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Canadian Jewry And Their Struggle For An Exemption In The Federal Lord's Day Act of 1906

Part II

SHELDON INDIG

Résumé

Nous avons, dans le numéro précédent du Journal, publié la première partie d'une étude faite par Sheldon Indig à propos de l'exemption de la loi du jour du Seigneur de 1906. Nous en donnons dans ce numéro la deuxième partie.

Les législateurs analysèrent le problème de façon minutieuse y cherchant une solution.

Mis à part les raisons différentes qui opposaient les tenants des opposants à propos de l'exemption, l'auteur Sheldon Indig porte essentiellement son analyse sur quatre têtes de chapitre dont on peut dire qu'elles couvrent l'ensemble du problème de l'exemption. En un premier temps, il analyse l'opération parlementaire se rapportant à l'exemption visant à octroyer aux Juifs le samedi au lieu du dimanche jour du Seigneur dans un Canada essentiellement chrétien.

Dans une seconde phase, l'auteur de l'étude pose le problème du jugement parlementaire à propos de l'exemption, signalant que l'on trouvait des divergences d'opinion au sein même des tenants de l'exemption. Dans ce chapitre, l'auteur se penche plus particulièrement sur l'aspect juridique et sur les énoncés des membres du Parlement en Chambre ayant soumis des propositions à cet effet invoquant les modifications de Henri Bourassa et de Fielding essentiellement. Une analyse s'ensuit.

En un troisième temps, l'auteur Sheldon Indig présente les motifs de refus du droit d'exemption des Juifs dans une optique canadienne. Ce refus repose essentiellement sur la controverse voulant que cette exemp-

tion ait eu un aspect d'“individualisme”. L'auteur expose également les diverses attitudes observées par les membres du gouvernement et les législations à ce propos, en cette époque. Enfin, dans le dernier chapitre intitulé le Judaïsme Canadien et le Refus du Droit d'Exemption, l'auteur envisage dans une nouvelle dimension les réactions de l'ensemble de la communauté juive face au refus. Comme le souligne l'auteur et je cite:

“Il est évident que la communauté juive du Canada a refusé la justification parlementaire.” La communauté juive fit appel auprès du Parlement se réclamant de l'exemption mais elle essuya un refus de la part de l'Assemblée Législative. La communauté juive, en tant que minorité, considérait qu'on devait lui accorder les mêmes droits qu'aux autres. Ainsi, la communauté intervint et dût accomplir un travail de Titan afin de pouvoir faire valoir ses droits et de pouvoir collaborer étroitement avec l'ensemble du pays.

IV

PARLIAMENTARY OPINION ON A JEWISH EXEMPTION

On June 27th, 1906, the third day of debate on the bill in the Committee of the Whole, the Commons discussed the controversial section exempting the Jews. The atmosphere in which Section 11 was discussed was one of “intense and steadfast interest.” *The Toronto Globe* reported:

From the opening this morning until midnight there was almost a full House, with eager faces, close attention and anxiety to take part, which shows how closely the measure touches every part of Canada. . . . The desire to speak was so great that sometimes half-a-dozen members would rise at once. . . .¹

During the debate, many arguments were enunciated in which both the Alliance and the Jewish points of view were reiterated by their respective legislative supporters. Within this consideration, minimal emphasis was placed upon the status of the Jew in the country and/or his reasons for coming; regarding this aspect both the parliamentary opponents and supporters of an exemption crossed lines in support of the stance taken by either the Alliance or the Jewish interests.² The core of the discussion centered upon the feasibility and practicality of an exemption to the Jewish minority within the context of the bill and its effects upon the nation as a whole. While earlier expressions of popular sentiment were brought forth by the respective parliamentary opponents and supporters, the dissection of the Jewish exemption issue in the House was by no means

superficial. Being face to face with a condition of society and not a theory, the legislators thoroughly analyzed the problem in seeking a solution.

