

Relations industrielles Industrial Relations



U.S. Responses to the Canadian Industrial Disputes Investigation Act

La réaction américaine à la Loi canadienne des enquêtes en matière de différends industriels

Bruno C. Ramirez

Volume 29, numéro 3, 1974

URI : <https://id.erudit.org/iderudit/028531ar>

DOI : <https://doi.org/10.7202/028531ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer cet article

Ramirez, B. C. (1974). U.S. Responses to the Canadian Industrial Disputes Investigation Act. *Relations industrielles / Industrial Relations*, 29(3), 541–559. <https://doi.org/10.7202/028531ar>

Résumé de l'article

La croissance rapide du syndicalisme qui a suivi une crise économique grave aux États-Unis entre 1893 et 1896, tout comme l'augmentation des grèves qui l'ont accompagnée, portèrent au premier plan la question de l'arbitrage des conflits industriels. L'arbitrage devait-il être volontaire ou obligatoire ? Ce sujet devait rester d'actualité pendant toute la durée de l'*Ere du Progrès* alors que divers groupements et organisations réformistes essayèrent de trouver une solution pratique au « problème ouvrier ». C'est dans ce contexte historique que l'article ci-dessus analyse les répercussions de la *Loi des enquêtes en matière de différends industriels* (Loi Lemieux) aux États-Unis. L'article tente aussi de montrer dans quelle mesure la question de l'arbitrage a eu tendance à déborder les frontières strictes des relations professionnelles pour prendre une véritable signification politique.

Au tournant du siècle, le *New Zealand Arbitration Act* (Loi d'arbitrage de la Nouvelle-Zélande) avait soulevé beaucoup d'intérêt et reçu énormément de publicité aux États-Unis. Cette loi était le premier exemple d'une législation imposant l'arbitrage obligatoire et exécutoire aux deux parties dans un différend du travail. La controverse qu'elle suscita montra cependant que l'opposition à cette forme d'arbitrage était le sentiment prédominant. Cette opposition provenait, non seulement du mouvement syndical, mais aussi de l'influente *National Civic Federation* (Fédération nationale des droits civils), une organisation à caractère national, où étaient représentés les syndicats, les hommes d'affaires et le public, et qui joua un rôle considérable dans l'établissement de la politique en matière de relations professionnelles pendant toute la durée de cette période d'expansion économique.

Le débat reprit de nouveau lorsque, en 1907, le Parlement canadien adopta la *Loi des enquêtes en matière de différends industriels* (Loi Lemieux). L'intérêt immense que cette loi produisit aux États-Unis était d'abord attribuable au fait qu'elle imposait aux parties un mécanisme d'enquête. En réalité, la Loi avait touché un des points auxquels le mouvement progressif était le plus sensible, c'est-à-dire à l'idéologie de la toute-puissance de l'opinion publique et de la valeur incomparable de la société démocratique. L'accent mis sur l'idée d'enquête qu'on trouvait énoncée dans la Loi concrétisait et rendait effective la notion d'opinion publique. D'un concept abstrait, elle faisait une force positive favorisant ce qu'on appelait « l'intérêt public ».

Pendant que le mouvement syndical trouvait inacceptable ce mécanisme d'enquête obligatoire et qu'il s'opposait avec vigueur à cette législation, la Loi obtenait, au contraire, la faveur des milieux gouvernementaux tant au niveau du fédéral que des États. Les principaux États fortement industrialisés, tels que les États de New York et du Wisconsin, présentèrent des projets de loi qui renfermaient des dispositions s'inspirant de la Loi canadienne ; d'autres États projetaient de faire la même chose. En 1914, le Colorado réussit à faire adopter une loi des différends du travail qui, sauf en de légères variantes, était une réplique de la *Loi des enquêtes en matière de différends industriels*. Aussi, parmi un grand nombre de médiateurs des gouvernements, la Loi reçut-elle un accueil favorable, sinon enthousiaste. La réaction des milieux réformistes était, au contraire, partagée. Ceci était surtout visible à l'intérieur de la *National Civic Federation* où un désaccord violent entre les représentants du travail et les représentants du monde des affaires engendra une longue et ardente controverse qui, à certains moments, fut la cause de crises graves dans l'organisation.

L'influence de la *Loi des enquêtes en matière de différends industriels* se refléta aussi dans les travaux de V.U.S. *Commission of Industrial Relations* en 1914 et en 1915. Créée en vue de faire enquête sur les conditions de la vie industrielle et de proposer des recommandations législatives sur un grand nombre de questions en matière de législation du travail, la Commission attira l'attention sur la Loi canadienne afin de se rendre compte de la réaction du public américain et d'en apprécier la valeur pratique. Le rapport final de la Commission laisse voir une polarisation certaine des opinions en faveur du principe de l'enquête obligatoire, à l'exception des représentants syndicaux qui la rejetaient et des représentants patronaux qui la recommandaient dans les entreprises de service public. Par contre, l'éminent économiste du travail, John Commons, qui était un membre important de la Commission, adopta une voie médiane. Il trouva que le principe de l'enquête avait une grande valeur et recommanda l'adoption d'une « commission d'enquête volontaire, qui consisterait dans une adaptation de la Loi canadienne, mais dénuée de tout caractère obligatoire ».

Dans les mois suivants, le débat prit une tournure fort dramatique, alors que, à l'été de 1916, les quatre fraternités de cheminots menacèrent de déclencher une grève nationale qui, si elle avait eu lieu, aurait paralysé le pays. C'est pendant cette crise industrielle et ouvrière imminente que les dispositions caractéristiques de la *Loi des enquêtes en matière de différends industriels* furent envisagées en plusieurs milieux comme une solution possible. C'est à ce moment que les stipulations de la Loi canadienne vinrent le plus près d'être incorporées dans la législation américaine du travail au niveau fédéral, alors que le président Wilson et son cabinet cherchèrent à appliquer une formule « en ayant à l'esprit la *Loi canadienne des enquêtes en matière de différends industriels* ». Cependant, l'opposition irrésistible du mouvement syndical et l'aggravation de la situation internationale forcèrent Wilson à céder aux exigences des fraternités en adoptant ce qui est devenu l'*Adamson Act*. Non seulement la guerre mit-elle fin à cette controverse, mais elle l'empêcha de dégénérer en une bataille à finir entre le mouvement syndical et le front uni du gouvernement et des employeurs.

