COMPULSORY LABOR ARBITRATION
IN FRANCE, 1936-1939
Copyright 1950 by Joel Colton
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 Manufactured in the United States of America
to my wife

Shirley Baron Colton

with affection and gratitude
Preface

In 1942 the Vichy regime placed Léon Blum and other prewar leaders of the Third Republic on trial, charging them with responsibility for France’s defeat in 1940. The Vichy government alleged that the labor reforms of the Popular Front and Blum's failure to enforce law and order in the sitdown strikes of 1936 had so weakened France that defeat was inevitable when war came. At the trial, Blum vigorously defended the reforms introduced by his administration and insisted, furthermore, that he had effectively restored order without bloodshed in the great strike movement of the spring of 1936. Besides emphasizing the extent of the mediation which his government had undertaken in that critical period, he noted also the following:

We saw to it [in December, 1936] that both houses passed a compulsory conciliation and arbitration law that prohibited strikes and lockouts before attempts at conciliation and arbitration had run their course. . . . A legal system of arbitration was gradually introduced into public life.¹

This statement by Blum at the Riom trial, which, incidentally, was abruptly suspended after several weeks of hearings, calls attention to a relatively little known aspect of French economic life in the years 1936 to 1939. An experiment in the compulsory arbitration of labor disputes was initiated by the original Popular Front government in 1936 and remained in operation under succeeding ministries until the coming of the war in September, 1939. Overshadowed by other, more publicized measures of the Popular Front, such as the forty hour week, it has not received the attention it merits as one of the most significant social reforms attempted in
the last years of the Third Republic. The French experience with compulsory arbitration takes on added interest, moreover, because of the limited number of countries in which this controversial method of settling labor disputes has been tried.

The present study is a history of the French experiment from its origins in the sitdown strikes of June, 1936, until its wartime suspension. It attempts first to describe the circumstances under which the labor-sponsored Popular Front government introduced compulsory arbitration despite labor’s traditional hostility to all such proposals. It attempts, further, to examine the nature of the system that was adopted; to explore the problems that arose in the operation of the system; and, as far as possible, to evaluate the results. As appropriate to a study in economic history, an effort has been made to emphasize the relationship of the experiment to the changing political scene, to public opinion, to the labor movement and to the general framework of industrial relations in France. On the other hand, even though the arbitration system is viewed against the background of the Popular Front economic experiment, full consideration of the latter has been excluded as beyond the scope of this work. It must be emphasized, finally, that the primary purpose has been to provide a history of the experiment tried in France in the prewar years, not to make a purely technical evaluation of the French experience nor to draw any lessons for other countries from this experience.

The book is divided into two parts. Part I describes how compulsory arbitration came to be introduced in France and the kind of system that was adopted. Part II treats the problems that arose in the operation of the system and the general results. The introductory chapter of Part I surveys the mediation machinery that existed in France before 1936 and provides the political and economic setting for the Popular Front election victory of 1936. The two following chapters sketch as background to the introduction of compulsory arbitration the great sitdown strikes of May–June, 1936, and the continued labor unrest of the autumn of that same year. The original temporary arbitration machinery, established by the Act of December 31, 1936, is then described and the circumstances under which the temporary system was twice renewed. The last
chapter of Part I examines the important reforms instituted when the system received permanent status under the Act of March 4, 1938.

Part II, except for the final chapter, is arranged topically. It is concerned with a selected number of problems that emerged in the operation of the arbitration system. Many phases of the legislation establishing the original system had been left obscure and the permanent act, moreover, served to introduce a number of additional problems. While under the 1936 Act no reviewing agency existed, under the permanent act, a Higher Court of Arbitration exercised appellate jurisdiction over the system. This court guaranteed greater homogeneity in the body of arbitral decisions and clarified several points left ambiguous by the lawmakers. Chapters 6-10 reveal the manner in which these ambiguities were handled in arbitration practice and how they were settled by the rulings of the Higher Court.

Part II, in addition, analyzes the results of the system under a number of special headings. It examines such aspects as the adjustment of wages to rising prices through arbitration; the effect of compulsory arbitration on "the right to strike" as well as on the strike record; the applicability of the system to the negotiation of initial contracts; and the enforcement of awards before and after the introduction of special legal sanctions in November, 1938. The final chapter describes the nationwide general strike of November 30, 1938, and the role played by the arbitration system in the aftermath of that strike. This last chapter indicates, too, the changing attitude of the labor movement as the restrictive implications of the system became clear, especially after the passing of the Popular Front. It indicates also the reforms that were being considered in government circles when the war interrupted the experiment. A concluding section discusses the status of the system from its wartime suspension to 1950.

