THE RISE AND DEVELOPMENT OF THE COLLECTIVE AGREEMENT

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I. INTRODUCTION

THE COLLECTIVE AGREEMENT represents the most important method in use today for the regulation not only of wages and other working conditions but also of the relations between the labour market organizations. It has become the principal instrument for self-regulation and self-government in the labour market.[1] It is well known that the collective agreement is a fairly modern development. Less well known is exactly how it came into being.

This paper, which is based on a treatise published in 1954,[2] deals with the question of how this kind of agreement arose and reached its present position in industrial relations. The introductory section is mainly concerned with the method used by the present author in dealing with these matters.[3] The following sections give a short outline of facts and results achieved.

Some 80 years ago, about 1880, trade organizations and the collective bargaining method for the regulation of wages and working conditions were practically non-existent in Sweden. Conditions were in principle regulated by means of individual agreements; in reality, however, they were governed mostly by the employer alone. Regulation by law or administrative decisions hardly existed. This can be called *the liberal era*.

Eighty years further back, about 1800, the picture was quite different. The system of governmental trade regulation still pre-

[1] Cf. in particular Robbins, *The Government of Labor Relations in Sweden*, New York 1942.

[2] Adlercreutz, *Kollektivavtalet. Studier över dess tillkomsthistoria*, Lund 1954 (XVI + 512 pp.). The headings of its seven chapters are as follows:

I. Introduction.
II. The evolution in certain European countries (Britain, France, Germany and Denmark).
III. The Swedish historical background.
IV. The labour market organizations as foundations of the collective bargaining system.
V. From employer regulation to national agreements—the formation of the collective agreement.
VI. The means of enforcing the collective agreements.
VII. The jurists and the collective agreement.

I may also refer to reviews by Schmidt, *Sv.J.T.* 1954, pp. 523 ff., and Lohse, *Statsvetenskaplig Tidskrift* 1955, pp. 225 ff., and to my reply to the latter, *ibid.*, pp. 237 ff.

[3] See further Adlercreutz, *op. cit.*, Ch. I.

vailed, a system based on the mercantilistic ideology but originating partly in the medieval corporative system. The guild legislation, and the regulation of the manufacturing industries, mining etc., were still in force. Administrative regulation of labour relations was more or less the main principle, but in practice individual agreements and unilateral regulations made by employers became increasingly important. This is here referred to as *the old regulation system.*

It follows from this that what I call the forms for the regulation of working conditions, or simply *regulation forms,* have varied considerably in the course of history.

It is a recognized fact that the history of the collective agreement is intimately bound up with the history of the trade union movement. However, closer investigation shows that some of its elements date from earlier times. One must study the background of earlier experiences and ideas in order to understand clearly how this regulation form came about.

The history of the collective agreement is an important part of the history of collective labour law. It gives an instructive example of the process by which law is made. The collective agreement came into existence without any apparent connection with legislation or adjudication. It was in the beginning a wholly autonomous institution. The parties to a collective agreement never counted on judicial means for its enforcement. This form for the regulation of working conditions can therefore be called extra-legal. This was partly due to the fact that jurists did not recognize the collective agreement as legally binding, or at any rate attributed only very limited legal significance to it. In Britain this is still the position under the common law. In Sweden the collective agreement was not in effect adopted into the legal system until the Collective Agreements and the Labour Court Acts of 1928, though the Supreme Court had previously, in 1915, recognized the collective agreement as legally binding.

The extra-legal system was, however, to a large extent founded on the legal system as a pattern. Terms such as "agreement" and "binding" were used, and methods for the impartial settlement of disputes were adopted. Of course this extra-legal system found strong support in ideas of right and morality connected with the legal order.

An investigation like this must therefore be carried out on two planes, or in two partly different spheres of ideas. The objects for investigation are the rules concerning working conditions etc.,

which have been established by the parties in the labour market. First, the emergence of this type of rules must be traced, and in doing so attention must be paid to the popular conceptions of this phenomenon, particularly among the active groups themselves. This can be called the *social* or *industrial plane*. Secondly, there is the *legal plane;* it is characterized by the ways in which jurists qualified and treated this same phenomenon. These two planes or spheres of thought are, of course, not strictly separate from each other. They both belong, broadly speaking, to the same social context. As has already been mentioned, legal ideas influenced the formation of the industrial system of rules. But the discrepancies are obvious. The legal constructions of the collective agreement as a social phenomenon were, in the beginning, inadequate from the industrial point of view: they did not correspond to the purposes of the collective agreement.

The *industrial plane* was primary. The task is to give an exposition, as concrete and comprehensive as possible, of how the collective agreement came into existence. This means not only to trace, present and analyse documents which can be considered as collective agreements or as forerunners of such, but also to analyse their coming into being by investigating the social and legal milieu, with special regard to driving forces, current ways of thinking, argumentation and possible patterns. This kind of science can be called *legal genetics,* and its aim is to examine the origins, the coming into being and the basic development of a legal institution.

The *legal plane* is secondary. In course of time the lawyers and legal scholars had to face the problem of whether and to what extent legal significance could be attributed to the collective agreements. Even if the notion of agreement influenced more and more the formation of the collective industrial relations, it was by no means certain that the collective agreement could be accepted as a contract at law. So long as no legislation had been passed on the matter general principles of law had to be applied. But the legal system was not fitted for this phenomenon. A preliminary difficulty concerned the legal status of trade organizations. The question of whether, or on what conditions, they could acquire legal capacity was decisive for their ability to act as parties to a collective agreement. The main problem, however, was how to apply general rules of law concerning contracts and obligations to the collective agreement. The solution nearest at hand was to qualify and treat the collective agreement as a contract binding

on the parties on both sides; another solution was to treat it as a usage or something of that kind. But the legal doctrines concerning contracts and obligations, based on Roman concepts, were too individualistic to correspond to the needs of the trade unions. Later, however, some of the scruples were thrown aside and the collective agreement was accepted as a legally binding agreement with fairly adequate legal effects. The investigation on the legal plane, which will—on the whole—be omitted in this paper, must aim particularly at the lawyers' starting-points and their methods of dealing with the legal problems raised by the collective agreement.

As a study of the rise of the collective agreement must be pursued mainly on the industrial plane, it has, to a large extent, to deal with matters outside the traditional domain of legal research.

Many authors concerned with industrial relations have, of course, touched on the same material. The Webbs wrote admirably on collective bargaining, but the authors of *Industrial Democracy* were not much concerned with the historical aspect,[4] or with a qualitative analysis of the regulation form, which for the present author is the main theme. On the other hand, this article leaves out the quantitative side as well as the economic implications of collective bargaining. Nor is it possible to give the general economic and social background. An important point, which in this paper will be dealt with only superficially, is the structure and attitudes of the trade organizations, the foundations of the whole system. The choice of organizational form and of policies naturally affected the structure of the collective agreements. Such choices were dependent not only on economic and technical circumstances in the industry concerned, but also on traditions and on the achievements of leading personalities, these sometimes being influenced by ideas and experiences from abroad.

When analysing the documents concerned it is an important question whether they can be considered as agreements and in other respects have the necessary requirements of a collective agreement, for this is not always apparent from the wording. Thus the analysis is to a large extent "legal" in character. To show what I mean, I shall submit for the reader's consideration a situation typical of the initial phase. A trade union succeeds for the first time in establishing negotiations with an employer, and on the basis of these negotiations a wage schedule is issued signed

[4] Their *History of Trade Unionism* does not deal with the history of collective bargaining.

by the employer alone. It must be stressed that it is not always possible to give a definite answer to the question whether a collective agreement has been entered into here or whether the employer has only issued a unilateral set of rules. The material available for investigating such a matter is often insufficient. Sometimes it is possible only to find out the subjectively differing opinions of the parties, which may be influenced by what has seemed advantageous for the time being. On the other hand, for the purposes of a study of this kind it is enough to point out trends and relevant facts. In such a way it can be determined when and in what connection a certain question has come to the forefront; when and how certain rules, or a certain practice, have been established.

Naturally the answer depends not only on the facts found out, but sometimes also on how the concepts of "agreement" and "collective agreement" are defined, for the meaning of these terms can vary. The scholar concerned with legal genetics has, within certain limits, a free choice. He has to consider what is suitable for the purposes of his study. In this case the point aimed at is the modern Swedish collective agreement. However, anachronisms must be avoided and attention must be paid to the notions current at the time in question. Therefore certain modifications seem to be justified, as will again be pointed out later.

I shall now (a) first discuss the material available for a study of this kind and then (b) turn to the question of the set of concepts or models necessary and suitable for the analysis and qualification of the material.

a) It follows from what has been said that the notions and opinions of the active persons and groups, as far as they can be traced in the wording of the documents themselves, in the minutes of proceedings, in comments thereon, etc., are of special importance. Therefore the investigation has required a thorough examination of the archives of trade organizations and other material, printed and unprinted, such as periodicals published by the trade organizations and records of trade union meetings. The jubilee publications of Swedish trade organizations on both sides —though of varying quality—have been of particular help in at least two ways. First, many documents have been printed in them—for example, the earliest union rules adopted by the organization and the first collective agreement entered into in the trade. Such documents are of special interest for this study. Secondly, these publications have given many indications of such events as

negotiations and strikes, on which further research has been concentrated. Of course a selection must be made. Not every trade organization can be expected to possess material of interest. As the history of trade unionism is fairly well known, the study has been concentrated on the documents of the pioneering organizations, which practically everywhere were those of the skilled trades such as printing and building. But it has been necessary, for purposes of comparison and control, also to devote attention to trades which were not organized until later, in order to see how working conditions were regulated there. It must not be assumed to be altogether out of the question that something like collective agreements existed in such trades.

The material must be analysed critically. Only contemporary material can be recognized as a first-class source. Further, it must be observed that the material is often biassed, particularly so far as the selection of facts is concerned, and that opinions expressed on both sides vary considerably. But even this coloured material can be of great value, and the bias is often revealed and counteracted by information from the other side.