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U.S. Response to the Canadian Industrial Disputes Investigation Act

Bruno Ramirez

The author analyses the impact that the Canadian Industrial Disputes Investigation Act of 1907 had in the U.S. His article also tries to show the extent to which the question of arbitration tended to transcend the narrow boundaries of industrial relations practice and acquire a wider political significance.

Among the many questions the Progressive movement grappled with and left unresolved, one stands out both for its complexity and for the pivotal importance it took on throughout the Progressive Era. This was the problem of the conflict between labour and capital, not so much in the rather abstract sense of the irreconcilability of the interests of two social classes, but rather in terms of the concrete institutional framework which was needed to contain that conflict and bring it under social control. Central to this problem was the question of arbitration of industrial disputes, especially when arbitration involved the intervention of a third party whose decision would have a determining weight on the result of the dispute, and more importantly, when this third party was the government. Under what circumstances and on what basis should this intervention become necessary? Should the government intervene on an advisory basis leaving the final decision to the two disputing parties, or should the government use its power to compel the parties to reach a settlement, thereby bringing the dispute to an end? In an era of rapid economic transformations in which the traditional relations of power between capital and labor were subject to constant changes, and in which the State's positive role was making major strides, it is not difficult to see how the question of arbitration tended to transcend the narrow boundaries of industrial relations practice and acquire a wider political significance.

RAMIREZ, B., Department of History, University of Toronto, Toronto, Ontario.
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It is in this context that the Canadian Industrial Disputes Investigation Act (IDI) of 1907 is of particular historical importance for the US situation, for the reactions it generated in US industrial and progressive quarters sheds much light on the limitations of the progressive movement in coming to grips with this problem, and ultimately, contributes to a deepening of our understanding of the progressive movement itself. Moreover, it gives us a particular vantage point which makes it possible to enlarge the basis for more comparative studies of the industrial and labour experiences of the two countries during the Progressive Era.

THE DEBATE AROUND THE NEW ZEALAND ARBITRATION ACT

The debate over arbitration had its first major impetus during the prosperity years which followed the severe 1893-96 depression. The rapid growth of unionism which characterized those years was accompanied not only by a remarkable spread of trade agreements in various industrial sectors and trades, but also by a high level of industrial conflict which in the minds of many industrialists posed a serious threat to the productive upswing the economy was undergoing¹. If the trade agreement, with its corollary of conciliation and voluntary arbitration, was having some effect in reducing the level of industrial warfare, its limitations in insuring industrial peace had become quite apparent, especially in those cases where one of the two parties (or both) refused to refer the issue of the dispute to arbitration. Moreover, one of the basic assumptions underlying the trade agreement system — as it had been elaborated and publicized by labour spokesmen and by progressive organizations such as the National Civic Federation (NCF) — was that no compulsion of any sort would be resorted to in the process of settling a dispute.

Coupled with this limitation of the trade agreement, was the widespread publicity that the New Zealand Arbitration Act began to enjoy in the USA around the turn of the century. This Act was the first instance in which arbitration was made compulsory and binding for the two parties to a dispute². Despite the immediate opposition from organized labour and from many employers, the compulsory arbitration feature

¹ U.S. Bureau of Labor, *Twenty-First Annual Report of the Commissioner of Labor, 1906; Strikes and Lockouts*, (Washington D.C., 1907). Cf. also, Marcus A. Hanna, «Industrial Conciliation and Arbitration», *Annals of the American Academy of Political and Social Science*, XX (July, 1902), pp. 29-34.

² Victor S. CLARK, «Labor Conditions in New Zealand», U.S. Bureau of Labor, *Bulletin No. 49*, Nov. 1903, pp. 1142-1281.

of the New Zealand Act aroused the interest of many progressive figures and politicians. William Holt, the famous New York publisher and editor, was enthusiastic with the Act and gave it widespread publicity through his newspaper network. Great enthusiasm and unqualified support came also from Henry D. Lloyd, who had visited New Zealand and had observed carefully the operation of that new experiment in industrial relations. Upon his return to the United States, Lloyd published his book *A Country Without Strikes*, in which he elucidated the features of the arbitration legislation, and concluded that the Act pointed the way toward the goal of industrial peace³. Even US labour leaders admitted that the New Zealand Act had proved quite beneficial to the labour and industrial community of that country. One such leader was United Mine Workers president John Mitchell who in his influential book *Organized Labor* subjected the Act to a lengthy analysis. If on the one hand Mitchell concluded that a similar Act could not be applicable to the US given that country's different socio-political and geographical conditions, on the other hand he did not exclude that there were particular instances — such as public utilities industries and railroads engaged in inter-state traffic — «... in which compulsion might possibly prove beneficial».⁴ The interest showed toward the Act by US politicians was remarkable and it became evident on occasion of Mr. Lusk's visit to the United States. Congressmen and members of several State legislatures had the opportunity of hearing the author of the New Zealand Act himself explain to them the features of the arbitration legislation. The impact of Mr. Lusk's visit is reflected by the subsequent attempt of some State legislatures to introduce arbitration legislation modelled after the New Zealand Act.⁵

If the publicity that the New Zealand Arbitration Act received had the effect of popularizing in the US the idea of compulsory arbitration, it also shewed that the prevailing sentiment was against adopting similar compulsory arbitration schemes. Leading this opposition was the NCF. Through its pioneering work in conciliation and arbitration during its first years of activity, which had resulted in the settlement of hundreds of disputes, the NCF could boast that compulsory arbitration was unnecessary.⁶ At the ideological level, the principle of compulsory arbitration ran counter to the ideology underlying the trade agreement, which the NCF had been so instrumental in promoting, i.e., the ideology of «harmony

³ Henry DEMAREST LLOYD, *A Country Without Strikes* (New York, 1900).

