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Towards Permanent Exceptionalism:

Coercion and Consent in Canadian Industrial Relations

Leo Panitch and Donald Swartz

WE ARE WITNESSING TODAY the end of the era of free collective bargaining in Canada. The era being closed is one in which the state and capital relied, more than before World War II, on obtaining the consent of workers generally, and unions in particular, to participate as subordinate actors in Canada's capitalist democracy. The era ahead marks a return, albeit in quite different conditions, to the state and capital relying more openly on coercion — on force and on fear — to secure 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 marks a change in the form in which coercion and consent are related to one another, a change significant enough to demarcate a new era.

The era of free collective bargaining began 40 years ago with the federal government's 1944 order-in-council PC 1003. This order-in-council established legal recognition of the rights of private sector workers across Canada to organize, to bargain collectively, and to strike, and backed these rights with state sanctions against employers who refused to recognize and bargain with trade unions. In 1948, PC 1003 was superseded by the Industrial Relations Disputes Investigation Act (IRDLA) giving these rights a "permanent" legislative basis for private sector workers under federal jurisdiction. Similar legislation was adopted by the provinces for private sector and municipal workers in their jurisdiction, with notable delay only by Quebec. 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" and finally met the International Labour Organization's (ILO) 1919 declaration that "a free society cannot coerce any of its citizens into working conditions that are not truly and generally acceptable." Despite continuing exclusions and limitations on free trade unionism in Canada, it was widely assumed, in a way that was typical of the reformist ideology

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that predominated in Canada in the post-war era, that there would be steady if slow progress towards the ever fuller realization of trade union rights. The reforms achieved in the 1940s were thought to be irreversible and cumulative. Such a world view inevitably tends to outlive the social realities which gave rise to it. The social realities of the 1980s may have finally put it to rest.

It is one of the greater ironies of the present conjuncture that just as the Canadian state finally moved in the 1980s to guarantee formally liberal democratic freedoms in an indigenous constitution, so has it simultaneously moved towards foreclosing those aspects of liberal democracy that specifically pertain to workers' freedoms. Canada's new constitution with its Charter of Rights and Freedoms notably excluded the right to strike from its list of fundamental freedoms, but in guaranteeing the right to freedom of association, it might have been thought that the federal and provincial governments were implicitly recognizing that the right to strike alone makes viable workers' rights to freedom of association. Significantly, however, within months of the proclamation of the constitution the right to strike was abrogated for well over 1,000,000 of the 3,500,000 organized workers in Canada through a series of federal and provincial legislative measures.

The most important of these measures, because it most clearly symbolized the significance of the Charter's silences on the right to strike, was the federal Public Sector Compensation Restraint Act introduced in June 1982. This act has tended to be treated as imposing a two-year period of statutory wage restraint on federal employees in conformity with the slogan "6 and 5" (increases of 6 per cent and 5 per cent in the ensuing two years). But the act did much more. It completely suppressed the right to bargain and strike for all those public employees covered by the legislation, and it abrogated existing collective agreements. What it lacked in comprehensiveness as compared with the Anti-Inflation Act of 1975-78 (which covered both public and private sector workers), it more than made up for in the severity of treatment of the workers it covered. The abrogation of the right to strike and to bargain was accomplished by the extension of existing agreements for two years. Since strikes during agreements were proscribed under the earlier legislation, the new act used the legislation which established free collective bargaining today to deny it, a denial which included the "rolling back" of already signed agreements which provided for increases above "6 and 5" during the life of the act.

The provinces, with the exception of Manitoba and New Brunswick, quickly followed suit. In autumn 1982, Ontario introduced legislation which followed the federal act in form, but was even broader in scope. As well as provincial government and crown corporation employees, Ontario's Inflation Restraint Act covered 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, etc.). The Maritime provinces, Alberta, and Saskatchewan legislated ceilings on wage increases, without explicitly abrogating the right to strike, except for particular groups of

workers, for example, hospital workers in Alberta. In Quebec and British Columbia events took a somewhat different but perhaps even more menacing course. The Parti Québécois government of Quebec actually decreed unilaterally one- to three-year collective agreements for public sector workers in 1983, thereby pre-empting their right to strike. These agreements not only required pay reductions of up to 20 per cent (meaning that many of the workers affected would be earning less at the end of 1985 than in 1982), but also rewrote the terms of their collective agreements regarding job security and working conditions.

It is perhaps not surprising that most of the attention has recently focused on British Columbia. The Social Credit government began the whole current trend with their wage restraint legislation at the beginning of 1982. After winning re-election in spring 1983, however, it went a great deal further by proposing to restrict permanently union rights. The form of free collective bargaining was to be preserved, while its substance was dramatically curtailed. Bill 2 sought to deprive provincial government employees of the right to bargain over working conditions and the organization of work, while Bill 3 stripped them of bargaining rights with regard to job security. Bill 16 would empower the government to prohibit strikes and/or picketing at any work site classified as an "economic development project." All this was, of course, part of a broader package of legislative assaults on the welfare state.

Taken together, the above-mentioned acts have affected approximately 1,500,000 unionized workers. They have been presented, in most cases, as "temporary" legislation which merely "suspends" the right to strike and free collective bargaining. Yet there 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 temporary measures are part of a long-term trend that includes the growing 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 the increased designation of public sector workers as "essential," thereby removing their right to strike.

It is true that the Ontario Supreme Court, in a rather weak ruling coming towards the very end of the life of Ontario's Inflation Restraint Act, declared the act unconstitutional because the act's blanket removal of the right to strike was inconsistent with the freedom of association guaranteed in the Charter. The significance of this ruling is unclear, however, not least because of the ambiguity of the status of the Charter itself. In any case, the federal legislation has remained unaffected by the ruling; no government has explicitly accepted its implications; and Alberta has explicitly promised to use the "notwithstanding clause" in the constitution to ensure that its legal prohibitions of public sector workers' right to strike remain unaffected by the ruling. Simultaneously, the federal and some provincial governments have moved to facilitate the employment of non-union labour in the construction industry, thus signalling that private as well as public sector workers are coming under the scope of the

new, more permanent restrictions of the rights of labour. This paper examines the rise and fall of the era of "free collective bargaining" and speculates on the shape the new era will take in the future.