True, the material is in part vague and difficult to interpret, and varies according to trade and locality, but it is by no means devoid of consistency and homogeneity. Certain trade unions became pioneers and set a pattern that was followed, especially in kindred trades. Behind the development there was a movement that became more and more centralized and unitarian in ideas and conceptions. Not only the labour unions but also the employers joined together in organizations of an increasingly centralized character. A result of this was also a certain uniformity in trade practices and established rules.

b) I now turn to the concepts necessary to be defined in order to be able to analyse and classify the material. What is to be regarded as a collective agreement, and what other forms for the regulation of working conditions ought to be taken into consideration? Besides the collective agreement some other autonomous regulation forms—as distinct from minimum wage legislation, administrative regulation and other public forms—must be mentioned. They can be distinguished and classified from two different viewpoints: individual or collective—unilateral or bilateral. As collective unilateral forms, there should be mentioned works rules issued by the employer, and "ring" agreements entered into by trade unions or less organized groups of workmen or employers (such as the wage combinations known particularly from the early

history of English trade unionism). The individual or personal agreement was the favourite form of the liberal era, but in reality unilateral employer regulation was the rule, whether published in works rules (and possibly incorporated in written personal agreements) or, as in most cases, not published at all. The "group" agreement entered into with a group of specific workmen is an individual form of agreement, in many early cases difficult to distinguish from the collective agreement, which concerns workmen not individually indicated in the agreement. The difference can be expressed by saying that with group agreements parties and scope of application are identical but with collective agreements they differ. Other collective regulation forms to be mentioned are customs and usages and, further, the arbitration award.

The requirements of a collective agreement as set out in the Swedish Collective Agreements Act of 1928 are as follows:

1. It must be an *agreement,* i.e. its provisions are meant to be *mutually binding.*

2. It must be an agreement between one or more employers, or one or more employers' organizations, on the one side, and one or more trade unions on the other side. The character of the *party on the labour side* is said to be the particularly distinctive feature of a collective agreement.

3. The agreement should *embody* conditions to be applied when workmen are employed, or provisions as to the relations between the employers and workmen, or their organizations.

4. Finally, the law contains certain requirements as to *written form.*

This definition corresponds fairly well to those adopted in the legislation of other countries. The modifications which seem suitable when the investigation is directed to earlier times concern points 2 and 4. Collective agreements could be entered into by representatives of non-organized workers.[5] And the requirement of written form is by no means self-evident. In Danish law, for instance, there is no such requirement. Nor is it very strictly upheld in Swedish law. Thus it is sufficient that the employer alone has signed the document, provided it is done in order to approve claims put forward by a trade union.

I shall dwell at some length upon point 1. What is meant by an *agreement* and by *mutually binding provisions?*

That a provision, a rule, is called *binding* or *valid* expresses

[5] This "non-corporate" type of collective agreement is recognized in Swedish law although it falls outside the Collective Agreements Act.

the idea that the rule must be complied with. The rule or pattern of action is qualified by these words, and is on this account met by a certain attitude on the part of the persons concerned. The aim is to induce persons to act in accordance with the rules and—which amounts almost to the same thing—to evoke more or less clear ideas of what will happen if the rules are not complied with. If the rules are connected with an effective machinery of sanctions, non-compliance should normally involve the application of such sanctions.

The distinguishing characteristic of legally binding rules is that they are connected with the State machinery of sanctions. This, however, was for a long time not the case with rules in the form of a collective agreement. Nevertheless they were considered as binding, and sometimes expressly so qualified, and the reality behind such an idea can be shown, reminding us of what lies behind legally binding rules. Sometimes these rules—in accordance with the English way of looking at the matter—were said to be morally binding. In the exposition of facts I have tried to show how on the industrial plane the idea of binding rules was associated with the collective bargaining on working conditions. But I must omit an account of the social sanctions representing the reality behind this idea.[6]

However, to constitute a collective agreement it is not enough that the rules concerned should in fact be complied with under sanctions of some kind. This was the case even with the rules issued unilaterally by an employer. The factual order established by means of such rules did not necessarily differ much from that founded on a collective agreement, but the workers did not really regard these unilateral rules as binding, unless they had signed an undertaking to abide by the rules. Such "documents" were therefore persistently opposed by the trade unionists.

The essential difference between unilateral works rules and collective agreements was that the workers associated the idea of binding rules with the idea of mutuality and thus with the idea of an agreement. The agreement was looked upon as the consent of the free wills of two equal parties, as a "friendly settlement". The conception of voluntariness as fundamental to the binding force was one of the basic elements of natural law and liberal ideology; it was not only compulsory but a *moral duty* to respect and observe agreements. The collective agreement based on active

[6] See Adlercreutz, *op. cit.*, Ch. VI.

partnership of the workers was of quite another order than the works rules, since it was associated with the idea of mutual duties, or obligations, and rights.

The idea of mutually binding or obligating rules seems to have arisen—at least on the labour side—somewhat earlier than the agreement notion, but it soon fused with the latter. As a matter of fact it is almost impossible to distinguish between them. Once the agreement notion was adopted, it brought in its train a set of rules concerning this legal form. The implications of this for the formation of practices in industrial relations—as to termination, consequences of breach of the agreement, etc.—should not be overlooked.

Some notes should be added on the historical material. Initially the mutuality of duties and rights was not a pronounced feature of the collective agreement. The early price lists imposed by the trade unions on single employers were more like unilateral engagements. But there was at least mutuality as to the creation of the engagement (see further below).

In the beginning it was not uncommon that the provisions were established only "for guidance" as non-compulsory rules or mere recommendations. The employers were in many cases not willing to bind themselves too strictly, particularly as far as wages were concerned. When wage provisions were made more differentiated and flexible the employers were more willing to accept the collective agreements as binding and mandatory.

One essential feature of a collective agreement is thus that the rules concerned have been expressly formulated or have otherwise been regarded as binding between the parties. But a dictation from the employer's side could also be given the form of an agreement, as with the personally signed "documents" already mentioned. Pure employer regulation—although in the form of an agreement—should not be reckoned as a collective agreement. One important reason for this is that such a standpoint would be contrary to popular ideas of what a collective agreement is.[7]

The bilateral feature of an agreement—stressed particularly in liberal doctrine—is connected especially with the way in which it came into being. It is typical, and I would point to this as a *second* essential feature of the collective agreement, that the labour side has taken an active part in its creation. The collective agreement is intimately bound up with the right of negotiation. But it must

[7] In fact, trade unions not strong enough to secure acceptable conditions generally prefer not to sign any collective agreement at all.

be borne in mind that the bilateral mode of coming into being is not enough. The rules must also be regarded as binding in the particular way that has been described above. Works rules do not lose their unilateral character because the workers have negotiated on or otherwise influenced their contents. The formal or qualitative character of the rules is decisive.

Now the popular mind tends to regard all collective regulations, if participated in by a trade union, as collective agreements. In our days, when stable practices in industrial relations founded on the collective bargaining principle have been developed, this "definition" may be sufficient for practical purposes. For an analysis of the historical material, however, it is too wide, and leads to anachronisms, not uncommon in books on the history of trade unions. It must be borne in mind that in the initial phase unilateral employer regulation was in practice the rule, and bilateral collective regulation an innovation, particularly as far as the regulation *form* is concerned. The idea of a collective agreement did not easily capture the popular imagination.

For the analysis of different documents and situations the following qualification would seem to be helpful. The notion of agreement or binding rules as to general working conditions implies that the employer is not entitled to change the established rules unilaterally. Moreover, he is bound—in relation to the labour collective—to apply the rules whenever he employs a worker falling within the scope of the agreement.

As examples of facts of importance for the classification of documents there should be mentioned the express denomination of the rules as "agreement", "contract", "convention" or "engagement", the signature of both parties, provisions as to time of validity and notice, rules of procedure for the revision of the rules, the establishment of joint bodies for interpretation and settlement of disputes, etc. But even in the absence of such express signs other circumstances can make it evident that the parties have regarded the rules as binding between them. Attention must be paid in such cases to established usages in the trade and to current ideas.

A few words may be added as to the significance of provisions concerning time of validity. In Sweden collective agreements are as a rule concluded for specified terms. This means that the parties are precluded from raising claims which would imply a change of the existing agreement. Where such provisions are found in the historical material they may be regarded as typical indications that the regulations have been intended to be binding.

Of course the reverse conclusion must not be drawn from the absence of such provisions.

In most cases written documents are analysed. To their wording must be attributed great and, when the wording is clear, decisive importance. In doubtful cases it is necessary to turn to other material. This is naturally always the case when the settlement of a dispute has not ended in a written document. This fact is in itself an indication that the employer has not been willing to bind himself by an agreement.

II. HISTORICAL AND LEGAL BACKGROUND[8]

The old system of governmental control, in the form of guild rules, privileges, etc., implied a regulation of labour relations, referring, however, less frequently to wages than to other conditions. Sometimes wages were fixed in tariffs sanctioned by the magistrates or other authority, but were mostly, like other conditions, governed only by custom, by a common notion of fairness or by tacit agreement between the masters. To use Maine's terminology, the employer-employee relation was chiefly one of status but there was always some scope for autonomous regulation, i.e. a contractual element existed even in the old regulation system, and this element became increasingly important as the ideas of freedom superseded the mercantilistic principles.

The guild system offered no favourable soil for the rise of a collective agreement. True, there was the associational element. Even journeymen were allowed to establish associations for certain purposes, subject to control by the master guilds. But these associations were not allowed to act as bargaining units as to working conditions. Combinations for such purposes, as well as strikes, were forbidden, more often by implication and as a matter of course than by express rules. Such an express rule was inserted in a Swedish Act of 1770 to regulate the manufacturing industries: workers were prohibited from taking concerted action to raise their wages. Striking amounted to mutiny, but nevertheless strikes as well as boycotting existed in the days of governmental control. The strikes were, however, more like desperate demonstrations than effective means for enforcing labour regulations. The only

[8] Adlercreutz, *op. cit.*, Ch. II and III.

legal way open to most of the workers was to petition authorities, corporations or individual employers for better conditions.