The publications of the French government have been of prime importance in preparing this study. Communication with the French Ministry of Labor has confirmed the fact that all relevant information still existing after the war and the occupation has been published through official channels. Much of the statistical data
used has been published by the French government only recently and has not been used elsewhere. The inadequacy, however, of French statistical data, particularly in regard to such matters as strikes and wages, has been an unfortunate handicap.

A number of monographs and articles on the compulsory arbitration experiment appeared before the war, while the system was still in operation. Although necessarily limited in perspective, many of these studies provide valuable technical information and have been used to advantage. The press—in particular, *Le Temps* and *Le Peuple*—the parliamentary annals (the *Débats Parlementaires* and the *Documents Parlementaires*), and a number of legal and economic periodicals have been found useful. Among the latter, one must be mentioned particularly: *Droit Social*, which, since its inception in 1938, has been a rich source of information on labor law and related problems. The arbitration decisions handed down in the course of the experiment and the rulings of the Higher Court of Arbitration have been invaluable. Furthermore, many of the eminent individuals who were called upon to serve as arbitrators have set down their experiences in a number of articles that afford an additional insight into the operation of the system.

It would be impossible to conclude without acknowledging a special debt of gratitude to Professor Shepard B. Clough, of Columbia University, under whose guidance this study was originally initiated as a doctoral dissertation. A number of fruitful suggestions have been made by Professors John H. Wuorinen, Jacques Barzun, Paul F. Brissenden, Leo Wolman and Ralph H. Bowen, all of Columbia University; and by my colleague, Professor Harry R. Stevens, of Duke University. The author, of course, assumes full responsibility for the contents of the volume and for any errors it may contain. Finally, it would be futile to attempt to convey adequately the special debt owed to my wife, Shirley B. Colton, who has been a constant source of encouragement and active assistance at every stage of this work.

JOEL COLTON

*Durham, North Carolina*
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Chronology

**First Blum Cabinet** (June 4, 1936–June 21, 1937)

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>1936</td>
<td>June 8: Matignon agreement</td>
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<tr>
<td></td>
<td>June 20–24: Paid vacations act, Forty hour week act, Collective bargaining act</td>
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<td>July 3: Decree simplifying machinery of arbitration system</td>
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<td></td>
<td>October 1: Currency act (Article 15) authorizing establishment of compulsory arbitration procedures by decree (never put into effect)</td>
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<td></td>
<td>December 31: Compulsory arbitration act authorizing arbitration system on temporary basis for six months</td>
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<tr>
<td>1937</td>
<td>January 16: Decree setting up detailed machinery of arbitration system</td>
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**First Chautemps Cabinet** * (June 22, 1937–January 14, 1938)

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<tr>
<th>Year</th>
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<tr>
<td>1937</td>
<td>July 18: Act extending arbitration system and all collective contracts for six months</td>
</tr>
<tr>
<td></td>
<td>September 18: Decree simplifying machinery of arbitration system</td>
</tr>
<tr>
<td>1938</td>
<td>January 11: Act extending arbitration system and all collective contracts for two months</td>
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* Refers to cabinets formed under the 16th Legislature (elected in April–May, 1936); actually, there were two previous Chautemps cabinets before 1936.
SECOND CHAUTEMPS CABINET (January 18, 1938–March 10, 1938)

1938
March 4 Act establishing permanent arbitration system (Article 10 on wage adjustments)

SECOND BLUM CABINET (March 13, 1938–April 8, 1938)

1938
April 3 Decree establishing Higher Court of Arbitration

DALADIER CABINET (April 10, 1938–March 21, 1940)

1938
April 20 Decree setting up detailed machinery of permanent arbitration system
May 16 First decisions handed down by Higher Court of Arbitration
November 12 Daladier-Reynaud decree laws modifying forty hour week; one decree law providing penalties to enforce arbitration awards
November 30 General strike

1939
January 14 Ségogne decision on reinstatement of workers dismissed after general strike
April 21 Decree law adding restrictions on wage adjustments obtained through arbitration
September 1 Decree law suspending arbitration system for duration of the war