I

The Origins of Free Collective Bargaining

THE SOCIAL RELATIONS UNDER WHICH capitalist production takes place embody a structural antagonism of interest between employers and employees. Since the employment contract gives the employer, as the purchaser of labour time, the right to determine what is done by employees at work, exercising this right involves the use 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. Formally free actors in the capitalist labour market, the employer and employee 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 institution of mass suffrage. But the distinction between a democratic or authoritarian capitalist regime is never one only of mass suffrage. It is equally a distinction which rests on the absence or presence of freedom of association. The long struggle of the working classes for political representation in 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, universal, non-class-specific criteria; it also involved the state's recognition of the collective, class-specific organizations of labour, the trade unions, as legitimate representatives of workers in the capitalist labour market. Moreover, the independence of trade union associations from direct interference by the state itself had to be established.

Prior to 1872, trade unions and strikes could be conceived as statutory offenses under the restraint of trade laws. The Trade Unions Act of 1872 did not grant positive rights to unions but merely removed them from liability. Indeed, capital's right to continue to resist unionization in the succeeding decades was the chief focus of "industrial relations." The state's extensive use of force in defence of this right became a hallmark of Canadian labour history, with the deployment of the Royal North West Mounted Police against the workers in the 1919 Winnipeg General Strike coming to symbolize the coercive role of the state. To be sure, the Royal Commission on the Relations of Labour and Capital of 1889, the establishment of the Department of Labour in 1900, and the Industrial Disputes Investigation Act of 1907 were indicative of the state's attempts to moderate and contain labour conflict. But even the 1907 Act

was replete with coercive implications and restrictions on freedoms of association. As Craven concludes in his recent study of this period, the 1907 IDIA was, in the characteristic fashion of the Canadian state until the 1940s, directed "towards the *ad hoc* suspension of hostilities," in the context of "a generalized defense of private property rights by the capitalist state."¹

In the 1940s, the state turned away from *ad hoc* coercive and conciliation mechanisms *vis-à-vis* workers' struggles for union recognition and began to recognize the principle of freedom of association for workers. It was only with Privy Council Order 1003, a wartime measure, that a comprehensive, stable policy emerged 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 accommodation 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.²

It must be stressed that this new era in labour relations did not evolve suddenly from the progressive minds of legislators, judges, and industrial relations experts. Nor had capitalists miraculously been transformed into far-

¹ Paul Craven, *An Impartial Umpire, Industrial Relations and the Canadian State 1900-1911* (Toronto 1980), 306. Craven notes (301-2) that H.D. Woods, despite arguing 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," concludes that in practice it "was little more than a public-interest, emergency-dispute policy."

² Justice I.C. Rand, "Rand Formula," *Canadian Labour Law Reports*, 2150 (1958), 1251-3.

sighted social philosophers. Rather the labour legislation of the 1940s was a product of an heretofore unparalleled shift in the balance of class forces in Canadian society. Beginning in the mid-1930s and increasing with intensity under national mobilization for war which brought the return of full employment in the early 1940s, Canada witnessed an unprecedented tide of sustained and comprehensive working-class mobilization and politicization. As H.A. Logan stated, the "trade union world seethed with discontent over the injustices resulting from the refusal of both private and government corporations to bargain collectively."³ In 1943, one out of every three trade union members was engaged in strike action, a proportion only exceeded in 1919.⁴ Union membership, just as significantly, grew rapidly, doubling between 1940 and 1944.

TABLE I
Union Membership in Canada 1940-48

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

Source: *Labour Organization in Canada* (Ottawa 1975), 28-9.

This industrial militancy was politically punctuated by the dramatic rise of the CCF in the opinion polls, by Communist and CCF victories in the 1943 federal by-elections, as well as by the rather hasty conversion of the Liberal and Conservative parties to reforms along the lines of the Keynesian welfare state. While the possibility of any direct political challenge had largely evaporated by 1945, as evidenced in the Ontario and federal elections of that year, the industrial militancy, while abating in 1944 and early 1945, did not pass away. The temporary industrial relations reform initiated by PC 1003 became "permanent" peacetime legislation in 1948 largely because of this sustained militancy:

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 some months later were crucial.⁵

³ H.A. Logan, *State Intervention and Assistance in Collective Bargaining* (Toronto 1956), 75.

⁴ L. Sefton MacDowell, "The Formation of the Canadian Industrial Relations System During World War Two," *Labour/Le Travailleur*, 3 (1978), 175-196.

⁵ Logan, *State Intervention*, 76.

Thus the era of "free collective bargaining" commenced.

The use of the word "free" has a crucial double meaning. It suggests that a balance of power existed between capital and labour, that they faced each other as equals, otherwise any bargain struck could scarcely be viewed as one which was "freely" achieved. It also suggests that the state's role is akin to one of an umpire, applying, interpreting, and adjusting impartial rules. In the first meaning, the structured inequality between capital and labour is obscured; in the second, the use of the state's coercive powers on behalf of capital falls from view.

Industrial relations orthodoxy in the post-war era of free collective bargaining accepted both meanings. We will not dwell on the continued structural inequality that Rand so openly acknowledged as capital's "long-term . . . dominant position."⁶ It will 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. The organizational and ideological resources of labour remained scarcely measurable against the network of associations, organizations, advisory bodies, in-house publications, and mass media which were owned by or financially beholden to capital. Finally, the greater access to the state enjoyed by capital throughout the post-war period has been well documented.⁷ The supremacy of capital in the era of free collective bargaining in both its ideological and coercive dimensions, was well captured by 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.⁸

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." He also understood that *even in capitalist democracy, the labour movement is confronted with "an upper limit to its efforts beyond which it is hardly likely to pass."*⁹

This reference to capital's privileged access to the coercive apparatus of the state 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 Canadian labour policy after World War II. The same legislation which supported the right to recognition and guaranteed the right to strike, also

⁶ Rand, "Rand Formula," 1256.

