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Canada and the International Labour Organization in the interwar period, 1919-1940.

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CANADA AND THE INTERNATIONAL LABOUR
ORGANIZATION IN THE INTERWAR
PERIOD, 1919-1940

by

Jeffrey Gordon Hucul

A Thesis
submitted to the Faculty of Graduate Studies
through the Department of History
in Partial Fulfillment of the Requirements
for the Degree of Master of Arts
at The University of Windsor

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ABSTRACT

CANADA AND THE INTERNATIONAL LABOUR
ORGANIZATION IN THE INTERWAR
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Jeffrey Gordon Hucul

In 1919, Canada, by virtue of its central role in the conduct of World War One, took its place as a member of the international community in the League of Nations and in the first representative body for world labour, the International Labour Organization. This thesis examines Canada's relations with the I. L. O. in the interwar period (1919-1940). It is hypothesized that Canada's role in the I. L. O. in this period reflected not the concerns and ideals of the organization per se, but rather the political and constitutional goals of the Dominion government. Consequently, social reform in Canada, as implied in the principles of the constitution of the I. L. O., was usually of secondary importance both to the governments of Canada in this period, and especially to Canadian industry, which were often united in thwarting the efforts of Canadian labour and the I. L. O. to influence social reform in Canada. Indeed, both Canadian governments and industry came to recognize

in the constitutional issue a useful vehicle to slow down the pace of social reform in this period.

Chapter I examines the early progress of Canadian state interventionism in the social sphere from 1882 to 1911, and the promise that these efforts seemed to hold for social reform in Canada. Chapter II outlines a brief history of pre-war efforts toward international agreement on labour concerns, and focuses chiefly on the work of the International Association for Labour Legislation and Canada's role therein. Chapter III deals with the role of Canadian labour in the war effort, and its goals and resulting frustration with the Unionist government, as well as the structure and formation of the I. L. O. and Robert Borden's motives for bringing Canada into the organization.

Chapter IV examines the response of various elements in Canadian society to Canada's involvement in the I. L. O. Chapter V focuses on Canada's participation in the first I. L. O. Conference in Washington, 1919, and the response of the Dominion government to that involvement. Chapter VI analyzes Canada's relations with the I. L. O. under the first two King administrations (1921-1930) and also deals with the various responses of Canadian governments in this period to Canada's responsibilities to the organization.

Chapter VII examines Canada's involvement with the I. L. O. in the Bennett era (1930-1935), and focuses on the central

role which certain I. L. O. conventions played in Bennett's legislative programme to stem the effects of the depression in Canada. Chapter VIII deals with the final period of Canadian involvement with the I. L. O. before the war (1935-1940) and analyzes the importance of the Supreme Court and Privy Council decisions on the authority of the Dominion government in the social sphere.

It will be seen that the constitutional issue (i.e., the division of powers between federal and provincial governments) represented the chief stumbling block to the fulfillment of Canada's obligations to the I. L. O. That no government of the period possessed the political will to solve the problem of divided jurisdiction with respect to labour concerns suggests that Canada's motives for joining the I. L. O. had little bearing on the principles of that organization.

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CANADA AND THE INTERNATIONAL LABOUR

ORGANIZATION IN THE INTERWAR

PERIOD, 1919-1940

Introduction

World War One presented the international community with both opportunities and problems. Among the latter was the increased seriousness of the social questions associated with accelerating industrialization. These concerns were on the minds of the participants in the Paris Peace Conference of 1919 and motivated them to create a specialized League of Nations agency for their alleviation. Thus the International Labour Organization (I. L. O.) was founded. From 1919 to 1940 it attempted to establish standards of industrial behaviour as a means to ensure world peace.

Canada, as is well known, was an eager founding member of the League of Nations, mostly so because such membership did serve as a vehicle to obtain recognition of its fledgling nationhood. To advance this cause, it was also advantageous, of course, to participate in organizations affiliated with the League of Nations such as the I. L. O. Reasons of international status, though, did not alone serve as grounds for membership in the latter agency. Canada, indeed, could also perceive solid social reasons for its participation. The war had awakened in Canada, as elsewhere, labour's

awareness of the problems caused by unrestrained laissez-faire industrialism, and it came to expect that government would intervene in order to curb the major abuses within Canadian industry. It also hoped that membership in the I. L. O. would encourage the government to sponsor reform. Canadian governments, for their part, had to respond to these expectations. The issue was complicated, however, by the influence that industrial leadership exerted in this respect. Government's task, therefore, was a very involved one; it was rendered still more complex by the intricacies of Canada's constitutional arrangement which did not clearly specify the extent of authority on the federal and provincial levels in the social sphere. Membership in and the resulting obligation to an international agency such as the I. L. O. thus almost of necessity brought with them great and often unpredictable challenges.

While Canada's role at the League of Nations has been the object of many studies, its relationship to the I. L. O. has, astonishingly, attracted far less attention, as yet. Besides various short articles which tend to gloss over the many failures of Canadian involvement with the I. L. O., only one work, Le Canada et l'Organisation Internationale du Travail,¹ by Jean-Pierre Després treats the subject

¹Jean-Pierre Després, Le Canada et l'Organisation Internationale du Travail (Montreal: Fides, 1947).

somewhat comprehensively. Even this work, however, neglects to deal with several important considerations, among them national self-interest as the chief motivation for involvement. Després, indeed, adopts a more positive attitude toward Canada's role in this period than the scrutiny of the conference records warrants. Other studies of this subject concern themselves only with given time spans within the period due to the fact that they were published during the very period in question. One such investigation, Canadian Labour Laws and the Treaty,² by Bryce M. Stewart, examines the problems of Canadian membership in some detail, but only up to 1927. Unlike Després, however, Stewart's interest focuses clearly on the motives of the Canadian I. L. O. activities. Samuel M. Eastman's study, Canada at Geneva, in a way, follows the same line, but provides a more critical evaluation of them. His major thrust, however, is the larger context of Canada's League membership. The best source for an understanding of Canada's initial I. L. O. role at Paris in 1919 is The Origins of the International Labour Organization,⁴ by James F. Shotwell. His analysis,

²Bryce M. Stewart, Canadian Labour Laws and the Treaty (New York: Columbia University Press, 1926; reprint ed. New York: A. M. S. Press, 1968).

³Samuel M. Eastman, Canada at Geneva (Toronto: Ryerson Press, 1946).

⁴James T. Shotwell, ed., The Origins of the International Labour Organization, 2 vols. (New York: Columbia University Press, 1934).

though, does not extend past the first I. L. O. Conference at Washington in 1919.

It is fair to state then that the existing secondary literature does not do full justice to the problem at hand. If the relationship between Canada and the I. L. O. during the interwar period is to be appreciated more thoroughly, one has to have recourse to the primary sources extant. The following study attempts to do this.

Canada's role at the I. L. O. will be examined under four general aspects. Of chief concern among these is the central motivation for Canada's interest in the organization. The Dominion government considered that participation in the I. L. O. was a useful tool to enhance Canada's international status. After that status was assured, however, Canada's involvement with the I. L. O. became something of a liability for the government. This was so mainly because the Dominion government became uninterested in the international scene in general, and because it lacked the political will to resolve the various constitutional difficulties which precluded the fulfillment of obligations to the I. L. O. This latter consideration itself forms a second important aspect of Canada's relationship with the organization. It is also important to note that Canadian governments patently still shared the outlook of business and industry which actively tried to forestall the implementation of social legislation advocated by the I. L. O. They believed that such legis-

lation would be detrimental to Canadian competitiveness. The response of Canadian labour to Canada's role at the I. L. O. is another central aspect of this study. Labour's lack of political influence to advance the I. L. O.'s cause (with which it attempted to identify) rendered unsuccessful its efforts in this direction.

The subject matter does require some modification. Although the slow emergence of Canadian state interventionism in the social sphere is a point of interest, the examination will concentrate upon Dominion initiatives regarding I. L. O. proposals. Some mention must be made of provincial legislation in this respect because much of the subject matter relates to the relationship of federal to provincial authority concerning the I. L. O. However, an inquiry into the many different and conflicting provincial ratifications of I. L. O. draft legislation would complicate the investigation needlessly.

This analysis will also be limited with respect to the formal development of Canadian labour institutions. The major concern will be with the overall response of Canadian labour to Canada's role at the I. L. O., and most particularly with the role of Canadian labour itself in the organization. Labour's development of political awareness thus must remain a secondary consideration only.

Certain limits must also apply with respect to Canada's role in the I. L. O. Consequently, Canada's attitude toward the League itself must largely remain outside this

examination, although it will become evident that it was quite similar to the attitude toward the I. L. O. Moreover, while the principles, structure and function of the I. L. O. cannot be ignored, this study's main concern will be with Canada's role within that organization rather than with an interwar history of it.

It is the contention of this study that Canada's role in the I. L. O. served the Dominion government's political and constitutional goals on the international scene, but was far less effective in bringing about social advancement in the domestic-industrial context. For the most part, the governments of Canada in the interwar period, and in this they had the support of Canadian industry, were never really interested in applying the principles of the I. L. O. to Canadian labour, nor in recognizing their importance for international peace. Consequently, the constitutional issue became a convenient tool for both government and industry to thwart the efforts of Canadian labour and the I. L. O. to advance social reform in Canada.

The detailed examination of this subject consists of several major themes. Chapters I and II deal briefly with the progress of Canadian state interventionism from 1882 to 1911, and its apparent promise for Canadian society. A look at the pre-war labour situation is provided by a discussion of Canada's role in legislation. Chapter III

deals with the conflict of Canadian labour with its government during World War One as well as with the advent of the I. L. O. and Robert Borden's motives for encouraging Canadian involvement. Chapter IV focuses on the initial response of Canadian labour, industry, press and governments to this involvement.

Canada's role at the first I. L. O. conference in Washington (1919) is the main subject matter of Chapter V. Of additional interest is an examination of the response of the Borden and Meighen governments to the decisions of that conference.

Chapters VI through VIII analyze Canada's role in the I. L. O. in the Mackenzie King eras (1921-1930 and 1935-1940) and the Bennett era (1930-1935) and provide an examination of two developments: Canada's activities at Geneva, and the response in Canada to these activities and to I. L. O. draft legislation. An investigation of this response attempts to analyze several aspects of governmental activity respecting I. L. O. proposals. One of the most interesting was the Bennett "New Deal" legislation which was based on several I. L. O. conventions; other important events were the decisions rendered by the Supreme Court and the Privy Council upon the extent of Dominion authority in the social sphere.

CHAPTER I

PREHISTORY: CANADIAN LABOUR LEGISLATION AND LAISSEZ-FAIRE/CONSTITUTIONAL REALITIES, 1882-1911

The early Canadian state response to laissez-faire followed European and American precedents and was also influenced by the growth of social criticism in Canada itself. Within the Dominion government's sphere of influence, however, this response was limited to investigations. These were usually conducted by Royal Commissions whose reports, while pinpointing the specific abuse of labour, made no suggestions as to the remedial legislative action which the Dominion government might take. These commissions were limited in the scope of their advice by the Canadian constitution which vested in the provincial governments the authority to enact social legislation. Consequently, much of the early reform work was understood to be the responsibility of the provinces. The Dominion government might only enact reforms which pertained to its own clearly defined area of legislative power. Nevertheless, even in its limited nature, between 1882 and 1911 the Dominion government did seek to articulate a response to what it came to regard as the excesses of industry in its relations with Canadian labour.

The following Chapter will detail a brief history of Canadian state interventionism from 1882 to 1911, and will focus specifically on the early developments, on the initial problems of constitutional jurisdiction, and on the progress of these developments through the administration of Wilfrid Laurier.

a. Early Developments in Canadian State Response to Laissez-Faire

The following subsection outlines Canada's early state response to laissez-faire. For the most part, it was based on European example, specifically that of Great Britain, but did reflect as well the growing public awareness of the need for state-sanctioned reform efforts.

As early as 1890, several European states came together to seek a common understanding of the problems inherent in the conditions of labour. Such a conference was significant, not for what was accomplished (rather little), but rather because in agreeing to send delegates to Berlin for such discussions, the major European industrial powers of the day openly recognized that industrial problems did indeed exist, not as natural consequences of the capitalist industrial system, (as for example, breakdowns of machinery, or fluctuations in the laws of supply and demand), but rather as issues that, if left unaddressed, might threaten the progress of modern

industrialization, or perhaps even worse, might lead to social disorders or class warfare. Clearly one of the products of nineteenth century laissez-faire industrial capitalism by the end of the century was public pressure which forced governments in Europe to speak out on behalf of humanity and, in particular, on behalf of the labouring masses on whose backs the unrestrained forces of capital and industry had been riding high for decades. Given the nature of the development of modern industrial relationships away from the personal and domestic toward the vast and complex, "where machines and natural powers can be substituted for human beings and human energy; where the entire world presents one vast field for investment, in which, by a stroke of a pen, millions of dollars of capital may be transferred from one industry to another and from one hemisphere to another; it is perhaps inevitable that labour should be regarded, in the markets of the world, not as representative of individual lives, to whom all that existence holds dear is of paramount concern, but as a commodity, to be valued solely on an economic basis, or, at best, as the expression of human effort."⁵ It was an idea, however, whose time was passing, albeit slowly. In regarding labour as a commodity (and in being permitted to

⁵W. L. Mackenzie King, Industry and Humanity (Toronto: Macmillan, 1935), p. 32.

do so by non-interventionist governments), the concept of laissez-faire in industry and economics had sought to separate the labourer from his efforts, to regard labour, not in human terms, which would require a major re-appraisal of social priorities, but rather as any item of trade or barter, easily severed--like capital itself--from its source and therefore obedient to the laws of supply and demand.⁶ By the late nineteenth century, however, informed and progressive public opinion, especially in Switzerland and Great Britain, had begun to demand recognition of the fact that labour was not an article of commerce, nor could it be severed, as could an article of commerce, from its source to obey the arbitrary dictates of capital.⁷ If the early European labour conferences set out to realize one goal, it seems that it was this--the recognition of labour's need for emancipation from the conditions of fear and deprivation and the consequent rolling back of the doctrine of laissez-faire from the social sphere.

Canada's own interests in this issue were generally derived from the example of Great Britain. For much of the nineteenth century, Canada was a young and underdeveloped country, barely emerging from colonial status. Consequently,

⁶Ibid., p. 48.

⁷Carol Riegelman, "Wartime Trade Union and Socialist Proposals," in Shotwell, ed., The Origins of the International Labour Organization, I:77-78.

Canada played no part in the earliest stages of the movement toward the humanization of labour conditions--a movement which at the onset was entirely European in scope. There had been no nineteenth century Canadian equivalent of a Robert Owen or a Daniel Legrand to direct public attention toward the international nature of the issue. Even in the more circumscribed field of national labour legislation, the emergent and as yet untried Canadian society was culturally, intellectually and socially unprepared to emulate certain British precedents in the realm of social and labour policy as suggested by the private initiatives of such notables as Sydney and Beatrice Webb, George Bernard Shaw, H. G. Wells or Keir Hardie.⁸ In the latter decades of the nineteenth century, however, when the Dominion or provincial parliaments did enact legislation within the prescribed limits set down in the B. N. A. Act, (as for example, the Ontario and Quebec Factory Acts of the 1880's or the 1876 federal amendment to the Criminal Code which legalized peaceful picketing for registered unions⁹), such legislation usually reflected a clear British precedent in the same field of legislative endeavour. Consequently,

⁸ John Mainwaring, "Canada and the World Movement Towards Social Justice," Labour Gazette (Ottawa: Department of Labour, September 1950), 50:1461-1465.

⁹ James J. Atherton, "The Department of Labour and Industrial Relations, 1900-1911" (M.A. Thesis, Carleton University, 1972), p. 8.

labour and social policies of Canadian governments in the latter half of the nineteenth century closely resembled the narrower scope of British policy rather than the more generalized post-laissez-faire philosophies of such individuals as the Webbs, or the visionary Owen. R. H. Coats provides a clear reflection of that reality when he states that:

The entire plan of Canadian labour legislation was based, as in England, not on any final theory as to individual liberty on the relation of state to labour, but on the principle of applying palliatives for apparent and remediable abuses.¹⁰

Necessarily, Canada's own interests in the wider field of international labour standards did not develop autonomously, but rather gradually as British attention and policy were drawn into the issue. The task of overcoming laissez-faire attitudes in Canadian society towards labour required nearly forty years of legislative effort. Only then were the needs of labour recognized by a general cross-section of the Canadian public as being separate from the market forces operating in society.

The earliest initiatives of the federal government to address the more obvious abuses of laissez-faire labour economics were influenced by several factors. Public opinion had been alerted to the more obvious abuses (such as child labour) since before 1880 by such labour journals

¹⁰ R. H. Coats, "Labour Legislation in Canada," in Canada and Its Provinces, 22 vols., editors A. Shortt and A. Doughty (Toronto: Glasgow, Brook and Co., 1914), 9:340.

as the Hamilton Labour Union and the Paladin of Labour. Furthermore, the Dominion parliament was confronted with numerous petitions not only from various trades and labour organizations, but as well from church and community groups such as The Society for the Protection of Women and Children.¹¹ The scene was not yet set for any concerted legislative initiatives, but the climate of opinion was such that government felt compelled to take a first step towards interventionism by launching investigations. The first such study was launched in June, 1881, under Sir Leonard Tilley, the Minister of Finance for the second Macdonald government. It was empowered to investigate, among other things, the conditions of child and female labour in factories across the Dominion, the length of the average work week, working conditions, general worker health and safety, and systems of accident insurance where they existed.¹² Predictably, the Commissioners (William Lukes and A. H. Blackeby) encountered managerial opposition to their efforts; they reported on 18 January 1882, "we were met with the reply that 'they know their own business and that Governments should not dictate whom they should employ or interfere in matters of trade'."¹³ The legis-

¹¹Canada. House of Commons, Journals, vols. 16, 17, 18 (1882-1884).

¹²Ibid., 16 (1882). Also, Canada. House of Commons, Sessional Papers, vol. 9, 1884: Sessional Paper 42, "Report of the Commission Appointed to Enquire into the Working of Mills and Factories of the Dominion and the Labour Employed Therein."

¹³Ibid., S.P. 42.

lative initiative which ensued from this report did not come until February 1884, and was withdrawn from second reading in April 1884, ostensibly because of several conflicting clauses in the matter of definition of specific offences against persons employed in Canadian factories.¹⁴ The bill was re-introduced in the 1885 and 1886 sessions with similar results. The differences pertaining to the proposed legislation could not be resolved in Committee.¹⁵

Close upon the heels of the 1882 Commission, the Dominion Parliament authorized A. H. Blackeby to conduct an investigation into the system of laws regulating labour in Massachusetts, and to report his findings to Parliament. This Commission was of special significance because it represented Canada's first active attempt to engage in international fact-finding on the question of the role of government in the affairs of labour. This is of great interest as an American precedent was consulted in addition to the British. The Massachusetts Factory Act represented an effort on labour's behalf by a legislative unit of a federal body and the Commonwealth of Massachusetts had already acquired acclaim for the role of government in the development of a progressive labour code. The Commission reported and made recommendations on a variety of matters, some of which had not as yet been addressed in Canada. In

¹⁴Canada. House of Commons, Debates (1884), p. 584; (1884), p. 1627.

¹⁵*Ibid.*, (1885), p. 29, 362; (1886), p. 946.

addition to the usual issues of child labour and women's work, Blackeby also reported on hours of labour, minimum wage proposals, the demand for one day of rest in seven, worker protection from accidents, lunch hour requirements, fire escape regulations, and inspection procedures. One of his more interesting recommendations was that, in general, the Massachusetts Factory Act would be "better for Canada" since the English Factory Act was, in his opinion, "too complicated."¹⁶ As for child labour (Blackeby's only specific recommendation), the Commission suggested that Canada prohibit employment of children under twelve years of age, and that a twenty-week course in reading and writing be required for all young persons before entering industrial work. In his follow-up report, Commissioner William Lukes conducted additional investigations into European factory acts during a personal inspection tour of the factories of England, Belgium and Germany. This investigation further substantiated the Commission's recommendation for some type of minimal state intervention insofar as the report pinpointed specific remediable abuses involving child and female labour, length of the work day and work week, and conditions of labour and worker safety; it also highlighted the means whereby in Europe the more obvious abuses were being addressed through state intervention.¹⁷

¹⁶ (Commons); Sessional Papers, vol. 10, 1883, Sessional Paper 16-1883.

¹⁷ Ibid., vol. 10, 1883, Sessional Paper 16a-1883.

While neither of these reports reflected international consensus on these matters (which did not exist at that time), it is of some interest to note that the federal government of Canada was apparently willing to become informed of legislative opinion in other places than Great Britain on the relationship between capital, the market forces, and the conditions of labour. It was, however, unable to act on behalf of the interests of the public at large or of private interests (although M. P. Darby Bergin had sponsored the factory bills of 1885 and 1886) for two reasons. In the first place, neither of the political parties of the day possessed the broad-based political support to legislate substantial social change in nineteenth century Canadian society.¹⁸ Secondly, the nature of the Canadian constitution regarding jurisdiction over labour matters rendered the federal government unable to commit itself to a nationwide programme of industrial reforms even where there existed a clear British precedent.

b. Initial Problems of Constitutional Jurisdiction

In the following section the progress of early efforts toward social legislation in Canada under the limits imposed by Canada's constitution is examined. In general, this development seemed to favour the role of the Dominion government in the social sphere, although provincial authority was a reality which could not be ignored either.

¹⁸ R. Clippingdale, Laurier, His Life and World (Toronto: McGraw Hill, 1979), pp. 126-127.

The division of authority between the Dominion and the provinces in matters affecting labour was at that time, and for decades to come, subject to various interpretations. According to Section 91 of the B. N. A. Act of 1867, the Dominion government had been granted authority over a number of specific classes of subjects pertaining to matters of concern to the entire Dominion. In addition to these defined powers, the Dominion government had been empowered "to make Laws for the Peace, Order and Good Government of Canada in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." Section 92 enumerated several classes of subjects over which provincial legislatures possessed authority. These subjects pertained to matters involving property and civil rights in the provinces and "generally all Matters of a merely local and private Nature in the Province."¹⁹ In neither enumeration of subjects had the matter of jurisdiction in labour matters been given clear expression, although by certain Privy Council interpretations of the 1870's, the Dominion government's authority over criminal law was recognized as applying to cases of unlawful association, conspiracy, picketing, violence and intimidation in matters pertaining to labour organization. By extension, provincial authority had been recognized as applying to regulation and inspection

¹⁹ Stewart, Canadian Labour Laws and the Treaty, pp. 47-48.

of factories, mines, shops, railways, elevators, work places, wages, hours of work, industrial accidents, child labour, contracts, licensing, employee health and employment offices.²⁰ It had been thought in 1883 and 1884, when Tilley introduced his factory bills, that the federal government could regulate labour conditions throughout the Dominion either by virtue of its jurisdiction over criminal law insofar as it would assume the authority to define which classes of action with respect to labour were to be regarded as contrary to that law, or by virtue of the authority vested in the residual powers clause of the B. N. A. Act allowing the federal government to act for "the Peace, Order and Good Government of Canada."²¹ The proposed legislation died in Committee, however, for content reasons. Consequently, the extent of provincial authority under Section 92 of the B. N. A. Act was not tested.

The matter of constitutional jurisdiction over labour problems fared no better in 1889 with the Report of the Royal Commission on the Relations of Labour and Capital in Canada. This third commission was appointed following a series of strikes and renewed agitation from both organized labour and special community groups for reforms or enforcement of factory laws in the provinces (as in Ontario and

²⁰ Ibid., p. 58.

²¹ Ibid., pp. 47-48.

Quebec from 1884 and 1885).²² The purpose of the Commission was twofold: to gather evidence which would have a bearing on all matters pertaining to labour and its relations with capital,²³ and to investigate the possible constitutional legality of the proposed federal factory legislation (from 1884). The bulk of the work of the Commission consisted of investigations into the conditions of labour across Canada, but because the commissioners chose not to commit themselves to any opinion as to constitutional jurisdiction, the central issue of national standards for labour was simply bypassed.²⁴ While the Commission could therefore not uphold the constitutionality of the proposed federal factory legislation, neither did it recommend any compromise in the nature of a federal-provincial agreement on Dominion standards (a solution which might have been beyond the capacities and capabilities of the Commission anyway).²⁵

²² Marion V. Higgins, Canadian Government Publications, 1867-1933 (Chicago: American Library Association, 1935), p. 336.

²³ Canada. Parliament, Royal Commission on the Relations of Labour and Capital in Canada, Report (Ottawa: Queen's Printer, 1889), pp. 5-6.

²⁴ William L. Tayler, Federal States and Labour Treaties: Relations of Federal States to the International Labour Organization (New York: Columbia University Press, 1935), p. 108.

²⁵ Canada. Parliament, Royal Commission on Relations of Labour and Capital in Canada, Report, p. 7.

Moreover, the problem of interprovincial competition, which had given rise to many of the conditions under investigation, could not be adequately addressed either. Essentially, the Commission's report catalogued in detail specific classes of subjects in which abuses had been noted (employment of children, hours of work, etc.) and then made specific recommendations without, in most cases, stating how these might be rendered effective. As for the status of labour in society, however, the report did define a key principle of the future concept of international labour standards when it stated that, "The man who sells his labour should, in selling it, be on an equality with the man who buys it and each party to a labour contract should be subject to the same penalty for violation of it."²⁶ Here, then, a response was articulated for the first time on the federal level to the concept of labour as a commodity. This also set the stage for future development. One of the final recommendations of the report was that a labour bureau be established to promote the interests of working people, to collect labour statistics and disseminate information, and to provide a means whereby labour could make its needs and ideas known to government. This recommendation, in effect, suggested that government concern itself with the labour question and, by extension, with industry.

²⁶Ibid., p. 9.

The concept of a single Dominion Factories Act for the purpose of equalizing all factory legislation across Canada continued to attract attention and support through the final years of the nineteenth century. Indeed, since 1873 the Canadian Labour Union had urged that uniform legislative standards in labour conditions be adopted by the different provinces, if not by the federal government on behalf of the provinces.²⁷ In 1895, at the request of the Dominion Trades and Labour Congress, the federal government appointed a commission to investigate the extent to which the sweating system was practiced in the garment industries of Toronto and Montreal.²⁸ Among the commission's recommendations was the suggestion that, whether sponsored federally or interprovincially, a uniform system of labour regulations in this regard should be brought forward at the earliest possible time. In addition to this recommendation, the commission echoed the sentiments of the 1889 Commission when it called for the establishment of a federal labour bureau which would collect, analyze and possibly standardize the various provincial labour statistics.²⁹

²⁷ Canada. Department of Labour, Labour Legislation in Canada (Ottawa: King's Printer, 1945), p. 24.

²⁸ (Commons), Sessional Papers, vol. 11, 1896, Sessional Paper 61, pp. 1-2.

²⁹ Ibid., pp. 16-17.

For the most part, therefore, the significance of these early years of Canadian state intervention lies in the development of new attitudes rather than in the formulation of legislative policy. Where legislation was enacted and could be supported constitutionally, as was the case with the Ontario and Quebec factory acts or the federal rulings on the rights of labour organizations, this was done following clear British precedents which formed the foundation. Where British precedents (as was the case with the various factory acts of England) were in contradiction with Canadian constitutional precepts, any legislative initiative toward a concept of Dominion standardization seemed to constitute an issue that no one commission or government wished to confront. Rather, with the development of Canada in this period as an industrial country, and with the growing public and private realization of the conditions of labour under essentially unrestricted market forces, governments in Canada only gradually came to recognize the responsibility of the state to protect its citizens from infringement of their fundamental rights by capital.³⁰ Where the constitution seemed to allow it, the federal government did make attempts to act upon the British precedents. Such was the

³⁰ E. Lorentsen and E. Woolner, "Fifty Years of Labour Legislation in Canada," in Readings in Canadian Labour Economics, ed. Aranka E. Kovacs (Toronto: McGraw Hill, 1961), p. 95.

case in 1884 with the introduction of Canada's first Factory Bill, a proposal made possible by the decision of the Privy Council on the 1882 Temperance Case (Russell v. The Queen) wherein the federal government's authority to restrict intemperance was recognized to come under the residual powers clause of the B. N. A. Act.³¹ Furthermore, in 1882, judicial interpretation had recognized federal authority in labour matters by virtue of federal jurisdiction in criminal law under which several classes of labour matters had been subsumed, such as those pertaining to peaceful picketing and legal organization of unions. Otherwise, it fell to the provincial governments to undertake social legislation at their own pace.

c. Further Development of Canadian State Interventionism, 1890-1911

The following section examines further developments in state interventionism in Canadian social legislation to 1911, a period dominated by Laurier and the Liberals, and in particular Mackenzie King. It was a time of increased activity of the Dominion government in this field, but always within the parameters of shared powers as defined in the B. N. A. Act.

Not until 1900 did the efforts of labour and private initiative realize some gains in these matters. The

³¹ Stewart, Canadian Labour Laws and the Treaty, p. 50.

gradual change in government attitude and policy with regard to laissez-faire resulted in part from the findings and recommendations of the Royal Commission of 1895 on Sweatshop Conditions, in part from the 1896 Wright Report on Dominion Industrial Conditions, and in part from the disastrous effects of the depression of 1893-1897 which did much to awaken public awareness of the iniquities inherent in Canada's unregulated industrial system. A new sympathetic attitude and interest in reforms developed as fewer groups in Canadian society were willing to accept traditional conservative principles of competitive individualism as the bases on which the social fabric of Canada should be knit.³² Then, too, because of the dual influence of American labour legislation and labour organization, particularly on the Trades and Labour Congress, the traditional Canadian loyalty to the legislative influence of Great Britain gradually became undermined. A new awareness of the industrial conditions of Canada within North America developed out of the workings of the National Policy which, while applying a system of protective tariffs, encouraged investment by the United States. Consequently, progressive American legislative and social influences began to have significant bearing on the evolution of Canadian legislative policy pertaining to labour and industry.

³²Atherton, "The Department of Labour and Industrial Relations, 1900-1911," pp. 14-16.

With the passage of the Conciliation Act of 1890, the Canadian government embarked on the first stage of a trend in industrial relations away from the British attitude of specific palliatives for specific abuses, toward an American concept of government intervention and compulsion--this, in the matter of strikes and lock-outs, as a measure for the protection of what Mackenzie King termed "the public interest."³³ Indeed, under the dual influence of Postmaster General Sir William Mulock and Mackenzie King, the new Department of Labour, which was called into being to administer the Conciliation Act, represented the Canadian government's departure from the British-inspired non-interventionist policies practiced over the last thirty years. Indeed, Laurier and the Liberals now found themselves articulating a labour policy which seemed almost novel both in terms of the status it assigned to labour and in the role it assigned to government. Laurier expressed this very concept when on May 15, 1909 he addressed the Commons on the Labour Department Act, which was to establish a separate labour portfolio.

This legislation, in our judgement, is rendered necessary by the ever growing dignity and importance of labour questions and labour problems. . . . It will not be disputed that for generations and generations the wage-earners had scarcely any standing in the community. . . . At last labour has been advanced to the dignity of a class in

³³ King, Industry and Humanity, p. 125.

itself, and quite as important in the economy of society as any other class.³⁴

The establishment of the Labour Department was followed by the passage of several other pieces of federal legislation: the Fair Wages Resolution of 1900, the Railway Labour Disputes Act of 1903, the Lord's Day Act of 1906, the Industrial Disputes Investigation Act of 1907 and, finally, the Labour Department Act of 1909. In each class of legislation, the federal government enjoyed unquestioned authority because none of the initiatives contravened provincial jurisdiction. Each legislative undertaking involved the federal government in labour issues only insofar as Dominion works were involved, or where the good offices of the Labour Bureau were drawn upon to administer conciliation and arbitration as suggested in the Conciliation Act and later, the Industrial Disputes Investigation Act. Except for the Lord's Day Act which, while referring to Dominion works, was left to the provinces for adoption, the Dominion legislation applied to labour in a broad sense without reference to civil rights or contingencies arising out of different classes of employment-- matters which it left to the authority of the provinces.³⁵ This legislation established a trend toward government compulsion in labour disputes insofar as King and Mulock relied upon the force of in-

³⁴ (Commons), Debates, (1909), p. 6711.

³⁵ Coats, "Labour Legislation in Canada," in Shortt and Doughty, eds. Canada and Its Provinces, 9:344.

formed public opinion to exert sufficient influence on those involved in a labour dispute to seek agreement. No further means of compulsion were countenanced by the Bureau (later the Department of Labour) because of the constitutional implications. Hence, especially in the case of the Conciliation Act and the Industrial Disputes Investigation Act, the legislation functioned only if the parties to a dispute requested a federal mediator to settle differences. However, the Industrial Disputes Investigation Act did empower the federal government to intervene where it judged the public interest to be at stake at the national level. The constitutionality of this interpretation was tested and resolved in favour of the federal government, during the Montreal Street Railway dispute of 1911 when the Superior Court of Quebec upheld the constitutionality of the Act because it was found that the federal government had the necessary authority under the residual clause to act for the common good.³⁶

How effective were these initiatives in mitigating the abuses of laissez-faire economics in Canada? As mentioned, nothing in this legislation addressed specific problems related to the standardization of provincial labour laws. Furthermore, in the cases of the Fair Wage Resolution and the Conciliation Act of 1900, two clear,

³⁶Atherton, "The Department of Labour and Industrial Relations, 1900-1911," pp. 208-209.

tried and true British precedents (of 1891 and 1896, respectively) were superimposed on the Canadian situation and thus addressed, as in Great Britain, only the problem of strikes and their effect on public interest. Consequently, the scope of this Canadian legislation, as that of its British counterparts, was limited to a single field of labour relations. This was due, in the main, to the vagaries of constitutional law in Canada and, as well, to the general attitudes of the federal government toward state intervention.

It is the contention of J. J. Atherton that Sir Wilfrid Laurier and the Liberals were, at the onset, not deeply impressed either with the idea of a separate labour ministry, nor with Mackenzie King as Minister (after Mulock), nor with the role of government in industrial arbitration. Laurier and the Liberals merely reflected the general attitude of the times: that government interference in labour policy or industrial disputes constituted unwarranted meddling in the private sector.³⁷ Laurier certainly altered his views somewhat with the Labour Department Act of 1909, but this was caused more by political necessity than by personal conviction. Nevertheless, in its capacity for compulsion through public awareness and participation, this legislation did exceed the British precedents by giving

³⁷ Ibid., pp. 63-75.

effect to Mackenzie King's concept of "the Community as the fourth party to Industrial Relations."³⁸ King saw this role of public participation as essential to any further concept of labour reform, since without its influence the state itself might be less inclined to pursue any policy directed at the protection of the public interest. In King's opinion, the public interest demanded law and order in industry, and this necessitated that the state regard industrial questions as the legitimate concern of politics and a problem of the state.³⁹ In holding this view, it is little wonder that King stood outside the mainstream of Liberal policy before 1911.

This pre-war labour legislation was of value to Canada in one other way. Both the Conciliation Act and Industrial Disputes Investigation Act recommended the setting up of arbitration boards and commissions composed of equal delegations from labour, industry and the community to settle specific industrial disputes. Here, Canadian labour, industry and the community received their first lessons on the structure and function of a tripartite conference wherein all delegations were recognized as possessing equal and autonomous authority--an arrangement that served as a useful training ground for Canada's future role in the International Labour Organization.

³⁸ King, Industry and Humanity, p. 77.

³⁹ Ibid., pp. 94-102.

Government intervention by way of investigation also proved useful with regard to specific abuses involving foreign labour, particularly in British Columbia where Oriental labour was competing seriously with domestic workers. Here again, the concept of laissez-faire in labour economics encouraged employers (particularly the railroads) to purchase the labour of alien workers at a far cheaper rate than that of domestic workers, thus undercutting the domestic labour market and creating the potential for serious social problems. Between 1900 and 1908, six Royal Commissions conducted investigations into the abuses caused by the hiring of alien labour.⁴⁰ While no legislative initiative was immediately forthcoming on the issue, the various recommendations of the Commissions provided Laurier with the basis of a policy on labour immigration which he could present at the Imperial Conference of 1911. This conference was unlike its predecessors in that a significant part of its agenda was given over to the discussion of various labour problems common to all members of the Empire. One of the key issues here for Laurier was the problem of alien labour and the policy of labour exchanges. The suggestion arose (from Mr. Buxton of Great Britain) that the governments of the Dominions consider, in concert with the Imperial government, the

⁴⁰George F. Henderson, Federal Royal Commissions in Canada, 1867-1966 (Toronto: University of Toronto Press, 1967), pp. 42, 52, 54, 61.

possibility of utilizing the machinery of the national system of labour exchanges established in the United Kingdom by the Labour Exchanges Act of 1909. The recommendation called for systems of national labour exchanges which would co-ordinate their efforts with a central office in Great Britain for the purpose of placing British nationals in the various Dominions and colonies. Laurier, however, would have none of this. His objection to the recommendation expressed an attitude which was to show frequently thereafter in Canada's dealings with international labour programmes and proposals. He held that the conditions of Canadian industry, labour and the labour market were very different from those of the other Dominions, which would render it difficult for Canada to enter into any international agreement on labour proposals. Laurier then articulated a key concept of Canadian immigrant labour policy: Labourers from the United Kingdom, or any other state, should be prepared to seek work as farm labour on the prairies, since organized labour in Canada would not look with favour on immigrant workers entering into industrial pursuits.⁴¹ In formulating a national policy at great variance with an Imperial scheme, Laurier perhaps for the first time defined the ground of Canadian self-interest in matters pertaining to international proposals

⁴¹(Commons), Sessional Papers, Sessional Paper 208, "Minutes of the Proceedings of the Imperial Labour Conference of 1911," pp. 160-168.

on industry and labour. It was not the last time that a spokesman for Canada formulated such a policy.

By 1911, with the advent of Robert Borden's Conservative ministry, thirty years of state intervention had begun to change the appearance of laissez-faire labour economics in Canada, if not its spirit. Between 1882 and 1911, certain trends appeared in the development of Canadian labour policies which were to have a significant influence on the future role of labourer and labour legislation, as well as Canada's position in the I. L. O.. After 1900, there appeared less of a desire on the part of Canadian government to superimpose indiscriminately British standards on the Canadian labour situation. This attitude was derived mainly from a growing Canadian self-awareness and self-consciousness as to the differences between Canadian and European conditions. By the same token, this national self-awareness propelled Canada into a continental awareness wherein the influence of American economic and social practices could not be ignored. Second, by 1911, the federal government of Canada had gained a clearer recognition of its constitutional limitations in the sphere of labour legislation. This awareness seemed to encourage the development of various types of legislation or practices which could legally extend federal influence in social matters without contravening provincial authority. Third,

as recognized by Mackenzie King, public interest and informed public opinion exercised a telling influence on the functioning of laissez-faire in Canadian society and served as the chief catalysts for state intervention. Furthermore, still other avenues to statism were opened to Canada, specifically by way of proposals for international labour standards. It is to such proposals that one must turn for further evidence of the growth of Canadian state interventionism in the social sphere.

CHAPTER II

CANADA AND THE PRECURSORS TO THE

I. L. O., 1890-1914

The concept of international standards in labour legislation was first expressed in such European initiatives as the Berlin Conference of 1890 and the founding of the International Association for Labour Legislation of 1901. The purpose of the latter organization was to encourage international discussions on standards of labour for the world's workers. Although its activities were strictly limited so as not to infringe upon the sovereign rights of its members, the I. A. L. L. did represent an important precedent for labour legislation. For the first time, the need to look beyond the borders of a specific nation in matters of labour standards was articulated. Only by common understanding, the I. A. L. L. proposed, could the problems common to all labour be resolved.

Canada's role in the I. A. L. L. showed its departure from the confines of its pseudo-colonial status. In fact, Canada's membership in this organization represented one of the first attempts by Canada to engage in international relations without prior sanction of the British authority.

Chapter II will deal briefly with the development of European state interventionism in the pre-war labour problem.

This examination will focus on the I. A. L. L. and its activities to 1914 and will note the extent to which Canada became involved in those activities.

a. Early European Initiatives to 1900

The purpose of this section is to outline the development of early European initiatives on behalf of labour which ultimately resulted in the creation of the I. A. L. L. For the most part, these initial efforts were made in response to the mounting dissatisfaction among European workers with their conditions under an unreformed system based on the principles of laissez-faire.

By 1914, nearly all the industrial states of Western Europe and North America, including Canada, had devised various types of labour legislation that, whether reflecting the constitutional necessities of unitary or federal systems, seemed to address at least the more obvious abuses of labour by industrial capitalism. An international labour code did not exist, however, for two reasons. The first was that no power completely recognized its responsibility for the protection of its labour force;¹ this meant that there was not enough stimulation to pursue the larger goal of international agreements. The underlying reason for this was, secondly, that general public opinion had not

Boutelle E. Lowe, The International Protection of Labour (New York: Macmillan, 1921), pp. 3-4.

yet progressed far enough; there still prevailed "the old laissez-faire attitude of non-interference with personal rights and private property, (which) was based on the self-interest of a privileged few, supported, through a strange antithesis, by the theory that 'man's self love is God's providence'; that each individual in seeking his own interest is unconsciously working out the good of society."²

On the international level, this attitude found expression in policies of national self-interest which sought the greatest benefit through the practice of ruthless competition in international trade and commerce. Such a system required continuous industrial output at a fast pace made possible through unfettered exploitation of the labour force.

The pre-war argument in support of international labour standards maintained that this fixation on efficiency drove the industrialized states further from their desired ends by grinding the forces of labour under the burden of excessive hours and hard toil, thereby impairing the very efficiency of the labour force on which the foundation of national industry was built.³ Consequently, a chief con-

²W. L. Mackenzie King, Industry and Humanity (Toronto: Macmillan, 1935), pp. 180-181.

³Lowe, The International Protection of Labour, pp. 5-6.

tention of the pre-war movement toward international standards was that a general recognition of the interdependent nature of the international labour question was necessary in order to address the practices of unscrupulous industrial competition. Otherwise, such competition might lead to the debasement of all labour to the eventual detriment of industry and international well-being alike.⁴ This argument maintained that such a fate could only be avoided if the industrial laws of the different countries were made uniform so that no unfair competitive advantages could be gained. Protagonists of this belief were the Webbs in Great Britain, Adolf Wagner in Germany, and Louis Woloski in France.⁵ These European progressives held a social philosophy of "loyalty to humanity" and attempted to raise the issue above the concerns of industrial efficiency to embrace what Mackenzie King had termed "progress in service to the well-being of the whole."⁶

The movement toward an international code of labour standards began, for practical purposes, in 1881 when

⁴Ibid., p. 6.

⁵Ernest Mahaim, "The Historical and Social Importance of International Labour Legislation," in The Origins of the International Labour Organization, 2 vols., ed. James T. Shotwell (New York: Columbia University Press, 1934), I:5-6, 12-14.

⁶King, Industry and Humanity, p. 11.

Switzerland proposed a conference of leading European industrial states to discuss the issue of conditions of labour across Europe with respect to various labour abuses born of unregulated industrial competition. It was Switzerland's hope that a conference allowing free exchange of ideas and information might lead the participants to recognize their common obligation to European labour.

Although the first initiative met with little response from the European states, Switzerland anticipating agitation on the part of the Swiss working classes to seek redress of their mounting grievances,⁷ made a second proposal in 1889. This initiative was pre-empted at about the same time by a similar proposal from Germany for similar reasons. Delegates from twelve European states attended the Berlin Conference of 1890, out of which emerged six resolutions--the first of their kind dealing with three classes of subjects: safety in mines, the guarantee of one day's rest in seven, and the protection of women and children in industrial enterprises. Because these matters were dealt with by resolution only, rather than in the form of a treaty or convention, there was a distinct lack of follow-up. National legislation to give effect to these resolutions did not materialize, and for the next decade,

⁷Sir Malcolm Delevingne, "The Pre-War History of International Labour Legislation," in Shotwell, ed., The Origins of the International Labour Organization, I:20-21.

the work of private individuals had to continue to fill the vacuum left by official inaction.⁸

b. The International Association
for Labour Legislation

In the following section the basic organization of the I. A. L. L. is outlined and examined. Although it was a body unique in founding principles and organization, the activities of the I. A. L. L. were handicapped by limitations imposed by the claims of the European states' members to complete sovereignty in social legislation within their respective borders.

The founding of the International Association for Labour Legislation in Paris in 1901 marked the effort toward a more organized programme than that which had characterized the Berlin Conference.⁹ The I. A. L. L. was composed chiefly of social workers, government bureaucrats, academics and well-known European progressives who gave the organization a decidedly middle-class orientation.¹⁰ Unlike the I. L. O., its post-war successor, the I. A. L. L.

⁸John Mainwaring, "Canada and the World Movement Towards Social Justice," Labour Gazette (Ottawa: Department of Labour, September 1950), 50:1463-1465.

⁹Encyclopedia of Social Sciences, s.v. "The International Labour Organization," by Francis G. Wilson

¹⁰Mainwaring, "Canada and the World Movement Towards Social Justice," Labour Gazette, 50:1465.

did not reflect the views of labour as much as the social conscience of European middle-class progressives. Nevertheless, its expressed aims clearly went beyond those of the Berlin Conference; these were:

- 1) to serve as a bond of union to those who, in the different industrial countries, believe in the necessity of protective labour legislation.
- 2) to organize an international labour office to publish in French, English, and German, a periodic collection of labour legislation in all countries.
- 3) to facilitate the study of labour legislation.
- 4) to furnish members information on the legislation in force and of its application in different states.
- 5) to promote the study of how an agreement on international labour standards may be reached and secured.
- 6) to call annual meetings of the international congresses of the I. A. L. L.¹¹

The International Association for the Legal Protection of Labour was composed of several specialized bodies. An International Labour Office, the first of its kind, although privately organized and directed, was empowered to gather and disseminate pertinent information on the efforts of the national sections of the I. A. L. L. aiming at national labour standards. The Association was directed by a Bureau chosen by the assembly of delegates representing the various national sections. The Assembly of the Association was composed of government delegates divided into

¹¹Labour Gazette (Ottawa, 1901), pp. 226-227.

those national sections whose purpose it was to carry out investigations and consultations with their governments and then to report back to the Office and the Assembly on their findings. Consequently, the character of the organization was predominantly unofficial, and whatever action or decisions were taken carried no authority. Membership, as well, implied no hard and fast acceptance of distinct principles; in Boutelle Lowe's words, "the only prerequisite . . . was acceptance of the principles of the legality and efficacy of intervention to regulate the relations of capital and labour."¹²

Furthermore, it is true to say that the I. A. L. L.'s efforts, because of the limited character of its authority, were confined to those subjects least likely to call forth resistance from the member governments. No attempt was made to pressure governments into official and legal concurrence with the recommendations and conventions of the organization. Moderation prevailed essentially because of the character of membership--the great European labour organizations were absent, and thus the more radical nature of their membership and programme had no immediate influence.¹³

¹²Lowe, The International Protection of Labour, p. 40.

¹³Delevingne, "The Pre-War History of International Labour Legislation," in Shotwell, ed., The Origins of the International Labour Organization, I:29-36.

c. Canada and the I. A. L. L.

In this section Canada's relationship with the I. A. L. L. will be examined. Although Canada did not participate as a member until 1910, her initial efforts after that date seem to indicate a growing acceptance by the governments of Canada of their responsibility for their labour force, and by extension, that of the entire world. This relationship also encouraged Canada to define for itself a new role in the community of nations. But with the limitations imposed by the B. N. A. Act on Dominion authority, Canada's ability to give effect to I. A. L. L. conventions seemed in doubt.

Although the United States was represented from the onset and took an active part in several committees, and as of 1902 was even contributing a small amount to the maintenance fund of the organization, Canada had no official representatives until 1910.¹⁴ When the Labour Office commenced its duties (on May 1, 1901), the new Canadian Department of Labour was requested through the Colonial Office to supply the I. A. L. L. with a collection of Canada's federal and provincial labour legislation. It was a request with which the Department eagerly complied; throughout September and October of 1901, these statistics

¹⁴Jean-Pierre Després, Le Canada et l'Organisation Internationale du Travail (Montreal: Fides, 1946), pp. 35-36.

were compiled through the offices of the Department of Labour and the Trades and Labour Congress of Canada. The T. L. -C. received detailed reports from provincial executives on existing provincial labour legislation at its Seventeenth Annual Session of October, 1901, and transmitted this information to the Department for communication to the I. A. L. L.¹⁵ However, Canada's official participation in the I. A. L. L. did not begin until September, 1910 with the Delegates Meeting in Lugano, Switzerland. Jean-Pierre Després provides the primary reasons for this delay when he states that:

Le Canada ne fut pas invité à participer aux conférences . . . pour la simple raison que la délégation britannique représentait non seulement la Grande-Bretagne, mais aussi tout l'Empire britannique. A cette époque, le Canada ne jouissait pas, ni en droit ni en fait du statut d'un Etat international. Nous étions purement et simplement une colonie.¹⁶

Canada thus depended on Britain for international representation. With respect to I. A. L. L. Conventions, however, the situation was different. Although Dominion participation had been assumed automatically by the presence of Great Britain at the Conference, Canada was not bound by British precedent to adhere to the 1906 Berne conventions on the manufacture of white phosphorus matches or on women's

¹⁵Labour Gazette (Ottawa, 1901), pp. 212-218.

¹⁶Després, Le Canada et l'Organisation Internationale du Travail, p. 42.

night work. In these matters neither British refusal of the Phosphorus Convention (because of existing legislation on the matter) nor acceptance of the Night Work Convention carried with it automatic Dominion or colonial refusal or acceptance. Essentially, this was because Articles 3 and 6 of the conventions on Women's Night Work and White Phosphorus, respectively, stated that the conventions did not apply automatically to colonies, possessions or protectorates because of the possible difficulties inherent in application to non-European conditions. However, if Great Britain requested Canadian adherence and this was constitutionally acceptable, Canada could undertake adherence to either or both conventions.¹⁷

In May, 1907 and December, 1908 requests were received by the Governor-General and the Department of Labour from the Secretary of State for the Colonies asking for Canada's views on Dominion adherence to the conventions. At that time, investigations conducted by the Department of Labour indicated that no provincial governments had enacted any legislation on the matter of white phosphorus in the manufacture of matches, although several provincial factory acts had included specific regulations on ventilation with respect to industrial poisons. On January 19, 1911, therefore, the Minister of Labour, Mackenzie King,

¹⁷Ibid., pp. 42-43.

introduced a bill to prohibit the manufacture of white phosphorus matches in the Dominion. This proposal was based upon similar legislation in Great Britain and the United States and sought to grant to the Dominion the jurisdictional authority to legislate for the general public good, as implied in the residual clause. King was immediately challenged on the constitutionality of this proposal by William Northrup of the Conservative opposition. His claim was that the authority vested in the provincial legislatures by Section 92 (over matters pertaining to provincial trade and commerce) was being usurped by the supposed misuse of the residual clause. Although the opinion of the Minister of Justice was cited in support of the Dominion claim, the bill did not survive the 1911 session, and never received a second reading.¹⁸ Not until 1914, as a consequence of public pressure, was the matter once again brought before Parliament. The bill was passed on March 17, 1914 by means of a Parliamentary resolution which recognized that the serious consequences arising from the use of white phosphorus in matches necessitated Dominion authority in the matter for the sake of "the community at large."¹⁹ The intervening war period precluded enactment of the legislation until 1919.

¹⁸Canada. House of Commons, Debates (1910-1911), pp. 2022-2062.

¹⁹Canada. House of Commons, Journals, vol. 49 (1914), p. 224.

Similar constitutional difficulties did not arise regarding the Women's Night Work Convention. At the time of the signing of the Convention, many provinces had already enacted legislation of one kind or other, or were about to legislate adherence to specific aspects of the Berne Convention. Ontario had agreed to the clause prohibiting women's nightwork in establishments without motor power, but which employed over five labourers, and Manitoba, Québec and Nova Scotia had agreed in principle to the prohibition of women's nightwork subject to provincial conditions.²⁰ By 1910, the provinces of Québec, Ontario, Nova Scotia, New Brunswick, Manitoba, British Columbia and Saskatchewan all had enacted factory legislation which included provisions against women's night labour.²¹ Thus, the federal government was spared the discomfort of another constitutional show-down.

Canada's first official presence at the I. A. L. L. proceedings came in September 1910 with the Sixth Delegates' Meeting in Lugano, Switzerland. This initiative was taken by the Liberal government of Sir Wilfrid Laurier in its final months. By that time, whether or not out of political motivation, Sir Wilfrid had admitted to the "inevitability"

²⁰ Lowe, The International Protection of Labour, p. 46.

²¹ Després, Le Canada et l'Organisation Internationale du Travail, pp. 49-50.

of state intervention in labour matters²² and had requested that the Labour Minister, Mackenzie King, attend not only the Lugano Conference, but several other proceedings as well. Invitations had been received from the Netherlands to send a representative to the International Congress of Social Insurance at The Hague, September 6-8, 1910, and from the government of France for Canadian representation at an International Conference on the Subject of Unemployment in Paris, September 18-21. A third invitation from the President of the I. A. L. L. had requested a Canadian delegate for the meeting at Lugano, September 26-28, and a fourth had requested Canadian presence at the Congress of Higher Technical Education at Brussels, September 9-12.²³

For the most part, King was an observer at these conferences, but at the Brussels Conference on Higher Technical Education, he took the opportunity to acquaint the Conference with the work of the Canadian Royal Commission on Industrial Training and Technical Education (June 1910) and made special arrangements to facilitate the proposed visit of this commission to Europe.²⁴ At the Conference

²²R. Clippingdale, Laurier, His Life and World (Toronto: McGraw Hill, 1979), p. 136.

²³Labour Gazette (Ottawa, 1910-1911), pp. 325-326.

²⁴Ibid. (November 1910), p. 559.

on Social Insurance at The Hague, King was made vice-president of the Permanent Committee on Social Insurance, and he took an active interest in the Conference. While all this seemed an auspicious beginning, the interest of the Liberals in King's activities unfortunately waned quickly.²⁵

The final I. A. L. L. conference before the outbreak of war was held at Berne in September 1913. By that time, the Conservatives under Robert Borden had acquired power in Canada, and whatever tentative beginnings had been made under the Liberals now gave way to Borden's preoccupation with Canada's North American status. Necessarily, less emphasis was placed upon Canada's participation in international labour legislation and standardization. Thomas Crothers, Borden's Labour Minister, concentrated more effort on the issue of Oriental Labour in British Columbia and the implementation of the Industrial Disputes Investigation Act.²⁶ As no Canadian representatives were sent in response to invitations to the Social Insurance Conferences of 1911 and 1912, no invitations were received for the 1913 or the 1914 conferences.

Canada's involvement with the I. A. L. L. reflected several trends and gave rise to certain questions which

²⁵ Frank E. Burke and John A. Munro, Canada and the Founding of the International Labour Organization (Ottawa: Department of External Affairs, 1969), p. 6.