These very general remarks on the old regulation system might apply to many European countries besides Sweden.

I now turn to the liberal era. In Sweden the old legislation was repealed gradually. An important step was taken by an Act of 1846, which replaced the guilds by local associations of master craftsmen. Manufacturers, too, could join these, if they wished, or establish associations of their own. This Act contained provisions that made strikes and collective bargaining virtually impossible. In 1864 the last remnants of guild legislation were abolished. Henceforth almost complete freedom of trade and freedom of contract prevailed. All associations of employers and workmen were now voluntary and permissible.

In practice, however, the old traditions lived on in many respects. The change only gradually manifested itself. The life in the workshops continued as before. The vacuum left after the removal of the old regulations was filled by customs and usages originating in the old system. In principle all matters had to be regulated by individual agreements, but in practice a customary opinion of what were the right wages was decisive. The dominant position of the employers remained. Strikes were still regarded as something evil and even criminal, but the opinion began to assert itself that strikes were legal in consequence of the freedom of contract, which implied everyone's right to withhold his labour, provided no breach of contract was thereby committed. Yet, there was in force a provision which proved to be a serious menace to strikers: that everyone capable of work and dependent on his work for his livelihood must be employed in a lawful occupation or risk being prosecuted for vagrancy. This provision was applied by the authorities in the saw-mill strike at Sundsvall in 1879. It was repealed in 1885 mainly in consequence of this event. Another weapon used to break strikes in cases where lodging was provided by the employer was eviction. But striking as such was not deemed to be unlawful.

Thus, by contrast with the situation in Britain, the fundamental legal prerequisites to an effective collective bargaining system—freedom of association and freedom to withdraw one's labour—were mostly acquired before any labour movement existed in Sweden. These fundamental freedoms have never since been questioned. The attitude of the Government and the courts of law was neutrality towards the parties in the labour market. There

was no endeavour to enforce positively the principles of free competition and individual freedom of contract. It was therefore left to the groups in the labour market themselves to form their relations. Economic warfare was lawful within the limits prescribed by the Criminal Code. There was not much, as far as the law was concerned, to hamper the evolution of a collective agreement system—but of course there was nothing to promote it either. The dominant attitude of neutrality or non-intervention of the Government was, however, subject to one exception. Some amendments to the Criminal Code which were passed in the 1890's, mainly concerning picketing, were, as was held even by many conservatives, clear examples of class legislation.

III. THE RISE OF THE COLLECTIVE AGREEMENT IN BRITAIN, FRANCE AND DENMARK[9]

Before entering upon an account of how the collective agreement came into existence in Sweden, some brief remarks on how it arose in other countries must be made. For this purpose I shall confine myself to a reference to certain lines of development in three countries—Britain, France and Denmark—where the origin of the collective agreement can be traced far back, and from which the influence on the Swedish development has been more or less noticeable.

A. *Great Britain*

The development in Great Britain, certainly the birthplace of the trade union movement and collective bargaining, is long and complex, and has not yet been systematically explored.[1] The material for such an investigation is enormous, and it has not been possible for me to undertake research in British archives in order to collect information. I have thus had to rely on material already published. What I have ventured to undertake is to draw attention to certain features which seem to show that the collective agreement, or the first attempts at it, came into being in close connection

[9] Adlercreutz, *op. cit.*, Ch. II.

[1] Cf. *The System of Industrial Relations in Great Britain* (ed. by Flanders and Clegg), Oxford 1954, p. 262, note 3.

with traditions from the old regulation system, as a substitute for the regulation of working conditions by authorities, for the purpose of defending what were regarded as rights embodied in customs and usages, and to protect the craft. Thus, more or less in consequence of this fact, the notion of a collective *agreement* as such did not arise until fairly late, perhaps not until the 1890's.

According to the Statute of Artificers, etc., of 1562, wages had to be fixed by the justices of the peace yearly at quarter sessions. It is well known how this provision fell into disuse, and that the lack of a regulating authority forced the workers to combine to protect what they conceived as their right to a "competent livelihood".[2] The trade union movement arose to enforce such provisions; the policy adopted was to petition various authorities for the application of the old methods of regulating working conditions. Until the middle of the 18th century the official attitude was in favour of such methods. To Parliament "it seemed right and natural that the oppressed wage-earners should turn to the legislature to protect them against the cutting down of their earnings by the competing capitalists".[3] The attitude changed under the influence of liberal ideas. Non-interference with industrial relations was the new policy, and it was, as the Webbs assert, this new "industrial policy on the part of the Government that brought all trades into line, and for the first time produced what can properly be called a Trade Union Movement".[4] The Spitalfields Acts, the first of which was passed in 1773, form an exception to this new policy. These Acts empowered the justices to fix wages for the silkweavers and to enforce their maintenance. A union, called a "Trade Society", was established on each side, and new price lists were sometimes negotiated by committees of both societies, and after an agreement had been reached the list was brought before the justices to receive their sanction.[5] Thus, within the framework of the old regulation system there grew up a method of collective bargaining with certain resemblances to a proper autonomous regulation system.

When, as in most cases, the old regulation method was not available, the trade unions had to have recourse to their own

[2] See further Webb, *The History of Trade Unionism*, 1920 ed., particularly pp. 46 ff.

[3] Webb, *op. cit.*, p. 48.

[4] Webb, *op. cit.*, p. 47.

[5] Brentano, *On the History and Development of Gilds and the Origin of Trade-Unions*, London 1870, pp. 189 ff.; Webb, *op. cit.*, pp. 54 f. These Acts were repealed in 1824.

efforts to regulate working conditions. Their chief method in the beginning was the "ring" agreement: the members of the union were requested not to accept employment, unless they were paid in accordance with the terms fixed by the union. The next step was to get the employers to recognize and to consent to these terms by acceptance or at least tacit compliance. The unilateral method by union rules has played an important part in the British development, but it met with great difficulties, not only, as in Sweden, from the side of the employers but also in law. The common law doctrine of "restraint of trade" made all such agreements illegal, null and void. And much worse than this, all combinations with the purpose of regulating wages were made criminal and subject to summary jurisdiction by the Anti-Combination Acts of 1799–1800. The attitude of the Government was to enforce free competition and individual bargaining, and even after the repressive Acts had been repealed in 1824–1825 and workers had been allowed to "meet together for the sole purpose of consulting upon and determining the rate of wages and prices", the possibility of pursuing collective regulation activity without getting caught in the net of the law was extremely limited. Not until the Trade Union Act of 1871 was passed did the trade unions achieve legal status and legal recognition of their regulation objects, but at the same time all matters concerning direct enforcement of trade regulations were withdrawn from the jurisdiction of the courts. Thus collective trade regulation is in the main extra-legal in character.

Despite the repressive laws in force in the years 1799–1824 there is evidence of some collective labour activity aimed at improving conditions. The Anti-Combination Acts were enforced rigidly, but they were directed chiefly at militant combinations and aimed at preventing direct action. It seems not to have been quite out of the question for workers to present claims to their masters in the form of petitions.[6] There were probably even a few instances of peaceful collective negotiations between masters and men (see next paragraph for an example). It may be that in such circumstances the men were quite dependent on the masters' good will. Anyhow, as remnants from this dark period of the trade union movement, some printed price lists have been preserved in which it is explicitly stated that they have come into being in some sort of co-

[6] See documents published by Cole and Filson, *British Working Class Movements. Select Documents,* London 1951, pp. 99 ff., particularly the document under (j).

operation with the journeymen. In 1805 "A List of Prices agreed upon between Masters and Journeymen Brushmanufacturers in London" was printed.[7] Another example is "The London Cabinet-makers' Union Book of Prices", published in 1811 and 1824 "by a Committee of Masters and Journeymen — — — to prevent those litigations which have too frequently existed in the trade".[8]

Some of the earliest examples of such price lists are those concerning compositors' work in London. The first scale, dating from 1785, was proposed by the journeymen but it is probably an example of unilateral employer regulation issued in consequence of a petition. According to the Board of Trade Report on wages and hours of labour, published in 1894, "this scale has formed the basis upon which compositors have since worked".[9] Its formal character changed, however, in the course of time until the modern collective agreement form was adopted. An important step was taken in 1805, when a joint committee drafted a more complete scale of prices which seems to have been used as the basis of written employment contracts. It was thus signed by all employers and workers concerned. For some years in the 1850's a joint board was establised to settle disputes arising out of the scale. Later its provisions were enforced by judicial proceedings; the scale, being signed by both masters and men, was legally binding as a contract of employment.[1]

I shall not mention any more examples of these early results of wage regulation under collective participation of the workers,[2] but shall only put the question: What was the popular conception of these price lists? Were they regarded as agreements? In many of them is found the formula "agreed to" or "agreed upon", which shows that the workers have had some part in their coming into being. But this does not prove that the notion of a collective agreement has been connected with them.

On the contrary, there is much evidence against any suggestion that such a way of looking at this phenomenon prevailed. These price lists had not the typical features of a durable contract. They

[7] Webb, *op. cit.*, pp. 74 ff.; Webb, *Industrial Democracy*, p. 283 and (in the 1902 ed.) p. 881.

[8] Webb, *The History of Trade Unionism*, p. 77; Brentano, *Die Arbeitergilden der Gegenwart* II, Leipzig 1872, p. 267.

[9] Board of Trade, *Report on Wages and Hours of Labour, Part II, Standard Piece Rates*, London 1894, p. 152.

[1] See further documents in Cole and Filson, *op. cit.*, pp. 107 ff.; Brentano, *op. cit.*, pp. 267 ff.