⁷ 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., *Canadian Politics in the 1980's* (Toronto 1981), 167-88.

⁸ H. Laski, *Trade Unions in the New Society* (London 1950), 66-7.

⁹ *Ibid.*, 224, 232.

constrained the nature of bargaining and the exercise of union power in a highly detailed manner. The true thrust of the legislation in this respect has been unwittingly laid bare by Paul Weiler in defence 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.¹⁰

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 frameworks for collective bargaining in any capitalist democracy. Modelled after the U.S. Wagner Act, Canadian legislation went "beyond it," as Logan noted, by "naming and proscribing unfair practices by unions. . . . 2. assuming a responsibility by the state to assist the two negotiating parties. . . . 3. [in forbidding] strikes and lockouts during negotiations and for the term of the agreement."¹¹ Part and parcel of union recognition and the promotion of collective bargaining was a broad set of legal restrictions on membership eligibility, and the precise circumstances for legal strike action. Apart from restrictions on picketing and secondary boycotts, the most important restriction on the right to strike — and the device used recently to abrogate the right to strike in the public sector — was the ban on strikes during the term of a collective agreement.

The post-war settlement between capital and labour, involving limited measures to reduce unemployment, and welfare state reforms, as well as the new labour legislation certainly entailed real gains for working people. These reforms, however, did not create equality between the contending classes. Rather, they fashioned a new hegemony for capital in Canadian society. It is critical to understand that the new mechanisms promoting the institutionalization of union recognition and free collective bargaining were, as Rand said, "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 capital's "long run . . . dominant position." Through formal mechanisms for negotiation and redistribution, consent came to play a visibly dominant role in inter-class relations, while coercion, still crucially present, was in the background. Coercion in capital-labour relations became less *ad hoc* and arbitrary because as the state rationalized and

¹⁰ Paul Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto 1980).

¹¹ Logan, *State Intervention*, 26-7. The "formal" equality of the ban on strikes and lockouts during collective agreements is illusory since the lockout is but one of several of capital's economic weapons.

institutionalized workers' freedoms of association, so coercion too became more formalized. 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.

II

The Post-War Decades

THE PASSAGE OF THE 1948 Industrial Relations and Disputes Investigation Act by the federal government, accompanied by similar provincial legislation, signified that legal protection of workers' freedom to organize and to bargain would be a central element of the post-war "settlement." The labour movement undoubtedly expected that the reforms were "permanent" gains which would be gradually extended to other workers and perhaps liberalized.¹² Moreover, given that the settlement also expanded the role of the state, substantial growth in the number of public sector workers was ensured. It might have been expected that the extension of bargaining rights would have begun among public employees.¹³ There was, however, little growth of bargaining rights in the post-war decades. In general, the unionized proportion of the non-agricultural work force remained close to the 1948 figure of 30 per cent until the mid-1960s. Until that time, 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.¹⁴

The end to this impasse came not gradually but suddenly, sparked by the Quiet Revolution in Quebec in the mid-1960s. This decade is frequently portrayed as one of university student radicalism and militancy contrasted with working-class consumerism and acquiescence.¹⁵ This contrast is overdrawn, as

¹² 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 1977), 311-43. Immediate post-war reforms were often presented as "down payments" towards more comprehensive measures. 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.

¹³ 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.

¹⁴ S. Jamieson, *Industrial Relations in Canada* (Toronto 1973), 130 ff. The unionized proportion of the work force did "jump" from 30 to 33 per cent between 1952-53, and then slowly declined to just below 30 per cent in the mid-1960s. The 1952-53 increase was due primarily to a contraction of 100,000 in the labour force. In B.C. new restrictions were imposed on the right to strike generally, while in Alberta, what were deemed "public interest disputes" were subject to more sweeping restrictions.

¹⁵ This position was common on the "left" as well as in mainstream thinking. For example, see H. Marcuse, *One Dimensional Man* (Boston 1964), and J.O'Connor, *The Fiscal Crisis of the State* (New York 1973).

the "revolt" of the 1960s was, in broad measure, a generational one. More importantly, consumerism is not without its contradictions. As Ralph Miliband observed, in taking issue with the omnipotence ascribed to corporate demand management 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. . . ." ¹⁶ "Happiness" and "success" are of course, relative terms. By the 1960s, the character of the working class was being transformed 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 being 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. ¹⁷ Increasingly, the only way to achieve incomes consistent with the image was through collective bargaining. This development was manifest in the mid-1960s wave of strikes, an uncommonly large number of which were wildcats (marked by occasional violence) conducted in defiance of union leaders and at times partially against them.

An even more profound set of changes was at work in Quebec. ¹⁸ The previous 25 years had seen a 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 interests headed by Duplessis and the Catholic church. The Quebec government's response to a succession of strikes from the 1949 Asbestos Strike through to Murdochville in 1957, was hostile and repressive, fostering a relatively radical working class and intelligentsia. The 1961 election victory of the Lesage Liberals formally broke the hold of the *ancien régime* on the Quebec state, and initiated a belated and rapid political modernization. For this, no less than in Canada at the close of World War II, a political settlement with labour was essential. The basis of this settlement was the extension of bargaining rights to Quebec's public sector workers in 1965.