²⁶ Ibid., p. 7.

later reappeared when the nation became involved with the I. L. O. The major issue was the constitutional problem. Provincial authority over matters of trade and commerce and civil rights was the key issue. Could the combined federal powers vested in Section 91, in the residual clause and in Section 132 of the B. N. A. Act (respecting treaty-making authority) imply sufficient federal jurisdiction in international labour matters? Depending on circumstances, could any of these powers do so separately? Could the legal interpretation given to federal power in this regard be considered binding over time and circumstance, or would such interpretation tend to vary with the interpreters? Furthermore, how far would the political establishments of Canada allow international standardization to impinge on sovereign authorities?

One other development resulted from Canada's participation in the I. A. L. L. Since the United States and, by extension, the American labour unions had been active in the I. A. L. L. since 1900, members of the international unions in Canada were brought into contact with the concepts of international labour legislation. Although a Canadian national section of the I. A. L. L. was never formed, plans were made to engage Canadian membership through Great Britain. The T. L. C. thus became actively involved in seeking a consensus among Canadian labour on international standards. Furthermore, Canadian labour was represented

at meetings of the American national branch of the I. A. L. L. as late as 1917. It no doubt recognized the growing importance of labour internationalism.²⁷ By 1919, this recognition had grown to the degree that it had acquired the characteristics of a "movement."

While Canada experienced certain difficulties with the I. A. L. L. peculiar to her pseudo-colonial status and inexact constitutional circumstances, these were overshadowed by greater difficulties within the international convention system itself. The primary problem was the loose organization of the I. A. L. L., whose lack of a generally recognized basis of authority allowed no method of compulsion. The I. A. L. L. merely reflected the reality of pre-war European nationalism--the suspicion of international measures that might in some way infringe upon national autonomy. That it was able to find general agreement on the two conventions of 1906 was a credit to the efforts of the Swiss who believed strongly enough in the aims of the organization to proceed against significant odds.

Nevertheless, the I. A. L. L. did bequeath an important legacy to the I. L. O. The concept of the "Labour Office" to disseminate labour information as the basis for informed international opinion, thereby drawing the public interest into the proceedings, was adopted by the I. L. O.

²⁷ Ibid., p. 8.

as the nucleus of its organization. Furthermore, the I. A. L. L. provided several valuable object lessons to the I. L. O. It proved the necessity of making all conventions binding in some quasi-legal fashion on all members. Insofar as it lacked widespread experience and expertise in its membership, the I. A. L. L. also proved how important would be the input of expanded representation to international labour legislation. The voices of labour and industry were required so that such legislation would better reflect the needs of society at large. Finally, the I. A. L. L., in recognizing the need for a practical and realistic agenda, underscored the importance of clearly articulated goals which would be within the reach of the states adhering to the principles of the organization.

For Canada, participation in the I. A. L. L. represented a unique opportunity to examine the scope and meaning of Canadian social legislation from the broader perspective of international discussion. Given the motives which had encouraged earlier state intervention (namely, the concern for the welfare of the Canadian worker), Canada might thus continue its progress in the social realm within the confines of its constitutional limitations. The First World War, however, was to present Canada with a very different set of priorities regarding its role in international organizations, and consequently a rather different outcome than articulated above was to be expected from its membership in the I. L. O.

CHAPTER III

CANADA AND THE FOUNDING OF THE I. L. O.

A. War-time Expectations and Post-War Realities

The First World War introduced new priorities into Canadian government and society. For labour, the war effort represented a vehicle through which it could justify its claims for industrial reform. Canadian labour entered the war effort in partnership with government and industry expecting to be rewarded for its efforts. Instead, its sacrifices were repaid with wages insufficient to keep pace with inflation. As a result, Canadian labour became dissatisfied with the partnership, especially because the large profit-taking by business and industry was not finding its way to labour in terms of increased wages. Moreover, labour suspected that Robert Borden's Unionist government was in league with industry to frustrate its hopes for post-war industrial reform. In reality, however, Borden was loathe to intercede on labour's behalf out of fear that such intervention might impede the war effort. In contrast to labour's priorities, Borden's chief interests were the successful conduct of the war effort, and international recognition of Canada's new world status as a result of this effort. Consequently, the Paris Peace

Conference and the founding of the I. L. O. represented different opportunities for Canadian labour and government. As labour's war-time priority was reform, so it looked upon the proposed organization as the means to that end. As Borden's priority was international recognition of Canada's new world status, so the League and the I. L. O. represented for him the appropriate vehicles to that goal. He felt that the interests of labour as vested in the I. L. O. could be made to serve Canada's diplomatic ends.

Chapter III is divided into two large sections, both of which are further subdivided. Section A deals with the role of Canadian labour in the war effort and the results of that sacrifice for the Canadian worker. Within that section will be examined the diminishing expectations among Canadian workers for the long-awaited reform that would not come, Borden's war-time labour policy and its influence on Canadian labour, and the development of new priorities within the Unionist government unrelated to labour's interests and demands.

a. Labour and the War Effort in
Canada: Diminished Expectations
of the Canadian Worker

This section focuses on the growing dissatisfaction among Canadian labourers with war-time economic conditions in Canada. As mentioned, the continuation of profiteering and excessive inflation without any government intervention on labour's behalf robbed labour of its hope that its

sacrifice would engender progressive legislation. Instead, it was confronted with temporization and indifference on the part of the Borden administration.

The First World War revolutionized the Canadian economy. Not surprisingly, relations between labour and capital also underwent significant change as labour, having played a key role in the war, argued for a new deal to reflect the reality of its sacrifice.

This sacrifice--of effort, of man-hours, and in many cases, of hard-won progress in the exercise of collective rights--was brought into focus by the growth of the Canadian economy in a dramatically short period of time. Influenced by the demands of war-time production policy, the general economy experienced a rapid change-over from a system of capital development to one of vast production for export.¹ Consequently, the demand for raw materials and the concurrent output of a rapidly-expanded capital goods production saw a proportionate increase in profits that, in the opinion of labour, was concentrated in the hands of industry and not finding its way, as higher wages, into the hands of the workers. Sizable profits were indeed made by Canadian manufacturers. The Nova Scotia Steel and Coal Company, for example, in 1918 realized a profit of

¹Grant Dexter, Canada and the Building of Peace (Toronto: Canadian Institute of International Affairs, 1944), p. 19.

3.5 million dollars, up from 236 thousand dollars in 1914. The Steel Company of Canada enjoyed a profit increase of nine hundred per cent over 1914 totals or 5.3 million dollars since the start of the war.² By 1919, the total value of all industrial production in Canada had surpassed one billion dollars--an increase of over 500 million dollars from 1915. On the other hand, the average industrial labourer in 1919 was earning less than one thousand dollars annually--which amounted to an annual rate of increase from 1914 of about eighty-five dollars, not a small sum, considering that the annual rate of increase from 1905 to 1914 was from eight to ten dollars, but insufficient in the face of war-time inflation and rising prices of domestic goods. Not surprisingly, trade union membership increased from 106,000 in 1914 to 380,000 by 1919 and strikes from a total of fifty-eight in 1914 to a total of three hundred and thirty-two in 1919. By 1919 such actions involved close to 150,000 labourers, an increase of three hundred per cent over 1914. Man days lost in work stoppages had therefore increased by five hundred per cent from the pre-war era.³ The indication is

²Vincent R. Porter, "The English-Canadian Labour Press and the Great War," (M.A. Thesis, Memorial University, 1981), pp. 35-36.

³M. C. Urquhart and K. Buckley, eds., Historical Statistics of Canada (Toronto: Cambridge Press, 1965), pp. 99, 107, 490.

that, by 1919, Canadian labour doubtless felt itself even more deprived of the benefits of economic development than before the war.

In the early days of the war, labour had responded to the call for unity in the face of what was styled German despotism. This appeal to patriotism submerged the earlier pacifist declarations of the T. L. C. that the coming conflict was a war of capital and not honour; by 1915, Canadian labour organizations were proclaiming "the duty of the labour world to lend every assistance possible to the Allies of Great Britain and, for us in Canada, more especially to the Empire of which we form part, in a mighty endeavour to secure early and final victory for the cause of freedom and democracy."⁴ However, Canadian labour, in the face of world conflict, did not forget the promise and potential of international labour legislation. The possibilities of labour's role in the realization of new post-war "world order" encouraged the Trades and Labour Congress, in 1915, to adopt the following resolutions toward that end:

Your executive council feel that . . . it is highly advisable that this convention take steps to cooperate with all labour organizations, both American and European, in securing the International Congress of Labour. . . . Once the war is over . . . a general readjustment of conditions will be in order; the nations of the world will meet in what

⁴Canada. Department of Labour, Fifth Annual Report on Labour Organization for the Calendar Year 1915 (Ottawa: King's Printer, 1916), p. 23.

may be called really 'the Parliament of Man,' and while the diplomats of the different countries are in solemn conclave, it is well and necessary that the labour interests of the world, which will then and there be effected by such readjustment, should be combined in an international and general congress, . . . It is therefore, the duty of the present convention of the Trades and Labour Congress of Canada . . . to take every necessary step in order that, when the hour comes, Canadian organized labour may be perfectly prepared to do its part and have its share in this world-wide settlement of affairs.⁵

But while Canadian labour thus showed its understanding of greater concepts, it was ill-prepared to confront the immediate realities of total war, as described by

A. C. Crysler:

As the insatiable demands of war for men and materials intensified, several developments took place. The number of men available for productive purposes became less while employment became full. . . . Against this, the quality of production for civilian use was reduced as materials were devoted more and more to war purposes. Like employment, production was at a peak level . . . and the profits of producers rose higher than before.⁶

Wages did not increase in consonance with producer profits, but climbed high enough to create an inflationary spiral. The cost of living index for Canada climbed from 79.6 in August, 1914 to 120.9 in November, 1918 and finally, 150.6 in July, 1920. Inflation increased annually over the war years at a rate of about fifteen per cent.⁷

⁵ Ibid., p. 24.

⁶ A. C. Crysler, Labour Relations and Precedents in Canada (Toronto: Carswell Co., 1949), p. 49.

⁷ Dexter, Canada and the Building of Peace, p. 21.

This unstable economic climate had a significant psychological impact on labour in Canada. Disillusionment and bitterness led to accusations of profiteering on the part of industry, and business favouritism on the part of government. Canadian labour felt cheated when it looked at the economic situation. Wages were still inarguably low in the face of great profit-taking, and did not keep up with prices. Labour reasoned that government ought to exert control over business so as to distribute profits more equitably, and more than one labour journal called for government-enforced fair wage clauses in government contracts.⁸ That the Conservative government of Sir Robert Borden refused to consider such an intrusion into the workings of the private sector seemed to indicate that collusion existed between business and the state to frustrate labour's efforts to be regarded as an equal partner of government and industry. By the time Borden did move to control food prices (by appointing W. J. Hanna as "Food Controller"), labour found that the initiative was too little, too late. By 1916, the sense of betrayal by government and industry was nearly pandemic in Canadian labour.

This sense of betrayal was nurtured not only by frustrated economic expectations, but by labour's growing realization after 1916 that the long awaited social transition would not occur. Although Borden and the Conserva-

⁸Porter, "The English-Canadian Labour Press and the Great War," p. 57.

tives had made no promises or guarantees, Canadian labour's hopes had been sparked by labour press speculation as to the content and conditions of possible social reform. This press understood by 1915 that such change made "good sense," as Borden's call for "vigorous prosecution of the war on all fronts"⁹ had supposedly altered all former relationships, and in particular those between labour and capital. Labour was no longer to be bound to the condition of serf; in heeding the Prime Minister's call, it featured itself the "home front" in Canadian society.¹⁰

It was to learn differently. After 1917, it became apparent that the much heralded Unionist Government of Sir Robert Borden was no more interventionist socially than the preceding Conservative regime. Like its predecessor, the Unionist ministry preferred the workings of the Industrial Disputes Investigation Act to outright state interference in industrial disputes, and would not consider labour's call for selective nationalization or the taxation of profits. Only in early 1918, with strikes and lock-outs increasing at an alarming rate, did Borden, fearing that Canada's war effort might become undermined, decide to seek a rapprochement with labour.

⁹ Robert C. Brown, Robert Laird Borden: A Biography, 2 vols. (Toronto: Macmillan, 1980), II:162.

¹⁰ Porter, "The English-Canadian Labour Press and the Great War," pp. 71-72.

b. Borden's War-time Labour Policy and Its Effects on Canadian Labour

Although Borden's war-time policy took labour into the Unionist ministry as a partner to the government in its programme for reconstruction, it also curtailed labour in several ways, most importantly by preventing the use of the strike weapon during the conflict. It seemed that, for Borden, the restrictions which the policy imposed were of greater importance than the benefits it bestowed. Political, not social, expedients were what motivated Borden in his rapprochement with labour.

Borden's initiative took the form of an invitation to labour by the Dominion government in January, 1918 to meet with its representatives and discuss ways to address the growing tension in labour's relations with industry. In seizing upon this dialogue, the Borden government finally admitted the necessity of dealing with at least some of labour's claims. A series of fourteen private meetings ensued between government and fifty labour representatives of various trade unions from across the Dominion. Since no official programme for labour had been devised by a representative caucus, the T. L. C. proposed an outline of topics for discussion. These topics naturally touched upon some key concerns, such as the drafting of industrial labour into agricultural work, railway labour problems, regulation of private employment agencies, protection of

women in industry, and coolie labour in Western Canadian industry.¹¹ While the government was determined to take most of the suggestions under advisement, it was prepared immediately to accept a proposal on labour representation in government advisory committees.

In August, 1918 the Borden government appointed a Labour Sub-Committee to the Cabinet Reconstruction and Development Committee. The chief duties of this body were to investigate the social and economic conditions of the Canadian worker, and to make recommendations for policies and measures which might be adopted by the Committee in respect to labour problems for the duration of the war and for the period of reconstruction to follow. The Sub-Committee was composed of representatives from each of the parties to Canadian industrial life: Gideon Robertson and Thomas Crothers for government, Professor R. M. MacIver for the universities, Herbert J. Daly, a Toronto industrialist for employers, and J. C. Watters (President of the T. L. C.) and Calvin Lawrence (legislative representative of the Brotherhood of Locomotive Engineers) for labour.¹² Here again, as with the Industrial Disputes Investigation Act and Railway Disputes Act, the tripartite system of membership was selected as the best method to ensure a variety

¹¹Labour Gazette (Ottawa, 1918), pp. 831-833.

¹²Ibid., pp. 831-833.

of opinions on matters pertaining to labour. At the end of the war, membership was expanded to include more diverse interests as well, such as engineering and technical associations, social workers and returned soldiers. Perhaps the most important post-war outcome of the Subcommittee's deliberations was the proposal, in March, 1919, for a Royal Commission to conduct formal investigations into industrial relations across Canada and to issue a report on its findings.¹³ That report became the basis for the convocation of the National Industrial Conference of September, 1919, the first such gathering of the parties to Canadian industrial life, and in light of the Winnipeg General Strike of the spring of that same year, one long overdue.

The major war-time outcome of the labour conferences of 1918, however, was the declaration of a War Labour Policy in July, 1918; while recognizing the right of labour to organize and to negotiate collectively, it also recognized the employer policy of "open shop" and, more significantly, prohibited any further work stoppages through strike action or lock-out while the war was underway. The principle of fair wages was upheld, but the issue of the eight-hour work day was left ambiguous by the language of the specific clause.¹⁴

¹³Ibid., (June 1918), pp. 432-433.

¹⁴Ibid., (August 1918), pp. 617-618.

While their overall impact on government policy, therefore, was minimal insofar as they were unable to get the Unionist government to address labour's legitimate concerns, the Labour Conferences of 1918 and the Labour Sub-Committee did, nevertheless, indicate a trend. Albeit gradually and with much hesitation, Canadian government was finding a place for the counsels of labour in the formation of social policy. But the effort had been too long in coming and this trend was obscured by new expectations. The Canadian worker, more than any other group in society, now anxiously looked to the promise of international dialogue to address the issues on which Canadian politicians had temporized for so long.

This temporization was to continue into the Reconstruction period. Although the end of the war rendered the War Labour Policy obsolete, Borden, ever suspicious of labour's intentions, not to mention its new self-awareness, was loathe to see the constraints lifted on the use of the strike weapon.¹⁵ Nor was he prepared to move any further toward government intervention in labour's chief areas of complaint, although his government was presented with a series of joint recommendations on these by the T. L. C., and the Canadian Manufacturers' Association in December, 1918.¹⁶

¹⁵Brown, Robert Laird Borden: A Biography, II:163.

¹⁶Labour Gazette (Ottawa, December 1918), pp. 1102-1103.

In general, Borden's war-time labour policy has therefore been regarded by historians as a failure. What initiatives did emanate from his administration were palliatives "in response to militancy rather than in anticipation of the problems that war economy imposed on labour."¹⁷ It was a policy of hesitation and indecision, the main theme of which, in general, was the demand for a continued observance of the same war-time measures which had already failed labour miserably. This was a fact realized quickly by the Canadian worker, and eleven days after the policy was lifted, the country was racked with a postal strike. The unexpected reality for Canadian labour was the continued agony of a soaring cost of living coupled with unemployment, as industry shifted over to peace-time production. Once again, as with prices, Borden's government refused to step in to alleviate the problem of joblessness; it considered the issue one for municipal governments to confront.¹⁸ Labour's "new day" not only did not dawn, in Canada its skies appeared utterly blackened.

Borden, in London in the spring and summer of 1918, and again in the winter and spring of 1919, gave only

¹⁷ Brown, Robert Laird Borden: A Biography, II:164.

¹⁸ Porter, "The English-Canadian Labour Press and the Great War," p. 88.

passing attention to the labour crisis. His basic fear was that Canada's "national purpose" might be "weakened" by the continued militancy, division and discord in Canadian industrial life. He also appears to have had an appreciation for the international implications of domestic strife as well, since he asked,

How shall nation join with nation in schemes of arbitrament for enforcing the peace of the world if within the nation itself these important, but minor difficulties between employer and employed cannot be settled without industrial war?¹⁹

None of this was to imply, however, that Borden was non-progressive. The war compelled him to measures of state intervention that he would have refused to consider before the war; income tax, the nearly compulsory war-time exercise of the Industrial Disputes Investigation Act, the regulatory role of government in the national economy, were some examples.²⁰ But with regard to labour Borden vacillated between contradictory policies. While against state influence in the regulation of conditions of the labour market, he had supported the Industrial Disputes Investigation Act in 1907 because, like Mackenzie King, he preferred the non-confrontational techniques of government-inspired conciliation and arbitration to the exercise

¹⁹ Brown, Robert Laird Borden: A Biography, II:164.

²⁰ Ibid., p. 174.

of the strike weapon.²¹ He, therefore, in principle supported certain of labour's claims--chiefly those concerned with the right to free association. The industrial upheaval of the late war years, however, confronted him with a contradiction in policy. His growing fear of radicalism in labour organization, which he thought would provoke revolutionary upheaval in Canadian society, encouraged him to seek out labour opinion for the Reconstruction and Development Committee, but also compelled him to the strict regulation of labour activities through the War-time Labour Policy. Yet, he was at the same time reluctant to involve government in the specific conditions of war-time production and its economics, fearing that any such involvement might impede industrial efficiency. Consequently he could not, or would not, move on war-time labour problems, although he was well aware of their existence, however much he chose to play them down as "minor difficulties."

c. Canada's International Status:
New Priorities for the
Government

Canada's participation in war had, in Borden's way of thinking, placed the nation in a new position in the international community. This new status had been sanctioned

²¹Robert Laird Borden, Memoirs, 2 vols (Toronto: McClelland and Stewart, 1969), I:180.

at the Imperial War Conferences of 1917 and 1918, but in Borden's mind was also closely associated with the status of the United States. Borden's new interest in 1919 thus centered upon his concept of Canada's essential role between Great Britain and the United States. It was an interest in which labour's demands played no role and had no influence.

If the war thus did not have as beneficial an impact on Canadian labour as it might have had, it did much to enhance Canada's position as a member of the international community. Certainly Canada's war record alone was proof of the efficacy of this new status. Above all, Canada's involvement in the war presented a new focus on the issue of constitutional relations with Great Britain. Through Canada's role in the Imperial War Cabinet and the Imperial War Conferences of 1917 and 1918 came increased recognition by Great Britain of the importance of Dominion input into matters both of war and reconstruction. Resolution 9 of the 1917 Conference was of particular importance to Canada (and the other Dominions as well), not only because it redefined Dominion status within the Empire, but because in seeking Dominion input into issues which would be of concern to them, it gave Canada and the Dominions further impetus to press for an autonomous presence in the League and the I. L. O.²²

²²Robert Laird Borden, Canada in the Commonwealth (Oxford: Clarendon Press, 1929), p. 93.

This new role for Canada in the world was to a great extent conditioned by Borden's own conception of nationalism. Unlike Laurier, he perceived a more active role for Canada, not only in Imperial matters, but in world affairs and councils as well. Borden's concept of Canada as the "lynch pin" holding together the relationship between the United States and Great Britain also compelled him to take careful note of relations with the former. Therefore, as a complement to his world view, Borden also emphasized that the peaceful and productive relationships between the two North American countries were an object lesson for the world of the practicability of co-operative coexistence on the same continent.²³ This "North American Idea" did have its social and economic ramifications, as it encouraged certain Canadian delegates to the 1919 Washington Conference to consider carefully any commitments to I. L. O. draft legislation which might have an adverse effect on U. S. labour standards. Furthermore (and in contradiction to the spirit of the Imperial conferences), this concept precluded any attempt by Great Britain to enact a policy of imperial economic co-operation which, Borden feared, might be viewed with distaste by Canada's chief trading

²³C. P. Stacey, Canada and the Age of Conflict: A History of Canadian External Policies, Vol. I: 1867-1921 (Toronto: Macmillan, 1977), p. 212.

partner to the south.²⁴ As did his policy toward labour, Borden's foreign policy, therefore, reflected the necessity of pragmatic politics in the face of divided loyalties. So too, were his motives in the I. L. O. based on political necessity. Unfortunately, as was the case with Borden's labour policies, none of these foreign policy initiatives had any bearing on the legitimate social concerns of Canadian labour. His expectations, therefore, differed widely from what the Canadian workers hoped to derive from Canada's participation in the I. L. O.

B. Canada at the Paris Peace Conference, 1919

Canada's role at Paris in 1919 placed the nation unmistakably within the ranks of influential powers at the peace conference. This was especially true with regard to the founding of the League and the I. L. O. Borden's initiatives from March to May, 1919 were directed solely toward securing for Canada the international recognition which he felt was Canada's right by virtue of its role in the war. Therefore, he regarded Canada's membership in the League and the I. L. O. as a natural outcome of this role, and emphasized that under no circumstances was that membership to be subsumed under that of Great Britain.

²⁴Suzann Buckley, "Attempts at Imperial Economic Co-operation, 1912-1918: Sir Robert Borden's Role," Canadian Historical Review, 55:3 (1974), p. 301.

For Borden, only independent membership in these organizations would validate and define Canada's place in the concert of nations. Historians have argued convincingly that Borden's priorities were essentially political, that he understood the importance of Canadian nationalism to his own political future and, therefore, acted as its representative in Paris. It is true that with regard to Canada's place in the I. L. O., Borden may also have been motivated by the growing unrest among Canadian workers and his fear that Bolshevism might find a ground in that unrest. But there is no doubt that his constitutional concerns were predominant. At any rate, of all the leaders of the allied countries, Borden seemed to possess the most clearly-defined set of national priorities. These, however, were not analogous to the ideals either of Canadian labour or the founders of the I. L. O.

Section B of this Chapter examines several topics. It is impossible to assess Canada's role in the I. L. O. without some prior understanding of the structure and functioning of the Organization. Much about the latter can be learned from an examination of the similarities and differences between the I. A. L. L. and the I. L. O. This will reveal the truly unique nature of the I. L. O. as the first-quasi-world parliament. The major concern of the following section, though, is with Canada's role at the Paris Peace Conference, with emphasis on Canada's

contribution to the creation of the I. L. O. and the various difficulties Robert Borden and Arthur Sifton faced in their defence of Canada's right to equal representation with fully independent states in both the League and the I. L. O. By far the most important fact of Canada's role at Paris is this struggle for recognition of her status--a priority well removed from the interests of Canadian labour.

a. The I. A. L. L. and the I. L. O.:
Contrasts and Similarities

The I. L. O. was founded after the First World War at the Paris Peace Conference of 1919 and in essence was the post-war successor to the I. A. L. L. Its creation, however, endowed it with wider competence than the I. A. L. L. had enjoyed. The signatories of the Peace Treaty of 1919 believed that world peace was attainable only through industrial order, where nations were not compelled to exploit their workers under inhumane conditions in order to achieve a competitive advantage. Consequently, the I. L. O. was given greater authority and a more cohesive organization than the I. A. L. L. to reach its end.

The basic principle which informed international labour legislation in 1906 was essentially the same in 1919. In fact, it increased in importance and intensity. That principle--the necessity for the establishment of international regulation of satisfactory labour conditions--had gained general acceptance

across Europe, albeit slowly by 1914. During the war the inevitable increase of the political influence of labour was accompanied and magnified by labour's demands not merely for national, but international redress of its grievances.²⁵ Furthermore, the growing public awareness of labour's war-time sacrifices and the conditions under which this toll was exacted made it necessary for those Allied governments which were determining the conditions of the Treaty of Peace to give serious consideration to a place for labour in the deliberations and settlement.

In associating the International Labour Organization with the League of Nations, the planners of the Peace Treaty proceeded further than any international organization on the status of labour in society had done to date. They articulated for the first time in clear language the concept that international peace should be based upon international industrial harmony. Mackenzie King paraphrased this concept when he stated:

Where there are no general principles, where everything is arbitrary, there can be no attempt at peaceful settlement of controversy whether industrial or international. Until industrial and international controversy become (equally) justiciable, the world's peace will be at the mercy of Force.²⁶

²⁵David Hunter Miller, "Some Results of the Clauses of the Treaty of Versailles," Cornell Law Quarterly, 6:2 (January 1921), p. 134.

²⁶W. L. Mackenzie King, Industry and Humanity (Toronto: Macmillan, 1921), p. 124.

Therefore, when the Allied governments included the Labour Clauses (which had been prepared by the British Government) in the Peace Treaty, they introduced them with a Preamble (preceding Article 387 of the Treaty) which stated that universal peace could be established only upon the basis of social justice. By this declaration, the signatories clearly recognized the existence of

conditions of labour involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled . . . (and that) the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.²⁷

Here was a statement of principles that exceeded anything conceived by the pre-war conferences. The Signatory Powers were themselves referring to such conditions in their own countries and were, therefore, accepting the responsibility for a programme of state interventionism that far exceeded the most progressive pre-war understandings of the concept.

The charter of the I. L. O., however, broke ground upon which the pre-war conference systems had feared to tread. The statement of general principles found in Article 427 clearly indicated that the well-being of

²⁷ "Final Texts of the Labour Section," in The Origins of the International Labour Organization, 2 vols., ed. James T. Shotwell (New York: Columbia University Press, 1934), I:424-425.

industrial workers was tantamount to world peace and that all industrial communities shared the responsibility for applying certain methods and principles to regulate labour conditions even where differences in national conditions might make uniformity difficult.²⁸ These nine general principles embraced a wide range of labour conditions across the international spectrum and, by implication, seemed to reach into the very fabric of the social policy of sovereign states. Such issues as the legality of workers' associations, adequate wages, hours of work, a weekly day of rest, the abolition of child labour and protection of the unemployed were highlighted as principles "of special and urgent importance" to international public and political welfare.

Like the I. A. L. L., the I. L. O. was constituted as a permanent organization with special bodies to conduct the business of the whole. The concept of the International Labour Office was taken directly from the I. A. L. L. and, in fact, the Labour Office of the latter was reconstituted into the Secretariat of the I. L. O. As with the I. A. L. L., the essential business of the I. L. O. was to be vested in the deliberations of an Annual General Conference, and executive authority was to reside with the Governing Body-- an office roughly equivalent to the Executive Bureau of

²⁸Miller, "Some Results . . .," Cornell Law Quarterly, pp. 135-136.

the I. A. L. L., but with a greater field of power and responsibility.

Here, however, most of the similarities between the two organizations ended. The main organizational element of the I. L. O., which rendered it a more effective international body than the I. A. L. L., was the basis of membership in the organization. Whereas participation in the pre-war system was, by necessity, loosely regulated, that of the I. L. O. was, by design, clearly defined. By Article 387 of the Peace Treaty, membership in the League of Nations carried automatic membership in the I. L. O. This gave the I. L. O. potential input from a much wider constituency than the I. A. L. L. had enjoyed. The latter had been restricted to European public opinion, whereas the I. L. O. could in addition reflect the interests and influence of a non-European membership. Furthermore, the I. L. O., unlike the I. A. L. L., was legally constituted, as the Peace Treaty carried with it adherence to the idea of an international labour organization. This provided the basis for a more forceful pursuit of its goals, although the organization was never designed as a parliamentary body whose decisions would be legally binding on governments.²⁹

²⁹Paul Martin, "Canada and the International Labour Organization," Public Affairs, 7:4 (1944), p. 195.

With regard to its agenda, however, the General Conference of the I. L. O. did reflect parliamentary procedures as, in an important departure from its pre-war traditions, it was empowered to determine (by two-thirds majority vote) its own subjects of discussion. In its scheme of representation, the conference system of the I. L. O. also reflected parliamentary characteristics and in so doing differed even further from every international precedent. Each member state was allowed a delegation of four representatives: two from government, one from employers' associations, and one to represent organized labour. While the constitution of the I. L. O. empowered the respective governments to name these latter delegates of private interests, Article 389 stipulated that such choice must be made "in agreement with the industrial organizations of the country" which were the "most representative" of these interests.³⁰ Moreover, the same article explicitly expressed that these delegates were to represent non-government interests in the Conference, thereby precluding any attempt by government delegates to force a bloc vote on specific issues. Labour delegates, therefore, could express opinions at complete variance with delegates of government and industry and cast their votes accordingly without fear of pressure or reprisal. This tripartite

³⁰Miller, "Some Results . . .," Cornell Law Quarterly, p. 138.

system of representation was of special interest to Canada and the other Dominions, because it allowed them, if they so desired, to break with British precedents in industrial legislation. Not only Article 389, but the entire system of membership (on which Robert Borden had expended much effort and influence) recognized each member as a "High Contracting Party," and as such completely autonomous with regard to the aims and intentions of the organization. Canada was well-prepared for such a construction, as the country had practical experience with the workings of tripartite arrangements. The pre-war Conciliation Act, Industrial Disputes Investigation Act, and Railway Labour Disputes Act had all stipulated that the tripartite system of government, industry, and labour representation was to be the key machinery for their operation.³¹

This system of representation also applied to the Governing Body, which was composed of twenty-four members, twelve representing governments and the remaining twelve divided equally between representatives of employers and labour. Of the twelve government delegates, eight were nominated by those members considered to be of chief industrial importance to the world economy, while the remaining four were representatives of those governments selected by the remaining government

³¹James J. Atherton, "The Department of Labour and Industrial Relations, 1900-1911," (M.A. Thesis, Carleton University, 1972), pp. 205-207.

delegates to the Conference. Here was a situation that caused difficulty without end for the Canadian delegation, given that Canada was not, at the onset, named as one of these powers of chief industrial importance. The oversight was to cause much heated discussion and feverish lobbying for what Borden considered Canada's "rightful place" in the Governing Body.

As with the Executive Bureau of the I. A. L. L., one of the chief duties of the Governing Body was the preparation of agenda for the General Conferences. The authority of the Governing Body, however, extended into other areas of concern as well, including matters pertaining to budget and executive control of the bureaucracy of the organization.

The business of the General Conference--the drafting of labour conventions and recommendations towards the establishment of international minimum standards--was the raison d'être of the I. L. O. Like the General Committee of the I. A. L. L., however, the General Conference did not have any final powers of legislation. In this way, the Conference was not a true parliamentary body, but rather an International Parliament with advisory powers only.³² The Conference was empowered by Article 405 to act along two lines--it could draft a treaty (also known as a

³²Miller, "Some Results . . . ," Cornell Law Quarterly, p. 141.

Convention, or more precisely, a "Draft Convention") or it could adopt a recommendation. A two-thirds majority vote by the Assembly was required for any final action on proposals, after which the Government members of the I. L. O. were expected to bring the draft convention or recommendation before the authorities "within whose competence the matter lies for the enactment of legislation or other action."³³ Recommendations were resolutions or proposals of a non-binding nature, whereas Draft Conventions carried with them some obligation on the members toward ratification by the competent legislatures. This "binding" characteristic of I. L. O. Conventions, however, did not imply an authentic treaty or legal obligation. No delegation signed any Draft Convention; the latter was authenticated by the signature of the President and Secretary-General of the Conference and deposited with the Secretary General of the League who then sent copies to each member government of the Organization. Therefore, the moral force of generally recognized responsibility and the equally powerful influence of public opinion were the only real incentives toward ratification. There may have been a change in dimensions, but in this respect I. L. O. practice did not essentially alter pre-war procedure. In both cases, public awareness was the key to compliance.

³³"Final Texts of the Labour Section," in Shotwell, ed., The Origins of the International Labour Organization, I:434-436.

With I. L. O. conventions, of course, the expanded functions of the Labour Office--to collect and disseminate labour information world-wide--brought greater public interest to bear more quickly on these matters. Compliance with I. L. O. conventions was also encouraged in one other fashion; Article 411 menaced universal sanctions on recalcitrant members through the influence of the League, a threat which marked a significant break with the non-interventionist nature of the I. A. L. L. Such drastic measures were to be preceded with hearings and discussions by Commissions of Inquiry and a final ruling on the matter by the Permanent Court of International Justice. The framers of the I. L. O. Constitution trusted that the mere threat of this public exercise would be sufficient to encourage compliance without having to resort to the difficulty of international sanctions.³⁴ The ultimate end, at any rate, of all Draft Conventions was their acceptance by member governments, for uniform national legislation would, in effect, produce a pattern of similar international legislation on the same classes of subjects.

Around the larger subject of the obligations of federal states to international organizations of which they were members, the I. A. L. L. had always steered a distant course. It

³⁴B. M. Stewart, Canadian Labour Laws and the Treaty (New York: A. M. S. Press, 1968), pp. 17-18.

was an issue, the pre-war organization felt, which came too near to the problem of sovereign rights and the constitutional headaches it implied. Article 405 of the I. L. O. constitution, however, attempted to make provision for this situation in stating that:

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.³⁵

Unfortunately, the text of Article 405 was inexact in several ways. It did not cover certain other instances where the central authority might be deemed competent. For Canada, the United States, Argentina and several other states with federal systems, Article 405 left unstated the subject of competency based on treaty-making powers of the central government. Furthermore, as William Rice has pointed out, the text was especially baffling because of its own inconsistency. If the state had not the "power" to enter into conventions under federal restrictions, how then could its central government exercise "discretion"?³⁶ This thorny problem of constitutional competence and its implications for the central government's exercise of

³⁵"Final Texts of the Labour Section," in Shotwell, ed., The Origins of the International Labour Organization, I:434-436.

³⁶William G. Rice, Jr., "Can Canada Ratify International Labor Conventions? - A Problem of the Division of Power Between Central-State and Member-States in a Federal Union," Wisconsin Law Review, 12 (February 1937), p. 187ff.

treaty-making and "discretionary" powers was of intense interest to Canadian law-makers, as well as American who, particularly in 1935, looked to the Canadian constitutional situation for precedents in the matter. To what extent would Canada's obligations to the I. L. O. be satisfied by the exercise by the central authority of the residual clause of the B. N. A. Act? Could such an application be considered constitutionally correct and binding in all subject classes of I. L. O. Conventions? Did Section 132 of the B. N. A. Act respecting the treaty-making authority of the central government imply the authority to apply the conditions of international labour conventions? To what extent was this authority subsumed under that of Great Britain? To what extent was it discrete from that of Great Britain? For Canada, Article 405 raised more questions than it answered, not only in terms of constitutional jurisdiction, but also with respect to the new international status which Canada acquired from 1919.

The final, but certainly not the least significant difference between the pre-war and post-war organizations was reflected in the general character of each, as expressed by David Hunter Miller.

Prior to the World War, the history and results of International Labour Conferences were almost exclusively European in their character. The formation of the International Labour Organization . . . made a great change in that regard. Of the forty-three countries which (were) members of that organization, only eighteen (were) European States, and of the remainder no less than fourteen (were) Latin American

powers. And, even taking into account the relative industrial importance of many of the European countries, the influence of non-European thought and discussion in the International Labour Conference (was) bound to be very great.³⁷

Taken together, Articles 387-427, known as the Labour Section, comprised Part XIII of the Covenant of the League of Nations. If the pre-war organizations bequeathed any legacy to their post-war successors, it was the recognition that the search for the best compromise on international minimum standards for labour must begin with common recognition both of the commonality of the problem, and the common responsibility for its solution. Mackenzie King alluded to this legacy of self-governing responsibility when he stated that:

In the struggle for a wider Freedom, mankind will not rest until in Industry, as in the State, Autocratic Government, whatever its form, is superseded by a form of Government representative of all the parties in interest, and, ultimately, by a system the cornerstone of which is Responsible Self-Government.³⁸

b. Early Problems of Dominion Representation at the Peace Conference

All the self-governing Dominions of the British Empire at the Paris Peace Conference of 1919 were forced to confront the problem of representation equal with that of fully independent states. In this matter, Canada was to

³⁷ Miller, "Some Results . . .," Cornell Law Quarterly, pp. 150-151.

³⁸ King, Industry and Humanity, p. 212.

assume a central role with Borden as the spokesman both for Canada and the other Dominions. In his mind, Dominion participation in the war effort was sufficient recommendation for a new international status, and he was not about to capitulate to Great Power fears that Dominion status would mean increased influence for Great Britain.

As they assembled in Paris, representatives of world labour, industry, and governments looked to the British proposals for an international labour body as the foundation for the future organization and constitutional framework of the I. L. O. Unfortunately, the British proposals overlooked three significant details which were to be of particular concern to Canada and the United States; they did not provide for differences in industrial development between countries due to geographic and social conditions; they ignored the problem of countries with federal constitutions; and they were mute about the issue of membership for the Dominions.³⁹ It was this third detail which seemed to concern Borden and the Canadian delegation most. No mention had been made by Great Britain of any separate Dominion role in the Peace Talks, the proposed League of Nations, or the Labour Commission and the Labour Conference. In fact, the interests of the Empire regarding labour

³⁹Walter A. Riddell, "Canada and the First Year of the I. L. O.," Labour Gazette (Ottawa, December 1959), p. 1258.

legislation were to be represented by G. N. Barnes and Sir Malcolm Deleyingne of the War Cabinet and the Office of Secretary of State, respectively. The United States was represented by Samuel Gompers (President of the A. F. L.) who was to be made President of the Commission and A. N. Hurley. French representation was undertaken by Colliard, Minister of Labour, and Loucher; from Italy came Baron Mayor des Planches and Cabrini; from Japan, Otchiai and Oka; from Belgium, Vandervelde and Mahaim; from Cuba, de Bustamente; from Poland, Count Zoltowski; and from Czechoslovakia, Benes.⁴⁰ This preponderance of Europeans on the Labour Commission and, as well, on the League Commission and at the Peace Conference, was viewed by Borden as an attempt by the European powers to monopolize the new organizations without taking into account the emergence of the Dominions as new variables in the political and economic alignment of the post-war world. Although perhaps generally right, Borden failed to recognize the great uneasiness which the British delegation felt toward the issue.⁴¹ Separate Dominion representation in these commissions and conferences was regarded by nations, above all by France,

⁴⁰ Edward J. Phelan, "The Commission on International Labour Legislation," in Shotwell, ed., The Origins of the International Labour Organization, I:128-129.

⁴¹ Stacey, Canada and the Age of Conflict . . ., Vol. I: 1867-1921, pp. 244-245.

as a disproportionate representation of the interests of Great Britain and the Empire.⁴² Britain could ill afford to alienate France or any Great Power by taking up the cause of Dominion representation.

Borden, on the other hand, cared little about Britain's uneasiness, but sought a united front among all Dominions on the question of separate representation and on specific trade issues. Unlike so many of his predecessors in Canadian political life, he was not overcome with the desire to follow Britain's lead or to put aside Canadian interests for its sake. Consequently, in naming the Canadian delegates to the Paris Conferences, Borden looked for those among his Cabinet who were committed to an active Canadian role in Paris. Among these were Arthur Sifton (Minister of Customs), Loring Christie (Legal Adviser to the Department of External Affairs), and George Foster (Minister of Trade and Commerce), all of whom shared his views on the issue. The delegation also included Lloyd Harris (Chairman of the Canadian War Mission in Washington), Frank Jones (Chairman of the War Trade Board), Dr. J. W. Robertson (of the Canada Food Board), Lieutenant-Colonel O. M. Biggar (Judge Advocate General), C. J. Doherty (Justice Minister), and, in spite

⁴² Extract from Minutes of Forty-Eighth Meeting of Imperial War Cabinet, December 31, 1918, Documents on Canadian External Relations: The Paris Peace Conference, 1919, ed. R. A. Mackay (Ottawa: Department of External Affairs, 1969), II:18-20.

of Canada's non-representation on the Labour Commission, P. M. Draper, Secretary-Treasurer of the T. L. C., as technical adviser on labour matters.⁴³ The decision to include Draper proved its value in April 1919, when he used his expertise in the eleventh-hour drafting of the general principles of the Labour Charter. Gustav Francq (Vice-President of the T. L. C.) was to join the delegation in January 1919 and, together with Draper, was requested by the T. L. C. to attend the International Socialist Labour Conference in Berne in February 1919. The Canadian delegation also included J. W. Dafoe of the Manitoba Free Press.

The presence of an autonomous Canada at the Peace Conference tended to complicate matters, particularly between Canada and those states which had heretofore regarded Canada as a mere extension of Great Britain. Borden's own interpretation sheds some light on the matter when he states:

It is not at all surprising that difficulties arose, for the status of the British Dominions was not fully realized by foreign nations, and in the kindred Commonwealth of the United States there was among the people, as a whole, equal incomprehension. Seeing that even in the British Islands the new status of the Dominions then was, and perhaps still is, imperfectly understood, and having regard to the conventional structure and the singular anomalies of our Empire organization, we need not feel surprised that its constitutional relations proved rather perplexing to the statesmen of other nations.⁴⁴

⁴³ F. E. Burke and J. A. Munro, Canada and the Founding of the International Labour Organization (Ottawa: Department of External Affairs, 1969), p. 10.

⁴⁴ Borden, Memoirs, II:176.

The subject of Canada's efforts to secure representation at the Peace Conference and the League Assembly and Council has been well documented by many historians. Suffice it to say that the first order of business in this regard-- representation equal with that of smaller belligerent powers-- was resolved successfully by January 18, 1919; by mid-February, 1919 the second issue--that of Canadian representation at the League Conference and Council--was also resolved in Canada's favour.⁴⁵ Neither decision by the Great Powers came easily, however, as the United States, and also France, objected to the potential increase of British influence implied by the separate status of the Dominions. Historians have given due credit for these successes to the tenacity of Robert Borden and several among the Dominion delegations; Borden in particular would not be put off by the "very tiresome" Woodrow Wilson or his "arrogant and disagreeable" Secretary of State, Robert Lansing.⁴⁶ Borden could see no possibility of argument against Canada's claim to representation, because he was sure of Canadian public opinion on the issue, but more importantly, because Canada's war-time

⁴⁵Loring Christie, "Notes on the Development at the Peace Conference of the Status of Canada as an International Power," External Affairs (Ottawa: Department of External Affairs), 16 (1964):165-169.

⁴⁶Borden, Memoirs, II:179.

sacrifice had cost the nation "more men killed in France than Portugal had put in the field."⁴⁷

These early successes were important for several specific reasons. With Canadian "personhood" recognized in principle by February, 1919, Canada could proceed both to the autonomous signing of the peace treaty and to the exercise of its advisory role in the formation of the I. L. O. Furthermore, as Canada's presence had now received official sanction, executive competence was forthcoming in early April, 1919, from the British government which transferred to the Canadian government the authority to issue full treaty-making powers to the Canadian delegates at the Conference.⁴⁸ Moreover, the personal status of Robert Borden was enhanced by his efforts on behalf of Dominion representation. Borden's subsequent participation as temporary chairman of the British Empire delegation and as Arthur Balfour's representative on the Council of Five indicated the importance and status that Borden specifically, and Canadian interests in general, had gained in a relatively short period of time. This fact was rendered even more significant with the appointments of Borden,

⁴⁷ Extract from Minutes of the Forty-Eighth Meeting of the Imperial War Cabinet, in Mackay, ed., Documents on Canadian External Relations: The Paris Peace Conference, II:19.

⁴⁸ Christie, "Notes on the Development at the Peace Conference . . .," External Affairs, p. 168.

Foster, Sifton, Doherty, Biggar and Christie to positions either on British, British Empire or Inter-Allied Commissions of the Peace Conference.⁴⁹

c. Double Difficulties for Canada:
Constitutional Competence and
Official Representation

Canada's specific difficulties at Paris with respect to the creation of the I. L. O. in general concerned two important issues: constitutional competence to ratify I. L. O. conventions, and official (and equal) representation in the League and the I. L. O. The first issue, which concerned the constitutional competence of federal states to ratify I. L. O. conventions, was unravelled by means of an amendment to the I. L. O. constitution. The issue of official representation, however, was not as easily addressed. In fact, it found Borden and the Canadian delegation at odds with several of the Great Powers, especially the United States.

The central challenge for Borden was Canada's role in the I. L. O., as by late February, 1919 the dual difficulties of Dominion representation and constitutional competence to ratify conventions had not yet been clearly addressed by the Commission. Consequently, Borden now turned his attention to the work of the Labour Commission in these areas of concern.

⁴⁹List of Canadian Representatives on British Empire and Inter-Allied Committees and Commissions, March 12, 1919, in Mackay, ed., Documents on Canadian External Relations: The Paris Peace Conference, II:71-72.

At the insistence of Henry Robinson, U. S. Adviser to the Commission, the issue of constitutional jurisdiction (Articles 18-19) regarding I. L. O. conventions and the best system for realizing the obligation to ratify these conventions had been much debated. By February 28, 1919, when no satisfactory compromise had been reached, Sir Malcolm Delevingne of the British Empire Delegation alerted Borden to the problem who referred it to Charles Doherty, the Canadian Minister of Justice. Doherty's reply is enlightening, as it reflects a rather hopeful view of the as yet unexplored treaty powers of the federal government in these matters:

The provision of Article 19, with reference to ratification by Federal States, to which Sir Malcolm calls your attention, would, I think, find no application to Canada. Though she is a Federal State, and though matters will in all probability be dealt with in conventions made in pursuance of the one now under consideration, upon which matters the power of legislation would ordinarily belong to the Legislatures of the Provinces, Article 132 of the British North America Act seems wide enough in so far as legislation may be necessary even as regards such matters, to confer upon the Parliament of Canada all the legislative power necessary or proper for performing the obligations of Canada or of any province under such conventions.⁵⁰

While Doherty's statement was quietly accepted by the Commission as a reflection of Canada's pre-occupation with international status and federal authority in foreign affairs, it was also generally understood that such a legal

⁵⁰Phelan; "The Commission on International Labour Legislation," in Shotwell, ed., The Origins of the International Labour Organization, 1:155.

position would do nothing to solve the practical difficulties which ratification of conventions would impose on the federal system.⁵¹ Like the United States, the Commission was more concerned with what would work than with the legal foundations of its working. Consequently, by March 17, 1919, through the good services of George Barnes and the British Empire delegation, the necessary compromise--introducing the term "Recommendation" for federal states' ratifications--was reached. This presented Canada with two alternatives. The one (referral to Section 132) recognized the treaty-making authority of the federal government, but was unclear on the provincial powers of treaty implementation. The other recognized the power of treaty implementation of the provinces, but negated the authority of the federal government to impose standardization. Borden, however, was satisfied with the compromise for one specific reason; it did not impose on Canada any other obligation than it did on the United States. Doherty's reply, therefore, while unsatisfactory to the situation at hand, was general enough to touch on one aspect of the issue without forcing Canada to commit itself to a decision on legislative competence before the United States had established its own position on the question.⁵²

⁵¹Ibid., p. 156.

⁵²Borden to Delevingne, February 26, 1919, in Mackay, ed., Documents on Canadian External Relations . . . , II:64.

Another challenge--in this case to Dominion status-- appeared in the text of Article 34 of the original I. L. O. charter. The wording of this text rendered Dominion membership in the I. L. O. inexact, as Dominions were said to have the same rights and obligations "as if they were independent States."⁵³ The article did not, in this way, specify or recognize the independent status of the Dominions. The compromise put forward by Sir Malcolm Delevingne of the British Empire delegation called for recognition of the Dominions as having rights and obligations "as if they were separate High Contracting Parties." An immediate distinction was then made between Dominions and colonies insofar as the latter were not specified as High Contracting Parties. This gave the Dominions a separate status from that of colonies, thus placing the former on an equal footing with all members of the I. L. O. which were, as well, referred to as High Contracting Parties instead of "independent states."⁵⁴

Naturally, this compromise article could not provide any clearer insight into the workings of Article 18 regarding jurisdiction in a federal state. But by March, 1919 the members of the Commission had come to the understanding

⁵³ Phelan, "The Commission on International Labour Legislation," in Shotwell, ed., The Origins of the International Labour Organization, I:171.

⁵⁴ Ibid., p. 172.

that this was a constitutional matter for the federal states themselves to confront. Nevertheless, a further alteration of Paragraph 3 of Article 34 attempted to provide at least a means toward solving the federal dilemma. This alteration stated that labour legislation should apply only in principle to colonies and possessions where local conditions dictated modification. For federal states, this paragraph thus implied that the central government could proceed in a similar way for its federal members. Central governments would therefore be able to pass along I. L. O. conventions as recommendations to their constituent members on the understanding that local conditions might preclude uniform application.⁵⁵

As discussions on Article 34 were proceeding, the Dominions perceived a further threat to their status, implied in the Protocol to Article 7 on the composition of the Governing Body of the I. L. O. Actually, Canada was to confront two issues with regard to this subject--one, in March, 1919 on the very right to be recognized as possessing separate status relative to the Governing Body, and the other at the Washington Conference of September, 1919 on Canada's criteria as a nation of "chief industrial importance" for nomination to the government delegation of the Governing Body. The first issue--that of right to membership--unlike Article 34, was more than a problem of wording, and as such

⁵⁵ Ibid., pp. 173-174.

brought the issue of Dominion status once again into focus when it stated that, "no State including its Dominions or Colonies, whether they be self-governing or not, can have more than one Government representative on the Governing Body."⁵⁶ While the text of Article 34 underwent modification without debate, that of Article 7 did not, as several members of the Commission feared increased British authority by way of Dominion presence on the Governing Body. Once again, Robert Borden was selected by the Dominions to plead their case before the Commission, and especially to George Barnes of the British Empire delegation. This argument was to continue well into April, 1919 with Borden at the centre of the "continued and irritating discussions"⁵⁷ with the implacable Henry Robinson of the American delegation.

d. Continued Dominion Opposition:
The Growing Crisis to May, 1919

The growing diplomatic crisis concerning Canadian representation in the League and the I. L. O. placed Robert Borden and Arthur Sifton in the uncomfortable situation of having to confront American opposition to Canada's new role. Nevertheless, Borden would not be swayed from his position, and succeeded both in amending the I. L. O. constitution in favour of Dominion representation, and in forcing the Great

⁵⁶ Ibid., p. 184.

⁵⁷ Borden, Memoirs, II:204.

Powers to acknowledge Canada's right to representation in all aspects of the Organization.

The Labour Commission completed its work in thirty-five sittings between February 1 and March 24, 1919 and at its conclusion presented the report, consisting of the text of thirty-six articles, to the Peace Conference. But the forthcoming opposition of the Dominions to the charter was a turn of events which George Barnes, the Vice-President of the Commission, had not anticipated. This opposition arose out of certain specific points in the Charter such as Point 8 and the Protocol to Article 7, neither of which had been resolved to Dominion satisfaction, but had nonetheless been dealt with by the British Empire delegation without prior discussions with the Dominions.⁵⁸ Dominion opposition, especially from Canada, had originally concentrated on Point 8 of the General Principles (the "Nineteen Points") of the Charter which dealt with the equality of status of foreign workers with domestic labour.⁵⁹ However, it had

⁵⁸ E. J. Phelan, "The Labour Proposals Before the Peace Conference," in Shotwell, ed., The Origins of the International Labour Organization, I:199-200.

⁵⁹ Not to be confused with Article 8, the Nineteen Points were proposed by Great Britain as specific items relating to the needs of labour, whereas the Articles referred to the organization of the I. L. O. Point 8 of the original text was composed as Point 6. In Borden's revised text it appears as Point 8 and is thus referred to in this way.

quickly expanded to the entire Charter to include the relationship between the I. L. O. and the League, particularly with regard to dual membership. Barnes was convinced that membership in the two organizations had been rendered one and the same by the work of the Commission and could see no further argument. William Hughes, Prime Minister of Australia, was of a different mind, however, and believed, along with New Zealand and South Africa, in complete separation between the League and the I. L. O. They feared that Japan might refuse membership in the League because of a proposed statement in the Covenant on racial equality. This would exclude Japan from the I. L. O. and preclude the restraining influence of the organization on Japanese trade and industry. Complete separation, however, would still allow Japan a place in the I. L. O. and would thus spare Australian industry that competition. At this point, Borden took the role of the mediator between Barnes and Hughes but, like Barnes and Lord Robert Cecil (adviser to the British delegation), he upheld the concept of dual membership at the March 29 meeting of the British Empire delegation. With the assistance of Arthur Sifton, he convinced the Dominion representatives to meet on April 3 under the chairmanship of Lloyd George to discuss the issue.⁶⁰ Borden apparently

⁶⁰ Extracts from Minutes of the Fourteenth Meeting of the British Empire Delegation, March 29, 1919, in Mackay, ed., Documents on Canadian External Relations . . ., II: 95-96. Also, Minutes of the Committee of the British Empire Delegation on International Labour Legislation, April 1, 1919, Ibid., II:99-100.

realized that the situation was sufficiently serious to warrant Lloyd George's personal intervention. The Prime Minister and Barnes must have agreed, for this meeting of April 3 carried over to April 8 and 9 under the chairmanship of Arthur Balfour. As a result, most Dominions accepted the dual membership scheme, although Sifton had pressed for further clarification of the issue.⁶¹

Sifton was very concerned about Canada's status with regard to international obligations, and particularly about the I. L. O., and he was tireless in his support of Canada's claim to autonomy. His work up to the Plenary Session of April 11, 1919 concentrated mainly on this problem. Furthermore, Sifton was determined to ensure that Article 35 clearly specified the distinction between India as a colony and Canada as a High Contracting Party, so that Canada would not be bound to British precedent in the same way as would be the colony of India. Sifton also worried about Article 19 (constitutional jurisdiction) and the Protocol to Article 7 (Dominion membership in the Governing Body). Moreover, one of his more interesting proposals to Borden was a suggestion to equalize representation at the conference level so that each of the three parties in the tripartite structure would receive two delegates instead of the one a-piece granted to labour and industry. He feared that, "the

⁶¹Letter, Foster to Borden, March 31, 1919, Ibid., II:97-98.

present plan would either increase the present ill feeling between employers and workpeople and cause more bitter fights for practical control of governments, or would on the other hand, appeal to workpeople as being so manifestly unfair as to throw discredit on the whole scheme."⁶²

Sifton was not alone in his various fears of worker reaction and his doubts about the reactions which the I. L. O. conferences might provoke back home. As early as March 20, Borden was urging Lloyd George to use his influence to bring the labour proposals more quickly before the Peace Conference. His fears of Bolshevik-inspired unrest among European and North American labour compelled him on this and several other occasions to complain about the pace of events at Paris and to urge speed.⁶³ By early April, 1919 his apprehensions were shared by Clemenceau and Lloyd George, both of whom agreed that in the face of rising Bolshevik power in Eastern Europe, the time was right for a Plenary Meeting of the Conference.