[2] I may refer to Flander's account of "some of the varying origins of bargaining practice" in *The System of Industrial Relations in Great Britain*, pp. 262 ff.

did not indicate any distinct parties, but rather the scope of application. Their appearance may not have differed much from that of the wage scales fixed by authorities, and there can hardly be any doubt that such tariffs served as patterns. When the old method of the fixing of wages by authorities came to an end, the unions brought about something as close to it as possible. An important difference was of course that these autonomous price lists were not sanctioned at law, unless they were signed individually as, for some time, the compositors' scale was.

If the price lists thus established were not regarded as agreements, they were nevertheless probably connected with notions of rights and duties. They came about to a large extent "to protect the rights of the trade", to preserve and maintain traditional customs and usages and a "competent livelihood", and certainly also—as the case may be—to create new customs and usages, thus in the latter case securing improvements.[3] The unformulated custom or usage was an ineffective regulation form, subject to infringements and violations of the employers. The fixing of decent standards in a definite form with guarantees for their observance was, therefore, the endeavour of the trade unions. The established rules were "recognized" and as such "binding" in a sense, though more like customs than like agreements.

The union rules concerning working regulations quoted in the report of the Royal Commission on Labour, issued in 1892, indicate that the unions, when they formulated their rules, never had it in mind to enter into formal collective agreements.[4] The wording gives more evidence of a unilateral regulation form. Some basic conditions were fixed in the union rules themselves, but generally special "working rules" were promulgated. More seldom do the union rules directly presuppose any sort of approval on the part of the employers, that the working regulations were to be "agreed to by employers and workmen"[5]—but nevertheless such a proceeding may have been implied.

It is interesting to note that there is no indication of an agreement notion in the Royal Commission Report of 1869. The Commission mentioned with approval the existence of "codes of working rules". "The practice of having a code of working rules agreed

[3] Webb, *The History of Trade Unionism*, pp. 49 f.; Cole and Filson, *op. cit.*, pp. 244 f.

[4] Royal Commission on Labour, *Rules of Associations of Employers and of Employed*, London 1892, passim.

[5] For an example see *op. cit.*, p. 214.

to between employers and workmen such as the better unions seek to establish, embracing a book of wages, of hours, and of trade rules, is attended with the best results."[6]

As we have already seen, the law—suspicious of all restraints of trade—took notice only of the "ring" agreement situation. The Trade Union Act of 1871, passed on the recommendations of the Royal Commission just mentioned, presupposes in sec. 4 (4) agreements "made between one trade union and another". The collective agreement entered into by two organizations undoubtedly falls within the wording of this subsection, but I am convinced that the legislators did not have in mind the collective agreement as such. The trade regulation activity is dealt with in sec. 4 (1): "any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed". This provision clearly contemplates the "ring" or "cartel" situation, which is only one of the elements of the collective agreement, and subsec. (4)—though more general in its wording than subsecs. (1)–(3)—was probably intended to be a complementary addition. It has so far been applied only in cases concerning two labour unions.[7] Be this as it may, the doctrine of restraint of trade was not the only obstacle to the acceptance of the collective agreement as a legally binding contract. The collective agreement scarcely needed the immunity provided by the wording of sec. 4 (4), which, for instance, does not cover the "shop" agreement.[8]

In the 1890's the situation was different. In that period there are signs of a clear agreement notion. The Royal Commission on Labour in its Report of 1894 used the actual term "collective agreement", which seems to have come into use at this time,[9] and the collective partnership was evident. "Collective agreements

[6] *Eleventh and Final Report of the Royal Commissioners Appointed to Inquire into the Organization and Rules of Trades Unions and Other Associations,* London 1869, p. 17.

[7] See Citrine, *Trade Union Law,* London 1950, p. 115.

[8] Cf. particularly Kahn-Freund in *The System of Industrial Relations in Great Britain,* p. 57.

[9] Beatrice Potter, later Mrs. Webb, is said to have invented the term "collective bargaining" (used in a book published in 1891). In the Webbs' *History of Trade Unionism,* which was published in 1894, the term "collective agreement" does not appear, only "collective bargain" (p. 68), but in *Industrial Democracy,* published in 1897, it is used rather frequently (see e.g. pp. 176, 179).

are", says the Report, "as a matter of fact, frequently made between great bodies of organised workmen and employers, which bodies have no legal personality — — —."[1]

This new conception can be traced in the wording of the collective agreements, which often began with formulations like these:

> Memorandum of Agreement between the Economic Printing and Publishing Company, Limited, and the London Society of Compositors (1892).[2]
>
> Memorandum of Agreement made between the undersigned representatives of the Leicester Master Builders' Association and of the Operative Society of Carpenters and Joiners, Leicester District, 6th day of June 1895.[3]

Exactly how this transformation into a more contractual conception came about cannot be investigated in this study. The more definite division of workers and employers into two opposing parties, and the development of more active negotiating trade associations which could effectively build up and administer an autonomous regulation system, have undoubtedly been important factors in this evolution. Much more could be added as to the changing economic conditions and the influence of new, particularly liberal, ideas, but I shall confine myself to a few concluding remarks.

What I have intended to show is merely that there is a slow and continuous progress from the old regulation forms, more or less originating in the old guild system and the guild spirit, to the modern collective agreement. The regulation idea dates from early times, the "agreement" idea is a liberal contribution. Much of the militant spirit was of course inspired by radical, more or less socialist, ideologies.

There is no need to try to give a definite answer to the question whether the old price lists can be regarded as collective agreements, despite the absence of an agreement notion. They may or may not, but anyhow—and this is the important thing—they can be regarded as the forerunners of the modern collective agreements.

It must be stressed that the agreement idea has never had the same importance in Britain as in most other European countries.

[1] *Fifth and Final Report of the Royal Commission on Labour*, Part I, London 1894, p. 54.
[2] Webb, *Industrial Democracy* (1902 ed.), p. 895.
[3] *The Labour Gazette* 1895, p. 179.

The typically British method is to establish a machinery for the settling of disputes which arise from time to time, not to fix standards for a definite term.[4]

B. *France*

The development in France shows a similar connection between the old regulation system and the new autonomous collective bargaining system. Immediately after freedom of trade had been established in March 1791, combinations of workers began to be formed in Paris for the purpose of regulating wages either by applications to the authorities or by their own efforts. The official attitude was that wages should be fixed by amicable agreements between the individual master and his men. Thus the authorities refused, with very few exceptions, to intervene in the fixing of wages. The labour combinations do not seem to have been altogether unsuccessful. As evidence of autonomous regulation methods Raynaud even quotes a printed form, which had probably been signed by some master smiths, whereby the signer undertook to pay all his journeymen a certain wage per day.[5] This may be regarded as a rudimentary collective agreement (a "shop" agreement).

But this first era of freedom was of short duration. The "Loi Chapelier", passed in June of the same year, prohibited all combinations and associations for trade purposes. Not until 1884 were trade unions recognized as legal associations and in the "Loi relative à la création des syndicats professionnels" the status and functions of a trade union were defined.

However, as in Britain, so also in France there had existed, in the shadow of the Anti-Combination Law, a trade union activity which is of great interest. As examples are to be mentioned the practices of semi-official wage regulation at Lyons at the beginning of the 19th century. In certain trades (silk, hatters) collective negotiations were conducted before the prefect or other authority, who afterwards gave their official sanction to the terms agreed upon, although there was no law to support such proceedings.[6]

[4] I may refer to Kahn-Freund, Intergroup Conflicts and their Settlement, *The British Journal of Sociology*, Vol. V, 1954, pp. 202 ff.

[5] Raynaud, *Le contrat collectif de travail*, Paris 1901, p. 21.

[6] Office du Travail, *Les associations professionnelles ouvrières*, Paris 1899–1904. Vol. II, pp. 242 ff., 540 ff. For an example from Paris see *op. cit.*, pp. 34 f.

This illustrates the transition from old to modern wage regulation methods.

The most interesting instance of autonomous wage regulation is found in the printing trades in Paris.[7] There the influence of the London compositors is apparent. An attempt by the typographers in 1833 to obtain a scale of prices was wrecked on the Anti-Combination Law. But in 1843, after permanent associations had been formed on both sides, a scale was established as a result of negotiations in a joint committee, called the "Conférence mixte". It was stated in the preamble of this scale that strict rules for the determination of remuneration had hitherto been lacking. The traditions and usages in that respect were too insecure and therefore apt to cause disputes. The scale was thus particularly aimed at establishing a certain usage in order to improve employer—employee relations. This method of regulating wages by collective bargaining, which in view of the legal circumstances must have required a sense of common interests or of goodwill on the part of the employers, was practised until 1878, when agreement could no longer be reached and the system of co-operation broke down. The employers then resorted to unilaterally fixed scales of prices.

After the revolution of 1848, when freedom of association and combination was established for a short time, collective bargaining was practised in many trades before a special commission for labour questions or sometimes between the parties without intermediation. Though very short and without lasting results this experimental period is of great interest.[8]

The development in France has been less continuous and narrower in scope than that in Britain. Collective agreements did not come into common use in France until this century. This was partly due to the attitude of the trade union movement, which was not in favour of orderly relations with the employers. However, an interesting feature to note is that in France the notion of agreement (*"contrat"* or *"convention"*) was from the beginning connected with autonomous collective regulation of working conditions. While in Britain ideas of custom and usage seem to have dominated, in France ideas of contract gave shape to this regulation form at an early stage. As early as the 1870's the question was

[7] *Op. cit.*, Vol. I, pp. 706 ff. Cf. also Raynaud, *op. cit.*, pp. 39 ff.