⁴ John MITCHELL, *Organized Labor* (Philadelphia, 1903), p. 345.

⁵ U.S. Commission on Industrial Relations, *Final Report* (Washington D.C., 1916), Vol. I, pp. 720-1.

of interests » between capital and labour. The trade agreement, in fact, rested on the assumption that through discussion and joint conferences capital and labour would discover their common interest and thereby work out a peaceful solution to their dispute.⁷ Compulsory arbitration implied instead that the two parties were divided by irreconcilable interests, and that the only way to put an end to the dispute was to let an impartial third party render a decision which would be binding.

THE CANADIAN INDUSTRIAL DISPUTES INVESTIGATION ACT OF 1907

It is on this note of clear rejection that the debate on compulsory arbitration soon subsided, undoubtedly pushed to the background by more burning issues which characterized the US labour scene from about 1903 to 1906. Then in 1907 the debate resumed again, when the Canadian Parliament passed the Industrial Disputes Investigation Act. The Act was occasioned by a prolonged strike in the coal mines of Alberta, which threatened the fuel supplies of the prairie Provinces and made the outlook for the incoming winter a grim one. The most important feature of the Act was the provision according to which the parties to a dispute had to subject themselves to the investigation of a fact-finding board before taking any strike or lockout action. The board was given 30 days to carry out its investigation, and during such time no hostility could be initiated. Only after the investigation was concluded and the facts made public, could the parties resort to their coercive weapons. Both parties were subjected to penalties should they violate the truce provision. The Act applied to public utilities industries and mines (both coal and metal)⁸.

The reponse that this legislative measure generated in US industrial and labour quarters was much stronger than that produced earlier by the New Zealand Act. Partly this was due to the geographical proximity

⁶ On the history and the activities of the National Civic Federation during the Progressive Era see, Marguerite GREEN, *The National Civic Federation and the American Labor Movement 1900-1925* (Washington DC., 1956); Gordon JENSEN, «The National Civic Federation: American Business in an Age of Social Change and Social Reform, 1900-1910» (unpublished Ph.D. dissertation, Princeton University, 1956); James WEINSTEIN, *The Corporate Ideal in the Liberal State* (Boston, 1968).

⁷ The ideology upon which the trade agreement rested has been analysed at some length in Bruno Ramirez, «Le Tensioni Ideologiche nella Storiografia del Progressismo Nordamericano», *La Critica Sociologica*, 23, (Fall 1972), pp. 62-90.

⁸ Cf. *Labour Gazette*, VII, April 1907, pp. 1108-9; U.S. Bureau of Labor, *Bulletin N. 76*, May 1908, pp. 657 ff.

of the Canadian industrial situation, which also meant that US-based international unions (AF of L affiliates) which operated in Canada would be directly affected by the Act. More importantly, however, the Act had struck one of the notes toward which progressive sentiment seemed to be most sensitive — the ideology of public opinion and the value it embodied in a democratic society. The investigation feature of the Act would make the notion of public opinion concrete and operative, and transform it from an abstract concept into a positive force in favour of the 'public interest'. The weight of public opinion would in fact be brought by disclosing to the general public the facts which lay beneath the dispute. This would act as a major restraining force, especially for the party that appeared from the investigation as making the most uncompromising demand, in that it insured public condemnation should this party seek a settlement by resorting to force. The compulsory feature of the Act, moreover, appeared in a new light and made the formula appealing to many who had found the New Zealand Act much too constraining. The Act, in fact, hit a mid-way ground between the two extremes which up to that point had constituted the two open alternatives : its compulsory feature appeared to be much more moderate than that provided for by the New Zealand Act, for it only applied to the period during which the investigation was being conducted. On the other hand, this compulsory feature was enough to make the Act depart from the 'voluntarist' approach that Gompers and the NCF had both preached and practiced over the years.

The appreciation of these 'enlightened' traits of the Act became soon evident in the first official US examination of the Act, done by Dr. Victor S. Clark for the U.S. Department of Commerce and Labor⁹. The analysis was based on the first twelve months in which the Act had been in operation, and took into account the immediate responses from various sectors of Canadian society. The evaluation was clearly positive. The Act was viewed as « the logical first step toward government intervention in labor disputes »¹⁰ ; judging from its first year of operation — the Bulletin pointed out — the Act had « accomplished the main purpose for which it was enacted, the prevention of strikes and lockouts in public services industries »¹¹. In analysing the Act's most innovative feature —

⁹ Victor S. CLARK, « The Canadian Industrial Disputes Investigation Act of 1907 », U.S. Bureau of Labor, *Bulletin No. 76*, May 1908, pp. 657-740.

¹⁰ *Ibid.*, p. 657.

¹¹ *Ibid.*, p. 678.

i.e., the machinery for compulsory investigation — the author took great pain in emphasizing the conciliatory dimension of the process as against its judicial dimension, thus toning down the element of compulsion underlying the Act. This interpretation was greatly facilitated by contrasting the Canadian Act to the New Zealand arbitration act whose compulsory aspect was, as already pointed out, quite far-reaching. This analysis therefore presented the IDI Act as a most progressive piece of legislation which pointed the way to industrial peace, a « hopeful example » for the American people which would « prove a guiding star in their difficulties » ¹².

