the Federal Orders of 1941 and 1943, by preventing a declaration from depriving an employer or worker of his right to appear before his natural judges, thereby also prevent the compulsory extension of clauses of a collective agreement setting up a joint board and giving that board judicial authority. If the answer is in the affirmative, the result would be that when other clauses of the agreement are declared generally binding, the employers and workers in the branch of activity in question would be divided into two groups. On the one hand would be those who are already bound by the agreement and come under the authority of the joint board, and on the other would be those subject only to the declaration and not otherwise bound by the agreement, who would come under the ordinary judicial authorities.

A declaration may, however, give rise also to a third kind of dispute. Under the legislation, the authority which takes the

decision to extend an agreement must define the area and occupation to which the declaration applies. This definition may give rise to disputes, and, in that case, which is to be the authority to decide: the ordinary court or the authority that made the declaration? The legislature adopted the second solution, and rightly in the writer's opinion. In a case of this kind the point at issue is whether the scope of the declaration should be modified, a question which the judicial authority is not suited to solve, but rather the executive authority that made the agreement generally binding.

Another feature of the legislation of 1941 and 1943 is that the clauses of an agreement providing for penalties, and entrusting to the parties the task of securing the enforcement of the declaration, may be made generally binding. This provision is proof of the great trust that the legislature places in the occupational organisations, whether of employers or of workers.

Before a declaration is made, the Federal Council or the cantonal government must publish the application in question in the official gazette and invite any opponents of the proposed measure to set forth their views within a specified time limit. As a rule the authorities are required to allow a period of thirty days, the object being that no one should be prevented for lack of time from submitting his views. In certain respects the effects of the declaration are those of a law. Since future legislation is announced publicly in advance, the same regulation should apply to future declarations.

Once the application has been published and the objections have been received, the competent authority is required as a rule to consult independent experts, that is to say, experts unconnected with the parties. These various formalities naturally prolong the procedure, but they are all indispensable. If any of them were abolished, the employers and workers not bound by the original agreement would feel that they were being persecuted, and it is desired to avoid this at all costs.

Effects of Extension

When the clauses of a collective agreement have been declared generally binding, they apply to all employers and workers in the branch of activity in question, whether or not they belong to an organisation party to the agreement. On the other hand, clauses of an individual contract that are incompatible with the declaration automatically become void and are equally automatically replaced by the compulsory clauses.

As long as the declaration remains in operation, employers and workers in the branch in question who have recourse to coercive measures, in other words, to a strike, lockout or boycott, are liable

to a fine of not more than 2,000 francs. This means that there may be no breach of the peace during the period of validity of the declaration, and that any such breach is treated as an offence. It is not so long ago that the legislature would have been denied the right to bring the criminal law into play in these matters.

Practical Experience

Decisions on Points of Principle

As already mentioned, the Federal Council has the right to override the objections of a cantonal government and to make a declaration applicable also to the territory of that government. In practice, however, it has not made use of this right, but has approached the parties with a view to the introduction of amendments to the agreement that will enable the cantonal authority to withdraw its objections.

Whenever an application to extend a collective agreement would result in practice in regulations governing the whole occupation, in other words, whenever the agreement deals not with a particular point only, but with the whole of the relations between employer and worker, the authorities must have the application examined by impartial experts and call for their opinion. The Federal Council has decided that in such cases neither the cantonal governments nor the Council itself can dispense with this requirement. The examination by experts is not optional but compulsory. Clearly, the Federal Government considered that in cases of this kind the opinion of the organisations party to the agreement would not be sufficient.

It has happened in practice that the Federal Council has made declarations with regard to handicrafts that are applicable either throughout Switzerland or in a large part of the country. For example, the hairdressing trade was at first made subject to uniform regulations for all the cantons without exception, and then for all the cantons except one. The Federal Council has been criticised for dealing with conditions in handicrafts on the ground that here the cantonal governments should have sole competence to make declarations. The criticism does not appear to be well founded. It is true that handicrafts are always much influenced by local conditions of employment, so that the cantonal governments, being on the spot, are better placed than the Federal Council to make the declarations in question. But in order that a cantonal government may take such a decision, it must have received an application for the extension of an agreement. This does not always happen, and the federal authority has intervened when such applications were lacking. As a general rule, therefore, it may be said that the intervention of the Federal Council has met a particular need, fully justifying its action.