At the Plenary Session of April 11, 1919 Borden presented an amendment to Barnes' final resolution which called the I. L. O. into being. This amendment stipulated that,

⁶²Letter, Sifton to Borden, April 2, 1919, Ibid., II:102-104.

⁶³Letter, Borden to Lloyd George, March 20, 1919, Ibid., II:90.

the Conference authorizes the Drafting Committee to make such amendments as may be necessary to have the Convention conform to the Covenant of the League of Nations in the character of its membership and in the method of adherence.⁶⁴

This critical amendment, though, was very nearly not presented at the Plenary Session due to a misunderstanding. When it seemed apparent that the Drafting Committee intended not to reprint the text, Borden lost no time in turning to Wilson, Clemenceau and Lloyd George for intervention in the matter. Through their influence, the last-minute change in the text was made and the amendment carried unanimously in the Plenary Session.

The matter of ~~the~~ Protocol to Article 7 (regarding Dominion rights to representation on the Governing Body) was not settled by way of this amendment. Borden felt that such membership should come automatically with membership in the I. L. O. conference.⁶⁵ But Henry Robinson of the American delegation maintained, for his part, that the text of Article 35 referred only to membership in the League and I. L. O. conferences. This issue was of supreme importance to Borden and the Canadian delegation because of the implica-

⁶⁴Phelan, "The Labour Proposals Before the Peace Conference," in Shotwell, ed., The Origins of the International Labour Organization, I:210.

⁶⁵G. P. de T. Glazebrook, Canada at the Paris Peace Conference (London: Oxford University Press, 1942), p. 73.

tions for Canada's role in the League in general. As long as the Protocol to Article 7 rendered the Dominions ineligible to positions on the Governing Body, it could be suggested that they were ineligible as well to positions on the League Council.⁶⁶ Borden was neither prepared to accept this interpretation, nor to admit the validity of the other American argument that Dominion representation on these bodies would account for six votes in favour of British or Empire interests. Essentially, Borden's position was based on the not insignificant rôle of Canadian troops in the war--a rôle far exceeding that of the forces of most European states whose membership had not been the object of speculation; as J. P. Després states,

Le Canada ne peut accepter un statut inférieur à celui de certains pays qui sont restés neutres durant la guerre ou qui ont joué un rôle de peu d'importance.⁶⁷

As for British influence on the Dominions, Borden maintained that the American argument was completely specious as,

the nation capable of exercising the greatest influence both in the League and under the Convention is the United States. If we examine the list of original members and of States invited to accede, one observes Cuba, Haiti, Liberia, Nicaragua, Panama, Salvador, Columbia and Venezuela. Out of these

⁶⁶Ibid., pp. 75-80.

⁶⁷Jean-Pierre Després, Le Canada et l'Organisation Internationale du Travail (Montreal: Fides, 1946), p. 77.

states one can easily select at least six over whom the United States can exercise a more effective control in such matters than can be exercised by the British Government over Canada, Australia, South Africa or New Zealand.⁶⁸

By early May, 1919, when it nonetheless seemed apparent that Robinson was immovable in his opposition, that Lloyd George was dragging his feet on the issue, and that Wilson simply did not wish to get involved, Borden took drastic action and delivered an ultimatum to the Powers: either the offending language was changed or Canada would voice its reservation publicly and then withdraw from the Conference. Neither the Canadian Parliament, nor public opinion, Borden stated, would allow this situation to continue.⁶⁹ On May 6, 1919 the Supreme Council agreed to suppress the offending language of the Protocol to Article 7 in such a way as to have it state that membership in the Governing Body was to conform in every way to that of the League Council. They confirmed that:

We have no hesitation in expressing our entire concurrence in this view (of the legality of Dominion representation in the Council, and by extension, the Governing Body). If there were any doubt it would be entirely removed by the fact that the Articles of the Covenant are not subject to a narrow or technical construction.⁷⁰

⁶⁸ Letter, Borden to Lloyd George, April 29, 1919, in Mackay, ed., Documents on Canadian External Relations . . . , II:135-136.

⁶⁹ Ibid., II:136.

⁷⁰ Declaration on the Status of the Self-Governing / Dominions under the Covenant of the League of Nations, May 6, 1919, Ibid., II:150-151.

In this matter, Wilson himself was uncharacteristically of valuable help to the Dominion cause, as he overrode the advice of Robinson, risking a breach in his own delegation. This about face was doubtless wholly due to Lloyd George who eloquently extolled the Canadian war effort in conversations with the President.⁷¹

e. Borden's Contribution to the Labour Charter

Borden's influence was not confined only to the issue of Dominion representation. The following section examines his contribution to the redrafting of the Labour Charter itself, the specific principles of which had caused much disagreement among the members of the Labour Commission. Borden's eleventh-hour strategy managed to avert a critical disagreement on the ninth point of this charter and thus brought the matter to a satisfactory conclusion.

For the most part, the problem of Canada's role in international organizations was regarded as solved by May 6. Its role in the I. L. O. had been defined not only by the struggle for individual status, but as well by the work of Robert Borden and the Canadian delegation on the Labour Charter, the revised text of which was presented to the opening session of the Plenary Conference on April 28,

⁷¹Extracts of the Minutes of the Thirtieth Meeting of the British Empire Delegation, May 5, 1919, Ibid., II:147-148.

1919. Essentially, the greatest dissension among the members of the British Empire delegation was caused by Point 8 of the Charter which stipulated equality of treatment of foreign and domestic labour. Although the strongest opposition arose from Australia, the United States also voiced its displeasure with the article because of its problems with cheap Oriental labour. Such problems, of course, were not alien to Canada either. They were given even greater focus when in April, 1919 Sir Thomas White, the Acting Prime Minister, recommended to Borden in Paris that a British cruiser be sent to Vancouver as a show of force against what White feared was Bolshevik influence in British Columbia.⁷² There was some unrest in the province, as returning soldiers found themselves competing for work with cheaper Coolie labour. This difficulty and the desire to return a service for Lloyd George's support throughout the representation issue, motivated Borden to take up the problem in late April after two previous drafts of the points had been rejected by various Commission delegates (including those of the British Empire delegation). Borden's eleventh-hour strategy on the 27th, in which he chaired several meetings with various representatives, did result in a compromise charter of 9 Points respecting the General Principles in Labour Legislation. Point 8 was rendered more vague and imprecise; from its earlier more

⁷²Brown, Robert Laird Borden, II:165.

exact wording regarding equal rights for foreign labour, it was changed to the following text:

The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully therein.⁷³

The unanimous acceptance of Borden's redraft by the Plenary Session of April 28 strengthened Borden's personal position and the Canadian cause in general. As we have seen, in the subsequent negotiations concerning the Protocol to Article 7, the mere threat of Canadian withdrawal was sufficient to bring about the required support. It seems fair to suppose that if Borden had attempted such a tactic in January or February, 1919, over the issue of Article 35, he might not have attained the same success. In fact, he might have severely alienated Great Britain from the cause of the Dominions in general.

f. The Results for Canada

Canada's work at the Peace Conference concerning the I. L. O. resulted in mixed blessings. On the one hand, Canada's place in the community of nations was assured; on the other hand, American opposition to that status had caused a serious diplomatic rift between the two nations. It is apparent also that Canadian labour did not share in Borden's enthusiasm for Canada's new status, since

⁷³"Final Texts of the Convention," in Shotwell, ed., The Origins of the International Labour Organization, II: 449.

Borden had not entered into the peace talks with labour's interests in mind. Whatever benefits accrued to Canadian labour from Canada's new identity were by-products and fell far short of its expectations.

In January, 1919, when Borden discovered that the Dominions would have no direct voice at the deliberations of the Labour Commission, he surmised that, "Canada got nothing out of the War but recognition."⁷⁴ This might have been true enough at the time, but by May, 1919 the efforts of Borden, Sifton, Christie and others had done much to bring about a clearer understanding of Canada's separate economic, political and social character. Moreover, as Loring Christie has stated, in every instance where Canadian international personhood was at stake, Canada took the initiative to clarify its status vis-à-vis Great Britain and all the Dominions. This tended to operate to the advantage of the other Dominions as well, ~~since they also~~ benefited from Canada's efforts in the realization of their own autonomous positions in foreign matters.⁷⁵ In this way, Canada's initiatives seemed to strengthen post-war Dominion relationships and to indicate to Great Britain the efficacy of reconstituting the constitutional status of the entire Empire.

⁷⁴Borden, Memoirs, II:179.

⁷⁵Christie, "Notes on the Development at the Peace Conference . . .," External Affairs, p. 171.

Unfortunately, Canada's efforts to attain international autonomy tended to alienate those shapers of American policy who saw in an autonomous Dominion a threat to American interests. Historians have argued convincingly that American suspicion of possible Dominion loyalty to British interests was an important factor in American rejection of the League and the I. L. O. For their part, the Canadian delegates never sought this alienation, and as often as possible, through Borden's diplomatic initiative, tried to overcome misunderstandings with the chief American advisers, Lansing and Robinson. Apparently it had never occurred to the latter that Canada's autonomy might work more effectively to the benefit of American interests than to those of Great Britain. In fact, it remained a cardinal principle among the Canadian delegates that good relations with the United States had to be maintained, and Sifton himself was in Paris the chief proponent of Borden's "North American Idea." Moreover, he consistently believed, and counselled other Dominion delegates accordingly, that the League and the I. L. O. were the foundation for the building of greater world harmony and peace, if not necessarily for the national good, which he did not perceive as dependent upon these organizations.⁷⁶ In this particular attitude, he reflected Borden's own thinking on the issue.

⁷⁶Glazebrook, Canada at the Paris Peace Conference, p. 102.

Other results were less apparent, and less immediate. As stated earlier in this Chapter, although Canadian labour still dared to hope that the Peace Conference would usher in a new age of industrial reform and respect for its claims, at home Canada's workers were less inclined than ever to heed governmental blandishments. While for the most part they still regarded government intervention as the best method to realize their goals, labour had grown restive and discouraged with the workings of the Industrial Disputes Investigation Act and similar legislation. In May, 1919 the Canadian worker in Winnipeg wanted more than conciliation and arbitration--neither of which came near to solving the threat to his standard of living. Paris, at any rate, seemed too far away to make much of a difference on that issue.

The First World War thus marked a turning point for the Canadian government and its relations with labour. The pre-war development of state intervention on behalf of the worker slowed down because of the war effort and did not get going again after the hostilities had ended. Furthermore, the concerns and interests of the Canadian worker were at best of secondary importance in motivating Canadian membership in the I. L. O. Canada's status in the international community turned out to be the chief reason for the Dominion's participation, as this membership brought with it recognition

of Canada's full nationhood. The ideals of the organization itself were barely factors in motivating Canadian participation except in the sense of there being a response to the growing power of Bolshevism among world labour. These facts did not become apparent to labour until the problem of Canada's constitutional competence to ratify I. L. O. Conventions arose.

CHAPTER IV

THE INITIAL CANADIAN RESPONSE TO THE I. L. O. MAY-OCTOBER, 1919

Canada's response to the I. L. O. in the months immediately following the Peace Conference was characterized by an ambivalence that was nearly pandemic in labour, business and industry, government and the press. But that ambivalence varied in intensity among them. Each, depending on its own interests in the matter, was willing to concede some value to the organization, but the concession was usually counterbalanced by misgivings as to the meaning of the I. L. O. to the Canadian worker. The most serious doubts as to the applicability of I. L. O. draft legislation to the Canadian industrial scene were held by the Dominion government itself, the very sponsor of Canada's interests at Paris. This hesitant attitude was already evident in the unwillingness of the Dominion government to take a more positive stand on the recommendations of the National Industrial Conference of September, 1919. It thus seems that membership in the I. L. O. was more important to the Canadian leadership for constitutional reasons related to the assertion of Canadian nationhood than for social reasons. Social reform was never the primary motive for Canadian involvement. In fact, once the issue of Canadian

nationhood and international identity was settled, the domestic side of the constitutional problem became a convenient vehicle to slow down the progress of social reform. The debate over the distribution of responsibility between Dominion and provinces would thus act as an effective brake to any meaningful advances of social legislation based on I. L. O. principles.

The initial response of Canadian labour, agriculture, business and industry to the I. L. O. has to be examined first. A look at the attitudes of the Canadian Press, of Parliament and that of the government itself as evidenced in the Royal Commission on Industrial Relations and the National Industrial Conference will complement this investigation. The intention of the Borden government began to manifest itself clearly in the aftermath of this conference, namely the intention to temporize on the findings of the conference commissions as long as possible, or to plead incompetence due to constitutional limitations.

a. Response of Canadian Labour,
Agriculture, Business and
Industry

The initial response of Canadian labour, agriculture, business and industry to the Labour Charter, while generally favourable, was ambivalent toward the possibility of its implementation. Canadian labour in particular had its doubts that any national legislative solution (much less inter-

national) could be applied effectively to its problems. One root of this doubt was the failure of war-time legislation to address adequately the more obvious excesses of profiteering and runaway inflation. The apparent desire of capital and government for a return to "normalcy" after the war seemed further proof to Canadian labour of the inadequacy of political solutions for social and economic problems.¹ Labour had misjudged the course of politics in these months directly following the war. Initially, it had expected changes in post-war Canadian society and had welcomed the concept of the Labour Charter and the application of its principles to the Canadian industrial scene.² Instead, it was confronted with the reality of a post-war industrial policy which seemed to uphold the structure of traditional capitalism--the very system which had spawned the industrial excesses and had given rise to the need for international standards.

The motives for Canada's work in Paris had nothing to do with restructuring the capitalist system to render it more congenial to the interests of labour. The desire for international status and the fear of worldwide Bolshevism

¹Roger Graham, Arthur Meighen, 2 vols. (Toronto: Clarke, Irwin and Co., 1968), I:213.

²Toronto Globe, 8 March 1919.

influence encouraged the Canadian delegation in its efforts on behalf of the Labour Charter, even if Paddy Draper's and Arthur Sifton's own interests in the success of the Charter transcended these motives. Consequently, as the work of the Canadian delegation in Paris was undertaken largely by a handful of politicians acting independently of Canadian public and parliamentary opinion,³ the specific interests of Canadian labour in the reform of capitalism were not addressed. Nor could they be, given that the Labour Charter itself represented a middle road between revolutionary Bolshevism and unreformed Capitalism. Under no circumstances was the Conference about to threaten the worldwide economic structure of capitalism for the welfare of the worker.

Here was an anomaly which was not lost on the Canadian worker: the government of Canada had endorsed the principles of the Labour Charter, but was abandoning its war-time interventionist policies in the realm of Canadian labour economics. Furthermore, runaway inflation--unrestrained by any effective government policy--continued to encourage the taking of sizable profits by private enterprise, thus further compounding the problem. Hardship, unemployment and a widespread feeling that the leaders of government had betrayed the cause of labour led many among the working

³F. H. Soward, "Canada and the World," in Canada After the War, eds. A. Brady and F. R. Scott (Toronto: Macmillan, 1943), pp. 126-127.

ranks to doubt that the Labour Charter could have any bearing on their situation. Having lost their faith in the efficacy of a national legislative effort and without any understanding of how international labour standards could solve the Canadian labour crisis, many Canadian workers turned to more extreme opinions and practices to realize their goals. Several such notions were met with widespread support from many quarters. Certain labour journals (The British Columbia Federationist, the Western Labour News) advocated major government intervention by way of public works and nationalization schemes for heavy industries. The Western Labour News even proposed a programme whose features echoed some of the sentiments of the Labour Charter--reduction of hours in industry, civil and municipal unemployment schemes, pensions and insurance for the sick, injured or aged, abolition of various classifications of work for women and children, and, naturally, federal attention to immigrant labour.⁴ More extreme viewpoints, such as those advocated by the Industrial Workers of the World, the One Big Union, and various leftist labour publications such as the Western Clarion, suggested the kinds of direct confrontation with authority--large-scale

⁴Vincent R. Porter, "The English-Canadian Labour Press and the Great War," (M.A. Thesis, Memorial University, 1981), pp. 93-94.

strikes, sympathetic work stoppages, and even the establishment of Canadian soviet-systems, which the Labour Charter, by function and design, was meant to preclude. Furthermore, the more moderate opinions of Paddy Draper and the Dominion Trades and Labour Congress now suggested that the time had arrived for widespread reform over and above reconstruction, and that the principles of the Labour Charter were the key to its realization. In an interview with the Toronto Globe of March 8, 1919 on the International Labour Charter, P. M. Draper drew a distinct parallel between industrial peace in Canada and the recognition of the Labour Charter:

In this (labour) convention, the Commission enunciates some truths which are obvious, but which the world for the first time is making a serious effort to face. The prosperity and contentment of all classes throughout the world are the natural basis of lasting peace both internally and externally, and in order to insure the amelioration of the lot of labour, the regulation of hours of work, provision for unemployment, the establishment of a living wage, protection of foreign workers and recognition of the principle of freedom of association must be envisaged. . . . In my judgement, one of the reasons why strikes are proposed and organized on such a gigantic scale is that the workers may give forceful notice to the whole community that no pressure of production shall be allowed to put aside the claims . . . for increased wages and shorter hours.⁵

In that same interview, Draper then articulated one of the key concepts behind the movement toward international labour standards--that there could be no return to pre-war in-

⁵Toronto Globe, 8 March 1919.

dustrial conditions where the labourer was considered little more than an expendable item of production. He said:

I do think there is a great common emotion in the minds of the working classes, . . . which leads them to think and say to one another that 'the hour has struck' when a definite and united movement must be made for the reconstruction of the whole basis of the nation and that there shall be no return to pre-war industrial conditions. What is needed in this twentieth century is the humanizing of the workers and the improvement of the conditions of industry.⁶

Draper then defined the exact nature of the responsibilities which the new Labour Charter placed upon both parties to industry:

Workmen are asking that their position in industry shall be comparable to the position of responsibility and trust given them in the citizenship of the country. Industry must no longer reflect autocracy, but more closely reflect democracy and co-operation with all its risks and imperfections. The misunderstandings now existing between Capital and Labour (the representatives of which seem to be living in two worlds) must be removed not by propaganda work, but by responsibility and experience brought about by a closer association with their employers in both the industrial and social spheres.⁷

As the spring of 1919 drew on, however, this spirit of compromise and conciliation which Draper had suggested as the goal of the Labour Charter seemed to Canadian labour more an ideal than a reality. More work stoppages and confrontations erupted across the Dominion, as various labour factions sought to acquire by force what they could not realize from the desultory efforts of the Unionist regime.

⁶ Ibid.

⁷ Ibid.

The Winnipeg Strike, therefore, not only indicated the seriousness of the breakdown in communications between government and industry on one side and labour on the other but, more significantly, illustrated a new trend in the thinking of the Canadian worker. Contrary to Borden's hope that the Labour Charter "might have a useful effect in improving the relations between employers and employees,"⁸ the Winnipeg Strike indicated that the feeling among many Canadian labourers of having been betrayed by government ultimately led them to challenge the Canadian traditions of compromise and deference to authority. When the new post-war order emerged virtually unchanged from the old order, Canadian labour came to the conclusion that government and industry had denied them the goal for which they had fought, namely democracy.⁹ Borden's efforts with the Labour Charter, whatever may have been his motivations, simply came too late to stem the torrent of rage and despair that crashed upon Winnipeg in the spring of 1919.

If Canadian labour's immediate response to the creation of the I. L. O. was muted because of industrial unrest,

⁸Robert Laird Borden, Memoirs, 2 vols. (Toronto: McClelland and Stewart, 1969), II:215.

⁹Porter, "The English-Canadian Labour Press and the Great War," p. 122.

that of Canadian agriculture was essentially non-existent. This was not, however, due to any specific crisis among agricultural workers similar to that of industrial labour. Rather, the scope of the Labour Charter itself was limited, as geographical circumstances made it difficult to formulate any general standards for agricultural labour. Yet, even when specific conventions and recommendations were adopted at the Third Session of 1921, Canada chose not to ratify several of them, citing constitutional difficulty as the chief reason. It has also to be kept in mind that the small and self-sufficient homestead which still prevailed as the chief means of organization in Canadian agriculture, particularly in the West, did not constitute a good object for international guidelines on labour conditions.¹⁰

In general, then, the response of Canadian labour to the Labour Charter of the I. L. O. was mixed. While Draper and the F. L. C. endorsed the Labour Charter as the best means for Canadian labour to realize its demands, most of the Canadian industrial workers were simply too preoccupied with the economic situation at hand to invest time and concern in what they must have regarded as an exercise in idealism. Fear and insecurity were the essential motivations

¹⁰ A. B. Andarawewa, "The International Labour Organization and Canadian Agriculture, 1919-1969," Canadian Farm Economics (Ottawa: Department of Agriculture, 1970), 4:2, p. 31.

for the labour unrest in 1919 and as such, the climate of anger and uncertainty among workers rendered impossible the kind of careful consideration which the Labour Charter demanded of organized labour.

The response of Canadian business and industry to the Labour Charter was not too different. In general, smaller industries which employed fewer labourers were more inclined to compromise with labour than were the large-scale fields like mining or transportation. In the case of small-scale industry and manufacturing, such compromise usually centered upon hours of labour and fair wages. It was not, however, necessarily a consequence of the application of the principles of the Labour Charter, but rather a result of the fear of confrontation and loss of production. Large industry, as well, was motivated by apprehensions about the new militancy of organized labour and uncertainty as to its objectives. This sense of insecurity in post-war Canadian industry, while possibly encouraging a conciliatory attitude among small-scale industrial enterprises, caused major industries to adopt a hard line as they feared Bolshevik tendencies among their workers. Consequently, Canadian industry regarded the Labour Charter for the most part with indifference; industrial unrest diverted its attention, like labour's, away from the salient features of the Charter. It must be noted, though, that the Canadian Manufacturers' Association, like its counterpart, the

T. L. C., adopted a more moderate approach to the issue. Citing the work of the Labour Commission as the preferred basis for dialogue, the C. M. A. called for a better understanding by workers and employers of each other's special difficulties and insecurities.¹¹

b. Response of the Canadian Press

To a great degree, the response of the press was uniform in its support of the principle of international labour standards, and equally as ambivalent about their application to Canadian labour. Of the large urban dailies consulted for this study, apparently only The Edmonton Journal was fully supportive of direct application of the principles of the Labour Charter to Canadian society. Like much of the press opinion of the time, this support was undoubtedly influenced by a preoccupation with Bolshevik influence, particularly in Western Canada.

Response among the Canadian press to the Labour Charter was more uniform than that of labour and industry. In general, the large urban dailies, like La Presse, Toronto Globe, Manitoba Free Press and Edmonton Journal, supported the concept of international standardization of the conditions of labour. However, opinions differed respecting the Canadian situation. At one end

¹¹Toronto Globe, 23 March 1919.

of the spectrum, The Edmonton Journal was highly supportive of the idea that internationally-recognized labour principles should be applied to Canada's industrial problems. This support was obviously motivated by the fear of Bolshevik stirrings among Western industrial labourers. At this time The Journal was often quick to demand federal intervention in cases where it judged labour unrest to be threatening the social order. In this light, the adoption of the Labour Charter seemed to present a timely means of addressing its concerns. The Journal clearly articulated this view in June, 1919 when it stated:

We welcome the labour proposals which are embodied in the treaty of peace and which, according to the recent statement of Sir Robert Borden, the federal government intends to carry out to the extent of its jurisdiction, being thoroughly convinced of its duty to do so. . . . These (proposals) and the other points of the treaty with respect to labour should become a part of Canadian law with all possible promptness and The Journal intends to use all its influence towards bringing about that result. Once they become part of the law, the most scrupulous regard must be paid to them.¹²

Prior to the Winnipeg Strike, J. W. Dafoe of the Manitoba Free Press also recognized the possibilities of the Labour Charter as one way to meet labour's claims, although unlike the editorialists of The Journal, he stopped short of proposing that these principles might in some way be directly applied to the Canadian industrial scene. He seemed more at ease with generalization when he stated that:

¹² The Edmonton Journal, 21 June 1919.

In the stress of industrial warfare, the worker became transmuted into an abstract term known as 'labour'. Labour was bought and sold as part of the machinery of production and this reduction of humanity to a mere cog in the wheels of industry is the thing that lies under all the effort that has been made in the past by labour itself to secure a more adequate recognition of its human claims on society. The labourer has resented for nearly two centuries his dehumanization by modern industry, and the incessant struggle of generations of labour and social reformers are behind this new charter in which the fact that 'labour' is flesh and blood as well as skill, is laid down for all time as the basis of international labour considerations.¹³

After the Winnipeg Strike, however, even this opinion underwent some modifications. By August, 1919 he regarded the concept of international standardization of labour regulations as a radical doctrine which, he feared, would entirely upset the traditional relations between labour and capital. "It proposes to make business considerations subordinate to human necessities," he stated, "and whether this can be done or not, must be established by careful experimentation."¹⁴ Doubtless this opinion was conditioned by the Strike itself--a situation which was, in Dafoe's opinion, the first step in a planned social revolution. Thereafter, Dafoe, while never the spokesman for labour in any special sense anyway, was less inclined to make specific statements in support of the Labour Charter, although he generally defended the concept.¹⁵

¹³Manitoba Free Press, 8 May 1919.

¹⁴Ramsey Cook, The Politics of John W. Dafoe and the Free Press (Toronto: University of Toronto, 1963), p. 102.

¹⁵Ibid., pp. 101-102.

While it also supported the principle of international uniformity of labour standards, The Toronto Globe was as vague as the Free Press on the possible influence of the Labour Charter on Canada's industrial problems. Furthermore, it devoted much less space even to general discussion than did the Free Press or The Journal. The Globe's one and only editorial on the subject, however, did adopt a generally positive attitude, especially in the sense that it recognized the direct relationship between industrial peace and international order:

It is a good augury for labour that its report was adopted at a plenary session of the Peace Conference which has yet to dispose definitely of any of the other matters it was called to consider, and it is also an acknowledgement of the fact that henceforth Labour will be the decisive factor in determining for or against War.¹⁶

Like The Globe, La Presse limited its discussion to a single editorial on the Labour Charter in the five months in which the Peace Conference was in session. This editorial, as that of The Globe, also emphasized the relationship between universal peace and industrial harmony when it stated that,

Il n'y a pas de doute aujourd'hui qu'une nation ne peut rester indifférente aux difficultés économiques ou sociales que peut traverser une autre nation: et c'est pourquoi il est urgent que toutes les nations s'entendent pour stabiliser le travail et lui donner toute la somme de satisfaction qu'il mérite tout comme elles se prêtent

¹⁶The Toronto Globe, 14 April 1919.

assistance les unes aux autres en temps de crise financière. La stabilisation du travail international sera le complément nécessaire de l'établissement universel et définitif de la paix.¹⁷

In general, it seems, then, that Canadian press opinion tended toward caution in its support of the Labour Charter and the concept of internationally recognized labour standards. While many writers adhered to the widely-held idea of there being a relationship between industrial and international peace, few were willing to suggest that such standards be applied immediately to Canada. Apparently this was a function of the preoccupation of the press with international Bolshevism in Canada, and in this Dafoe may have spoken for many when he wrote:

What is radical . . . is the adoption of the Report itself (on Labour Principles); the linking together for international consideration of working conditions and hours of labour in the factories and workshops . . . (of) . . . every country whose signature is on the parchment of the League of Nations.¹⁸

Such a concept--that of world organization on behalf of worker interests--may have appeared to some as another manifestation of "disguised Bolshevism" on Canadian soil.

In addition, Canadian press opinion was quick to observe that the concept of an organization devoted to the creation of international labour standards represented an idealistic solution to a complicated problem, and a solu-

¹⁷ La Presse (Montreal), 24 February 1919.

¹⁸ Manitoba Free Press, 14 April 1919.

tion which carried in its train problems of its own. In a special article for The Edmonton Journal, F. E. Mercer enumerated several such difficulties when he stated that:

The labour covenant . . . follows along the lines of the League of Nations Covenant in that it is a covenant of governments rather than a covenant of people or industrialists. The governments have as many delegates present as combined employers and employed. They may, of course, send actual workers, but there will be a tendency to send economists or civil servants or other theoreticians who will then dominate the conference. Having passed decrees, there is no method of securing action along the lines decreed except the appeal to reason, the public conscience and the fear of being 'shown up' to the other nations by the boards of inquiry.¹⁹

Mercer went on to suggest that the slow, deliberate pace by which organizations must function would tend to militate against its aims insofar as "neither the employers nor the employed, who both have in their power the weapon of 'direct action' will submit themselves patiently enough to such a slow and dubious method of progress."²⁰ His most interesting criticism, however, although directed at the United States, contained an important implication for Canada, when he stated that:

Even in the United States the fact that labour legislation is in the power of the various state administrations and not under the control of the central Washington government, will hinder adoption of decrees in America and, even in the case of adoption, there would remain the Supreme Court of the United States which has a way of defending reaction by insisting on the freedom of contract to the detriment of the welfare of the worker.²¹

¹⁹ The Edmonton Journal, 24 May 1919.

²⁰ Ibid.

²¹ Ibid.

Early Canadian press criticism of the Labour Charter, while hardly overwhelming in its commentary, did, at any rate, point out what W. M. Banks called the "phantasy" and what F. E. Mercer termed "the most lofty idealism" of international labour standards. It was not that the Canadian press desired or wished the effort the worst; indeed, the various urban dailies were united in their praise for the initiative shown by the Peace Conference in this regard. But they were above all concerned with the growing unrest in Canadian society, and apprehensive about the influence that new and untested ideas might have on its collective mind.

c. Parliamentary Response

The initial parliamentary response to Canada's presence in the I. L. O. can be characterized as complacent. The brief flurry of Liberal opposition over the legislative application of the Labour Charter quickly dissolved into the larger debate on Article 10 of the League Covenant and little other discussion followed on the meaning of Canada's presence in this Organization. Of particular interest in this debate, however, is the government's declaration of its motives for taking Canada into the I. L. O. It is a disclosure which contrasted sharply with Borden's priorities in Paris.

If Canadian public opinion seemed somewhat ambivalent about the outcome of the Peace Conference and the various

treaties (including the Labour Charter) arising from these deliberations, it was essentially because Canadian public opinion as represented in Paris had not received parliamentary sanction. It had been Borden's intention not to seek any "binding instructions" from what he considered to be uninformed parliamentarians regarding the conduct of peace negotiations or Canada's role therein.²² Nor did he seem to place much faith in Canadian public opinion or advice insofar as Canada's newfound international obligations were concerned. Canadian public and parliamentary opinion were useful in the status debate with the United States, but beyond that Borden was determined to maintain nearly complete autonomy in matters Canadian at the Peace Conference.

The Parliamentary debate on the Peace Treaty Bill extended from September 2, 1919 with its formal introduction by the Prime Minister, to November 10, 1919, the date of Royal Assent. The discussion centered upon Canada's obligations to the League as implied by Article 10 of the League Covenant. By comparison, the discussion of the Labour Articles was both brief and secondary, but it was not without value in revealing the importance that the Borden government had come to place on them for the Canadian labour situation. This was

²²Donald M. Page, "Canadians and the League of Nations Before the Manchurian Crisis," (Ph.D. dissertation, University of Toronto, 1972), p. 71.

evident from the beginning, when M. P. John C. McIntosh, who seconded the motion of H. P. Whidder on the Speech from the Throne, stated that:

The foundations laid by Sir Robert Borden at the Peace Conference will be the beginning of a new era for labour in Canada--the Prime Minister's work on these lines, when brought into effect in Canada by legislation, as I feel sure it will be shortly, will, to my mind, be the saving of our country from industrial unrest.²³

McIntosh's address is significant as it indicated a marked change in official attitude toward state intervention in the causes of labour unrest. His references to "the false Bolsheviki-doctrine advocated by the One Big Union," the high cost of living, the problem of increasing unemployment, and the proposed work of the National Industrial Conference²⁴ all seemed to underscore the sense of deep unease that had grown among parliamentarians since the Winnipeg Strike. His reason for alluding to Canadian labour legislation based upon the principles of the Labour Charter was probably this unease rather than the desire for a carefully devised policy toward labour. Similarly, the convocation of the National Industrial Conference reflected this same attitude--the desire to address existing problems rather than to devise reform policies to eliminate the causes and conditions of the unrest.

²³Canada. House of Commons, Debates (September 2, 1919), p. 9.

²⁴Ibid., p. 10.

Unlike the debate on the Treaty in general, opposition to the Labour Charter was not directed specifically at the terms of the Charter, but rather at conditions and circumstances pertaining to its ratification by Parliament. Liberal opposition Leader Daniel Mackenzie instigated debate on this issue on September 4 by first calling into question the motives for government sponsorship of the Labour Charter insofar as Canadian labour was concerned. He criticized the government's mishandling of the cost of living issue by denouncing the inaction of the Board of Commerce and berated its inability to forestall profiteering in the marketplace. It seemed to Mackenzie that the Canadian government was sponsoring the Labour Charter because no other policy to that date had enjoyed much success, judging from the Winnipeg crisis.²⁵ Even more relevantly, Mackenzie criticized the apparent government duplicity which the request for ratification of the Labour Charter implied. Earlier, the government had maintained that it was constitutionally incapable to regulate hours of labour through federal legislation. In Paris, however, and away from the jurisdiction of the Canadian Parliament, "the leader of the Government and his colleagues . . . experienced absolutely no difficulty in formulating resolutions with respect to this subject and

²⁵Ibid., (September 4, 1919), p. 32.

submitting them to the Peace Conference for approval."²⁶ Mackenzie thus decried what he regarded as government chicanery respecting labour legislation. The same ministers who could not find a constitutionally correct method of alleviating the problem of labour during the war, had found at the Peace Conference a legislative course of action. To compound the insult, they had committed the Canadian Parliament without consulting it on these matters. Borden's response to Mackenzie's criticism was the reminder that the proposed National Industrial Conference had been empowered to address the issue of the eight-hour day.²⁷ This statement was revealing in its avoidance of the constitutional question--an issue which Borden apparently wished not to confront at that or any other time.

Mr. Mackenzie's second attack on the Labour Charter (September 8) again did not focus on the principles themselves, but rather on the ratification issue. Mackenzie emphasized the implications for Canada's nationhood and did not confine his remarks specifically to the Labour Charter. His chief argument respecting the latter, however, was that the League of Nations Covenant and the Labour Charter should have been dealt with by Parliament apart from the Treaty so as to afford Parliament more opportunity for comment and opinion.²⁸

²⁷Ibid., p. 37.

²⁸Ibid., (September 8, 1919), pp. 77-79.

In response to Mackenzie's argument, Public Works Minister Arthur Sifton held that it was impossible to separate the three documents; only by the association of these documents could the unanimous consent of the Allies be gained for their implementation. The League had had to come into existence to enforce the terms of the Treaty, and Canada's commitment to the Labour Charter was necessary because "those who were there on behalf of the Dominion of Canada took the position that it was absolutely necessary for the making of an honorable peace that there should be a League of Nations and a Labour Convention. They thought, with the labour conditions in Canada so far superior to the labour conditions in many other countries, that it was proper for them to join in any international union that was absolutely essential for securing peace in the world."²⁹ Sifton's eloquent defence of the reasons for Canada's participation in the I. L. O., however, failed to convince several Opposition members that any Canadian interests were served by this membership. William Fielding was of the opinion that,

where Canadian interests were particularly affected, it would be desirable that we should have special representation, but when there was no Canadian business before them, when no Canadian interests were affected, I say it was not wise for us to insist upon having representation of Canada when there was really nothing of importance from a Canadian point of view for our representatives to

²⁹Ibid., p. 85.

consider. . . . There were men over there who were better representatives of labour than the (Canadian) Prime Minister. There was Mr. Barnes, the Labour representative of Great Britain, and . . . there was that very eminent labour representative of America, Mr. Samuel Gompers. Are we to be gravely told that with Barnes and Gompers looking after the labour question, if the Prime Minister of Canada had not been there, nothing would have been done?³⁰

The debate then moved to other aspects of Canadian participation unrelated to the I. L. O., especially pertaining to the obligations incurred under Article 10 of the League Covenant. For the most part, discussion pertaining to the Labour Charter became subsumed under this broader issue.

The terms of the Labour Charter were presented to the Senate by Labour Minister Senator Gideon Robertson, on September 4. They were received without debate, and only one question by way of clarification was asked (by Senator L. O. David).³¹ It is of interest to note that in his address Senator Robertson made no attempt to link the Labour Principles to government policy on labour conditions. His comments were couched entirely in general terms and thus apparently encouraged speedy Senate compliance. Indeed, Senate ratification of the Peace Treaty bill consumed only sixteen session days whereas ratification in the Commons demanded almost a month. Yet in the latter, progress of

³⁰ Ibid., (September 11, 1919), pp. 181-182.

³¹ Canada. Senate, Debates (September 4, 1919), pp. 48-50.

ratification was never jeopardized by recalcitrant parliamentarians. While the Senate seemed almost uninterested in the issues, the Commons were relatively cowed by their enormity--and because of Borden's policy of autonomous decision-making, the House was incapable of undertaking informed investigation into their ramifications for Canadian society.

- d. Governmental Response: The Royal Commission on Industrial Relations and the National Industrial Conference, 1919

The Unionist government's official response to Canada's obligations to the I. L. O. was to empower a Royal Commission to conduct investigations into the state of labour and industry in Canada. This commission recommended the calling of a National Industrial Conference of labour, industry and government to discuss the application of certain of the Labour Principles of the Labour Charter to the national industrial scene. It is of interest to note here that while the Unionist government seemed to show greater interest in labour matters by its willingness to call these groups together, it was probably motivated in its decision by the serious unrest in Winnipeg. That the government seemed disinclined to proceed on the recommendations of the National Industrial Conference seems to support the view that it regarded both the Conference and perhaps the Labour Charter itself as mere palliatives to stem the rising tide of social unrest, however momentarily.

The response of the Dominion government to the Labour Charter was not confined to the rather hasty debate in Parliament. The establishment of the Royal Commission on Industrial Relations (April-June 1919) and the convocation of the National Industrial Conference of September, 1919, represented a modification in attitude within the Unionist ministry regarding state interventionism in labour affairs. A Royal Commission to investigate labour conditions and reasons for labour unrest was recommended by the Labour Sub-committee of the Cabinet Reconstruction and Development Committee which presented its report on March 22, 1919. Following this recommendation, Orders-in-Council were passed empowering a commission to undertake investigations with the purpose of making suggestions as to how relations between employers and employees in Canada might be improved.³² In this work, the new commission was not without precedent. In July, 1917 the British government had appointed a Commission of Inquiry into the problem of industrial unrest in Great Britain. The recommendation of this commission-- that a "new spirit of partnership" be advanced between labour and employer--could enlighten the Canadian commission as to the goal of its endeavours,³³ and thus help to bring to

³²Canada. Parliament, Royal Commission on Industrial Relations, Report (Ottawa: King's Printer, 1919), p. 3.

³³*Ibid.*, p. 5.

the fore the conflicts and misunderstandings which stood in the way of reconstruction. The commission was authorized to conduct hearings across Canada for the purpose of ascertaining the reasons for the high incidence of labour unrest, particularly in the western provinces. This authorization reflected the same motives which had already guided Borden in his war-time labour policy, and the work of the Canadian delegation in Paris. Borden felt that "in Canada . . . the conditions of business and employment were abnormal and equally abnormal was the state of mind of the people in general,"³⁴ a judgement that motivated him to deal principally with the immediate situation. Although he upheld the Labour Charter as the catalyst for a new long-range understanding between labour and industry, he did not seem eager to encourage its application to the industrial scene. Instead, he merely expressed "the hope" that, "both employers and employees . . . not overlook the principles which were adopted by all the nations represented in the Peace Conference at Paris and which are included in the Peace Treaty as presented to the Germans."³⁵ Borden's preoccupation with industrial unrest which he attributed to Bolshevik influences, compelled him to take ad hoc measures such as this Royal Commission. However, this concern did not encourage him to more vigorous efforts to

³⁴ Borden, Memoirs, II:214.

³⁵ (Commons), Debates (May 27, 1919), p. 2852.

get legislative action based on the Labour Charter. Such an initiative would not have conformed with his opposition to direct government interference in the labour crisis. Furthermore, Borden, like most world leaders, could not be certain that a legislative implementation of the Labour Charter would not be to the detriment of Canadian industry, if the industrial policies of other nations remained unreformed. There was one more concern. The Royal Commission might use the Labour Charter as a guide for its investigations, but it must realize the constitutional limitations to which any of its recommendations would be subject. The Labour Charter had in no way clarified this issue and the quoting of its principles would not change the constitutional facts.

The Commissioners, led by Chief Justice Mathers of Manitoba, were therefore strictly limited to the collection of information respecting labour unrest across the Dominion. Although the Commissioners were drawn from government, labour and industry from across Canada, their work demanded complete impartiality--a task made especially difficult when, in the course of their investigations in the western provinces, representatives of either labour or industry showed indifference or outright contempt.³⁶ The Commission's findings indicated that labour unrest in Canada had its cause not in revolutionary Bolshevism, but rather in the

³⁶The Edmonton Journal, 3 May 1919.

bitterness and fear generated among labour by unemployment, the high cost of living, excessive hours of labour, denial of the right to organize and bargain collectively, loss of confidence in constituted governments, insufficient or poor housing, lack of educational opportunities, and the ostentatious display of wealth by the forces of capital.³⁷

One of the Commission's recommendations, therefore, was the suggestion that a federal-provincial Industrial Conference should be convened at which representatives of labour, industry and the community at large could seek some constitutionally acceptable compromise as a foundation for uniform industrial legislation. There was a precedent for this as well, as upon the recommendation of the Commission of Inquiry of 1917, an Industrial Conference had been convened in Great Britain in March of 1919. The chief task of that Conference had been to establish a basis for better relations between British industry and labour, and out of its deliberations had emerged a plan for the establishment of joint industrial councils to enable British labour to provide input into British social policies.³⁸ These Whitely Councils had been designed to circumvent confrontation between labour and industry by bringing labour to the

³⁷ Canada. Parliament, Royal Commission on Industrial Relations, Report, p. 6.

³⁸ Labour Gazette (Ottawa, January 1919), p. 225.

negotiating table as a partner rather than as a recipient of conditions. The Canadian Royal Commission, therefore, recommended the establishment of such a system in Canada, subject to whatever compromises could be arranged at the National Industrial Conference.

The National Industrial Conference met from September 15-20, 1919. The introductory addresses by Prime Minister Borden (delivered for him in his absence) and Arthur Sifton contained significant allusions to the Labour Charter and its meaning for the Canadian labourer. Arthur Sifton's address in particular brought forward several key points regarding any legislation based on I. L. O. standards. He stated that because of the basically idealistic nature of the I. L. O. programme, Canadian legislators and future Canadian representatives to the I. L. O. must be careful to maintain Canada's "best interests" as the first consideration when legislating on the basis of international standards. Canadian labour problems, he maintained, would be better addressed by Canadian solutions after which the results could be communicated to the I. L. O. as an example to the other nations.³⁹ Here then, was the first clear indication to Canadian labour and industry of where the Dominion government stood with regard to the work of the

³⁹ Canada. Official Report of the Proceedings of the National Industrial Conference (Ottawa: King's Printer, 1919), pp. 9-10.

Labour Commission. Idealism could not be a substitute for Canada's best interests in the labour field, only Canadians could address their own labour crises, heeding domestic standards which, Sifton insisted, were superior to those of any other state.

While the conference produced special committee reports and resolutions on the eight agenda topics, those arising from the debate on unification and co-ordination of existing labour laws, hours of work, minimum wage, and rights of organization and collective bargaining had required the greatest amount of time and effort. Regarding the subject of uniformity of labour laws across the Dominion, the specific committee unanimously recommended the authorization of a joint Dominion-provincial commission to examine the issue further. The Committee on Minimum Wage Laws unanimously suggested provincial legislation for women and children guided by generally agreed-upon standards. No resolution or recommendation was handed down on minimum wage standards for unskilled male labour. The committee on worker organization and collective bargaining entered separate workers' and employers' reports, both of which reflected opposing views on the matter; no compromise had been possible on the issue. The debate on hours of work had consumed the greatest amount of conference time with the result that the committee report contained three opposing opinions on the matter: that of employers

recommended continued committee study of the adaptability of the principles of the Labour Charter to the different industries of the country; that of the employees suggested Dominion enforcement of the eight-hour day across the country; that of the "Third Group" (community interests) upheld the principles as stated in the Labour Charter and suggested their application to all industry across the Dominion.⁴⁰

The special Third Group Report on the hours of work principle in the Labour Charter represented the first effort by a government-constituted committee to report on the feasibility of legislation based upon I. L. O. standards. This group, chaired by Calvin Lawrence of the Labour Subcommittee of the Cabinet Reconstruction and Development Committee, was unable to reach a unanimous decision with representatives of the government or the opposition on that committee. Consequently, the Third Group recommendation reflected conclusions in which government representatives had declined to acquiesce.⁴¹

In several key areas of concern, as stated, the National Industrial Conference of 1919 did not reach a

⁴⁰ Canada. Official Report of the Proceedings of the National Industrial Conference: Resolutions, pp. viii-xii.

⁴¹ Canada. Official Report of the Proceedings of the National Industrial Conference, pp. 206-207.

mutually satisfactory settlement of the differences between employees and employers, and therefore it was assumed that the resolution of these differences would occur at future industrial conferences or through the deliberations of the committees which were recommended for continued study of the subjects. Unfortunately, no such conferences took place, although several were promised by the Department of Labour. The Dominion-provincial commission on unification of labour laws across the Dominion in 1920 published its findings on workmen's compensation legislation, factory and mining laws, minimum wages for women and girls, industrial disputes and inspection and regulation of factories and workshops. The chief recommendation of each of these reports was that the Dominion Parliament bring its authority to bear on the issue of uniformity between the various provincial factory laws wherever the general welfare of the nation would be best served by such intervention. Regarding industrial disputes, however, the committee limited recommendations to disputes involving public utilities and mining, for which federal intervention was suggested as the preferred course rather than the piecemeal exercise of provincial authority.⁴²

Essentially this was the extent to which the work of the National Industrial Conference could go, and there was no immediate follow up by the Borden or Meighen ministries

⁴²Labour Gazette. (Ottawa, May 1920), pp. 540-547.

on these recommendations. Moreover, the most important compromise agreed to by industry at the N. I. C.--that concerning the lawful right of labour to organize and bargain collectively (albeit within the "open-shop" system) was in many cases simply ignored; employers attempted to negate the attempts by organized labour to bargain collectively as the Powell River Paper Company did in 1923.⁴³ No formal government action was forthcoming from the Dominion government on any issues where its authority might have proven helpful, except in the area of private employment agencies, but in this matter, the government had been committed since 1911 to the establishment of a national labour exchange system.⁴⁴

Throughout the spring and summer of 1919, the response of labour, industry, the press and government toward the Labour Charter of the I. L. O. displayed something less than unanimous approval and support. While each upheld the theory of international labour standards as the surest means to worldwide industrial and political harmony, each for its

⁴³ (Commons), Debates (May 18, 1923), pp. 2890-2891.

⁴⁴ (Commons), Sessional Papers, Sessional Paper 208, "Minutes of the Proceedings of the Imperial Labour Conference of 1911," p. 168.

own reasons, regarded the application of these standards to the Canadian industrial scene as impractical and idealistic. Only the T. L. C. seemed convinced of the possibilities of such application, but in the face of widespread labour unrest and confusion, it found it impossible to muster a nationwide consensus of labour opinion on the issue. Consequently, a consensus among the parties to industry as to how industrial peace could be realized was rendered impossible well before the convocation of the National Industrial Conference. The conference merely confirmed the existence of a substantial chasm between employers and labour which government was unable or unwilling to bridge. Certainly it did not regard the Labour Charter as a sufficient basis for a reformed industrial policy. Canada would thus have to play the waiting game at the upcoming I. L. O. Conference in Washington--watching, waiting, responding, and, where possible, upholding its right to equal status among the members. A broad understanding among the Canadian delegates as to what initiatives, if any, Canada should take regarding I. L. O. recommendations seemed out of the question. Arthur Sifton's warning that Canada's "best interests" should be kept uppermost in the minds of the delegates seemed wishful thinking indeed, as in reality no real consensus existed as to what those "best interests" might be.

CHAPTER V

CANADA AND THE WASHINGTON CONFERENCE,

OCTOBER-NOVEMBER, 1919

Canada's role at the first I. L. O. Conference at Washington in 1919 was characterized by concerns which were not shared by the rest of the membership, nor did they correspond to the ideals of the organization itself. From the beginning, the government and employer delegates articulated two themes of central concern to Canada: the recognition of Canada's independent status in the I. L. O. and the notion that regional conditions placed Canada in a special situation with regard to draft legislation. Neither of these issues reflected the true character of the organization or its policies, and in fact on several occasions may have distracted the Conference from its real work. Nevertheless, the Conference admitted these Canadian concerns into the international discussion, and in this regard established a future pattern for Canadian participation in the organization. The constitutional difficulties and political ambivalence regarding the work of the Washington Conference also indicated another trend. In the same way as the ideals of the I. L. O. were relegated to a position secondary to Canada's national interests, so were proposals

for social legislation assigned a status inferior to constitutional considerations at home.

Initially, Canada experienced difficulties with regard to representation and agenda, matters which will be of interest at the onset of this investigation. The Canadian delegation itself next has to be studied in terms of its general significance to North American society, its composition, and its membership in the various conference commissions. Of particular importance was Canada's role in regard to the question of Finnish membership and Canada's attitude towards the agenda itself. The study of the latter will attempt to identify the various conflicts within the Canadian delegation with respect to the national interest. Following this investigation, Canada's voting record at the Conference will be examined, to be followed with a brief summary on the general importance of the Conference to Canada. This Chapter will conclude with a look at the political reaction in Canada to the Washington Conference and at the measures taken by the Borden-Meighen ministries and certain provincial governments on the recommendations of the Washington Conference.

a. The Canadian Situation:
Problems with Representation and Agenda

Canada was confronted by difficulties with the Washington Conference before it was even convened. Essentially these stemmed from the issue of Canadian

representation at the Conference itself and in the Governing Body, and the problem of divided constitutional jurisdiction over draft legislation arising from the agenda items. Of central concern in the matter were the attitudes of the Dominion and provincial governments to the meaning of Canadian participation at the Conference.

The first General Conference of the I. L. O. opened in Washington on October 29 and continued to November 29, 1919. Preparatory to the convening of the conference, the organizing committee issued invitations to the conference and sought to secure information on the proposed agenda by forwarding questionnaires to each of the invited countries. This procedure was to become standard I. L. O. practice--to inquire of member states about their law and practice and views on the upcoming subjects so as to compose draft conventions which would to some extent reflect actual conditions and not merely pious hopes. The agenda under consideration included such subjects as the eight-hour day and forty-eight hour week, unemployment and various aspects of the protection of women and children--essentially the same topics as addressed at the National Industrial Conference. In addition to this responsibility, the organizing committee was also empowered to select the eight states of chief industrial importance to be represented on the Governing Body of the I. L. O. In the exercise of these responsibilities, however, the organizing

committee (and the United States in particular, as head of the Committee), offended Canadian interests. The major Canadian concern was Canada's status at the Conference and in the I. L. O. rather than any specific matter respecting Canadian labour or industry. As a consequence of the protracted struggle at Paris for international recognition, no slight to Canadian status could be taken lightly.

The method by which the original invitation to the Conference was communicated to Canada was the first source of irritation to the government. That this invitation was extended through the British government, by way of a request that "the names of British delegates and their advisers" be forwarded to Washington, prompted the Canadian government to the following reply to the British Chargé d'Affairs in Washington, R. C. Lindsay:

Government of Canada accepts invitation of Government of the United States to send its delegate and other representatives to Washington for purpose of attending Conference. Government of Canada hopes that Government of United States may be reminded that Canada is a member of the International Labour Organization and that communication with respect thereto, while properly transmitted through British Embassy, should have regard to this fact.¹

¹F. E. Burke and J. A. Munro, Canada and the Founding of the International Labour Organization (Ottawa: Department of External Affairs, 1969), p. 16.

Borden decided to ignore the implications of the American procedure and rather than forward the list of Canadian representatives through the Foreign Office in London, sent the information directly to Washington. The issue did prompt Professor J. T. Shotwell of Columbia University, a member of the Organizing Committee, to comment that:

the change is justified not only by the part played in industry by those progressive portions of the British Empire, but also by the part they have played in the war, and it must not be forgotten, that, after all, this was a treaty of peace and not simply a convention drawn together for the purpose of arrangement of the constitution of a world state. Canada asked nothing more than the right to be regarded as a progressive nation and the United States and Canada can undoubtedly co-operate more effectively in future meetings of the International Labour Conference if Canada is given a separate vote than if left as a subsidiary factor subordinate to British representatives.²

The issue of Canada's nomination to the Governing Body on the basis of world industrial importance proved less simple to resolve. In August, 1919 the Organizing Committee, as instructed in Article 393 of the Treaty, had nominated the eight members of chief industrial importance to the Governing Body, namely, the United States, Great Britain, France, Germany (or, temporarily, in the event that Germany was unable to qualify for membership before the Conference, Spain), Italy, Belgium, Japan and Switzerland. Four non-permanent members were then to be nominated

²Manitoba Free Press, 3 November 1919.

from the remaining states according to the guidelines set down in Article 393.³ Here again, the issue of Canada's status in the I. L. O. arose and the government immediately voiced its opinion that Canada should have ranked higher than several of the states chosen. On September 8, 1919 a reply was forwarded from the Governor-General to the Organizing Committee by way of the Secretary of State for the Colonies, which stated:

Government of Canada feel that some rule or standard should be laid down to govern determination of question of who are the members of chief industrial importance. In the absence of such rule Government of Canada feel that claim of Canada to place among eight members of chief industrial importance should receive further consideration. . . . Canada with regard to many important aspects of resources and development compares favourably with several of chief industrial countries and if comparison be restricted to countries of less industrial importance in list tentatively designated as for instance Spain and Switzerland then advantage to Canada is very marked. Canada in relation to nine countries tentatively designated stands first as regards A: area; B: railway mileage per 10,000 inhabitants; C: telegraph mileage per 10,000 inhabitants; second as regards A: potential water power B: developed water power; third as regards total railway mileage; fifth as regards A: total telegraph line mileage, B: total exports; sixth as regards A: pig iron production, B: total telegraph mileage; seventh as regards A: total coal production, B: total imports, C: total foreign trade; eighth as regards population. In all important respects, Canada falls within eight leading members here indicated taking moreover frequently a high place.⁴

³ Letter, Colonial Secretary to Governor General, August 21, 1919, Documents on Canadian External Relations: The Paris Peace Talks, ed. R. A. Mackay (Ottawa: Department of External Affairs, 1969), II:171-172.