REACTIONS FROM LABOUR AND REFORM GROUPS

If the advocates of the Act were careful to contrast it to the New Zealand Act in order to stress the former's moderate character, the opponents of the Act tended, instead, to lump both Acts together. From the 'voluntaristic' standpoint Gompers and other AF of L leaders looked at the Act, there was not much point drawing fine distinctions between those Acts. « As soon as the Government steps in — as Gompers pointed out — and says to the workingman . . . : you must work under such conditions as are here stipulated ; if you do not work you will go to prison. At that moment slavery has been introduced . . . call it by whatever name you please, compulsory arbitration or compulsory investigation, compulsory work pending the final determination of that investigation . . . [establishes] the system of slavery . . . » ¹³ For Gompers the thirty-day, no-strike order — pending the result of the investigation — was enough to make the Canadian Act appear as an infringement of the workers' most sacred right, the right to withhold their labour. Hence, the reaction from AF of L quarters was immediate. Gompers' opposition to the Act became one of overt belligerence, and he welcomed all opportunities to denounce it as a most oppressive and enslaving piece of legislation. He saw the potential that the IDI Act might have in influencing US public opinion in favour of some form of compulsion in the settlement of industrial disputes. Gompers' fears were not unfounded. During the 1908-1909 legislative session two important industrial States, New York and Wisconsin, had introduced in their state assemblies bills which embodied provisions modelled after the Canadian Act ¹⁴. Although these early attempts did

¹² *Ibid.*, p. 680.

¹³ U.S. Commission on Industrial Relations, *op. cit.*, p. 721.

¹⁴ U.S. Bureau of Labor, *Bulletin No. 86*, January 1910, p. 21.

not go very far, some years later the New York State legislature tried again to push through a similar bill. This proposed bill became the principal topic of discussion at the 13th annual meeting of the NCF's Executive Council. Here Gompers — who was the vice-president of that Council — embarked on a pointed speech in which he stressed the danger of arbitration schemes such as the Canadian one, and expressed his determination to fight any measure which would take away from the workers their right to strike, under whatever guise it presented itself¹⁵. Gompers' belligerence toward the IDI Act would intensify through the years as other States would contemplate similar legislation, and as the State of Colorado would actually succeed in passing an industrial disputes law which, except for some slight difference, was essentially a replica of the IDI Act¹⁶.

Of the AFL-affiliated unions, the one that became most vocal in denouncing the IDI Act was the United Mine Workers Union. This seemed obvious since the union was directly affected by the provisions of the Act due to the fact that the Alberta and British Columbia coal miners were organized by that union. At the 1909 Annual Convention of the mine workers union in Indianapolis, the miners adopted a resolution which outrightly condemned the Act. A resolution was also passed by the Canadian delegates, advising «... our brothers on this side of the line to oppose any such measure of like nature to the utmost of their powers»¹⁷. John Mitchell, who after leaving his position as president of the UMW remained one of the most influential figures in progressive industrial and labour circles, attacked the bill as being ineffective, and therefore, useless legislation. To Henry Howard — chairman of the Boston Chamber of Commerce — who had written to Mitchell expressing interest in the Canadian Act, Mitchell answered pointing out the clearly anti-labour character of such a measure. Howard's interest in the Canadian Act stemmed from the fact that a bill resembling the Canadian IDI had been introduced in the Massachusetts legislature¹⁸. Few years later, when called upon by the US Industrial Relations Commission to give his opinion on the merits of the IDI Act, Mitchell called it a «re-

¹⁵ *Proceedings of the 13th Annual Meeting of the Executive Committee of the NCF*, January 28, 1913, Box 187(1), National Civic Federation Papers, New York Public Library.

¹⁶ *Monthly Review* (of the US Bureau of Labor Statistics), I, 6 (Dec. 1915), 10-12.

¹⁷ US Bureau of Labor, *Bulletin No. 86*, January 1910, p. 15.

¹⁸ John MITCHELL to Henry HOWARD, Feb. 7, 1910, John Mitchell Papers, Box 156, The Catholic University of America.

pressive system »¹⁹, and « ... a species of involuntary servitude, which is repugnant to the law of the land »²⁰.

If US organized labour was united in denouncing the Canadian Act, the same cannot be said of the NCF. Although the leading spokesman of the Federation, Ralph Easley, had left no doubts as to his opposition to the Canadian law, there remained among the members of the Federation a certain amount of ambiguity as to the feature of the Act. This was due in part to the fact that many of the NCF's executive council members were employers who obviously looked at the Canadian Act from quite a different angle. A leading example was Marcus Marks. As president of the National Association of Clothiers, he had been a leading member of the Federation for many years, and enjoyed a high reputation in industrial circles on account of his repeated services as mediator and conciliator for the Federation's Conciliation Department. The historian of the Federation calls him « the star mediator »²¹. Besides his practical knowledge of that field growing from his involvement in hundreds of disputes, he was also a keen student of the subject. His response to the IDI Act was enthusiastic. He wrote Easley that he was « impressed with it »²², and took a particular interest in the measure, spending a great deal of time travelling throughout Canada, talking with arbitrators, labour leaders, employers and politicians. He soon became convinced that the Canadian Act pointed the way toward a peaceful solution of the industrial problem and firmly believed — as he told a NCF audience — that « ... the principles of that Act [could] be introduced into our States »²³. He gave wide publicity to the principles of the Canadian Act in various articles which he wrote through the years. One such article appeared in the *Independent* in 1910, and was later put into pamphlet form and widely circulated²⁴. The article aroused the wrath of Gompers not only for the position Marks took in regard to the IDI Act but also for the position he took on the thorny topic of the open versus closed shop. Gompers decided to call this whole issue to the attention of the labour public by reproducing the article in the *American Federationist* and by

¹⁹ U.S. Commission on Industrial Relations, *op. cit.*, p. 421.

²⁰ *Ibid.*, p. 422.

²¹ Marguerite GREEN, *op. cit.*, p. 300.

²² Marcus M. MARKS to Ralph EASLEY, Jan. 22, 1912, Box 79a, NCF Papers.

²³ *Proceedings of the Eleventh Annual Meeting of the National Civic Federation*, New York, January 12 to 14, 1911 (New York, 1911), p. 283.