All industrial undertakings in Switzerland are subject to the Federal Factory Act, which requires among other things that overtime shall be paid at time-and-a-quarter rates. The authorities were asked to give binding force to certain collective agreements providing for rates higher than the statutory overtime rates. How were they to decide? After consideration the Federal Council agreed to the request, in our opinion rightly. The Federal Factory Act was never intended to make the time-and-a-quarter rate a maximum. This is obviously a minimum rate. Moreover, it is clearly to the interest of the community to raise the cost of overtime in order that as little of it may be worked as possible.

The principles so approved with regard to overtime might of course be extended to other subjects.

From the point of view of production, the Factory Act applies only to industrial undertakings proper, as shown by their size. Handicraft undertakings are not covered. This situation has led to discontent not only among the workers of the undertakings not covered, but also among industrialists. The former do not enjoy the same safeguards as the workers in the undertakings covered and object to the inequality of treatment, while the latter are exposed to the competition of undertakings which are not subject to the same legal obligations. The result is that the authorities received applications in certain branches to make handicraft undertakings liable to observe by analogy, not all the provisions of the Factory Act, but some of them. The question was how to reply to these applications.

The Factory Act is very strict as to the size and equipment of industrial premises. Since a large number of handicraft undertakings use premises that do not fully satisfy these requirements, it would clearly have been impossible to make them subject, without modification, to the same obligations as those imposed on industrial undertakings. As a matter of fact, the applications for extension did not contemplate such action. What they did was merely to select a certain number of the provisions of the Factory Act and to ask that handicraft undertakings should be required to observe the provisions so chosen, not to the letter, but by analogy.

After careful examination, the authorities agreed to the applications and made the necessary declarations. In the cardboard industry, for example, the Federal Council has agreed that handicraft undertakings shall by analogy be subject to twelve of the provisions of the Factory Act.[1]

[1] *Feuille fédérale*, 1945, Vol. 1, p. 795.

This decision is an important one. Switzerland is considering the adoption of a Federal Act on employment in arts and crafts which would be a complement to the Federal Factory Act. By making handicrafts subject by analogy to particular provisions of the Factory Act, certain declarations extending collective agreements have perhaps prepared the ground for placing industry and handicrafts on a footing of equality.

It is obvious that the authorities can give generally binding effect to the clause of a collective agreement fixing minimum wage rates. But can they also give such effect to a maximum wage scale? This question was referred to the Federal Council in 1942 in an application on which no action has been taken.[1] It would thus appear that the federal authority has settled the point in the negative. It considered, no doubt, that a clause of this kind would be contrary to the principle of equality before the law and therefore ought not to be made generally binding. From the point of view of production, a maximum wage scale may have serious disadvantages, which should not be forgotten by the authorities responsible for making or approving declarations to extend collective agreements.

It has been argued that Swiss law accepts the principle that in industry only the actual work done gives a right to remuneration. The conclusion is drawn that it is impossible to give generally binding force to the clause of a collective agreement which treats hours during which the worker is absent from the workshop as hours of work and provides for their remuneration. However this may be, the Federal Council has agreed to give binding force to a clause of a collective agreement which, after laying down the principle that "only actual work shall be remunerated", enumerates a certain number of cases in which the worker is not rquired to work but nevertheless receives a sum equal to his wages.[2]

Several collective agreements recognising the workers' right to an annual holiday have been made generally binding. The federal authorities have seen no difficulty in the way of making a declaration in this case.

It has often happened that at the time when an application for a declaration was submitted some of the workers were earning more than the wage which it was desired to make compulsory for their category as a whole. In general the collective agreements in question provided for the maintenance of acquired rights, thus enabling the authorities to make the desired declaration.

The Federal Act on vocational training introduced two kinds

[1] *Feuille officielle suisse du commerce*, No. 71, 27 Mar. 1942, Ch. I (IX).
[2] *Feuille fédérale*, 1945, Vol. 1, p. 795.

of diplomas: one, a certificate of skill, is intended more particularly for workers; the other, a master's certificate, for employers. In several branches of activity the workers' organisations would like to have all employers without exception prohibited from entrusting skilled work to uncertificated workers. At first, therefore, a clause in accordance with this demand was inserted in collective agreements. Subsequently the organisations asked the federal authorities to make this provision generally binding. The Federal Council did not adopt a negative attitude in this matter, but it should be noted that the extended collective agreement protected the acquired rights of older workers and did not apply at once to young workers. In practice the latter were allowed sufficient time to prepare for the examination on which the certificate of skill is granted.[1]