[8] See Durand et Jaussaud, *Traité de droit du travail*, Vol. I, Paris 1947, pp. 102 ff. Documents in: Office du Travail, *De la conciliation et de l'arbitrage dans les conflits collectifs entre patrons et ouvriers en France et à l'étranger*, Paris 1893, pp. 577 ff.

debated whether collective agreements should be made binding as contracts on all members of the parties to the collective agreement.[9] The term *"contrat collectif"* was already in use in the early 1890's.[1] It has since been replaced by the expression *"convention collective de travail"*.

c. *Denmark*[2]

Danish industrial relations have exerted the most obvious influence on the development in Sweden. British and Continental experiences were to a large extent brought to the Swedes by Danish intermediation. Denmark provides, perhaps, the most evident example of an almost organic transition from the old guild system to the modern collective bargaining system. The guilds were not abolished until 1862, under an Act passed in 1857, and they therefore still existed when the first beginnings of a trade union movement appeared in Denmark. True, not many journeyman associations were transformed into and continued as trade unions—usually new organizations were formed for such purposes—but the first attempts to pursue trade union activities were made by journeyman guilds. And on the employers' side the old master guilds in the building trades continued as employers' associations and were very active in creating a comprehensive nation-wide employers' confederation in the late 1890's.

Freedom of association was guaranteed in Denmark by the Constitution of 1849, but combinations to raise wages were prohibited as long as the guild legislation was in force (until 1862). The practice of administrative regulation of wages began to fall into disuse as early as the 17th or 18th century, but wages were probably fairly uniform as a result of agreements among the masters in the guilds. Freedom of contract as regards wages was expressly laid down in an Act of 1800 concerning the guilds in Copenhagen. The period of high prices at the beginning of the 19th century (during the Napoleonic wars) caused the journeymen to press their masters for higher wages. This time the masters requested the authorities to regulate wages, and in 1813 a Royal ordinance regulating working conditions in the building trades was promulgated. Wages were henceforth to be revised each year,

[9] Raynaud, *op. cit.*, pp. 65 ff.

[1] It was used by Sauzet in his articles in the *Revue d'économie politique* 1892, pp. 924, 1128; and by Raynaud in his *op. cit.* (1901).

[2] For literature in Danish, see Adlercreutz, *op. cit.*, pp. 86 ff. See further Galenson, *The Danish System of Labor Relations*, Cambridge, Mass., 1952.

but it proved very difficult to achieve a satisfactory fixing of wages. So in 1826 wages were again made free, but the masters in fact adhered to the wage rates fixed in the last ordinance. Following a petition from the journeyman masons in 1845 the day rates were increased, and the masters once again applied to the magistrates in Copenhagen to have the new rates sanctioned. The journeymen, too, appealed to the magistrates with complaints, but this time the authorities consistently refused to have anything to do with wage regulation. This is a direct parallel to what happened in Paris in 1791, and to the refusal of the justices of the peace in Britain to fix wages at the beginning of the 19th century.

In 1851, when the master masons refused to increase wages, the journeymen went on strike. Such action was still unlawful, but thanks to the intervention of the master mason guild the striking journeymen were not prosecuted. Instead the guild issued a price list, modelled very largely on the ordinance of 1813. Thus a unilateral (employer) regulation form was used. The journeyman carpenters, too, succeeded in securing a similar price list in 1851.

There is evidence that even after the abolition of the guild system it seemed natural to the journeyman masons that the masters should fix the rates of remuneration. When their journeyman guild was transformed after the Act of 1857 into a voluntary association, a provision was inserted in the new union rules to the effect that wages should preferably be settled by the magistrates or, as hitherto, by the masters. The journeymen wanted a uniform regulation of wages, but the bilateral regulation form was not yet in their minds.

The price lists of 1851 were revised now and then, but in the 1860's, probably as a consequence of the introduction of free trade and free competition, the masters began to disregard their provisions. A strike in 1865 forced the master masons to recognize the old price list with their signatures. A party relation was thus established between the masters and the journeymen's association, and the result may very well be qualified as a collective agreement, although certainly no clear "agreement" notion was present. An attempt by the journeymen's association to get the sanction of the magistrates was again unsuccessful. By a strike soon afterwards the carpenters, too, obtained their masters' recognition of the old price list.

In both trades new price lists, prepared by joint committees, were adopted in 1875, but after only two years the master masons

returned to a unilateral price list. In the prevailing depression the journeymen's association could offer no effective resistance. In both trades new workers' organizations, better fitted to fight, were formed at this time with the object of enforcing the price lists and with the provision of strike pay as a main function; they were thus real trade unions. A new price list for masonry work was adopted in 1880. It was still signed only by the alderman of the guild, but the concluding phrase ran: "Thus approved by masters and journeymen." When in 1883 new price lists were established, a similar procedure was applied. In 1885 a board of arbitration was set up in the masons' trade. Now the new trade union was expressly recognized as a representative on the workers' side.

The continuous progress from administrative wage regulation by way of unilateral employer regulation to the modern bilateral collective agreement form is thus quite clear in the building trades. What the journeymen feared above all was that the freedom of trade would lead to undercutting and an invasion of unskilled labour. This fear and this attitude made the journeymen in the building trades and some other former guild trades, together with the printers who had similar traditions, pioneers of the trade union movement and of collective bargaining.

I cannot dwell any longer on the rise of the collective agreement in Denmark. Something must, however, be added about the most remarkable example of a Danish collective agreement, the so-called *September Agreement* of 1899 (*"Septemberforliget"*).

In 1898 nation-wide central organizations had been formed on both sides. The bold and resolute organization on the employers' side is a an especially striking feature of the Danish development. Those in the lead were the employers in the metal trades and the masters in the building trades, thus representatives of the new as well as the old industries. The employers were ready to accept the collective bargaining method, which had spread to all the more important town industries. Nevertheless, already in 1899 organized employers and organized labour went out in a great trial of strength. It began with some ordinary strikes in the province, but the Employers' Confederation took the opportunity to secure an all-round settlement on matters of principle. The Employers' Confederation aimed at a centralistic collective bargaining system, built on the principle that the central organizations should be vested with full authority and assume full responsibility for the observance of collective agreements by their affiliates. They also requested the unions to recognize certain managerial prerogatives.

A general lockout took place. The dispute was settled by a formal agreement between the two central organizations, named the September Agreement, 1899. It was a compromise, but organized labour had to yield to the claims of the Employers' Confederation on many essential points. The September Agreement, which is still in force, has virtually served as a fundamental law of collective labour relations in Denmark. A Permanent Court of Arbitration, authorized by a special statute to summon witnesses, was established for the interpretation and application of the Agreement.

Of the contents of the September Agreement there should first be mentioned the provisions concerning industrial warfare. Strikes and lockouts require authorization and a 75 % majority vote in the assembly as prescribed in the union rules, and notice of such action must be given to the other party 14 days in advance. The right to take sympathetic action is implied in this provision. Here the centralistic tendency is clear. It received a much vaguer expression in the provision concerning the responsibility of the central organizations for the actions of their affiliates. As to the managerial prerogatives, it was laid down as a main principle, in accordance with the demands of the Employers' Confederation, that the employer has the right to direct and distribute work and to use what labour may in his judgment be suitable at any time. There was no express recognition of the right of association, but as interpreted by the Arbitration Court the Agreement implies such a right, and employers are therefore prevented from discriminating against union men.

The September Agreement provides the most striking example of legislation by agreement. The cases interpreting the Agreement form the main source of Danish collective labour law today. For the formation of Swedish industrial relations and particularly of the policy of the Swedish employers it has been of great significance. The events of 1899 were the subject of careful study by the Swedish labour market organizations.

IV. FROM EMPLOYER REGULATION TO NATIONAL AGREEMENTS IN SWEDEN[3]

In Sweden the non-intervention attitude on the part of the Government, described above in section II, gave the organizations

[3] Adlercreutz, *op. cit.*, pp. 222 ff., 251 ff., and Ch. V.

freedom to form their own relations—either in opposition or in co-operation. There was in the early trade unions much of a co-operative spirit, originating in the guild atmosphere and mainly concerned with the question of how to uphold the standard of the craft in the anarchy of free competition. In a few cases they met the same spirit and the same interests on the masters' side, but the majority of the masters were usually more reserved. The unions had to grow strong before they could obtain recognition and co-operation on the basis of a balance of power.

In the liberal era the working conditions were as a matter of course determined by the employers or—in the view of liberal ideology—by the economic laws of supply and demand. When the trade unions began to raise their claims, the employers in some trades replied by regulating the working conditions in concert. They did not always form organizations at once, but held regular meetings to decide on what measures to take in respect of the trade unions. Sometimes joint or at least identical works rules were issued. There are also examples of "ring" agreements connected with special sanctions: the members of certain organizations pledged themselves to comply with the rules thus prescribed at the risk of penalties.

Thus the method of employer regulation was expressly set in opposition to the trade unions' claim for a voice in the determination of working conditions. The contrasting principles were clearly pronounced in the 1890's. The aversion of the employers to the claims of the trade unions was partly due to the fact that from the nineties onwards the Social-Democratic party had a growing influence on the trade union movement.

Some trade unions, finding no basis for co-operation with the employers, embarked upon the method of self-help. They decided to hold on to certain conditions, sometimes laid down in the union rules, and not to accept employment on less favourable terms. This method of unilateral employee regulation did not meet with much success. In a few cases trade unions succeeded in securing overtime remuneration in that way, but when complete price lists were issued by the unions they were usually disregarded by the employers and were impossible to uphold. One exception is the price list issued by the stevedores' union in Norrköping from time to time in the 1890's and the beginning of this century. The employers, before they were willing to enter into negotiations with the trade union, paid in fact according to the union list of prices.

The first collective agreement in Sweden is generally thought to be a scale of prices for compositors' work, issued in 1872 by the Society of Printing-Houses, a venerable institution established in 1752 in the palmy days of governmental trade regulation. The initiative came from the Stockholm Typographical Union, a trade club established in 1846. The Union submitted to the Society for approval a complete proposal, with a view to having the rates of remuneration fixed as to amount and clearly worded. The scale adopted by the Society diverged from the proposal in several respects. The Union, not satisfied with the scale, succeeded in securing a few alterations and then passed a vote of thanks to the Society. All this was done in writing; no direct negotiations were conducted. The scale of prices thus established, which contained piece rates based on the previous system of calculation, provisions as to hours and overtime, allowances for lodging etc., signifies an important step towards the collective agreement. There was active participation and even initiative on the part of the Union, and the initiative must be associated with the trade union movement, which had at this time a new start. Nevertheless, it would be anachronistic to call this scale of prices a collective agreement. The Society, which had already been now and then engaged in regulating wages, graciously took notice of the petition of the Union, towards which it was favourably disposed, and took action thereupon as and when it found convenient. Neither the Society nor the Union had, so far as the sources reveal, any idea of there being a new relationship between them: of a collective agreement coming out of the negotiations. The Society was still regarded as an authority vested with powers to take action for the welfare of the printing houses and their workers.