The breakthrough in Quebec sent shockwaves reverberating throughout Canada because the reforms went well beyond what had been achieved in English Canada. Moreover, federal public sector workers in Quebec were part of the politicization process of the Quebec working class and were galvanized to intensify their efforts to win the same demands from their own employer. Pressure from Quebec was a powerful boost to the growing insistence of federal workers generally for bargaining rights after the Diefenbaker government, faced with the 1958-61 recession, broke precedent by rejecting the pay increase

¹⁶ R. Miliband, *The State in Capitalist Society* (New York 1969), 217.

¹⁷ A broadly similar argument is made by Jamieson, *Industrial Relations*.

¹⁸ For a good overview, see K. McRoberts and D. Posgate, *Quebec: Social Change and Political Crisis*, rev. ed. (Toronto 1980).

proposed by the bi-partite National Joint Council, which since 1944 had advised the government on these matters.¹⁹

It was inevitable that significant political restructuring would take place, not only in Quebec but at the federal level as well. The Quebec Liberal Party, reflecting the initiatives of a radicalized petit bourgeois intelligentsia, provided a beacon to the federal Liberals who needed to find a new image after the conservative St. Laurent-C.D. Howe government of the 1950s was routed by the populist Diefenbaker Conservatives in 1958. This need was intensified by the apparent appeal of the recently formed NDP, an appeal which was sufficient to block a quick return of the Liberals to power.

The new reality at the federal level was reflected in the fanfare surrounding the co-optation of the "three wise men," Trudeau, Pelletier, and Marchand, into the leadership of the Liberal Party. The second wave of the welfare state in Canada undertaken by the minority Liberal governments of the mid-1960s was in good part an outcome of these developments. A significant element of this, apart from medicare and pension reforms, was the appointment of the Heenev Commission in 1963 to examine the question of collective bargaining rights for federal workers. That Heenev would recommend in favour of collective bargaining for federal workers was a foregone conclusion; what was at issue was how free it really would 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 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 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, particularly in Quebec and B.C., 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 also felt in the provinces, where collective bargaining became the order of the day for most public sector workers. While the meaningfulness of these reforms is beyond

¹⁹ H. Arthurs, *Collective Bargaining by Public Employees in Canada: The Five Models* (Ann Arbor 1971).

²⁰ There has been some suggestion that Jean Marchand, the former President of the CNLU 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.)

doubt, it is nonetheless striking how cramped a version of trade union freedoms was conceded. In most provinces a number of crucial issues were decreed to be outside the scope of bargaining. Secondly, in Alberta, Ontario, P.E.I., and Nova Scotia, provincial employees, and often others, such as hospital workers, were denied the right to strike.²¹

III

The Limits of Reform

THE "BREAKTHROUGH" OF THE 1960s in the extension of free collective bargaining must be seen in terms of the continuing narrow limits of trade union rights in Canada. It would be wrong to ascribe these limits just to the resistance of particular sections of capital or to the ideology of liberal politicians. An equally important, and largely ignored, factor has been the remarkable conservatism of the English Canadian labour movement, which has repeatedly proved itself incapable of taking the initiative in generating demands and mobilizing support for reforms to challenge the terms of the post-war settlement. Few Canadian trade unionists, for example, have questioned the principle of the ban on strikes during the life of a collective agreement, although they have sought specific exemptions from its application (for example, unsafe working conditions and technological changes). They have even accepted the requirement that unions act as agents of the law by formally notifying their members of the legal obligation to abide by this ban.

This conservatism can be attributed in part to the effects of the Cold War on the labour movement. The anti-communist crusade after World War II was directed against the tradition of socialist ideas and militant rank-and-file struggle, as much as at members of the Communist Party who symbolized, albeit imperfectly and not exclusively, that tradition. As a result, control of the labour movement was assumed by people who were characterized, as David Lewis delicately put it, "by the absence of a sense of idealism."²² There is no little irony in Lewis providing this description given his own central role in building a base for the CCF in the union movement by trying "to wrest control from the communists where ever possible."²³ In this struggle, the CCF allied with the most conservative and opportunistic elements of the union leadership, who, upon winning this internecine struggle, placed their own indelible stamp on the labour movement.

But other factors are involved as well, not least because objective circumstances typically exert more influence over action than subjective intention. In

²¹ S. Goldenberg, "Collective Bargaining in the Provincial Public Services," *The Institute of Public Administration of Canada Collective Bargaining in the Public Service* (1973). A useful, if somewhat dated, overview of provincial labour legislation.

²² David Lewis, *The Good Fight: Political Memoirs 1909-1958* (Toronto 1981), 393.

²³ *Ibid.*, 151.

this respect, the adverse effort of the 1940s legislation on the character of the Canadian labour movement must enter into our consideration. Bourgeois reforms, however much they are the product of class struggle, are not without their contradictions. Left unchallenged they can undermine the very conditions which called them into existence, opening the way for future defeats. In reflecting on the approach to union recognition of the IDIA, H.A. 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."²⁴ Logan's reference to the way the legislation devalued militant organization is of crucial importance. Unlike the capitalist firm with its singularity of purpose, unions aggregate discrete individuals with their own purposes. The power of unions lies in the willingness of their members to act collectively, for which a common purpose must be developed.²⁵ This is a social process — an outcome of education and organization involving sustained interaction between leaders and members — and one requiring particular skills. Moreover, the incessant centrifugal pressures of a liberal consumerist society make this a never ending process.

The certification approach to recognition did not just weaken the apparent importance of militant organization, but directed the efforts of union leaders away from mobilizing and organizing towards the juridical arena of the labour boards. In this context, different skills were necessary; it was crucial above all to know the law — legal rights, procedures, precedents, etc. These activities tended to foster a legalistic practice and consciousness in which union rights appeared as privileges bestowed by the state rather than democratic freedoms won and to be defended by collective struggle.²⁶ The ban on strikes during collective agreements and the institution of compulsory arbitration to resolve disputes while agreements were in force had a similar effect. Under these circumstances, it was unnecessary 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. Industrial relations legislation inevitably tends to treat unions as legal entities distinct from the people who comprise them. This was reflected in the typically much greater penalties for union officials who violate the law as compared to those for members, which intensifies the pressure on the former to act as agents of social control over their members rather than their spokespersons and organizers.