²⁴ Marcus M. MARKS, « The Employer and the Labor Union », *Independent*, LXVIII (May 26, 1910), pp. 1112-1115.

refuting its arguments. Referring to the principle of compulsory investigation which Marks had advocated, Gompers pointed out that the principle was «...repugnant not only to that provision of the Constitution which guarantees that no man shall be kept in involuntary servitude except as a punishment of crime, but [was] at variance with every concept of liberty and progress»²⁵. Another exchange between the two men took place again in the February issue of the AF of L paper, in which Marks reaffirmed his belief in the principle of compulsory investigation²⁶, and Gompers proceeded again in refuting it as being contrary to the interests of organized labour and useless as far as unorganized workingmen were concerned²⁷. One can see how, on account of the position of prominence that both Gompers and Marks occupied in industrial circles and in the NCF's high councils, such a controversy could have very well produced a serious crisis in the National Civic Federation. However, Easley intervened promptly and with his notorious diplomatic skills was able to defuse the tension between the two men. If the issue seemed to be settled in the short run, it is very likely that the controversy had a crucial role in strenghtening the feelings of antagonism toward the NCF which had been mounting in recent years in large strata of the AF of L membership, and which was to erupt during the United Mine Workers annual convention of 1911, when John Mitchell was forced to sever his affiliation with the NCF, and at the AF of L National Convention that same year, where a resolution forbidding AF of L members to maintain membership in the NCF was barely defeated.

That the IDI Act became a subject of major controversy within the NCF is also witnessed by the repeated times in which the Act was hotly debated during NCF-sponsored conferences. One such debate took place in occasion of the Federation's annual convention in January 1911, at which time a whole session was devoted to the subject of 'Industrial Peace'. NCF President Seth Low hoped that session would become a testing ground for some amendments he had worked out to the New York State industrial disputes law, in the hope that the new law would

²⁵ Samuel GOMPERS, «Labor's Differences with Mr. Marcus M. Marks et Al.», *American Federationist*, XVII (October, 1910), p. 884.

²⁶ «Isn't wiser —Marks replied to Gompers— to investigate while the men are earning wages, the company doing business and the public being accomodated rather than take up these questions after a strike has been declared» ? — a statement which sums up the feeling of many employers toward the Canadian Act; *American Federationist*, XVIII, (February 1911), p. 109.

²⁷ *Ibid.*, p. 110.

become a model for other states, thereby generating uniformity while at the same time extending the principle of the Erdman Act (voluntary arbitration in inter-state railroads) to disputes involving public service corporations²⁸. Instead, most of the discussion revolved around the significance of the Canadian IDI Act and most of the speakers pointed to it as a possible solution to the problem of industrial disputes in the U.S. For Cornelius J. Doyle —Chairman of the Illinois State Board of Arbitration— the principle of compulsory investigation upon which the IDI was founded was «... a desirable clause to be inserted into the arbitration laws of every State». ²⁹ He pointed out that that principle grew out of the appreciation of the value of enlightened public opinion, and felt that «publicity [was] the strongest weapon that can be used for the maintenance of industrial peace». ³⁰ According to Edward W. Frost —Wisconsin Labor Commissioner, and fervent admirer of the «brilliant young Canadian statesman» Mackenzie King— in the Canadian system of arbitration «... there lay the way toward industrial peace». ³¹ Frost warned the audience that «unless labor and capital stand shoulder to shoulder for some such principle as that, there are very much graver danger ahead of us, and there is the danger of such an uprising of public opinion as will lead us into new ends and into new measures for the solution of this problem». ³² Seth Low's position toward the Canadian Act — forced by the course the debate had taken — was quite ambiguous and reflected the contradictory nature of the NCF's activities, namely, having to pursue the interest of capital while at the same time trying not to alienate its labour members. Actually, it would be more correct to say that Low avoided taking any position. He admitted that the IDI Act «seems to work fairly well in Canada», but felt that the Act should be dismissed from consideration «at the present time», because he thought it unlikely that similar legislation could be adopted in the U.S. on account of the strong opposition from organized labour ³³.

The pro-IDI Act statement of Doyle and Frost, mentioned above, did not necessarily reflect the opinion of all government arbitrators; they nevertheless indicate the degree of support the IDI Act was gaining among this important class of professional arbitrators, especially at a time when

²⁸ *NCF Proceedings, 1911, op. cit.*, p. 267.

²⁹ *Ibid.*, p. 257.

³⁰ *Ibid.*, p. 258.

³¹ *Ibid.*, p. 250.

³² *Ibid.*, p. 250.

³³ *Ibid.*, p. 266.

agitation among the profession was mounting because of the limitations of state boards to deal with industrial disputes of an inter-state character. This agitation had been set off by the long and bitter strike of the seamen on the Great Lakes in the summer of 1909, when the Mediation and Arbitration Boards of six states bordering on the lakes had been prevented from dealing effectively in a concerted way with that crisis on account of the diverse powers given by law to those Boards³⁴. In this context, no few state arbitrators saw in the compulsory investigation feature of the Canadian IDI Act the principle which would provide uniformity in the various state arbitration laws.

THE IDI ACT AND THE US COMMISSION ON INDUSTRIAL RELATIONS

The centrality of the IDI Act in the minds of US industrial relations experts became strikingly apparent in the work of the U.S. Commission on Industrial Relations³⁵. When in 1914 the Commission set out to carry out its massive work of investigating the industrial conditions, touring the whole country and interviewing hundreds of employers, labour leaders, government officials, and academics, the Canadian Act was one of the main items on the agenda, and repeatedly the Commission members brought it into the discussion in an attempt to ascertain the reaction of the American public, as well as to assess the merits of the Act in practice. The highlight came when the author himself of the IDI, Mackenzie King, appeared before the commission to testify, and was subjected to extensive questioning especially by the commissioners representing labour. All the arguments against the Act which had emerged since its enactment were presented to King, and he proceeded with great argumentative skill to refute them one by one. One of the main charges against the Act had been that of portraying it as a « law against strikes and lockouts ».³⁶ As previously pointed out, American opponents of the Act had often neglected to differentiate it from the compulsory arbitration provision of the Australasian Acts. King took great pains to point out the difference and show the characteristic features of the IDI Act in order to prove that the accusation was unfounded. If labour was sincere

³⁴ *Bulletin of the New York State Department of Labor*, June 1909, pp. 132-158.