* Refers to cabinets formed under the 16th Legislature (elected in April–May, 1936); actually, there were two previous Chautemps cabinets before 1936.
Part I
THE INTRODUCTION OF COMPULSORY ARBITRATION IN FRANCE

1. The Background: Before the Popular Front

The Settlement of Labor Disputes: Some Definitions

France's experience between 1936 and 1939 marks one of the rare instances in which compulsory arbitration has been tried during peacetime by a major industrial nation with democratic institutions. Of all the techniques designed to promote industrial peace, governmental systems that legally compel the submission of labor disputes to arbitration are the boldest. They are at the farthest end of the spectrum from the commonly accepted democratic ideal—the independent settlement of disputes by industry and labor through voluntary agreement or through voluntary recourse to adjustment procedures. Barring only totalitarian systems that suppress collective bargaining entirely, systems of compulsory arbitration represent the strongest form of government intervention so far evolved in the settlement of labor disputes.¹

The most common forms of government intervention are of a considerably more limited nature. The provision of official conciliation and arbitration services, to be used at the option of the parties, is perhaps most typical. Under such systems, the parties may request the assistance of government mediators in settling their differences or the latter may take the initiative in bringing the principals together in conferences to encourage the peaceful settlement of the dispute. If the conciliation efforts fail, the parties are invited on a voluntary basis to submit their dispute to the decision of an arbitrator or an arbitration board. These voluntary conciliation and arbitration systems, which have found favor in English-speaking countries, are well illustrated by the existing Federal Mediation and Conciliation Service in the United States.
Other forms of government intervention are characterized by increasing degrees of compulsion. The first such method is compulsory investigation. It requires the submission of disputes to a government-appointed fact-finding board, which collects information and then, generally, makes recommendations based on its findings. The principals are usually required to abstain from strikes or lockouts prior to the publication of the findings, but are under no compulsion to accept the board's recommendations. Sometimes such systems apply only to disputes in public utilities or in essential industries; in other cases they apply to disputes in all industries. As a generalized procedure affecting all disputes, it has been tried notably in Canada with considerable success. In more limited form, it comprises one of the procedures authorized under the Taft-Hartley Act in the United States.

A second method involving a degree of compulsion requires the submission of disputes to compulsory conciliation procedures. In such systems, the parties are required by law to participate in a conference, or a series of conferences, designed to settle their dispute. Only the agreement of the parties, however, can end the dispute. This procedure has been tried in Sweden and was one of the mandatory phases of the compulsory arbitration system established in France after 1936.

Finally, the extreme type of government intervention, compulsory arbitration, requires the submission of unsettled disputes to the decision of an impartial person or board. It may take a variety of forms. It may be the result of a voluntary agreement between labor and management reached under government auspices, as was the case in the United States in World War II, or it may be established by law, as was the case in France in 1936. It may be "with voluntary award," which means that the government cannot legally compel the acceptance of decisions; or "with compulsory award," in which case the law provides penalties for violations. In both varieties the parties are required to abstain from strikes and lockouts pending the award. However, the effect of compulsory arbitration laws on the right to engage in strikes and lockouts is a controversial point not easy to settle, as the French discovered.
Two other distinctions in compulsory arbitration must be mentioned. Some forms, such as those in the Scandinavian countries, are restricted to disputes arising out of the legal interpretation of existing contracts—sometimes called disputes over "rights" as opposed to disputes over "interests" (economic disputes). In other forms, compulsory arbitration extends to the latter as well and covers disputes involving the modification of working conditions, especially wage schedules. The French system belonged to the more inclusive category and applied both to disputes over "rights" and to disputes over "interests." A final distinction is based on whether a compulsory arbitration system is permitted jurisdiction over the preparation of initial contracts—the most extreme form of compulsory arbitration. This problem the French settled only after considerable difficulty, on a compromise basis.

Although the complexities of modern industrial life have rendered some form of mediation service essential to the administrative apparatus of every state, compulsory arbitration in generalized form has remained rare. New Zealand in 1894 was the first to adopt it, with Australia following shortly thereafter. In both nations it has had a varied career, being abolished and reestablished intermitently. Weimar Germany, the Scandinavian countries, several Latin American countries and the state of Kansas have also tried it.