²⁴ Logan, *State Intervention*, 76.

²⁵ C. Offe and H. Wessenthal, "Two Logics of Collective Action," *Political Power and Social Theory*, 1 (1979).

²⁶ 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 1937-1974," *Minnesota Law Review*, 62 (1978), 265-339. R. Warskett, "Trade Unions in the Canadian State: A Case Study of Bank Worker Unionization 1976-1980," M.A. thesis, Carleton University, 1981, develops a similar argument in her timely and insightful study of efforts to organize bank workers in Canada.

The corrosive effects on union democracy of this kind of juridical and ideological structuring have been severe.²⁷ 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 were reflected in the acceptance of the greater restrictions on public employees' freedom of association by the broader labour movement. Moreover, the existing labour movement provided no other inspiration or example than legalism for public sector unions granted partial collective bargaining in the 1960s. This model has been particularly debilitating for those public sector unions which have had to engage in little of the mobilization and struggle for recognition that shaped the early labour movement prior to the post-war settlement. Thus, a union like the Public Service Alliance of Canada (PSAC), in contrast to the Canadian Union of Postal Workers (CUPW), was one born almost entirely of legalism rather than mobilization and struggle.

This, of course, is not to suggest that all the newly-recognized public sector unions have been content to accept what has been offered to them. For many the limited rights acquired were seen only as a way station on the path to their final destination of trade union rights equivalent to those enjoyed in the private sector. As events unfolded, however, this proved to be a naively optimistic view. By the time the unions reached this way station in the late 1960s the roadbed was already crumbling because the state had to contend with the wage pressure from its workers, while adjusting to the constraints placed upon it by the emerging crisis of capitalism.

IV

Towards Exceptionalism

THE WAVE OF INDUSTRIAL MILITANCY which arose in the mid-1960s continued on into the early 1970s when it crested as public sector workers, inspired by material aspirations similar to those of private sector workers, exhibited a willingness to fight to achieve them.²⁸ This heightened degree of industrial conflict, however, reflected not just greater worker militancy but also opposition to union demands by capital and the state because of the deepening economic crisis. The long post-war boom had led many observers to believe that sustained economic growth was unproblematic. If capitalism had not quietly passed away, they argued, at least its anarchic character had been subdued by

²⁷ For a graphic illustration see J. Deverell, "The Ontario Hospital Dispute 1980-1981," *Studies in Political Economy: A Socialist Review*, 9 (1982).

²⁸ E. Swimmer, "Militancy and Public Sector Unions," in M. Thompson and E. Swimmer, eds., *Conflict or Compromise: Public Sector Industrial Relations in Canada*, forthcoming IRPP, 1984.

governments armed with Keynesian theory.²⁹ But the post-war boom could not, and did not, last. In the 1970s the economy was characterized by "stagflation"; growth rates below the level necessary for full employment, combined with severe inflationary tendencies. In these conditions, the margin for concessions to secure labour's consent no longer existed. It was capital that increasingly required concessions. Faced with stagnant or shrinking markets, rising resource prices, increased foreign competition, and a labour movement ready to defend its living standards, capital experienced reduced profit margins on existing investments and few new profitable opportunities.

One response by governments in Canada, and elsewhere, involved additional subsidies to capital through loans, grants, and tax concessions. Thus governments underwrote investment and further shifted the cost of the welfare state onto employed workers.³⁰ But these initiatives had little impact on economic growth; indeed, they tended to exacerbate inflation because organized workers responded militantly to preserve their real incomes. Government deficits ballooned as expenditures on corporate subsidies, the unemployed, and public sector wages rose. The other major response by the state to the economic crisis was its attempt to restrict the bargaining power of organized labour. Governments attempted to obtain the "voluntary" agreement of union leaders to limit members' wage demands to some agreed level, in exchange for a union role in state economic decision-making and/or reforms enhancing union security, marginal extensions of the welfare state, etc.³¹ At the same time, governments increasingly deployed the state's coercive powers against the labour movement. These two strategies were not mutually exclusive. Coercive measures served, intentionally or otherwise, to prompt unions to rethink their opposition to "voluntary" restraint. On the other hand, the inability of the state to deliver a *quid pro quo* in a form of the "social wage" because of the growing economic crisis, undermined the viability of the voluntary restraint option and forced the state to adopt more coercive measures.

²⁹ This boom was in fact the product of a historically specific set of conditions which obtained at the end of World War II: 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. 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 Bretton Woods agreement on which the post-war international financial order was based. See, for example, I. Gough, "State Expenditure in Advanced Capitalism," *New Left Review*, 92 (1975).

³⁰ See for example, D. Wolfe, "The State and Economic Policy in Canada 1968-1975," in Panitch, *Canadian State*, 251-88, and I. Gillespie, "On the Redistribution of Income in Canada," *Canadian Tax Journal*, 24 (1976), 419-50.

³¹ See L. Panitch, "The Development of Corporatism in Liberal Democracies," *Comparative Political Studies*, 10 (1977).

Government policy at the federal and provincial levels initially reflected both strategies. In 1969/70 and again in 1974/75 the federal government held discussions with the Canadian Labour Congress (CLC) aimed at securing voluntary wage restraint.³² In a number of jurisdictions there were reforms enhancing union security and workers' collective rights; for example, the relaxation of the restrictions on secondary picketing (B.C.), expansion of the right to refuse unsafe work (Ontario, Saskatchewan, federal government), provisions for imposing first agreements on recalcitrant employers (B.C., Ontario, Quebec), and limitations on the use of strikebreakers (Quebec). Nonetheless, what became particularly striking as the decade of the 1970s wore on, was the state's shift towards new coercive measures. This change was graphically reflected in the rising incidence of *ad hoc* back-to-work legislation at both federal and provincial levels.