³⁵ For a thorough analysis of the history and the activities of the US Commission on Industrial Relations in the context of progressive politics, see Graham ADAMS, Jr., *The Age of Industrial Conflict* (New York, 1966), and James WEINSTEIN, *op. cit.*, pp. 172-213.

³⁶ U.S. Commission on Industrial Relations, *op. cit.*, vol. IX, p. 8834.

in its claim that the strike weapon was the very last resort — King argued — now the Canadian government had provided some machinery whereby the State would assume all the expenses of investigating industrial disputes. Therefore the Canadian Act — King pointed out — was « tak[ing] away no right from labor that it desires to have ».³⁷ Instead, it had provided « one other means of obtaining justice » for the working people. King then proceeded to defend the Act from the allegation that it had been a failure in Canada. This allegation had been repeatedly used by US labour leaders who opposed the Act; they pointed to the various occasions when large numbers of striking workers had violated the Act without incurring any penalties, due to the sheer impossibility of prosecuting several thousands of striking workers. King's answer was that under the Act the government was not so much concerned in initiating prosecutions, as it was concerned in trying to render a service to the community. The Act assumed that both parties were sincere in allowing the machinery of the State to bring out the facts with a view to reaching a just settlement. Both organized labour and organized capital had expressed their willingness to this effect. « The penalty feature of the Act » — King thus concluded — « had to be regarded as « quite a secondary feature » »³⁸.

Although this emphasis on the conciliatory, rather than on the judicial, aspect of the Act was intended by King to tone down the element of compulsion contained in the Act, King was finally forced to admit that compulsion was indeed one of the characteristic features of the legislation. He went on discussing the principle of compulsion which in effect underlie the whole philosophy of the Act. The principle of law and order — so essential if the State had to insure social justice — made it necessary to give up a certain amount of one's rights for the good of society as a whole. Therefore, both capital and labour had to surrender their rights to society³⁹. But this restraint was necessary in order to « gain a wider measure of liberty from and for society as a whole ».⁴⁰ In the long run, the Act was providing an extension of the bounds of liberty of labour rather than a restriction.

In an earlier appearance before the Commission, King had been forced to discuss the political significance that the compulsory investi-

³⁷ *Ibid.*, pp. 8834-35.

³⁸ *Ibid.*, p. 8842.

³⁹ *Ibid.*, p. 8843.

⁴⁰ *Ibid.*

gation legislation had taken on in Canada in relation to the labour-capital conflict. King had admitted that the penalty provision was aimed primarily at insuring « continuous operation of the utility . . . concerned », and that this had been a sort of « understanding » between the State and the employers⁴¹. In exchange for this concession, labour had in turn been given a concession also, namely, « the right to have their own member on a board »⁴². This admission that King made to the US Industrial Relations commissioners is, of course, of vast historical importance. It dissolves the intricate ideological verbiage which he so masterfully put forth to the commissioners as an apologia of the IDI Act, and points to the actual political bargaining surrounding the enactment of that labour legislation. It also provides the key to gaining a clearer historical understanding as to why the compulsory investigation provision had met the support of a whole sector of the Canadian labour bureaucracy when such a provision would instead meet the outright opposition of US organized labour, and become branded as anti-labour legislation⁴³.

When the Commission completed its investigations, the final reports it issued reflected the degree of division existing among its members in regard to the principle of compulsory investigation which the Canadian Act had popularized throughout the past few years. The report presented by the three representatives of labour and by the commission's chairman, Frank Walsh, rejected outrightly the principle of compulsory investigation, and recommended the creation of national boards of mediation and investigation, independent from the Department of Labor, where investigation would be carried out on a purely voluntary basis⁴⁴. The opposite position was taken by the three representatives of capital, who in a dissenting report recommended the adoption of compulsory investigation in public utility industries to be carried out by Industrial Commissions which would be created for that express purpose⁴⁵. Between these two opposite positions was economist John Commons' report, which received the partial support of the three representatives of capital. In his report Commons dealt

⁴¹ U.S. Commission on Industrial Relations, *op. cit.*, Vol. I, p. 716.

⁴² *Ibid.*

⁴³ KING told the commissioners, with a certain amount of pride, that « . . . the leading officers in the labor organizations at that time were not opposed to [the legislation] », and that in particular « . . . the Trades' Labor Congress of the Dominion indorsed it ». *Ibid.*, p. 716. On the immediate reaction from the Canadian Labor movement, cf. also Victor S. CLARK, *op. cit.*, Bulletin N. 76, pp. 672 ff.

⁴⁴ U.S. Commission on Industrial Relations, *op. cit.*, pp. 120-124.

⁴⁵ *Ibid.*, p. 233.

at great length with the Canadian Act. He commended it for having made capital and labour sensitive to the great value of public inquiry by elevating the principle of investigation — a principle which Commons had carefully studied over the years and which had become central to his theory of industrial democracy⁴⁶. For Commons, however, investigation was a technical-scientific process rather than a strictly political one — something the government had to provide freely and which organized capital and labour could avail themselves of whenever the need arose⁴⁷. Its great value, therefore, lay not in the fact that it allowed for government intervention in the process of industrial conflict, but rather, that it provided the necessary technical machinery which made it possible to ascertain the causes of the industrial disturbance, thus enabling the parties to arrive at a mutually satisfactory settlement. The moment the government would try to administer it on a compulsory basis, investigation ceased being a technical-scientific process, and would become a political problem. Compulsion would, in fact, vitiate the process of fact-finding and would have the effect of upsetting in favour of one of the two parties the delicate balance of power which, in Commons' view, was essential for the success of the collective bargaining process. Commons' report, thus, recommended the adoption of « a voluntary board of investigation, adapted from the Canadian Act but without its compulsory feature »⁴⁸.

