

CONTRIBUTION TO THE THEORY OF CORPORATE BODIES :

19TH CENTURY WORKMEN'S ASSOCIATIONS

The transformation of workmen's associations in the course of the 19th century is a good illustration of how legal forms change. Following the abolition of the Ancien Régime's guilds, and an ensuing series of changes, groups developed which were the predecessors of the trade unions (officially recognized by the 21 March 1884 law), one of the key institutions in 20th century labor relations.

With this mutation in the course of the 19th century workmen's associations were gradually granted the legal status of corporate body, a notion of which revolutionaries had been extremely wary in 1789, as shown by the debates on the nationalization of church property. They viewed it as harmful, and therefore opposed it, particularly in occupational relations and on the labor market, by voting the 14 June 1791 Le Chapelier law.

Workers, who were intent on creating associations, although these were usually clandestine since prohibited by law, proceeded to make their own contribution to the theory of the corporate body and the recognition of associations as such.

At the turn of the century a larger breach was opened, with the 1901 law on associations. The working class were ahead of the movement, since the 1884 law on trade unions had already granted them the status of corporate body.

The CESDIP is currently conducting research on the transformation of the shapes taken by working class trade organizations in the 19th century. The purpose is to show how the March 21, 1884 law, legalizing trade unions came into being : to determine the long, underground course travelled by the latter before gaining legislative recognition. Writings of all sorts - legislative texts, jurisprudence decisions, police bulletins, exchanges of letters within the Ministry of the Interior and the Ministry of Justice, statutes of working class organizations - have been analysed, at different periods in the 19th century. Although this research is not yet complete ¹, it has already yielded some information on the characteristics and legal nature of labor organizations during the first half of the 19th century. These include :

- the frame of reference of working class groups ;
- the versatility of these groups ;
- governmental attempts to control them through repression after 1848.

1 - See Francine Soubiran-Paillet, *Droit, ordre social et personne morale au XIX^{ème} siècle : la genèse des syndicats ouvriers*, Vol. 1 *L'agrégation d'intérêts chez les ouvriers de 1791 au Coup d'Etat de 1851*. Paris, CESDIP, 1992.

6 THE ASSOCIATION, A SIMPLE JUXTAPOSITION OF INDIVIDUAL INTERESTS

Under the Ancien Régime some guilds qualified for the status of corporate body. In 1791, the intention of legislators was to eliminate corporate bodies based on occupational ties. Although these were prohibited, they subsisted underground, without any of the attributes which make the concept meaningful (the creation of obligations in relationships with outside parties). Throughout the first half of the 19th century, the government, the judicial authorities and even lawmakers view workmen's associations as coming under criminal law. Criminal repression leaves no room for the common-law existence of workmen's associations. In fact, the 1804 Civil code does not include a definition of partnership deeds. Associations remain unchartered, and therefore have no chance, for long years, of constituting corporate bodies capable of representing their members. This is particularly true of labor relations, in which bargaining and collective contracts are out of the question, since the entire economic edifice is founded on the personal contract between two individuals (master and worker). The only exception to this general rule is associations of recognized public utility. Few working class associations fall into this category, however ². As a rule, workmen's associations were required to apply for authorization, and were governed by a system whereby the right to exist and legal capacity were dissociated ; that is, the possibility of coming into existence, through government authorization, did not foster growth through the use of one's rights. In their organizational attempts, workers and their apologists were practically obliged to start from zero ; that is, from groups which were a simple juxtaposition of individual interests and in no way a collective entity. It was almost half a century before common law - rather than criminal law - jurisprudence granted them the right to collective action.

THE FRAME OF REFERENCE OF WORKMEN'S ASSOCIATIONS

Under the Ancien Régime, working class organizations were based on fraternal bonds, almost of a family nature.

