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Jon Alexander

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FROM FREE COLLECTIVE BARGAINING TO PERMANENT EXCEPTIONALISM: THE ECONOMIC CRISIS AND THE TRANSFORMATION OF INDUSTRIAL RELATIONS IN CANADA

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"In the present state of society, in fact, it is the possiblity of the strike which enables workers to negotiate with their employers on terms of approximate equality. It is wrong to think that the unions are in themselves able to secure this equality. If the right to strike is suppressed, or seriously limited, the trade union movement becomes nothing more than one institution among many in the service of capitalism: a convenient organization for disciplining the workers, occupying their leisure time, and ensuring their profitability for business."

Pierre Elliot Trudeau,
The Asbestos Strike, 1956.[1]

"For this so-called 'rebirth of the trade union movement' to be genuine, however, it would have to include independent unions administered and led by officials who were nominated freely and elected by a secret ballot. They must also have the rights normally associated with labour unions, including the strike weapon. ...The trade union movement, as envisioned by the bill, would not be so much a movement as an aggregation of individual unions. ...The right to strike would technically exist, but would be severely cramped by complex regulations. There would be a requirement of seven days notice preceding a strike. Any strike 'of a political character' would be prohibited, with the government having discretion to decide what is politically motivated. The bill would provide arbitration procedures for labour disputes and forbid any strike over an issue that could be arbitrated. ..."

Editorial, The Globe and Mail,
October 8th, 1982.[2]

"It is the pattern in all countries that, as soon as the bourgeosie reconciles itself to the fact that trade unionism is here to stay, it ceases to denouce the institution as a subversive evil that has to be rooted out with fire and sword in order to defend God, country and motherhood, and turns instead to the next line of defence: domesticating the unions, housebreaking them, and fitting them into the national family as one of the tame cats."

Hal Draper,
Karl Marx's Theory of Revolution,
1978.[3]

I

For labour relations in Canada, 1982 is unlikely to be just another year. As the present comes to be seen as history, it is likely that 1982 will be taken as marking the end of an era of industrial relations in Canada, an era that began some forty years before with the federal government's war-time order-in council P.C. 1003 of 1944. This order-in council established legal recognition of the rights of workers to organize, to bargain collectively, and to strike, and backed these rights with state sanctions againstemployers who refused to recognize and bargain with trade unions. In 1948, P.C. 1003 was superceded by the Industrial Relations Disputes Investigation Act which established these

rights on a "permanent" legislative basis. Broadly similar legislation was adopted by the provinces, with notable delay only by Quebec. In the 1960's these rights were extended to groups of workers not specifically covered by the original acts, particularly public sector workers, albeit unevenly and partially. These rights, and especially the right to strike, were from the 1940's heavily circumscribed in terms of legal prohibitions of strikes during the duration of a collective agreement and during a compulsory conciliation process after an agreement expires. But these legally-established rights have been universally seen, and not least by the Canadian trade union movement itself, as the point at which Canada extended democracy to include "free collective bargaining," so that it finally met the International Labour Organization's 1919 specification that "a free society cannot coerce any of its citizens into working conditions that are not truly and generally acceptable."

This judgement was premised on the assumption that, whatever the continuing exclusions and limitations on free trade unionism in Canada, from 1944 on it could be expected that steady if slow progress towards the full realization of trade union rights by all workers would be the normal course of events. It was assumed, in other words, as is in the nature of reformism as an ideology, that the reforms in this arena were irreversible and cumulative. Such a world-view inevitably has a tendency to outlive the social realities which gave rise to it. The social realities of 1982 may finally put it to rest. For in this year of the proclamation of Canada's new constitution with its Charter of Rights and Freedoms, we have found that not only is the right to strike not enumerated amongst our "fundamental freedoms", but also that the right to strike has been abrogated for some one million of the three and a half million organized workers in Canada. The silence of the Charter of Rights and Freedoms together with the loud prohibitions of Bill C-124 may indeed be taken as symbolizing the close of the post-war era of industrial relations in Canada.

Most public discussion of the Public Sector Compensation Restraint Act, as Bill C-124 is officially called, tends to treat it as imposing a two-year period of statutory wage restraint on federal employees in conformity with the slogan of "6 and 5". But the Act is much more than that. What it entails is the complete supression of the right to bargain and strike for all those public employees covered by the legislation. What it lacks in comprehensiveness as compared with the Anti-Inflation Act of 1975-78 which covered both public and private sector workers, it more than makes up in intensity with regard to the workers it covers. The abrogation of the right to strike and bargain is accomplished by the simple, if rather cynical, device of extending existing agreements for a two year period. Since strikes during agreements were proscribed under the earlier legislation, the present Act uses the legislation which established free collective bargaining to today deny it.

A similar Restraint of Compensation Bill is presently proceeding through the Ontario Legislature. As well as provincial government and crown corporation employees, this Bill covers the employees of municipalities, schools, hospitals, and privately-owned para-public sector companies contracted to, or funded by, the province (including nursing homes, ambulance services, private hospitals, garbage contractors, home care services, and various charitable organizations). The two Acts together have a coverage of approximately one million employees. This leaves aside those provinces who have or will have adopted similar measures as part of 6 and 5, as well as the Quebec legislation which unilaterally rewrites the terms of contracts already signed with public sector unions in that province.

This is, of course, "temporary" legislation. It has the effect of "suspending" the right to strike and free collective bargaining for only a two year period in the federal case and a 15 month period in the Ontario case. Yet these are good reasons for thinking that this is indeed a case where the old French saying, -- c'est seulement le provisoire qui dure -- has particular merit. These are "temporary" measures which reflect long-term trends and have long-term implications. These measures were enacted in the context of a set of changing balance of social forces and attendant initiatives and attitudes on the part of the state and capital, all of which bespeak the emergence of a more permanent era of restriction of the rights of labour. We shall discuss further in this paper this broader context, including state initiatives over the past decade which have included the repeated use of back-to-work legislation, the adoption of the statutory incomes policy in 1975, the jailing of prominent union leaders for the first time in the post-war era, and, finally, the increased designation of public sector workers as "essential", thereby removing their right to strike. Taken together and culminating in the silence of the Charter of Rights and Freedoms and the noise of "6 and 5", it may not be too hasty to speak of the end of an era.

The era that is being closed is one in which the state and capital relied more than they had before World War Two on obtaining the consent of workers generally, and unions in particular, to participating as subordinate actors in Canada's capitalist democracy. The era that we are entering is one that marks a return, albiet in quite different conditions, to the state and capital relying more openly on coercion, on force and on fear -- as a means of securing that subordination. This is not to suggest that coercion was in any sense absent from the post-war era or that coercion is about to become the only, or even always the dominant factor in labour relations. But there is a changing conjuncture in the Canadian political economy and it is one marked by a change in the form in which coercion and consent are related to one another, a change significant enough to demark a new era. This paper shall proceed to examine the rise and fall of the era of "free collective bargaining", and to speculate, in conclusion, on the shape the new era will take in the foreseeable future.

II

The social relations under which capitalist production takes place embody a structural antagonism of interest between employers and employees. If the employment contract gives the employer as the purchaser of labour time the right to determine what is done by employees during the hours of work, exercising this right involves an exercise of power. In turn, workers have historically recognized that collective organization and the threat of collective withdrawal of labour are necessary to advance their interests vis à vis the employer. Both formally free actors in the capitalist market, the employer and employee, the purchaser and the seller of labour, both seek to establish their interests, ideologically and legally, in terms of recognized rights by the state: the rights of property and managerial prerogative on the one hand; the rights of freedom of association and the right to strike on the other.