⁴ International Labour Office, Official Bulletin (Geneva, 1923), 1:454-455.

The message went on to point out various statistics to illustrate the superior position which the values of Canadian exports, and manufacturers held for the years 1917-1919 relative to those of Spain and Switzerland and cited information on industrial population to give further support to the Canadian claim. Similar complaints were registered as well by the governments of Poland, Sweden and India.

These challenges to the Organizing Committee's decision presented a difficulty for the very administration of the I. L. O. The Committee had hoped for unanimous approval of its decision so as to have the administrative apparatus in place before the conclusion of the Washington Conference. Failure in this would mean that the I. L. O. would have no separate administration to oversee compliance with the Conventions of the Washington Conference and no bureaucracy to undertake its work. The responsibility for the final decision on the Governing Body would therefore fall (by mandate of Article 7 of the Labour Convention) to the League Council, but this body had not yet been constituted by the fall of 1919, nor would it be before the conclusion of the Conference. The work of the Conference undoubtedly would be undermined by this delay. Furthermore, placing this decision with the future League Council would tend to compromise the autonomous nature of the I. L. O., rendering it dependent on the League of Nations for the final word on the legality of its own constitutional framework.

Consequently, on September 22, 1919, the Director of the Organizing Committee, Arthur Fontaine, circulated a request to the governments of Canada, India, Sweden and Poland asking them to withdraw their objections so as to expedite the organization of the Labour Office and Administration within the prescribed period of time.⁵ Unfortunately, the objections were not withdrawn, and the issue remained unresolved as the conference began its work on October 29.

As for the agenda itself, the reply of the Department of Labour to the questionnaire illustrated another difficulty that Canada, as a federal state, would have with the legislative expectations of the Washington Conference. The replies to the questions respecting the principle of the eight-hour day/forty-eight hour week indicated a bewildering variety of provincial legislation pertaining to both the class of industry (e.g., underground, mercantile, retail shops, etc.) and workers (e.g., boys between 12 and 16 years of age, boys over 16 years of age). Similarly, the information on fair wage schedules and employment of women and children in various industrial undertakings and at various times of the day showed the provisions of the provincial factory acts which covered those subjects. The data revealed disparities in standards between the provinces with no one provincial standard as the norm, although the factory

⁵Ibid., p. 455.

acts of Ontario and British Columbia were most often cited for regulations which seemed to cover a wider range of specifics; for example, the provision for the eight-hour day in the British Columbia Factory Act applied to all girls and women employed in any establishment or industrial undertaking, whereas in the factory acts of Nova Scotia, Manitoba and Quebec various categories of age or type of employment tended to restrict overall application of a standard.⁶ In its concluding statement regarding the application of the principle of the eight-hour day/forty-eight hour week standard in Canada, the Department of Labour alluded to the difficulty which the Dominion-wide application of this initiative would entail in view of the prevailing provincial jurisdiction. Furthermore, the Department was unwilling to provide a clear illustration as to the extent to which the principle might apply to Dominion works. It could only refer to the possibility of further provincial action, as suggested in the following:

The whole subject of hours of labour is at the present time one of increasingly active discussion in the public press and also of increasing contention as between employers and workmen. The time allowed for replying to the questionnaire is too brief to permit communication with the provinces, but information . . . would not lead to the view that the several provinces have yet formulated any distinct policy (on the hours of labour principle).⁷

⁶ Canada. Department of Labour, Documents Relating to the International Labour Conference at Washington, 1919 (Ottawa: King's Printer, 1919), pp. 26-51.

⁷ Ibid., p. 51.

Regarding the question on the prevention of unemployment in Canada, the Department was able to provide more specific information on the role of the Dominion. It cited the passage of the Employment Offices Co-ordination Act of May, 1918 as the principal Dominion legislation regarding the reduction of unemployment and in connection with the provisions of that Act explained in detail Canada's immigration policy with respect to foreign labour. The Dominion-wide uniformity of this legislation was predicated on Dominion jurisdiction in these areas, yet the Department of Labour was unwilling to judge the feasibility of an international standard to prevent unemployment. With regard to international standards for the employment of women and children, the Department was equally non-committal.⁸ La Presse gave an interesting appraisal of the situation when it suggested in an editorial of October, 1919 that the reason why the Canadian government would be unable to commit itself to I. L. O. standards was the adverse effect this would have on Canadian-American relations.⁹ It is perhaps not unfair to suggest that Borden understood continental solidarity to serve "Canada's best interests" in Arthur Sifton's sense better than any protracted

⁸ Ibid., pp. 53-72.

⁹ La Presse (Montreal), 29 October 1919.

Dominion-provincial debate on jurisdiction respecting

I. L. O. Conventions.

b. The Significance, Composition
and Initial Role of the
Canadian Delegation

In the following section, the Canadian delegation to the Washington Conference is examined on the basis of its overall significance (especially to North American labour), its composition and its initial role in the membership of various conference committees. Of particular interest in this examination is the composition of the advisory delegation to the government delegates. This membership reflected provincial input and was doubtless of some influence in the shaping of the government delegates' policy regarding Canada's interests and the tailoring of I. L. O. proposals to those interests.

The Washington Conference could not have been held at a more inauspicious time. Washington was embroiled in the bitter struggle over the ratification of the Treaty which imperiled the promise of American participation in both the League and the I. L. O. Moreover, this crisis over ratification in the United States created a difficult situation for the Canadian government, as one of the chief American objections to the Treaty was the possibility of six British votes in the League and the I. L. O. The struggle for independent status had aroused

American suspicion as to the ends which this new individuality would serve--many discerned a possible extension of British influence in world affairs. This was an argument that Borden simply could not accept, neither in April when he was confronted with it by Robert Lansing, nor in October when the American Senate raised it, because he had always hoped to identify Canadian interests more with those of the United States than with Great Britain.¹⁰ In addition, both Borden and Sifton had often feared that if Canada was denied equal status with other nations in the I. L. O., Canadian labour would seek representation through the American labour delegation. Such an eventuality would undoubtedly have unbalanced the precarious structure of post-war industrial relations in Canada for many years to come and would certainly have obstructed the orderly progress of reconstruction.

As it happened, however, the absence of the United States from the deliberations of the Washington Conference meant that Canada, as the only North American state officially represented at the Conference, could well be seen to represent the North American point of view. Confronted with this reality, the Canadian delegation, by extension, had to recognize the fact that the days of following the British precedent in labour questions were

¹⁰Burke and Munro, Canada and the Founding of the International Labour Organization, pp. 18-19.

now definitely at an end. So too, however, was Borden's principle of continental solidarity with the United States. The American challenge of the fall of 1919 provoked the Canadian government to a self-defence of its interests not on the basis of Canada's war record (as in the spring of 1919), but rather on the facts of Canada's economic position in the world community. Borden's hope that Canada would play the role of "lynch-pin"--combining the interests of the United States and Great Britain in the work of world leadership--foundered and died with the reality of American obstructionism.¹¹

As the Canadian representatives were to be the only spokesmen for the North American viewpoint, the twenty-six member delegation was the largest at the Conference, followed by that of Japan, with twenty-five delegates. S. R. Parsons, President of the British-American Oil Company, was nominated by the Canadian Manufacturers' Association as the representative of Canadian employers. He was advised by five experts drawn from the C. M. A. and the Canadian Employers' Association: J. E. Walsh, General Manager, C. M. A.; J. T. Stirrett, General Secretary, C. M. A.; E. Blake Robertson, Ottawa Representative of the C. M. A.; J. B. Hugg, C. M. A.; and J. G. Merrick, Secretary, C. E. A.

¹¹ Donald M. Page, "Canadians and the League of Nations Before the Manchurian Crisis," (Ph.D. dissertation, University of Toronto, 1972), pp. 145-160.

As the representatives of Canadian labour, P. M. Draper, Secretary-Treasurer of the T. L. C., was nominated by the T. L. C., and four of his advisers were also drawn from that organization: Tom Moore, President, and Vice-Presidents Arthur Martel, Robert Baxter and David Rees; Mrs. Kathleen Derry was a Member of the Boot and Shoe Workers' Union.¹²

As for representation of the Canadian government, the situation was somewhat different than it had been in Paris. At the Peace Conference, the Canadian delegation had taken a broad view of the Federal government's powers to fulfill treaty obligations. This opinion had been based upon Justice Minister Doherty's view that the power vested in Section 132 of the B. N. A. Act allowed the federal authority to ratify and fulfill the demands of international agreements. Hence, provincial interests had not been directly represented. However, the work of the Washington Conference concerned matters which involved either specific provincial jurisdiction or a combination of federal and provincial powers which had not been determined by these authorities as of October, 1919.¹³ The compromise reached was that the two representatives of the

¹²Labour Gazette (Ottawa, December 1919), pp. 1427-1428.

¹³John Mainwaring, "Canada and the Movement Towards Social Justice," Labour Gazette (Ottawa: Department of Labour, September 1950), p. 1427.

Canadian government, while drawn from the federal cabinet, were advised by members of provincial legislatures. This part of the delegation was led by Gideon Robertson, Senator and Minister of Labour, and Newton Rowell, President of the Privy Council and Acting Secretary of State for External Affairs. Advisers were F. A. Acland, Deputy Minister of Labour; L. Christie, Legal Adviser to the Department of External Affairs; D. A. Cameron, M. L. A. for Nova Scotia; C. W. Robinson, Member without Portfolio of the Government of New Brunswick; L. Guyon, Deputy Minister of Labour for Quebec; Dr. W. A. Riddell, Deputy Minister of Labour for Ontario; T. H. Johnson, Attorney-General for Manitoba; T. M. Molloy, Secretary of the Bureau of Labour of Saskatchewan; C. R. Mitchell, Provincial Treasurer for Alberta; J. D. McNiven, Deputy Minister of Labour for British Columbia; G. Brown, Secretary of the Reconstruction Committee of the Government of Canada; and W. L. Mackenzie King, representing Prince Edward Island.¹⁴

Given the size of the Canadian delegation, it was inevitable that Canada would be requested to serve on various commissions created by the Conference. Robertson was appointed to the important Commission on Selection whose task it was to establish and organize the work of the study commissions in the specific areas of legislation. Rowell

¹⁴Labour Gazette (Ottawa, December 1919), pp. 1427-1428.

served as the Chairman of the Commission on Application for Admission to the Conference. Christie served on the Drafting Commission whose work was to draw up and present the formal texts of the six draft conventions and six recommendations for the consideration of the Conference. On the important commission studying the Hours of Work Convention, Robertson, Parsons and Draper were named as tripartite representatives, with Moore standing in as Draper's substitute. On the Commission to Study Legislation on Unemployment, Robertson (Acland substituting), Parsons (Robertson substituting) and Draper (as provisional substitute for Samuel Gompers of the United States) formed a tripartite delegation with Riddell as Secretary to the Commission. Draper also served as workers' delegate to the Commission on Employment of Women and the Commission on Unhealthy Processes in Industry.¹⁵

c. Canada's Role at the Conference:
The Issue of Membership for
Finland

The problem of Finland's participation in the Conference and the I. L. O. pushed Canada into the centre of Conference proceedings at an early date. It may be stated in a general way that this issue reflected Canada's own

¹⁵International Labour Organization, Proceedings of the First Annual Conference (Washington, 1920), pp. 29-31; 39.

problems with membership in the I. L. O. Hence, a satisfactory solution to the question could only strengthen Canada's status in the Organization.

Canada highlighted its presence at the Conference at a relatively early point in the proceedings. At the Third Session, of October 30, Judge J. Castberg and Dr. D. Elizalde, Government delegates for Norway and Ecuador respectively, sought to know whether the Finnish delegation had been officially recognized by the Conference as a member of the I. L. O.¹⁶ Newton Rowell, as Chairman of the Commission on Application for Admissions, replied that the matter of official Finnish representation at the Conference was constitutionally inadmissible because Finland was not included as a signatory power to the Treaty of Versailles, and therefore was not a member of the League of Nations. Article 387 of the Treaty expressly stated that membership in the League carried automatic and mandatory membership in the I. L. O., but it did not make clear whether or not non-membership in the League excluded participation in the I. L. O.¹⁷ In his reply, Rowell chose to cite the narrower

¹⁶ Ibid., p. 26.

¹⁷ "Reports on Applications for Admission of New Members to the Washington Conference, November, 1919," in The Origins of the International Labour Organization, 2 vols., ed. James T. Shotwell (New York: Columbia University Press, 1934), II:487.

interpretation of Article 387--that membership in the I. L. O. was predicated solely on that of the League--rather than the broader interpretation allowing I. L. O. membership without prior League sanction. The matter came up for more prolonged discussion on November 12 at the Eleventh Session of the Conference. At that time, Rowell informed the Conference that the Admissions Commission had been unable to arrive at a unanimous opinion with regard to Finnish status and so had presented majority and minority reports on the question. In his presentation of the majority report, Italian workers' delegate G. Baldesi maintained that Finland's claim to membership should be recognized since Germany and Austria had already been officially admitted to the conference without having acquired prior status in the League. Furthermore, he declared, the Supreme Council of Paris had already decided to refer the question of German and Austrian membership to the Labour Conference, thus providing a procedure whereby Finland might similarly be taken into the Conference. In answer to the argument that Finland might have been admitted on the basis of a wider interpretation of Article 387 if the Finnish Government had but properly applied for admission through correct channels, Baldesi argued that neither Germany nor Austria had exercised this option, yet their membership had nonetheless been recognized.¹⁸

¹⁸International Labour Organization, Proceedings of the First Annual Conference, pp. 78-79.

In his address on the minority report, Rowell reminded the Conference that:

The question which (the members of the Conference) are now called upon to consider is one of the most important and far-reaching in its effects of any questions which will come before this conference . . . because it involves the correct interpretation of one of the articles of the peace treaty which goes to the very foundation of the organization of the International Labour Organization.¹⁹

Rowell then referred to the exact text of Article 387 on the issue of dual membership and noted that no such ambiguity or uncertainty as implied by the majority report actually existed in the Article, and that to imply otherwise was to "strike a fatal blow to the efficiency" of the operations of both organizations.²⁰ World peace, Rowell argued, was directly influenced by industrial peace and thus informed the nature of the relationship between the League and the I. L. O. If a nation, such as Finland, which was not named in the annex to Article One of the Treaty as a potential member of the League, wished to become an I. L. O. member, then, argued Rowell, the Treaty had set down a clear procedure: a two-thirds majority vote of the League Assembly would be required for recognition only after formal application was tendered through the applicant's government. Rowell stated that by the strict interpretation of Article

¹⁹ Ibid., p. 79.

²⁰ Ibid., p. 80.

387, the Washington Conference had no such authority (as maintained by the majority report) to authorize memberships. Membership in the two organizations was meant to be identical, Rowell stated, and only afterwards was assurance to be made to the League that the applicant would be willing to abide by all obligations both to the League and the I. L. O. Rowell also reminded the Conference that Borden's resolution at Paris stating that the Labour convention did conform in every way to the League Covenant in the character of its membership and method of adherence, had been unanimously accepted by the Plenary Session.²¹ In terms of the admission of Germany and Austria to the I. L. O., Rowell indicated to the Conference that the Supreme Council had arrived at this decision in May, 1919 so as to realize the full and immediate benefit of Germany's and Austria's industrial importance to the I. L. O. and to protect European markets and labour from the competitive risks associated with keeping Germany and Austria outside the I. L. O. If Borden's resolution had been sidestepped by this precedent, the Supreme Council had done so out of concern for industrial order in Europe. Finland's situation, Rowell maintained, was not analogous to this matter, and therefore beyond the legal capacity of the Conference.²²

²¹ Ibid., pp. 80-81.

²² Harold Butler, "The Washington Conference," in Shotwell, ed., The Origins of the International Labour Organization, I:310-311.

In his resolution on the matter, however, Rowell suggested a compromise which would admit Finland to the Conference with the same unofficial status which had been granted to the United States; the Conference would then be able to commend the matter of Finland's full membership in the I. L. O. to the first session of the League Council where it could receive legal sanction. This was the extent of the powers of the Conference in this matter, Rowell maintained. Any attempt to extend the constitutional capacity of the Conference in the area of membership would have deleterious effects on the very nature of the work of the I. L. O. He said:

If this conference is not legally constituted, and if this membership is not the membership provided by the constitution, then, perchance, any nation which did not desire to carry out its obligations might challenge the findings of the conference on the ground that it was not legally constituted.²³

It was purely a technical matter, but the issue carried certain implications for Canadian membership as well. A free and open admission of non-signatory powers to the I. L. O. would tend to diminish the force and importance of Dominion membership in the organization. If Borden's resolution could so easily be contravened, what then was the point in having it? Or the representation of the Dominions themselves for that matter? On this issue, Great Britain sided with Canada

²³International Labour Organization, Proceedings of the First Annual Conference, p. 82.

against the majority opinion. Sir Malcolm Delevingne's reasons for doing so further underscored the emphasis which Rowell had placed on correct constitutional jurisdiction. As a result, the matter was concluded at the Twelfth Session of Thursday, November 13 with a unanimous vote in favour of the minority report. Finland was admitted as an unofficial participant to the Conference with the recommendation of the Conference to the Council that full membership in the I. L. O. be awarded concurrently with similar status in the League.²⁴

d. Canada's Role at the Conference--
The Problems of Articulating
the National Interest

With the problem of Finnish representation now solved (and, by extension, Canada's own place rendered more secure), the Canadian delegation entered into the work of the Conference. The chief problem among the delegates was one of definition; the various delegates held to different ideas as to what constituted Canada's best interests, vis-à-vis the I. L. O. Consequently, Canada's role in the proceedings was characterized by public difference of opinion between representatives of Canadian labour, industry and government over this critical issue.

²⁴Ibid., p. 89.

While the Canadian delegation did distinguish itself in the resolution of Finnish participation in the Conference, it also acquired distinction of a less welcome nature in terms of the agenda itself. The chief matter of that agenda--the hours of work proposal--found the Canadian delegates in opposing positions, and, predictably, friction arose among them.

At the Ninth Session of November 7, Canadian employers' delegate S. R. Parsons expressed the opposition of Canadian employers to the principle of limiting the work day and work week because "in the present world-wide conditions, we are not prepared for it and we cannot fit it to our individual country's economic system."²⁵ Much of Parsons's argument was a repetition of the ideas he had presented at the National Industrial Conference: shorter hours meant less production; shorter hours drew labour from agriculture to industry which resulted in higher food prices; shorter hours drove up the price of finished materials and thus encouraged inflation; shorter hours could not be fitted to Canada's seasonal industries, nor could they be rendered uniform across Canada due to geographic and climatic conditions; neither could the principle be adapted to Canada's federal system. Furthermore, he argued, shorter hours penalized the small business-owner and the under-industrialized nation

²⁵ Ibid., p. 57.

alike by limiting their ability to compete effectively. Parson's final argument concerned the industrial and economic relationship between Canada and the United States; Canada, he stated, would be unable to adopt any principle which the United States had not adopted herself. "Until the U. S. has spoken," Parsons said, "Canada must keep silent."²⁶

At the Seventeenth Session of November 24, Parsons once again rose to state the objections of Canadian employers to the hours of work convention. In addition to the points he had mentioned at the Ninth Session, he suggested that Canada, as a young and underdeveloped country, could not be placed on the same competitive footing as European states. Canada should have the opportunity to manage its own affairs to suit its own special circumstances; national development should not be constrained by international obligations which took no cognizance of these conditions.²⁷ In this, Parsons seemed to be articulating a rather bold statement of national self-interest--an issue with which the I. L. O. had not yet come to terms.

The response to Parsons' remarks was immediate and nothing short of surprising since it came from the Canadian

²⁶Ibid., p. 59.

²⁷Ibid., p. 115.

delegation. Newton Rowell's defence of the hours of work convention originated in his belief that a practical (rather than idealistic) convention was possible and desirable. To this end, he had been responsible for having the matter referred to committee at the Tenth Session of November 10, where it could be decided whether or not a choice existed between the adoption of an eight-hour day and a forty-eight hour week standard, or whether the convention implied the adoption of both. The acceptance of Rowell's resolution had precluded an arid debate over the form of the convention and had allowed the proposed committee the freedom to choose either a dual or a partial standard to be presented to the Conference.²⁸ Parsons' remarks, however, indicated a self-interest which Rowell found offensive, especially since he believed that compromise was possible on the issue, whereas Parsons rejected any such notion. In his reply, Rowell criticized Parsons for his narrowness of view and then delivered the following clarification on the Canadian government's position with respect to the American situation:

The action of the Government of Canada in dealing with these matters does not depend on the action of the Government of the United States. It has not in the past. It will not in the future. . . . The Parliament of Canada has already approved the treaty containing the labour clauses and the Covenant of the League of Nations . . . the Government of Canada will carry out, in spirit as well as in letter, the obligations it has assumed under the treaty.²⁹

²⁸ Ibid., pp. 73-74.

²⁹ Ibid., pp. 116-117.

P. M. Draper's views also tended to clash with those of other Canadian delegates. On the issue of the form of the hours of work convention, he remained opposed to Rowell's efforts for compromise legislation. For Draper, equal consideration had to be given both to the eight-hour day and the forty-eight hour week to prevent work days of nine to twelve hours in length. Unlike Rowell, he did not recognize that any choice existed between the proposals.³⁰

Regarding the convention on unemployment, a clash of opinion occurred between Draper and Canadian employers' delegate E. Blake Robertson at the Twentieth Session of November 26. At that time, Robertson, in reporting on the findings of the commission to study the convention on unemployment, suggested that the draft convention on reciprocity in treatment of foreign workers in all matters of protection of labour (including the right of lawful association) should give consideration to the guidelines set down by the employers' group of the committee to study unemployment and work organization of the National Industrial Conference. These guidelines implied that, while the right of labour to organize was recognized as legal by Canadian employers, no employers were compelled to recognize the organizations themselves, thus leaving Canadian employers free to maintain the "open shop" system. Robertson main-

³⁰ Ibid., p. 36.

tained that any attempt to compel employers to such recognition in the case of foreign workers would result in his opposition to the draft convention on reciprocity of treatment.³¹ Draper, in response, took issue with Robertson's reference to the findings of the Unemployment Commission of the National Industrial Conference; he maintained that such a reference had no place at this Conference and only created a misapprehension regarding the labour situation in Canada. The brunt of his argument was that Canadian employers generally did not maintain the "open shop," contrary to Robertson's implication, and that Canadian labour organizations did not require employer recognition to enjoy legal status in Canadian society. That status, Draper maintained, had been acquired independently of employer sanction, and was therefore already a recognized fact in Canadian society. However, because the employers had refused to move beyond that pre-established fact to a full recognition of what this right implied for worker representation, Canada had undergone serious industrial strife. Draper blamed this unrest on the employers and their stubborn resistance to labour's full right to negotiate for just conditions. As often as employers had forced the "open shop" system upon Canadian labour, they had been met with labour unrest, of late the Winnipeg Strike.³²

³¹Ibid., p. 140.

³²Ibid., pp. 142-143.

Draper then declared with respect to worker representation, "If we are to have industrial peace in our country in the future, it will be by the employers recognizing the right of the trade-unions to enter into collective bargaining or any other kind of agreement that will suit their membership."³³ It was an outspoken and daring departure from the general solidarity which had prevailed among most of the thirty-nine national delegations, and it underscored for the entire international community, the serious difficulties that continued to beset Canadian industry.

By the final week of proceedings, Canada's participation at the Washington Conference had taken on a specific character. In addition to what Samuel Eastman has referred to as "the Canadian problem" regarding equality of status, Canada's presence had been characterized by divisiveness within its delegation and the repeated complaint that conditions in Canada were so different from Europe that any suggestions for draft conventions would have to recognize this fact or be considered invalid for Canada.³⁴ While S. R. Parsons had maintained that attitude towards all aspects of the hours of work convention, Newton Rowell's reply, although stern with regard to possible American in-

³³ Ibid., p. 143.

³⁴ Samuel M. Eastman, Canada at Geneva (Toronto: Ryerson Press, 1946), pp. 6-7.

fluence in the matter, had contained suggestions for modifications to suit Canadian conditions.³⁵ But with regard to the convention on reciprocal treatment for foreign labour and to the matter of equitable distribution of raw materials, Rowell was uncompromising on behalf of Canadian sovereignty and national interest.³⁶ Similarly, in the matter of government subventions for unemployment, E. R. Robertson stated that:

For the conference to recommend that any certain system should be introduced in a particular country without the conference having sufficient information and knowledge regarding the particular state and the conditions therein to justify the recommendation, can have no other effect than to discredit . . . the work of the conference in the eyes of the thinking public.³⁷

P. M. Draper seemed to stand out in his refusal to allow these arguments to have any bearing on Canada's obligation to the I. L. O. On the whole, there could be little doubt that national interest played an important role in shaping the character of Canadian involvement at the Conference.

This fact was particularly evident in the matter of the selection of the representatives to the Governing Body. That selection had been a chief source of irritation to Canada for several reasons. Borden and the members of the

³⁵International Labour Organization, Proceedings of the First Annual Conference, pp. 116-117.

³⁶Ibid., p. 154.

³⁷Ibid., p. 139.

delegation had felt that Canada more than qualified as a nation of chief industrial importance, especially since tremendous amounts of war material had originated in Canada. Furthermore, (and in this opinion Canada was by no means alone), Canada felt that the European predominance in the Governing Body was both foreign to the spirit of the Conference and was perhaps even contrived to ensure a European advantage in terms of design and scope of the conventions.³⁸ Canada's formal objection, along with those of Poland, Sweden and India, was recognized at the Second Session of Wednesday, October 29 and was transmitted to the Selection Commission for further consideration. At the Nineteenth Session of November 25, it was determined that since Article 393 of the Treaty provided for four non-permanent Government seats to the Governing Body, in addition to the eight permanent positions, these seats should be awarded for a three-year term (subject to renewal) to Spain, Argentina, Canada and Poland. Out of thirty-one votes cast for each of the nominees to the positions, Canada received twenty votes in favour of its claim and, in addition, P. M. Draper was selected as employee delegate to the Governing Body as a substitute for an American labour representative.³⁹

³⁸ Butler, "The Washington Conference," in Shotwell, ed., The Origins of the International Labour Organization, I:321.

³⁹ International Labour Organization, Proceedings of the First Annual Conference, p. 131.

Canada accepted the decision, and the Governing Body was constituted in time to give legal effect to the decisions of the Conference.

e. The Canadian Voting Record
at the Washington Conference

The conflicts and differences among the Canadian delegates showed most clearly in Canada's voting record at the Conference. The following section will examine this information and note its influence on Canada's position at the Conference. Of particular interest is a comparison between the records of Canada and Great Britain, as it reveals to what extent the Dominion still adhered to the example set down by the mother country.

The Canadian voting record on the draft conventions and recommendations provides a clear illustration of the divisions that beset the Canadian delegation. The delegates were unanimous in their support of certain of the draft conventions--those concerned with fixing the age for admission of children to industrial employment, night employment of women and young persons, and the establishment of state apparatus to oversee the problem of national unemployment. They were unanimous as well on recommendations concerning protection of women and children against lead poisoning, prevention of anthrax, establishment of government health services, prohibition of private employment agencies, the prohibition of the manufacture of white

phosphorus matches, and state co-ordination of public works projects to alleviate national unemployment. These recommendations and conventions, however, did not touch upon the basic relationship between labour and industry in Canadian society, because they addressed only those situations where the federal authority had already intervened. The more encompassing matters (such as the hours of work issue) indicated definite differences in opinion. To the recommendation regarding reciprocity of treatment of foreign workers, Newton Rowell publicly stated his opposition because in the form in which it was presented, the recommendation differed from its original text, and therefore in his opinion could not be dealt with at the Conference. Nonetheless, the second government delegate, Gerald Brown (for Gideon Robertson) did vote in its favour, as did Parsons and Draper. The incident itself seems to indicate that Rowell continued to distinguish himself at the Conference as the delegate most concerned with the legality of the proceedings. The Canadian vote also split on the recommendation that foreign labour be not permitted to enter a state prior to consultation of the employers and employees concerned. Draper supported this matter while Rowell, Brown and Parsons voted against it. On the recommendation to establish state and part-state/part-private systems of unemployment insurance, Brown, Rowell and Draper voted in favour while Parsons voted against. On the Hours of Work Convention (eight per

day and forty-eight per week), Rowell, Draper and Brown supported the measure, while Parsons rejected it. This alignment within the Canadian delegation is of particular significance, because the government delegates had not sided with labour on the matter of hours of work at the National Industrial Conference in Ottawa. Apparently, the change at the Washington Conference represented the first attempts by the Borden Ministry to give effect to the Prime Minister's promise to honour I. L. O. obligations.

The convention regarding the employment of women before and after childbirth included several proposals. While the Canadian vote was unanimous in its rejection of the proposal to include agriculture as a classification of work under consideration, the vote split on the proposal to classify industry and commerce in the same way. In this, Draper supported the suggestion, while Brown, Rowell and Parsons rejected it. The convention itself, subsequently, also drew a split vote from Canada: Draper supported the measure while Brown, Rowell and Parsons voted against it.⁴⁰

In all, the Conference passed six recommendations and six draft conventions in its final sessions. Of these, Canada unanimously supported three conventions and five recommendations. On those matters where unanimity was not forthcoming, the Canadian delegation usually split between

⁴⁰ Ibid., pp. 179-191.

employer and employee delegates. The government delegates tended to side with the former more often than with Mr. Draper except on the crucial issue of hours of work.

Canada's voting record seemed not to vary from the British practice to any significant degree, although in the matter of the four clauses of the recommendation on unemployment, some disparity was evident. Both of the government delegates of Great Britain had abstained from the vote on the prohibition of private employment agencies, leaving the workers' and employers' delegates to split on the issue, whereas all the Canadian delegates voted in favour of the recommendation. On the clause regarding mutual agreement between workers and employers prior to recruitment of foreign workers, the British vote split in a way similar to that of Canada: the workers' delegates voted in favour of the issue, while the delegates for government and employers opposed it. During the Conference proceedings, the Canadian and British delegations found themselves in agreement on most issues, particularly in the matter of the Conference recognition of Finland's claim to I. L. O. membership. In fact, British support of the Canadian position strengthened the argument of the minority report. Certain specific differences did arise, however, particularly regarding the debate on the hours of work convention wherein George Barnes chided S. R. Parsons for prolonging the discussion against the measures beyond a reasonable limit. It was Barnes'

contention that this convention was a recognized fact of the Labour Charter and that Mr. Parsons' repeated complaints about its influence on Canadian industry served no useful purpose.⁴¹ Nevertheless, the British employers' delegate, D. S. Marjoribanks, did concur with Parsons on his argument that general reduction of working hours would have deleterious effects on production,⁴² but this support did not extend to the voting itself, where Parsons and the employers' delegate from Norway, G. Paus, cast the only two dissenting votes on the issue. For the most part, the Canadian delegation apparently voted according to national interests rather than British precedent. No conclusive evidence seems to exist that any Canadian delegates supported British initiatives out of hand. In fact, where British interests arose, only Newton Rowell ever moved to support them and on those two occasions, only to gain time for the British delegation by way of postponement of debate.⁴³ Otherwise, Canada seemed to chart its own course. On only one occasion did Canada's position on a specific issue vary completely from that of Great Britain and several of the other Dominions.

⁴¹Ibid., p. 115.

⁴²Ibid., p. 66.

⁴³Ibid., p. 154.

This matter concerned a special resolution on the hours of child labour in India. The Canadian vote split on the subject; both government representatives supported Draper on the proposal, while Parsons cast the dissenting vote. However, by supporting this measure, the government and labour delegates of Canada found themselves in direct opposition with the government delegates from Great Britain.

f. The Importance of the Conference to Canada

The Washington Conference was of chief importance to Canada with respect to two issues which were to have a direct bearing on future Canadian participation in the I. L. O., namely, recognition of Canada's equality of status, and definition of Canadian self-interest. Newton Rowell clearly addressed the former issue on more than one occasion when he stated that it would be the Canadian government which would, in the end, decide on the specifics of Canadian industrial policy. In a sense, the Canadian delegation was testing the waters of national sovereignty at the Washington Conference; testing, and finding them to its liking-- particularly in the face of an Italian proposal concerning the equitable distribution of raw materials. To it, Canada was in solid opposition, and Newton Rowell reminded the Conference of its own clearly-defined limits. The Conference had no jurisdiction over such matters, he maintained, because it was not an international parliament with legislative

powers.⁴⁴ This, then, was as clear a statement as possible of future Canadian policy regarding the I. L. O. and the League itself. Canada's presence, no longer questioned, was not to be taken for granted. Canadian interests would take precedence regarding her obligations as they had with regard to membership and status. Moreover, Canada's status was enhanced by Robert Borden's contribution to the Washington Conference, because his amendment to the draft Convention of the I. L. O. on dual membership was instrumental in legally convening the Conference before the League itself had been officially empowered. This dual membership principle bestowed on the Conference the contingent authority to proceed in its deliberations. Hence, the Borden Amendment, while originally conceived to protect Canada's equal status in both organizations, possessed the additional benefit of clarifying the constitutional nature of the Conference itself, thereby furthering the cause of Canadian influence in the organizations.

Important questions remained, however, for the Canadian worker. Although provincial representatives had accompanied the delegation as advisers, there was no guarantee that the provinces would grant the federal government jurisdiction to legislate uniformity in the provisions of provincial factory acts. In the Parliamentary

⁴⁴Ibid., p. 154.

Session of November 8, Messrs. Fielding and McKenzie of the Opposition reminded the government spokesman, Sir George Foster, of this very fact: that national legislation was still the only means to give effect to these conventions and then only with prior provincial approval.⁴⁵

g. The Political Reaction in Canada,
to the Washington Conference

The political reaction in Canada to the Washington Conference was varied. Several investigations were conducted by the Labour and Justice Departments of the Borden and Meighen ministries into the question of the constitutional jurisdiction for ratification of the Washington proposals. However, their outcome tended to confuse the issue in several ways by suggesting contradictory interpretations of the use of federal and provincial powers. For the most part, crucial I. L. O. matters were left to the discretion of the provincial legislatures for their consideration, a less than ideal decision given the prior existence of inter-provincial rivalry and suspicion in economic and social matters.

As Canada entered the 1920's, it became apparent to labour, capital and government that the future of the Dominion demanded equal involvement of all three of these groups in the function and progress of industry. Both the National

⁴⁵Canada. House of Commons, Debates (November 8, 1919), p. 1950

Industrial Conference and the Washington Conference of the I. L. O. had indicated that understanding was possible through negotiation, but had also made it clear that any such effort would be doomed to failure without an active government role in the proceedings. Whether in the case of private industrial disputes where a voluntary request was made for application of the Industrial Disputes Investigation Act, or that of the more encompassing work of the I. L. O. Conferences, the Canadian federal government was gradually assuming a role which was central to the successful outcome of negotiations between labour and industry. It was a role, however, with which Borden and the Unionists had never been comfortable. Indeed, except for the Wheat Board, the obligations under the Employment Offices Coordination Act (1918), and minor legislation aimed at the inflationary spiral, the Unionist ministry had attempted to divest itself of its war-time functions and controls. But Canada's role at the Washington Conference had proven this abstinence to be contradictory to the spirit of the I. L. O. and Canada's status within the organization. Here was an anomaly which could not be resolved by John Dafoe's optimistic contention that:

Whatever good effect (the Labour Conference) is able to produce in (Canada's) troublous industrial situation, Canadians at least have the satisfaction of knowing that Canadian statesmanship secured for them the right to attend the Convention clothed with full responsibility and powers of action.⁴⁶

⁴⁶Manitoba Free Press, 30 October 1919.

By 1920, after the first enthusiasm had subsided, the Unionist governments of Robert Borden and his successor Arthur Meighen, had still to confront the question of what "full responsibility" entailed insofar as international labour legislation was concerned. Borden's all-consuming belief in the necessity of international recognition of Canada's new status had kept him aloof from domestic labour crises even as it had compelled him toward the Labour Charter of the I. L. O.⁴⁷ Yet he was acutely aware of the necessity for the federal government to take some initiative in this regard. In his farewell address to the Unionist caucus,⁴⁸ he maintained that:

No question demands more serious attention than that which is concerned with the effective co-operation of the Government in promoting, establishing and maintaining the best relations between capital and labour. We have given our assent in the Peace Treaty and in the Labour Conference at Washington, to certain principles which must be carried out by legislation within a designated period, in so far as the responsibility pertains to or can be fulfilled by the Federal Government and Parliament.⁴⁸

The unravelling of the constitutional knot, though, he left to Arthur Meighen.

By disposition, background and reputation, Meighen was singularly unprepared to undertake the task. In the first place, his role in the prosecution of the leaders of the

⁴⁷ Robert Craig Brown, Robert Laird Borden, A Biography, 2 vols. (Toronto: Macmillan, 1975), II:175-176.

⁴⁸ Robert Laird Borden, Memoirs, 2 vols. (Toronto: McClelland and Stewart, 1969), II:245.

Winnipeg Strike had netted him the undeserved stigma of anti-labour reactionary and lackey to big business interests. In fact, like Borden he did sympathize with labour and saw in the post-war economic conditions justifiable reasons for worker complaint. However, he felt as strongly as did Borden that strikes and other forms of unrest were inappropriate methods for labour to voice its grievances. The fear that such actions were in fact indications of revolutionary upheaval and class warfare compelled Meighen to take a strong stand in the face of labour unrest.⁴⁹ Unfortunately, he had not Borden's keen interest in foreign policy and international status, and therefore his minimal attention to the obligations assumed by membership in the I. L. O. removed him that much farther from some type of accommodation with the unions regarding labour standards. While he supported the principles behind the founding of the I. L. O. (in September, 1920 at the Thirty-sixth Annual Convention of the T. L. C. in Windsor, Ontario),⁵⁰ his chief concern in foreign affairs was to maintain diplomatic conformity with Great Britain and the Empire and a harmonious relationship with the United States.⁵¹ Any proposal which

⁴⁹ Roger Graham, Arthur Meighen, 2 vols. (Toronto: Clarke, Irwin Co., 1968), I:243-244.

⁵⁰ Labour Gazette (Ottawa, October 1920), p. 1334.

⁵¹ Graham, Arthur Meighen, II:55.

sought to impose some standard on Canadian industrial conditions but was not applied to the American scene was for him simply out of the realm of possibility. Here one may find the probable reason for the indefinite postponement of the second National Industrial Conference.

What the Canadian worker was receiving from government, therefore, was a somewhat confusing if not incomplete picture of Canada's efforts at the National Industrial Conference and the Washington Conference. As early as January 8, 1920, representatives of the T. L. C. and various international labour unions met with members of the Dominion government to discuss, among other proposals, legislation aimed at Dominion-wide application of the Hours of Work Convention, the recommendations of the National Industrial Conference, and the labour standards advocated therein.⁵² By January 20, the Dominion government had conducted a national survey of labour in Canada towards a possible early enactment of legislation as defined by the Hours of Work Convention. The results of this survey indicated that about one-half of all workers in the industries covered were working the eight-hour day, the largest numbers to be found in Ontario, Quebec and British Columbia. However, statistics also indicated that more of the labouring classes of these same provinces worked in excess of eight hours than in any other

⁵²Labour Gazette (Ottawa, February 1920), pp. 107-108.

part of the Dominion.⁵³ Although the survey made no recommendations as to jurisdiction over legislation in these matters, the Labour Gazette of March, 1920 reported that Federal Labour Minister Gideon Robertson had offered a proposal as to how the issue might be resolved. He had taken this initiative in response to British Columbia Labour Minister J. W. de B. Harris, who had asked what action the federal government was prepared to take to implement the I. L. O. convention on hours of work.⁵⁴ Essentially, Robertson repeated Justice Minister Charles Doherty's opinion that the treaty-making authority vested in Section 132 of the B. N. A. Act conferred on the federal government the power to implement this particular convention. Robertson had also admitted, however, that because of provincial jurisdiction in this matter, the provinces could enact standards in advance of any federal action on the convention.⁵⁵ Public Works Minister Sir George Foster, on the other hand, in the Dominion government reply of April, 1920 to the T. L. C. submission of January, 1920, held that the matter of federal jurisdiction in the labour conventions

⁵³ Ibid., (January 1920), pp. 46-47.

⁵⁴ Ibid., (March 1920), pp. 208-209.

⁵⁵ John Mainwaring, "Canada as an I. L. O. Member: Performance and Potential," Relations Industrielles 24:4 (December 1969), p. 702.

matter was still under discussion.⁵⁶ Apparently, Robertson had volunteered his own opinion on the issue to Harris, and the government was compelled quietly to repudiate it lest it jeopardize the ongoing work of the Dominion-provincial Commission on Uniformity of Labour Laws. Nevertheless, the leadership of the T. L. C., if not the body of Canadian labour at large, could probably not help but wonder what the federal government's actual policy might be with respect to labour standards, or whether it had any policy at all. If the federal government intended to take unilateral federal action based upon Section 132, did this imply the admission of an inability or unwillingness to undertake policy initiatives with the provinces? Or was this claim to federal authority a political effort by the Unionists to gain time and much-needed support for their crumbling fortunes?

Neither Robertson nor Meighen helped to clarify the situation. On April 6, 1920 Robertson suggested to the Senate that another National Industrial Conference might be held in Ottawa in the coming year to discuss improvements to the Industrial Disputes Investigation Act and further measures toward implementing the decisions of the 1919 Conference.⁵⁷ On June 30, Meighen upheld the promise that

⁵⁶ Labour Gazette (Ottawa, April, 1920), pp. 372-373.

⁵⁷ Canada. Senate, Debates (April 16, 1920), p. 115.

this conference would take place sometime in 1920, but nothing transpired on the issue. On April 14, 1921 Meighen once more repeated the promise for the conference, only to back away from the idea in June.⁵⁸ The issue remained unresolved after this point due to the changing political climate, but certainly his procrastination can not have aided Meighen in his struggle to fashion a decisive programme on which to build an electoral policy.

The Borden-Meighen governments did succeed in advancing the work of the Dominion-provincial Commission suggested by the N. I. C. to study uniformity of labour laws by passing several Orders-in-Council in April, 1920 which empowered the Commission to make recommendations on legislative uniformity for various provincial legislation on workmen's compensation, minimum wage, factory inspection and regulation of the labour conditions of various industrial undertakings. In its report of May 1, 1920 this Commission recommended that the federal government institute a permanent six-member Federal-Provincial Board composed of dual tripartite representatives from federal and provincial labour, industry and government for the purposes of overseeing whatever legislation might result from their recommendations on the specific subject areas. Jurisdiction over certain of these subjects (e.g., workmen's compensation legislation

⁵⁸(Commons), Debates (June 30, 1920), p. 4512; (April 14, 1921), p. 2101; (June 14, 1921), p. 4549.

and the I. L. O. Convention on Hours of Work for Women and Children) was awarded to the federal authority, as it was judged necessary to apply uniformity on provincial factory acts for the general public good. Jurisdiction over other matters (e.g., regulation of conditions in mines) was awarded to the provinces on the basis of wide inter-provincial disparities in conditions which, it was judged, were subjects not easily given to uniform legislation.⁵⁹ Unfortunately, some of the findings of this Commission clashed with some specifics of the Department of Justice Report on legislative competence with regard to the I. L. O. conventions arising out of the Washington Conference. This report, submitted to the Governor-General-in-Council on November 6 by the Justice Department,⁶⁰ made the first official statement on the extent of federal authority in these matters by maintaining that the specifics of Article 405 of the Treaty (requiring federal authorities to treat labour conventions as recommendations and then to submit these to the competent authorities) obviated the need for the Federal government to move unilaterally on the basis of Section 132 of the B. N. A. Act. Whether or not the provinces chose to ratify after receiving I. L. O. conventions as recommendations, the

⁵⁹ Labour Gazette (Ottawa, May 1920), pp. 538-547.

⁶⁰ Ibid., (November 1920), pp. 1491-1493.

Dominion government judged that its own responsibility ended after submission of the I. L. O. decisions. To further confound the issue, whereas the Federal-Provincial Commission on Legislative Uniformity had awarded regulation of the I. L. O. Convention on Hours of Work for Children to the federal authorities, the Justice Department awarded it to the provincial authorities. The same held true for the I. L. O. Convention on Women's Nightwork. In fact, all the proposals subsumed under the Hours of Work Convention and the conventions regarding employment of women before and after childbirth, and the minimum age for admission of children to industry, were judged to be within provincial jurisdiction. In the latter case, it was of course doubtful that the Dominion government's authority would have been recognized anyway, given that the work of Dominion projects very seldom involved the employment of women and children. Other judgements by the Department seemed to imply contradictory applications; for instance, with regard to the Convention on Unemployment, the report granted the jurisdiction over the national system of employment agencies to the federal authority, so as to check the widespread abuses practiced by private employment agencies, but gave to the provincial authorities the sole right to suppress these agencies pending the adoption of whatever legislative measures and standards the provinces chose to come up with. Yet, the authority of the federal government in this area

in fact was predetermined by the existence of prior national legislation, namely, the Employment Offices Co-ordination Act of 1918.

Except for these matters, the federal government was regarded as the competent authority to fulfill the requirements of the remaining conventions and recommendations. These included the recommendations on the Unemployment Convention referring to recruitment of foreign workers and the enactment of a system of unemployment insurance, both of which were judged to be subsumed under the authority of existing federal legislation and the residual clause of the B. N. A. Act, while the recommendation referring to co-ordination of public works projects was judged to be a shared responsibility of the federal and provincial powers. The federal government's authority was also recognized in regard to the recommendations concerning the protection of women and children against industrial poisoning, the reciprocity of treatment of foreign workers, the prevention of anthrax, the establishment of health services and the application of the 1906 Berne Conventions on prohibition of white phosphorus in the manufacture of matches (for which Dominion legislation had already been passed as of 1914). The Justice Department recognized federal jurisdiction generally on the basis of Section 91 and of the residual clause of the B. N. A. Act, but Dominion authority was also extended to those areas of concern which could be partly

subsumed under the authority of Section 91 of the B. N. A. Act. Furthermore, with respect to Dominion works, the federal government also possessed jurisdiction in the area of the various I. L. O. recommendations and conventions which might normally come only under provincial authority. This apparently was to be the general procedure whereby Canada would fulfill I. L. O. obligations; it was articulated by the Department of Justice in the following:

The Treaty engagement being of this character, (in reference to Article 405) it is not such as to justify legislation on the part of Parliament under the Authority of Section 132 of the British North America Act, 1867, to give effect to any of the proposals of said draft conventions and recommendations, which must be held, as between the Dominion and the provinces to be within the legislative competence of the latter. The Government's obligation will, in the opinion of the Minister, be fully carried out in the different conventions and recommendations are brought before the competent authority, Dominion or Provincial, accordingly as it may appear, having regard to the scope and objects, the true nature and the character of the legislation required to give effect to the proposals of the conventions and recommendations respectively, that they fall within the legislative competence of the one or the other.⁶¹

Of crucial importance for the fate of I. L. O. draft legislation in this period was the position of the provincial governments. The persistent and growing stridency with which the doctrine of provincial rights was held up fostered a sectionalism which in turn rendered it extremely

⁶¹Ibid., p. 1492.

difficult to attain any overall consensus on I. L. O. standards. The disparity in economic life between the depressed Maritime and the booming central provinces complicated the issue, while interprovincial trade rivalries, jealousies and disagreements over shipping rates created a confrontational atmosphere in which any effort at labour standardization was sure to be greeted with suspicion and obstruction.⁶²

Much of the Dominion responsibility was already covered by existing legislation (e.g., the various Immigration Acts covered much of the matter dealt with by the recommendation on recruitment of foreign workers), or would be, given the specific constitutional authority. But the legislative responsibilities of the provinces toward the first I. L. O. initiatives were not as encouraging. At the heart of the matter was the fear of each individual province that by ratifying I. L. O. standards, it would place itself in an unfavourable economic position compared with those which had not ratified or would not do so. Consequently, British Columbia, for example, passed a series of acts in 1921 to give effect to the Washington Conventions, but these acts were not designed to come into force until the enactment of similar legislation by the rest of the provinces.⁶³

⁶² Edgar McInnis, Canada: A Political and Social History (Toronto: Rinehart and Co., 1959), pp. 431-432.

⁶³ Bryce M. Stewart, Canadian Labour Laws and the Treaty (New York: A. M. S. Press, 1968), p. 36.

Only by bringing the provincial governments directly into the work of the I. L. O., suggested F. A. Ackland, would an "obvious advantage" be gained in fulfilling Canada's obligations to the organization.⁶⁴ Otherwise, Canada's presence on the Governing Body would merit very little respect.

Thus, the success or failure of Canada's position in the I. L. O. at this time effectively rested with the provinces and their attitudes toward social legislation. That the Borden and Meighen governments never sought an understanding with the provinces on the best method for the Dominion government to assume greater authority for ratification, seems to indicate that political response in Canada to the I. L. O. obligations was at best lukewarm.

With the conclusion of the Washington Conference, Canada could look on the work of 1919 with some satisfaction. In that time, the Dominion had evolved from a part of the British Empire with no autonomous international status, into an independent member of the world community. Canada had gained not only separate recognition for its delegation at the Peace Talks, but in the League and the I. L. O. as

⁶⁴Labour Gazette (Ottawa, July 1920), p. 854.

well, and in addition, had succeeded in acquiring a position on the I. L. O. Executive. In effect, the Washington Labour Conference had confirmed Canada's international status while Newton Rowell's work in particular delineated the role which Canada intended to assume on that basis. For the most part, Canadians supported their country's initiative in Washington, and Tom Moore, President of the T. L. C., spoke for a more hopeful Canadian labour class when he stated that, "Canada has made international obligations (and) the workers will do their part in carrying them out."⁶⁵ Press opinion, as well, tended toward optimism, with the Manitoba Free Press as the leading proponent of the work of the Conference. Its opinion was of special significance to the workers of Winnipeg, who, in microcosm, had represented the plea for justice of all Canadian labour. On October 29, the opening day of the Conference, the Free Press articulated the hope for better days ahead in the following statement:

The International Labour Convention will lift the subject of industrial relationships to a level of discussion they have never previously reached, and it will do this in the eyes of the whole world and in the expressed attempt to substitute peaceful methods for the battle and waste of strikes in arriving at settlements. If at the end of its sittings, it has done no more than convince the people that this at least, is the way the work should be done, the convention will have done well. If we manage to lay the foundations of industrial peace in these days, it will be no trifling contribution to the welfare of the human species.⁶⁶

⁶⁵ Manitoba Free Press, 27 November 1919.

⁶⁶ Ibid., 29 October 1919.

In the decade to follow, Canada was to be hard-pressed to realize "Labour's Magna Charta," as the optimism of 1919 diminished before the political and constitutional facts of the 1920's. What Canada had taken from Washington was more than a sense of her own status; it was the realization that Canadian interests took precedence when they could not be resolved vis-à-vis international obligations. Unfortunately, this was the very attitude against which the I. L. O. could not prevail.

CHAPTER VI

CANADA AND THE I. L. O. IN THE MACKENZIE

KING ERA: 1921-1930

Canada's involvement in the I. L. O. in the 1920's was characterized by diplomatic, constitutional and political considerations and priorities which tended to limit Canada's effectiveness in the Organization. Diplomatically, Canada's role under the Liberals reflected King's general distaste for membership obligations. King displayed far more interest in Canada's role in North America, and thus paid only little attention to its place in the international community. This attitude tended to limit Canada's effectiveness in the Organization inasmuch as it discouraged the government delegates from taking decisive positions on many issues. Canadian involvement was more restricted still by the constitutional issue. The many rulings and discussions on the subject in this period never adequately defined the extent of federal authority regarding I. L. O. draft legislation. Therefore, the Dominion government delegates were often prevented from committing Canada to important I. L. O. decisions, and as a result Canada's record of ratifications was embarrassingly skimpy. The responsibility for taking any action fell to the provinces, but given the nature of the federal system, not to mention

the various inter-provincial economic rivalries, a uniform application of I. L. O. principles was an impossibility. Nevertheless, many provinces, notably British Columbia, did take important measures based on I. L. O. decisions, thus partly filling the void in social legislation left by Dominion inaction.

Canada's role in the I. L. O. in this period was also influenced by party politics. This was particularly true with respect to ratifications, as Dominion action on I. L. O. decisions in this period often reflected the desire of the King administrations to gain a political advantage over the Conservatives. An outstanding example of this was the timing of the Fair Wages and Hours of Work Act, which was arranged to coincide with the federal election of 1930. Other considerations springing from Canada's geographic and economic nature, of course, were also important factors bearing upon the Dominion's stand with respect to the I. L. O.

Canada's status in the international community in this era was thus often compromised by narrow interests which had no direct regard for the wider principles of organizations like the I. L. O. Neither did they have much regard for the interests of Canadian labour. Very often, rather, the proceedings at Geneva in this period saw Canadian labour on one side and Canadian industry and government on the other, unless the government delegates chose to abstain from committing themselves, which they often did.

It is the intention of this Chapter to examine various facets of Canada's involvement with the I. L. O. in the Mackenzie King era. Necessarily, this Chapter is subdivided into several sections and subsections. A first glance is cast at the political situation at the onset of this period and the general attitude of the incoming King government to Canada's relationship with the I. L. O. An examination of Canada's roles at the Second Conference, 1920, the Third Conference of 1921, and the remaining conferences from 1923 to 1929 follows. Of further interest is Canada's role in the Labour Office. The subject of governmental attitudes towards and initiatives in the I. L. O. in this period will round out the look at the 1920's. Of concern in this context are Canada's record of ratifications to 1929; the role of the Justice Department in helping to define the procedure for Canadian compliance with I. L. O. obligations; various Dominion and provincial initiatives toward these obligations; the role of the Canadian Supreme Court and the Privy Council in interpreting Canada's obligations; and an investigation into the ratifications of 1930 and their significance for King and the Liberals. The Chapter will conclude with an examination of public opinion with respect to the I. L. O. in this period.

a. The Canadian Political Situation
at the Onset of this Period

The purpose of the following section is to outline briefly the basic attitude of the incoming King government toward Canada's participation in the I. L. O. It was an attitude that remained fairly constant throughout the 1920's, in spite of a labour policy that implied otherwise, and therefore led to a great deal of embarrassment for the delegates at Geneva who were compelled to defend it.

While Meighen and the Unionists seemed to have no coherent policy regarding labour or the I. L. O., Mackenzie King and the Liberals did have one. The Liberal platform of 1919 articulated the intention to pursue the implementation of the terms of the Labour Charter, "in the spirit they have been framed and in so far as the special circumstances of the country will permit."¹ In addition to this vague statement, the platform contained resolutions on public health policies, representation of labour on federal commissions and railroad boards, control of cost of living, and establishment of a system of insurance for the worker sponsored by the federal government. But promise and platform are seldom easily translated into practical politics. The Liberal government's labour policy and its attitude toward international obligations could not be separated.