Experience has shown that a system of equalisation is indispensable in a number of cases. For example, if it is desired to grant children's allowances in a particular branch of activity, the employers must make a payment to an equalisation fund which is calculated without reference to the number of children of their workers. The fund then divides the total amount received among the workers in proportion to the number of their children. This is the only way to remove the temptation to employers to employ single men or childless married men. The contribution to the equalisation fund may be calculated in various ways. Sometimes it takes the form of a simple capitation fee; for example, the employer pays 10 francs a month for each worker employed in his undertaking. Sometimes it is proportionate to the total wages paid by the employer, who pays, for example, 3 per cent. of the total wage bill to the equalisation fund. Lastly, the contribution may be proportionate to the total hours or days worked by the workers in the undertaking. Each of these different systems has its own advantages and disadvantages. The reason why there is at present a tendency to criticise the second method, that of calculating the contribution on the total wage bill, is the belief that it to some extent penalises employers paying high wages and thus tends to discourage them.

As already mentioned, the principle of freedom of association may not be infringed in making a declaration to extend the scope of a collective agreement. This means that the authorities have not compelled independent employers to join institutions running an equalisation fund. In fact they would have no means of doing so. On the other hand, they have not hesitated to require independent employers to join the fund itself, and have included in their declarations an obligation for such employers to pay to the fund the contributions needed for covering the allowances granted. They

[1] *Ibid.*, pp. 792 and 793.

have gone even further. They have expressly reserved "their right to take any measures with regard to the fund that will protect the interests of employers and workers not belonging to the organisations party to the agreement, in particular in the event of liquidation".[1] This formula has become so frequent that it may be regarded as a standard clause in the decisions of the Federal Council. It means that the funds may not grant privileges to those of their members who belong to the organisations party to the agreement that they refuse to the other members.

The authorities have agreed that clauses imposing fines for failure to observe the provisions of the agreement shall be made generally binding. Several binding collective agreements provide that where there has been an evasion of payment, the amount due must at once be paid to the person entitled to it. This does not create an obligation out of the void for the persons in question, but merely serves as a reminder of a legal obligation, and does not call for extension. The clauses we have in mind are those which impose fines on persons breaking the agreement, the money being payable to the authorities but intended for the organisations party to the agreement, which are the bodies responsible for supervising its observance and thus incur costs.[2] Such clauses, which impose penalties under the agreement in the case of members of the organisations party to the agreement, but fines in the case of outside persons, are tending to become quite usual.

As already indicated, the organisations party to a collective agreement usually agree to leave the settlement of individual disputes between an employer and a worker to the ordinary judicial authorities. For example, they do not object to having those authorities deal with disputes arising out of the dismissal of a worker without notice.

The organisations are also often prepared to do without the intervention of the cantonal conciliation offices, whose function was mentioned above. On the other hand, they are now tending to give their own joint institutions authority not only to act as conciliators, but also to settle collective disputes. Take the case of an employer belonging to an organisation party to the agreement who has not paid the wages fixed in the agreement and obstinately refuses to make up the full amount. The organisations wish to have the means of instituting proceedings before the joint board and of giving the board authority to make an award against the employer. They therefore introduce an *ad hoc* clause in the collective agreement, and it is clear that some day the validity of

[1] *Feuille fédérale*, 1943, pp. 1189 and 1192.
[2] *Ibid.*, p. 1367.

that clause will be contested before the courts. But whether or not this happens, the organisations take a further step. They ask the authorities to make clauses of this kind generally binding so as to be applicable to third parties. It is difficult to say whether the declaration in this case has the desired effect in practice. Several declarations have been made which recognise the existence of joint boards[1]; but does this mean that in addition to giving the boards competence, as is quite admissible, to supervise the observance of the declaration and to conciliate collective disputes, they are also given competence to settle such disputes? This may be so, but is by no means certain. No definite answer can be given until judicial decisions have been taken establishing a precedent.

In any case, even though the joint boards that have been approved through the declarations have competence only to conciliate disputes, it seems regrettable that in certain cases their authority has been extended to the whole of the country. In the writer's opinion, at least as many joint boards should have been set up as there are cantons. If a dispute arises in a particular area, it should be possible to convene the conciliation authority at once; but this cannot be done if there is only one joint board for the whole of Switzerland, if its members are in the very nature of things chosen from different parts of the country, and if they live at all four points of the compass. The system of a single joint board seems defective.