The evolution of liberal capitalist societies into liberal democratic societies is conventionally understood in terms of the winning or granting of mass suffrage: the right to vote for the non-propertied wage earner. But there is an additional aspect in the evolution of liberal democracy -- the winning or granting of freedom of association for the non-propertied worker -- which is no less crucial than the first. The distinction between a democratic or authoritarian capitalist regime is never one only of mass suffrage; it is equally -- in some cases it is more clearly -- a distinction which rests on the absence or presence of freedom of association. The long struggle of the working classes for entry into the representative system of the state was matched through the nineteenth and twentieth centuries by an equally long struggle against the legal prohibition of the right to free association for wage labour. Liberal democracy not only brought the working class into the representative system on the basis of individual, universalistic, non-class-specific criteria; it also involved the recognition by the state of the collective, class-specific organizations of labour, the trade unions, as legitimate representatives of workers in the capitalist labour market; and it established, moreover, the independence of trade union associations from direct interference by the state.

Until 1944, workers' freedom of association, as an aspect of liberal democracy, was, at best, only partially and tenuously achieved in Canada. Prior to 1872, trade unions and the use of the strike weapon were subject to statutory offenses under the restraint of trade laws. Even the 1872 Act gave no positive foundation to the recognition of unions by capitalists, whose resistance to unionization in the course of succeeding decades became the chief focus of "industrial relations". The extensive use of naked force on the part of the state in defence of employers' resistance to unionization has become one of the hallmarks of Canadian labour history, with the Winnipeg General Strike coming to symbolize, in the deployment of the R.C.M.P. against the workers, the coercive role played by the state in this struggle. To be sure, from the Royal Commission on Labour and Capital of 1889 to establishment of the Department of Labour in 1900 to the Industrial Disputes Investigation Act of 1907, the state also played a role in attempting to moderate and contain that conflict. But even the 1907 Act, apart from the limited industrial sectors to which it applied, was replete with coercive implications and restrictions on freedoms of association. For while it conferred a limited de facto recognition of sorts on the part of the state to the principle of "recognition" (unions were not actually mentioned in the Act), it also severely restricted the right to strike and sought to distinguish between illegitimate and legitimate (i.e. "responsible" in the official parlance) associations of workers. Even though Woods has argued that the primary purpose of the IDIA was the "establishment of a bargaining relationship and not, as commonly supposed, the delaying of strikes or lockouts," in fact his own detailed consideration of the act leads him to conclude, in contradictory fashion, that it "was little more than a public-interest emergency-dispute policy" in which "once the dispute had been dealt with, the formal situation was as before the intervention." It is difficult to escape Craven's conclusion, in his recent and important study of Canada's first significant decade of labour legislation, that the 1907 IDIA was, in the characteristic fashion of the Canadian state until the 1940s, directed "towards the ad hoc suspension of hositilities", in the context of a "generalized defense of private property rights by the capitalist state."[4]

It was only in the 1940s, during the second significant decade of Canadian labour legislation, that the state turned away from ad-hoc coercive and conciliation mechanisms vis à vis workers' struggles for union recognition and engaged in the laborious political and legal process of institutionalizing the principle of freedom of association for workers. It is only with P.C. 1003 that one can speak definitively of a comprehensive, stable policy favouring union recognition and free collective bargaining. The tenor of this new policy was graphically captured in Justice Rand's famous 1946 ruling on union security:

> "Any modification of relations between the parties here concerned must be made within the framework of a society whose economic life has private enterprise as its dynamic. And it is the accomodation of that principle of action with evolving notions of social justice in the area of industrial mass production, that becomes the problem for decision.
>
> Certain declarations of policy of both Dominion and Provincial legislatures furnish me with the premises from which I must proceed. In most of the Provinces, and by dominion war legislation, the social desirability of the organization of workers and of collective bargaining where employees seek them has been written into laws. ...The corollary from it is that labour unions should become strong in order to carry on the functions for which they are intended. This is machinery devised to adjust, toward an increasing harmony, the interests of capital, labour and public in the production of goods and services which our philosophy accepts as part of the good life; it is to secure industrial civilization within a framework of labour-employer constitutional law based on a rational economic and social doctrine....
>
> In industry, capital must in the long run be looked upon as occupying a dominant position. It is in some respects at greater risk than labour; but as industry becomes established, these risks change inversely. Certainly the predominance of capital against individual labour is unquestionable; and in mass relations, hunger is more imperious than passed dividends.
>
> Against the consequence of that, as the history of the past century has demonstrated, the power of organized labour, the necessary co-partner of capital, must be available to redress the balance of what is called social justice; the just protection of all interests in an activity which the social order approves and encourages."[5]

It needs to be stressed that this new era in labour relations did not evolve suddenly and full-blown from the progressive minds of legislators, judges, and industrial relations experts. Nor had capitalists miraculously been transformed into far-sighted social philosophers (as Rand's judgement against the Ford Motor Company itself attests). Rather the labour legislation of the 1940s was a product of a conjunctural change, heretofore unparalleled in Canadian history, in the balance of class forces in the society. Beginning in the mid-1930s and increasing with intensity under national mobilization for war and the return of full employment in the early 1940s, Canada witnessed a tide of sustained and comprehensive working class mobilization and politicization of a kind perhaps never witnessed before!

The foremost manifestation of this was a "trade union world (which) seethed with discontent over the injustices resulting from the refusal of both private and government corporations to bargain collectively."[6] In 1943 one out of every three trade union members was engaged in strike action, a proportion previously exceeded, and then just marginally, in 1919.[6A] Union membership, just as significantly, was growing extremely rapidly (moreso in fact in the four years preceding P.C. 1003 than in the four years following), so that union membership doubled in 1940-44 period.

TABLE I

Union Membership in Canada 1940-48

	Membership (000's)	% of non-agricultural workforce
1940	362	17.3
1944	724	24.3
1948	978	30.3

Source: Labour Organization in Canada (Ottawa, 1975) pp. 28-29

This industrial militancy was politically punctuated in 1943 by the dramatic rise of the CCF in the opinion polls and by communist as well as CCF victories in by-elections. And even though the direct political challenge largely evaporated with the 1945 Ontario and Federal elections, the industrial militancy, which had also abated in 1944 and early 1945, did not pass away. The permanence of the industrial relations reform initiated in 1944 in response to this challenge by labour, was largely determined by this sustained militancy. As Logan put it:

> "The fall of 1945 marking the return to peace was hailed by both parties -- not altogether secretly -- as a testing time: was collective bargaining to dominate the field of labour relations or was it not? The showdown at Ford in Windsor in November-December and that at Stelco come months later were crucial."[7]

Thus the era of "free collective bargaining" came to be. But the use of the word "free" here had a crucial double meaning. It suggested that a balance of power obtains between capital and labour, that they face each other as equals, elsewise any bargain struck could scarcely be viewed as one which was "freely" achieved. It also suggested, however, that the state's role is akin to one of an umpire, applying interpreting and adjusting impartial rules in a neutral manner. In the first meaning, the structured inequality between capital and labour falls from view; in the second, the use of the state's coercive powers on behalf of capital falls from view.