TABLE 2
Back to Work Legislation in Canada

	Federal	Provincial	Total
1950-1970	4	9	13
1971-1975	4	11	15
1976-1978	6	13	19
Total	14	33	47

Source: A. Price, "Back to Work Legislation."³³

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."³⁴ Not surprisingly, St. Laurent insisted that it was "not designed to establish precedents or procedures for subsequent bargaining negotiations."³⁵

³² A discussion of these attempts in Canada and the reasons for their failure is found in L. Panitch, "Corporatism in Canada?" *Studies in Political Economy: A Socialist Review*, 1 (1979), 43-92. See also A. Maslove and E. Swimmer, *Wage Controls in Canada 1975-1978* (Montreal 1980).

³³ 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, Queen's University, 1980.

³⁴ Quoted in A. Price, "Back to Work Legislation," 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 disruption of immediate concern to a relatively small segment of society, or to prevent broad public inconvenience. (90)

³⁵ *Ibid.*, 99.

Events were to prove otherwise, as railway workers were threatened with similar legislation in 1954 and actually subjected to it in 1960 and 1966. The increased frequency and wider application of back-to-work legislation was not the only notable trend in the state's use of this weapon. Governments have introduced such legislation with greater dispatch after the onset of a dispute and with less parliamentary debate. They have also legislated increasingly onerous penalties for union members defying the law.

This new reliance on back-to-work legislation was part of a broader pattern of developments, which characterized the onset of a new era in state policy towards labour. What marked this transformation was a shift away from the generalized rule-of-law form of coercion (whereby an overall legal framework both establishes and constrains the rights and powers of all unions), towards a form of selective, *ad hoc*, discretionary state coercion (whereby the state removes for a specific purpose and period the rights contained in labour legislation). We have witnessed a return to the pre-PC 1003 era of "*ad hoc* suspension of hostilities," not to avoid or delay the establishment of freedom of association, but to contain or repress manifestations of class conflict as practised within the institutionalized freedom of association. In the last decade, actions legal under general legislation have increasingly been declared unlawful for particular groups of workers or for all workers for a particular period of time. The state's resorting with increasing frequency to emergency rhetoric and powers to override the general framework of freedoms clearly indicated that there was a crisis in the old form of rule. This is precisely what has happened in Canada over the last decade, and today characterizes the state's response to labour.

The treatment accorded to CUPW by the federal government in 1978 illustrates this crisis as it is manifested through back-to-work legislation. 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 began, the government immediately invoked back-to-work legislation (Postal Services Continuation Act, Bill C-8), which revived the previous collective agreement and overrode the relatively small penalties in the Public Service Staff Relations Act to allow for potentially unlimited penalties. 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 (not publicly urging them to obey the law).³⁶ Similar requirements on union leaders specified in previous back-to-work legislation had escaped public notice because they were either obeyed, or if not, were disregarded by the government. In charging Parrot, and in the courts making bail for Parrot conditional upon his telling CUPW members what the law required, the state not only set aside the general legal provisions for the union's right to strike, but also the Bill of Rights protection of free speech.

³⁶ H.J. Glasbeek and M. Mandel, "The Crime and Punishment of Jean-Claude Parrot," *Canadian Forum* (August 1979), 10-14.

The increased use of back-to-work legislation is only one sign of the end of the era of free collective bargaining. Equally significant is the use of designations in the public sector to remove the right to strike from a much broader group of workers, and the use of statutory incomes policy to suspend free collective bargaining. Under the 1967 legislation extending 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 the workers performing these jobs the right to strike. As interpreted by the Public Service Staff Relations Board (PSSRB), the definition of "safety and security" was a relatively narrow one, so that the right to strike was not vitiated by indiscriminate use of designations,³⁷ and the government traditionally accepted the PSSRB's definition. This practice was shattered in 1982 when the government, intent on withdrawing the right to strike of virtually the whole Air Traffic Controllers group, successfully challenged the Board's definition of "safety and security" in the Supreme Court.³⁸ This ruling allows the government to designate anyone whose normal work activities, in the government's own view, concern the safety and security of the public. Three sets of negotiations have occurred since this decision, which permit an assessment of the government's future intentions. In two cases, the percentage of workers designated was increased by half — to over 40 per cent of all workers in the Program Managers category of the federal public service, and to over 90 per cent of heating and power workers. In the other case, Library Sciences, the number of designations remained insignificant.³⁹ It would appear that this difference reflects an implicit criterion of basing designations on the bargaining strength of a group of workers.

The use of back-to-work legislation and of designations primarily concern public sector workers. The statutory incomes policy of the Anti-Inflation Programme of 1975-78 suspended free collective bargaining for all workers. It was initiated by the government and upheld by the courts on the basis of an elastic definition of economic emergency. Once again, the rules of the game established in the post-war settlement were set aside through special legislation, which empowered the Anti-Inflation Board to examine newly negotiated agreements and roll back wage increases exceeding the government's guidelines. The act created an "Administrator" to enforce a Board report or Cabinet order through the onerous penalties of unlimited fines and five years imprisonment. The new spirit of the era was adequately expressed by Prime Minister Trudeau when he cynically told a radio interviewer immediately after the initiation of

³⁷ The "designation" of the Governor General's gardener during the 1974 strike by the General Labour and Trades group illustrates the willingness of the government to exploit this provision.

³⁸ The Canadian Air Traffic Control Association vs. the Treasury Board. Judgement dated 31 May 1982.