Thus this event has features of both old and new. Even in the period of governmental trade regulation it happened that workers sent a deputation or presented a written petition to their masters or to an authority, such as the guild or the magistrates, to ask for improvements of their working conditions. The petition submitted by a subordinate to a superior seemed to many of the early trade unions to be the natural proceeding. The employers' right to decide was hardly called in question. The wording of the petition was as a rule highly respectful, which did not, however, prevent the petitioners from striking if their application was refused. If it was dealt with favourably, this usually implied not an agreement but a *concession* on the part of the employers, even if the regulations were put down on paper. Notwithstanding the

initiative and activity of the workers it was still formally a unilateral regulation.[4] In most cases the workers—not yet aware of the importance of the regulation form—were satisfied. Compared with the former state of unformulated rules the proceeding now described seemed to be a definite improvement.

A timber-yard strike at Gävle in 1875 offers another interesting example from the period of transition from old to new methods.[5] The workers' claims were conveyed to the employers by intermediation of the mayor, who agreed to receive representatives of the strikers assembled outside the hotel where he and the employers were deliberating on the situation. The employers finally conceded the workers' claims. At the request of the strikers the mayor publicly confirmed the decisions of the employers. It is not impossible that this claim for some sort of sanction had been inspired by old ideas of legal ratification of working conditions, but it might also be interpreted as a practical means to induce the employers to live up to their concessions.[6] More evident attempts to obtain official sanction of price lists are reported to have been made by workers in Gothenburg down to the 1890's.[7]

Only if some kind of engagement or binding promise on the part of the employers was obtained by the trade unions can one really speak of a collective agreement. Some years before the action of the Typographical Union the Stockholm masons had already taken an initiative which had little practical result, but nevertheless led to something which, in my opinion, should be called the first collective agreements in Sweden. This event, which occurred in 1869, only five years after the last remnants of guild legislation had been abolished, has hitherto received little notice. In that year of depression something like a labour movement—at least it was so called in the newspaper reports—arose in Stockholm. Several strikes broke out and workers in some trades came together and decided to combine in unions with the aim of resisting wage reductions. The masons did this, and at an open-air meeting which went on for several hours they arrived at what are in my

[4] As is shown by events in Britain and Denmark, such originally unilateral rules could be converted into bilateral and binding rules, provided that they were regarded and maintained as such by watchful activity on the labour side.

[5] For details of the strike see Reinhold Olsson and Rickard Lindström, *En krönika om sågverksarbetare*, 1953, pp. 43 ff. Cf. Lohse, *op. cit.*, pp. 229 f.

[6] The method of applying to administrative officers for assistance in order to have industrial disputes settled peacefully developed and was eventually regulated by law in the Mediation Act of 1906.

[7] Svärd, *Göteborgs byggmästareförening 1893–1943*, Göteborg 1943, p. 144. No details are known.

view two historic decisions. First, they put down on paper certain claims, including minimum hourly wages and piece rates, and decided to try to get the masters' approval of them. Anyhow they were determined to stand individually on the claims, which were by no means excessive—as a matter of fact many master builders paid more. Secondly, they decided to establish a union with the aim of securing the introduction and enforcement of the new regulations. Work was resumed on the same day. The masters never agreed to negotiate or to take any official decision as to the claims, but some of them signed separately, thus binding themselves to comply with the terms. Consequently no general working rules for Stockholm were adopted, only a few "shop" agreements, probably without much practical value (because the masters signing were among those who paid more), but nevertheless of great interest in point of principle. The devices of general minimum rates of remuneration and other conditions, and of binding rules, were clearly formulated. There is no evidence of any direct communication with trade unionism abroad, but in all probability events such as the strikes in the Copenhagen building trades in 1865 exerted some influence. It ought to be added that the proceedings in the other trades during the Stockholm strikes were modelled much more on the traditional pattern. Respectful petitions were addressed to the masters. The masons' union was established as a trade union, as such the first in Sweden, although much on the old patterns from the days of the guild system, but it lived on only as an association for mutual insurance (friendly benefits). It was not until 1898 that the Stockholm masons obtained their first formal collective agreement with the masters' association, although improvements as a result of negotiation had been reached long before that date.

The method of imposing lists of prices on separate employers was, in the beginning, on occasion the only way to achieve results and was much used in trades with many small establishments as painters and joiners. The price of approval was sometimes modifications in the claims set forth, and therefore it was often not possible to achieve absolutely identical conditions everywhere. The method was used for the first time on a large scale by the joiners in a strike at Stockholm in 1881. Later it was preceded by negotiations on the terms with the employers or their association, a proceeding which marks an important stage in the development towards a collective agreement for a whole town.

The first list of prices for a whole town, signed by representatives

of the trade organizations on both sides, that I have come across (and there must be little chance of finding any earlier one) was the Gothenburg price list of 1886 for the painting trade, composed by a joint committee (whose signatures were on it) and then approved of by the organizations. It was, however, according to its own wording, established only "for guidance".[8] The first formal collective agreement signed by local organizations on both sides was the price list of 1890 for masonry work in Malmö.

In trades with marked seasonal variations the regulations were often as a matter of course fixed for the season. Otherwise provisions as to specified terms were infrequent before the turn of the century. Examples are found particularly in the metal trades. The employers seem to have been anxious to obtain for a definite period guarantees against new claims.

The first instance known to me of the establishment of a joint body for the interpretation and application of the rules adopted—which clearly implies that the rules have been recognized as bilateral—was in the painting trade in Stockholm in 1895. As early as 1889 a provision to the same effect had been included in the price list, but as far as I know it was never acted upon.

Arbitration as a means of establishing working conditions was used in a few instances in the 1890's. The bilateral character is then clear from the method of settlement and from the agreement by which the dispute is referred to arbitration.

What conception did the active parties themselves have of a regulation of wages and working conditions in the forms now described? How were such rules classified and referred to? Is there any sign of an "agreement" notion attached to the procedure applied?

What the trade unions were after is quite clear. They were endeavouring to fix satisfactory regulations as to working conditions. The notion of rules which were in some way *binding*

[8] The development in this trade is very interesting. Already in 1869 and later, in the 1870's, there had been negotiations between masters and journeymen. Sometimes the masters had "promised" to stick to a certain rate of wages for the season, but generally the negotiations resulted only in unilateral decisions communicated by the masters' association to the trade union by way of extracts from the minutes. This in itself was a step towards a formal collective agreement. There was recognition of the union, and the conditions were brought to the union's notice, although they were still unilaterally fixed. Such methods were much used in the building trades, where in spite of early organizations on both sides formal collective agreements were rare until the late 1890's.

was there early, but, as in Britain, there was no sign of an "agreement" or "contract" notion. The rules were referred to as "general regulations concerning the X trade in Y town" or usually only "List of prices" etc. In the beginning the employers and their old organizations (as the Society of Printing-Houses) were looked upon as authorities with the power to establish rules, as the guilds had been vested with such power not very long ago. But by the influence of the actual state of law and liberal ideas the old conceptions were replaced by more modern ones. No wage regulating authority was in fact conferred on the employers' associations nor on any other institution. The only legally valid form in which wages could be fixed was the agreement.

Thus, to sum up the development in the 19th century, the first attempt at a collective agreement that has been found dates from 1869. In the 1870's some more attempts to regulate wages and working conditions were made, mostly in the old ways and without lasting results. In the 1880's a real trade union movement broke through and in some handicraft trades succeeded in obtaining working regulations of a clearly bilateral character, but these were still vague as to form and incomplete as to contents. The establishment of regulations, where it came about—or had at least been under consideration—in real co-operation between organized employers and workmen, was looked upon as a means of regulating and protecting the trade. The atmosphere of these early attempts was coloured to a considerable degree by the guild spirit. The best examples are furnished by the painting trade.

In the 1890's the divergences as to ideology and course of action between employers and workmen became apparent. The employers combined to resist the encroachment on their conceived prerogatives. The sense of class struggle, promoted by socialist agitation, took possession of the workers. The liberal ideology, fostered particularly among the new class of industrialists, determined the attitude of the employers more and more, even in the handicraft trades. All the same, the collective agreement developed both as regards frequency and form. It was introduced in some big industries (the metal trades) but was still uncommon there. It began to be a normal means of regulation in the handicraft trades in the towns, including the building trades. At this time the collective agreement in some trades developed features that were to become almost universal later, such as provisions as to term of validity and prolongation, and concerning the settlement of disputes. It now also began to be regarded and referred to as an

"agreement", but the term "collective agreement" was not yet introduced.

It was, however, not until the first decade of this century that the collective agreement reached a central position in the Swedish labour market. The progress, previously slow and tentative, was then remarkable. One important new feature was the nation-wide scope that collective bargaining attained, and national agreements were entered upon in several trades (at least 15 before 1910). Another innovation was the structure of the agreements. They were now built up as complete constitutions or codes for the trade containing not only working conditions, but also provisions as to the relations between the organizations (the right to take direct action, the settlement of disputes, etc.).