The opposition to a Jewish exemption in Parliament was a powerful and well-founded force consisting of conservative Christians.³ Aside from their differing reasons for opposing an exemption, they were a solid core, unflinching in their unwavering adherence to not granting any type of exemption whatsoever. To these gentlemen, the principle of the bill, one day's rest in seven meant, "that everyone in this country whenever possible (should have) ONE DAY IN SEVEN (during) which he shall NOT LABOUR, and . . . that day . . . be the FIRST DAY OF THE WEEK."⁴ [author's emphasis] Feeling as they did, any section or amendment which prevented the carrying of the bill into effect was "a reason for not passing it."⁵ This formidable group opposed any type of exemption. The theme which the opponents of the exemption held fast to, and one which recurred throughout their argumentation, was that of the political concept of majority rule, "the greatest good to the greatest number."⁶

Since Canada was a Christian nation, predominately consisting of first-day Christians, Sunday was made the national day of rest so as to remain consistent with the views of the majority.⁷ But the measure was not enacted for the ruling majority's sake, but for the welfare and betterment of the general community, thereby making the law applicable to everyone in the same manner.⁸ One of the requirements was that all must rest (abstain from labour and certain public functions) on one day in seven, and that the designated day of rest was the first day of the week, Sunday.⁹ This did not prevent the Jew from either observing his religious Sabbath or from labouring upon it; nor did it require any religious observance of the national day of rest. Parliament did not debate these contentions because it was the concern of the individual and his conscience, not the state.¹⁰ Any infringement placed upon an individual's freedom which was exploited by this measure was of national concern and worked equally upon the inhabitants.¹¹ It was not the law which injured the Jew's earning power, but his conscientious convictions.¹² To protect and preserve the national day of rest, uniformity had to prevail at the expense of religious conscientiousness.¹³

The numerical strength of the Jews¹⁴ was insignificant to cause a change from the general application of the law. Living in Canada, the Jews had a duty to observe its laws over and above the "mere personal preference of the individual."¹⁵ By granting an exemption within this consideration, it merely set the Jew "apart from the greater majority of the people"¹⁶ and

made the enactment sectional in application¹⁷ and a piece of class legislation.¹⁸ An exemption favouring a certain class would be harmful to the general community. Public scandal would result because certain individuals through their own conscientious scruples believed any type of work done on that day, whether quiet or not, would be setting a bad example for others to follow thereby disturbing their personal observance of the day.¹⁹ This, in turn, would create animosity within the populace, especially between Jews and non-Jews.²⁰ Furthermore, prosecution and conviction would be difficult against the exempted individual based upon judging one's conscience as well as the evidence concerning one's working seven days in the week. Conscience and habitual observance during some chosen day of rest other than Sunday were both difficult things to prove before the courts.²¹ Also, human nature had to be taken into consideration regarding the people who were not exempted and could not work on the national day of rest. These people who saw or had knowledge that work was being carried out would desire to take advantage of the same opportunity.²² The sum total of all these sociological factors would result in the majority of the people losing respect for the law which, in turn, would lose its effect.²³

In a constitutional-legal sense, Christianity was a fundamental element of Canadian law. Through tradition, custom and common law, Canada inherited British institutions. One such institution was that early English Sunday Observance Statutes were designed to protect the Christian Sabbath.²⁴ Applying this theory to Canada, the Jew who came to this country which had existing institutions based "upon what this majority in this country [Canada] consider(ed) the truths of the Christian religion," was compelled to conform just as "the Jew who emigrated to that country [Great Britain] to observe the Christian Sunday, the first day of the week instead of the seventh day."²⁵ This being the case, it was an anomalous thing to provide for such an exemption.²⁶

Yet, this was supplementary to another legal argument. Sunday regulations being within the domain of the criminal law, an exemption for the Jews within the statute was both anomalous and a "most extraordinary piece of legislation."²⁷ It was a piece of class legislation which created:

... an exception to the general measure, which exception leaves a certain portion of the community altogether free from liability to the penalties which are provided against every other citizen who may transgress its provisions. ²⁸

Existing conditions in other countries under the British rule were reviewed and compared to the present Canadian situation. There was no precedent

to follow in this situation. Neither Canada, Great Britain nor any other member of the British Empire allowed for such an exemption, which was granted to the Canadian Jew within any general act for Sunday legislation.²⁹ Therefore, constitutional-legal factors favoured not granting an exemption.