And this was still very much the case after the Revolution. The values to which the Government and workers referred at that time have several points in common. Each in their own way, both refer to domestic life. The solidarities, the accepted hierarchies within working class organizations are akin to governmental paternalism, as seen at several levels including the regulations set down by municipal officers for conciliation attempts in labor conflicts. Working class practices do also partake of the proclamation of new ideals however, although in minute doses, and sometimes in a rather contradictory manner. The acclaimed desire for equality and individualism, through which the collective interest may be expressed by each and all, is one example. The ideals proclaimed by the *Constituante* ³ were also voiced by the government, especially when it comes to th

2 - With the rare exception of some benefit societies.

3 - The first "Parliament" at the very beginning of the French Revolution.

idea of the common good, embodied in the National will, which is undermined by all associations.

By around 1830, the traditional working class organizations were losing ground. New forms took shape, in response to the desire to overcome the rifts between rival groups, either within a same trade or between trades. The underlying conflict, in 1789, between individualism and the guild situation inherited from the Ancien Régime, was transcended. The notion of community took on new meaning, closely tied to the concepts of equality and individuality. At that time, benevolent societies proliferated.

The 1848 Provisional Government provided the working class with a model in which the State is no more than a gigantic association in which specific organizations naturally have a place. From 1848 on, the workers' private space gradually expanded, in pace with their integration in the industrial world, with the extension of the factory system.

THE VERSATILITY OF GROUPS

After 1789, workers created organizations which were often carryovers from the Ancien Régime, as was the case for journeymen's societies. They could not innovate then, and were forced into clandestinity, which made them unreceptive to outside influences. To break with this situation, they created mutual benefit societies, which were tolerated by the government. The bases of these benefit societies, and even of the providence societies, differed from those of the journeymen's societies. The latter were immersed in the production sphere, whereas members of benefit societies simply attempted to achieve mutual aid and protection in case of illness or even old age, and thus remained within the bounds of the semi-private sphere : their solidarity did not interfere with labor relations. In fact it is this transition from the private or the semi-private sphere to the sphere of production that is at stake in the government's opposition to collective interests. The stakes were even greater when benefit societies were turned into camouflage for resistance societies ⁴, reviving the idea of interference in the craft and factory spheres.

In 1830-34, journeymen's guilds were seen as increasingly inappropriate instruments for organizing workers, not only because of the rivalries they encouraged between different fractions, but also because of their increasing inadequacy to the changes in mentalities and in working conditions. Benefit societies then seemed better able to channel workers' demands. They simply asked that members pay their dues, celebrate their patron's day and respect the organization's rules. They were more in step with the incipient individualism and secularization of 1789. The bounds between journeymen's guilds and benefit societies were unclear, however, and workers tended to use them interchangeably. The resistance societies, in turn, grew in number toward 1830, but often were confined to highly organized trades such as the *canuts* in Lyons and typesetters in Paris. They remained fragile, and tended to come and go.

4 - The name given to groups in which workers organized to fight employers, often under the cover of a society for mutual aid in case of illness.

7 They were extremely influential, however, because they helped crystallize a sense of working class solidarity.

The benefit societies of the 1848 period increasingly turned into organizations aimed at providing protection against risks in impersonal terms : less emphasis was placed on specific individuals, their status or position in a given area of social life such as the family or the trade, and more on information that put people in categories. The purpose of this was to determine objective criteria for granting compensation.

In 1848 and immediately thereafter, associations were viewed by workers as a cure-all. Cooperative associations represented a progress for workers of that period, even when they were small, and even more so when they covered a single trade : broader fraternity between all workers only became conceivable when workmen's groups began to view themselves as free associations of productively working citizens rather than as distinct groups devoted to specific crafts. The goal was then to transcend the limits of the association grouping a single trade, and to create federations.

WORKMEN'S ASSOCIATIONS AND GOVERNMENTAL REPRESSION AFTER 1848

The reports issued by the ministry of the Interior, and even the letters exchanged within this ministry and the ministry of Justice in 1849 and 1850 are especially enlightening as to the way the government viewed workmen's associations.