Most commentators on the post-war era of free-collective bargaining have accepted both these meanings and thus share these blinkered views. We will not dwell on the continued structural inequality between capital and labour that Rand so openly and honestly laid bare in his reference to capital's "long-term...dominant position". Suffice to mention the massive inequality in resources available to each party in the relationship. In sheer scale, flexibility and durability, capital's material resources continued to overwhelm those of labour. (As Rand rather pithily put it in chastising Ford for complaining of the secure financial power the union would obtain in a check-off arrangement...in the present state of things, those who control capital are scarcely in a position to complain of the power of money in hands of labour"[8]) The organizational and ideological resources of labour remained scarcely measurable against the network of associations, organizers, advisory bodies, in-house publications, and mass media which either belong proprietarily to capital (singly or collectively conceived), or which by virtue of financial support are beholden to capital. We might note, finally, the rather well-documented greater access to the state enjoyed by capital throughout the post-war period.[9] The hegemony of capital in the era of free collective bargaining is captured well in both its ideological and coercive dimension, in this example from Harold Laski:

> "The right to call on the service of the armed forces...is normally and naturally regarded as a proper prerogative of the ownership of some physical property that is seen to be in danger...(But) we should be overwhelmed if a great trade union in an industrial dispute, asked for, much less received, the aid of the police, or the militia or the federal troops to safeguard it in a claim to the right to work which it argued was as real as the physical right to visible and corporeal property, like a factory."[10]

Laski of course recognized that in "a political democracy set within the categories of capitalist economies...the area within which workers can maneuver for concessions is far wider than in a dictatorship." But nor was he incognisant of the fact that even within capitalist democracy, the labour movement is confronted with "an upper limit to its efforts beyond which it is hardly likely to pass."[11]

This reference to capital's privileged access to the coercive apparatus of the state in terms of assessing the claims to equality between capital and labour in the era of free collective bargaining brings us directly to the second meaning of "free" within the term. For the limits beyond which labour was "hardly likely to pass", were not left to the imagination in the new Canadian labour policy. They were carefully inscribed in the legislation itself. The very same legislation which backed with state sanctions the right to recognition and guaranteed the right to strike, also constrained the nature of bargaining and the exercise of union power in a highly detailed manner. The role played by the state in this respect has been unwittingly laid bare by Paul Weiler in a defense of the conventional interpretation of free collective bargaining:

> "There are two parts of a labour code which are central to the balance of power between union and employer. One is the use of the law to facilitate the growth of union representation of organized workers. The other is the use of the law to limit the exercise of union economic weapons (the strike and the picket line) once a collective bargaining relationship has become established."[12]

The "other" part of the labour legislation of the 1940s was precisely the extensive set of restrictions placed on collective action by unions, establishing one of the most restrictive and highly juridified framework for collective bargaining in any capitalist democracy. Modelled after the U.S. Wager Act, Canadian legislation went "beyond it", as Logan noted: "1. in naming and prescribing unfair practices by unions...2. in assuming a responsibility by the state to assist the two negotiating parties...3. it forbade strikes and lockouts during negotiations and for the term of the agreement."[13] Part and parcel of union recognition and the promotion of collective bargaining were a broad set of legal restrictions on unions concerning who is eligible for membership, and the precise circumstances under which, and the purposes to which, strike action might legally be taken.

Apart from restriction on picketing and secondary boycotts, which became a major basis for the use of court injunctions restricting the effectiveness of strikes, the most important restriction on the right to strike -- and the device used today to abrogate the right to strike in the public sector -- was the ban on strikes during the term of a collective agreement. Canadian unions, as parties to the post-war settlement, have rarely complained of this restriction, and rather readily accepted the legal requirement that they act as agents of the law vis à vis their members by formally notifying them of their legal obligation not to engage in unofficial or wildcat strikes. It may be a sign of the demise of the era of "free collective bargaining" that some Canadian unions have begun to question the role in which they have been legally cast in this respect. A recent special issue on "free collective bargaining" of CUPE's news magazine, The Public Employee, deserves to be quoted at length:

> "The single greatest curtailment of the right to strike in Canada, and also the one most overlooked, is the ban on strikes during the term of a collective agreement. In most other industrialized countries, including the United States and Britain, no such legislative ban exists. Unions in other countries normally agree not to strike during the contract term, but only as part of the agreement with the employer. If a wildcat strike does occur, anyway, it may be a violation of the contract but not of the labour laws.
>
> The advantage to unions not prohibited from striking while the contract is in effect is that employers, as well as unions, must be careful to abide by the contract terms if they want to avoid mid-term walkouts.
>
> In Canada, once the ink is dry on a contract, the employer can break any clause with impunity. The union's only recourse, not having the right to strike, is to file a grievance which may take a year or more to process if it goes to the final stage of arbitration.
>
> Even if the employer is found guilty after this long and costly procedure, the only 'penalty' imposed on him is to undo what he did....
>
> The Canadian ban on strikes during a contract is made all the more repressive by the residual rights theory of management that...gives the employer the right to make any work changes not expressly forbidden in the wording of the contract, while preventing the union from legally and effectively protecting its members from the dislocations and layoffs that result....
>
> Even when the contract does expire, the right to strike is not regained right away. In almost all provinces and federally, unions must not only attempt to negotiate a renewal of the agreement, but, if a bargaining impasse is reached, must go through a compulsory conciliation process.
>
> Only when a conciliation officer or board has tried to mediate, and submits a report to the minister of labour, is the union legally allowed to go on strike. This is usually not until a week or 10 days after the report reaches the minister...."[14]

What is critical to understand about the era of "free collective bargaining", and what is unfortunately all too little understood, or at least acknowledged, in most of the conventional literature, is that the new mechanisms promoting the institutionalization of union recognition and free collective bargaining were, as Rand made clear in the quote above, "devised to adjust, toward an increasing harmony, the interests of capital, labour and the public" in light of the shift in the balance of class forces that had taken place. It was an adjustment devised not to undermine but to secure and maintain under new conditions what Rand appropriately called "the framework of a society whose economic life has private enterprise as its dynamic", one in which capital continued to occupy what he termed its "long run...dominant position". The post-war settlement between capital and labour, involving in Canada limited Keynesian and welfare state reforms as well as the new labour legislation, did not establish a structured equality between the contending classes. Rather, in and through reforms which yielded real material gains as well as symbolic gratification for labour, it fashioned a new hegemony for capital in Canadian society, one in which, through institutionalized negotiaton and redistribution mechanisms, consent came to play a visibly dominant role in inter-class relations while coercion, still crucially present, played a background, less visible role. Coercion in capital-labour relations became less ad-hoc and arbitrary: as the state rationalized and institutionalized workers' freedoms of association, so coercion, too, became more rationalized and institutionalized. It suffused the new relationship with statutory restrictions on the unions' exercise of the newly established rights; what before had taken the appearance of the Mountie's charge, now increasingly took the form of the rule of law by which unions policed themselves in most instances.

There were real gains for labour to be had in this new arrangement, above all union recognition and security. But there were costs to be paid as well, costs to be counted less in terms of tactical advantage around more flexible use of the strike weapon than in terms of the union movement's entrapment in legalistic and juridicial procedures whereby the offical skilled in interpreting the law

or the grievance procedure superseded the official skilled in organizing and mobilization. What was new about the era of free collective bargaining was not its doing away with the structural inequality between capital and labour or the state's coercive role in maintaining labour's subordinate position. Rather what was new was the development of new mechanisms to rationalize these critical dimensions of Canadian capitalism, and the securing of the unions' consent to these mechanisms. The unions' consent was won on the basis of assumptions that reforms are inherently cumulative and irreversible, and that the high-employment and high-growth capitalism of the post-war era would continue forever. This choice of consent was understandable on the part of the unions. But by virtue of this choice, other options were closed off and long-term costs were incurred. As we shall see, some of these costs are, just today, really coming home to roost.