Economic considerations produced new arguments for the opposition. As previously stated, with the law being applicable to everyone, it was not the law but the Jew's own conscience which injured his earning powers.³⁰ Yet, the Jews themselves were not conscientious in following their religion. Both Jewish employers and employees worked on their Sabbath.³¹ Exempting the Jew because of religious reasons was "a reasonable and logical thing to provide for" as long as he abided by his religious convictions, otherwise not.³² With the situation as such, the Jew was quite capable of looking after himself.³³ The denial of an exemption would merely maintain the financial status quo.³⁴

To deny the Jews an exemption based on their present religious and economic practices was a secondary consideration in the discussion of the exemption issue. The primary factor was that the granting of an exemption would be a detriment to the nation at large. The majority, first-day Christians, especially the religiously conscious ones, who worked for a Jewish firm could have their earning power decreased when a Jewish employer shut down his place of business on Saturday for his benefit and/or that of his Jewish employees, so as to take advantage of the exemption.³⁵ Many first-day Christians were employed at Jewish establishments,³⁶ and they were compelled to work on Sunday for financial and conscientious reasons.³⁷ Taking this into consideration, the managerial staff of these corporations, being strictly controlled by the Jews, would not be affected because they were salaried wage earners. But the labourers, being hourly wage earners, would be greatly affected, especially the religiously conscientious first-day Christian. He would be limited to a five-day work week with no compensation for the extra day's loss of pay, while the Jewish labouring minority would work six days.³⁸ Viewing the situation thusly, the precarious position from which the troubled Jew was being removed would be assumed by the first-day Christian worker.³⁹ Under these prevailing conditions, an exemption would create "a rank injustice to labour" as applied to the first-day Christians, and yet more significantly to the religiously conscious ones. Conscientious convictions of first-day Christians should be given the same consideration as those of the Jew.⁴⁰ This being the case, the interests of the majority

must be sustained so that they would not endure any financial hardships. The arguments presented by the opposition, concerning financial-economic considerations were the most significant and crucial ones in the denial of a Jewish exemption.

Those opposed to a Jewish exemption had an extremely strong case in the sociological, constitutional-legal and financial-economic considerations, as well as the political concept of majority rule. The opposition's position was best described by one of their own, Thomas S. Sproule:

It is true that no Bill can be enacted which will meet the requirements in every instance and the exceptions which we (the legislators) are making here are exceptions according to the best judgment of those who made the suggestion in favour of the enactment of this measure. ⁴¹

It was the immovable opinion of the legislative opposition that any type of exemption be denied to the Jews.

The parliamentary supporters of a Jewish exemption were also a powerful and well founded force. They consisted of moderate Christians.⁴² Aside from their differences of opinion as to why an exemption should be granted, they displayed cohesiveness in desiring to grant some sort of exemption. To these gentlemen, the principle of the bill, one day's rest in seven, meant, "that every person in the country shall observe ONE DAY . . .,"⁴³ being "24 HOURS REST in the WEEK . . .,"⁴⁴ and "that DAY should be SUNDAY . . .," but "ANY OTHER DAY in the week BESIDES SUNDAY may be a day of rest."⁴⁵ [author's emphasis] Feeling as they did, the supporters sought an exemption because "the Parliament of Canada (had) the right . . . as a Christian country . . . to pass laws respecting that day [Sunday], but (did not have) the right to dictate to (an individual) what day (he) shall observe as (his) Sabbath day."⁴⁶ Basing their convictions upon this premise, the constant theme which dominated the supporters' arguments was majority rule with minority rights in which the majority ought "to respect the conscientious feelings and sentiments of this important minority."⁴⁷