¹C. P. Stacey, ed. Historical Documents of Canada (Toronto: Macmillan, 1972), V:39.

Once in office in 1921 King did little to encourage any support for Canada's obligations to the League and the I. L. O. He was willing to have Canada participate with caution, but dreaded international commitments.² In fact, he attempted on more than one occasion to fill Canada's place on the Governing Body of the I. L. O. with political patronage appointments³--a somewhat cynical initiative from the author of Industry and Humanity.

b. Canada and the Second Conference,
Genoa, 1920

Canada's role at the Genoa Conference of 1920, while technically still guided by the outgoing Unionist government, displayed certain important characteristics which would reappear throughout the 1920's. Chief among these was the preoccupation with national interest defined by geographical and economic conditions. It will be seen, however, that in certain specific instances, this preoccupation with regional conditions served the wider purpose of clarifying certain proposed conventions whose uniform application might have proved troublesome to most of the membership.

The Second Conference of the International Labour Organization, the "Seaman's Conference," was held in Genoa

²Canada. House of Commons, Debates (March 3, 1919), p. 140.

³R. M. Dawson, William Lyon Mackenzie King (Toronto: University of Toronto Press, 1958), p. 426.

from June 15 - July 10, 1920. The purpose of this conference was to adopt international standards for the regulation of labour conditions in world shipping. It had been generally accepted by the Governing Body as well as the Conference (at the first session) that the standards set at Washington would be difficult to apply to work at sea, and that the latter, therefore, required separate consideration. The conference's agenda was divided into four pertinent subject areas: hours of work at sea, unemployment of seamen, including facilities for finding employment and insurance against unemployment, employment of children at sea and Seamen's Codes. The conference was able to agree on three conventions and four recommendations: one of the latter, the hours of labour recommendation, had originally been presented as a convention but had failed to secure the necessary two-thirds majority. The hours of work issue (especially regarding inland navigation) was the subject of the most serious debate among the delegates, a debate into which Canada was drawn out of national self-interest.

The Canadian delegation to Genoa consisted only of the delegates themselves, without advisers or provincial representatives. The government was represented by Philippe Roy, Commissioner-General of Canada at Paris, and G. J. Desbarats, Deputy-Minister of Naval Affairs. Thomas Robb, Secretary of the Shipping Federation of Canada, served the employers' interests while J. C. Gauthier, President of the

Sailors, Firemen and Cooks' Union of Canada stood for the workers. Since the Canadian delegation was alone in representing North American opinion, as neither advisers from the American government, nor any American workers' or employers' groups had come along, it found itself in a somewhat delicate situation. G. J. Desbarats described this in a report to the Department of Labour:

Many of the questions relating to the employment of seamen affect Canada and the United States in a similar manner, and on the Great Lakes and the boundary waters their interests are similar, and it would be difficult for Canada to adhere to a Convention which would obligate it to conditions which would not be recognized by the United States.⁴

Here was a situation which did not support Newton Rowell's contention that "the action of the Government of Canada . . . does not depend on the Government of the United States."⁵ On the contrary, Canada's best interests apparently could not be served by taking too independent a position on certain subjects.

Of major concern was the hours of work convention as applied to inland navigation. In this matter, Canada let its views be known even before the Conference empowered commissions to study the issue. At the Third and Fourth Sessions of June 16 and 17, both Thomas Robb and Joseph

⁴ Labour Gazette (Ottawa, October 1920), p. 1319.

⁵ International Labour Organization, Proceedings of the First Annual Conference (Washington, 1920), p. 36.

Gauthier made statements advising against hasty application of the Washington Conference Convention on the Eight Hour Day-Forty-eight Hour Week to inland waterways or fishing trawlers. Both classes of concern, they maintained, were governed in many states (but particularly in Canada) by conditions of climate or political circumstances (inland waterways were often shared between member and non-member states) which made application of the Eight Hour Convention nearly impossible.⁶ In this, Canada received much support from several European delegates who saw similar difficulties for their own nations. Great Britain and France supported a proposal for a special study commission to examine the subject of inland navigation. As this matter was of chief concern to Canada, its delegation thought it imperative to have places on this and all other commissions touching upon the problem of inland waterways. When it became apparent that the commissions were to be representative of European opinion and that too few positions were allocated for Canadian representatives, the Canadian delegation therefore lodged several unofficial complaints.⁷ This resulted in the appointment of Canadian representatives to each of the commissions, with the exception of the Commission

⁶International Labour Organization; Proceedings of the Second Annual Conference, 2 vols. (Geneva, 1921), I:26-31; 47-49.

⁷Labour Gazette (Ottawa, October 1920), pp. 1318-1319.

on Employment of Children at Sea. On the Hours of Labour Commission, Canadian employers were represented by Robb and workers by Gauthier. The commission appointed to study the application of the Hours of Work Convention to inland waterways was chaired by Robb with Gauthier as a further delegate. G. C. Desbarats represented Canadian government interests on the Unemployment Commission and the Commission of Selection, while Robb represented employers on the Commission dealing with the Seaman's Code. Robb was also selected as a member of the permanent consulting body of owners and seamen whose task it would be to advise the Labour Office when necessary on conditions of work at sea.

Of all the matters which came before the Conference, that respecting the conditions of inland navigation proved the most troublesome. One difficulty was the definition of inland as opposed to marine navigation. Under the chairmanship of T. Robb, the commission was able to arrive at an overall statement which did not bind any member to a specific policy or procedure; it maintained that the member states,

should enact legislation limiting . . . the hours of work of workers employed in inland navigation on waterways used in the main by its own vessels, with such special provisions as may be necessary to meet the geographical and industrial conditions peculiar to inland navigation in each country, and after consultation with the organizations of employers . . . and workers involved.⁸

⁸ International Labour Organization, Proceedings of the Second Annual Conference, 2 vols., I:263.

Unfortunately, the studied vagueness of this statement invited criticism and debate. The French Technical Adviser Louis Reaud rejected the idea that any distinction should be made between the two classes of sea labour, since the very concept of international labour legislation postulated application regardless of national conditions and circumstances.⁹ However, George Desbarats rose to defend the Canadian position in this regard by reminding the Conference that some types of international labour legislation were simply impractical, given that:

In my own country we have laws relating to internal waterways and we have other laws relating to lesser inland waterways. We have also laws relating to the coastal trade and to long distance navigation. If there are these four different sets of laws in one country, we can see how difficult a question it will be to legislate for the whole world.¹⁰

The debate limped along in this fashion with various amendments proposed, accepted or rejected, until the final text was read and adopted at the Nineteenth Session of July 5. This text essentially made the same statement as that of the first draft insofar as the responsibility for the definitions of inland and marine navigation and the corresponding legislation was recognized as residing with the members of the Conference.

⁹ Ibid., pp. 269-270.

¹⁰ Ibid., p. 275.

The Canadian voting record at Genoa resembled that of the Washington Conference in what it revealed about the government's position on labour standards. Again, a split vote occurred over the Hours of Work Convention. This convention, like its companion recommendation for inland navigation, was the product of protracted debate both within the commission and the General Conference. In the commission, this debate found Robb and the other shipowners' delegates solidly opposed to Gauthier and the employees' delegates on many topics, so much so that on more than one occasion the commission arrived at an impasse.¹¹ Consequently, the Preamble and Articles One and Two of the convention had to be submitted, with amendments, to the vote of the entire Conference before these could be taken into the body of the text. The vote on the Preamble, and Article One, taken at the Twenty-Second Session of July 7 found the Canadian government delegates siding with Gauthier, while Robb and many of the other shipowners' delegates stood in opposition.¹² The same situation prevailed at the Twenty-Third Session of July 8 at which the vote was taken on the Second Article.¹³ While these articles did pass the Conference vote, they barely received the necessary two-

¹¹Ibid., p. 505.

¹²Ibid., pp. 363-364.

¹³Ibid., p. 388.

thirds majority. The crucial matter of the Eight Hour Day or the Forty-Eight Hour Week Convention (Article One having established that a choice did exist for seamen), fared less well. Although many governments sided with the workers' delegates, Canada's included, the opposition of the shipowners' delegates, aided in some cases by government delegates (e.g., Denmark and Great Britain) was sufficient to prevent passage, as a single vote was lacking for a two-thirds majority.¹⁴ Thereafter, the matter was suggested to the Conference as a recommendation only. On the recommendation concerning the limitation of hours of work in inland navigation, however, all the Canadian delegates were unanimous in their support, as well all but three European delegates.¹⁵ Unlike its counterpart, this measure received strong support from the Conference. One reason was that it constituted only a non-binding recommendation; furthermore, the principle itself had received early acceptance by the Conference as a whole, partly because of the tenacity of the Canadian delegation in impressing upon its membership the overall importance of the consideration. As in the case of the Finnish question at the Washington Conference, Canadian delegates thus contributed much to the proceedings by illustrating how Canadian interests represented in microcosm the general interests of the entire Conference.

¹⁴Ibid., p. 478.

¹⁵Ibid., p. 446.

The Canadian delegation also voted en bloc to support the conventions on fixing the minimum age for admission of children to employment at sea,¹⁶ on the matter of unemployment indemnity in case of loss or foundering of the ship,¹⁷ on the matter of establishing facilities for finding employment for seamen,¹⁸ and on the establishment of national Seamen's Codes and of unemployment insurance.¹⁹

c. Canada at the Third Conference,
Geneva, 1921

The 1921 I. L. O. Conference was the first during a Liberal administration. Nevertheless, Canadian participation displayed many of the characteristics in evidence already at the Genoa Conference. Chief among these was the emphasis which the Canadian delegates placed on their regional difficulties. Of added interest at this conference, was the continuing conflict between the members of the Canadian delegation as to the nature and validity of the national interest.

Canada's role at the Third Session of the International Labour Conference (1921) seemed to reflect as much

¹⁶Ibid., p. 439.

¹⁷Ibid., p. 451.

¹⁸Ibid., p. 462.

¹⁹Ibid., pp. 445; 453.

interest on the part of the incoming Liberal regime, as had been shown by the outgoing Conservatives. Like the Conferences at Washington and Genoa, Canadian delegates were involved in the workings of several important commissions whose complex agenda concerning the adaptation of the Washington decisions to agricultural labour demanded input from many of the overseas members.

Whereas during the first and second conferences, however, Canada's contributions had demonstrated a certain internationalism, the proceedings of 1921 rather indicated more concern for the national self-interest. At the Sixth Sitting of the Third Session (October 29, 1921), the Canadian employers' delegate S. R. Parsons emphasized that, "it is highly desirable that no restrictions be placed on agriculture, which would prevent the proper development of this great land of ours."²⁰ Parsons then directed several criticisms at the Organization itself, and while these did not reflect specific government policy, they did illustrate the mood of Canadian industry toward the concept of internationally-supervised standards applied to what the Canadian employer considered as national domain. With regard to agriculture, and in particular, the Hours of Work Convention as applied to agriculture, Parsons maintained that the farm owner would suffer the effects of reduced hours in

²⁰International Labour Organization, Proceedings of the Third Annual Conference, 2 vols. (Geneva, 1921), I:102-104.

reduced output and income, and thus see the work force eroded by discontent with decreased wage scales. It was an old argument, one that Parsons had articulated at the National Industrial Conference and the Washington Conference. Unfortunately, Parsons' claim for special consideration for Canada probably did more harm than benefit to Canada's status at the Conference. Worker's delegate Tom Moore pointed out, in reply to Parsons' argument, that the opposition of the employers' delegate to the hours of work proposal as applied to agriculture was in complete contradiction to his stand on the hours of work convention as applied to industry. Having held that this latter proposal was unfair to Canadian industry because it threatened to draw off agricultural labour to the cities, Parsons now opposed its extension to agriculture because labour might be attracted to the farms by the promise of an increased wage scale commensurate with an unregulated pace of production.²¹ Doubtless, Moore was not alone in asking how these contrasting policies could coexist in the Canadian labour market, or for that matter, how Canada's status was to be enhanced by these protestations. Apparently Parsons' comments at the Sixth Sitting constituted an embarrassment to the Canadian delegation as a whole, especially after the protests of the British and Belgian delegations against

²¹ Ibid., pp. 105-107.

the gross statistical inaccuracies in his comments on the worldwide agricultural wage. It seems that Parsons learned his lesson. He was not heard from again after the Sixth Sitting, nor was he invited to return to any I. L. O. Conferences on behalf of employers.

Parsons' views certainly reflected the narrower interests of Canadian industry; but the opinions of Gerald Brown, Assistant-Deputy Minister of Labour and government delegate, and of E. Blake Robertson, adviser to the employers' delegate also revealed a desire to stress the national self-interest. Brown opposed certain aspects of the Recommendation on Technical Education in Agriculture not because he found any particular feature of the recommendation offensive to Canada's interests in general, but rather because the recommendation placed too great a burden on the federal government to gather appropriate data from the several provinces and their various programmes.²²

Robertson voiced his dissatisfaction with the draft convention concerning white lead in paint because he felt that no economical substitute for white lead had been found by Canadian manufacturers, because Canada was a chief exporter of white lead for the manufacture of paint, and because he felt that existing labour legislation in several provinces,

²²Ibid., p. 139.

but notably Ontario, had already provided satisfactory safeguards for the use of white lead-based paint.²³

To counterbalance these expressions of national self-interest, workers' delegate Tom Moore and government adviser Fabian Roy attempted to demonstrate that the Canadian delegation was somewhat more aware and informed of world concerns. On several occasions Moore spoke out against the tendency of the state members to retreat into the defence of national interests on the basis of existing national legislation;²⁴ Government adviser Roy spoke on behalf of the provincial government of Quebec in defence of the white lead convention.²⁵ Unfortunately, the Canadian government delegate Obed Smith and employers' adviser E. Blake Robertson did not share Roy's views on the necessity for comprehensive legislation on this matter. Both had been named to the White Lead Commission where Smith had become President. Together they proceeded to vote against all proposals for legislation which would endeavour to place controls on the manufacture and use of white lead in paint. The resulting draft legislation, while it admitted to the damages in the use of white lead, failed to suggest a possible remedy for its continued utilization.²⁶ Was Smith also motivated

²⁴ Ibid., pp. 105-107; 363.

²⁵ Ibid., pp. 457-458.

²⁶ Ibid., II:715-740.

by national considerations in this matter? According to Robertson's address at the Twenty-Third Sitting (November 17), both gentlemen must certainly have been aware of all the considerations regarding Canadian exports of lead, existing provincial labour legislation and the difficulty in the use of any other metallic base, because Smith made no attempt to repudiate any of Robertson's remarks. Moreover, Roy himself stated at the Twenty-Second Sitting of November 16 that his critical opinion on the use of lead in paint was not shared by the delegates of the Canadian government.²⁷

Given these differences of views among the Canadian delegation, it is no wonder that the members tended to split their votes on nearly every issue. Of the sixteen various conventions and recommendations placed before the Conference, the Canadian representatives voted unanimously on only five. These concerned conventions on the minimum age for admission of children to agricultural employment, on compulsory medical examination of children employed at sea, on fixing the minimum age for employment of trimmers and stokers on ships, and the recommendations on weekly rest in commercial establishments and on technical education in agriculture.²⁸ On the key issues, namely, weekly rest

²⁷ Ibid., I:457-458.

²⁸ Ibid., pp. 433-434; 309-310; 306-307; 578-579; 319-320.

for industrial undertakings, rights of association and combination for agricultural workers, the use of white lead in paint, night work for women and children in agriculture, and social insurance in agriculture, the Canadian delegates' vote usually split. On several issues, most of which concerned the working conditions of the agricultural labourer or children employed at sea, (but not, significantly, the conditions of women and children's nightwork in agriculture) the government delegates tended to side with labour. In most of these cases, jurisdiction could be considered as either belonging clearly to the federal or to the provincial governments but with these conventions and recommendations, jurisdiction was probably not the chief issue for the Canadian delegation. That the government delegates chose not to vote at all on the issue of women's nightwork in agriculture seems to indicate a certain uneasiness about being placed on record as having supported a policy which had the potential to undercut Canada's competitive advantage in agriculture. Yet neither could they be seen by labour as withholding their support for progressive legislation. Whether or not they had had any prescience of the consequences, Canadian government delegates to these I. L. O. Conferences indicated by their voting patterns a trend away from commitment to Conference decisions which might be considered contentious in Canadian society in the interwar period. Consequently, on at least five issues at the Third

Conference, the Government delegates did not even register an official abstention.

d. Canada and the Fourth Conference,
Geneva, 1922

Canada's major interest at the 1922 Conference was constitutional, more in particular Canada's status in the Governing Body. Doubtless, the Liberal government stood behind Ernest Lapointe's central role in the Conference proceedings on this matter because the issue of Canada's international identity was as important for King and the Liberals as it had been for Borden and the Unionists. Furthermore, the issue implied no direct obligation of members to the Governing Body (other than attendance at its sessions) and therefore probably encouraged Liberal support for Lapointe's activities. Another interesting contribution to the proceedings came from Labour Minister James Murdock who dealt with the problem of non-European attendance at I. L. O. conferences. The attempted solution for Canada's own attendance problems was the appointment of W. A. Riddell as Dominion Advisory Officer to the League.

Canada's role at the Fourth Session of the International Labour Conference (October 18 - November 3, 1922) required a greater effort at self-affirmation than had any of the previous conferences. This session was summoned to examine the constitutional framework of the I. L. O. (part XIII of the Treaty of Versailles) and to make amendments

where necessary. A special Commission of Experts appointed by the League to examine the constitutional relationship between the League and the I. L. O. had already adopted several resolutions respecting this matter. That item of the resolution which dealt with the composition of the Governing Body and its possible reconstitution was of central interest to Canada. The original recommendation had stipulated that of the twelve government members on the twenty-four person panel of the Governing Body, eight were to be drawn from the eight nations of chief industrial importance, and the other four seats were to be elective positions until it might prove necessary to reorder the system. The protests brought forward by Poland, Canada, Argentina and India at the Washington Conference had resulted in elected positions for all of these states except India, but the tumult which these members had caused had indicated the necessity for a judgement by the League itself. Consequently, one of the chief "official" items on the 1922 agenda by recommendation both of the League Council and the Eighth Session of the Governing Body concerned the matter of membership on the Governing Body.

The Canadian representatives, the new Labour Minister James Murdock, the Minister of Marine and Fishers Ernest Lapointe, employers' delegate W. C. Coulter and labour delegate Tom Moore found themselves on various study commissions, but curiously not on the critical Commission for

Constitutional Reform. But then, no overseas members had been included in the latter; this commission was to enjoy only the input of European state members, a reality not lost on the non-European delegations (e.g., particularly the states of Latin America²⁹). Nevertheless, Canada was not without a voice in the deliberations on the composition of the Governing Body. At the Fourteenth Sitting of October 30 Ernest Lapointe (in association with the government delegate from India) proposed an amendment to Article 393 of the Treaty respecting membership to the Government Delegation of the Governing Body. This amendment called for a total increase in representatives to the Governing Body from the original twenty-four to thirty-two, so that the number of representatives to the Government Delegation would be increased to sixteen (from twelve). Of these sixteen, eight would be drawn from the states of chief industrial importance (including Germany, France, Great Britain, Italy, Japan, and provisionally, the United States), and eight would be nominated to the remaining seats by the vote of the entire Conference minus the chief industrial states. Furthermore, Lapointe's amendment specified that of the eight remaining seats, six were to be occupied by non-European state members. The amendment then recommended that

²⁹ International Labour Organization, Proceedings of the Fourth Annual Conference, 2 vols. (Geneva, 1922), I: 281.

the states of chief industrial importance should be designated by the League Council which had already been asked to provide a classification system.³⁰ Lapointe's argument represented an even bolder statement of Canada's national rights within the I. L. O. than the amendment itself. In the first place, it was in complete opposition to the original resolution to limit further the membership to the Government Delegation. Furthermore, Lapointe maintained that Canada's claim to reconsideration of its status on the Governing Body arose from two motives. First, as long as Canada's position on the Governing Body was the source of some uncertainty among the members of the commission itself and the Conference in general, competition for direct government representation would continue among the unnamed members of the Conference, thus undermining the authority of the Governing Body. Secondly, the very statistics of the Report of the commission upheld Canada's claim. Lapointe then articulated a strong defence for Canada's position in the I. L. O., in the following statement:

Are we to be excluded because of lack of interest in this Conference? No. Canada has always sent representatives. I feel bound, therefore to make a declaration, not intended in any way as being in the nature of a threat, but a declaration, both as a Delegate to this Conference and also in a certain measure, as a member of the Canadian Government, that we wish to come to this Conference as equals.³¹

³⁰ Ibid., II:540.

³¹ Ibid., I:256-260.

Lapointe's statement about representation at the I. L. O. was only partially true. While Canada had always sent full delegations to the Conferences, Canadian participation in the deliberations of the Governing Body was less than complete. Prior to the convening of the Genoa Conference, for instance, Canada had been requested to take its places on the Governing Body for the first four sessions. The appointed delegates from Canada, Labour Minister Gideon Robertson as government representative and T. L. C. Secretary-Treasurer Paddy Draper as labour representative, however, attended only the Opening Session. Thereafter, Deputy Labour Minister F. A. Ackland, or Philippe Roy, Commissioner General for Canada in France, substituted for Robertson, while T. L. C. President Tom Moore stood in for Draper. No Canadian representatives were present at the Second Session in January, 1920, nor was there any Canadian representative for labour at the Fourth Session of June, 1920.³² It seemed an inauspicious way to begin the work of Canada's new international position, given that except for Argentina all the member delegates on the Governing Body were present for each of the four sessions. From the fifth to thirteenth sessions, no regular Canadian delegate was in attendance, but rather, a constantly alternating cast of substitutes

³²International Labour Office, Official Bulletin, 1 (October 1923):468; 473-474; 486; 496-497.

filled in for Labour Minister Gideon Robertson and Workers' delegate P. M. Draper; at the Eighth Session of July 5-7, 1921 Draper's place was even taken by the Swiss Workers' Delegate.³³

In his reply to Lapointe's address on the amendment to Article 393, therefore, Ernest Mahaim, government delegate of Belgium, argued that Canada's geographical distance was a difficulty which continually forced the Dominion to modify its representation on the Governing Body. Consequently, Canada's opinion could not be adequately or even consistently represented. Mahaim complained as well that Canada's apparent motive for the amendment was national self-interest, and he expressed his disappointment that "national should prevail over international sentiment."³⁴ Mahaim also went on to criticize the entire basis for selection of members to the Government Delegation. Industrial importance, he argued, could hardly be measured by any quantitative method; rather, true industrial importance should be gauged by "social organization."³⁵ What caused Belgium's opposition to the Canadian amendment? Like Canada's, Belgium's claim to status on the Government

³³ Ibid., 4 (July 1921):60.

³⁴ International Labour Organization, Proceedings of the Fourth Annual Conference, I:279-280.

³⁵ Ibid., p. 280.

Delegation of the Governing Body had been the subject of uncertainty and speculation among members of the Constitutional Commission. In fact, Canada and Belgium had been grouped together as states whose status had posed some difficulty.³⁶ On the basis of the new classification system, however, Canada's status as one of the members of the first group of eight states was assured, whereas that of Belgium was not.³⁷ Hence, the desire of the government representative of Belgium to shift the focus from industrial capacity to social organization.

Canadian Workers' Delegate Tom Moore responded to Mahaim's criticism with a rather interesting argument on national self-interest:

I want to ask the Conference in all seriousness whether the elimination of the names of six particular States is approaching the question from a national or an international spirit. The height of nationalism must be the predominance of six particular states and if the proposal at present before you were carried and the amendment defeated, it would stultify internationalism absolutely because we should then set up six particular States as superior.³⁸

Moore then read the formal Canadian statement of opposition to the original resolution which had been sent to the Commission on Selection:

³⁶ Ibid., pp. 256-260.

³⁷ International Labour Office, Official Bulletin (Geneva, 1923), 6 (December 1923):566-582.

³⁸ International Labour Organization, Proceedings of the Fourth Annual Conference, I:281.

Canada is not represented on your Commission and we cannot express our views before it. We therefore have the honor to inform you that we strenuously oppose Section 2 of the proposed new Article 393 (limiting membership on the Governing Body). . . . Such change would be unfair to our country and would deprive it of its right and position among the States of Chief Industrial Importance. . . . We shall consider it our duty to protest before the plenary meeting of the Conference against any decision which prejudices the interest of Canada.³⁹

With these matters now before the Conference, and with the support of the British, Polish and Latin American delegations officially articulated, Lapointe's amendment was presented for the vote and passed with ninety per cent of the Conference in support.⁴⁰

Canada's position as a member of chief industrial importance on the Governing Body was now assured, and with the acceptance by the Conference of the new draft amendments to Article 393, this position received legal sanction. Not until the entrance into the I. L. O. of the United States and the Soviet Union in 1934 was Canadian status to undergo further challenge.

The new classification system adopted by the International Labour Office in the summer of 1922 further reflected the reality of Canada's changing world status, and until 1934 was regarded as the basis for Canada's claim to influence on the Governing Body. This system embodied new

³⁹ Ibid., pp. 281-282.

⁴⁰ Ibid., p. 283.

categories of industrial competence which seemed more favourable to the Canadian situation. Categories respecting developed water power, telegraph service, pig iron production, coal production, total foreign trade and population were abandoned for a more generalized system which seemed less likely to penalize Canada for its lack of population. Several new categories, including those relating to railway mileage, total horse-power output, industrial population relative to the total, and mercantile marine tended to place Canada generally in a higher category than that to which it had been assigned in 1919. According to the new statistics, Canada ranked fourth ahead of Italy, Belgium, Japan and India as compared to its much lower ranking of 1919 which had placed it between eighth and ninth.⁴¹

The Fourth Session of the International Labour Conference was to hear several times from the Canadian delegation. Indeed, it is safe to say that after the Washington Conference, the Session of 1922 was for Canada the most important conference of the decade. Certainly no other conference of the 1920's could match this one in terms of Canadian participation or simply of plain outspokenness of the Canadian delegates themselves.

A newcomer to international discussion, the new Labour Minister James Murdock showed a candor which the British

⁴¹International Labour Office, Official Bulletin, 6 (December 1923):566-582.

government delegates in particular found refreshing. The constitutional problem of the frequency of the Conferences and the Governing Body Sessions had held the Sixteenth Session of October 31 in protracted debate. The Swiss government delegate had proposed a biennial system of Conferences which would permit a more lengthy preparation period as a safeguard against over-hasty draft legislation. The argument put forward by several workers' delegates, including that of Great Britain, however, was that without an annual I. L. O. Conference, the influence of labour in the organization would be undercut still further (given that any draft legislation had to have the support of a two-thirds majority anyway; and given the fact that workers' delegates constituted only twenty-five per cent of the total delegate membership). Murdock's comments in defence of the biennial system were concerned less with supporting the concept of an extra brake on labour expectations, than with providing an explanation for Canada's questionable record of attendance at the Governing Body sessions. He claimed that the annual Conferences and quarterly sessions of the Governing Body offered too little business of real importance to attract non-European members to the sessions. Notwithstanding the benefits which had accrued to Canada through the Fourth Conference, Murdock levelled stinging criticism on the nature of the work of this Conference and the Fourteenth Session of the Governing Body when he asked:

What of national benefit to employer and employee was undertaken and handled by the Governing Body on 12 and 13 October? . . . what has been accomplished of material benefit to the future safe and proper conduct in this International Labour Conference? . . . Is it going to answer any good purpose for us to make an attempt to attend and continue these meetings which . . . in our country are on certain occasions referred to as 'junketing trips'? . . . Canada desires wholeheartedly to co-operate along the lines of doing something, but we really do not feel that we have the time, nor the disposition to undertake or make a pretence of doing something when there is really nothing to do at the moment.⁴²

In spite of the protest registered by several Latin American workers' delegates (whereas Moore, usually an articulate voice of labour's rights within the organization, was silent), the British government delegates were in complete agreement with Murdock's complaint. The proposal for a biennial commission and biannual session of the Governing Body simply made good sense, they claimed; why convene a compulsory conference when there was little to merit international attention?

The Conference, of course, did not accept the Swiss proposal, but if any doubt had existed as to Canada's position regarding its obligations to participate in the various conferences, Murdock had doubtless addressed them in rather unmistakable terms. Canada would take its place in the Governing Body, but given the distance involved and the limited nature of the agendas, the organization would

⁴² International Labour Organization, Proceedings of the Fourth Annual Conference, I:319.

have to tolerate inconsistent representation until a more acceptable procedure could be adopted. A chance for this came in 1925 when W. A. Riddell, former Deputy Minister of Labour for Ontario, relinquished his position as Chief of Agricultural Service of the International Labour Office to Professor S. Mack Eastman of the University of British Columbia (who was also to become chief of the Research Division of the Labour Office to 1933) and undertook the duties of Dominion of Canada Advisory Officer to the League of Nations.⁴³ This position allowed Riddell to represent Canada's interests at the League itself and to provide a more consistent representation for Canada as a government representative to the Governing Body, thus releasing Murdock from the obligation.

e. Canada's Role at the Conferences,
1923-1929

At the Conferences from 1923 to 1929, several difficulties caused various diplomatic embarrassments for Canada. Canada's constitutional problem with I. L. O. proposals was eloquently explained and defended by Riddell and others, but nevertheless garnered the criticism and impatience of most of the membership.

Canada's participation in the conferences after 1922 (to 1929) revealed less of a tendency to speak out force-

⁴³ Labour Gazette (Ottawa, July 1925), p. 710.

fully on any particular issues, although Tom Moore continued to berate various governments for their unwillingness to come to terms with the Hours of Work Convention. For the most part, when the various Canadian government delegates chose to make statements, these were usually in defence of Canada's rather dismal record on ratifications. They maintained that the efforts of the provinces should be taken into consideration rather than the inaction of the federal government. At more than one conference in these years, W. A. Riddell assumed the responsibility of apologist for Canada's federal system, seeking from those members with unitary systems of government greater recognition of Canada's difficulties in ratifying conventions.⁴⁴

A recurring theme in the statements of Canadian government delegates in these years was their emphasis on Canada's contributions to the I. L. O. apart from ratifications. At the Sixth Conference of 1924, for example, Government representative F. A. Ackland responded to the criticism of the British workers' delegate on Canada's scant record of ratifications by informing the Conference that Canada had generously donated the doors for the new world headquarters building of the International Labour

⁴⁴ International Labour Organization, Proceedings of the Tenth Annual Conference, 2 vols. (Geneva, 1927), I: 219-220.

Office.⁴⁵ At the Seventh Conference of 1925, workers' delegate Gustav Francq responded to similar criticism by the British Empire workers' delegate by citing existing provincial legislation (regarding workmen's compensation) which he upheld as evidence of Canada's contribution to the organization. His implication in this reply was that provincial legislation on this subject actually represented a superior class of legislation than the I. L. O. standard for unitary members and therefore provided an example on which these members might draw in formulating their own legislation.⁴⁶ At the Ninth Conference of 1926, Riddell's comments on the Director's Report of that year focused on North America's contribution of a new "industrial philosophy" to the international industrial scene which he described as,

a growing recognition among organized workers and employers alike, that the class struggle, with its distrust, its suspicions, cannot bring about industrial prosperity. It is a deepening conviction that industrial prosperity can only come from mutual confidence and from intelligent co-operation and it depends on better and more economic methods of production, and on the just distribution of the profits of this increased production, making possible an increased purchasing power for the great mass of workers in North America.⁴⁷

⁴⁵ International Labour Organization, Proceedings of the Sixth Annual Conference, 2 vols. (Geneva, 1924), I: 147-148.

⁴⁶ International Labour Organization, Proceedings of the Seventh Annual Conference, 2 vols. (Geneva, 1925), I: 285.

⁴⁷ International Labour Organization, Proceedings of the Ninth Annual Conference, 3 vols. (Geneva, 1926), Part II, Vol. I, p. 139.

Riddell then requested that this "industrial philosophy" be taken into consideration by the Labour Office as Canada's contribution to international labour economics.⁴⁸ Tom Moore, for his part, considered the concept a poor substitute for actual compliance with the work of the organization through ratifications. In his address on the Director's Report, Moore maintained that what the worker wanted was not so much "scientific management" (e.g., rationalization of industry, accelerated methods and increased efficiency), but greater democratization within industry itself,

whereby all those who are interested, whether they be the State or an individual, whether from the contribution of management or . . . manual labour, should take their just part in discussing the problem of the industry and then see that the results achieved thereby are equally distributed according to those who participate in the increased production.⁴⁹

These statements in fact represented a serious concern in the work of the Canadian delegation. As late as 1926 the Canadian representatives continued to articulate two irreconcilable opinions on the nature of industrial policy in Canada. The argument had not varied much since the National Industrial Conference of 1919 at which S. R. Parsons and Paddy Draper had first tabled the issues for public consideration. The employers' delegates had insisted then (with support of the government representatives) that the absence

⁴⁸ Ibid., pp. 139-140.

⁴⁹ Ibid., p. 63.

of legislative controls represented the best economic stimulant, whereas the workers' representative advocated increased worker input into industrial policy. The disagreement was not necessarily about the ends of industrialization in Canada, but rather the means toward its realization--a controversy common to most of the industrialized member states of the I. L. O. In Canada's case, however, the lines which had been firmly drawn in 1919 showed little evidence of change or compromise by 1926. A temporary thaw occurred at the Eleventh Session of the Conference in 1928 when both the Canadian workers' delegate (Mr. Moore) and employers' delegate (Mr. Champ) found themselves in complete and resounding agreement on the Resolution on Accident Prevention, and in separate addresses publicly emphasized the importance of worker-employer co-operation in the prevention of industrial accidents. The rapprochement prompted the Canadian government delegate, Peter Heenan (Minister of Labour), to a public declaration of his own support of the issue;⁵⁰ but this display of solidarity seemed merely to underscore the fact that co-operation was possible among the Canadian delegates only when common concerns surfaced. Of these there had been rather few in the span of twelve conferences.

⁵⁰ International Labour Organization, Proceedings of the Eleventh Annual Conference, 2 vols. (Geneva, 1928), I: 266.

Consequently, the appeal of the various Canadian government representatives to the I. L. O. for greater understanding of the Canadian situation seemed oftentimes to fall upon unsympathetic ears. Certainly the problems posed by Canada's federal system merited the close attention of the Conference, but Canada's record itself, which usually found the workers' and employers' delegates on opposite sides and, at the conferences later in the decade, the government delegates in regular abstention, could hardly encourage support for Canada's claim to sympathy. Therefore, the Canadian delegates to the I. L. O. conferences in the 1920's could anticipate at least one criticism at each session of Canada's record of ratifications. It is not to be wondered, then, that the first statements made by any Canadian delegates to each conference were usually exercises in national self-justification or comments on various contributions which, as in Riddell's statement of 1926, were meant to take the place of more substantial proof of Canada's intentions.

f. Canada at the International
Labour Office

Canadian participation in the I. L. O. was not limited to the proceedings of the conferences and the Governing Body. Canada also sought a more active (not to mention more representative) role at the Labour Office. It was Riddell's contention that without increased presence of non-European

members at the Labour Office, the agenda of the I. L. O. would continue to reflect only European conditions, thus removing Canada even further from the possibility of ratification of I. L. O. decisions.

Constitutional constrictions did not prevent Canada from taking part in other activities of the I. L. O. After 1926, Canada's attendance at the Governing Body was more regular due to Riddell's presence in Geneva as Dominion Adviser to League Affairs. During this period Riddell forcefully complained that the staff of the International Labour Office and the special Governing Body Commissions were disproportionately European in membership. At the 1925 Conference, Riddell had found the Seventh Session to be more internationally representative than the Office itself,⁵¹ and at the 1926 Conference, he emphasized that without consideration for non-European social conditions within the Organization as a whole, the I. L. O. would be unable to retain worldwide influence.⁵² Furthermore, Riddell maintained, non-Europeans were "out of" the staff of the Labour Office, yet they paid forty per cent of the maintenance fees! He then pointed out, by way of contrast, that France had been allowed ten times as many representatives at the Labour Office as all the non-European states

⁵¹International Labour Organization, Proceedings of the Seventh Annual Conference, I:220.

⁵²International Labour Organization, Proceedings of the Eighth Annual Conference, 2 vols. (Geneva, 1926), I:220.

combined. Riddell was adamant in his refusal to recognize European social legislation as the guiding principle for the Labour Office and the Conference itself, and he stated that,

If we are going to have an International Labour Organization, it must draw its officials from every part of the world. If we are going to have conventions which give us less trouble and which will enable us to get along with greater speed, we must have representatives coming from all parts of the world and representing all systems of legislation.⁵³

His amendment to augment the number of non-Europeans on the Maritime Commission (13 out of 14 members to the Commission were European, with T. Robb of Canada only a substitute for the employer's delegate), though, was rejected by the Conference by a vote of 39 to 36.⁵⁴ For Riddell, effective participation of Canada in the I. L. O. had to go beyond the work of the Conference to the inner workings of the Labour Office itself insofar as,

The International Labour Office is to the General Conference what our Civil Service is to Parliament. The measures for submission to the General Conference are largely prepared by the staff of the Labour Office. A large proportion of the draft texts of conventions and recommendations . . . become the deliberate findings of the representatives . . . in the General Conference, and so become the standards for labour legislation throughout the world. . . . With this power in the hands of the staff of the Labour Office both to originate and determine the form in which a proposal shall go before the General Conference, the personnel of the staff becomes of

⁵³ Ibid., p. 285.

⁵⁴ Ibid., p. 288.

great importance. If Canada is to effectively participate [sic] in the I. L. O., it is clear that she must be adequately represented on the staff of the Labour Office.⁵⁵

According to Riddell's statistics, as of 1925 Canada was represented at the Labour Office by only two officials (Professor P. E. Corbett of McGill University, and Professor S. M. Eastman of the University of British Columbia) to France's eighty-five and England's seventy-three.⁵⁶

g. Canadian Governments and the I. L. O.

The governments of Mackenzie King as well as those of several provinces did take various actions on I. L. O. proposals in the 1920's. Unfortunately, with the exception of British Columbia's initiative of 1923, none of these responses represented a real legislative effort to adapt I. L. O. proposals to Canadian society. For the most part, both Dominion and provincial governments took part in discussions which had no lasting effect on the constitutional difficulties surrounding ratification of I. L. O. conventions. Necessarily, the Justice Department and Supreme Court played a central role in helping to determine the extent of shared responsibility in these matters. But even these authorities could not suggest a means by which Canada

⁵⁵W. A. Riddell, "Effective Participation of Canada in the International Labour Organization," Social Welfare (March 1925), p. 115.

⁵⁶ibid., p. 116.

might satisfy its obligations to the I. L. O. Moreover, the Privy Council ruling of 1925 against the Dominion government on the validity of the Industrial Disputes Investigation Act seemed merely to compound the problem by further undercutting the authority of the Dominion government to legislate for the public good.

The following investigation will examine the various responses of the Dominion and provincial governments to the constitutional situation relating to I. L. O. proposals. The first subdivision will, by way of introducing the topic, touch briefly upon the record of Dominion and provincial ratification for this period. The decisions of the Department of Justice regarding specific I. L. O. matters will then be examined and so will the views of the Justice Department on the nature of the constitutional difficulty and the Department's role in bringing I. L. O. matters before the competent authority for ratification. The next subsection will deal with the various Dominion-provincial conferences in the Mackenzie King era and, as well, the work of the Select Standing Committee on Industrial and International Relations. An investigation of the Supreme Court decision of 1925 on the Hours of Work Convention follows, and of the decision by the Judicial Committee of the Privy Council on the Industrial Disputes Investigation Act. Both decisions are of great significance in that they resulted in a further diminution of Dominion

power in the social sphere and thus erected another barrier against Canada's compliance with its international obligations. The final concern of this section will be the attempt by King and the Liberals to sponsor social legislation based upon the Hours of Work and Fair Wage Conventions. The major interest of this legislation of 1930 lies in its motives which had little or nothing to do either with the principles of the I. L. O. or the needs of Canadian labour.

i.) Canada's Record of Ratifications

By 1929, Canada had ratified four out of a total of thirty-one I. L. O. draft conventions. Of these four convention ratifications, one (concerning day of rest) was subsumed under existing Dominion legislation, and three (concerning several of the Genoa decisions) fell under the aegis of the Canada Shipping Act. The six recommendations adopted fell under the authority of existing Dominion legislation regarding abolition of private employment agencies, prevention of anthrax, maintenance of Public Health, prohibition of the manufacture of white phosphorus matches, and establishment of Seamen's Codes under the authority of the Canada Shipping Act. In addition to Dominion ratifications, however, the provinces themselves enacted legislation in connection with provincial factory acts or in some cases existing legislation even exceeded the I. L. O. standards. This was true, for instance, with respect to women's nightwork, which in

several industrialized provinces, was prohibited for various categories of work already before the I. L. O. decision. Many provinces chose to ratify specific sections of various conventions rather than the entire decision, heeding provincial conditions and the competitive limitations which complete ratification might impose. Nova Scotia and Saskatchewan, for example, endorsed the first, second, fourth and fifth sections of the recommendation on unemployment in agriculture, each of which provided temporary alleviation schemes.⁵⁷ On the whole, this piecemeal approach to I. L. O. standards originated in the desire for provincial self-protection. Seldom would a specific province strike out on its own to fulfill I. L. O. obligations, as it feared interprovincial competition. Only British Columbia proved the early exception to this general rule.

ii) The Role of the Department of Justice

The opinion of the Federal government of November, 1920 respecting the extent of jurisdiction as articulated in Article 405 did not clarify all subsequent issues either for the Dominion or the provincial governments. Each new series of I. L. O. decisions demanded studies and opinions on jurisdiction; many of these were unambiguous in their

⁵⁷ Bryce M. Stewart, Canadian Labour Laws and the Treaty (New York: A. M. S. Press, 1968), pp. 37-47.

judgements regarding federal or provincial competence, but as the decade progressed, many as well expressed a certain ambivalence and hesitancy in various matters. Some reports, such as those on the 1921 conventions and recommendations on agricultural employment, recognized a dual Dominion-provincial authority, but made no suggestions as to how the I. L. O. obligations might be fulfilled. Without Dominion initiative, however, it was rather unlikely that the provinces would proceed for themselves; thus the fear of trespassing on vaguely-established areas of responsibility kept both authorities from making any progress in these matters.⁵⁸ Several decisions arising from the Ninth Session of 1926, for example (respecting certain principles on emigrant inspection and the rights and labour of seamen), found the Dominion government unwilling and probably unable to adopt the kind of clarifying legislation which might have given them meaning. Certain articles of the Canada Shipping Act had been overridden by several articles of the Imperial Merchants Act which prohibited the Dominion government from taking any action on emigrant inspection or inspection of seamen's conditions of labour except for vessels registered in Canada by Canadians. Since the bulk of Canada's merchant fleet was of British registry or owned by non-Canadians, the force of the conventions on inspection

⁵⁸International Labour Office, Official Bulletin, 8 (July 1925):253-259.

was greatly reduced. There was also some difficulty with the recommendation concerning inspection of seamen's conditions of work, as Justice Minister Lapointe's decision on the matter allowed for a shared jurisdiction between Dominion and provinces, but did not clarify the extent of this jurisdiction vis-à-vis the Imperial Merchants Act.⁵⁹ Under such circumstances, there simply existed no way to fulfill the obligation to its fullest extent, nor was it possible (except in a limited sense with the inspection of seamen's conditions) to draw the provinces into the matter by way of an extension of the principle of shared jurisdiction, since most of these matters fell clearly under Dominion authority.

These difficulties with ratifications were therefore chiefly caused by constitutional rather than political considerations, although Mackenzie King and many within the Liberal government expressed little interest in the workings of the I. L. O. or Canada's obligations as a member.⁶⁰ Section 91 of the B. N. A. Act respecting immigration, navigation, fisheries, criminal law and trade and commerce gave the Dominion government the authority to deal with

⁵⁹Ibid., 13 (January 1928):34-38.

⁶⁰Donald M. Page, "Canadians and the League of Nations Before the Manchurian Crisis," (Ph.D. dissertation, University of Toronto, 1972), p. 326.

several classes of subjects under I. L. O. consideration: alien labour, employment agencies, protection of seamen, trade unions and the manufacture and sale of white phosphorus matches. Under Section 92 of the B. N. A. Act respecting property and civil rights, the provincial governments had jurisdiction over regulation and inspection of factories, mines, shops, work places, wages, hours of labour, industrial accidents, child labour, school attendance, contracts of employment and employee health. In addition, the Dominion government was empowered to legislate for Dominion works, or issues of an interprovincial nature, or with respect to situations pertaining to the general welfare which could be addressed under the residual powers clause of the B. N. A. Act.⁶¹ However, not every I. L. O. matter which came before the governments of Canada in this decade could be subsumed under these categories, nor was it clear what the nature of Dominion authority might be with regard to the entire nation. In the first place, as pointed out, some subjects (e.g., agriculture and immigration) came under the jurisdiction of both authorities⁶² (as with the 1921 conventions), which precluded a clear division of legislative responsibilities. Secondly, Dominion authority to ratify for the entire nation on the basis of Section 132

⁶¹Stewart, Canadian Labour Laws and the Treaty, pp. 58-59.

⁶²Ibid., p. 59.

of the B. N. A. Act, respecting the Dominion's treaty-making rights, was not unequivocal as to the Dominion government's rights (with regard to the I. L. O.) under Section 94 of the B. N. A. Act. This latter article recognized Dominion authority to provide for Dominion-wide uniformity of all existing laws relative to property and civil rights, and by at least one interpretation of the powers conferred by Section 132, the Dominion government could have moved to impose this uniformity whether or not those laws did indeed exist. This interpretation suggested that, although the text of Section 132 implied such authority under treaties between Empire and foreign countries, rather than between foreign countries and self-governing Dominions forming part of the Commonwealth, the Dominion authority was nonetheless authentic since Canada's membership in the I. L. O. was considered to be that of an independent state (defined as "High Contracting Party").⁶³ This interpretation, however, was complicated by the fact that various Justice Departments had adopted different views of the meaning of this power, some judging it solely on the basis of Imperial prerogative (Lapointe), others on the basis of Dominion prerogative (Doherty). Therefore, a consistent definition of the meaning of the treaty-making authority

⁶³William L. Tayler, Federal States and Labour Treaties: Relations of Federal States to the International Labour Organization (New York: Columbia University Press, 1935), pp. 109-110.

had eluded Canadian lawmakers since 1919, and was to continue to do so for most of the interwar period. Moreover, if a province was to decide not to ratify a certain convention, the Dominion government could be considered unable to move on the authority of Section 132, because such an initiative would undermine the entire principle behind the federal system. In fact, however, the collective Dominion authority as suggested by Sections 91, 94, 132, the residual powers clause, and the authorization to nullify provincial legislation if it invaded federal jurisdiction or endangered national interest, made it difficult for the Dominion authority not to trespass on the provincial sphere of interest. Given these constitutional conditions, it is little wonder that the federal government moved as slowly and hesitantly as it did on these issues. Section 405 of the Peace Treaty had merely proposed a generalized procedure for federal states. The real difficulty for Canada was to decide not only which authority was competent to handle I. L. O. decisions, but also what the extent of that competence was and whether or not it was a shared prerogative. The Dominion government thus seemed loathe to take the initiative on I. L. O. decisions during the 1920's, and the provinces could not be encouraged to do otherwise.

Consequently, the burden to interpret the relationship between federal and provincial authorities with regard to I. L. O. decisions was ultimately placed on the Justice De-

partment and the Canadian Supreme Court. Certainly the federal government delegates to the conferences were in no position to make such judgements--a fact which may have partly accounted for their growing reticence later in the decade to place the Dominion government on record as being either opposed to or in favour of certain contentious decisions. Inevitably, the Supreme Court of Canada would have been drawn into those issues which would have required clarification (the hours of work convention). But unlike the American court system which had the power to rule on reasonableness or fairness of legislation, the Canadian Supreme Court could only decide which authority had the power to legislate. It could not contravene the supremacy of Parliament on these matters.⁶⁴ Therefore, the decisions of the Justice Department and the Supreme Court tended to uphold the authority of the provincial legislatures regarding I. L. O. obligations regardless of the fact that the provinces themselves, as separate entities, were highly unlikely to support the I. L. O. decisions unilaterally, and even less likely to combine and co-ordinate their efforts.

The procedure for Canadian ratifications thus usually followed a set pattern which placed the Justice Department at the centre of the proceedings. The specific I. L. O.

⁶⁴ Stewart, Canadian Labour Laws and the Treaty, pp. 60-61.

decision, having been forwarded by the International Labour Office to the Department of Labour, was usually transmitted to the Department of Justice with recommendations as to procedure and applicability. The Justice Department would then prepare a report on the constitutional competence and submit it to the Privy Council for consideration. The Committee of the Privy Council would adopt the Department of Justice recommendation by an Order-in-Council. The report, if it advocated provincial competence, would express the specific convention as a recommendation to the various Lieutenant-Governors of the provinces. With this, according to the stipulations of Article 405, the Dominion obligation to the I. L. O. would be considered as fulfilled. If the matter was judged to come within Dominion competence, the Justice Minister's report would be submitted to the Dominion Parliament for ratification.⁶⁵ In the case of recommendations to the provinces, the Dominion government had to accept the responsibility for transmitting the matter to the Lieutenant-Governors no later than one year after acceptance of the decision by the Conference, or eighteen months under exceptional circumstances. Indeed, the Dominion government could discharge its obligations within the same amount of time accorded to unitary states to bring

⁶⁵Riddell, "Effective Participation of Canada in the International Labour Organization," Social Welfare, p. 114.

the matter to ratification, but suffer much less in the way of international pressure to conform to the standards.

iii) Various Dominion and Provincial Initiatives on I. L. O. Obligations

Given the various constitutional obstacles that hindered both Dominion and provincial governments from assuming more responsibility for I. L. O. obligations, inter-provincial and federal-provincial conferences seemed to be one way to circumvent the impasse after 1920. As early as 1918, and throughout the 1920's, the Council of the Canadian Bar Association, for instance, sponsored inter-provincial conferences to secure the passage of measures aiming at greater uniformity of workmen's compensation laws.⁶⁶ Moreover, various recommendations of the National Industrial Conference of September, 1919 had called for other tri-partite conferences including government representatives of both the Dominion and the provinces as a means to work toward legislative compromise. This suggestion appealed to Mackenzie King and the Liberal administration because of its applicability to the unemployment situation. Like his Conservative predecessors, King did not believe in outright federal responsibility for alleviation of unemployment nor in national ratification of the I. L. O. conventions on the subject. He saw the responsibility for unemployment in-

⁶⁶Labour Gazette (Ottawa, August 1922), p. 844.

insurance as strictly a provincial matter and reminded the Commons that the Liberal electoral platform of 1919 had promised an adequate system of insurance against unemployment in conjunction with the governments of the provinces. Consequently, on April 24, 1922, King proposed that a Dominion-provincial conference would be summoned to examine this issue and, by extension, the nature of the Dominion-provincial relationship regarding I. L. O. obligations.⁶⁷ This conference met in Ottawa from September 5 to 7, 1922 and was attended by the Prime Minister, representatives of national employer and worker organizations, and members of the various provincial governments. In general, the conference split along lines separating worker interests from those of the governments, thus placing employers in a somewhat awkward situation. Organized labour sought to hold both provincial and federal authorities jointly responsible for administering to the needs of the unemployed and issued a call for greater government action on implementation of the I. L. O. decisions.⁶⁸ The Dominion government's concluding statements on these issues, however, saw the situation in a vastly different light. They held unemployment to be a problem best handled by community co-

⁶⁷Canada. House of Commons, Debates (April 24, 1922), pp. 1073-1074.

⁶⁸Labour Gazette (Ottawa, August 1922), pp. 977-982.

operation and initiative on the part of industry. The Dominion government did not recognize that the problem was as widespread or as serious as labour had represented it and thus was not prepared to suggest an exercise of Dominion authority on the basis of the residual clause.⁶⁹ As for the role of the Dominion government in I. L. O. decisions, it was the opinion of the Dominion and provincial delegates that the application of Article 405 of the Treaty with respect to federal status still represented the best method of observing Canada's legislative obligations toward the I. L. O. These delegates, however, did adopt a resolution that a future Dominion-provincial conference should be called to clarify these matters.⁷⁰

This second conference was held in Ottawa, September 24 - 26, 1923 and dealt with the matter of legislative obligations to I. L. O. decisions and the question of government competence. Membership again reflected the interests of labour, industry, and the provincial and Dominion governments, but this time representatives of labour and industry were invited to submit observations only, rather than resolutions. The chief matters of discussion before the conference were the Hours of Work Con-

⁶⁹ E. Lorentsen and E. Woolner, "Fifty Years of Labour Legislation in Canada," in Readings in Canadian Labour Economics, ed. Aranka E. Kovacs (Toronto: McGraw Hill, 1961), pp. 108-109.

⁷⁰ Labour Gazette (Ottawa, August 1922), p. 982.

vention and the various conventions and recommendations of the first three I. L. O. conferences. The conference generally recognized that each of the nineteen I. L. O. decisions was of benefit and importance to Canadian labour and industry, but could provide no suggestions as to how uniformity might be achieved for matters regarded as distinctly under provincial jurisdiction (e.g., hours of work and unemployment). Certain of the I. L. O. decisions (night employment of women, minimum age for admission of children to industrial work), though, were declared to come under federal authority; no suggestion was made, however, as to the extent of this authority with regard to existing provincial legislation.⁷¹

Overall, the conference came to rather general conclusions which seemed to express the uncertainty of the government delegates as to the correct government jurisdiction, especially with regard to the Hours of Work Convention.⁷² Only the Province of British Columbia seemed willing to proceed on the latter issue, apparently as a means to provide a useful example whereby the legislative impasse between Dominion and provinces might be overcome, but as well, as a means to stabilize a still unsettled labour climate within the province. This legislative

⁷¹Canada. Department of Labour, Annual Report (Ottawa: King's Printer, 1923), pp. 130-135.

⁷²Taylor, Federal States and Labour Treaties: Relations of Federal States to the International Labour Organization, pp. 111-112.

initiative, known as the Hours of Work Act,⁷³ was passed at the Fourth Session of the Fifteenth Legislature (October, 1923), and introduced the Eight-Hour Day - Forty-Eight Hour Week standard in industrial work within the province. Unlike similar legislation of 1921 this initiative did not depend upon prior ratification by other provinces of the hours of work decision before it could come into effect.⁷⁴ As a consequence of this important breakthrough in Canada's relationship with I. L. O. decisions, other provinces did more toward limited ratification in other areas of I. L. O. concern. For example, Manitoba took action prohibiting night employment of young persons,⁷⁵ and Nova Scotia adopted legislative resolutions pertaining to a minimum age of children in industrial employment, and to nightwork of women.⁷⁶

These and several other provincial, Dominion and Supreme Court initiatives and decisions made the period from September, 1923 to January, 1926 the one in which the greatest amount of work was undertaken by Canadian governments respecting I. L. O. decisions. Prominent was the

⁷³British Columbia. Statutes, December 21, 1923 (Victoria: King's Printer, 1923).