A few words must be said here on the organizations which were the prerequisite of this development. The Confederation of Trade Unions, "Landsorganisationen i Sverige" (LO), was founded in 1898. On the employers' side, the situation was more complex. A three days general strike, organized in 1902 by the Social-Democratic Party, had far-reaching consequences. The big employers, previously hesitant, found it necessary to unite in strong organizations. In the same year the Swedish Employers' Confederation, "Svenska Arbetsgivareföreningen" (SAF), which was to become the counterpart of the LO, was formed mainly by employers in the big industries. The employers in the metal trades took their own course. They had an organization established as early as 1896, "Verkstadsföreningen" (VF), which was reorganized and made effective in the same year, 1902. The handicraft masters' associations, more or less direct descendants of the guilds, had taken steps already in the 1890's to build up a central organization which took on the task of dealing with employer problems, but as a consequence of the same strike a special organization for employer purposes was formed, "Centrala Arbetsgivareförbundet" (CA), much looser, however, in its structure than the SAF and the VF.

As early as 1896 central negotiations for the whole tobacco industry took place in Stockholm, an important step towards a centralized system. However, the result of the negotiations—which, because of the refusal of the employers to meet the trade union officials, were conducted by intermediation of the head of the Social-Democratic Party (Hjalmar Branting)—cannot be regarded as a national collective agreement, but only as unilateral declarations of separate employers as to what they were willing to pay in their respective establishments. In 1902 this loose settlement was

transformed into a formal collective agreement, supplemented by an agreement on grievance procedures.

The first national agreement, established in 1901 by means of arbitration, was one containing scales for the typographical trades in Sweden.

Of much greater interest, however, is the first national agreement for the metal trades, entered into in 1905 between the VF and four national unions after much strife. It was also signed by the president of the LO (the Confederation of Trade Unions). Only a few hints as to its contents and structure can be given here. It consisted really of two agreements, one containing grievance procedures, the other working conditions, possibly modelled partly on British and Danish patterns. The principle of minimum wage scales, based on the workers' age and years of experience in the trade, had been a matter of great controversy but was now accepted by the employers. The original proposal, drawn up by a joint committee, was based on the principle that the right to determine working conditions would in certain cases be conferred on the organizations, which were to deal with them according to the grievance procedure. The agreement as finally worked out was, as is typical of compromises, less clear on this point, particularly on the question of how piece rates of different kinds should be determined—whether between the individual firm and the workers concerned or between the organizations by means of the grievance procedure—and this entailed doubts as to the scope of the peace obligation, as was shown by later events in the industry.

The national agreement for the metal trades was epoch-making. From now on the collective agreement became an accepted regulation form in the big industry. One of the first and most important national agreements concluded within the SAF (the Swedish Employers' Confederation) was the agreement for the iron and steel works of 1908. It bore on many points the imprint of the SAF principles, which will be dealt with shortly.

A national agreement of quite another type was concluded in 1909 for the building trades. On the employers' side was the CA, the association for handicraft employers, and on the workers' side no fewer than eleven trade unions. It contained uniform or alternative provisions to be included in local agreements. For the settlement of wages and other matters referred to local negotiations, an elaborate grievance procedure was adopted.

The policy adopted by the SAF in 1905 was to leave it to its members to decide whether they would enter into collective agree-

ments, but to fix certain principles to be applied whenever a collective agreement was concluded by a member. It was laid down in the rules of the SAF that all collective agreements had to be ratified by the executive committee of the SAF and should contain provisions as to the employer's right to direct and distribute work and to engage and dismiss workers at his own discretion (the managerial prerogatives).

The policy of the SAF has had enormous influence on the structure of the present Swedish collective agreement system. The SAF has played a leading part in all of the more important negotiations concerning its members. Based on a strike insurance scheme, it has had great resources to enable it to assert its principles both in relation to the trade unions and to its members, who have conferred on this body even the right to throw them into industrial warfare. The collective agreement was accepted as a regulation form, provided no provisions in the agreements encroached upon the managerial prerogatives. The SAF endeavoured to put a stop to the guerilla methods of the trade unions and to establish a highly centralized collective bargaining system, similar to that in Denmark; it promoted the system of concluding national agreements for a whole industry and thereby indirectly the formation of industrial unions (instead of craft unions); and it forced its counterpart, the LO, to take on duties and powers in relation to affiliated unions which were not envisaged in its constitution.

The first, and in the light of later events preliminary, clash between the SAF and the LO took place at the end of 1906 and mainly concerned the question of the managerial prerogatives and the unions' claims to have a voice in the matters affected. Many trade unions refused to accept the provision prescribed in the SAF rules, and on the occasion of some minor strikes on this question the SAF invited the LO to negotiations with the aim of obtaining a definite solution. The outcome of the negotiations, universally referred to as the December Compromise of 1906, was the formulation of a standard clause to be inserted in collective agreements. According to this clause labour recognizes the managerial prerogatives and the employer the workers' right of association. The most important concession on the SAF side was that in the case of disputes as to whether a dismissal had occurred in violation of the right of association, the workers represented by their union were to be entitled to call for investigations to have the matter settled. The LO claim that workers should be entitled to refuse to work together with strike-breakers was turned down.

These were the first direct negotiations between the two big central organizations. However, the December Compromise was no formal agreement like the Danish September Agreement. The LO had certainly no authority to enter into such an agreement. It was decided that the negotiating parties should recommend the parties to the local disputes to accept the clause agreed to in the December Compromise. After many complications the disputes were settled on these terms.

The December Compromise had, in fact, virtually the same effect for the future as if it had been laid down in a formal agreement. This result is due mainly to the rigid insistence of the SAF on the insertion of the standard clause referred to above in all collective agreements.

In the following years, the SAF forced the trade unions to accept some other provisions on matters of principle. No negotiations were conducted at the top level, as the LO accepted the situation, though not without reluctance. Thus a provision on the right of the organizations on both sides to take sympathetic action was included in more and more collective agreements as a limitation to the peace obligation. The general lockout was the most important weapon at the disposal of the SAF, without which it claimed not to be able to pursue its policy, and some trade unions were also anxious to retain their freedom of action. Another provision of this kind was a very simple grievance procedure clause which did not give rise to such difficulties as the elaborate procedure rules in the agreement for the metal trades mentioned above.

The real trial of strength between the SAF and the LO took place in 1909. A general strike, in fact a combination of strikes and lockouts, was then launched. It ended without a definite settlement, though the LO had the worst of it. The LO was seriously weakened by the exertion and lost many members; but gradually it regained its position. The SAF abandoned its plan to secure a formal agreement with the LO on matters of principle.

After the general strike there was a period of slow and rather quiet development on the same lines as before without any important innovations. The SAF continued to enforce its principles by controlling the contents of the agreements concluded by its members. Gradually the balance of power was re-established, but no direct negotiations between the SAF and the LO were resumed until the 1930's. In 1938 these organizations entered into the *Basic Agreement,* by which many matters of principle were solved. This

agreement, which cannot be dealt with here,[9] was the first in a series of agreements between the central organizations and thus set a pattern for the future.

Leaving out of account the legal side, the basic features of the collective agreement system of to-day had already been developed by the time of the general strike in 1909. The framework of the first national agreements is still in many cases kept surprisingly intact.

V. SUMMARY AND FURTHER DISCUSSION ON THE ORIGINS OF THE COLLECTIVE AGREEMENT[1]

The trade union movement started among the skilled artisans and compositors. This is an international phenomenon. What caused the workers and particularly the journeymen to unite and made them devote their efforts to the establishing of a collective regulation of working conditions was the *insecurity* resulting from what seemed to be the anarchy of economic liberalism. In reality this insecurity was due to stronger powers than the abolishment of the old regulation system: the increase of population, the dynamics of economics and the oscillations in trade, powers that had mostly only acquired freer scope through the new liberal devices. The workers, however, looked upon the difficulties mainly as consequences of the new economic principles. This assumption, which was undoubtedly supported by their masters, is important for the explanation of their course of action. Their aim was first of all to obtain guarantees for a secure, adequate and fair wage-rate that would be independent of the employers' discretion. Therefore it is not surprising that they at first groped their way towards methods strongly influenced by the traditions of the period of trade regulation, insofar as these were compatible with their interests. General ideas of freedom encouraged the workers to take steps to assert their interests.

The exposition of facts above shows, in my view, that there is an obvious connection between the old governmental regulation of working conditions and the first attempts at collective agreements in England, France and Denmark. After the pioneer achievements

[9] For an account of this Agreement I may refer readers to my article in *The Modern Law Review* 1947, pp. 153 ff.

[1] Adlercreutz, *op. cit.*, pp. 366 ff.

had been accomplished, these agreements constituted the patterns, but it was of great importance that these patterns not only corresponded to what was felt to be a great need, but also fitted well into the traditions, particularly the idea that there should be in each trade a generally observed wage rate.

This connection is less obvious but nevertheless quite apparent in the Swedish history of the collective argreement. In this country, too, the efforts which led to the first collective agreements (as well as to the first trade unions) were clearly based on the traditions from the period of governmental trade control. The collective agreement came into existence at a time of transition between old and new, before the journeymen's way of thinking had moved too far from that of their masters, before the journeymen had fully realized the change in their social situation and allied themselves with the labour class proper.

What has been said applies to the initial phase of the collective agreement. But the idea had a future and it developed under new conditions when employers and workmen ranged themselves against one another, conscious of the fact that they belonged to two separate classes. The collective agreement became the most important instrument for reaching peaceful settlement of disputes and preserving industrial peace.

The problems and matters in dispute differed from trade to trade, from locality to locality. This multiplicity naturally led to divergences as to policies. All that one can refer to as a common driving force behind the rise of the collective agreement are the endeavours for economic security and justice, which could, in the view of the workers, be achieved only by—as the Webbs put it—a "common rule" for the working conditions and the collective cooperation of the workers for the establishment of this common rule. The system of employer discretion was to be replaced by—in Slichter's words—a system of "industrial jurisprudence".[2] The claims for improvements and for the conditions to be clearly defined were closely interrelated. For the trade unions, it was essential to acquire a guarantee for the observance of the conditions settled, particularly important if an essential improvement had been obtained. These endeavours led to the adoption of the written form. The conscious shaping, and denomination, of these documents as agreements etc. was of later date and was probably due mainly to the influence of the employers.