The supporters gave recognition to the sociological arguments of the opposition, but differed in their application. They as legislators lived up to "one of its [Parliament's] fundamental principles," of protecting minorities and assuring absolute religious liberty,⁴⁸ in their drive for an exemption based upon the concept of freedom of conscience. Since Canada was a Christian nation, the Christian principles "of the humble and lowly Nazarene"⁴⁹ ought to be applied; in merely reversing the position of the two religious interests, religiously conscious first-day Christians would

ask of the Jew that which the Jew was requesting.⁵⁰ Furthermore, combating the exemption by entertaining the Sabbath idea of the Mosaic law against the Jew was unfair. The Jew, not having a country of his own, did not have the opportunity to set a precedent for the treatment of Christians in a similar situation.⁵¹ Since Christians did not follow the Mosaic law, the exemption supporters argued, Christians should not criticize the Jewish interpretation of Mosaic law. Instead, Christians should follow the law of Christ, the Golden Rule: "do unto another as you would like another to do to you."⁵² In such action, Christians would reveal to the Jew that Christianity was imbued with a liberal spirit.⁵³

With the religious element of the bill being carefully discarded,⁵⁴ it neither forced the Jew to work on his religious Sabbath nor prevented him from labouring; religious observance of Sunday was similarly not forced upon the Jew.⁵⁵ Because of this, the supporters rallied for an exemption because the exemption was designed to protect the religiously conscious Jew and not the irreligious one.⁵⁶ In this instance, the only concession ceded to the Jew was the provision for restricted Sunday labour because the Jew rested by abstaining the previous day from labour which was his religious Sabbath.⁵⁷ With the remainder of the bill's terms applicable to the Jew as well as anyone else,⁵⁸ the desire for uniform observance appeared to be neglected because of conscientious religious affiliation;⁵⁹ yet uniformity of the day remained intact. The exemption within this light remained consistent with the principle of the measure as viewed by the supporters.⁶⁰ Even though it was the Jew's conscientious convictions and not the law which injured his earning powers, respecting one's conscience "for the sake of religious beliefs" was necessary.⁶¹ It followed a greater law; the right of an individual "to earn a living for his family,"⁶² thereby providing for in this situation, "absolute religious liberty" because the ramifications did not entail "any civil [secular] or financial disabilities."⁶³ Otherwise, not protecting the religiously conscious Jew would simply be a case of "religious despotism."⁶⁴

Since the Jew was law abiding, he had a right to be protected by the law and to be treated like any other Canadian.⁶⁵ Being a part of (and not apart from) the Canadian populace, the numerical strength of the Jews had no bearing on the general application of the law. It was conceded that an exemption would let Canada be known "not only as a land of freedom, but also as a land where everyone's conscientious scruples were accepted, and the rights of minorities, large or small, respected."⁶⁶ However, an exemption in this situation did not make the enactment either a piece of class

legislation⁶⁷ or sectional in application,⁶⁸ thereby maintaining an equilibrium among the inhabitants of the nation.

Harmful effects upon the general community would not occur in granting the Jews an exemption. The observance of the national day of rest by the remainder of the people in any form whatsoever would not be encroached upon.⁶⁹ The work which was provided for had to be done on the Jew's own premises, as opposed to public places, so as not to affect the community. Further restrictions provided that no type of merchandising was allowed. Their work:

... cannot be of such a nature as to invite the complicity of other people ... (who) do not agree with them on conscientious lines to participate in violating the first day of the week as is permitted to these classes (Non-conformists) under this section (11).⁷⁰

More restrictions protected the national day of rest for the religiously conscious first-day Christian as a day of peacefulness and serenity. The work being done by the Jew would have to be such as not to disturb other persons in the observance of the day as a holy day.⁷¹ The work would have to be silent in nature as contrasted with the rumble of labour, puffing chimney smoke and piercing signal whistles, so as not to create scandal within the community.⁷² In the event of difficulty, however, prosecution and conviction, argued the supporters, could easily be proven when the law was broken.