A difficulty sometimes arises in determining the scope of a declaration. It often happens that workers belonging to a particular category are to be found not only in the branch of economic activity in which their presence is self-evident, but in other branches as well. For example, smithies are not the only undertakings to employ blacksmiths, who are to be found also in undertakings of quite a different kind. Faced with this problem, the federal authorities may be said to have agreed in principle that a declaration should not apply to workers of a particular branch of activity who are employed for its internal needs by an undertaking belonging to another branch. Similarly, undertakings which do not compete on the market with those subject to the declaration should not be affected by it.[2]

The above account would be incomplete if no reference were made to the almost moralising tendency of some declarations. One of them, for example, states that "the workers must conscientiously carry out the work entrusted to them", that it is "their duty to take care of the materials entrusted to them", and "that they must immediately notify the management of defects in ma-

[1] *Idem*, 1945, Vol. 1, p. 797; 1944, Vol. 1, p. 1452.
[2] *Idem*, 1945, Vol. 1, p. 800.

chinery or materials". As to the management, it is "required to adopt the necessary remedies".[1] Ethics and law go hand in hand and strengthen each other.

Statistics

The federal authorities have recently drawn up a statement of the results of four years of application of the system of extending collective agreements. The following information is drawn from the study they have published.[2]

During this relatively short period of four years, the Swiss Federal Council has taken action on 51 occasions in the shape of decisions affecting either the whole of the country or an area comprising several cantons. It will be remembered that only the Federal Council has authority to intervene in cases of this kind. Among these decisions there are several no longer in force. They fixed the cost-of-living allowances payable in certain branches of activity during a specified period, and on the expiry of the period they were in most cases replaced by decisions increasing the percentages in question.

The decisions of the Federal Council have related to the following occupations: carpenters and glaziers, electrical fitters, plasterers and painters, locksmiths and metal workers in the construction industry, tilers, tinsmiths, central heating fitters, monumental masons, hairdressers, workers in the wholesale furniture industry, workers in tile and brick works, workers in the men's bespoke tailoring industry, workers in the cardboard industry. For the first eight of these occupations, the Federal Council gave binding force to clauses governing certain special payments, such as cost-of-living bonuses, household allowances, and children's allowances. For the remaining five occupations, on the other hand, the declarations it made were much wider in scope, its object being to regulate the relations between employers and workers as a whole and to give the occupation its own rules.

As regards the cantonal governments, these have also taken a number of decisions. They have made 64 declarations which have been approved by the Federal Council, and 58 of these are still in operation. A consideration of the occupations covered shows that declarations have rarely been needed in branches of activity where industry is firmly established. For example, there have been none in the metallurgical industry. It is natural that recourse to the compulsory extension of agreements has been had mainly in branches of activity where there are many scattered employers and

[1] *Feuille fédérale*, p. 794.
[2] Cf. *Vie économique* (Berne), No. 10, Oct. 1945, pp. 401 *et seq.*

handicrafts are important. Thus the building industry has made wide use of the system. Agriculture, forestry, and horticulture, on the other hand, have made less use of it than some people had expected. Only one declaration has been made in this field, and that is a cantonal one.

Conclusion

There can be no doubt that it took some time before the system of making collective agreements generally binding was accepted in Swiss law. For reasons of principle, many jurists were opposed to the system, which does not fit into any established category, or rather may be said to form a new category. The legislature ignored these objections and went ahead with the establishment of the institution. In the writer's opinion it acted rightly in not being held back by considerations of this kind. Law must not become set in its form, but must evolve like any other social science.

After four years of unbroken practical application and judicial decision, it may be said that the system has become fully integrated not only in law but in custom, and firmly established. It has been widely used and has helped to maintain industrial peace in several branches of activity.

The organisations themselves have realised the value of the new institution, as is clearly shown by a small incident. The Government of the Canton of Geneva has on various occasions been required to refer applications for a declaration to experts. These experts, who are entitled to demand a fee, have hitherto refused all remuneration. They have felt that they were carrying out a task in the general interest of the country, and have also wished to save the organisations applying for a declaration from incurring such a cost. In this evidence of their devotion we may read a good omen for the future of the institution.