The reasons why compulsory arbitration has remained exceptional and a subject of recurrent controversy in many parts of the world are not difficult to understand. Although the "public"—and politicians—are often strongly attracted to it as a panacea for industrial troubles, the two parties principally involved—labor and industry—have been almost universally opposed. Employer groups have fought it as an intolerable form of government interference with industrial autonomy. With just as much conviction, the labor unions have regarded it with repugnance, principally because of the potential threat to their right to strike. Among the theoretical objections raised by students of industrial relations is the argument that compulsory arbitration tends to lessen reliance on voluntary processes and makes for increased state control over industrial relations. The tendency to "split the difference" in arbitration deci-
Mediation in France before 1936: the 1892 Act and Substitute Proposals

Like other industrial nations, France before 1936 had some official machinery for the settlement of labor disputes, although it was very ineffective. Established by the Act of December 27, 1892, the system was completely voluntary and utilized as official mediator the justice of the peace (juge de paix), the lowest ranking member of the French judiciary. The procedure may be briefly summarized. In the event of a labor dispute that had not yet become a strike or lockout, either party might request the justice of the peace to arrange a joint conference over which he would preside. Once a strike or lockout had occurred, the justice of the peace might convocate such a conference on his own initiative. If conciliation conferences failed to result in an agreement, the magistrate was empowered to invite the parties to submit their dispute to arbitration. They were each to choose an arbitrator or, alternatively, a common umpire. If the arbitrators chosen by the respective parties failed to agree, they were to name a third arbitrator to cast the deciding vote. When they could not agree on such an umpire, the presiding magistrate of the Tribunal Civil in the area made the selection. Publicity was the only sanction connected with these procedures. The justice of the peace was to make public all requests by either of the parties for a conciliation conference, all refusals to participate and the results of such conciliation and arbitration as did take place.

The results of the 1892 Act, both in settling and in preventing strikes, were long a subject for complaint in France. In 1924 an official report summarized the meager fruits of the system between 1893 and 1920. During those years the machinery was called into use to help settle strikes in only 18 per cent of all strikes that oc-
The system was ineffective principally because it had become anachronistic. It had not been designed for strikes extending over large geographical areas and certainly not for those of nationwide scope. Rare at the time of the law's adoption, such strikes had become more and more frequent as industry grew and as employers and labor became more widely organized on a regional and national basis. In these strikes the humble rural magistrate employed as prime mover could hardly be effective. Thus, the system was ill-suited to handle the very disputes that were most crucial to the national economy in more recent times. There were other reasons for its weakness as well. Recourse to the system was entirely voluntary and the failure of either party to cooperate could result in the collapse of the procedures at any point. Moreover, only ad hoc conciliation and arbitration boards were authorized. With the passing of the years the usefulness of the 1892 Act declined steadily. A relic of the horse and buggy days, it had fallen into desuetude by 1936. On the eve of the Popular Front electoral victory, the country had no effective official mediation machinery.

As a result of the inadequacy of the official system, informal government intervention in labor disputes had become common. Mediation by such officials as prefects, sub-prefects, mayors, labor inspectors, the Minister of Labor and other cabinet officers tended to overshadow the statutory procedures. In the year 1919, for example, there were 457 instances of mediation by these other authorities in contrast to only 187 instances of intervention by the
Justice of the peace under the 1892 Act. This type of intervention, furthermore, generally occurred in the more important disputes.

Almost from the time of its inception, efforts were made to amend or replace the inadequate 1892 Act. By 1936, some thirty bills had been introduced for that express purpose, none of which ever passed. Among the more important proposals was a measure sponsored by the Waldeck-Rousseau ministry in 1900, which provided for a form of compulsory arbitration with an added provision requiring a secret strike vote of the workers in any plant. A second important proposal, the Millerand bill of 1920, called for compulsory recourse to conciliation procedures in all disputes and compulsory arbitration for disputes in public utilities. The Durafour bill, introduced in 1925, advocated a combination of compulsory conciliation and optional recourse to arbitration. The last attempt before 1936 to amend the existing system was a government bill introduced in 1929 by Minister of Labor Loucheur. It provided for compulsory conciliation, with the prefects and the Minister of Labor serving as mediators, and for voluntary recourse to arbitration. This bill passed the Chamber of Deputies in 1929, was amended by the Senate in 1935, and awaited Chamber approval. It became lost, however, in the tumultuous events of 1936 and did not even enter into the discussion when the compulsory arbitration act was passed.