With the exemption being given for conscientious convictions of religious adherence,⁷³ the Jew availing himself of this provision had to observe his religious Sabbath as the day of rest by abstaining from labour, but had to do so habitually, not periodically. Otherwise, if he did not abide by these rules, he had to take Sunday off as his regular day of rest like everyone else. Yet, once caught working seven days a week or alternating between the two days, he was held liable for his action because he was not a religiously conscious Jew.⁷⁴ Furthermore, the Jew who availed himself of the exemption had to observe all the other restrictions of the law outside of restricted Sunday labour.⁷⁵ Prosecution and conviction of the religiously conscious Jew in this instance would be a procedure similar to that of the rest of the community.

Under these conditions, both the Jewish minority and the first-day Christian majority would fare equally before the law and it would be deemed illiberal for the majority element of the country not to respect the religious conscientious convictions of the Jew.⁷⁶ Combining all of these sociological factors in an attempt to exempt the Jew, was indicative of "a

desire to respect the conscientious convictions of all . . . (and to) . . . bring about a result that would be for the benefit of the people as a whole.”⁷⁷

Constitutional-legal considerations were also brought up by the exemption supporters. With reference to the argument that Christianity was part of the law of the land, the supporters argued for the application of the Golden Rule.⁷⁸ To further strengthen their case, the supporters argued that Christianity not only had its roots in Judaism but that the Holy Writ accepted both the Old and the New Testaments, establishing the existence of two (religious) Sabbaths.⁷⁹ This being the case, and Christianity recognized as part of the law, an exemption ought to be enacted.

With specific reference to the exemption in the Canadian legal framework, the supporters urged its adoption. Up until this time, the Jew who illegally worked on Sunday had no legal, statutory right or privilege to do so.⁸⁰ But working as he did, he acquired this privilege “by habit, by custom and usage.”⁸¹ To grant an exemption in his favour was not creating anything new, but maintaining the status quo and legally safeguarding through a statutory proviso what had always been.⁸² Furthermore, with the bill being under criminal jurisdiction, the supporters’ position was enhanced. Under the criminal law, there existed “no such thing as joint and several crimes or joint and several misdemeanours . . .,” because everyone was “responsible for himself and not for his neighbour.”⁸³ With Sunday regulations being part of the criminal law, the Jew and the Christian had only themselves to look after.

Nevertheless, referring back to the constitutional position concerning Great Britain and its affects on Canada, the supporters further enhanced their position. Under the British constitution, the Jew had rights which were protected. Even though he immigrated to that country with knowledge of its institutions being based upon Christianity, Britain recognized the principle of toleration with respect to liberty of conscience as a part of its constitution.⁸⁴ Despite not having an exemption within any general Sunday regulation, the British Parliament somewhat exempted the religiously conscious Jew by providing for Sunday labour by means of a regulatory provision in their Workshop Acts.⁸⁵ So, with similar circumstances surrounding the Jew who dwelled in Canada, whether he was naturalized or native born, the natural right of one’s liberty of conscience should have been applied to everyone because it was “a principle of the British constitution we (Canadians) most glory.”⁸⁶ In the Canadian situation regarding Sunday law and the Jew, the British concept should be followed but to a greater degree because the principle of “liberty of con-

science . . . (was) the cornerstone of the Canadian constitution.”⁸⁷ Making provision for an exemption in this instance would not only confirm the legal-statutory position of the Jew in Quebec but the Jew’s position throughout the Dominion.⁸⁸ Granting an exemption by means of statutory law would reveal “the spirit of toleration”⁸⁹ among Canadians and would give the Jew “freedom of conscience and at the same time freedom of citizenship.”⁹⁰