According to the reports written by almost all chief justices after 1848, most benevolent societies formed under the name of benefit societies and brotherhoods were in fact political groups in disguise.

Governmental fears generated its hostility and exposed workmen's associations to pursuit. This deprived them of any chance of acquiring the status of corporate body. One of the main preoccupations of the government of the time, in its handling of the working classes, was to find ways of preventing the creation of workmen's associations, suspected of combining political activism and pseudo-commercial activities.

The justice department was particularly distrustful of selfless associations and of cooperatives in particular. It viewed them as dangerous. In a report sent to the minister of Justice in 1849, relative to a workmen's association known as *L'Association Fraternelle de l'Industrie Française*, we read : *this society is bound together by the exclusive zeal and selfless fanaticism of the sect, to the extent that such selflessness may exist, at any rate...* Similarly, the search for profit is viewed as guaranteeing the members' serious intentions : *the societies which I will discuss here, Sir, were also inspired by socialist leanings, but they are of a completely different nature : the ties between members are serious, here. The members are all workers in a same branch, and are all seeking financial profit...*

This explains why companies, and commercial firms in particular, were given the benefit of the status of corporate

body at a very early date ⁵, along with a relatively favorable legal status, as opposed to associations which defined themselves as non-profit (see also framed quotation below).

Present-day legislation is powerless. It did not foresee the abusive use to which partnership deeds would be put. It gave the contracting parties full leave for the civil law stipulations involved in partnership deeds, such as the rates of stocks, however low they be, the allocation of benefits to the worker's aid fund, etc... The question, then, is a legislative one, pertaining to this new form of partnership deed, the dangerous use of which is corroborated by the birth of socialist doctrines and our present political scene. In my opinion, the question may be solved as follows : governmental intervention is required so as to eliminate, from the outset, those associations which threaten the peaceful existence of the State or the normal pursuit of industry and commerce, and to maintain surveillance throughout their existence for those societies whose goals are legitimate, serious industry or commerce, but whose type of charter nonetheless makes them likely to degenerate into a public danger. In other words, the Government should be given the means to prohibit or to control associations directly. This is an extension of the golden rule according to which private interest is subservient to the public interest, many applications of which are evident in our commercial law system. The joint-stock company, as organized by our legislation, is one example. Do you not agree, Sir, that the stipulations relative to these would constitute a perfect solution for the workmen's associations with which this report is specially concerned ? ⁶.

8 This inventory of the situation mainly shows how distrust of any way in which associations might escape from the framework defined by commercial law is combined with the idea of a potential threat to public order. The message is : commercial firms are respectable, since they are a part of the business sphere, and are easily identified. Further, they are easy to control. This is far from true of associations, which are gateways to abuse of all sorts, and to dangerous political activities in particular. Trade and political life belong to two different worlds, seemingly foreign to one another at first glance, and yet not necessarily so, since the State is so concerned with maintaining a boundary between them. Workers who dare interfere with wage-setting or working conditions move onto forbidden land, then ; that is, into the political sphere.

This study shows how difficult it was for workmen's associations, non-profit and therefore suspect by definition, to obtain a legal status. The suspicion that workmen's associations engaged in political activities along with their occupational activities explains why it was only when other types of associations forced jurisprudence that workmen's associations could at last win their cause and achieve the status of corporate bodies.

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References :

Fenet, *Recueil complet des travaux préparatoires du code civil*, Paris, Imprimerie Videcoq, 1836.

Tchernoff (I.), *Associations et sociétés secrètes sous la deuxième république*, Paris, Alcan, 1905.

⁵ - In the preparatory phase of the civil code, Bérenger told the *Conseil d'Etat* that shareholders companies are corporate bodies (see Fenet, 1836, T XI, p.16).

⁶ - Taken from a report to the prosecutor's office of the Lyons Appeal Court on the post-1848 workmen's associations in Lyons, in I. Tchernoff, (1905).