The agreement form was a product of liberalism, but collective

[2] Slichter, *Union Policies and Industrial Management*, 1941, p. 1.

regulation of working conditions was of older origin. There is no need to explain the collective regulation method by referring to the fact that working conditions were bound to be collectivized in consequence of the industrial production system. It is in my view wrong to claim, as some authors do, a direct connection between the rise of the collective agreement and the rise of the factory system and the use of machinery in production, which would imply that there would be no more individual achievements. This contention, which seems to have been a common explanation, at least in Sweden,[3] is not supported by the facts. Of course these circumstances had a tremendous impact on the development and expansion of the collective agreement, which was to have its most conspicuous application in the big industries, but it came into being and was first spread in the handicraft and printing trades which had changed very little or not at all as far as processes were concerned. There the provisions of the collective agreements were often closely related to older practices and wage systems. The rise of the collective agreement had as such nothing to do with the introduction of the modern machine technique. It is quite another thing that the contents of the agreements were modified when new processes were introduced.

The increasing number of workers, of course, stimulated the growth of the collective agreement. It is typical that the collective agreement came first into use in the towns. A prerequisite of collective wage regulation is that the workers shall be not too few, the establishments not too small. There was already more scope and more need for such regulation because of the expansion of the old handicraft trades in the 19th century. But if the increasing numbers of workers had been of decisive importance, one would have expected collective agreements to have sprung into existence in the manufacturing industries or metal trades rather than in the handicrafts. This, however, was not the case. In Britain and France the textile industries (silk and in Britain cotton as well) seem to have played a certain role in the development, but even there the old traditional handicraft and printing trades led the way, and the textile industries were very much like handicrafts.

[3] This rather "mechanical" explanation is derived from some passages in Steffen, *Sociala studier* VIII, Stockholm 1907, pp. 31 ff. Steffen may in turn have been inspired, directly or indirectly, by the pronouncement in the Royal Commission on Labour Report of 1894: "that the substitution of agreements between associations for agreements between individual employers and individual workmen is a growing practice, and one which is intimately connected with the mode and scale upon which modern industry is at present carried on" (p. 116).

The glut of labour, due to the increase of population and the agricultural crisis, brought to the labour market a previously unknown competition, promoted by the new economic principles. The old handicraft trades were invaded by the unskilled who made undercutting their weapon in the struggle for customers. There is much evidence from the time of the early trade unions that the workers tried to get in touch with their masters with a view to organizing their trade and protecting it from undercutting by outsiders. In some cases the masters accepted co-operation, and in such an atmosphere the first collective agreements based on negotiations (and not merely imposed on separate employers) came into existence, as in the Gothenburg painting trade.

Neither the new processes nor the increase in the number of workers brought the collective agreement into existence, but the unhampered competition, the fluctuations of trade,[4] the divergences as to prices and wages—in short the *insecurity* arising from the new circumstances. It was not the collectivization of working conditions, but rather the *lack* of it; it was the lack of uniformity and the arbitrariness as to wage rates in trades with numerous small establishments, such as the old handicrafts, that made the workers there pioneers of trade unionism and of the collective agreement. Trade protectionism, at the root of which lay many ideas originating in the old guild system, was an important ferment in the process that created the first collective agreements.

The problems were in part different in the big industries. There working conditions have as a matter of course always been more or less uniform. Wages were often fixed in schedules brought to the notice of the workers. Sometimes a settlement could be obtained by the workers, involving a wage increase of a certain percentage, as happened in connection with some strikes in the 1870's. Such settlements were of course antecedent to the collective agreement. Formal collective agreements were, however, scarce before 1900. One of the main reasons was naturally the employers' stubborn resistance to the workers' claim for a voice in the regulation of working conditions. Their resistance was not only due to a stronger bargaining position in labour relations than that of the

[4] It is interesting to study the correlation between trade union activity and these fluctuations. The first beginnings of a trade union movement and the collective agreement date from 1869, a year of depression, and were aimed at resisting wage reductions. Similar was the situation at the great saw-mill strike at Sundsvall in 1879. The boom period in the early 1870's saw the first more successful attempts, and similar conditions in the 1880's gave to the trade union movement its definite start.

small handicraftsmen, but also to quite a different attitude to industrial problems, which did not permit any encroachments on the "freedom of contract" and the managerial prerogatives. Nor were the old patriarchal industries of the countryside, such as the iron and steel works, a favourable soil for trade unionism and collective agreements, although there had long existed some kind of group agreements or joint contracts for smiths. There was in the big industries nothing of the trade-protectionist attitude that in the handicraft trades enabled the first collective agreements to be reached in a spirit of co-operation. In the course of events the liberal ideology soon influenced the handicraft masters, too, and widened the gulf between masters and journeymen.

It is apparent from what has been said that the desire for the *regulation* of conditions of employment was the primary motive behind the creation of the collective agreement. This applies particularly to the labour side, which took the initiative. For the employers there was, at least when industrial warfare had become a not unusual element in labour relations, another very important motive: to achieve *industrial peace*. In the earliest phase of evolution, one finds no trace of any conscious consideration of this question. A special peace obligation connected with the agreement was hardly in the minds of the parties, although, in the case of a strike preceding the conclusion, it must have seemed natural that work should be resumed and continued in peace. The practices of concluding agreements for definite terms and of negotiating on disputes have certainly implied and promoted the idea of a peace obligation. The earliest example of an express peace regulation that I have found was one connected with a price list for stevedores in Stockholm 1890. The concessions contained in the price list were made by the employer concerned on condition that strikes would be avoided. But not until after the turn of the century did the collective agreements contain more definite rules on this question, often in connection with clauses concerning the settlement of disputes.

The old price lists imposed by trade unions on individual employers stood out as unilateral promises and engagements as to the workers' emoluments. The peace motive, converted into an express peace obligation, made it possible to give to the collective agreement the character of a mutually obligatory agreement.

Among *patterns* or *models* of significance for the formation of the collective agreement in the initial phase I have already mentioned the old *tariffs* fixed by the guilds, the magistrates or other

authority. If, in Sweden, they were less important as direct patterns than, for example, in Denmark, and may have fallen into complete oblivion—in Stockholm the last tariff for the building trades was issued in 1805, elsewhere somewhat later—there was at least left, even here, as an essential inheritance from the old regulation system, the regulation idea itself and the idea of a decent and fair standard of remuneration, as opposed to the liberal idea of wages determined by the supply and demand of labour.

The *works rules,* the unilateral employer regulation form, are another such pattern. Before the trade unions had a clear idea of a suitable regulation form, giving them real partnership in the regulation of the working conditions, they often contented themselves with improvements in the form of works rules.

The *price list* is not in itself a regulation form; it can be unilateral as well as bilateral, autonomous or sanctioned by authorities. The price list, undetermined or unilateral as to form, is certainly one of the most important forerunners of the collective agreement. Where the evolution from old forms to the modern collective agreement can be traced step by step, it is in most cases a matter of price lists of a more or less distinct form that have been gradually converted into definite collective agreements.

I have dealt so far only with *collective* regulation forms as patterns or models to the collective agreement, and I think it comes out clearly from the facts presented above that these were the main source. Nevertheless there may have been in certain cases an approximation to the collective agreement from another angle: the individual labour contract in its shape of a group agreement (joint labour contracts) referred to in the introduction.[5] In small establishments it has often been impossible to distinguish such contracts from shop agreements, and undoubtedly the two types of agreement—defined clearly only by jurists of this century—were often confused.[6] But this cannot have been the main line of development, and I have tried to refute particularly the "mechanical" theory that the collective agreement was a development originating

[5] See *supra,* p. 17.

[6] Before the turn of the century, probably as a consequence of the agreement notion beginning to influence the way of thinking, the confusion between the collective agreement and joint contracts of employment seems to have been almost universal. It may be regarded as one of the most important contributions of the legal scholars concerned with the collective agreement to have brought out a clear distinction between the collective agreement, as containing general regulations, and the contracts of employment, the gist of which is the obligation to perform work.

in the individual labour contract, and depending on, and closely connected with, the industrialization of labour conditions.

Various lines of development have led to the collective agreement, and the shape of the first agreements, especially, depended very much on the way in which contact was established between the trade unions and employers concerned, and on the situation in which the agreement came about. Oral settlements may in certain cases be classified as collective agreements, but the written form was usually one of the main demands put forward by the unions. If negotiations were conducted in writing, the settlement often took the form of separate documents containing proposal and acceptance. If the agreement was the outcome of direct negotiations, the minutes recording the decisions arrived at sometimes served as a memorandum of the agreement. Likewise the agreement might be contained in a proposal drafted by a joint committee and ratified by the organizations. The regulation could further be brought about by an arbitration award or a decision of a joint body. Yet, in practice it became ever more common to draft the agreement in a single document signed by representatives of the organizations on both sides as parties, and possibly approved by the central organizations.

What significance had foreign patterns or models for the formation of the collective agreement in Sweden? As has been pointed out, the strongest influence came from Denmark, but the developments in Denmark and Sweden were partly parallel, with Sweden lagging somewhat behind. Thus no fully developed collective agreement's form existed in Denmark when the first attempts in that direction were made in Sweden, nor can such a form be said to exist elsewhere, for its occurrence in France was very sporadic, and the British development was rather peculiar. Undoubtedly the collective bargaining method was of greater importance than the regulation form, and certainly the modes of procedure of trade unions abroad were already known in Sweden to a certain extent in the initial phase. The printing trades, particularly, maintained close international contacts. But many of the first price lists were so simple and natural, founded as they were on previous conditions, that there can hardly have been any need for direct foreign patterns.

At a somewhat later stage foreign collective agreements had a much more direct importance as patterns. Trade unions as well as employers' organizations established close international contacts and co-operation. It even happened in 1883 that the masons'

union in Malmö adopted the Copenhagen price list as its own. The importance of the September Agreement for the policy of Swedish employers' organizations has already been stressed. But in most cases the patterns were not imitated slavishly. The organizations relied primarily upon the experiences gained at home.