Aside from sociological and constitutional-legal factors, financial-economic concerns played the most important and crucial role in the discussion. In professing the right of the Jew to earn a living so that religious and secular disabilities would not be incurred,⁹¹ the supporters maintained that numerical strength of the religiously conscious Jew had no bearing on the issue. Since the exemption was conceived to protect specifically those individuals,⁹² the supporters contested that when “talking of a principle and legislating according to a principle,”⁹³ it would be quite adequate to have this protecting clause, even if there existed only “one (religiously conscious) Jew.”⁹⁴ Yet, the supporters’ contentions were not limited to basing arguments upon principles because they used actual existing conditions to strengthen their concepts when the effects of the exemption were taken into consideration with respect to the labouring class.

While arguing for an exemption, the supporters kept in mind the position of the first-day Christian labourer, especially the religiously conscious one who worked for a Jewish firm. They argued that the granting of an exemption would not injure the first-day Christian’s earning power, thereby not placing them in the precarious position of the religiously conscious Jew; whether or not the Jewish establishments had either a majority of Jews or first-day Christians as employees.⁹⁵ In the former case, the supporters stated that the majority of factories which were owned and operated by Jews consisted of predominately Jewish labour because of an *infra* Jewish helping-hand policy.⁹⁶ Of course, first-day Christian labour existed, but they were a small number who did not incur any financial liabilities because they received six days pay for five days work.⁹⁷ Therefore, granting an exemption under this consideration would legally provide for the religiously conscious Jew six days labour during the week, enabling him to earn a substantial living while not injuring the earning power of the first-day Christian who received six days pay.

The latter group who contended there was a majority of first-day Christians rather than Jews labouring for Jewish firms were also convinced that the earning power of the first-day Christian, especially the religiously con-

scious one, would not be impaired if present conditions were maintained.⁹⁸ Realizing “that the Jews as a class were good businessmen” and having a majority of first-day Christians as employees, they would not be “so foolish”⁹⁹ as to shut down on Saturday when full production could conceivably be maintained so that the minority of their employees would be able to work on Sunday.¹⁰⁰ This being the situation, granting an exemption would not financially injure the (religiously conscious) first-day Christian. The religiously conscious Jews would be financially hurt, though, because the Jewish employers might not respect the conscientious convictions of their fellow (religious) Jews in light of this fact.¹⁰¹ Under the financial-economic considerations, provisions were made for the conscientious convictions of the religious Jews, while at the same time keeping the interests of the ruling majority in perspective. The financial status quo was maintained.

Fighting for an exemption, the parliamentary supporters based their contentions upon sociological, constitutional-legal and financial-economic considerations in conjunction with the political concept of majority rule with minority rights within the principle of one day’s rest in seven of the bill. Their rule of thumb was well expressed by the Minister of Finance, William S. Fielding:

If we can please our neighbour in any way without hurting ourselves, if we can meet the conscientious views of our neighbours, aye, even his prejudices, in anything he does for conscience sake, and in addition, if we can do that without injury to ourselves and those who hold with us, then surely we ought to meet the views of the minority in matters of that sort.¹⁰²

These gentlemen were firm in their convictions in wanting to grant the Jews an exemption.

V PARLIAMENTARY JUDGEMENT ON A JEWISH EXEMPTION

Even though the parliamentary supporters of an exemption were firm in their convictions of wishing to grant one to the Jews, they were not as zealous in their stance as those in the House who opposed the exemption. All of the supporters wanted to grant some sort of exemption, but the degree to which this exemption should be conceded varied among them because of their individual prejudices, biases and convictions. This being the situation, amendments to the exemption clause, Section 11, were pursued.

There were a total of four amendment exemption clauses proposed. The

core of the discussion focused upon the first two amendments along with Section 11 itself. Henri Bourassa and William S. Fielding, respectively, proposed substitutional clauses for Section 11. Bourassa's amendment read:

Notwithstanding anything herein contained, whoever from reasons of conscience, habitually and invariably observes as a day of rest and worship any other day of the week and actually refrains from work, labour or trade, on that day, and if he be an employer permits no work, labour or trade to be performed on that day upon his premises, shall not be subject to prosecution for performing or permitting to be performed work or labour on the first day of the week; provided any such work or labour does not disturb or cause annoyance to other persons in the observance of the first day of the week as a holy day and provided the said premises be not open for traffic on that day.