⁷⁴Labour Gazette (Ottawa, January 1924), pp. 24-26.

⁷⁵Ibid., (May 1924), p. 373.

⁷⁶Ibid., (October 1924), p. 866.

progress of the Hours of Work Convention--a matter which had caused much heated debate between the T. L. C. and the C. M. A., and had been a key item each year on the T. L. C. agenda of legislative proposals to Parliament. That debate had spilled over into the Commons itself, where Labour Minister Murdock was confronted in May, 1924 with a series of questions as to why Dominion authority had been so sorely lacking in this area.⁷⁷ J. S. Woodsworth had pursued the matter since March, 1924. His earlier proposals to introduce legislation on the Eight-Hour Day and Unemployment Conventions had met with the same constitutional obstacle which had blocked the 1923 Conference. Now he called for a complete re-evaluation of the B. N. A. Act which might bring an amending formula recognizing Dominion authority with respect to social legislation.⁷⁸ Although, of course, nothing immediate came of this proposal, Woodsworth's efforts, coupled with the failure of the 1923 Conference in this regard, prompted King in May, 1924 to propose a resolution calling for the convocation of a Select Standing Committee on Industrial and International Relations.⁷⁹ The Resolution was adopted a few days later and, as if to underscore his seriousness with regard to the I. L. O. situation (after approximately five

⁷⁷ (Commons), Debates (May 19, 1924), pp. 2274-2277.

⁷⁸ Ibid., (March 20, 1924), pp. 508-511.

⁷⁹ Ibid., (May 23, 1924), pp. 2466.

years Canada had not yet enacted any I. L. O. proposals), King himself introduced three I. L. O. decisions from the Genoa Conference of 1920 and the Geneva Conference of 1921 for Dominion legislation. These matters concerned the minimum age of admission of young persons to employment as trimmers and stokers, compulsory medical examination of children and youth employed at sea, and unemployment indemnity in case of loss or foundering of the ship. The basis of this action was federal authority by virtue of amendments to the Canada Shipping Act.⁸⁰

Woodsworth's efforts did result in the convocation of a third federal-provincial conference (in 1927) which attempted for the first time to discuss the meaning of the B. N. A. Act in the twentieth century and its relevance to modern concerns--topics which Woodsworth had championed for the greater part of the decade. At this conference, the question of participation by the provinces in the International Labour Conferences arose. The proposal, which was advanced by W. J. Major, Attorney-General of Manitoba, and A. M. Manson of British Columbia, suggested that one of the government delegates should be chosen by the provinces themselves. Labour Minister Heenan pointed out, however, that one of the government delegates already represented provincial interests.⁸¹ The matter ended here,

⁸⁰ Ibid., p. 2513.

⁸¹ Labour Gazette (Ottawa, November 1927), pp. 1168-1170.

and the Conference proceeded to other issues. As the decade drew to a close, however, and the clutter of provincial legislative confusion with respect to the I. L. O. remained unresolved, it seemed apparent that a new system would have to be devised either uniformly to augment Dominion authority, or to establish an official provincial presence at the I. L. O.

The work of the Select Standing Committee on Industrial and International Relations merely seemed to impose another layer of legal opinion on a situation already top-heavy with such information. Its key 1924 report to Parliament recommended a judgement from the Canadian Supreme Court on the Hours of Work Convention, but in the absence of any federal or provincial initiatives on that decision (of 1925), the Committee could only continue in its work of issuing imprecise statements on Dominion and provincial authority. Although the Committee recognized that many I. L. O. proposals represented serious long range demands of Canadian society, it found itself generally unable to admit that the Dominion government had any jurisdiction beyond that suggested by the clause on Dominion works. Furthermore, it was unwilling (or unable) to suggest how the provinces might assume these responsibilities and therefore proposed that the matter be referred to still another federal-provincial conference.⁸² At least one exception, though,

⁸²Canada. Parliament, Select Standing Committee on Industrial and International Relations, Reports of Proceedings (Ottawa: King's Printer, 1926-27, 1928, 1929), pp. v-vi; iv-v; iv.

was seen by Commissioner McIntosh in the 1926 Report on Minimum Wage when he asserted that:

There can be no doubt that where Canada has entered into an obligation by treaty - and in that connection I mean an association within the Empire of course - within the meaning of Section 132 . . . I do not think there is any doubt but that Parliament has power to legislate for the purpose of carrying into effect the provision of the treaty.⁸³

The report went on to state what J. S. Woodsworth had been haranging Parliament about in that same session, namely, "that the British North America Act by no means contemplates industrial problems of the kind and scope to which Canadians today must adjust themselves."⁸⁴

As mentioned, the key proposal of the Select Standing Committee resulted from its deliberation on the Hours of Work Convention in 1924. By the opinion of the Committee, the entire matter was to be submitted to the Canadian Supreme Court for a final decision.⁸⁵

- iv) The Role of the Canadian Supreme Court and the Judicial Committee of the Privy Council in Defining Canada's Obligations to the I. L. O.

On January 12, 1925 an Order-in-Council was transmitted to the Supreme Court (and to the International Labour

⁸³ Ibid., (1926-27), p. vi.

⁸⁴ (Commons), Debates (March 9, 1927), pp. 1036-1039.

⁸⁵ Canada. House of Commons, Journals, vol. 61 (July 16, 1924), p. 569.

Office) which explained to the Court the status of the issue regarding the Hours of Work Convention. The Order-in-Council posed four general questions. The first concerned the nature of Canada's obligation to the I. L. O. vis-à-vis draft conventions and recommendations; the other three questions referred to provincial competence with regard to the Hours of Work Convention, the nature of shared responsibility for this Convention, and specifically the extent of provincial as distinct from Dominion authority.⁸⁶ Supreme Court action on these questions came on June 11, 1925. Counsel appeared on behalf of the governments of Quebec, Ontario and Nova Scotia, as well as the Dominion government. The latter argued that, as stipulated in Article 405, no obligation rested with the Parliament of Canada to take responsibility for ratification of the Hours of Work Convention, and that the matter was within provincial competence. Quebec sided with the Dominion in this argument, but the Counsels for Ontario and Nova Scotia held that the Dominion government had exclusive jurisdiction and the additional obligation to make the provision of the Convention effective across Canada. In the absence of this authority, it was argued, the matter would come under provincial jurisdiction. The Court's unanimous decisions tended to favour provincial jurisdiction, although the

⁸⁶International Labour Office, Official Bulletin, 10 (March 1925):28-30.

justices did make special provision for Dominion authority within the context of Dominion works. Regarding Canada's obligation to the I. L. O., the justices upheld the specifics of Article 405 as the basis on which the division of jurisdiction should take place. It was merely the Dominion's obligation to bring the draft legislation before the competent provincial authorities. Since Article 405 made no comment as to the role of the Dominion authority after that point, the Supreme Court rendered no judgement either.

With regard to the Hours of Work Convention, the Court ruled that the provinces were competent by virtue of Section 92, Subsections 13 and 16 of the B. N. A. Act (on property and civil rights), but that Dominion authority prevailed in those areas not within provincial boundaries, on public works specifically designated as Dominion works, and on Dominion railways.⁸⁷ The decision therefore confirmed the practice of the government in referring I. L. O. decisions to the appropriate authority according to the opinion of the Justice Minister.⁸⁸ Necessarily, as stated earlier, the Department of Justice held the key middle position between the two powers.

⁸⁷ Ibid., 11, 15-18.

⁸⁸ A. C. Weinfeld, "Canadian Constitutional Problems in Connection with Conventions of the International Labour Organization - Comparison with Problems in the United States," George Washington Law Review, 4 (March 1936):330.

Even this Supreme Court decision, however, did not clarify all matters. The issue of Dominion authority as vested in Section 132, B. N. A. Act was not broached, nor was an opinion provided on Dominion jurisdiction on the basis of "peace, order and good government." However, with regard to the latter prerogative, judgement of a very different sort had been handed down several months before which was to have a bearing on any future attempt by the Dominion to impose its own jurisdiction on I. L. O. decisions. On January 20, 1925 the Judicial Committee of the Privy Council ruled in a case between the Toronto Electric Commissioners and One Colin Snider on the validity of the Industrial Disputes Investigation Act of 1907. Viscount Haldane overturned the 1882 precedent (Russell vs. The Queen), upholding Dominion authority by virtue of the residual powers clause, and declared the Industrial Disputes Investigation Act to be invalid.⁸⁹ Taken together, the judgements of the Canadian Supreme Court and the Judicial Committee of the Privy Council represented a formidable barrier to any future initiative which the federal government might wish to take with respect to I. L. O. conventions. Unlike the uncertain days of 1919 and 1920 when a Labour Minister could confidently assume federal authority on the basis of a variety of constitutional practices and precedents,

⁸⁹ Labour Gazette (Ottawa, February 1925), pp. 241-247.

1925 brought a substantial setback for the cause of state interventionism in the social sphere. Canada's lack-lustre performance at the I. L. O. Conferences and sessions of the Governing Body after 1925 seems to have been a natural outgrowth of this condition. This situation prompted International Labour Office Director Albert Thomas to suggest how federal states might be encouraged to improve their ratifications record. At the Eleventh Session in 1928, he asked federal governments "to obtain from the Governments of Provinces or States guarantees sufficient to enable them to undertake the obligations of ratification."⁹⁰ Unfortunately, as William L. Tayler has pointed out, such a procedure involved the acceptance of a new principle totally alien to Canadian parliament by tradition. It implied nothing less than that one government would bind others to a legislative initiative.⁹¹ Little could come of this in Canada.

v). The Liberals and I. L. O. Proposals at the End of the Decade

By the end of the 1920's nine years of Liberal government in Ottawa had thus produced an unimpressive record

⁹⁰International Labour Organization, Proceedings of the Eleventh Annual Conference, Director's Report, II:69; 976.

⁹¹Tayler, Federal States and Labour Treaties . . ., p. 116.

regarding I. L. O. decisions bearing on Canadian labour matters. Apparently, the constitutional problem had presented the chief obstacle for Dominion legislation aiming at rendering provincial labour standards uniform. Nevertheless, this impasse had prompted the King administrations to produce an interesting array of expert opinion on the subject, most of which usually recommended that ultimate responsibility for international obligations (concerning the I. L. O.) rested with the individual provinces.

Thus denied the authority to act on the basis of most of the powers enumerated under Section 91, the King administrations chose not to challenge the Privy Council decision with respect to at least three other types of Dominion authority, namely, the residual powers clause, Section 132 and Section 91(2) regarding interprovincial regulation of trade and commerce.⁹² Neither did King attempt to establish Dominion authority through constitutional amendment. He shied away from confrontations, and because of his preoccupation with national status, he refused to ask that Great Britain amend the B. N. A. Act on behalf of the Federal government.⁹³

⁹² Canada. Parliament, Report of the Senate Session Relating to the Enactment of the B. N. A. Act, (1867) (Ottawa: King's Printer, 1939), pp. 16; 83; 86.

⁹³ H. Blair Neatby, William Lyon Mackenzie King, 1924-1932: The Lonely Heights (Toronto: University of Toronto Press, 1963), p. 235.

Moreover, the Privy Council judgement of 1925 which invalidated the Industrial Disputes Investigation Act had weakened any potential resolve to establish a standard code of labour law across the nation. True to its spirit of complacency, the Federal government had not contested the ruling, but, like most of the I. L. O. decisions, passed the matter to the provincial authorities for consideration. Consequently, the King administrations displayed a great deal less initiative with respect to International Labour Conventions than had been envisaged in the 1919 manifesto.

Exceptions, though, were the 1925 ratifications of the four conventions relating to sea labour, and the one in the spring of 1930 regarding hours of work and minimum wage for Dominion employees on Dominion works;⁹⁴ the latter was an initiative rather removed in time from its origins in the programme of 1919 and thus greeted by the Opposition with unaffected cynicism. The proposal was introduced on April 1, 1930 by Labour Minister Peter Heenan,⁹⁵ and on April 3, as if in anticipation of the gathering criticism of the measure (due to its timing, more than its content), Mackenzie King articulated his first defence of Liberal labour policy with respect to the I. L. O. charter.⁹⁶ In

⁹⁴Canada. Department of Labour, Annual Report (Ottawa: King's Printer, 1930), p. 189.

⁹⁵(Commons), Debates (April 1, 1930), p. 1140.

⁹⁶Ibid., pp. 1234-1235.

this address, King explained which of the stipulations enumerated in the Nine Points of the Labour Charter had been fulfilled under the 1919 programme, and he cited various federal initiatives taken by his regime to give effect to the Charter principles. However, for certain cases, such as child labour and factory inspection, King denied all federal responsibility, as these fell under provincial authority. This prompted J. S. Woodsworth to ask the Prime Minister why these issues had been included in the federal manifesto of 1919. King had no answer to this and proceeded in his speech as if he had not heard the question.⁹⁷

Naturally, Woodsworth was not the only opposition member to be highly critical of this new initiative. Opposition Leader R. B. Bennett, as well as Isaac Macdougall and A. W. Neill denounced the bill as an exercise in political opportunism, prompted by the approach of a federal election, and the growing economic crisis.⁹⁸

Macdougall pointed out the obvious--that the Bill, even in its limited form (limited, that is, to Dominion works and employees) was eleven years too late, as the 1919 Manifesto had already articulated specific provisions for hours of work and fair wages legislation for Dominion concerns. He

⁹⁷ Ibid., p. 1236.

⁹⁸ Ibid., p. 1432.

maintained as well that the proposed legislation would do very little to address the real problem of labour in the developing depression, namely, the need for unemployment relief. Of all the principles enunciated in the 1919 Manifesto, Macdougall claimed, this matter had received the least attention by the King government; here was a situation where the federal government did indeed have recognized jurisdiction, but refused to acknowledge it. King's reply was that the federal government had other uses for the money.⁹⁹

The criticisms of Opposition Leader R. B. Bennett touched more upon the constitutional aspects of the Bill than upon the motivations of the Liberals for its presentation. Compared with his later policy of upholding Dominion jurisdiction in I. L. O. matters, Bennett's position in 1930 indicated a rather less adventurous spirit. While he supported the concept of Fair Wages-Hours of Work Legislation, he announced reservations as to the authority which this initiative bestowed on the Federal Executive to determine rates of wages and hours on Dominion works, and on the Dominion Parliament to enforce these by enactment of law.¹⁰⁰ He maintained, as had many of his predecessors, that the great variety of conditions across the provinces rendered

⁹⁹ Ibid., pp. 1255-1256.

¹⁰⁰ Ibid., p. 1435.

such uniform legislation even for Dominion works somewhat impracticable. Moreover, in contrast to his desire in 1935 to cloak the Executive with powers sufficient to move unilaterally on I. L. O. decisions, Bennett was unhappy that this legislation gave the Executive,

powers so great, so fraught with opportunities for tyranny, the exercise of which is repugnant to the very idea of our institutions, of the conventions and of the treaty itself which brought about the possibility of an international declaration of a forty-eight hour week and an eight-hour day at fair wages.¹⁰¹

For J. S. Wordsworth, the proposed legislation contained far too many conditions and exceptions (as it was to apply only to those Dominion works undertaken on Dominion property) which, in his opinion, eroded the effectiveness of the initiative even in its limited scope. Wordsworth felt that the Dominion government had evaded certain duties with respect to the I. L. O. and was still attempting to underplay them even in the new legislation. He maintained that:

We pledged our solemn word in the Versailles treaty that we would stand by the principle of the eight hour day. We are expecting the other nations to stand by their obligations and yet we have not been able to carry out our own solemn obligation. I know that the excuse is made - I consider that it is very largely an excuse - that the federal government is clear when it passes this responsibility on to the competent legislative authority. I cannot think it is in keeping with the spirit of the Versailles treaty for us to claim that we have done our whole duty when we pass these obligations on to some other body without impressing upon them the necessity of living up to them. If we are given the authority

¹⁰¹Ibid., p. 1436.

to make a treaty, I should say . . . that we have a certain responsibility for carrying out the terms of that treaty. Even supposing it were true that this was entirely a provincial matter, I should say that when it comes to work carried on for our own Dominion Government, we have every right . . . to insist that work should be done under fair conditions whether it be on Dominion government property or elsewhere.¹⁰²

The Fair Wage and Hours of Work Act received final legislative sanction in May, 1930 marking the realization of a policy of fair wages on Dominion works which had been advocated originally by the Liberals in 1900 and again in 1919.¹⁰³ The Act did not make any suggestions to the provinces as to the advisability of adopting similar legislation for provincial works, nor did it propose a means whereby the principle could be applied to part-Dominion/part-provincial works. But the Supreme Court ruling of 1925, on which this legislation was predicated, had not clarified these concerns, which narrowed the Act to rather specific applications.¹⁰⁴ Nevertheless, the Act did commit the Dominion government to a wider exercise of authority than had been anticipated in the original Fair Wages policy pronouncements which had held that the prevailing rates of wages in the district in question should be assumed to be

¹⁰² Ibid., p. 1447.

¹⁰³ Labour Gazette (Ottawa, May 1930), p. 514.

¹⁰⁴ Ibid., (April 1930), pp. 383-384.

fair and reasonable. The 1930 Act, on the other hand, gave to the Governor-General-in-Council the authority to decide what wages could be considered fair and reasonable. Consequently, not only Bennett, but the C. M. A. as well objected to the significant increase of Dominion authority conveyed by this legislation.¹⁰⁵

Why, then, did the King administration pass this legislation in apparent contradiction to its previous non-interventionist attitude in the realm of labour economics? As indicated earlier, regard for the principles of the I. L. O. was not the motivation since King preferred not to have Canada assume obligations to the organization. It may have been the desire to score a political coup before the approaching federal election. However, H. B. Neatby has pointed out that King had always emphasized that some government intervention was necessary to ensure "fair play" between the parties to industry.¹⁰⁶ It had been a central theme of Industry and Humanity that the welfare of the community was best served in matters pertaining to the relationship of labour to industry by some type of state intervention which ensured that neither party gained an unfair advantage over the other and that the cause of

¹⁰⁵ Ibid., (June 1930), p. 674.

¹⁰⁶ Neatby, William Lyon Mackenzie King . . ., pp. 310-311.

morality in public affairs was being well-served.¹⁰⁷ Thus, King had been compelled before the First World War to sponsor the Industrial Disputes Investigation Act and the Combines Investigation Act, not necessarily for the economic good which may have derived from these measures, but rather because he had felt that "the public good" demanded such intervention. Beyond these measures, however, King refused to approach the constitutional relationship with the provincial governments. He quite firmly believed that, in terms of what he considered "local matters," the provincial or municipal governments could assume the role of mediating authority far more effectively than could the Dominion government, given their superior knowledge of local conditions. For King, the mounting unemployment crisis, therefore, was not a matter of concern for the federal government, but rather, as H. B. Neatby points out,

unemployment (to King) was 'a matter for individuals in the first instance; between municipalities and the people living within their bounds, in the second instance; next between the provinces and the citizens of the respective provinces; and only finally a matter of concern in the federal arena.' Until such a state of emergency developed that individuals, municipalities and provinces could not cope with the situation, unemployment would not be a moral issue for which he felt any responsibility.¹⁰⁸

¹⁰⁷W. L. Mackenzie King, Industry and Humanity (Toronto: Macmillan, 1935), p. 141.

¹⁰⁸Neatby, William Lyon Mackenzie King . . ., pp. 311-312.

The Fair Wage and Hours of Work Act represented King's only response to the Depression. Without a further policy on export trade or a general plan of state intervention to shore up the sagging fortunes of free enterprise, the Liberals could not hope to address the gathering crisis.

h) Canadian Public Opinion
and the I. L. O.

Canadian public opinion toward the I. L. O. in this era ranged from indifference to hostility. This is evident in Mackenzie King's own attitudes, the opinions of the C. M. A. and the T. L. C., and also in a sampling of press opinion. This suspicious attitude was such that the Labour Office itself considered the situation serious enough to send the Director of the Labour Office directly to Canada to clear up the misunderstandings many Canadians held regarding the I. L. O.'s so-called "socialist tendencies."

The matter of Canada's role in the I. L. O. in this period received inconsistent discussion and support from public or political opinion. Between 1925 and 1929, the government of Mackenzie King was often compelled to defend its policy regarding I. L. O. obligations against attacks by members of Parliament from the western provinces. Unlike various newspapers (e.g., the Montreal Gazette)¹⁰⁹ these individuals, among whom J. S. Woodsworth played a leading

¹⁰⁹Page, "Canadians and the League of Nations Before the Manchurian Crisis," pp. 325-326.

part, did not extend their criticisms to the Labour Conferences, the Labour Office or to the concept behind the organization itself. Their attacks were limited specifically to the failure of the Federal government to induce the provinces to accept some sort of legislative compromise, and were usually received by the Labour Minister as an attack either on the Liberal labour programme, or the system of constitutional division of powers regarding labour. On several such occasions, Murdock or Heenan was compelled to defend both without providing any suggestion as to how the Federal government might facilitate matters with regard to ratification.¹¹⁰ This was especially infuriating to Woodsworth who accused the government of evading the issue, as well as its responsibility, stating that:

If Canada had the right to sign the treaty . . . then as a nation Canada must go forward and ratify the treaty. . . . I think it is evident to all that in treaty obligations the provinces have no jurisdiction whatever, and they might very well take the ground that they must wait until Canada ratifies the treaty before they decide their own policy.¹¹¹

Woodsworth would not be cowed in this either by Supreme Court decisions or rulings of the Judicial Committee of the

¹¹⁰ (Commons), Debates (April 14, 1925), p. 1997; (June 25, 1925), pp. 4918-4923; (June 14, 1926), p. 4490.

¹¹¹ Ibid., (June 25, 1925), p. 4920.

Privy Council (regarding the Industrial Disputes Investigation Act). In his opinion, the Federal government possessed ample authority as vested in the B. N. A. Act to give full effect to its obligations. That it refused to do so, even in some cases with respect to its own employees, struck Woodsworth as a lack of will on the part of the Liberal government.¹¹²

For his part, Prime Minister King provided little public encouragement for Canada's work in the I. L. O. His visit of 1928 to the International Labour Office had scant effect on his general attitude of ambivalence toward international obligations. When he spoke of Canada's "wholehearted" contribution to the I. L. O. in an earlier address to the Commons (March 26, 1928), he provided only vague generalizations as to the specifics of that contribution.¹¹³ In general, King's attitude toward the I. L. O. and the League closely replicated his attitude toward domestic issues; he strove to remain non-controversial and to maintain the status quo, particularly as regard the position of the United States vis-à-vis Canadian labour and industry. King's major policy initiatives therefore seldom ventured beyond the bread-and-butter issues of domestic concerns. For the most part, he came to rely on the opinion of his chief adviser and close friend, O. D.

¹¹²Ibid., (June 12, 1929), pp. 3671-3672.

¹¹³Ibid., (March 1928), p. 1712.

Skelton; Skelton reflected the national self-interest which had become a chief characteristic of the Prime Minister's concept of international obligations.

Canadian industry, as evidenced by the proceedings of the annual conferences of the C. M. A., was always opposed to most of the decisions of the I. L. O. With regard to the Hours of Work Convention, however, the C. M. A. was especially vehement, and at every conference in the 1920's denounced the convention as impractical for Canadian political and industrial conditions, and also pointless, given the close industrial relationship which Canada shared with the United States.¹¹⁴ In this matter, Canadian industry and Liberal politics spoke the same language, as it hardly made good sense to either for Canada to alienate its chief trading partner.

Naturally, the T. L. C., as the official voice of Canadian labour, held a view diametrically opposed to that of the C. M. A. Whereas the latter at its annual conferences denounced both the principles and many of the decisions of the I. L. O., the T. L. C., at its annual conventions, upheld them. Its chief goal in the early 1920's had been to secure ratifications of I. L. O. decisions in spite of the Justice Department's ruling on the nature of federal responsibility.¹¹⁵

¹¹⁴"Hours of Work in Canada," The International Labour Review, 9 (March 1924):395-396.

¹¹⁵Dominion Trades and Labour Congress, Proceedings of the Thirty-Seventh Annual Convention (Ottawa, 1921), p. 42.

Even after the Supreme Court decision of 1925, the T. L. C. continued to submit legislative proposals to the Dominion authority, but unlike the early 1920's when it had been more insistent on unilateral Dominion action, the T. L. C. tended after 1925 to limit its requests for legislative action to suggestions for procedures in conjunction with the recognized fact of provincial jurisdiction.¹¹⁶ At the same time, the organization also began to submit its legislative proposals to the various provincial authorities in anticipation of increased provincial activity.¹¹⁷

However, by 1926, it had also become apparent to the T. L. C. that fewer benefits than anticipated might accrue to Canadian labour from the work of the I. L. O. The nature and pace of correct constitutional procedure were obviously of less interest to labour than the fact that many significant issues dealt with by the I. L. O. conferences had simply not been resolved in favour of the Canadian worker. In an article for the Alberta Labour News, Tom Moore commented that:

Attendance at a conference now impresses one that the one big mistake which was made in 1919 was to call this organization the International Labour Organization. It should have been the International Industrial Organization. Workers in every country

¹¹⁶ Labour Gazette (Ottawa, January 1928), p. 38; (January 1929), p. 38.

¹¹⁷ Ibid., (February 1926), pp. 122-124; (April 1926), pp. 342-343.

have been misled by this name and encouraged by it to expect too much from their representatives there, who after all, are only one-fourth of the delegation whilst employers have an equal representation and governments as many as both together.¹¹⁸

Certain political and constitutional realities, therefore, suggested to the T. L. C. that the halcyon days of 1919 and the idealism which had accompanied the early work of the I. L. O. were most certainly things of the past. Judging from the scaled-down tone of T. L. C. proposals after 1925, it seems apparent that the organization came to recognize that Federal government action in the social sphere had come as far as possible under the prevailing constitutional circumstances.

With a few notable exceptions, the Canadian press tended to maintain silence on the work of the I. L. O., and it was only through the publicizing efforts of the League of Nations Society in Canada that an accurate account of the work of the I. L. O. ever came before the Canadian public.¹¹⁹ The preoccupation of many English-language newspapers, among them the Manitoba Free Press, with Canada's status in the League obscured the importance of the question of national responsibility for I. L. O. obligations assumed under that status.¹²⁰ At the same time, certain

¹¹⁸ Ibid., (October 1926), p. 954.

¹¹⁹ Page, "Canadian and the League of Nations Before the Manchurian Crisis," p. 203.

¹²⁰ Ramsay Cook, The Politics of John W. Dafoe and the Free Press (Toronto: University of Toronto Press, 1963), pp. 173-174.

important Quebec newspapers (The Montreal Gazette, The Montreal Herald, and The Montreal Daily Star) were vociferous critics of Canada's involvement in the League and the I. L. O.¹²¹ The Montreal Herald was especially suspicious of the "socialistic politics" of the I. L. O.; The Montreal Gazette, under the control of Senator Robert White, echoed these sentiments by asserting that the League had been seriously compromised by its association with the supposedly socialistic propaganda studies of the I. L. O. (e.g., the various I. L. O. studies and reports on standard-setting practices of certain nations).¹²² Neither were other Canadian business interests (as distinct from the C. M. A.) prepared to accord any recognition to the work of the I. L. O. Like the C. M. A., they viewed the organization and its goals with a restrained suspicion.¹²³

Recognizing that the mood of Canadian society toward the League and the I. L. O. had shifted from optimism to suspicious tolerance, and in some cases to outright hostility, the International Labour Office attempted to

¹²¹Page, "Canadians and the League of Nations Before the Manchurian Crisis," pp. 188-190.

¹²²The Montreal Herald, 5 June 1924; The Montreal Gazette, 21 April 1924; The Montreal Daily Star, 10 April 1923; 2 October 1923; 4 October 1923.

¹²³See, e.g., The Financial Post (Toronto) 19 December 1924.

improve matters through official visits of staff members to Canada. In April, 1924 Dr. Riddell (and later Professor Eastman) returned to Canada to meet with provincial representatives and Senator White in order to effect a greater appreciation for the work of the I. L. O.¹²⁴ Finally, in the fall, 1926 the Director of the Labour Office himself, H. B. Butler, paid a special visit to Canada on his mission to the United States. Between October 29 and November 2, Butler addressed the Men's and Women's Clubs of Ottawa, the McGill University Canadian Club of Montreal and the Men's and Women's Canadian Clubs of Hamilton and Toronto, and also met with representatives of the T. L. C. and the C. M. A. In his address to these organizations, Butler explained and clarified the principles, organization and work of the I. L. O. He emphasized the importance of the contribution of the non-European members to the organization and sought to allay suspicions as to the meaning of internationalism with respect to I. L. O. decisions. He acknowledged the fears of industry with respect to this concept, and suggested that for the I. L. O. the concept of internationalism meant nothing more than global co-operation and mutual assistance in the task of improving the condition of world labour.¹²⁵

¹²⁴ Labour Gazette (Ottawa, April 1924), p. 300.

¹²⁵ Ibid., (October 1926), pp. 1113-1118.

The success of these endeavours seems to have been limited. If Canada's conference voting behaviour and ratifications between 1927 and 1929 can be regarded as a barometer of the public mood concerning the I. L. O., Butler's speeches fell upon deaf ears. The C. M. A. certainly did not alter its opinion on I. L. O. conventions either, and while the tone of The Montreal Gazette toward the I. L. O. was somewhat modified, its basic opposition to the concept of international standards for social legislation remained fairly constant.

Canada's relationship with the I. L. O. in the Mackenzie King era thus reflected certain general tendencies in Canadian politics and society. The political climate was not receptive to whatever benefits membership might have been able to bring to the Canadian public. Judging from the apparent proliferation of Dominion-provincial conferences, Reports of Standing Committees and opinions of the Justice Department and the Supreme Court, one such tendency seemed to be the desire for politicians and public officials to rely on a plethora of opinions on an issue which could only be resolved by way of a difficult but necessary choice-- that choice being, as J. S. Woodsworth had maintained, between constitutional amendment through patriation or empty justifications and diplomatic embarrassment. This fear of "hard choices" with reference to the League and the I. L. O.

indeed seems to have been a chief characteristic of the Mackenzie King years in general, a manifestation of a post-war view of the world which placed national interest above international responsibility. Doubtless, King's preoccupation with the political balance of power as vested in Quebec's sixty-five seats represented a determining influence behind this hesitation; he did not want Canada to occupy any position in the League or the I. L. O. where it might be forced to side in arguments between England and France, as this could precipitate problems in French Canada.¹²⁶ Borden's carefully constructed scheme of Commonwealth solidarity was undoubtedly viewed by King as a luxury which Canadian interests could ill afford and, with the able assistance of O. D. Skelton, King set about to alter Canada's stand as quickly as possible. What King did retain of Borden's efforts reflected another important tendency in Canadian politics and society in the 1920's-- a sort of national self-consciousness which motivated the shapers of public opinion to define Canada's relationships-- with the League, the Commonwealth, the I. L. O.--in terms of Canada's status. Indeed, the issue represented the "red herring" of international relations in the 1920's--when Canada could not meet I. L. O. standards and the constitu-

¹²⁶ C. P. Stacey, Canada and the Age of Conflict: A History of Canadian External Policies, Vol. II: 1921-1948 (Toronto: Macmillan, 1981), pp. 4-5.

tional argument had become threadbare with overuse, Canadian government representatives could claim an anti-overseas bias among the European members of the Labour Office and then, as F. H. Soward maintains, "hide under the bed" until someone (often another non-European state) came to their defence.¹²⁷

One important trend in Canada's relationship with the I. L. O. in the 1920's was the role which the provinces assumed (almost by default) as a result of Dominion ambivalence. Although they were enacted on a piecemeal basis, provincial initiatives on I. L. O. decisions did partially fill the vacuum created by the Dominion government's inaction. What was needed, however, was a new system, as F. A. Ackland had suggested earlier in the decade, whereby provincial ratification could be given international recognition and status.

As for King's government itself, the issue of state intervention in labour economics represented a veritable snake pit of unanswered questions and troublesome ramifications. Certainly the constitutional problem was the major issue, but King was well-acquainted with the mood of the Canadian public; and in it he detected a complacency which

¹²⁷ F. H. Soward, "Canada and the World," in Canada After the War, eds. A. Brady and F. R. Scott (Toronto: Macmillan, 1943), p. 123.

represented a significant force for not embarking on an adventure in the social realm. Against the combined influences of an isolationist Dominion government and industry and an uninformed public, Canadian labour was the lone voice of dissent. The coming of the worldwide depression, however, demanded a re-examination of the meaning of the I. L. O. in Canadian society.

CHAPTER VII

CANADA AND THE I. L. O. IN THE BENNETT ERA, 1930-1935

The Bennett era was a time of interesting and important developments for Canada's position in the I. L. O. as well as for Canadian state interventionism in the social sphere. In both cases the depression acted as the chief motivating factor. At the I. L. O. Conferences and in the Governing Body and Labour Office, Canada's national interests more than ever occupied the thinking and actions of the Canadian delegates. Canada's chief concern in this period was that the preparatory work as well as the work of the Conferences themselves be tailored to include Canadian and other non-European input. In this way Canada, among other non-European members, hoped to influence the Organization to draft legislative proposals more reflective of non-European conditions and thus perhaps less difficult to apply, particularly in the case of federal members.

Bennett's early economic and social programmes did not envision a direct relationship between I. L. O. draft legislation and the alleviation of the growing problems of the Canadian worker. Generally, Bennett's "Canada first" programme of the early 1930's gave top priority to Canada's economic interests, at the expense of those of the larger

world community of which Canada was a member. Similarly, in the social realm, the early Bennett programme did not recognize the value of international standards for the welfare of the Canadian worker and was at odds with the internationalist principles of the I. L. O.

Meanwhile in Geneva, Walter Riddell continued to insist that the I. L. O. adopt agenda more reflective of non-European conditions which would thereby encourage non-European compliance with I. L. O. draft legislation. To this end, he laboured to develop methods for greater non-European input into the proceedings of key conference commissions. His goal was not only greater influence by non-European states in the organization, but also the general acceptance by its membership of the principle that regional conditions had a distinct bearing on the applicability of I. L. O. proposals.

Considered together, both Bennett and Riddell were articulating Canada's national interests at the onset of this period. Bennett's "New Deal" programme of 1935 was a continuation of this policy. Although three crucial I. L. O. conventions formed the basis of this programme, the latter was clearly not designed to reflect the philosophy of the organization itself. It did, however, propel the state into the social sphere. In this way, an important, albeit temporary link was forged between Canada's membership in the I. L. O., Canadian social legislation, and the

role of the Dominion government in shaping that legislation. In effect, the Bennett "New Deal" represented the desired outcome for all parties.

For the I. L. O., it represented a long-awaited initiative by Canada to give credence to that country's status in the organization. For Bennett, it represented a means to address the continuing problems of the depression (all other methods having failed) and, as well, a vehicle to increase political prestige. For King, however, it also represented a dangerous invasion of Dominion power into the realm of provincial and local concerns. The constitutional question thus proved to be the chief priority in Canada's dealings with the I. L. O. for Bennett as it did for King.

A study of Canada's role in the I. L. O. in this era must highlight several important topics. One of the first subjects under discussion has to be the economic and political situation in Canada at the onset of this period, and the effects of the world depression on this situation. Following this discussion an inquiry into W. A. Riddell's efforts at the I. L. O. must be conducted. This examination will focus on the Riddell system for non-European participation in conference commissions and the problems which that system encountered in 1931 with the Coal Convention. In addition, the Labour Office policy of recognition of provincial ratifications and its influence on the Riddell

system will be noted. While Canada's participation at the Sixteenth and Seventeenth Conferences of 1932 and 1933 had some special character, Canada's role at the I. L. O. in 1934 (including the Eighteenth Conference and the 1934 sessions of the Governing Body) merits even more consideration because of the challenge to Canadian status posed by the entry of the United States and the Soviet Union into the organization. An overall look at Canada's voting record for this era reveals definite contrasts to that of the 1920's under the King administrations.

Of central importance to this study, however, is the Bennett "New Deal" legislation of 1934. This legislation, which was based on three important I. L. O. conventions, represented a turning point both for Canadian constitutional history and for Canada's relations with the I. L. O. Because of the nature of this initiative, the Liberals under King were able to take advantage of its many constitutional pitfalls and thus use the legislation as a spring-board for their own bid for political power in 1935.

a. The Economic and Political
Situation in Canada at the
Onset of This Period

Bennett and the Conservatives were able to acquire political power in 1930 largely because King and the Liberals were unable to cope with the initial effects of the depression. Those effects could be recognized in the

disastrous decline of the value of Canadian exports (especially wheat) and in the growing crisis of unemployment, subjects which will receive brief statistical analysis in the following. Consequently, the Bennett programme was geared to intervene in certain aspects of social welfare (e.g., unemployment relief) which King had always avoided. King's belief in the ability of provinces and local governments to address the problem of unemployment relief did not reflect a real understanding of the magnitude of the crisis, and consequently caused his fall from power. Bennett's aggressive "Canada first" programme, on the other hand, seemed to represent a bold step forward in solving the national economic dilemma. It, of course, had some impact upon Canada's relationship with the internationalist principles of the I. L. O.

As a nation whose principal economic activity was the export of raw material, especially wheat, Canada was hard-hit by the economic crisis. Overproduction, which had been encouraged by the activities of the Canadian Wheat Pool throughout the 1920's, had resulted in giant surpluses held against the speculation that prices would rise by 1929.¹ But with the contraction of the world market, exports of Canadian wheat and other various agricultural products

¹League of Nations, Report to the Assembly on the Course and Phases of the World Economic Depression (Geneva: Secretariat of the League of Nations, 1931), p. 47.

plummeted in 1930 by more than forty per cent, and manufactured goods by slightly more than twenty per cent.² By the beginning of 1931, the rate of decline of the value of raw material exports decreased a further eight per cent and manufactured goods by a further ten per cent.³ Almost overnight Canada went from a position of net exporter of goods and capital to borrower status. Consequently, the force of the Depression manifested itself immediately on the Canadian labour market. Unemployment of unionized labour, which had stood at 65,000 in 1928, escalated to 371,000 in 1930 and 481,000 by 1931, or sixteen per cent.⁴ At its peak in 1935, unemployment in Canada stood at 625,000, nearly twenty-five per cent of all unionized labour in the Dominion. Perhaps the statistics for the building trade represent the most dramatic increase in joblessness of all unionized activities. In 1928, unemployment in this field stood at 3.9 per cent and in 1930 at 26.2 per cent of all unionized labour.⁵ These statistics do not account for the unskilled or non-union workers, whose numbers made the

²Ibid., p. 159.

³Ibid., pp. 168-169.

⁴Ibid., p. 142.

⁵Ibid., p. 148.

situation more serious than officially recorded.⁶ Yet, of the total number employed as of 1932 (about 500,000), fully sixty-three per cent still worked more than the average of forty-eight hours per week⁷--a situation which tended to aggravate the problem of unemployment, since the economy could not sustain the pace of production given the depressed standard of living. Profits were lowered, capital investment sank, and opportunity for employment shrunk. Unfortunately, Canadian industrialists had always seen unregulated production as the panacea for any economic malaise. Hence, the I. L. O. concept that a shortened workday might encourage the employment of a larger work force and hence expand the purchasing power of the public struck Canadian business and industry as ill-considered speculation.⁸

Politically, the gathering depression spelled trouble for King and the Liberals, a situation made worse by King's attitude toward unemployment. Certainly his famous "five-cent-piece" speech⁹ and his "better uses for the money"

⁶M. C. Urquhart and K. A. Buckley, eds., Historical Statistics of Canada (Toronto: Macmillan, 1965), p. 61.

⁷Ibid., p. 104.

⁸International Labour Organization, Proceedings of the Seventeenth Annual Conference (Geneva, 1933), pp. 90-91.

⁹Canada. House of Commons, Debates (April 3, 1930), pp. 1227; 1256.

comment on unemployment relief, both on April 3, 1930, played directly into the hands of Bennett and the Conservatives. Furthermore, whereas King could only try to justify the less than sterling results of his labour policies, Bennett and the Conservatives brought forward a platform whose chief emphasis was on the creation of employment by way of economic stimulation. This "Canada first" policy consisted of large-scale public works programmes and a tariff scheme designed both to protect domestic industry and encourage the export of Canada's raw materials.¹⁰ Thus Bennett seemed to have more concrete proposals for the alleviation of unemployment than did the Liberals. With respect to the I. L. O. and Canadian labour, however, Bennett was silent. His programme made no provision for the enactment of draft legislation on labour's behalf. In fact, if Bennett's policy was to be one of aggressive resurrection of Canada's export economy, then perforce reduction of hours and increase of wages would prove to be a barrier. In 1935, of course, matters were to look quite different.

In the heyday of August, 1930, therefore, the question of Canada's place in the I. L. O. took a decidedly low priority in the political face-off. The Bennett administration swept into office on August 7 and remained until October 23, 1935.

¹⁰"R. B. Bennett Presents His Programme, June 9, 1930," in Historical Documents of Canada, ed. C. P. Stacey (Toronto: Macmillan, 1972), V:100-102.

b. W. A. Riddell and the Quest for
More Meaningful Canadian
Participation in the I. L. O.

During the King era, Canada had striven to establish a separate Canadian identity in the I. L. O. and to foster an understanding of the special conditions which precluded automatic acceptance of I. L. O. standards in Canada. However, the Liberal government had rendered scant assistance to its representatives in this regard, since it had provided no encouragement to the provinces to undertake ratifications, nor had it undertaken them itself. Consequently, Riddell and others had been compelled to seek the sympathy of the conference almost on their own initiatives. Judging from Riddell's efforts in this respect, it is not inaccurate to suggest that Canada's status at the Conferences and in the Governing Body had been a result of his tireless diligence. Under the Bennett administration, matters continued into the 1930's pretty much the same. Riddell's task under Bennett, however, was rendered more formidable still by a number of circumstances. Chief among these were the world economic crisis and Bennett's obvious policy of national self-interest. W. A. Riddell strove to gain a greater measure of representation for Canadian interests in the conference commissions of 1930 and 1931, in spite of the conflict between the internationalist principles of the I. L. O. and the fact of Canada's regional character. This conflict became

particularly evident at the Fifteenth Conference, 1931 in which the debate over the Coal Convention made a clash of these principles nearly inevitable. Of additional interest in this context was the Labour Office ruling on recognition of provincial ratifications--a development which, while much desired by Riddell, militated against his efforts with regard to the Coal Convention.

As in the 1920's, Riddell's most pressing problem in this period continued to be recognition of the rights of non-European states to greater representation in the Labour Office and on the conference commissions which prepared the draft conventions and recommendations. He recognized that in order for Canada or any overseas member to maintain an effective role in the I. L. O., it would be necessary to have greater input of a non-European nature into the technical work of the Labour Office and the conference commissions so that the Governing Body would compose agenda more reflective of non-European conditions.¹¹ Therefore, at the Forty-fourth and Forty-fifth Sessions of the Governing Body (of March and September, 1929) Riddell submitted a proposal which called for an increase of government delegate members of the special commissions of the I. L. O. conferences.¹² This proposed amendment to Article 7 of the

¹¹W. A. Riddell, "Effective Participation of Canada in the International Labour Organization," Social Welfare (March 1925), pp. 114-116.

¹²International Labour Office, Official Bulletin (Geneva, 1929), 14 (May 1920):24; (September 1929):44.

Standing Orders of the Conference suggested that before the Selection Commission was to name the various members of the commissions, it would ask that each government delegation indicate the specific commissions on which it desired representation. The government group seats, Riddell suggested, would be equal in number to those of both non-government groups taken together; but so that commission voting to enact amendments would still reflect the principle of two-thirds majority, each government delegate would be given only one vote, while each non-government delegate would be allowed two. Thus, more non-European government delegates could participate in those commissions proceedings which possibly concerned their national interests.¹³ The proposal was adopted on an experimental basis for the Twelfth and Thirteenth Sessions of 1929 (on the recommendation of the British government delegate), but it was suggested that this procedure should have no bearing on the composition of Governing Body commissions.¹⁴ This condition was to have important ramifications for overseas members at the Fourteenth and

¹³International Labour Organization, Proceedings of the Twelfth Annual Conference, 2 vols. (Geneva 1929), I:24.

¹⁴International Labour Organization, Proceedings of the Thirteenth Annual Conference, 2 vols. (Geneva 1929), I:20-21.

Fifteenth Sessions with respect to proposed draft legislation on work in the coal-mining industry.

Although Riddell's suggestion did enable non-European members to have some input into several commissions, that input seldom possessed the numeric force to render it influential; for example, on the important Commission on Hours of Work in Coal Mines of the Fifteenth Session of 1931, seven non-European delegates out of a total of forty-eight were invited to the deliberations; of this number, only two--Brazil and Chile--were given seats on the government group of the Commission.¹⁶ Still other difficulties arose in the application of the Riddell system. Wider representation of Government delegates resulted in the appointment of some to commissions with whose subjects they were not really interested. Hence, the rate of absenteeism of government delegates was rather high, which undercut the effectiveness of the government group as a whole. Riddell maintained, nonetheless, that the concept was basically sound and, with modifications, could be made to work. What was needed, he maintained, was closer supervision by the Selection Commission itself. To this end, he suggested a system whereby governments would be required to provide in writing the names of those commissions on which they desired representation and on which they could

¹⁶ International Labour Organization, Proceedings of the Fifteenth Annual Conference, 2 vols. (Geneva, 1931), I:12.

be present for the entire session.¹⁷ The proposal was given grudging acceptance, and the experiment continued until the Seventeenth Conference of 1933 when, in spite of other suggestions for clarification by overseas members, the Riddell system underwent an alteration which rendered it totally ineffective. At that conference, the Standing Orders Commission (with only one non-European state in its membership) indicated that delegates or advisers who attended commissions had the same rights as those already appointed, except the right to vote.¹⁸

As indicated, the Riddell system had been confined only to conference commissions, the technical commissions of the Labour Office were dominated completely by Europeans, and thus their findings and conclusions represented only European conditions. But these reports became the basis for the agenda of the conferences and thus applicable to all members, European and non-European alike. Periodically, throughout the 1920's, this system had caused difficulty for Canadian interests (e.g., as with the proposed draft legislation of 1920 on hours of work on inland navigation) and had incited Canadian delegates to a spirited defence

¹⁷ Ibid., Part 3, Appendix 3, I:595-597.

¹⁸ International Labour Organization, Proceedings of the Seventeenth Annual Conference, 2 vols. (Geneva, 1933), I:312. See also, "Appendix 3, Standing Orders; Revised Text," II:498; 502-503.

of those interests, usually based on geographical or economic considerations. The situation came to a head in the early 1930's with respect to the Technical Conference on Conditions of Work in Coal Mines and the subsequent draft legislation on hours of work in coal mines of the Fourteenth and Fifteenth Sessions (1930 and 1931). This Conference had been appointed in October, 1929 and was originally instructed to conduct investigations of conditions in Austria, Belgium, Czechoslovakia, France, Germany, Great Britain, Netherlands, Poland and Spain, and to arrive at proposed draft legislation on various specifics, including hours of work, only for those states.¹⁹ The resulting draft legislation was presented at the Fourteenth Conference; it received Canadian support because of the understanding that the legislation was to reflect regional and not general conditions among the membership.²⁰ The Conference, though, rejected the convention by not providing the necessary two-thirds majority. It is of interest to note, however, that of the twenty non-European states voting on the issue, fourteen voted in favour of the convention, including

¹⁹International Labour Office, Official Bulletin, 14 (December 1929):121-123.

²⁰International Labour Organization, Proceedings of the Fourteenth Annual Conference, 2 vols. (Geneva, 1930), I:380-381. See also, "Text of the Hours of Work in the Coal Mines Convention," Articles 14 and 15," I:847-848.

Canada.²¹ When the matter came up for reconsideration at the Fifteenth Conference, the non-European members found themselves confronted by a much different situation. Article 17 of the revised text of the Coal Commission Report to the Fifteenth Session maintained that after ratification by two or more original European members, the convention would come into force for the entire membership.²² Here was an example of the sort of misunderstanding which Riddell had been labouring to correct. That so few non-European members had been included on the Coal Commission either in 1930 or 1931 (and none on the Technical Commission) suggested to employers' delegate Gemmill of South Africa that the European members were completely ignorant of non-European conditions, but were attempting nonetheless to gain wider European support by expanding the scope of the legislation, thus shielding European mining interests from unregulated non-European competition.²³ Riddell was in full support of the Gemmill amendment aiming at a return to the 1930 status. Furthermore, both delegates held that the concept of non-European participation was under no circumstances

²¹International Labour Organization, Proceedings of the Fourteenth Annual Conference, I:487.

²²International Labour Organization, Proceedings of the Fifteenth Annual Conference, Appendices, "Article 19," I:672-673; "Article 1," I:666.

²³Ibid., pp. 399-407.

rendered legal in 1931 by the forwarding of questionnaires to non-European states prior to the Fifteenth Session.²⁴ Riddell went on to remind the Conference that he had supported the original investigation as well as the 1930 legislation and the initiative to place the matter before the 1931 Session only because it was confined to those states taking part in the matter. Moreover, he stated, that Lawson, the British government delegate, had guaranteed that for the sake of expediency, the matter would remain limited (a tacit admission that non-European input into the Technical Commission, would have tied up the matter indefinitely with non-European concerns). The Canadian government delegates, he maintained, would be quite willing to bring the convention to the attention of the Dominion government provided that Canada had the opportunity to take part in the preparatory work.²⁵

However, by a special extension of the conditions stipulated under Article 405 concerning ratifications by federal states, Riddell's argument was rendered invalid. In his reply to Riddell's statements, Coal Commission Reporter and government delegate to Great Britain Shinwell hinted at an innovation for the International Labour Conference--that this convention applied as a convention only to the original membership, and as a recommendation to all

²⁴ Ibid., pp. 399-407.

²⁵ Ibid., pp. 406-407.

other states. Canada's only obligation, he maintained, was to submit the matter as a recommendation to its provinces after it had been ratified as a convention by two or more European members.²⁶ This, of course, Canada as a federal state would have been bound to undertake regardless of the nature of the legislation. Shinwell went on to state, however, that he was "troubled" by Riddell's comments, since Canada did respond to the questionnaire. From the affirmative replies of certain provinces to the question of whether the conference as a whole should adopt the draft convention on hours of labour in coal mines, the Labour Office had deduced that Canada would proceed.²⁷ Shinwell also maintained that the exclusion of the non-European states would create a hopeless tangle and confusion, as some European states might seek similar exemption.

Another development tended to complicate Canada's position even further with respect to the Coal Convention. Part of Riddell's argument for more effective Canadian participation had been to suggest that provincial ratifications be given official recognition by the Labour Office.²⁸

²⁶ "Note of the Labour Office on the Clause Concerning the Coming into Force of the Proposed Draft Convention on Hours of Work in Coal Mines," in International Labour Organization, Proceedings of the Fifteenth Annual Conference, Appendices, I:675-679.

²⁷ International Labour Organization, Proceedings of the Fifteenth Annual Conference, I:408-409.

²⁸ Riddell, "Effective Participation of Canada in the International Labour Organization," Social Welfare, p. 115.

In his report to the Thirty-fourth Session of the Governing Body of 1927, H. B. Butler had stated similar views when he suggested that:

The fact that Canada is a Federal State places it in a special position as regards ratifying the conventions. Hitherto only four maritime conventions have been ratified by the Canadian Government, most of the others being within the sphere of the provincial legislatures, and therefore, according to the best legal opinion, not susceptible of action by the Federal Parliament. The result has been that Canada has not perhaps received the credit which is due to her for the social legislation which she actually possesses. Because she is not shown on the chart as having ratified any of the industrial conventions, it has sometimes been wrongly assumed that none of them is being carried out in practice. This is far from being the case. In fact, the social legislation of Ontario and most of the other Canadian Provinces will bear comparison with that of almost any other country. It was generally agreed (with the Minister of Labour) that some method was desirable by which the measure of observance obtaining in each Province in relation to the Conventions could be officially stated, as would enable a true idea to be formed of the standing of Canada in respect of social legislation.²⁹

This recommendation was followed by another in Butler's report to the Fifty-first Session of the Governing Body (January, 1931). In addition, the Dominion government forwarded a special report to the Labour Office which explained the extent to which I. L. O. proposals were met by existing provincial legislation.³⁰ The Labour Office

²⁹International Labour Office, Minutes of the Thirty-Fourth Session of the Governing Body (Geneva, 1927), pp. 83-84.

³⁰International Labour Office, Industrial and Labour Information (Geneva, 1931), pp. 167-176.

thus adopted a special marking (*) on the Ratifications Chart to indicate the measure which federal states had taken in respect to applications by their state members. In May, 1931 Canada therefore was accorded recognition for provincial legislation which met or surpassed the standards of I. L. O. decisions.

With respect to the Coal Convention, this development seemed to strengthen Shinwell's contention that Canada needed only to place the matter before the competent authorities as a recommendation to fulfill its obligation. The provinces could thus treat the Coal Convention like any other I. L. O. proposal accepting or rejecting it only as a recommendation, but would receive international recognition for their efforts if they chose to ratify.

Given these variables, it seems, therefore, that the European members had scant sympathy for Canada's concerns regarding the general application of the Coal Convention. Furthermore, judging from Shinwell's response to Riddell, it also appears that the British government delegation had undoubtedly become impatient with his preoccupation with legality. As Samuel Eastman has implied, in light of the Depression, the plight of labour, the tenuous nature of the British Labour government and the critical importance of this convention to the continued existence of that government, Canada's insistence on legality seemed poorly-timed.³¹

³¹ Samuel M. Eastman, Canada at Geneva (Toronto: Ryerson Press, 1946), pp. 26-27.

Moreover, since the Dominion government was constitutionally incapable of ratifying the coal convention anyway, it could have made little difference whether or not Canada was to be included in the preparatory work.

Ultimately, the Gemmill amendment was defeated by a vote of 89 to 14. Of the fourteen votes in favour of the proposal, ten were cast by non-European members, including Riddell and G. H. Ferguson, whereas workers' delegate P. M. Draper voted with the majority.³² The convention itself was accepted by the Conference by a vote of 81 to 2, with Draper in support of the decision and the rest of the Canadian delegation abstaining.³³

c. Canada and the Sixteenth Conference, 1932: Regaining Lost Ground

Canada's central role at the Sixteenth Conference (1932) presented a unique opportunity to legitimize further its claim for special consideration for its regional conditions. Since a Canadian, Labour Minister Gideon Robertson, was appointed to the presidency of the conference, Canada acquired an influential voice in the realization of this claim. Furthermore, after Canada's disastrous showing at

³²International Labour Organization, Proceedings of the Fifteenth Annual Conference, I:411.

³³Ibid., p. 482.

the Fifteenth Conference, 1931 (regarding the Coal Convention), the Canadian delegation probably needed just such an opportunity to regain some lost prestige.