III

The passage of the Industrial Relations and Disputes Investigation Act in 1948 by the federal government, accompanied by similar legislation by the provinces, signified that legal protection of workers' freedom to organize and to bargain would be, in fact, a central element of the post-war settlement. As we suggested earlier, the labour movement in "accepting" this settlement, undoubtedly did so with the expectation that the reforms were "permanent" gains which would be gradually extended to greater numbers of workers, and perhaps that some of the initial restrictions on the exercise of this right would be loosened. Post-war reforms often were presented as "down payments" with more comprehensive measures to follow as soon as practical.[15] Moreover, given that the settlement, in extending the role of the state, ensured substantial growth in the number of public sector workers, it might well have been expected that it would be here, that a pattern of gradual extension of bargaining rights would first and foremost be evident.[16]

There was, however, virtually nothing gradual about the growth of bargaining rights in the post-war decades. In general, the unionized proportion of the non-agricultural workforce remained close to the 1948 figure of thirty percent, until the mid-60s.[17] Prior to the mid-60s, there was no extension of legislative protection in the fast growing public sector; indeed the only changes involved the imposition of additional restrictions on existing collective rights.[18]

The end to this impasse came not gradually but suddenly, in the mid-60s, sparked by the "Quiet Revolution" in Quebec. The previous twenty-five years had seen a profound transformation of the economic base of Quebec and of its working class, including the growth of unionization. Despite this transformation, the provincial state remained in the grip of conservative rural forces headed by Duplessis and the Church. The Quebec government's response to a succession of strikes from the 1949 Asbestos Strike through Murdochville in 1957, was hostile and repressive, fostering a relatively radicalized working class and intelligentsia.[19] The 1961 election victory of the Lesage Liberals formally broke the hold of the "ancien regime" on the Quebec state, and initiated a belated and rapid political modernization of Quebec. For this, no less than in Canada at the close of World War II, a political settlement with labour was essential, one of the terms of which was the extension of bargaining rights to Quebec's public sector workers in 1965.

The breakthrough in Quebec sent shockwaves reverberating throughout the Canadian state since the reforms in Quebec went well beyond what had been achieved in English Canada at the time of the post-war settlement, it was inevitable that significant political restructuring would take place, not only in Quebec but at the federal level too. Moreover, the modernizing Quebec Liberal Party, reflecting the initiatives of the radicalized petit bourgeois intelligentsia, provided a beacon for the Federal Liberals who needed to find a new image after the stultifying conservatism of the St. Laurent-C.D. Howe governments of the 1950s was routed by the populism of the Diefenbaker Conservatives in 1958. The effects of the Quiet Revolution at the federal level were seen in the fanfare surrounding the cooptation of the "three wise men", Trudeau, Pelletier and Marchand, into the leadership of the Federal Liberal Party. As well, federal public sector workers in Quebec were part of the politicization process of the Quebecois working class and were galvanized, therefore, to intensify their efforts to win the same demands from their own employer. This gave a powerful boost to the growing insistence of federal workers elsewhere for bargaining rights after the Diefenbaker government, faced with the 1958-61 recession, broke precedent by rejecting the pay increase proposed by the bi-partite National Joint Council (which since 1944 advised the government on these matters).

The "second wave" of the welfare state in Canada undertaken by the minority Liberal governments of the mid-60s was in good part an outcome of this development. A significant element of this, apart from medicare and pension reforms, was the appointment of the Heeney Commission in 1963 to examine the question of collective bargaining rights for federal workers. That Heeney would recommend in favour of collective bargaining for federal workers was a foregone conclusion; what was at issue was how "free" it would really be.

The government's commitment to the rights of its workers was no deeper than that of capital. As employers, governments have a unique rationale for restricting their employees' freedom of association -- the supremacy of parliament. As a result, while finally conceding federal employees collective bargaining rights in 1967, the federal government insisted on an additional set of restrictions beyond those imposed on private sector workers. Vital issues, including pensions, job classifications, technological change, staffing, and use of part-time or casual labour, were wholly or partly excluded from the permissible scope of bargaining. Serious consideration was given to denying federal workers the right to strike as well. That the right to strike was granted was due in large measure to the willingness of postal employees, led by those in Quebec, to wage a number of what in effect were recognition strikes in the mid-1960s. These strikes did much to persuade the government that making strikes illegal was no guarantee of preventing them.[20] The reverberations of the "Quiet Revolution" in Quebec were not only felt at the federal level, but in the provinces as well, where collective bargaining became the order of the day for public sector workers. But while undoubtedly important, what is so striking is the limited, cramped version of trade union freedoms that was conceded. Generally in most provinces, a number of crucial issues were decreed to be outside the scope of bargaining. Secondly, in several cases -- i.e. Alberta, Ontario, P.E.I., and Nova Scotia -- provincial employees, and often others such as hospital workers, were denied the right to strike.

Finally, it should be noted that the 1960s extension of collective bargaining did not include making it easier for private sector workers in the trade and service sectors to secure union recognition. This was even true for those which fell within federal jurisdiction, such as bank workers, with regard to whom the federal state did nothing to help them organize in the face of implacable opposition from Canada's powerful financial bourgeoisie.

The "breakthrough" of the 1960s as regards the extension of free collective bargaining, must be seen, therefore, in terms of the continuing narrow limits within which it was contained. It would be wrong to ascribe these limits just to the resistance of particular sections of capital or to the ideology of liberal politicians. Equally as important a factor -- and one that has been largely ignored -- has been the remarkably conservative character of the English Canadian labour movement, which repeatedly proved incapable of taking the initiative in generating demands, and mobilizing support behind them, for reforms that would challenge the terms of the post-war settlement. In this respect the adverse effect of the 1940s legislation on the character of the Canadian labour movement must enter into our consideration.

In reflecting on the approach to union recognition of the IDIA, H. Logan observed that: "The powerful weapon of the strike as an aid to negotiation through militant organization, was weakened in its usefulness where the approach to recognition had to be certification."[21] Logan's reference to the way the legislation devalued militant organization is of crucial importance. Unlike the capitalist firm with its naturally given singularity of purpose, unions aggregate discrete individuals with their own purposes. The power of unions lies in the willingness of their numbers to act collectively, for which a common purpose must be developed.[22] This is, of course, a social process -- an outcome of education and mobilization involving sustained interaction between leaders and led -- and one requiring particular skills. Moreover, in light of incessant centrifugal pressures in the context of a liberal consumerist and privatized society, it is a never-ending process.

The certification approach to recognition did not just weaken the apparent importance of militant organization. It also directed the efforts of union leaders away from mobilizing and organizing towards the jurisdictional arena of the labour boards. In this context, different skills were necessary; what was crucial to know above all was the "law" -- legal rights, procedures, precedents, etc. These activities tendentially fostered a legalistic practice and consciousness in which union rights appeared as privileges bestowed by the state rather than democratic freedoms to be won and defended by collective struggle.[23] The ban on strikes during collective agreements and the institution of compulsory arbitration to resolve disputes during this time, had a similar effect. Under these circumstances, there was no necessity to try to maintain and develop collective organization between negotiations. Indeed, union leaders had a powerful incentive to do the reverse, to suppress any sign of spontaneous militancy. The legislation of industrial relations inevitably tends to treat unions as legal entities, as institutions distinct from the people who comprise it. One reflection of this was the establishment of massively greater penalties for violations of the law by union officials, which intensified the pressure on them to act as agencies for social control over their members rather than spokespersons for, and organizers of them.