2. The day of rest and worship mentioned above is the period of time reckoned as such by the religious bodies to which may belong the person who has the right to enjoy the privileges granted by this clause.¹⁰³

Fielding's substitution stated:

Notwithstanding anything herein contained, whoever from reasons of conscience, habitually and invariably observes as a day of rest and worship, any day of the week other than the Lord's day and actually refrains from work, labour and trade on that day and, if he be an employer, permits no work, labour or trade to be performed for him on that day, shall not be subject to prosecution under this Act for performing or permitting to be performed work or labour on the Lord's day, provided such work or labour is done within any inclosed building and does not disturb or cause annoyance to any other person in the observance of the Lord's day as a holy day, and provided that the place where the same is performed be not open for traffic or business on that day.¹⁰⁴

The latter exemption proposals were in line both with the principles and features of the Lord's Day Bill and with the exemption¹⁰⁵ as viewed generally by its legislative supporters.

It was suggested that these exemption clauses be accepted over the exemption which the select committee inserted, in order to solve the apparent problems of Section 11. But, in so doing, they strengthened that segment of Parliament which was opposed to granting any type of exemption because of the apparent difficulties involved.

One of the problems was that Section 11 made the exemption a piece of class legislation, by giving the privilege of Sunday labour to only conscientious religious observers of the seventh day. Neither Bourassa nor Fielding wanted an exemption to favour any particular denomination or sector of society. Rather, the exemption had to be extended to meet the conscientious views of every religious dissenting minority which might dwell in the country and which observed any other day of the week other than Sunday as its religious day of rest and worship. They provided for it accordingly.¹⁰⁶

The substantial complaint against the exemption, Section 11, was the

effect of the exemption on the economic positions of the first-day Christians and Jews. In this instance, it was noted that the Jewish employer,¹⁰⁷ who employed a mixed staff, was able to use first-day Christian labour on Sunday.¹⁰⁸ However, the solution to this problem created yet another difficulty with Section 11 itself. The Jewish employer¹⁰⁹ would be able to keep his place of business open for seven days a week.¹¹⁰ The objective of the amendments was the reconciliation of both these difficulties.

As for the former problem it was possible to use first-day Christian labour on Sunday.¹¹¹ Although clause 2 of the bill forbade anyone to labour on Sunday, Section 11 was applicable to anyone who fell within its jurisdiction and it provided for an exception to the rule of mandatory rest. With parliamentary concern over the national day of rest strictly limited to the secular-labouring aspects, and not the religious-spiritual, Section 11 fell within the scope of the proposed rest day law. Accordingly, first-day Christians fell within the context of Section 11. The intention of the clause was to secure an exemption for the religiously conscientious member of a dissenting minority only. The wording of Section 11 implied this, but did not specifically state it. According to its terms, Section 11 applied to anyone "who conscientiously and habitually observ(ed) the seventh day of the week as the Sabbath," a term having been ruled by the Canadian judiciary as a name of an institution for the purpose of rest.¹¹² Under Section 11 anyone could work on Sunday who abstained from labour on the seventh day from reasons of conscience. Therefore, by merely designating an exemption for conscientious reasons, yet not specifically stating religious conscientious reasons for abstention from labour on the seventh day, non-seventh-day observers fell within its context.¹¹³