³⁹ Information supplied by an official of PSAC.

the Anti-Inflation Programme that "We'll put a few union leaders in jail for three years and others will get the message."⁴⁰

It is now virtually universally conceded that despite the government's rhetoric about equivalent price, dividend, and profit restraint under the Anti-Inflation Programme, the substantive aspect of the policy entailed only wage controls. Prime Minister Trudeau, in his October 1982 broadcast, referred to a comprehensive but temporary statutory prices and incomes policy of the 1975-78 type as follows: "... 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."⁴¹ A more appropriate metaphor for the 1975-78 case would have the referee holding the arms of one of the boxers while the other flailed away.

V

The New Era

AS INDICATED IN THE INTRODUCTION, the events of 1982 which combined the silence of the new constitution on bargaining and strike rights with the particularly draconian, "temporary" suspension of those rights for a very large number of Canadian workers, signal a new era in labour relations. It inaugurates a new era, however, only in the sense that it makes explicit what was implicit in the developments of the last decade. What has been made explicit 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. The suspension in 1982 of public sector workers' rights was not proclaimed or defended in terms of what it would directly accomplish to stem inflation and reinvigorate Canadian capitalism. It was offered as an example of what other workers must voluntarily do if these objectives are to be attained.

What characterizes the new era is not only a series of *ad hoc* coercive measures by the state, but also the construction of a new ideology to extend 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 universally remove the right to strike and free collective bargaining — the new state coercion is paradoxically capable of being ideologically portrayed as "voluntary." 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:"

⁴⁰ See L. Panitch, *Workers, Wages, and Controls: The Anti-Inflation Programme and its Implications for Canadian Workers* (Toronto 1976), esp. 1, 18.

⁴¹ Quoted in *Globe and Mail*, 21 October 1982.

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.⁴²

The successful presentation of increased use of state coercion in this obfuscatory way is conditional upon 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 amidst careful phrases which asserted that only “*comprehensive* controls” were coercive and contrary to the principle of a “free people acting together.” They were rather “examples” for other workers’ “voluntarism.” That this 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 element is that the specific acts of coercion — back-to-work legislation, designation, statutory incomes policies — be continually portrayed as temporary, exceptional, and emergency-related, regardless of how frequently they occur, and the increasing numbers of workers who fall within their scope or are threatened by their “example.” In so far as the terminology of emergency and crisis can be made elastic enough to cover a whole era rather than specific events, months or even years, measures presented as temporary can come to characterize an entire historical period.

Finally, and perhaps most importantly, the voluntary ideological veneer of the new era rests upon the construction of a new set of norms to justify labour’s subordinate role within capitalism. The post-war settlement sought to maintain capital’s dominant position by establishing legal rights for organized labour to protect the workers’ immediate material interests in a capitalist system. The *new era’s* ideology reverses this earlier logic. It places the *onus* on labour to maintain capitalism as a viable economic system by acquiescing to capital’s demand for the restriction or suspension of labour’s previously recognized rights and freedoms, as well as sacrificing its immediate material interests. Whereas the “question of social justice” was the key phrase in the construction of the hegemony of the 1940s, Trudeau’s “question of trust and belief” becomes the key phrase in the effort to reconstitute it in the 1980s.

It must be stressed that Trudeau and his government do not stand alone in effecting the construction of the “trust and belief” element of the new ideology. They are aided not least by a bevy of industrial relations experts, many of whom are recognized publicly for their “pro-labour” sentiments. A good example is provided by Paul Weiler. At one level, his book displays with refreshing candour the dilemmas of a liberal reformer in its attempt to combine a spirited defence of the right to strike with a model of state intervention which

⁴² *Ibid.*

will ensure that this right will not be disruptive to capital. At another level, Weiler's study makes an unwitting contribution to the construction of the new ideology when he attempts to justify statutory incomes policies as being in labour's interests. Weiler acknowledges that the 1975-78 Anti-Inflation Programme only involved effective wage restraint, adding that for economic (the "openness" of Canada's economy) and political (capitalist objections, the evils of bureaucracy) reasons, such programmes cannot do more than restrain incomes. Nor does he view wage increases as the sole cause of inflation. Nonetheless, he commends controls, if not the government's lack of candour, to labour, arguing that it is in labour's interests to acquiesce to such policies. The uncertainty that inflation creates "interferes with rational business planning and investment," reduces the rate of job creation, and makes Canadian products less competitive internationally, all of which threaten to create "unemployment in our plants and factories." Controls in this context "facilitate an orderly winding down of inflation . . . with a minimum of disruption and unemployment."⁴³ In other words, labour should eschew efforts to defend its economic interests directly and entrust its future to capital.

The "trust and belief" required of labour in this new era may sound reasonable, but it is not. It requires labour to trust that capital will use workers' forgone wages and social benefits to invest in Canada rather than abroad, without any guarantees that they will in fact do so. It requires labour to trust that capital will not speculate in land, currency, or commodity markets nor use re-established profit margins to reward executives lavishly. Indeed, if trust and belief in capital are the requirements of the day for workers, what, one might ask, is the use of unions at all? Perhaps they are useful only if they can be induced to contribute to spreading the new ideology and to policing their members' adherence to the new coercive interventions and their "voluntary" by-products? One is reminded of an earlier Pierre Elliott Trudeau writing after the 1949 Asbestos Strike:

In the present state of society, in fact, it is the possibility 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.⁴⁴

VI

Towards the Future

WHAT WILL BE THE LABOUR MOVEMENT's response to the new era? It cannot be assumed that Canadian labour will lie down and play dead. The

⁴³ P. Weiler, *Reconcilable Differences*, 254.

⁴⁴ P. E. Trudeau, *The Asbestos Strike* (Toronto 1974), 335.