Soon the Commission disbanded, its massive findings became nothing more than source material for industrial scholars, and its recommendations fell on deaf ears. However, throughout its search for a solution to the problem of industrial conflict, the IDI Act had been a constant reference point and a base for analysis and experimentation. More importantly, the Commission had also served to crystallize the division of opinion existing in the US in regard to compulsory investigation ; it had made clear that the principle served primarily the interest of capital and that it worked against the interest of organized labour.

THE RAILROAD CRISIS OF 1916 AND THE DEFEAT OF COMPULSORY INVESTIGATION

Only few months had passed that the debate over compulsory regulation of industrial disputes became the center of industrial and political

⁴⁶ *Ibid.*, p. 210.

⁴⁷ Bruno RAMIREZ, « Collective Bargaining and the Progressive Era : The Contribution of John Commons and Samuel Gompers » (mimeogr., Toronto 1970).

⁴⁸ U.S. Commission on Industrial Relations, *op. cit.*, p. 210.

affairs. Late in the summer 1916 the four railroad Brotherhoods threatened a nation-wide strike which, if actually called, would have paralyzed the country. What is more significant is the fact that the Brotherhoods had grown dissatisfied with the arbitration machinery (voluntary investigation) provided by the Newlands Act to settle disputes in the railroads. In their demands for the eight hours and for wage increases they had no intention to submit to arbitration. It became evident that some new legislation had to be enacted if a period of major economic chaos was going to be averted in the country.

It was in the midst of this feeling of impending industrial and labour crisis that the compulsory investigation and arbitration features began to be viewed again in many quarters as possible solutions. This became the object of serious consideration in organizations such as the U.S. Chamber of Commerce, and the American Academy of Political Science. In the case of the latter organization, support of compulsory arbitration was total. Easley, who had met privately with DR. Samuel McCune Lindsay — president of the Academy — found out to his great dismay that among the members of the Academy there was « not a man who is against compulsory arbitration . . . they are all for it »⁴⁹. The issue generated enormous tension among the NCF executive council members. This climate of tension characterized the October 23 emergency meeting which the executive council of the Federation called to discuss the subject. Once again Gompers used the occasion to denounce all forms of compulsory government intervention in industrial matters, but this time he got a cold reception among some prominent members such as August Belmont and economist B. Seligman. They were beginning to display clear signs of annoyance with Gompers' intransigence on the matter. In their view, this was no time for rigidity. The situation demanded a careful assessment of the limitations that the present machinery embodied, and a search for some alternative which would preclude the enactment of more extreme measures⁵⁰. In reality, these objections were going right to the heart of Gompers' philosophy of 'voluntarism'. That the labour impasse was about to precipitate a crisis in the NCF can also be seen by Easley's response to the situation. He had to admit that the labour crisis had raised the all-important question as to whether « . . . collective bargaining point[ed] the way out ». As he wrote to a leading railroad president :

⁴⁹ *Proceedings of the Executive Council Meeting of the National Civic Federation*, October 23, 1916; Box 189, NCF Papers., p. 8.

⁵⁰ *Ibid.*

« if the most intelligent unions and the largest capitalists, under a model collective agreement, can reach a stage where one has the power to say to the other — and says it — « unless you yield, we will destroy you », then those employers who oppose collective bargaining have had placed in their hands a very formidable weapon ». ⁵¹

As the debate on compulsory regulation of industrial disputes intensified, the features of the Canadian IDI Act were increasingly emerging in the minds of many as constituting the proper formula for the solution of the problem at hand. Easley was very well aware of this, and he tried desperately to influence public opinion against the Canadian Act. In an article which very tactically he entitled « The Canadian Compulsory Investigation Act », and which appeared in several publications, he set out again to analyse the Act and to show how it had failed in its objectives. To the growing number of people who were asking themselves whether the Canadian Act would not solve the crisis situation in the railroads, Easley was proving that it did not hold « any promise as a way out to the United States » ⁵².

The sentiment in favour of the Canadian Act reached a climax point when it became known that President Wilson had given very careful consideration to it, and that he was attempting to formulate a plan « . . . having in mind the Canadian Investigation Act ». ⁵³ But the overwhelming opposition from organized labour to such a plan ⁵⁴, the determination of the Brotherhoods that the eight-hour day was a non-negotiable demand, and the worsening of the crisis on the international front, forced Wilson to accede to the Brotherhoods demands by passing what became known as the Adamson Act, therefore averting a major economic and political paralysis ⁵⁵.

President Wilson's serious intentions to enact arbitration legislation modelled after the IDI Act marks the high point of influence that the

⁵¹ Ralph EASLEY to Vincent ASTOR, Sept. 12, 1916; Box 188, NCF Papers; letters similar in tone were sent to other prominent railroad presidents.

⁵² Copy of the article in Box 76, Mitchell Papers.

⁵³ *NCF Proceedings*, Oct. 23, 1916, *op. cit.*, p. 4.

⁵⁴ See GOMPERS's editorial « Freedom must not be surrendered », *American Federationist*, XXIV (Jan. 1917), pp. 45-46.; The opposition of the railroad brotherhoods to compulsory investigation was well articulated by Austin B. GARRETSON, « The Attitude of Organized Labor Toward the Canadian Industrial Disputes Investigation Act », *Annals of the American Academy of Political and Social Science*, XVI (Jan. 1917), pp. 170-72.

⁵⁵ « R.R. Workers Win Eight Hours », *American Federationist*, XXIV (Apr. 1917), 282-4.

Canadian Act exerted on the US industrial and political establishment. Undoubtedly, the situation of crisis surrounding Wilson's design made the Canadian formula appear as a ready solution to the impending industrial chaos. Nevertheless, the decision was the culmination of nearly a decade of intense debate, during which all the pros and cons of the IDI formula had been carefully scrutinized and argued, with its advocates and opponents taking sides.

The war not only put an end to this debate, but it also prevented the debate from transforming itself into an all-out power confrontation between organized labor and the employers-government front. The Adamson Act was not only the railroad Brotherhoods' historic victory over the eight-hour demand. It was the victory of US organized labour over the principle of compulsory investigation ; a victory that shows not only the objective position of power of US labour at that particular historical juncture, but also the wider political significance that an industrial relations formula such as compulsory investigation acquired in the context of the capital-labour conflict in the U.S.