The 1892 Act was not repealed in 1936 when the compulsory arbitration system was introduced. Moreover, unlike the latter, it was not suspended in September, 1939, for the duration of the war. It remained on the books, therefore, in the first years after World War II, but was of no practical importance. Today, like the prewar compulsory arbitration system, it has been superseded completely by the Act of February 11, 1950. The latter combines compulsory conciliation procedures with provision for voluntary recourse to arbitration.

To complete the record of legislation affecting labor disputes before 1936, two other items ought to be noted. First, during World War I, in 1917, compulsory arbitration was introduced, but solely on a wartime basis. Secondly, over the years special arbitration
procedures were established for limited jurisdictions—for the merchant marine, the maritime fisheries and the railroads. In the case of the railroads, these special procedures provided for compulsory arbitration.  

Finally, one cannot omit mention of the celebrated French labor courts known as the conseils de prud'hommes, which have jurisdiction over a special category of labor disputes. These courts, still in existence, date back legally to Napoleonic times, although their deepest roots are found in thirteenth century Paris. The primary function of these courts is the settlement of labor disputes arising out of the contract of employment between the individual worker and his employer. The disputes over which they have jurisdiction must be sharply differentiated from collective labor disputes, which involve groups of workers and their mutual interests. It is with the latter that the forms of government mediation described above are concerned. The distinction in specific cases, however, is not always easy to draw, as the French discovered when jurisdictional problems arose after the introduction of compulsory arbitration.

Labor and Industry in France before 1936: Attitudes toward Compulsory Arbitration and the Status of Collective Bargaining

It is paradoxical that the French labor movement should have been responsible for the introduction of compulsory arbitration in France. French labor has had a distinctly revolutionary tradition, with syndicalist and socialist influences competing for leadership. By the turn of the century the former had triumphed. United in 1895 into the Confédération Générale du Travail (known thereafter as the CGT), the organized labor movement dedicated itself to the goal of abolishing capitalist society through the syndicalist weapon of the “general strike.”  

In the years immediately following World War I, important changes occurred in the labor movement. In the aftermath of the Russian Revolution, a large section of the labor movement fell under Communist influence. At the same time, the non-Communist section adopted a more reformist program. In 1922 a schism—not
unlike that which has taken place in the period after World War II—split the CGT into two groups: a reformist, non-Communist confederation that continued to be known as the CGT headed by the veteran leader of the French labor movement, Léon Jouhaux; and a revolutionary, Communist confederation, the Confédération Générale du Travail Unitaire, or CGTU.\(^\text{15}\) Alongside these two major organizations in the years between the two world wars there existed a smaller Catholic trade union confederation, the Confédération Française des Travailleurs Chrétiens, or CFTC, organized in 1919 and inspired by such papal doctrines of social Catholicism as Rerum Novarum and Quadragesimo Anno. A number of unimportant splinter organizations were also in existence.\(^\text{16}\)

In the 1920's and '30's the split in labor's ranks and the coming of the depression weakened the labor movement. In 1935 only slightly more than one million of the approximately eight million workers in France were organized. The CGT claimed 775,000 members; the CGTU, 230,000; and the CFTC, 150,000. If civil servants are excluded, and only the six and a half million workers in private industry are counted, the proportion of organized workers was indeed small—about 6.3 per cent.\(^\text{17}\)

That French labor shared the almost universal labor antipathy to compulsory arbitration is not surprising. In the years before World War I, because of its revolutionary orientation, the CGT was especially hostile to what it considered a curtailment of its freedom of action. In 1906 the ninth congress of the CGT specifically denounced compulsory arbitration as a weapon designed "to hinder the development of syndicalism and to destroy the right to strike."\(^\text{18}\) In that same period, however, principally because of the weakness of labor, some working class leaders, including Jean Jaurès, favored the introduction of compulsory conciliation as a means of enlisting the aid of the state against the more powerful employers.\(^\text{19}\)

The switch to reformism in the CGT after World War I did not lead to any fundamental change in attitude toward compulsory arbitration, although the organization now actively espoused compulsory conciliation proposals. In contrast, the Communist confederation was unreceptive even to compulsory conciliation. Of all