The corrosive effects for union democracy of this kind of juridical and ideological structuring of workers freedom of association are severe. The trade unionism which developed in Canada during the post-war years bore all the signs of the web of legal restrictions which enveloped it. Its practice and consciousness were highly legalistic and bureaucratic, and its collective strength accordingly limited. These characteristics of the post-war unions were reflected in the acceptance of the greater restrictions on public employees' freedom of association by the broader labour movement. And the broader labour movement in turn, provided no inspiration or example to oppose that of legalism for those new public sector unions granted partial collective bargaining in the 1960s. This was particularly debilitating for those public sector unions which had to engage in very little of the kind of mobilization and struggle for recognition which originally formed the labour movement and which had characterized the industrial unions in the period prior to the post-war settlement. Thus, a union like the PSAC (in contrast to CUPW), was one born almost entirely of legalism rather than mobilization and struggle.

This, of course, is not to suggest that the newly recognized public sector unions were content with what had been offered them. Clearly, the limited rights acquired were seen as a way station, the final destination being rights equivalent to those enjoyed in the private sector. As events would have it, this was to be a naively optimistic view. For, at the same time as the way station was reached, the roadbed was beginning to crumble, as the state had to contend with the wage pressure of the late sixties and early seventies while adjusting to the constraints placed upon it by the newly emerging crisis of capitalism.

The decade of the sixties is frequently portrayed as one of (university) student radicalism and militancy contrasted with working class consumerism and acquiescence.[24] While there is something to this, the contrast is much overdrawn as the "revolt" of the sixties was, in broad measure, a generational one. More importantly, consumerism is not without its contradictions. As Ralph Miliband[25] observed in taking issue with the omnipotence ascribed to corporate demand managment through advertising by John Galbraith and others: "The point is rather that business is able freely to propagate an ethos in which private acquisitiveness is made to appear as the main if not the only avenue to fulfillment, in which 'happiness' or 'success' are therefore defined in terms of private acquisition ...." "Happiness" and "success" are of course, relative terms. By the sixties, the working class was being infused by the post-war generation no less than the universities. Their frame of reference did not include the depression or the Cold War, and they grew up when the myth of a classless, affluent society was incessantly propagated. The contrast between this image and their reality did not so much tarnish the image as inspire them to make it part of their own reality.[26] Increasingly, the only way to achieve incomes consistent with the image was through collective bargaining. This was first exhibited in the mid-1969s wave of strikes, an uncommonly large number of which were "wildcats" (marked by occasional violence) conducted in defiance of union leaders and at times in part against them. This wave continued on into the early seventies when, instead of abating, it reached a new crest as public sector workers, whose demands for bargaining rights, were inspired by similar material aspirations, exhibited their willingness to fight to achieve them.

The heightened degree of industrial conflict, however, did not only reflect greater wage militancy and resistance to managerial authority on the part of workers; it also involved more determined resistance by capital and the state, in light of the deepening economic crisis. The long post-war boom led many people to believe that economic growth was unproblematic; that if capitalism had not quietly passed away, its anarchic character had been subdued by governments expertly armed with Keynesian theory. The boom was, in fact, the product of an historically specific condition; the unchallenged dominance of the U.S. vis à vis the major capitalist countries which allowed it to order the international financial system; the extensive task of post-war reconstruction in Europe; huge discoveries of cheap resources; the colonial or neo-colonial dependency of most of the Third World; and the moderation of the labour movement in the West, not least due to the Cold War.

These conditions could not and did not last. While signs of their passing were already dimly visible by the mid-sixties, the "formal announcement" came in 1971, when U.S. President Nixon renounced the Breton Woods agreement on which the post-war international financial order was based. The subsequent years have been ones of "stagflation": growth rates increasingly below the level necessary to approximate full employment, combined with severe inflationary tendencies. In these conditions the margin for concessions with which to secure the consent of labour no longer existed. Indeed, increasingly it was capital that required concessions. Faced with stagnant or shrinking markets, rising resource prices, increasing foreign competition, and a labour movement willing and able to defend its living standards, profit margins on existing investments fell and few new profitable opportunities appeared.

One response by governments in Canada and elsewhere involved new subsidies to capital in the form of loans, grants, tax concessions, thus underwriting investment and shifting the cost of the welfare state onto employed workers. Initially this was seen as consistent with Keynesian stimulation precepts. These initiatives had little impact on growth, however, and tended to exacerbate inflation in so far as organized workers responded with industrial militancy to preserve their net real incomes. Government deficits ballooned as revenues fell and expenditure (on corporate subsidies, the unemployed, and public sector wages) rose.

The other major response by the state was to move against the bargaining power of organized labour. One form that this took involved attempts by governments to obtain the "voluntary" agreement of union leaders to act as agents of social control over their members, restricting wage demands to some agreed level with offers of a role for unions in state economic decision-making and/or reforms enhancing union security, marginal extensions of the welfare state, etc., made as a quid pro quo.[28] The other form that the move took involved deploying the coercive powers of the state against the labour movement. These two strategies should not be seen as mutually exclusive. On the one hand, coercive measures served, intentionally or otherwise, to prompt unions to rethink their opposition to "voluntary" restraint; on the other hand, the inability on the part of the state to deliver a quid pro quo in a form of the "social wage" given the growing economic crisis, undermined the viability of the voluntary restraint option, and this in turn forced the state to adopt more coercive measures.

While both strategies were evident in Canada,[29] what is particularly striking was the extent of the shift toward new coercive measures. This shift is graphically reflected in the rising incidence of "ad hoc" back to work legislation at both federal and provincial levels of the state in the 1970s.

TABLE 2

BACK TO WORK LEGISLATION IN CANADA

	FEDERAL	PROVINCIAL	TOTAL
1950-1970	4	9	13
1971-1975	4	11	15
1975-1978	6	13	19
TOTAL	14	33	47

Source: A. Price, 1980[30]

The first post-war use of such legislation was by the federal government in 1950 against railway workers striking for a 40 hour week and a pay increase. The justification, then as subsequently, for the legislation was, to quote Prime Minister St. Laurent, that, "the welfare and security of the nation are imperilled".[31] Not surprisingly, St. Laurent insisted that it was, "not designed to establish precedents or procedures for subsequent bargaining negotiations."[32] Events, of course, were to prove otherwise as railway workers were threatened with similar legislation in 1954, and actually subjected to it again in 1960 and 1966. The increased frequency of back-to-work legislation along with its wider application to other groups of workers, was not the only notable trend in the state's use of this weapon. Over time, governments have introduced such legislation with greater dispatch after the onset of a dispute, with less parliamentary debate, and have included increasingly onerous penalties for defiance of the law.