La réaction américaine à la Loi canadienne des enquêtes en matière de différends industriels

La croissance rapide du syndicalisme qui a suivi une crise économique grave aux États-Unis entre 1893 et 1896, tout comme l'augmentation des grèves qui l'ont accompagnée, portèrent au premier plan la question de l'arbitrage des conflits industriels. L'arbitrage devait-il être volontaire ou obligatoire ? Ce sujet devait rester d'actualité pendant toute la durée de *l'Ère du Progrès* alors que divers groupements et organisations réformistes essayèrent de trouver une solution pratique au « problème ouvrier ». C'est dans ce contexte historique que l'article ci-dessus analyse les répercussions de la *Loi des enquêtes en matière de différends industriels* (Loi Lemieux) aux États-Unis. L'article tente aussi de montrer dans quelle mesure la question de l'arbitrage a eu tendance à déborder les frontières strictes des relations professionnelles pour prendre une véritable signification politique.

Au tournant du siècle, le *New Zealand Arbitration Act* (Loi d'arbitrage de la Nouvelle-Zélande) avait soulevé beaucoup d'intérêt et reçu énormément de publicité aux États-Unis. Cette loi était le premier exemple d'une législation imposant l'arbitrage obligatoire et exécutoire aux deux parties dans un différend du travail. La controverse qu'elle suscita montra cependant que l'opposition à cette forme d'arbitrage était le sentiment prédominant. Cette opposition provenait, non seulement du mouvement syndical, mais aussi de l'influente *National Civic Federation* (Fédération nationale des droits civils), une organisation à caractère national, où étaient représentés les syndicats, les hommes d'affaires et le public, et qui joua

un rôle considérable dans l'établissement de la politique en matière de relations professionnelles pendant toute la durée de cette période d'expansion économique.

Le débat reprit de nouveau lorsque, en 1907, le Parlement canadien adopta la *Loi des enquêtes en matière de différends industriels* (Loi Lemieux). L'intérêt immense que cette loi produisit aux États-Unis était d'abord attribuable au fait qu'elle imposait aux parties un mécanisme d'enquête. En réalité, la Loi avait touché un des points auxquels le mouvement progressif était le plus sensible, c'est-à-dire à l'idéologie de la toute-puissance de l'opinion publique et de la valeur incomparable de la société démocratique. L'accent mis sur l'idée d'enquête qu'on trouvait énoncée dans la Loi concrétisait et rendait effective la notion d'opinion publique. D'un concept abstrait, elle faisait une force positive favorisant ce qu'on appelait « l'intérêt public ».

Pendant que le mouvement syndical trouvait inacceptable ce mécanisme d'enquête obligatoire et qu'il s'opposait avec vigueur à cette législation, la Loi obtenait, au contraire, la faveur des milieux gouvernementaux tant au niveau du fédéral que des États. Les principaux États fortement industrialisés, tels que les États de New York et du Wisconsin, présentèrent des projets de loi qui renfermaient des dispositions s'inspirant de la Loi canadienne ; d'autres États projetaient de faire la même chose. En 1914, le Colorado réussit à faire adopter une loi des différends du travail qui, sauf en de légères variantes, était une réplique de la *Loi des enquêtes en matière de différends industriels*. Aussi, parmi un grand nombre de médiateurs des gouvernements, la Loi reçut-elle un accueil favorable, sinon enthousiaste. La réaction des milieux réformistes était, au contraire, partagée. Ceci était surtout visible à l'intérieur de la *National Civic Federation* où un désaccord violent entre les représentants du travail et les représentants du monde des affaires engendra une longue et ardente controverse qui, à certains moments, fut la cause de crises graves dans l'organisation.

L'influence de la *Loi des enquêtes en matière de différends industriels* se refléta aussi dans les travaux de l'*U.S. Commission of Industrial Relations* en 1914 et en 1915. Créée en vue de faire enquête sur les conditions de la vie industrielle et de proposer des recommandations législatives sur un grand nombre de questions en matière de législation du travail, la Commission attira l'attention sur la Loi canadienne afin de se rendre compte de la réaction du public américain et d'en apprécier la valeur pratique. Le rapport final de la Commission laisse voir une polarisation certaine des opinions en faveur du principe de l'enquête obligatoire, à l'exception des représentants syndicaux qui la rejetaient et des représentants patronaux qui la recommandaient dans les entreprises de service public. Par contre, l'éminent économiste du travail, John Commons, qui était un membre important de la Commission, adopta une voie médiane. Il trouva que le principe de l'enquête avait une grande valeur et recommanda l'adoption d'une « commission d'enquête volontaire, qui consisterait dans une adaptation de la Loi canadienne, mais dénuée de tout caractère obligatoire ».

Dans les mois suivants, le débat prit une tournure fort dramatique, alors que, à l'été de 1916, les quatre fraternités de cheminots menacèrent de déclencher une

grève nationale qui, si elle avait eu lieu, aurait paralysé le pays. C'est pendant cette crise industrielle et ouvrière imminente que les dispositions caractéristiques de la *Loi des enquêtes en matière de différends industriels* furent envisagées en plusieurs milieux comme une solution possible. C'est à ce moment que les stipulations de la Loi canadienne vinrent le plus près d'être incorporées dans la législation américaine du travail au niveau fédéral, alors que le président Wilson et son cabinet cherchèrent à appliquer une formule « en ayant à l'esprit la *Loi canadienne des enquêtes en matière de différends industriels* ». Cependant, l'opposition irrésistible du mouvement syndical et l'aggravation de la situation internationale forcèrent Wilson à céder aux exigences des fraternités en adoptant ce qui est devenu l'*Adamson Act*. Non seulement la guerre mit-elle fin à cette controverse, mais elle l'empêcha de dégénérer en une bataille à finir entre le mouvement syndical et le front uni du gouvernement et des employeurs.

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