In a sense, the fact that Canada was offered the Presidency at the Sixteenth Conference of 1932 can be viewed as a response by the I. L. O. to Canada's repeated demands for influence and input into its work. It was not the first time that a Canadian held the position of President at an International Conference, or served in the Officers' Group of the I. L. O. Senator Raoul Dandurand had been elected President of the 1925 Session of the League Assembly, and Tom Moore had served as the workers' delegate to the Vice-Presidency of the 1928 I. L. O. Conference. But the appointment of Gideon Robertson to the Presidency of the Sixteenth Conference of the I. L. O. came at an interesting time for Canada. In the first place, Riddell had probably, but without intention, placed Canada in an embarrassing situation at the 1931 Conference. Certainly his point on legality was well taken but, for the reasons mentioned, rather untimely. Consequently, Robertson's nomination to the Presidency seemingly represented a desire on the part of the organization to give Canada a formal opportunity to make a statement on its position. Furthermore, it could provide Riddell with one final opportunity to practice and improve his system of expanded commission representation. Thirdly, it could be regarded as an attempt

to forge a stronger link between the I. L. O. and the Bennett administration than had existed with King and the Liberals, especially since the depression had dropped the world price of wheat below fifty cents a bushel and thus thrown into disorder much of the Bennett trade programme, and with it the Canadian economy. At any rate, judging from the agenda itself, which contained no issues central to the worldwide labour crisis,³⁴ it seemed apparent that the Sixteenth Conference had been designated by the Governing Body more as an exercise in building up Canada's national self-confidence than in gathering informed opinion on the crucial problems of world labour. Apparently Robertson thought so as well, since in his opening address he recognized that his appointment to the Presidency was a tribute to Canada and its loyalty to the I. L. O. (rather than its accomplishments). He then pointed out that the agenda itself was of small importance to the worldwide economic crisis,³⁵ and thus implied a relationship between Canada's status at this Conference and the non-controversial nature of its agenda. Nevertheless, Robertson did take the opportunity in his opening address

³⁴International Labour Organization, Proceedings of the Sixteenth Annual Conference, 2 vols. (Geneva, 1932), I:9.

³⁵Ibid., pp. 9-10.

to defend, albeit indirectly, Canada's record on ratifications by reminding the Conference that in some countries, "Conventions have often been taken as the ultimate goal rather than as an immediate objective. By that method, progress had been made towards putting them into practice which often means a bigger step forward than actual ratification by some highly industrialized country where the Convention was already in operation before it was adopted."³⁶

Most of the work of the Sixteenth Conference other than the adoption of a convention and recommendation on minimum age for non-industrial employment and revision of the Dockers' Convention consisted of first discussion on items which would come before the Seventeenth Conference for final decision. These discussions focused on abolition of fee-charging employment agencies and on invalidity, old age, widows' and orphans' insurance.³⁷ The more crucial subjects, such as unemployment insurance, public works and reduction of hours did not find their way into conference discussion.

Controversy did arise, however, with Riddell's system for conference commissions when certain other proposals were made in relation with the central issue of expanded

³⁶ Ibid., pp. 9-10.

³⁷ Ibid., pp. 1-2.

representation and found their way into conference discussion. An Italian government proposal on equal voting rights for each of the three groups to expanded commissions sparked heated discussion, and led inevitably to the question of whether or not groups had the autonomy to register individual votes within the groups or whether the groups were to vote en bloc. The discussion tended to obscure Riddell's original purpose of the experiment; except for one effort to clarify the Italian position, he was unable to bring about anything satisfactory. An amendment was passed to the Standing Orders on the subject, but since it had been established before the Sixteenth Session that the entire matter was to be reviewed by the Governing Body before the Seventeenth Session, no further effort was expended to redraft the Riddell proposal.³⁸

d. Canada and the Seventeenth Conference, 1933: Continued Divisiveness Among the Canadian Delegates

Canada's role at the Seventeenth Conference (1933) was characterized by continued divisiveness in the Canadian delegation. This was particularly evident in the split between the workers' and employers' delegates over the question of reducing hours of work to diminish unemployment. The significance of this conflict lies in the fact that, by

³⁸Ibid., pp. 45-67.

1933, thirteen years of Canadian involvement with the I. L. O. had passed without any progress between labour and industry on the question of hours of work, or for that matter, on most questions relating to the basic working conditions in Canadian industry. In fact, as compared with the relative cohesiveness which had characterized the role of the Canadian delegation at the Sixteenth Conference, the divisiveness within the delegation at the Seventeenth Conference seemed to be an unfortunate regression.

The Sixteenth Conference had been short on agenda, but the Seventeenth Conference of 1933 more than made up for the shortfall. It included final discussion on those topics first discussed at the 1932 Conference, as well as the more controversial and contentious subjects of unemployment insurance and reduction of hours of work. In these and other respects, the Canadian delegation distinguished itself by what it had come to do best: participation in conference discussions in order to present in unambiguous terms the nature of the Canadian situation. This was especially important at that time for several reasons: the Depression continued to play havoc with Canadian wheat prices, and domestic unemployment had soared to alarming heights. For Riddell, it was imperative that the Conference understand the nature of the problem in Canada, just as it was for Bennett that the various national

delegations at the London Economic and Monetary Conference understand it. Furthermore, at the Sixty-second Session of the Governing Body (April, 1933) the decision was made not to renew the Riddell system for the Seventeenth Conference³⁹ thus apparently closing off Canada (and other non-European states) from possible participation in crucial commission decisions. Consequently, conference proceedings would more than ever have to represent Canada's major vehicle toward expressing her national interests and needs. The abandonment of the system did not go unchallenged, by the way, as the Swiss employers' delegate made it known that:

The Riddell system has been dropped not because of its inherent defects, but because of certain defects in the way in which it was applied and we consider that the whole question of representation in Committees requires to be re-examined.⁴⁰

In his address on the Director's Report, at any rate, Riddell was determined that the Conference understand Canada's economic position and the situation of the Canadian labour market. Essentially, he made a plea for the restoration of an equilibrium between world costs and prices, so that exporting nations like Canada could obtain a fair

³⁹ International Labour Office, Official Bulletin, 18 (August 1933):268. See also, International Labour Organization, Proceedings of the Seventeenth Annual Conference, 2 vols. (Geneva, 1933), I:312.

⁴⁰ Ibid., p. 393.

return for their primary products. Such a policy, he maintained, demanded stabilization of prices and restraint in production by exporting nations, certainly a novel concept after Canada's pre-depression agricultural practices. Through the stabilization of the price of wheat, the problem of unemployment could be addressed in nations like Canada, he maintained, and through an international policy on public works to encourage capital movements between afflicted nations, and an overall agreement to reduce hours of labour in industry, more work could be made available to ameliorate the crisis. In reference to large scale public works, Riddell made what was termed by wags at the Labour Office "the Canada speech," in which he upheld the joint proposal between Canada and the United States on the St. Lawrence waterway as a sterling example for other nations of international co-operation and good will.⁴¹

While Riddell might have spoken for the Canadian government regarding the efficiency of reducing hours to reduce unemployment, he did not speak for employers' delegate A. R. Goldie of the C. M. A. As S. R. Parsons had argued years earlier and as the employers' delegates, in general, continued to argue, Goldie maintained that any reduction of hours meant reduced production, which in turn meant increased overhead costs, increased selling prices, reduced sales and

⁴¹Ibid., pp. 293-295.

thus unemployment. In his opinion, no employment had yet been created through reduction of hours, and he therefore could see no reason for imposing more regulations on an already overburdened industrial situation--particularly Canada's which was tied so closely to agricultural production and seasonal undertakings.⁴²

Naturally, workers' delegate James Simpson of the T. L. C. opposed Goldie's argument, but he did not stop here. He also maintained that labour and industry's pre-occupation with technical, rather than economic efficiency had a direct bearing on the crisis in employment in that:

Employers and employees in North America today are realizing that man's ingenuity in both the scientific and inventive world has its limitations . . . and that when it comes to a certain point, both employers and employees themselves have to suffer because of the mechanization of industry and because of the application of machine production to our modern industrial system.⁴³

Continuing on this "North America" theme, Simpson went on to make his own "Canada speech" on how continental co-operation between Canadian and American industrialists represented an example for the international community to follow in addressing the problem of unemployment. It had been through such rapprochement, Simpson declared, that large Canadian employers such as Imperial Oil and Canadian

⁴²Ibid., pp. 90-91.

⁴³Ibid., p. 221.

General Electric had reduced hours of labour to forty per week, realizing that mechanization in industry had made serious inroads into labour welfare, production and sales.⁴⁴

It seems apparent that the change from post-war prosperity to conditions of depression had not altered the positions of industry and labour in Canada substantially. Industry still stuck to a "hands-off" policy with regard to all industrial legislation and added a "Canada-is-different" attitude with respect to international standard-setting as a justification for non-intervention. Labour, for its part, still looked to the American example in labour economics (when the international would not suffice) to compel Canadian industries and governments to take measures of reform. This division of opinion undoubtedly acted as a reminder to the International Labour Conference that Canadian labour and industry were subject to certain influences beyond the control of international labour legislation.

e. Canada and the I. L. O., 1934:
New Difficulties for Canadian
Status

The year 1934 marked an important turning point for Canada and its relations with the I. L. O. In that year, Canadian status in the Governing Body was subjected to review in an effort to accommodate American and Soviet

⁴⁴Ibid., pp. 221-222.

membership. The irony of this situation was that Canada had been the first member to support the American request for membership, at the very Eighteenth Conference which had adopted the Lapointe amendment of 1922 guaranteeing Canada's place in the Governing Body. Riddell now fought bitterly against the majority decision of the Governing Body to relegate Canada to the status of deputy-member. In doing so, however, he probably just tried the patience of the entire organization at a time when American and Soviet membership were considered both necessary and expedient.

With regard to Canadian involvement, the Eighteenth Session of the Conference (1934) was characterized mainly by the adoption of the Lapointe amendment (of 1922) to Article 393 of the Treaty which called for enlargement of the Governing Body to include eight more members (of chief industrial importance) in the Government group. Of these eight, four were non-European states (Mexico, Brazil, Argentina and China), which together with Canada, India and Japan, provided more than the six non-European members as specified in the amendment.⁴⁵ Canada's own position in the Governing Body had been assured in the Report of the Selection Commission on its composition;⁴⁶ by a prior

⁴⁵International Labour Organization, Proceedings of the Eighteenth Annual Conference, 2 vols. (Geneva, 1934), I:501-502.

⁴⁶Ibid., Appendix II, I:523-525.

decision of the Dominion government, Riddell had been named permanent Canadian representative to the government group as successor to Labour Minister Gideon Robertson who had died in late 1933.⁴⁷

More significantly for Canada's immediate status, however, was the announcement of the American decision to participate in the I. L. O. The news prompted a pleased Walter Riddell to be the first at the Conference to propose that an invitation be extended immediately to the United States.⁴⁸ Apparently it had not occurred to him that a position might have to be created on the Governing Body to accommodate a member of such obvious industrial standing. To compound difficulties, the Soviet Union also sought membership in the I. L. O. in late 1934. The matter came before the consideration of the Governing Body at the Sixty-Eighth Session of September, 1934,⁴⁹ at which time a Special Commission was set up, with Canada among its members to study the situation. At the Sixty-Ninth Session of January,

⁴⁷International Labour Office, Official Bulletin, 19 (April 1934):74.

⁴⁸International Labour Organization, Proceedings of the Eighteenth Annual Conference, I:457-459.

⁴⁹W. A. Riddell, ed., Documents on Canadian Foreign Policy, 1917-1939 (Toronto: Oxford Press, 1962), p. 386.

1935, two reports were submitted; a majority report in favour of appointing the United States and the Soviet Union to the seventh and eighth positions in the government group (formerly held by Canada and Belgium), and Riddell's minority report which was in complete opposition to this conclusion.⁵⁰ Essentially, Riddell's argument was based (as were many of his arguments) on a legalistic interpretation of the issue. The majority report held that the Governing Body itself was the competent authority to effect any changes to the list of the eight states of chief industrial importance. Riddell, on the other hand, maintained that no such authority had ever been vested in the Governing Body, that no precedent therefore existed as to its exercise, and that in fact the only authority with legal competence to render such a decision was the Conference itself, and this only after the prescribed period of three years--the legal term of office of members to the Governing Body. On February 7, 1935 the Minister of Labour, Wesley Gordon, expressed before the House of Commons and in a message to the Governing Body his complete support, and that of the government, for Riddell's argument. He declared that Canada was not satisfied with the settlement; rather, both Belgium and Canada were to be considered as deputy members

⁵⁰ International Labour Office, Minutes of the Sixty-Ninth Session of the Governing Body (Geneva, 1935), pp. 4-13.

until 1937 at which time the question would be reconsidered by the whole Conference.⁵¹

The matter, however, did not rest here. At the Nineteenth Session of June, 1935 Riddell once again stressed the Canadian position, this time for the benefit of the entire Conference including the American delegation.⁵²

In addition to presenting the argument for legal constitutional interpretation (a moot point since the decision had already been taken to relegate Canada and Belgium to deputy-member status), Riddell also articulated a defence of Canada's recent record of I. L. O. ratifications. Although the decision of the Governing Body rested on other grounds, he emphasized the irony of the situation given that the Dominion government had taken a recent initiative in ratifying the Hours of Work and Minimum-wage-fixing Conventions on the basis of authority (seemingly) vested in Section 132 of the B. N. A. Act.⁵³

Was Riddell being practical or realistic by taking this attitude or by prolonging the argument to this extent?

⁵¹ (Commons), Debates (February 7, 1935), pp. 561-562.

⁵² International Labour Organization, Proceedings of the Nineteenth Annual Conference, 2 vols. (Geneva, 1935), I:285-288.

⁵³ Ibid., p. 288.

As Samuel Eastman has observed, neither the United States nor the Soviet Union would have been prepared to "sit on the sidelines" until the next conference or until Riddell's suggested "Committee of Experts" had made a decision.⁵⁴ Furthermore, viewed against Belgium's graceful acceptance of the inevitable, Canada's intransigence could scarcely heighten the country's national status in the I. L. O. If anything, it probably served to emphasize an unfortunate national inferiority complex about the extent of Canada's so-called influence in international affairs. Indeed, as Eastman implies in the following, it was hardly a practical attitude, given the circumstances:

Technically, the Canadian protest was well-founded, but on a higher plane it might be asked which was of more vital importance: to make sure of having the United States and Soviet Russia as immediately active members of the Organization; or to adhere strictly to a law of procedure which was not adjusted to meet such an emergency. Insistence upon 'recognition' may be carried so far as to involve a momentary loss of moral prestige whereas a graceful gesture, like Canada's withdrawal (January, 1946) in favour of Australia after a deadlock in the election of the non-permanent members of the Security Council, is bound to enhance one's influence.⁵⁵

The problem with the Governing Body can therefore be seen as a sort of natural outgrowth of Canada's interwar obsession with international status. At a certain point, given the priority which Canadian politicians and delegates

⁵⁴Eastman, Canada at Geneva, pp. 20-21.

⁵⁵Ibid., p. 21.

alike had placed on it, the status argument proved to be counterproductive to Canadian interests. Borden, Sifton, and Lapointe may have entrenched Canada's status constitutionally, but in practical terms, they had left little room to manoeuvre under emergency conditions. In this regard, the situation was not unlike the constitutional tangle in 1935 with Bennett's "New Deal" legislation.

Canada's diminished status as deputy-member of the Governing Body lasted only until later in that year. In October, 1935 Germany withdrew from the I. L. O. and the vacated seat was given to Canada.⁵⁶ Riddell returned to his position as Permanent Representative for the Canadian government, but it is of some interest to note that the decision of the Sixty-Ninth Session, according to which Canada had also relinquished its seat on the Workers' group, was not rescinded. Canada did not regain workers' representation. Given that the Canadian workers' delegate, Tom Moore, had attended only six out of twenty-seven sessions of the Governing Body between 1930 and 1935, and of the remaining twenty-one, Canadian labour was represented by European workers' delegate-substitutes at ten, it hardly seems surprising that Canada was asked to relinquish its workers' seat as well.

⁵⁶International Labour Office, Official Bulletin, 20 (January 1936):111.

f. Canada's Voting Record, 1930-1935

The examination of Canada's role at the I. L. O. Conferences of the early 1930's reveals a rather checkered picture. This, though, could give an insufficient impression of the period. There was more cohesiveness to it, as the Canadian voting record does indicate. An appreciation of this can be gained by a comparison between the voting of the 1930's and that of the prior Mackenzie King administrations. It will be seen that one of the chief differences was the more active role of the government delegates under the Bennett administration. Of additional interest in this study is Canada's voting record on the Hours of Work Conventions and the various attitudes of government, labour and industry in this regard.

In general, Canada's voting record at the Labour Conferences of 1930-1935 was different in certain aspects from that of the 1920's. In this latter period, Canadian government delegates frequently abstained from voting on contentious issues, such as the recommendation concerning night-work of women in agriculture (1921) or the resolution concerning regulation of hours of work on board ship (1927). Sometimes they voted with the worker delegates on decisions about which no constitutional controversy would arise (e.g., most of the Seamen's Conventions of, 1927, with the exception of the Hours of Work Convention; or the convention concerning workmen's compensation for occupational diseases,

1925). On rather few occasions government delegates sided with the employers' delegate, where the convention might have represented an extreme measure of state interference in the private sector (e.g., as with certain decisions of the 1926 Conference on seamen's rights). Contrary therefore to Samuel Eastman's contention that the Canadian delegates to the Conferences were usually in accord,⁵⁷ the record for the 1920's seems to indicate otherwise. So does the record for the period 1930-1935. Moreover, unlike the period of the 1920's, the Canadian government delegates now nearly always voted with the workers' delegate, while the Canadian employers' delegate was usually in opposition or abstained. At the 1930 Conference, the key questions on regulation of hours of work in commercial and retail establishments and the prohibition of forced labour saw this pattern,⁵⁸ as did the convention on age of admission to non-industrial work (1932),⁵⁹ the convention on fee-charging employment agencies (1933),⁶⁰ the conventions on compulsory

⁵⁷Eastman, Canada at Geneva, pp. 25-26.

⁵⁸International Labour Organization, Proceedings of the Fourteenth Annual Conference, I:504; 479-480.

⁵⁹International Labour Organization, Proceedings of the Sixteenth Annual Conference, I:479.

⁶⁰International Labour Organization, Proceedings of the Seventeenth Annual Conference, I:435.

old age and widows' and orphans' insurance (1933),⁶¹ the convention on unemployment insurance (1934),⁶² the convention on limiting hours of work in coal mines (1935),⁶³ and the convention on pension rights for invalids, the aged, widows and orphans (1935).⁶⁴

There were, however, important exceptions to this pattern. As mentioned, the key issue of the 1931 Conference--the Convention on Hours of Work in Coal Mines--did not receive either the support of the Canadian government or the employers' delegates. That the government delegates were to alter their position in June, 1935 was as a result of the decision of the Dominion government to ratify the Hours of Work Convention (of 1919) in February, 1935. Another important exception occurred at the 1935 Conference regarding the convention on reduction of hours of work. Again, the government delegates did not support the workers' delegate, but neither did they support the employers' delegate. Bennett's policy in this regard was that since Canada had

⁶¹Ibid., pp. 438; 440; 446; 448.

⁶²International Labour Organization, Proceedings of the Eighteenth Annual Conference, I:485.

⁶³International Labour Organization, Proceedings of the Nineteenth Annual Conference, I:583.

⁶⁴Ibid., I:586-587.

already undertaken to reduce the hours in industry, to eight per day and 48 per week as of February, 1935, there was no need to adopt further legislation in this respect. Thus the government delegates had been instructed to abstain.⁶⁵ Generally, however, the government delegates tended to abstain far less than did the employers' delegates in this period--a reversal of the situation in the 1920's, but fewer occasions also arose for unanimity of opinion. One exception to this was the three recommendations on hours of work for salaried employees (1930); all the Canadian delegates voted to support these decisions, apparently because the recommendations only required that the state members conduct investigations into the matter after which they were to be allowed a four-year period in which to submit the information for study.⁶⁶ Therefore, the decisions posed no real threat of state intervention and in fact represented the only compromises possible, given the intransigence of the employers' group about any discussion on hours of work in any aspect of business and industry. John H. Roaf, Chairman of the British Columbia division of the C. M. A., had been especially anxious that the Fourteenth Conference understand the difficulty of

⁶⁵ (Commons), Debates (June 10, 1935), pp. 3462-3463.

⁶⁶ International Labour Organization, Proceedings of the Fourteenth Annual Conference, I:504.

Canada's position as a neighbour of the United States. He stated that:

Hours of labour, whether for manual labourers, for salaried employees, or, in particular, for coal miners, should be governed to a great extent by the hours of labour obtaining in countries which are not parties to this Treaty.⁶⁷

A. R. Goldie maintained a similar line of reasoning in 1935. Why, he asked, should Canada, largely an agricultural nation, undertake the forty-four hour week when the United States had not even considered the forty-eight hour week? Such an initiative would invite even more destructive competition from across the border than was the case at that time.⁶⁸

The Hours of Work Conventions in the period 1930-1935 represented the chief source of disagreement between Canadian government and labour representatives on one side and employers on the other. Yet the Hours of Work Conventions of this period were quite unlike those of 1919. The latter initiatives had been directed toward improved and more humane conditions of work and therefore represented a goal toward which states members could work in ameliorating the more obvious abuses of industrialism. The Hours of Work Conventions in the 1930's, on the other hand, were the direct outcome of the depression, designed not so much as an ideal

⁶⁷ Ibid., I:195.

⁶⁸ International Labour Organization, Proceedings of the Nineteenth Annual Conference, I:95-96.

of social justice as a policy of financial expediency-- the shorter work week, it was reasoned, would spread the available work over more labourers and thus perhaps alleviate unemployment.⁶⁹ However, Canadian employers (among many of the employers' group) held to a view not unlike that of S. R. Parsons in 1919. He had opposed the shorter work day because he saw in it a source of increased production cost, not, as P. M. Draper, a means which would enable more workers to share in the profits, thus creating more demand for the product. So, too, between 1930 and 1935 John Roaf, H. W. Macdonnell, A. R. Goldie and W. D. Black each expressed essentially the same point of view with respect to unemployment: shorter hours would exacerbate the unemployment problem because in Goldie's words:

You have to sell the goods, and to sell the goods you have to produce them at a price that the consumer can pay . . . but the cost of the goods has to be such that the consumer can buy, and my point is that anything which increases this cost will reduce the amount of goods that are sold and hence reduce the amount of work.⁷⁰

Labour's reply to this did not vary much from the 1920's either. As James Simpson pointed out at the Seventeenth Conference of 1933, and as Tom Moore had maintained at the

⁶⁹ A. E. Grauer, Labour Legislation: A Study Prepared for the Royal Commission on Dominion-Provincial Relations (Ottawa: King's Printer, 1939), pp. 5-6.

⁷⁰ International Labour Organization, Proceedings of the Nineteenth Annual Conference, I:95.

Eighth Conference of 1926, industry's preoccupation with rationalization, ultimately replacing man with machine, rendered the industrial process undemocratic because by such policies, workers were robbed of initiative and finally of employment itself. Only by more equitable distribution of work and of profit, labour maintained, could the crisis of unemployment be eased.

By 1935, the argument had gone on relatively unchanged for approximately fifteen years: it had been in the 1930's, as in the 1920's, a controversy over the means by which the development of Canada's industrial society would be achieved. The great distinction between the two cases, however, was the role that government assumed in the labour issue. The worldwide economic crisis compelled the Bennett administration far more than the King regime to assume both domestic and diplomatic responsibilities. Canada's government delegates voted more often on behalf of labour's interests in the Bennett era than during the King administrations, a practice that reflected the greater importance which Bennett placed on the unemployment problem than had his predecessor.

g. Bennett and Social Legislation:
Prelude to the Labour Con-
ventions Case, 1935

The central problem in the relationship of Canadian institutions to I. L. O. draft legislation in this period

developed out of Bennett's need for new social legislation to alleviate the effects of the continuing depression. His initiatives in social legislation throughout the 1930's showed a slow but inevitable trend toward unilateral action by the Dominion government. The existence of certain I. L. O. conventions provided a convenient basis on which to formulate this legislation, whereas certain judgements of the Privy Council in favour of Dominion authority seemed to validate the notion that the Dominion government possessed the power to give effect to these conventions. The following examines both the legislation itself and Bennett's argument in favour of Dominion authority to enact it.

The Bennett administration lost little time in 1930 to involve government in the unemployment crisis--an initiative which King had spurned only months before. By a special Act of Parliament, (the Unemployment Relief Act, 1930) \$20 million were provided to be used essentially as a subsidy for provinces and municipalities to carry out public works.⁷¹ Bennett had been most careful in bringing forward this legislation to stipulate that it was to deal only with "the acute present problem" since the B. N. A. Act prohibited direct federal assistance for provincial relief.⁷² Neverthe-

⁷¹International Labour Office, Annual Review for 1930 (Geneva, 1931), p. 362.

⁷²Ernest Watkins. R. B. Bennett: A Biography (London: Secker and Warburg, 1963), pp. 185-186.

less, in this matter Bennett set the trend for future practice. The depression had exacted a serious toll on the federal government, as it had imposed upon it the responsibility for fiscal intervention where the ability of provincial and local administrations to undertake their own relief work had been overwhelmed by the demands for public assistance. Up to the end of 1933, the federal government paid out approximately \$100 million for direct relief to the unemployed and loaned or advanced another \$46 million to the provinces, the largest share of which went to Saskatchewan. A further \$29 million was spent during this period for federal public works and \$92 million in loans to private corporations for specific projects.⁷³

The Bennett administration continued gradually to undertake various forms of state intervention to 1933. Generally these consisted of subsidies to the provinces for unemployment relief and economic discussions in London and Ottawa on tariff preferences for Canadian goods. But these efforts had no effect on the deepening crisis. Not until after 1933 did the Bennett administration make an about-face with regard to state interventionism, and it was in this context that Canada's attitude toward international labour standards underwent significant change.

⁷³Urquhart and Buckley, eds., Historical Statistics of Canada, p. 53.

This development must be seen in relation to Bennett's "New Deal" programme, which was formulated after the American example. It benefited also from certain Privy Council decisions which had apparently ushered in a new definition of Dominion authority; by judgements of the Judicial Committee of the Privy Council on regulation and control of aeronautics and radio communications in Canada (October 22, 1931 and February 9, 1932, respectively), the Dominion government was accorded sweeping authority to enact Dominion legislation in these matters. In both cases, the Dominion government had entered into international agreements on the regulation of aeronautics and radio communications, but the Supreme Court had rendered judgements concerning the Aeronautics Case in which no Dominion authority was recognized as existing in the enumerated powers of Section 91, and in the Radio Case in which Dominion authority was upheld, but challenged as well by dissenting opinions of Justices Rinfret and Lamont. In both situations, the justices had determined that no authority existed under Section 132 of the B. N. A. Act which would transfer jurisdiction to the Dominion government to legislate for the provinces in these matters.⁷⁴ By their interpretation,

⁷⁴Canada. Department of Justice, Decisions of the Judicial Committee of the Privy Council Relating to the British North America Act, 1867 and the Canadian Constitution, 1867-1954, 3 vols. arranged by Richard A. Olmstead (Ottawa: Queen's Printer, 1954), II:710-711, S.C.R. 663, 1930; III:18-20, S.C.R. 541, 1931.

the authority vested in Section 132 involved only the authority of the Dominion to enter into international obligations. The power to perform the responsibilities, it was maintained, fell within provincial jurisdiction.⁷⁵ As regards the Radio Case, the dissenting justices furthermore held that since the Radio Convention was not in the form of an "Empire Treaty," Canada was not bound under Section 132 even to enter into international agreement on the matter. By this interpretation, then, the dissenting justices determined that only the Crown had the power to enter into treaties on behalf of Canada (hence the term, "Empire Treaty") and that the Radio Communication Agreement (Washington, 1927) did not meet the stipulations of such a treaty.⁷⁶ In their decisions of October, 1931 and February, 1932, the Judicial Committee of the Privy Council over-ruled the Supreme Court on the Aeronautics Case and sided with the Majority Report for the Radio Case. With respect to the former judgement, the Committee upheld Dominion authority under Section 132, B. N. A. Act insofar as,

⁷⁵Canada. Supreme Court, Law Reports, Part X (Ottawa: King's Printer, 1936) 31 December 1936, pp. 698-699.

⁷⁶A. C. Weinfeld, "Canadian Constitutional Problems in Connection with Conventions in the I. L. O. - Comparison with Problems in the United States," George Washington Law Review, 6 (March 1936):331.

it is proper to take a broader view of the matter rather than to rely on forced analogies or piecemeal analysis. They (their Lordships) consider the governing section to be s.132, which gives to the Parliament and Government of Canada all powers necessary or proper for performing the obligations towards foreign countries arising under treaties between the Empire and such foreign countries.⁷⁷

This ruling, therefore, enabled the Dominion government to act for the whole of Canada on the basis of treaty-making powers, given that for the provinces to enact legislation on the matter on a "piecemeal analysis" would constitute a danger or threat to public safety. On this basis, an appeal to the residual powers clause would probably have resulted in the same judgement, but because the efficacy of an international convention (agreed to in 1919) was at stake, the Committee had ruled that if the Dominion authority was competent to enter into the agreement, it was competent to carry it out.⁷⁸

The Privy Council decision on the Radio Case followed essentially the same line of reasoning. Section 132 allowed Canada to enter into treaty agreements on radio-communications insofar as the Statute of Westminster recognized the authority of the Dominions as self-governing entities to

⁷⁷ Olmstead, Decisions of the Judicial Committee of the Privy Council . . . , II:727.

⁷⁸ Horace E. Read, "Canada as a Treaty-Maker," Canadian Bar Review, 5 (1927):299; 301; 309.

undertake such agreements on behalf of their particular national interests. Moreover, the Committee ruled that although the agreement was not specifically of the class determined by Section 132, "it came to the same thing" with respect to its intention. However, the Committee ruled in favour of Dominion authority on the basis of power vested in the residual powers clause insofar as by the enactment of such authority, the Dominion government would be preventing individuals in Canada from infringing on the stipulations of an international agreement.⁷⁹ By these decisions, the Supreme Court rulings of 1925 (on International Labour Conventions and the Privy Council decision on the Industrial Disputes Investigation Act) which had limited Dominion authority on the basis of Section 132, and the residual powers clause seemed to have been overturned, and thus Bennett was encouraged to consider certain legislative initiatives with respect to certain I. L. O. decisions.

Bennett's new policy of state interventionism was given more impetus still by some of the findings of the Stevens Commission on Price Spreads. The work of this Commission, which incidentally caused a major cabinet crisis in the Bennett administration, revealed various abuses by large retail corporations in buying practices and labour conditions. Although it did not submit its

⁷⁹Olmstead, Decisions of the Judicial Committee of the Privy Council . . . , III:24-26.

report until after the Bennett administration had left office,⁸⁰ the Commission did, largely by way of Stevens' influence, create such a furor that Bennett was compelled to take his "New Deal" to the Canadian public in a series of radio addresses in early January, 1935. For Bennett, an orthodox capitalist, this legislation constituted an important philosophical reorientation as he now advocated the kind of state interference in the economic system which in earlier times he had opposed. With regard to labour, Bennett was emphatic in his pronouncement that labour reform was of paramount importance in his "New Deal." He said:

I believe there should be a uniform minimum wage and a uniform maximum working week. I hold the view that if we are to have equality of social and political conditions throughout this land, we must have equality in economic conditions as well. Labour in one part of Canada must not be at the disadvantage with labour in another part. That is wrong socially and it is foolish in a business sense, for clearly it creates a disequilibrium in the nation's industrial life. There must be an end to child labour. There must be an end to sweatshop conditions. There must be an end to the reckless exploitation of human resources and the trafficking in the health and happiness of Canadian citizens. There must be an end to the idea that a workman should be held to his labour throughout the daylight hours of every day.⁸¹

⁸⁰Canada. Parliament, Report of the Royal Commission on Price Spreads (Ottawa: King's Printer, 1937), pp. xviii-xxv.

⁸¹"The Premier Speaks to the People, Second Address, January 4, 1935," in The Bennett New Deal: Fraud or Portent?, ed. J. R. H. Wilbur (Toronto: Copp Clark, 1968), pp. 83-84.

The Bennett "New Deal" legislation was presented to Parliament in January, 1935. This programme consisted of an Employment and Social Insurance Act and a group of acts, based on I. L. O. conventions of 1919, 1921, and 1928, which provided for limitation of weekly hours of work, weekly holidays in industry, and minimum wage-fixing machinery. In addition, the programme sought ratification for three other I. L. O. decisions: the Seamen's Article of Agreement (1926), the convention on marking the weights on heavy packages transported by vessels (1929), and the Docker's Convention (1932). For the most part, few amendments were suggested by either the House or the Senate, and each bill received royal assent between February and July, 1935. With respect to constitutional jurisdiction, however, some discussion did arise. Bennett refused to entertain King's suggestion that the Supreme Court or the provinces themselves might wish to provide insight into the matter of competency, or that a Dominion-provincial constitutional conference might be in order. Bennett stated that:

We have not the slightest doubt at the moment, and unless the hon. gentleman is able to throw some doubt on it that we have not at the present time, we can see no escape from our having jurisdiction, for the simple and obvious reason that Section 132 of the British North America Act provides (the authority). . . . The question of the obligation under the treaty section so far as I know has not been doubted by any province in the Confederation, and if it is not necessary to amend the Constitution to effectuate the purpose we have in mind, I do not think any good purpose is served by doing so.⁸²

⁸² (Commons), Debates (January 29, 1935), p. 282.

Bennett's argument in support of the constitutional validity of this legislation was derived from two principal points. Canada had signed the Treaty of Peace as an autonomous member of the British Empire and thus legally entered into both benefits and obligations associated with it. Secondly, by the judgements of the Privy Council in the Aeronautics and Radio Communications Cases, the powers vested under Section 132 and the residual powers clause were found to be sufficient for the Dominion power to legislate in these matters for the entire nation.⁸³

In his response, ex-Justice Minister Ernest Lapointe offered several equally compelling considerations. He maintained that decisions arising from I. L. O. conferences represented conventions only and not binding agreements, especially in the case of federal states whose only obligation as stipulated in Article 405 was to bring the question before the competent authority. How then, Lapointe asked, could the Dominion parliament be bound by Section 132 to an obligation which, in fact, did not exist? With reference to the Aeronautics and Radio Cases, Lapointe held that unlike I. L. O. Conventions, these agreements represented legal and binding treaties, thus necessitating the fulfillment of obligations for the entire Dominion via Section 132.⁸⁴

⁸³Ibid., pp. 632-642.

⁸⁴Ibid., pp. 642-650.

Lastly, Lapointe reminded those on both sides of the House who had supported this redefinition of Dominion power that "the assumption of jurisdiction does not create it" and that the government was running the risk of leading labour into a constitutional impasse whose only outcome would be disappointment.⁸⁵ Bennett, however, cited the following evidence. According to an interpretation by C. Wilfred Jenks⁸⁶ of the 1925 Supreme Court decision on jurisdiction in labour matters, the Court had never properly replied to the question on whether or not the Dominion government was competent to enact legislation to give effect to labour conventions, because it had determined that the question had not been properly placed before the Court. Consequently, Bennett maintained, the Supreme Court's 1925 decisions did not precisely delineate jurisdiction of authority, and, in fact, had invited reinterpretation. Moreover, with reference to Article 405 of the Treaty, Bennett reminded Lapointe that the text of the article stipulated that the Dominion government had the discretion to treat the draft convention as a recommendation, therefore giving that government the

⁸⁵ Ibid., p. 653.

⁸⁶ C. Wilfred Jenks, "The Constitutional Capacity of Canada to Give Effect to International Labour Conventions," Journal of Comparative Legislation and International Law, 3rd series, vol. 16, Part 1 (February 1934), pp. 201-215.

authority to proceed on its discretion in the opposite sense.⁸⁷ But Bennett's most important remarks in defence of his legislation concerned a subject of interest to every Prime Minister since Borden; that of Canada's status as a nation in the world community. On this matter, he emphasized the following points:

Now Canada claims to be a nation; Canada signs conventions; Canada makes treaties. . . . We have claimed, and rightly claimed, that under the power conferred upon us we have become a nation. If we are a nation there must be somewhere . . . in this national federal government . . . a power to speak for all the citizens of Canada. That being so . . . certainly no one province can do it. Certainly you cannot piece it together by saying that in the aggregate all the provinces can do it. But the body corporate, the entity, is the Dominion of Canada, and that Dominion speaks through this parliament with respect to matters to which we have bound ourselves by our treaty obligations. . . . The question of power is the question of jurisdiction. The question of obligation is the acceptance of responsibility. The Dominion does not accept the responsibility except through the execution of a treaty. If it accepts that responsibility in the exercise of a discretion, then the power is conferred by section 132. When the obligation is accepted, the power is conferred by that section 132. It is so simple.⁸⁸

h. Difficulties with the Bennett
"New Deal"

Bennett's "New Deal" legislation was undoubtedly doomed to failure. In addition to the constitutional problems which it implied, it was badly timed, poorly conceived, and not effectively presented either to Parliament or the public.

⁸⁷ International Labour Office, Official Bulletin (Montreal, 1944), 25 (April 1944):67.

⁸⁸ Ibid., pp. 71-72.

Mackenzie King's chief concern, however, was its constitutionality, and he intended to make this consideration the vehicle for his return to power.

Neither King nor Lapointe could agree with Bennett on the inherent simplicity of the matter. King maintained that any reallocation of constitutional authority had to be sanctioned either by the Supreme Court or the Privy Council or by constitutional amendment through some prior arrangement with the provinces. This was the work of Dominion-provincial conferences, King suggested; any exercise of Dominion authority without considering the legally constituted federal balance he referred to as an "arbitrary and uncertain procedure."⁸⁹ At no time, however, would King allow the government and its supporters to imply that the Liberals were denouncing the legislation itself. The mere suggestion would have surely handed Bennett the sort of political opportunity with which he was favoured by the Liberals in 1930. King's only challenge to the legislation was on its constitutional validity; he was careful to insist that the Liberal opposition did support the principle, but not the modus vivendi of the undertaking. Lapointe's arguments touched specifically on Bennett's interpretation of the meaning of Article 405 and on his justification for his programme on the basis of

⁸⁹Ibid., (March 12, 1935), p. 1621.

Canada's status in the I. L. O. He denied Bennett's contention that Article 405 implied that the Dominion government had the discretion to decide on legislative competency. That discretion, Lapointe argued, allowed for ratification by the central government only by prior consent of the competent authority. By definition, he maintained, Canada as a federal state, enjoyed dual competency in these matters--a prior fact of Confederation which could not be reinterpreted simply by entering into a relationship with other nations through the League or the I. L. O. Furthermore, and more seriously for Canada's position at the Labour Conferences, he argued that the Bennett interpretation would allow the Canadian delegates, by merely assenting to a proposal, to bind all of Canada immediately to their decisions. This would have the effect of technically transferring legislative competence from the Dominion authority to the four Conference delegates. Moreover, Lapointe maintained, since Canada was no longer considered a member of the Governing Body, such an arrangement would find the Canadian delegation assenting to matters of purely European concern to the detriment of Canadian interests and the further diminution of the prestige of the League and the I. L. O. in the minds of the Canadian public. The entire matter, in Lapointe's opinion, was fraught with serious problems and misconceptions, and if

adopted, would ultimately prove counterproductive to Canada's international relations and status in the League and I. L. O.⁹⁰

The assertion of the right of the Dominion parliament to ratify for the entire nation implied a further difficulty, once again related to Canada's membership in the I. L. O. C. Wilfred Jenks has pointed out that by declaring its power to undertake a particular labour convention by the enactment of federal legislation, the Dominion government took the position that the power to enter into this agreement was unlimited and thus placed Canada outside the group of federal states. By so doing, Canada would henceforth be unable to exercise certain conventions as recommendations,⁹¹ a situation which might well expose Canadian industry to the same rigorous standards which had already been applied to the European states members and which might impede the development of Canadian manufacturers. It must be remembered, however, that the Bennett ratifications were not undertaken to alter Canada's status in the I. L. O. The motivating factors for this initiative were economic and

⁹⁰ Ibid., pp. 1735-1739.

⁹¹ Jenks, "The Constitutional Capacity of Canada to Give Effect to International Labour Conventions," Journal of Comparative Legislation and International Law, 3rd series, vol. 17, Part 1 (February 1935), pp. 12-30.

social, specifically the alleviation of the extreme problems associated with the depression, although given the chronological proximity of this undertaking to the impending federal election, it is not inaccurate to suggest a political motive as well.

The Bennett programme failed for several reasons. First, and most importantly, it could not have succeeded under Canada's constitution, and especially not under the careful scrutiny of the Supreme Court--an inevitability under the circumstances. Furthermore, like the Liberal policy on hours of work in 1930, it had come too late to reverse the downward trend in the party's political fortunes; yet, unlike the King programme, it had come too soon (without adequate preparation) to ensure proper study and considered opinion.⁹² In his electoral campaign of 1935, Mackenzie King argued that the "dictatorial" style of the Bennett administration was holding Canada "under a reign of terror" as it attempted to establish a "national government" in the place of legislative parliamentary practice and legally constituted legislative jurisdiction.⁹³

⁹²Watkins, R. B. Bennett: A Biography, p. 220.

⁹³C. P. Stacey, ed., Historical Documents of Canada (Toronto: Macmillan, 1972), V:107-108.

His own programme for unemployment, he stated, was to create a representative national commission to conduct investigations with provinces and municipalities into the administration of unemployment relief--a familiar Liberal palliative for economic and social unrest.⁹⁴ Unfortunately, Bennett was unable to counter this rather predictable programme with the promise of new initiatives. As it was, his legislative undertakings with regard to labour seemed possessed of a dubious future which in consequence placed him on the defensive for most of the campaign. His electoral programme was thus characterized by a plea for more time to put his reforms into practice.⁹⁵ Stevens' revolt from the Conservatives and Bennett's own inability to communicate the full meaning of his "New Deal" further undercut the success of his programme. In the final analysis, of course, it was very much the depression itself which defeated the Conservatives in October, 1935, as it had the Liberals in 1930.

Canada's role in the I. L. O. under the Bennett administration was in many respects motivated by the same consideration which had influenced participation in the Mackenzie King era. As during the latter period, Canadian

⁹⁴ Ibid., pp. 109-110.

⁹⁵ Ibid., pp. 113-114.

involvement from 1930 to 1935 reflected national interests, but unlike that period, these interests were conditioned by national emergency. The crisis of the depression necessitated an active role for the Dominion government in the social sphere, and thus encouraged a more active Canadian role at the I. L. O. Unfortunately, Bennett sponsored the legislation of 1935 not out of any regard for Canada's place in the I. L. O., nor apparently because of any real belief in the Labour Charter. His actions rather suggest that he needed a legislative breakthrough to bolster his sagging political fortunes. In this respect, Bennett's 1935 initiative was similar to that of Mackenzie King in 1930. In both cases, legislation on I. L. O. decisions was enacted as a reaction to economic and social conditions rather than as independent initiatives. In both cases, such enactments were therefore timed to coincide with approaching federal elections. Consequently, in both cases, I. L. O.-based legislation was adopted for political purposes. The difference, however, was in degree. King's proposal was by far too little too late, while Bennett's exceeded all previously accepted exercises of Dominion authority. King's under-reaction and Bennett's over-reaction to economic crisis apparently caused their respective failures; the I. L. O. Conventions in both cases thus were employed for reasons of political expediency rather than for their own inherent merits.

In one other respect, Canadian involvement in the I. L. O. in the Bennett era reflected a continuation of certain priorities from the King period. The recognition of Canada's status continued to motivate Riddell and other Dominion government delegates in their work in the Organization. Between 1930 and 1935, however, these representatives confronted the task of expanding that recognition to include Canada's regional interests. Furthermore, representatives of Canadian industry and labour at the I. L. O. continued to display fundamental differences over the means by which industrialization was to proceed in Canada. The Bennett ratifications were not designed to address this disagreement either.

The Bennett programme did leave its mark on Canadian society in that it propelled the federal government into social and economic functions for the entire nation. That the Judicial Committee of the Privy Council disregarded this reality reflected the pressing necessity of constitutional reform in the final years before the war.

CHAPTER VIII

EBB TIDE FOR THE I. L. O. - THE CANADIAN SITUATION FROM OCTOBER, 1935 TO AUGUST, 1940

This final period in Canada's interwar relationship with the I. L. O. represented one of the least promising times both for the organization and for Canada's place within it. For the most part, Canada's role was characterized by a further retreat from its responsibilities. Evidence of this is most clearly apparent in the fate of the Bennett "New Deal" legislation. The judgements of the Canadian Supreme Court and of the Judicial Committee of the Privy Council on this matter effectively placed a brake on any exercise of Dominion power in the social sphere. Consequently, the government delegates to the I. L. O. conferences in this period adopted a less active role in the proceedings than had been the case under the Bennett administration. Moreover, as a consequence of Mackenzie King's suspicious attitude toward involvement with the League and the I. L. O., these delegates were more reluctant than those of the Bennett era to commit the Dominion government to any course of action which might imply the acceptance of an obligation.

The positive developments of the period were significant in themselves, but appeared far too late to be of lasting benefit to the organization or, for that matter, to Canadian labour. Of these, perhaps the most important was contained in the report of the Royal Commission on Dominion Provincial Relations which upheld the validity of the Dominion power to legislate on the basis of Canada's obligations to the I. L. O. Other successes were derived from various conventions and conferences which suggested new procedures whereby federal and non-European members might more easily adopt I. L. O. proposals. Unfortunately, these developments, however beneficial to states with special constitutional or regional conditions, came too late, to effect important change. Furthermore, the resignation of certain Asian, European and Latin American states from the organization undercut its effectiveness by limiting it to a membership no longer representative of world economic opinion.

In addition to a study of the Supreme Court and Privy Council decisions on Bennett's "New Deal," this examination will inquire into the work of the incoming King administration to achieve a resolution to the constitutional issue. It will also note the various reactions from across Canada to the verdict against the Dominion government's authority in social legislation, such as that of the C. M. A. and the T. L. C. For the latter, the Privy Council judgements represented a major setback in its hopes for progressive legislation. Of specific concern in this final period are

diplomatic problems with the I. L. O. which were engendered by the failure of Bennett's "New Deal" legislation, Canada's participation at the last three conferences, the Canadian voting record, and the fate of W. A. Riddell as Dominion Advisory Officer to the League and the I. L. O.

- a. Mackenzie King Confronts the Constitutional Issue:
The Dominion-Provincial Conference of 1935

The judicial fate of Bennett's "New Deal" legislation necessarily determined the history of Canada's involvement with the I. L. O. during Mackenzie King's third administration. The Supreme Court and Privy Council decisions to return the separation of authority for social legislation to its 1925 constitutional status clearly indicated that the time of experimentation with the B. N. A. Act had ended and a more conservative period was at hand. This did not prevent King, however, from seeking a rapprochement with the provinces on possible constitutional amendments to permit a wider exercise of Dominion authority in the social realm. To this end, he followed his own 1920's example in the matter and called for another Dominion-provincial conference. In the following, the work and the results of that conference will be highlighted.

King wasted no time in bringing the issue to a head. Shortly after assuming office, he referred the Bennett "New Deal" legislation to the Supreme Court for a judgement on

constitutional competence (November 5, 1935). The legislation under review included not only the acts respecting weekly rest in industrial undertakings, minimum wages and limitations of hours of work, but as well the Employment and Social Insurance Commission Act and the Dominion Trade and Industry Commission Act. (The latter was a law essentially for the regulation of commerce and industry through the aegis of a special federal commission.) For his part, King was not completely averse to federal intervention to regulate working conditions and industrial combines, and he had been careful not to allow Bennett to manoeuvre him into that position. What he rather sought was legislative authority for the federal government which would stand present and future constitutional challenges. Such a position, King judged, could only be attained by way of flexible constitutional amendments which would not require the unanimous consent of all provinces for every change.¹ To attain this end, he issued invitations for a Dominion-provincial conference to run concurrently with the Supreme Court hearings on the "New Deal" legislation.

¹King Papers, W. L. M. K. to J. B. Ross, November 30, 1935, as quoted in H. Blair Neatby, William Lyon Mackenzie King, 1932-1939: The Prism of Unity (Toronto: University of Toronto Press, 1976), p. 151.

Certainly this was not a novel suggestion; J. S. Woodsworth had called for just such an undertaking in 1924 and again in 1931. In January, 1935 Woodsworth had repeated his proposal, and in February, a special commission had been appointed to "study and report on the best method by which the British North America Act may be amended so that while safeguarding the existing rights of . . . legitimate provincial claims to autonomy, the Dominion government may be given adequate power to deal effectively with urgent economic problems which are essentially national in scope."² The final report of the commission, submitted in June, 1935, had conveyed the unanimous desire of the provinces to meet with the federal government at a Dominion-provincial conference and in its conclusion had emphasized that this undertaking would perhaps be the best method to arrive at a flexible amendment on the legislation in question.³ The King administration could thus build on its recommendations if it chose to do so.

The conference met from December 9 to 13, 1935 and while it did not adopt any dramatic new initiatives, it did accept several recommendations for further consideration by the respective governments. On the central issue of constitutional amendment, the conference recognized the necessity

²Canada. House of Commons, Debates (February 12, 1935), p. 762.

³Ibid., (June 19-20, 1935), pp. 3815-3817.

for action (particularly in light of the Bennett legislation), and proposed that another conference of Dominion and provincial officials undertake discussions as to procedure. A second important issue (for labour) concerned unemployment and the role of the federal government in its alleviation. The conference made no suggestions as to how the federal government might reduce joblessness, but instead emphasized the necessity for more uniform and more efficient management of unemployment relief. The federal government did offer, however, to assume the responsibility for relief of the permanently unemployable, such as agricultural labour on the Prairies, and proposed an increase in grants to the provinces for their own relief schemes.⁴ Apparently the Conference enjoyed modest success, in spite of King's own orthodoxy respecting fiscal and constitutional policies. Furthermore, with respect to the B. N. A. Act, the principle of constitutional amendment was accepted, as was the proposal for ongoing federal-provincial discussion on the subject. It would seem, suggests H. Blair Neatby, that King's policy of co-operation through discussion had resulted in important advances regarding the possible revision of Canada's federal system.⁵

⁴Canada. Dominion-Provincial Conference of 1935, Record of Proceedings (Ottawa: King's Printer, 1936), pp. 37-43.

⁵Neatby, William Lyon Mackenzie King . . ., p. 152.

b. The Fate of Bennett's "New Deal" Legislation: The Role of the Canadian Supreme Court

While the outcome of the Dominion-provincial conference suggested the importance of revision of Canada's federal system, the judgement of the Supreme Court in the Labour Conventions Case implied regression. Although the justices split on their decision, the opinion prevailed that the Dominion government had overstepped its bounds and that the 1925 Supreme Court decision was still valid. Any investigation of this matter must represent both sides of the argument and try to understand the motivations of the justices.

The Supreme Court rendered its verdict on the Labour Conventions Case on June 17, 1936 but it was not a unanimous decision. In fact, the Court split evenly on the question; Chief Justice Duff and Justices Davis and Kerwin upheld the constitutionality of the legislation, while Justices Rinfret, Cannon and Crockett declared against it.⁶ Justices Duff, Davis and Kerwin based their support on Bennett's line of reasoning: Section 132 vested legislative and executive jurisdiction in the Dominion authority insofar as the labour conventions implied an international agreement, and inasmuch as the rulings on the Aeronautics and Radio Cases had upheld Dominion authority. They stated that:

⁶Jean-Pierre Després, Le Canada et l'Organisation Internationale du Travail (Montreal: Fides, 1947), p. 143.

As a result of the constitutional development of the last thirty years . . . Canada has acquired the status of an international unit . . . recognized . . . as possessing a status enabling her to enter into, on her own behalf, international arrangements. . . . Parliament has full power by legislation to determine the conditions under which international agreements may be entered into and to provide for giving effect to them.⁷

These justices tried to resolve the central question in Article 405 of the I. L. O. constitution, namely, how a federal state which had no "power" to assume any obligation to the I. L. O. would be able to exercise "discretion" with regard to submission to competent authorities. The justices indicated that by definition, the use of the word "obligation" (in the text of Article 405) implied responsibility for fulfilling the terms of the Treaty itself, a power not accorded to the Canadian provinces. The justices consequently suggested that, given the nature of Dominion authority with respect to treaty "obligation" (Section 132), the federal parliament was in fact the competent authority in these matters. This was so because the obligation was a treaty obligation which, by the Privy Council defence of Section 132 in the Aeronautics and Radio Cases, was a Dominion prerogative.⁸

The dissenting justices held that the labour conventions were not treaties in the same sense as those respecting

⁷ Canada. Supreme Court, Law Reports, Part X (Ottawa: King's Printer, 1936), 31 December 1936, pp. 697-698.

⁸ Ibid., p. 698.

regulation of aeronautics or radio communications.

Furthermore, they declared, the validity of the Aeronautics and Radio cases depended not only upon Section 132, but also on the authority vested in the residual powers clause, and certain parts of Section 91 as well. None of these latter powers could be drawn upon in the case of the Labour Conventions. The federal government, they argued, might indeed hold the authority to create an international obligation by virtue of its jurisdiction over treaty-making, but where that agreement implied an exercise of civil rights, the authority to perform its particulars was vested in provincial authority by virtue of Section 92. In this regard, they maintained that:

A civil right does not change its nature just because it becomes the subject-matter of a convention with a foreign state. It is always the same civil right. It is not within the spirit of the Constitution that the Dominion Parliament might acquire exclusive jurisdiction over such matters merely as a consequence of the fact that the Dominion Government, in regard to them, decides to enter into a convention with a foreign power.⁹

Furthermore, with reference to the meaning of Article 405, these justices maintained that according to the Supreme Court ruling of 1925 on hours of labour, Article 405 should be interpreted to mean that the Dominion authority could not act without prior consent of the provincial governments. Justice Cannon also held that Article 405 restricted federal

⁹ Ibid., p. 699.

power insofar as its exercise was "subject to limitation" (by the text of the Article), that limitation being the prior existence of Section 92, which, while not having anticipated radio and aeronautics concerns in 1867, had most certainly made provision for hours of work, weekly rest and payment of wages. The only exercise of "discretion" thus permitted the federal government with regard to labour conventions was the discretion to submit the matters as recommendations to the competent authorities, or to deal with them only as they could be subsumed under existing federal authority. Any other exercise, Cannon argued, was an attempt by the federal authority to alter the constitutional powers of the provinces by invoking some clauses of the Treaty of Versailles--clearly a case of imposing a non-Canadian interpretation on a national matter.¹⁰

Justice Crockett's opinion reflected much of the same reasoning as Cannon's on the limitations imposed on federal states in Article 405. In addition, however, he denied that the residual clause itself was a sufficient basis on which to legislate in these matters if in exercising it the Dominion government was interfering with private and civil rights in the provinces. Neither could Section 91 justify imposing federal power on clearly-articulated provincial rights, particularly with regard to fulfillment of treaty obligations. Only by the explicit terms of the B. N. A. Act

¹⁰ Ibid., pp. 699-700.

itself (and not the provisions of a treaty which bound parties to international agreement) could the federal government exercise authority relative to international agreements.