This new reliance on back-to-work legislation is part of a broader pattern of developments, one which may be truly said to characterize the onset of a new era in state policy towards labour. What marks this transformation is a shift from the generalized rule-of-law form of coercion, characteristic of the post-war settlement (whereby an over-all legal framwork both establishes and constrains the rights and powers of all unions within the labour market) towards a form of selective, ad-hoc, discretionary state coercion (whereby the state removes for a specific purpose and a specific period the exercise of rights as enshrined in the legislation governing labour relations in general). We have witnessed over the past decade a return to the pre-PC 1003 era of "ad-hoc suspension of hostilities" but this time not as a means of avoiding or delaying the institutionalization of workers' freedom of association, but rather as a means of containing or repressing particular manifestations of class struggle as it is practised within the institutionalized form of freedom of association. Actions which follow meticulously the legal procedures established to make them lawful under general legislation are increasingly declared unlawful for particular groups of workers or for all workers for a particular period of time. When the resort to emergency rhetoric and powers to override the general framework of freedoms and legitimate expectations becomes common and habitual, rather than occasional and sporadic, there is clearly a crisis in the old form of hegemony. This is precisely what has happened in Canada over the last decade.

The treatment accorded to the Canadian Union of Postal Workers by the Federal Government in 1978 is illustrative of this crisis as it is manifested through back-to-work legislation. In this case, the government publicly stated in advance of a strike that it would not tolerate the union's exercise of its legal right to strike. Once the strike occurred, the government immediately invoked back-to-work legislation (the Postal Services Continuation Act, Bill C-8) which revived the pre-existing collective agreement, but which established potentially unlimited penalties for breaches of that agreement rather than the relatively small ones generally fixed in law and administered by the labour relations boards. Finally, the Government charged the union's leader, J.C. Parrot, not for encouraging his members to defy the back-to-work law, but for remaining silent -- i.e., for not publicly urging his members to obey the law. On previous occasions, similar requirements on union leaders specified in back-to-work legislation had escaped notice because they were either obeyed or if not, were disregarded by the government. In charging Parrot this time (and in the courts making the granting of bail conditional upon Parrot telling his members what the law demanded), the state not only set aside the general legal provisions for the union's right to strike, but it also set aside the Bill of Rights provisions on freedom of speech. Parrot was actually charged and convicted for the offence of not saying anything, for not speaking against his conscience, rather than, as is commonly thought, for urging his members to defy the law.

The use of back-to-work legislation, up to and including prohibiting otherwise legal action before there was any sign of economic or other emergency, was only one instance, however, of the end of the era of free collective bargaining. Equally significant have become the use of designations in the public sector to remove the right to strike from a much broader group of workers than has heretofore been the case, and the use of statutory incomes policy to suspend free collective bargaining.

Under the 1967 legislation extending the right to free collective bargaining to federal public employees, the government reserved the right to "designate" certain jobs as "essential for the safety and security of the public" and hence to deny to the workers performing these jobs the right to strike. As interpreted by the Public Service Staff Relations Board's (PSSRB) rulings in administering the legislation, the definition of "safety and security" was a relatively narrow one -- elsewise the right to strike would have been vitiated by an indiscriminate use of designation (as in the case of the Governor-General's gardener). This practice was shattered in 1981 by the Government's successful challenge of this interpretation in the Supreme Court in the case of the Air Traffic Controllers, where the government's intention to designate away virtually the whole group's right to strike was upheld. The result of this ruling is that the government is now free to designate anyone whose normal work activities, in the government's own view, concerns the safety and security of the public. Three sets of negotiations have occurred, following the ruling, where the government's future intentions can be assessed. In two cases, the percentage of workers designated was increased by 50% -- to over 40% of all workers in the P.M. category of the federal public service, and to 90% for federal government heating and power workers. In the other case, library sciences, the number of designations remained insignificant. It would appear that this difference reflects the unspoken criterion of the degree of bargaining strength of a given group of workers.

The use of back-to-work legislation and of designations primarily has to do with public sector workers. The statutory incomes policy represented by the Anti-Inflation Program of 1975-78 was an instance of the suspension of free collective bargaining for all workers, both initiated by the government and upheld by the courts on the basis of an elastic definition of the notion of economic emergency. Here again, the rules of the game established for free collective bargaining in the post-war settlement were set aside through special legislation which empowered the Anti-Inflation Board to examine any agreement, concluded or pending, and decide what the permissible increase might be under the government's wage guidelines, and then empowered an "Administrator" under the Act to make orders prohibiting anyone from contravening a Board report or a Cabinet order. If the Administrator's order was not complied with (in the sense of a union or unofficial group of workers exercising their "normal" right to strike under pre-existing legislation to secure an increase from an employer beyond the Board's ruling) they were subject to onerous new statutory penalties -- up to an unlimited fine and five years' imprisonment. Unilaterally the federal government changed the rules of the post-war settlement, but again only on a temporary ad-hoc basis. The new spirit of the era was adequately expressed by Prime Minister Trudeau when he cynically told a radio interviewer on October 26 immediately after the initiation of the Anti-Inflation Program: "We'll put a few union leaders in jail for three years and others will get the message,"[34]

It is now virtually universally conceded that despite the government's rhetoric about equivalent price, dividend and profit restraint to that of statutory wage restraint under the Anti-Inflation Program, the substantive aspect of the policy entailed only wage controls. Prime Minister Trudeau, in his October, 1982 CBC series of homilies referred to a comprehensive but temporary stautory prices and incomes policy of the 1975-78 type in the following manner: "...what controls are for (is) to place the coercive use of Government power between Canadians, like a referee who pushes boxers apart and forces them to their corners to rest up so that they can hit each other again."[35] The metaphor is only misleading in the sense that in the 1975 to 1978 case, the referee actually held the arms of one of the boxers while the other flailed away.

As we indicated in the introduction to this paper, the events of 1982, combining the silence of the new constitution on free collective bargaining and the right to strike with another, but this time particularly draconian, "temporary" suspension of those rights for a very large number of Canadian workers, may be said to signal a new era in labour relations. It inaugurates a new era, however only in the sense that it makes explicit what has already been implicit in the developments over a decade which we have just outlined. What has been made explicit in 1982 is that the ad-hoc, selective, "temporary" use of coercion is not merely directed at the particular groups of workers affected or at the particular issue or emergency at hand, but rather is designed to set an example for what is appropriate behaviour throughout the industrial relations system for the duration of the contemporary conjuncture of capitalism. The suspension in 1982 of public sector workers' rights is not proclaimed or defended in terms of what it will directly accomplish to stem inflation and reinvigorate Canadian capitalism -- rather it is offered as an example for what other workers must voluntarily do if these objectives are to be attained.

What in fact characterizes the new era, therefore, is not only a series of ad-hoc coercive measures on the part of the state but also the construction of a new ideology to generalize the state's new coercive role to the working class as a whole. Because this new ideology is not legally codified in the manner of the post-war settlement -- because it does not in universalistic terms actually remove the right to strike and free collective bargaining -- the new state coercion is paradoxically capable of being ideologically protrayed as "voluntary", rather than coercive. Thus the Prime Minister's October 1982 broadcasts to the nation emphatically declared that the Government had explicitly rejected the option of the "coercive use of Government power":

> "Controls could not create the trust in each other and belief in our country that alone would serve our future. Controls would declare, with the force of law, that Canadians cannot trust Canadians....To choose to fight inflation, as a free people acting together -- that is the course we chose."[36]

That the increased use of discretionary state coercion which marks the new era in labour relations can be presented in this way on the idological level is conditional on three elements. The first is a form of ideological excommunication regarding the rights of public sector workers qua Canadian citizens. The draconian controls established over them in 1982 became hidden admist careful phrases which assert that only "comprehensive controls" are coercive and contrary to the principle of a "free people acting together". Apparently, selective controls are not coercive. And apparently, those coerced by "6 and 5" and Bill C-124 are not "people" within the notion of a "free people acting together". They are rather "examples" for other worker's "voluntarism". That this ideological sleight of hand can even be attempted rests upon a decade of denigration of state employees as parasites and a decade of denigration of state services not long ago understood as essential to the community and social justice as wasteful and unproductive.