CLC's national one-day general strike against the Anti-Inflation Programme, known as the Day of Protest of 14 October 1976, was an early instance not only of Canadian labour's unwillingness to succumb to the first salvos in the new era of coercion, but also of a certain preparedness even among the top leadership, to respond with industrial action. Moreover, as the economic crisis deepened, some Canadian unions, such as the United Auto Workers, were much less cowed by their employers than their American counterparts and managed to obtain significantly better contract terms. Similarly, Canadian public employees appear to have been less frightened by threats of public expenditure cut-backs than have their American counterparts as evidenced by a number of public sector strikes, most notably by nurses in Alberta, hospital workers in Ontario, and federal clerical workers. But these facts may only explain why the state acted to restrict significantly the rights of the Canadian working class in 1982. They tell little about how workers will respond in the longer term.

There is little reason to expect that the Canadian labour movement will be capable of mounting any meaningful or sustained counter-offensive in the immediate future. The leaderships' commitment to the existing legal framework, even when new legislation has abrogated previous laws enshrining workers' rights, has been remarkable. This was graphically illustrated by the CLC's abandonment of the postal workers in 1978 and CLC President Denis McDermot's explicit attack on the union. It was seen again in 1983 when the CLC's initial public response to the B.C. government's evisceration of trade union rights, along with tenant and civil liberties protections, was to counsel the workers affected against taking strike action.

The union movement has been clearly unprepared for each successive coercive blow struck by the state over the past decade. The 1976 Day of Protest, while in itself a successful and unprecedented mobilization by the CLC, came ultimately to represent the climax of real opposition to the Anti-Inflation Programme rather than the onset of a campaign of sustained mass mobilization. Despite the repeated attacks on the right to strike, the CLC, virtually alone among large interest groups in Canada, remained aloof from the constitutional debate. It did not even make representation to the parliamentary hearings regarding inclusion of 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. Although the practical effects of such declarations may not be great, inclusion of such rights at least helps to legitimate union struggles around these issues. Even an unsuccessful campaign for including such rights in the constitution would have put the issue before their members and the broader public.

For various reasons, including the federal NDP's alliance with the Liberals and the reluctance of the Quebec Federation of Labour to be seen improving a constitution which the Quebec government unalterably opposed, the CLC did not act. Ironically, on the very day (12 January 1981) that the Justice Minister appeared before the special parliamentary committee to present the govern-

ment's amendments to the Charter of Rights and Freedoms in response to the submissions received from about 100 groups across 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 had violated international labour conventions (ratified by Canada in 1972) by denying the right to strike to its own employees.⁴⁵ Would the CLC have been less complacent about the constitution if it had known that but two months after its proclamation, the right to strike would be "temporarily" removed from federal employees as well?

To be sure, the defence 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 neither at the top nor the bottom is capable of undertaking a sustained coordinated defence — industrially, politically, ideologically — of the right to strike? In advance of the federal government's "6 and 5" legislation, a resolution calling for action up to and including a general strike in the event that the government abrogated the right to strike was carried by a huge majority at the CLC convention. The CLC leadership is not wrong in recognizing that such resolutions from the left contain a large measure of rhetorical flourish and lack mass support. Years of neglect of the mobilizing aspects of trade unionism and years of practice of legalism have taken their toll on the fighting capacity of union organizations. This of course neither excuses, nor more importantly explains, the failure of the union leadership seriously to attempt to build such support. The nature of the problem, which goes well beyond facile charges that the leadership lacks the will to fight, was cogently expressed by J.C. Parrot in a recent interview. Responding to the question of why resistance by the union leadership to the new coercion has been so weak, he noted:

Well, it starts with a feeling of being powerless. So why do they feel powerless? Well, first of all, the big thing is that we are fighting the government and fighting against the law. So you get the feeling, how can I do something? If you meet with lawyers two or three times in a week, they are not going to tell you that you have to fight on the streets. They are going to tell you what the legal avenues are, and so you get directed to that. And then, in addition, many leaders have no control over the unions. When I say control, I mean that it's not even controlled by the members either. The structure is made in such a way that in order for the leaders to get to the membership, they have to go through a structure, and never get to the membership, which is a serious problem. Especially at a time when you have to work with other unions, as in fighting Bill C-124, the structure of the labour movement is unbelievable. People don't seem to know what to do. It's like the leadership has never gotten involved in a struggle before. It seems you have to go through all the ABCs of what a struggle is in order to be able to get organized.⁴⁶

⁴⁵ *Globe and Mail*, 13 January 1982.

⁴⁶ "J.C. Parrot: An Interview," *Studies in Political Economy: A Socialist Review*, 11 (1983), 61.

Of course, one must not overestimate the dominance of capital and state in this crisis nor the permanence of the present union paralysis. The contradictions to be contained by the new ideology are not easily managed. The ideology of the era of free collective bargaining was rooted in a material basis of consent permitted 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 amidst 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 defending Polish workers' rights at the same time as Canadian workers' rights are being denied.

The following *Globe and Mail* editorial refers to Poland but it could just as easily apply to Canada:

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 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. . . .⁴⁷

The conditions are obviously not propitious for selling the new coercion in terms of voluntarism and freedom. It is surely not by accident, after all, that the massive and broad-based opposition to the repressive measures imposed by the Bennett government in B.C. has rallied under the name Operation Solidarity. Moreover, one's assessment of the combative potential of the union movement should not be restricted to what the CLC or the union leadership accomplishes in its 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 may be expected to induce a rather different, more combative labour movement in turn.

⁴⁷ Editorial, *Globe and Mail*, 8 October 1982.

The ideas in this paper were first developed for a conference on public sector industrial relations sponsored by the Institute for Research on Public Policy (IRPP) and the School of Public Administration, Carleton University in October 1982, the proceedings of which are to be published in 1984 as an IRPP publication. This paper elaborates our argument considerably and updates it in light of recent developments. We would like to express our appreciation to Laurel Sefton MacDowell, Eugene Swimmer, Peter Warrian, and Reg Whitaker, and the anonymous reviewers for Labour/Le Travail for their thoughtful criticisms of our original ideas. The editorial assistance of Heather Swail in preparing this manuscript for publication is also gratefully acknowledged.

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