"The provisions of the B. N. A. Act," he argued, "not the terms of the Treaty of Versailles, should be looked at for the answers to the questions submitted on this reference concerning the constitutionality of these three statutes; and, accordingly, they are ultra vires of the Parliament of Canada."¹¹

The divided opinion of the Supreme Court, however, indicated that a change had occurred in its thinking on this matter since 1925. At that time, opinion had been unanimous that the provisions of Article 405 implied the definite limitation of federal authority in matters pertaining to I. L. O. Conventions; Justices Duff, Mignault, Rinfret and Magee had ruled at the time that:

It seems very clear that the duty arising under this clause (405) is not a duty to enact legislation or to promote legislation; it is an undertaking simply to bring the Recommendation or Draft Convention before the competent authority.¹²

For Chief Justice Duff, the matter seemed to have taken on a somewhat different character as of 1935, whereas Rinfret's opinion indicated no change from his former position. It seems apparent from the text of his 1935

¹¹ Ibid., pp. 700-701.

¹² International Labour Office, Official Bulletin (Geneva, 1926), 11 (January 1926):17.

opinion that Duff now believed that the development of Canada's status as an international entity now allowed the Dominion authority to proceed with a fuller exercise of power than had been deemed possible in 1925.¹³ Indeed, he and Justices Davis and Kerwin were probably motivated as well in this opinion by the Privy Council decisions on the Dominion authority under Section 132 (regarding the Aeronautics and Radio Cases) to enact legislation based on treaty agreements--a consideration which had not arisen in the 1925 case. What is more interesting still, however, is that in 1925, neither Duff nor the other judges had made an attempt to define "competence" as stated in the text of Article 405. For Duff, the term had suggested only the role of the provincial authorities. In 1935, however, he proposed that the term referred to Dominion authority insofar as by Section 132, the "obligation" for treaty fulfillment had been judged to be a Dominion concern. Furthermore, Duff based his 1935 judgement on the understanding that the Statute of Westminster had allocated to Canada the authority to proceed in matters of international concern independent of British foreign policy.¹⁴ Thus Canada's competence to enter into international agreements could be extended beyond the definition of "Empire Treaty" into a new sphere of treaty

¹³Supreme Court, Law Reports, Part X, 31 December 1936, p. 696.

¹⁴Ibid., p. 697.

engagements which pertained only to Canadian interests (such as I. L. O. Conventions), and could be upheld by the expanded meaning of Section 132. As Vincent C. MacDonald stated in the Canadian Bar Review:

The idea of Canada as a Dominion being bound by a convention . . . is the outcome of a gradual development of the position of Canada vis-a-vis to the Mother Country Great Britain, which is found in these latter days expressed in the Statute of Westminster. . . . For many purposes Canada has acquired [since the World War] distinct international status and ability to make treaties, to establish direct diplomatic relations . . . and international recognition has consolidated its position in these respects.¹⁵

c. The Fate of Bennett's "New Deal" Legislation: The Role of the Judicial Committee of the Privy Council

Because the Supreme Court justices could not agree on the extent of Dominion authority with respect to the Labour Conventions Case, final judgement had to rest with the Judicial Committee of the Privy Council. Its decision removed any further doubt on the matter. By unanimous consent, it declared Bennett's "New Deal" legislation to be ultra vires of the Dominion power, and, in spite of the inability of the provinces to assume the task, placed the burden for legislative enactment on their shoulders.

The Statute of Westminster had maintained the authority of the Judicial Committee of the Privy Council as the

¹⁵Vincent C. MacDonald, "Canada's Power to Perform Treaty Obligations," Canadian Bar Review, 11 (November 1933), pp. 581; 596.

ultimate court of appeal, and under circumstances where the Supreme Court itself could not decide, its judgement was to be considered final. On January 28, 1937 the Privy Council decided that the Bennett legislation respecting the Labour Conventions (and also Unemployment Insurance), was ultra vires of the Parliament of Canada. The Committee based this judgement on several key factors. First, it noted the clear distinction in a federal system between treaty-formation and treaty-performance, the former being the obligation of the federal authority, the latter the obligation of the various legislatures. It did not contest the right of the Dominion authority to engage Canada in a treaty obligation; indeed, the Committee recognized that Canada's status as "an international juristic person" rendered valid any such undertaking. However, it maintained that no exercise of such authority, regardless of its constitutional feasibility (Section 132), was sufficient reason to impinge upon prior, clearly-defined powers of the legislatures, unless under extreme circumstances, which it judged did not exist relative to the enactment of the Bennett legislation.¹⁶

Second, in terms of the validity of Section 132 in this instance, the Committee maintained that its own judgements

¹⁶Canada. Department of Justice. Decisions of the Judicial Committee of the Privy Council Relating to the British North America Act, 1867 and the Canadian Constitution, 1867-1954, 3 vols. arranged by Richard A. Olmstead (Ottawa: Queen's Printer, 1954), III:201; 205.

on this validity (respecting the Aeronautics and Radio Cases) could not be extended to the Labour Conventions Case. The judgement on the Aeronautics Case had upheld the authority of Section 132 because the matter had been the subject of an Empire Treaty, whereas, in the Radio Case the Dominion authority had been confirmed not only on the basis of Section 132, but more particularly because the subject could not be subsumed under the authority of Section 92, since it referred to inter-provincial situations involving radio communications. Therefore the Committee held that this did not constitute legal precedents for the Labour Conventions Case.¹⁷

Third, the Committee maintained that although Canada had indeed acceded to international status which enabled it to enter into the above agreements, this accession did not carry with it further legislative competence to enact all such agreements, nor could that competence be stretched "to keep pace with the enlarged functions of the Dominion executive."¹⁸ The competence of the Dominion authority was thus to be understood as coming strictly within the enumerated powers of Section 91. "In other words," the Committee stated, "the Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth."¹⁹

¹⁷ Ibid., pp. 202-203.

¹⁸ Ibid., p. 204.

¹⁹ Ibid., p. 204.

Lastly, the Committee rendered its conclusion, if rather prosaically, as follows:

It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed, and if in the exercise of her new functions derived from her new international status Canada incurs obligations they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by the totality of powers, in other words by co-operation between the Dominion and the Provinces. While the ship of state now sails on larger ventures and into foreign waters, she still retains the water-tight compartments which are an essential part of her original structure.²⁰

The Privy Council also rendered a decision on the Employment and Social Insurance Act, a matter which had caused another difference of opinion between Justices Rinfret, Cannon, Crockett and Kerwin (who declared it ultra vires of Dominion parliament) and Justices Duff and Davis (who had declared it intra vires).²¹ In upholding the opinion of Justices Rinfret et alii the Committee denied the validity of Bennett's justification for the Act, that a special emergency existed which made it expedient to undertake this legislation, and that the Preamble to Article 23 of the League Covenant had directed members of the League and the I. L. O. "to maintain fair and humane conditions of labour."²²

²⁰ Ibid., pp. 205-206.

²¹ Ibid., pp. 207-208.

²² Ibid., pp. 210; 215.

By this latter defence, Bennett had hoped that the treaty obligation which derived from the labour conventions applied as well to this legislation and could be defended in the same fashion. It was a rather weak argument, and the Committee rejected it immediately.²³ That it also denied the validity of a special emergency as justification for the Act was a more serious matter, one to have consequences for Dominion-provincial fiscal relations. Only by co-operation with the provinces, the Judicial Committee insisted, would the Dominion be considered constitutionally competent to act.²⁴ By thus denying the Dominion government the power to raise money directly to alleviate unemployment, the Committee placed the onus for relief effort on the provinces, all of which were financially incapable of taking the responsibility. The Committee reasoned in defence of Section 91, that by assuming authority to raise funds on behalf of the provinces, the Dominion government would be invading provincial civil rights, "or encroaching upon the classes of subjects which are reserved to provincial competence."²⁵

The Judicial Committee summarized by saying,

If on the true view of the legislation it is found that in reality in pith and substance the legislation invades civil rights within the Province or in respect of other classes of subjects otherwise en-

²³Ibid., p. 215.

²⁴Ibid., pp. 212-213.

²⁵Ibid., p. 218.

croaches upon the provincial field, the legislation will be invalid. To hold otherwise would afford the Dominion an easy passage into the provincial domain.²⁶

d. Ramifications and Reactions

The Privy Council verdict had serious consequences for Canadian government and society. In addition to impeding the Dominion government's activities in the social realm at a time when such intervention was becoming increasingly necessary, the judgement placed the political and financial burden to enact this legislation on the several provinces. In view of the inter-provincial rivalry and suspicion in matters touching on social legislation, and the ravages of the depression on provincial economies, the decision to return legislative power to the provinces seemed to be unduly optimistic. Reaction to the judgement was swift and significant. The Canadian Bar Review and the Canadian Forum, both sources of official and popular opinion, saw in these decisions a lack of understanding on the part of the Privy Council of the economic and social conditions in Canada which had made necessary the creation of the "New Deal" legislation. The T. L. C. and the C. M. A. were united in several respects in their reaction against the decisions, but for the T. L. C. they represented a serious setback in its expectations for reform legislation. Indeed, it is

²⁶Ibid., p. 218.

possible to suggest that this setback represented "the final straw" for the T. L. C. and its own relationship both with the Dominion government and the I. L. O.

The general effect of the Supreme Court and Privy Council decisions was to place Canada outside worldwide trends. As Harold Butler had pointed out in the Director's Report for the Twenty-Third Session (1937):

It is generally realized that the extension of government interference into the economic field is bound to remain a permanent feature of the new order. This principle is being more and more widely adopted in every country, whatever its political label . . . and . . . its application is now practically universal. . . . The mere fact that the maintenance of employment and living standards has been accepted as a fundamental aim of national policy in itself implies a radical divergence from the ideas of the last century, which considered that the level of wages and the demand for labour were automatically determined by the state of business activity.²⁷

This is not to suggest that the Bennett legislation was entirely without consequence, for, as pointed out, that legislation introduced the concept of the state's duty to intervene in the social realm by way of large-scale public works or various acts for the rehabilitation of labour and industry.²⁸ The Supreme Court-Privy Council decisions, however, put a brake on this development.

The reaction to these decisions reflected disappointment and disapproval from many sources of informed opinion.

²⁷ International Labour Office, Report of the Director for the Twenty-Third Annual Conference (Geneva, 1937), pp. 58-59.

²⁸ Ernest Watkins, R. B. Bennett: A Biography (London: Secker and Warburg, 1963), p. 218.

The Canadian Forum called the decisions "disastrous" and stated,

The most exaggerated doctrines of provincial rights have been accorded full recognition, and the national sovereignty of Canada in the international field has been destroyed. We can no longer act as a unit in face of the world, nor co-operate on terms of equality with other countries in an endeavour to regulate international affairs. We are nine peoples, not one. To all intents and purposes Dominion status, so long fought for and so shortly enjoyed, is deprived of any meaning, and Canada is thrust back by an alien hand to a position of constitutional infantilism.²⁹

The Canadian Bar Review devoted its entire issue of June, 1937 to the consequences of the Privy Council decisions, and several noted contributors, specifically Vincent C. Macdonald of Dalhousie Law School, N. A. M. MacKenzie of the University of Toronto, W. Ivor Jennings of the London School of Economics, C. Wilfred Jenks and F. R. Scott all indicated the necessity of a broader interpretation of Dominion authority, particularly with respect to treaty obligations.³⁰ Even in his article in defence of the Privy Council decisions, A. B. Keith of the University of Edinburgh recognized that a federal authority should possess the requisite power to

²⁹ Frank Underhill, "Goodbye Dominion Status," Canadian Forum, 16 (March 1937):6-7.

³⁰ Vincent C. Macdonald, "The Canadian Constitution Seventy Years After," Canadian Bar Review, 15 (June 1937): 401-427. See also, W. Ivor Jennings, "Dominion Legislation and Treaties," *Ibid.*, pp. 455-563; C. Wilfred Jenks, "The Present Status of the Bennett Ratifications," *Ibid.*, pp. 464-477; F. R. Scott, "The Social Legislation Reference," *Ibid.*, pp. 478-494.

ratify international conventions, and admitted that the time had come for constitutional change in Canada. Furthermore, he conceded that the Privy Council decisions on the Radio and Aeronautics Cases were poor precedents for the Labour Convention Acts insofar as they did not clarify the extent to which executive authority might engage the nation in treaty obligations whose particulars were the subject of constitutional interpretation. In this regard, he maintained that the Judicial Committee should have "shown more caution" in arriving at those particular decisions.³¹

In F. R. Scott's opinion, a policy of greater Dominion-provincial co-operation on such social issues as might arise from I. L. O. decisions would have little or no effect on the legislative outcome itself. As long as there existed an appeal system to a final non-Canadian authority, any legislation regardless of its genesis in co-operation, could be set aside. He said:

The Privy Council is and always will be a thoroughly unsatisfactory court of appeal for Canada in constitutional matters; its members are too remote, too little trained in our law, too casually selected, and have too short a tenure. Confederation itself may well have difficulty in surviving the disintegrating effect of the Court's judgements upon the British North America Act. Canada is the only self-governing Dominion that has not yet realized this fact and taken steps to restrict or abolish the appeal. No alterations to the British North America Act will

³¹A. Berriedale Keith, "The Privy Council Decisions: A Comment from Great Britain," *Ibid.*, pp. 430-433.

ever achieve what Canadians want them to achieve if their interpretation is left to a non-Canadian judiciary.³²

Canadian labour organizations were equally united in their dissatisfaction with the decisions. They had staked their hopes on the ill-starred Bennett programme only to encounter the same disappointments as had followed the Privy Council decisions on the Industrial Disputes Investigation Act and the Supreme Court decisions regarding the I. L. O. convention on hours of work in 1925. Between that time and 1935, the inescapable facts of Canadian federalism had compelled organized labour to present its legislative expectations to nine legislative authorities instead of one, a situation rendered exceedingly difficult because the backward conditions of some provinces often precluded the adoption of progressive legislation in others. Throughout that decade, the T. L. C. in particular had lobbied ceaselessly for amendments to the B. N. A. Act to give greater powers to the federal government to deal with social and labour legislation, and to establish the Supreme Court of Canada as the highest court of appeal. It is little wonder, then, that having witnessed another setback on the basis of the constitutional situation, organized labour in Canada had become, in H. A. Logan's words, "impatient with

³²F. R. Scott, "The Consequences of the Privy Council Decisions," Ibid., p. 494.

the whole government line-up in Canada and with certain provinces in particular for their failure to get along with the settlement of constitutional difficulties."³³ Moreover, the decisions of 1936-1937 undoubtedly represented a real problem for organized labour insofar as it had based much of its programme (particularly with regard to unemployment insurance for which it had been working since the 1920's³⁴), on Bennett's guarantee of increased Dominion authority. The denial of the validity of that power left the T. L. C. with the same programme it had adopted in 1925 respecting constitutional authority. That programme, as readopted at the Fifty-Second and Fifty-Third Annual Conventions of the T. L. C., called for:

Full competence of the Federal Government to pass social and labour legislation affecting Canada as a whole; Dominion control over industrial activities essential to ensuring observance of proper labour standards and to eliminate unfair competition between provinces; federal authority to regulate highway transport; to eliminate unsafe standards of operation and unfair competition with other methods of transportation; restriction on the powers of the senate to veto any bill passed by the House of Commons . . . and abolition of appeals to the Privy Council.³⁵

³³H. A. Logan, Trade Unions in Canada: Their Development and Functioning (Toronto: Macmillan, 1948), p. 481.

³⁴Dominion Trades and Labour Congress, Proceedings of the Forty-Third Annual Convention (Ottawa, 1927), pp. 101-103; Proceedings of the Forty-Fourth Annual Convention (Ottawa, 1928), pp. 65-68; Proceedings of the Forty-Fifth Convention (Ottawa, 1929), pp. 117-119.

³⁵Dominion Trades and Labour Congress, Proceedings of the Fifty-Second Annual Convention (Ottawa, 1936), p. 21; Proceedings of the Fifty-Third Annual Convention (Ottawa, 1937), p. 25.

With regard to the work of the I. L. O., organized labour continued to include suggestions for legislative enactments in its annual proposals transmitted to the various provinces and the Dominion government.³⁶ By 1936 at the latest, though, it had realized the mistake of pinning its hopes on the influence of the I. L. O.³⁷ According to H. W. Macdonnell of the C. M. A., the nature of provincial authority rendered such influence "academic in character for the reason that the only Canadian government represented . . . has been the Dominion government, and it is deemed to have no constitutional right to enact (such) legislation."³⁸

The opposition of the C. M. A. in this period continued to be directed against the various hours of work and minimum wage proposals which emanated from the final I. L. O. conferences; these concepts, it maintained, would render production unprofitable and thus exacerbate unemployment. These had already been the major concerns of the C. M. A. in its resistance to the Bennett programme.³⁹

³⁶ Labour Gazette, Ottawa, 37 (January 1937):38; 38 (February 1938):142-143; 156.

³⁷ Charles Lipton, The Trade Union Movement of Canada, 1827-1959 (Toronto: New Canada Publications, 1973), pp. 238-239.

³⁸ H. W. Macdonnell, "Canadian Labour Legislation and the International Labour Organization," Industrial Canada, 37:1 (May 1936):60.

³⁹ Ibid., p. 61.

It was not completely unimpressed, however, with the possibilities of action by the federal government. In the areas of public works and social insurance, the C. M. A. was quite supportive of a national effort, in the first place because national public works schemes created jobs, and secondly because a national social insurance or pension programme would impose a uniform system on the various overlapping, expensive and inefficient provincial programmes.⁴⁰ It was for these reasons then, that the C. M. A. also opposed the Privy Council decisions.

e. The Royal Commission on
Dominion-Provincial Relations

The Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission) represented one of the more positive results of the judgements on the Labour Conventions Case, and judging from its recommendations, probably one of the most overdue investigations into the B. N. A. Act in Canada's history. The Dominion-provincial Conference of 1935 had been unequivocal in its recommendation that the time had come for a more comprehensive study of Canada's constitution than could be undertaken by a mere conference. The Commission thus laboured for about four years. Its report recommended that Canada's treaty obligations to the I. L. O. should constitute an entirely unique type of international agreement.

⁴⁰ Alvin Finkel, Business and Social Reform in the Thirties (Toronto: Lorimer and Co., 1979), p. 145.

The public dispute at the political, judicial, social and economic levels gave birth to an expedient not alien to Canadian politics, and the Liberals in particular. On February 16, 1937 Mackenzie King announced that his government proposed to appoint a Royal Commission to conduct investigations into the entire realm of Dominion-provincial relations and the corresponding constitutional framework.⁴¹ The Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission) presented its report in 1940. With regard to I. L. O. legislation its findings indicated that a distinction should have been made between I. L. O. conventions and other treaties. The former, it maintained, were applicable throughout the world and as such did not represent a definitive attempt by the Dominion to encroach upon provincial jurisdiction, whereas the latter type might have only involved Canada and some other single state and thus have a bearing on provincial jurisdiction.⁴² The report thus insisted that the Dominion parliament should have jurisdiction to ratify and enact I. L. O. conventions for the nation, and in particular to establish basic minimum wages, maximum hours of labour and a specific minimum age

⁴¹ (Commons), Debates (February 16, 1937), p. 937.

⁴² Canada. Parliament, Royal Commission on Dominion-Provincial Relations, Book 2: Recommendations (Ottawa: King's Printer, 1941), p. 48.

of employment, but should leave to the provinces the right to raise minimum wage and age of employment or lower hours of labour if they so desired.⁴³ This transfer of power, the report recommended, should be effected only by means of a Dominion-provincial conference; at which time amendments to the constitution would have to be considered. In general, the Dominion's right to ratify and enact I. L. O. conventions on the basis of Section 132 was recognized as valid, but only with respect to labour conventions.⁴⁴ Any other treaty obligation demanded prior consultation with the provinces whenever their jurisdictions were involved. The report was careful to point out, as well, that uniformity of labour legislation, while a desirable social goal, should not be brought about through "undue centralization of jurisdiction as a means of effecting uniformity."⁴⁵ The principle of the Dominion-provincial conference was upheld as the preferred method to realize any such standardization; to this end, the report recommended that such conferences be conducted on a yearly basis between representatives of Dominion and provincial Labour Departments.⁴⁶

⁴³ Ibid., p. 49.

⁴⁴ Ibid., p. 274.

⁴⁵ Ibid., p. 49.

⁴⁶ Ibid., p. 49.

With regard to unemployment, the Report made two recommendations. These represented perhaps the key proposals of the entire report insofar as they broke with the established practice of provincial jurisdiction in this matter. It was recommended,

- (1) that all doubts should be removed as to the power of the Dominion to pay and administer unemployment aid, and to establish a national employment service; and
- (2) that the Dominion Parliament be given jurisdiction to establish unemployment insurance.⁴⁷

The Rowell-Sirois Report thus stood at the junction of two eras in Canadian constitutional history: It put an end to the slow and hesitant movement towards centralization of authority which had characterized the interwar period, and ushered in an age of a quicker and more decisive development in that direction. With regard to Canada's relationship with the I. L. O., the Rowell-Sirois Report represented a similar watershed in that it distinguished a new post-war era of more active and meaningful Canadian participation from the interwar period of self-interest and isolationism born of political and constitutional insecurity. By the I. L. O. itself, in exile in Montreal, the report was hailed as an important standard by which the nations of the world community might measure their own progress toward social and even constitutional reform. The International Labour Review stated that:

⁴⁷ Ibid., p. 25.

as regards the problems created by the development of an internationally interdependent industrial economy, Canada, with its diversity of cultural traditions and economic conditions and its federal political system, has been a microcosm of the world at large, and rarely has the importance of the International Labour Organization as a vital part of any attempt to promote 'peace, order and good government' on a world basis been more cogently demonstrated than in the study of the social and economic problems of Canada contained in the Rowell-Sirois Report. . . . It is also of outstanding importance as a study of the problems involved in the distribution of legislative authority in respect of labour and deserves to be widely known in other federal countries.⁴⁸

f. Canada and the I. L. O. in the
Aftermath of the Labour
Conventions Case

The Privy Council verdict on the Labour Conventions Case resulted in another diplomatic embarrassment for Canada at the I. L. O. This was especially true with regard to the published Summaries of Annual Reports on compliance with I. L. O. conventions. These reports first presented the Bennett legislation as being in complete compliance with certain I. L. O. proposals, and then ran one retraction after another by the Dominion government. If anything, these reports seemed to reveal a lamentable constitutional insecurity in Canada. Canada's role at the I. L. O. in the aftermath of the Labour Conventions Case, however, was not a complete disaster. True, the Canadian delegates were

⁴⁷"The Rowell-Sirois Report: A Canadian Reaffirmation of the Democratic Faith in Social Progress," International Labour Review, 42:6 (December 1940):347.

⁴⁸"The Rowell-Sirois Report: A Canadian Reaffirmation of the Democratic Faith in Social Progress," International Labour Review, 42:6 (December 1940):347.

forced to justify the Dominion government's reversal on this legislation at the Conferences of 1936 to 1938. But arising from those same conferences were new types of draft conventions which recognized and attempted to alleviate the difficulties which federal and non-European members experienced.

The final years of the 1930's represented an ebbtide for the fortunes of the I. L. O., marked essentially by the resignations of Germany, Italy, Japan, several Latin American states, and the disappearance of Austria and Czechoslovakia as members. For Canada as well, it was a time of controversy and crisis. The Dominion still faced not only record unemployment and social displacement, but also a delicate constitutional situation which amounted to an embarrassment at the I. L. O. This was especially evident in regard to the Summaries of Annual Reports Under Article 22. According to that article, a member state was required, "to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."⁴⁹ The Bennett Labour Legislation of 1935 was the main cause of Canada's discomfort with the Summary. Upon ratification of

⁴⁹ International Labour Organization, Constitution (Geneva, 1954), p. 15.

the labour convention in the spring of that year, Labour Minister Wesley Gordon had notified the Labour Office so as to make public these ratifications before the incoming King ministry could refer them to the Supreme Court. Consequently, this information appeared in the 1936 Summaries,⁵⁰ but the 1937 Summary indicated that the information had been withdrawn.⁵¹ The government explained that the matter had already received unfavourable response from one-half of the members of the Supreme Court and therefore was under study by the Privy Council for final decision on constitutional competence. The government then requested more time of the Governing Body Committee on Article 22 for a detailed report⁵²--this almost fifteen years after the deadline for the Hours of Work Convention. The Committee graciously declined comment and waited for further information from Canada.⁵³ And so it went for the remainder of the decade--Canada submitting annual reports (in 1938 and 1939) pertaining to the work of the Rowell-Sirois Commission and seeking further extensions; and the committee expressing "its earnest hope" that in its next

⁵⁰ International Labour Office, Summary of Annual Reports Under Article Twenty-Two of the Constitution of the International Labour Organization for the Twentieth Session, (1936), Appendix (Geneva, 1936), pp. 6; 12.

⁵¹ International Labour Office, Summary of Annual Reports . . . for the Twenty-Third Session (Geneva, 1937), p. 5.

⁵² Ibid., p. 5.

⁵³ Ibid., p. 6.

report the Canadian government would be in a position to supply fuller information.⁵⁴ That the Summaries were distributed worldwide undoubtedly added to Canada's discomfort. In former days when no action had been forthcoming, little mention had been made of this in the Summaries except to remind the members about the constitutional vagaries of Canada's federal system. Now, however, the about-face between the Bennett and King governments received full coverage--the inevitable consequence of Gordon's hastiness in 1935.

The Conferences themselves were a further source of discomfort for Canada regarding this issue, and of these the Twentieth, Twenty-Third and Twenty-Four Sessions (1936-1938) witnessed the Canadian government delegates in a position not unlike that during the prior decade; that is, they were compelled to explain the constitutional reasons for their abstentions regarding certain key issues. Undoubtedly, like "the Canada speech" on North American cooperation, this explanation had by 1936 achieved some notoriety at the I. L. O., or in C. P. Stacey's words, had become another "Canadian cliché."⁵⁵ Unfortunately, by the time Labour Minister Gérald Brown had explained the reasons

⁵⁴International Labour Office, Summaries of Annual Reports . . . for the Twenty-Fourth and Twenty-Fifth Sessions, Appendices (Geneva, 1938, 1939), p. 6.

⁵⁵C. P. Stacey, Canada and the Age of Conflict: A History of Canadian External Policies, Vol. II: 1921-1948 (Toronto: Macmillan, 1981), p. 161.

for Canada's decision to abstain from voting, (at the Twentieth Session), the Summary for 1936 had already published the information on Canada's 1935 ratifications thus compounding the embarrassment. Brown could do little but offer Canada's standard reply:

Let me say here that the Canadian Government takes a very strict view of whatever obligation it assumes . . . pending the decision of the courts of last resort on the whole question of federal jurisdiction in labour matters generally, the Canadian Government Delegates will be compelled to abstain from voting on certain of the questions coming before the present session of the Conference.⁵⁶

At the Twenty-Third Session (1937) Deputy Labour Minister William Dickson articulated a similar justification, but prefaced it with a somewhat confusing interpretation of the status of the Bennett legislation in light of the Privy Council judgement. He said:

The situation at the moment is that while all four Acts are still on the Statute Book, not having been repealed, nevertheless, by reason of the judgement of Judicial Committee of the Privy Council they are inoperative.⁵⁷

That no other member sought to question Dickson on this rather incomprehensible statement seems to suggest either general compassion or general apathy toward the state of affairs in Canada. Brown offered little else by way of

⁵⁶International Labour Organization, Proceedings of the Twentieth Annual Conference (Geneva, 1936), p. 250.

⁵⁷International Labour Organization, Proceedings of the Twenty-Third Annual Conference (Geneva, 1937), p. 171.

clarification at the Twenty-Fourth Session of 1938, although he did inform the Conference that authority had been given by an Order-in-Council for the ratification of conventions concerning the seamen's articles of agreement, the marking of the weight on heavy packages transported by vessels and the protection against accidents of dockers.⁵⁸ These conventions, like similar draft legislation from the 1920's on marine labour, were assumed under Dominion government authority by way of amendments to the Canada Shipping Act, and, by 1940, had brought the total number of conventions ratified by the Dominion authority to ten. By comparison, the United States, another federal state with only five years of membership in the Organization as of 1940, had registered sixteen ratifications by the central authority, and another twelve recommendations to the competent national authority for approval.⁵⁹

Ironically, the last session of the Labour Conference before the outbreak of the war (the Twenty-Fifth, in June, 1939) produced the first breakthrough by the I. L. O. in its recognition of the legislative conditions of federal members. This development arose out of an amendment to the Draft Convention on Road Transport which was moved by the representative of the government of the United States, and was adopted as a resolution by the Commission on Hours of

⁵⁸International Labour Organization, Proceedings of the Twenty-Fourth Annual Conference (Geneva, 1938), p. 180.

⁵⁹International Labour Office, "Progress of Ratifications Chart," in Labour Office Yearbook, 1939-1940 (Geneva, 1940).

Work in Road Transport. This amendment proposed that an article be added to the convention which would permit a federal state to ratify this draft convention on the understanding that its obligations would be limited to applying the convention to those workers directly under the authority of the federal power. In addition, the amendment suggested that this authority should be extended to the constituent units of the federation which had transferred to the federal power the competence to apply the convention.⁶⁰

Hume Wrong, the Canadian government delegate, alleged Canada's full support for this resolution, and in doing so he emphasized the importance of the "vitality" which federal states brought to the organization. Draft legislation which recognized the legislative reality of federal systems, he maintained, encouraged further federal state input into the organization--a process of benefit to all members, but particularly to the states of Europe. These nations, Wrong suggested, by adopting federal-state approaches to I. L. O. decisions as the basis for their own efforts toward co-ordination of legislative undertakings, might encourage social and perhaps even political co-operation between themselves.⁶¹ Moreover he maintained that an improved status for federal states in the I. L. O. was vital from

⁶⁰ International Labour Organization, Proceedings of the Twenty-Fifth Annual Conference (Geneva, 1938), p. 356.

⁶¹ Ibid., p. 356.

the standpoint of public interest and support—a key issue given the defections of several important members from the organization. On this matter, he said:

The provision in the Constitution permitting Federal States to treat Conventions in certain cases as Recommendations has not proved satisfactory. That Federal States should be able to apply international labour Conventions is a matter of growing importance. It follows that it is of growing importance that public interest in the Organization should be maintained and increased inside Federal States. It is a commonplace which still bears repetition that the salt of our discussion in the International Labour Organization comes from the direct participation of representatives of employers and workers. But the real value of our tripartite methods depends, . . . on the existence of a lively support at home for the work of the Organization . . . a slackening of public interest in the Federal States would be a serious matter for the Organization. An increase of public interest would be of great value. Can this be accomplished if the possibility of ratifying Conventions in some federations is limited to those dealing with a few subjects?⁶²

The resolution was adopted,⁶³ and thereby established a precedent for federal state members. It was a fitting, if not unlooked for culmination in Canada's inter-war relationship with the I. L. O., but doubtless was motivated by a general apprehension that the organization might lose even more members if such compromises were not undertaken.

⁶²Ibid., p. 356.

⁶³Ibid., p. 358.

g. Canada's Role at the Final
I. L. O. Conferences, 1937-
1939

The most remarkable feature of Canada's role at the I. L. O. in the last years before the war was the constructiveness of the employers' delegate's opposition. For the first time they showed concern that conventions be tailored to suit the constitutional or regional conditions of non-European or federal members. It was a far cry from the days of S. R. Parsons when Canadian employers rejected conventions out of hand, without concern that some altered form might be more acceptable. Canadian labour's silence, on the other hand, seemed to reveal a loss of confidence that the Dominion government or the I. L. O. could encourage change in the working conditions of Canadian labour.

Apart from the constitutional issue, Canada's role in these final conferences was characterized by the usual obstructionism of the employers' delegates. However, in contrast to former times, when the employers' opposition had emphasized Canada's geographical or political circumstances in an effort to represent the Canadian situation as unique, and therefore deserving of special consideration, the Canadian employers' delegate to these later conferences (A. R. Goldie) based his opposition to several draft proposals on their apparent inflexibility. His concerns in this regard touched on the issues of minimum age of admission to industrial and non-industrial employment and reduction of

hours of work in various industrial and non-industrial undertakings. In both cases Goldie sought to have the conference limit its expectations with regard to less advanced members so as to encourage them to adopt I. L. O. standards more readily.⁶⁴ Otherwise, he maintained, the legislation's rigidity would preclude ratification by those members and thus work to the detriment of the whole organization. The universal application of draft legislation he regarded as an unrealistic expectation when many of the less advanced member states simply had not progressed either socially, politically or economically to the point where the application of such proposals was possible or even practicable. "If it is difficult to make a single law uniformly and universally applicable to the whole industry of a single country," he argued, "it is even more difficult to draft an international convention of uniform and universal application."⁶⁵ This he found especially true with regard to the convention on reduction of hours for the road transport industry, and he maintained that:

The road transport industry cannot be organized like a factory; indeed it is hardly correct to

⁶⁴International Labour Organization, Proceedings of the Twenty-Third Annual Conference, p. 342.

⁶⁵International Labour Organization, Proceedings of the Twenty-Fourth Annual Conference, p. 345.

describe it as an industry at all. Rather it is the handmaiden of industry, and as such must adapt itself to meet the needs of all other industries and it can only be successful when it does meet these needs. Flexibility is its dominant need and this would indicate that it is almost the last industry to which a Convention should apply.⁶⁶

Goldie saw this entire matter as the proper subject of voluntary collective bargaining at the national level because of the variety of conditions of transport between countries. In fact, he argued, the proposal reached so deeply into the private sector (since it attempted to cover owner-drivers as well as professional drivers) that it was outside the constitutional competence of the I. L. O.⁶⁷

This practice of tying draft legislation to every aspect of a nation's industrial life had become a source of irritation to the Canadian Manufacturers' Association, and a chief reason (among several) for its protracted opposition. Goldie, perhaps more distinctly than any other Canadian employers' delegate to the Conferences, had, from 1935 to 1939, articulated this opinion in the clearest possible terms. The I. L. O., he maintained, was sacrificing practicability for idealism in its programmes. This practice was producing frustration and disappointment for

⁶⁶International Labour Organization, Proceedings of the Twenty-Fifth Annual Conference, p. 337.

⁶⁷Ibid., p. 336.

governments which lacked the authority to impose legislation and for labour which had been led to expect a more promising outcome than what was actually possible under political or economic circumstances.⁶⁸ For Goldie, as for the majority of employers' delegates to these conferences, the I. L. O. had never made a clear enough distinction between the economic and social aspects of draft legislation. It had not done so, in his opinion, with regard to the hours of work conventions, and his opposition to the forty-hour week proposal continued to reflect the same concerns of Canadian employers as S. R. Parsons had articulated in 1919. With respect to the forty-eight hour week, he had held that without a reduction in wage rates, costs of production would undo any benefit, social or economic, which labour might obtain from reduced hours. On this matter, Goldie said:

What must be apparent is that to increase individual incomes and purchasing power there must be more national income to divide, and this increased national income can only come from more production, which cannot be attained by reduction of hours. The bald fact remains that the workers must choose between increased income and increased leisure - they cannot have both.⁶⁹

Goldie's arguments indicated an interesting change in the position of the Canadian employers' delegates. As

⁶⁸ International Labour Organization, Proceedings of the Twenty-Fourth Annual Conference, p. 345.

⁶⁹ International Labour Organization, Proceedings of the Twenty-Third Annual Conference, p. 64.

pointed out, in earlier years they had attempted to impress upon the Conference and the legislative commissions the importance of Canada's unique geographical, economic and political conditions in an effort to gain some compromise or, at the very least, sympathy for Canada's situation. Even Riddell, the government delegate, had engaged in this task for years, but he had allied Canadian interests far earlier to those of the non-European members and so had become one of several spokesmen for that more general opinion. Goldie's statements in this period began to reveal a similar tendency. At each of the four major conferences between 1936 and 1939, Goldie delivered essentially the same statement on the need for practical draft legislation, given the special conditions of underdeveloped and non-European members. Thus, rather than referring directly to Canada's special interests, he usually associated them with those of non-European or less industrialized members. Perhaps this change of tone was ultimately for the best. Canada had undoubtedly drawn more than its share of attention, not to mention embarrassment, from its constitutional difficulty, and a further pleading of national interest by the employers' delegate could not have lessened the discomfort. In this context, it is also interesting to note that the Canadian workers' delegates to these conferences, P. M. Draper, W. A. MacDonald, R. J. Tallon and P. R. Bengough, all of the Trades and Labour Congress, delivered no addresses--neither

in response to those of A. R. Goldie nor in their own initiative, a surprising reticence particularly in Draper, but under the circumstances, probably welcomed. On the other hand, as indicated earlier, organized labour in Canada had reached the end of its patience both with the federal government and the I. L. O. Perhaps its silence at the final conferences was merely resignation.

h. The Canadian Voting Record
in this Period

An overall view by way of an assessment of Canada's voting record can shed some further light on the Dominion's attitude during this period. Its characteristics gain good profile when compared with the performance during the 1920's, and with that of the United States.

The Canadian voting record in this period showed certain contrasts to that of the 1920's. Primarily, Canadian government delegates to these final conferences tended to abstain much less often than during the first and second King administrations. It might have seemed otherwise, given the vague status of the Dominion government delegation due to the constitutional question. In fact, however, (and in spite of Labour Minister Brown's statement to the 1936 Conference on the necessity for Canadian government abstentions), Canadian government delegates to these sessions voted on seventy per cent of all decisions before the conference; they sided with the workers' delegate on approximately

eighty-five per cent of these; the remainder saw full unanimity among government, workers' and employers' delegates. Unanimous agreements were also obtained on some seamen's rights (Twenty-First and Twenty-Second Sessions, 1936⁷⁰), public workers, accident prevention and vocational education (Twenty-Third Session, 1937⁷¹), matters clearly within the scope of Dominion authority. Government and workers' delegates also generally agreed on various other Seamen's Conventions during the Twenty-First Session (i.e., sickness insurance and regulation of hours of labour⁷²), conventions on minimum age for admission to industrial and non-industrial employment (revised from the 1919 and 1932 conventions, both of which the government had supported⁷³), and recommendations on vocational training and apprenticeship.⁷⁴ That the Canadian government and

⁷⁰ International Labour Organization, Proceedings of the Twenty-First Annual Conference (Geneva, 1936), pp. 58; 168; 169. Also, Proceedings of the Twenty-Second Annual Conference (Geneva, 1936), pp. 394-395.

⁷¹ International Labour Organization, Proceedings of the Twenty-Third Annual Conference, pp. 501; 518; 521; 522; 524.

⁷² International Labour Organization, Proceedings of the Twenty-First Annual Conference, p. 175. Also, Proceedings of the Twenty-Third Annual Conference, pp. 508-509.

⁷³ Ibid., pp. 503-504.

⁷⁴ International Labour Organization, Proceedings of the Twenty-Fifth Annual Conference, pp. 360-361; 371-372.

workers' delegates were also able to agree on the convention to reduce hours of work in the textile industry did not indicate that the Dominion government had changed its policy toward questions on hours of labour. Rather, it reflected the fact that the convention itself represented a change of I. L. O. policy. This convention was the outcome of the work of the Washington Tripartite Technical Conference on Hours of Work in the Textile Industry (April 2-17, 1937), a world conference at which Canada had enjoyed full representation.⁷⁵ Canadian government compliance was thus encouraged because of this opportunity for Canadian input into the proceedings. Moreover, this conference represented the first attempt by the I. L. O. to review the general situation of a worldwide industry so as to give full consideration to the various geographical and economic conditions of its members. A conciliatory atmosphere had thus prevailed both at the Washington Conference and in the Conference commission itself, with the result that the ensuing draft convention gave immediate recognition to the need for flexibility in the application of its terms to non-European members.⁷⁶ Similar motives brought a corresponding agreement with reference to the convention on hours of work

⁷⁵Labour Gazette (Ottawa, April 1937), p. 392.

⁷⁶International Labour Organization, Proceedings of the Twenty-Third Annual Conference, p. 363. "

of professional drivers (1939).⁷⁷ As mentioned, the Twenty-Fifth Conference had adopted a unique resolution which recognized the constitutional circumstances of Federal states members,⁷⁸ thus allowing for Dominion approval of the concept.

As in former times, the Canadian employers' delegate remained in implacable opposition to any hours of work principle, regardless of its conciliatory tone. As mentioned, Goldie was generally of the opinion that while the reduction of hours was inevitable, and in some instances, socially desirable, the rigid stipulations contained in the text rendered it impracticable.⁷⁹ He was of the same opinion on several other matters as well, one of which concerned the draft convention on vocational education: On this draft legislation, employers' adviser J. McIntosh asked:

Why should the control of the number of apprentices, the fixing of wages, wages during periods of sickness, holidays with pay, whether apprentices should be members of trade unions, or otherwise, be mixed in with a most excellent document on education? Surely these are matters for agreements between the parties concerned. At all events, they are matters in which educational administrators have no concern.⁸⁰

⁷⁷International Labour Organization, Proceedings of the Twenty-Fifth Annual Conference, p. 379.

⁷⁸Ibid., p. 358.

⁷⁹Ibid., pp. 336-337.

⁸⁰International Labour Organization, Proceedings of the Twenty-Fourth Annual Conference, p. 407.

On this particular issue, the employers' delegates from both Canada and the United States were in agreement, the latter having indicated that this draft legislation was too specific and touched upon several areas of concern not germane to vocational education.⁸¹ Generally, it was one of the few occasions in the final conferences where Canadian and American delegates agreed on a specific issue. For the most part, the entire American delegation voted unanimously on the draft legislation before these conferences, and unlike its government counterparts in the Canadian government group, rarely abstained from voting. Apparently, the American government delegates did not share Canada's preoccupation with constitutional difficulties, but this contrast must be seen in the context of the differences in political leadership between the nations. The distinction in this regard was between Roosevelt's aggressive New Deal policies and Mackenzie King's predelection for orthodox constitutional practice.

- i. The Fate of W. A. Riddell as Dominion Advisory Officer to the League and the I. L. O.

It is perhaps not an unfitting conclusion to this Chapter to examine one of Canada's chief diplomatic misfortunes in this ebbside period, namely, the career of

⁸¹Ibid., pp. 409-410.

W. A. Riddell. While his failure is directly tied to the fiasco of the Ethiopian crisis, it is not inaccurate to suggest that his poor judgement in that matter may have stemmed in part from his nearly autonomous position at the I. L. O.

And what of Walter Riddell? After 1935, his career doubtless represented the chief casualty of Canada's League and I. L. O. policy. By that time, Riddell had served for ten years as Dominion Advisory Officer to the League, and as Dominion Government Representative to the Governing Body. The Ethiopian crisis of October, 1935, however, marked not only the beginning of the end of League influence in world affairs, but also the turning point in his career. Certainly it represented another classic embarrassment for Canadian foreign policy further exacerbated in 1936 and 1937 by the difficulty with the labour conventions rulings. Perhaps Riddell's decision to proceed independently with regard to oil sanctions against Italy must be viewed in the context of his role at the I. L. O. As indicated, Riddell in the I. L. O. often acted on his own initiative, especially with respect to Canadian status and matters concerning Canada's political, economic and geographical conditions.

In former times, this had been due to the Dominion government's general lack of interest in the work of the I. L. O. which hampered the formulation of an official policy regarding the organization. C. P. Stacey has in-

licated, however, that even where instructions from Ottawa were forthcoming, Riddell "chose to look only at those which fell in with his views."⁸² With respect to the Ethiopian crisis of September-October, 1935 Riddell doubtless felt encouraged to make decisions which he should not have made, since he was not speaking for the Dominion government. As long as he confined his efforts to the I. L. O. where he could more clearly represent Canadian interests, this kind of initiative could go forward without difficulty. In the larger scope of world politics, however, such a forthright procedure was disastrous for Canadian foreign policy and therewith ultimately for his career.

Riddell continued in his role as Dominion Advisory Officer until November, 1937 when he switched positions with H. Hume Wrong, Counsellor of the Canadian Legation at Washington.⁸³ Nevertheless, within that two year period, Riddell did enjoy some final successes. He was elected Chairman for the 1935-1936 Sessions of the Governing Body at its seventy-third meeting of October, 1935,⁸⁴ an honour which contrasted sharply with his diplomatic fiasco of the

⁸² Stacey, Canada and the Age of Conflict, Vol. II: 1921-1948, p. 188.

⁸³ Labour Gazette (Ottawa, November 1937), pp. 1177-1178.

⁸⁴ International Labour Office, Official Bulletin, 21 (April 1936):5-6.

previous month. This position afforded him the opportunity to open the Conferences of 1936 and to represent both Canada and the Governing Body at the Labour Conference of American States at Santiago, Chile in January, 1936.⁸⁵ This latter conference was of particular importance for Riddell and his concerns regarding I. L. O. legislation because it represented I. L. O. recognition of the fact that problems of special interest to non-European members should be studied in light of conditions prevailing in those regions. At the Twentieth Session of June, 1936 Riddell asserted:

The fears which had been expressed in certain quarters that the holding of a regional conference might impair the universal character of the Labour Organization proved to be entirely groundless. The interest which the Conference evoked unquestionably showed that the Organization derived the greatest possible benefit from its first attempt at discussing on the spot the problems peculiar to the American continent. The holding of a regional Conference marked, in fact, a new phase in the development of the International Labour Organization pregnant with possibilities for broadening the horizons of social justice in all parts of the world.⁸⁶

The same spirit which had animated this gathering, had encouraged Roosevelt to summon the Tripartite Technical Conference on Hours of Work in the Textile Industry. Indeed, this entire pre-war trend towards both regional conferences and draft legislation more in tune with regional conditions

⁸⁵ Labour Gazette (Ottawa, January 1936), p. 159.

⁸⁶ International Labour Organization, Proceedings of the Twentieth Annual Conference, p. 2.

seemed to represent a recognition of Riddell's concerns for a more balanced programme of I. L. O. legislation. Certainly, in light of the major defections of European states from the League and the I. L. O. in this period, it represented a welcome contrast to the gathering gloom.

At the I. L. O. Labour Office, work and deliberations of the Governing Body valiantly continued through the end of 1939 and into February, 1940. By that time, however, fearing that it might be cut off from communication with overseas members, the Governing Body met for the last time and decided to follow the invitation of the Canadian Government to move the base of operations to the campus of McGill University in Montreal.⁸⁷ That transfer took place on August 17, 1940 and except for a protest by the Vichy government in France that a belligerent country ought not to be hosting a neutral organization,⁸⁸ the move took place without incident or complication.

The final period in Canada's interwar relations with the I. L. O. was characterized by both gains and losses for Canada and the organization. Unfortunately, the losses far outweighed the gains. The loss of prestige due to diplomatic

⁸⁷ International Labour Office, Official Bulletin (Montreal, 1944), 25 (April 1944):67.

⁸⁸ Ibid., pp. 71-72.

error and constitutional impasse rendered Canada's role, particularly on the Governing Body less than effective; this statement is borne out by the fact that between 1936 and 1939, Canada was not represented on any major Governing Body commissions. Furthermore, as mentioned, Canadian labour had ceased to think of the I. L. O. as having any bearing on the realities of labour economics in Canada. Its major concern had long since shifted to the provincial sphere of labour legislation. It seems, then, that the constitutional problem had rendered the national labour situation secondary in importance. Once Canadian labour realized this, it directed its attention toward those powers and influences which could offer more. Neither did political leadership under the third administration of Mackenzie King provide much encouragement for more effective Canadian participation in this period. Besides the constitutional problem, the Ethiopian crisis left King with what C. P. Stacey has termed "a decided dislike" of the League, and by extension, the I. L. O.⁸⁹ Taken together, these various conditions and attitudes not only impeded the development of social legislation in Canada, but more importantly for the I. L. O., prevented Canada from encouraging and stimulating progress abroad. In sum, Canada simply did not give a good example for less developed states in this final

⁸⁹Stacey, Canada and the Age of Conflict . . ., Vol. II: 1921-1948, p. 187.

period, even if there were some minor successes associated with recognition of regional conditions.

As for the I. L. O. itself, apart from the political turmoil and the losses it engendered in membership in the organization, the period 1936 to 1939 tended to raise perplexing problems for the post-war future. The question of totalitarian states' membership, presenting itself as early as 1934 with the entrance of the Soviet Union into the I. L. O., posed serious implications for the tripartite structure. Given that autonomous workers' and employers' groups did not exist in such states, the very concept of independent representation and voting rights received its first and most serious challenge in this pre-war period. In fact, the entrance of Fascist and Soviet states into the I. L. O. (and, in several cases, their rejection of the same) represented an even more serious challenge, as the organization's founding assumptions had been that liberal capitalism and political democracy would continue to be the guiding forces of world opinion for an indefinite period of time. This "ebb tide" period in the fortunes of the I. L. O. was thus characterized in one respect by the lack of political will in such leading states members as Canada, in another respect by the complete rejection by Fascist regimes of the principles of the League Covenant and the Preamble to the Labour Charter, and in a third respect by the passing of the idealism which for better or worse had in-

formed the purposes of the I. L. O. The final anomaly in a relationship too often characterized by abnormalities was that at the moment when the I. L. O. was confronted with its most serious crisis, Canada was the first to offer sanctuary. Given a twenty-year history of various difficulties with the I. L. O., the last five or six years representing the least auspicious period in the relationship, one can perhaps suggest that at least one motive for Canada's hospitality was a rather overdue sense of responsibility. Certainly the status motive cannot be overlooked here as well.

5

CONCLUSION

Canada's role in the I. L. O. in the interwar period was characterized mainly by necessities of political expediency. As long as membership in the organization could serve to heighten Canada's status in the international community and, by extension, the influence of the Dominion government, it was considered useful and desirable. Furthermore, where legislation based on I. L. O. proposals could be used by Canadian governments to increase their domestic political prestige (especially just prior to elections), I. L. O. membership was considered advantageous. Canadian participation in the organization became inexpedient, however, when the Dominion government was confronted with the obligation to give legislative form to the principles it had endorsed at Paris in 1919. Consequently, once the Dominion government had achieved its initial political and diplomatic ends attainable through I. L. O. membership, further association with that body became a burden. It was considered as such both by governments and business not chiefly because of the constitutional difficulties which membership implied--those might have been solved with sufficient political will--but rather because each feared the loss of competitive advantages if Canadian industry were subjected to an international system of labour standards.

It was unfortunate for Canada's international status that the Dominion government's apparent duplicity with respect to the rights and responsibilities of I. L. O. membership was evident to many members of the organization. The very voting record of the Dominion government delegates reveals a tendency to side with industry against labour, or merely to abstain altogether. The views of labour were rarely, if ever, endorsed. Furthermore, the Canadian government constantly felt obliged to justify its inaction with regard to I. L. O. proposals before the conferences in this period. Thus it became public knowledge that the attitude of the Dominion government at these conferences reflected interests which were not shared by the I. L. O., nor based on its founding principles. The general awareness of this state of affairs was obviously bound to harm Canadian interests in the long run. More damaging still for Canadian concerns were the government delegates' frequent and often arid defences of Canada's national interests and identity at moments when such arguments simply confused the issue at hand, as was the case with the Coal Convention debates of 1931. In particular, W. A. Riddell's advocacy of these matters often resulted in general impatience with the manifestations of Canada's self-interest, and thus further compromised the Canadian position at the I. L. O. Little wonder, then, that the Labour Office termed Canada's constitutional difficulties "the Canadian problem" and,

Canada's often repeated references to North American industrial solidarity "the Canada speech." Neither appellation was meant to be complimentary, and doubtless reflected the low esteem that Canada's interests often earned in the organization.

Canadian labour, on its part, was hard-pressed to effect much change in the attitudes of government and industry either at home or at the I. L. O. Its efforts to influence the Dominion government to adopt I. L. O.-based legislation were usually frustrated by the constitutional argument. Of necessity, labour was thus forced to turn to the provinces for ratifications of I. L. O. standards--a self-defeating exercise given the wide discrepancies between provincial labour laws. At Geneva, Canadian labour encountered obstruction of another sort. Here, Dominion government delegates often (but not always) displayed a discouraging ambivalence or disregard for I. L. O. principles in their quest to protect national interests. But those cares, unfortunately, were not identical with labour's concerns, and very often led the labour delegates to oppose the representatives of government and industry. Overall, Canadian labour lacked political influence; it simply could not compete with industry for the government's attention. Ultimately, then, Canadian labour had to abandon the idealistic goals the I. L. O. represented for whatever legislative satisfaction it could obtain from the provincial governments.

The constitutional difficulty was by far the most convenient tool in the hands of government and industry to block labour's efforts on behalf of I. L. O. proposals. That Borden took Canada into the I. L. O. without a clear understanding between Dominion and provincial governments of the full meaning of Article 405, that Mackenzie King avoided any resolution of the constitutional matter and still maintained Canada's place in the I. L. O., and that Bennett arrived at a solution only when it had become politically expedient to do so--all this points to an inescapable conclusion. The constitutional issue was clearly of secondary importance to the issue of the national self-interest.

Canada's adherence to the I. L. O. throughout the period in question must be considered as an instrument to attain goals essentially alien to the organization's intrinsic purpose. The federal government was most eager to make use of the potential of its membership on the international scene, but it balked at fulfilling the obligations arising from it at home. The constitutional issue readily became a means to slow down, or even obstruct, implementation of the various resolutions and conventions to which the Canadian delegates at Geneva had given their initial consent. In fact, during King's early tenure the Supreme Court and Justice Department deprived the Dominion government of the authority to implement I. L. O. decisions;

during Bennett's administration the Privy Council rulings on the Radio and Aeronautics Cases reinstated that power, only to deny it to the Dominion government during the third King administration. All these rulings apparently followed similar lines that the government of the day was pursuing. It thus fell to a Dominion-provincial commission ultimately to clarify the issue at hand. Even it only did so when the war had changed conditions drastically and made government intervention, so long postponed, finally practicable.

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VITAE

Jeffrey Gordon Hucul was born and raised in Windsor, Ontario. He received his elementary education in the Windsor Separate School system and attended Assumption and Forster Secondary Schools from which he received his grade twelve and thirteen diplomas respectively in 1967 and 1968. He graduated from Windsor Teacher's College in 1969 as an elementary school teacher and assumed his first teaching position for the Fort Frances Board of Education in 1969 - 1970 as a classroom teacher and principal at Morson Public School on the Big Grassy Indian Reserve. He returned to Windsor in 1970 and has taught for the Windsor Separate School Board for the last fourteen years. In that time, he has pursued his undergraduate, honours and graduate work entirely on a part-time basis at the University of Windsor. He received his undergraduate and honours degrees in History in 1977 and 1980 respectively and on both occasions was named to the President's Honour Society. He undertook graduate work in History in 1980 and pursued this research from the summer of 1982 to the winter of 1983. He will receive his master's degree in History from the University of Windsor in the spring of 1984, at which time he will be again named to the President's Honour Society.

Mr. Hucul is also a writer of prose fiction and poetry. Recently, he has studied creative writing at the University of Windsor under the guidance of poet John Mitsky and noted Canadian author Alistair MacLeod. In conjunction with his writing, he currently co-produces and hosts a radio programme of poetry from the University of Windsor. He has presented his works in area publications and public readings, and in February, 1981, he conducted a one-man reading of his poetry under the sponsorship of the Canada Council. He now divides his time between his careers in teaching and writing.