The second condition for the ideological presentation of the era of discretionary state coercion over freedom of association as "voluntary" is that the specific acts of coercion -- back-to-work legislation, designation, statutory incomes policies -- are continually presented as temporary, exceptional, emergency-related, regardless of how frequently they take place and regardless of the increasing numbers of workers who fall within their scope or are threatened by their "example". Thus, insofar as the discourse of emergency and crisis can be made elastic enough to cover a whole era rather than specific events or months or even years, measures presented as temporary can come to characterize an entire historical conjuncture. This is indeed the era of "c'est seulement le provisoire qui dure."

Finally, and perhaps most importantly, the voluntary ideological veneer of the new era is conditional upon the construction of a new set of norms to justify labour's subordinate role within capitalism. We saw above that Justice Rand characterized the labour legislation of the post-war settlement in terms of accomodating "the framework of a society whose economic life has private enterprise as its dynamic" with "evolving notions of social justice". Capital's "long-term dominant position" was to be maintained by "redressing the balance" through establishing legal rights for organized labour to protect the subordinate classes' immediate material interests within capitalist production. The ideological principles appropriate to today's new era involve the exact reversal of this earlier logic. It involves putting the onus on labour to maintain capitalism as a viable economic system by acquiescing to the restriction or suspension of its previously recognized rights and freedoms, and by sacrificing its immediate material interests. Whereas the "question of social justic" was the key phrase in the construction of the new hegemony of the 1940s, Trudeau's "question of trust and belief", as explicitly enunciated in his CBC lectures, becomes the key phrase in the construction of the new hegemony of the 1980s.

It must be stressed as regards this "trust and belief" element of the new idology that Trudeau and his Government stand no more alone in effecting its construction in the 1980s than did Mackenzie King and his Government in the 1940s. They are aided not least by a bevy of industrial relations experts, many of whom are partial to the N.D.P. rather than the Liberals and are recognized publicly by their place on the labour side of the bargaining table or of the labour relations board. A good example is provided by Paul Weiler in his immodestly titled book Reconcilable Differences: New Directions in Labour Law, who justifies the new discretionary coercion of the state as regards statutory incomes policies in terms of the controls entailed being in fact in labour's interests. Weiler admits that

the Anti-Inflation Program only involved effective restraint of wages, but he argues that for economic (the open nature of Canada's economy) and political (capitalist objections, evils of bureaucracy) reasons, such programs couldn't and shouldn't be more than (restraint of) incomes policies. His argument is that it is in labour's interests to acquiesce in such policies because inflation "erodes savings and investment". The uncertainty inflation creates hampers the ability of corporations to plan, invest and thus create jobs, and, by making Canadian products less competitive internationally, it threatens existing jobs. Controls in this context "facilitate an orderly winding down of inflation...with a minimum of disruption and unemployment."[37] Weiler recognizes then that controls are about enhancing profits at the expense of wages but, in arguing for acquiescence to controls, he effectively urges labour to place its future in the hands of capital. Weiler offers at the same time a defense of the right to strike but seeks a model of state intervention which will ensure that this right will not be disruptive to capital. At one level his book displays with refreshing candor the dilemmas of the reformer in an era of capitalist crisis. At another level it is an unwitting contribution to the construction of the new labour relations ideology appropriate to capitalism in our time.

The "trust and belief" required of labour in this new era sounds reasonable but in fact it asks a lot. It involves asking that labour should trust that capital will use workers' foregone wages and social benefits to invest in Canada rather than abroad without any statutory guarantees established by the state they will in fact do so. It involves that the labour movement should trust capital not to invest in, and the state not to support, third world regimes which ban unions in order to ensure profitable opportunities for multi-national companies. It involves that labour should trust that capital will not speculate in land, currency or commodity markets or use re-established profit margins to maintain lavish living styles. Indeed, one might ask, if trust and belief in capital are the ideological requirements of the day for workers, what are the use of unions at all? Perhaps they are useful only insofar as they can be induced to contribute to spreading the new ideology of "trust and belief" and to police their members' adherence to the new coercive interventions and their "voluntary" by-products?

IV

What will be the labour movement's response to the new era of increased state coercive intervention in collective bargaining and its accompanying ideology of voluntarist "trust and belief"? It can be by no means assumed that Canadian labour will necessarily lie down and play dead. Some Canadian unions, such as the UAW, have been much less cowed by the corporations in the crisis than have their American counterparts and have managed to obtain significantly better terms. Similarly, Canadian public employees appear to have been less frightened by threats of public expenditure cutbacks than have their American counterparts. But all this may only bespeak why the state moved in 1982 to tighten significantly the coercive and ideological screws on the Canadian working class. It says little or nothing about how workers will respond in the immediate or longer-term period.

In many respects there is little reason to expect that the Canadian labour movement will be capable of mounting any sort of meaningful or sustained counter-offensive. Not only have the unions traditionally been exceedingly respectful of the law even when it abrogated previous laws enshrining workers' rights (viz. the CLC's abandonment of -- indeed Dennis McDermot's explicit attack on -- the postal workers in 1978). They have also been remarkably unprepared for each successive coercive blow struck by the state over the past decade. Despite the repeated attacks on the right to strike, the CLC, virtually alone among interest groups of any notable size in Canada, failed to involve itself in the constitutional debate even to the point of making representation to the parliamentary hearings regarding enshrining the right to strike (or free collective bargaining or full employment) in the Charter of Rights and Freedoms. Other liberal democratic constitutions contain such rights, and even if they don't guarantee as much as they appear to, the inclusion of such rights at least has the effect of helping to legitimate union struggles around these issues. Even to have campaigned unsuccessfully for the inclusion of such rights in the constitution would have at least put the issue before their members and the broader public. For various reasons -- the federal N.D.P.'s alliance with the Liberals, the reluctance of the QFL to be seen improving a constitution to which the PQ was inalterably opposed -- the CLC refrained from acting.

It was of considerable irony that on the very day (January 12, 1981) the Justice Minister appeared before the special parliamentary committee to announce the government's amendements to the Charter of Rights and Freedoms in response to the submissions the committee had received from about 100 groups from all parts of Canada, the National Union of Provincial Government Employees announced plans to seek action from the federal Labour Minister in the wake of an ILO ruling that the Alberta Government was violating international labour conventions (ratified by Canada in 1972) by its denial of the right to strike for unionized provincial employees.[38] Would the CLC have been less complacent about the constitution if it had known that but two months after the new constitution was proclaimed the right to strike would be "temporarily" removed from federal employees as well?

To be sure, the defense of the right to strike does not ultimately lie in representations to parliamentary committees on constitutional rights. But is it any less evident that the Canadian labour movement (the rhetorical flourish of resolutions at CLC conventions calling for general strikes notwithstanding), neither at the top nor the bottom, is capable of undertaking a sustained coordinated defense -- industrially, politically, ideologically -- of the right to strike. Years of neglect of the mobilizing aspects of trade unionism, years of practice of legalism, have taken their toll on the fighting capacity of union organizations.

But neither should one overestimate the degree of hegemony exercised by capital and state in this crisis, nor the permanence of the ossification of the unions. The contradictions to be contained by the new ideology are not ones easily managed. The ideology of the era of free collective bargaining was rooted in a material basis of consent given by the expansion of post war capitalism. It should be recalled, moreover, that the West's moral superiority in the Cold War was in part sustained precisely by the post-war settlement's legal proclamation of workers democratic rights admidst the refrain of "social justice". Today, however, the material basis of consent can less easily be summoned up. And fighting the new cold war entails, as the Globe and Mail editorial quoted at the outset so clearly points out, defending Polish workers' rights at the same time as Canadian workers' rights are being denied. The conditions are not propitious for selling the new coercion in terms of voluntarism and freedom.

Similarly, one's field of vision regarding the combative potential of the union movement should not be restricted to what the CLC or the union leadership accomplishes or argues in opposition to the new coercion. It is one of the paradoxes of depressions that they make workers acutely aware of the benefits of collective action and solidarity, precisely because their employers are less chary of asserting managerial authority in a period of high unemployment. There will certainly be a struggle on the ground, as there was in the 1930s, to change the character of the union movement in Canada. The era of "free collective bargaining" induced legalism and complacency regarding union organization and officialdom. The era of discretionary coercion can be expected to induce a rather different, more combative labour movement in turn.

FOOTNOTES

1. P.E. Trudeau, The Asbestos Strikes, first published 1956, English translation by F. Boake, Toronto, James, Lewis and Samuel, 1974, p. 336.

2. "Son of Solidarity", The Globe and Mail, Toronto, October 8, 1982.

3. H. Draper, Karl Marx's Theory of Revolution, Vol. II, New York and London, Monthly Review Press, 1973, p. 108.

4. Paul Craven, 'An Impartial Umpire', Industrial Relations and the Canadian State 1900-1911, Toronto, University of Toronto Press, 1980, p. 306. cf. p. 301-2, for the discussion of H.D. Woods treatment of the IDIA.

5. Justice I.C. Rand, "Rand Formula", Canadian Labour Law Reports, No. 2150, CCH Canadian Limited, 189 - 9.58. pp. 1251-3.

6. H. Logan, State Intervention and Assistance in Collective Bargaining, Toronto, University of Toronto Press, 1956, p. 75.

6A. Laurel Sefton MacDowell, The Formation of the Canadian Industrial Relations System During World War II (Labour/le Travailleur, 1978), pp. 175-96.

7. Logan, op.cit., p.76.

8. Rand, op.cit., p. 1256.

9. For a recent survey of the relevant literature see L. Panitch, "Elites, Class and Power in Canada", in M.S. Whittington and G. Williams (eds.), Candadian Politics in the 1980s, Toronto, Methuen, 1981, pp. 167-188.

10. H. Laski, Trade Unions in the New Society, London, George Allen and Unwin, 1950, pp. 66-67.

11. Ibid., pp. 224, 232.

12. Paul Weiler, Reconcilable Differences: New Directions in Canadian Labour Law, Toronto, Carswell, 1980, p. 25.

13. H.A. Logan, op.cit., p.

14. Canadian Union of Public Employees, The Public Employee, Vol. 4, No. 4, Spring 1982, pp. 10-11.

15. For example, federal assistance to the provinces for extending health facilities, particularly hospitals, was presented as a step towards health insurance -- a Liberal party "promise" since 1919. See D.Swartz, "The Politics of Reform: Conflict and Accommodation in Canadian Health Policy", in L. Panitch (ed.), The Canadian State: Political Economy and Political Power, Toronto, University of Toronto Press, 1977, pp. 311-343.

16. It is well recognized that the working conditions (including pay and managerial practices) of public employees were inferior to those of private sector workers employed by major corporations. It should be noted here that in 1944 the CCF government in Saskatchewan granted bargaining rights to provincial employees.

17. The unionized proportion of the workforce did "jump" from 30 to 33 percent between 1952-53, and then slowly declined to just below 30 percent in the mid-1960s. The 1952-53 increase was due primarily to a contraction of 100,000 in the labour force following the Korean War.

18. In B.C. new restrictions were imposed on the right to scrike generally, while in Alberta, what were deemed "public interest disputes" were subject to more sweeping restrictions. See S. Jamieson, Industrial Relations in Canada, Toronto, MacMillan, 1973, p. 130ff.

19. See for example, S. Jamieson, op.cit., p. 32ff. and H. Milner, "The Decline and Fall of the Quebec Liberal Regime: Contradictions in the Modern Quebec State", in L. Panitch (ed.), The Canadian State, op.cit., p. 101-132.

20. There is some suggestion based on unpublished research, that Jean Marchand, the former president of the C.N.T.U. and the most sought-after of the "three wise men" made granting the right to strike a condition for remaining in the government (Personal Communication from E. Swimmer). Were this to be true, any assessment of its importance would have to place it in the context of the period.

21. H. Logan, op.cit., p. 76.

22. C. Offe and H. Wiesenthal, "Two Logics of Collective Action", Political Power and Social Theory, 1, 1979.

23. For a brilliant elaboration of this argument in the context of the U.S. see K. Klare, "Juridical Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness 1937-1941", Minnesota Law Review, 1978, 62, p. 265-339.

24. This position was common on the "left" as well as in the mainstream thinking. See, for example, H. Marcuse, One Dimensional Man, Boston, Beacon Press, 1964, and J. O'Connor, The Fiscal Crisis of the State, N.Y., St. Martins Press, 1973.

25. R. Miliband, The State in Capitalist Society, N.Y., Basic Books, 1969, p. 217.

26. A broadly similar argument is made by S. Jamieson, Op.Cit., Chap. 4.

27. See for example, D. Wolfe, "The State and Economic Policy in Canada 1968-1975", in L. Panitch (ed.), The Canadian State, op. cit., pp.251-288, and I. Gillespie, "On the Redistribution of Income in Canada", Canadian Tax Journal, 24, No. 4, July/Aug., 1976, pp. 419-450.

28. See L. Panitch, "The Development of Corporatism in Liberal Democracies", Comparative Political Studies, X, i, April, 1977.

29. An extensive discussion of these attempts in Canada and the reasons for the their failure is found in L. Panitch, "Corporatism in Canada", Studies in Political Economy: A Socialist Review, 1, Spring, 1979. pp. 43-92.

30. A. Price, Back to Work Legislation: An Analysis of the Federal and Ontario Governments Increased Propensity to End Strikes by Ad Hoc Laws 1950-1978; M.A. Thesis, Political Studies, Queen's University, 1980.

31. Quoted in A. Price, op.cit., p. 98. Based upon a detailed examination of these legislative orders by the Federal and Ontario Governments, Price concludes that seldom, if ever, was there such a threat. Rather, government intervention was designed to prevent serious deception of immediate concern to a relatively small segment of society, or to prevent broad public inconvenience (p. 90).

32. Ibid, p. 99.

33. See H.J. Glasbeek and M. Mandel, "The Crime and Punishment of Jean-Claude Parrot", Canadian Forum, August, 1979, pp. 10-14.

34. See L. Panitch, Workers, Wages and Controls The Anti-Inflation Programme and Its Implications for Canadian Workers, New Hogtown Press, 1976, esp. pp. 1 and 18.

35. Quoted in the Globe and Mail, Toronto, October 21, 1982, p. 5.

36. Ibid.

37. P. Weiler, op.cit., p. 254.

38. See the Globe and Mail, Toronto, January 13, 1982.

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