A first-day Christian, whether or not religiously conscientious, who worked for a Jewish firm which closed every Saturday would habitually and conscientiously, through habit and custom, observe Saturday merely as a day of rest by abstaining from labour. This coincided with the meaning of rest expressed both within the proposed Act and Section 11. Because of this, the first-day Christian who worked on Sunday did so from reasons of conscience in the sense of his obligation to earn an adequate living for the support of his family. Accordingly, he fell within the scope of Section 11 which legally enabled the first-day Christian to work on Sunday. Saturday would be his legal, national day of rest, while Sunday remained his religious day of rest and worship. The first-day Christian would, however, be unable to fulfill his religious obligations, especially in the case of the religiously conscientious one, according to the Christian beliefs which he

professed.¹¹⁴ This being the case, the religiously conscious first-day Christian reversed positions with the unfortunate Jew when no exemption was conceded. To alleviate this problem, but at the same time maintain the principle behind the exemption, which was to aid the religiously conscious Jew, the proposed amendments replaced the word “Sabbath” in Section 11 with the words “as a day of rest and worship.” Using this terminology, the only person who could profit from the exemption would be a religiously conscious member of a dissenting minority and not a first-day Christian. Since Sunday was the latter’s religious day of rest and worship, the provision for the same in the amendments to Section 11 of the anticipated Act remained consistent with the bill which designated Sunday as a legal, national day of rest.¹¹⁵ Sunday was, and continued to be, the Christian Sabbath.¹¹⁶

Paraphrasing the exemption to read “a day of rest and worship” alleviated another problem for one certain group of first-day Christians, the Roman Catholics, especially those religiously conscious. In their case, according to Section 11, a Jewish employer¹¹⁷ was “able to concentrate work on a Sunday even at the expense not exactly of the (religious) conscience of his (Roman Catholic) Christian employees but almost so.”¹¹⁸ The primary stipulation placed upon the Roman Catholic according to his religious tenets, was to go to Mass to fulfill his religious obligations. The remainder of the day was left for the individual to do as he pleased. A Catholic, who worked for a Jew who closed on Saturday, could use Saturday as his legal day of rest. On Sunday he was able to fulfill both his religious obligations and his financial commitments.¹¹⁹ But, because he was a first-day Christian, living in a majority ruled Christian professing nation where Sunday was recognized by statutory law¹²⁰ and judicial opinion,¹²¹ it was provided that Sunday remain his legal, national day of rest as guaranteed by the enactment itself.¹²² Under this consideration, it was impossible for the Roman Catholic to work on Sunday. The proposed amendment exemptions, therefore, protected all first-day Christians keeping Sunday as their legal, national day of rest along with allowing any other day of the week to be one of rest also, to accommodate the religious dissenting minority. The replacement clauses to Section 11 remained consistent with the principles of both a Jewish exemption and the bill itself.¹²³ Reconciling the issue in such a fashion removed an objection to granting an exemption to the religiously conscious Jew.

Another objection to the exemption by the opposition in Parliament was that Section 11 allowed the Jewish employer¹²⁴ to keep his “store open

on Saturday and have work performed behind closed doors on Sunday.¹²⁵ According to the wording of Section 11, Sunday labour under the prescribed conditions was applicable to an individual person regardless if he was an employer or employee; “whoever . . . refrains from work and labour on that day, shall not be subject to prosecution for performing work or labour . . .”. Under this consideration, it was then possible for the exempted owner of an establishment to remain open every day of the week as long as he, the employer, and his employees regarded either Saturday or Sunday as their legal, national day of rest. It was quite conceivable that the staff could consist of both Saturday and Sunday observers on both days, or that Jews and first-day Christians could work denominational shifts (that is Christians on Saturday, Jews on Sunday), depending upon whether each person took his religious Sabbath as his legal, national day of rest.¹²⁶ But, with the amendment exemptions already establishing the fact that first-day Christians could not work on Sunday,¹²⁷ the working alignments were altered to a mixed staff on Saturday and a strictly religious conscious Jewish staff on Sunday. This being the case, the possibility of a seven-day work week still prevailed and the amendment exemptions proceeded to rectify this problem in the following manner:

. . . Whoever . . . refrains from work, labour or [and] trade, on that day, and if he be an employer permits no work, labour or trade to be performed on that day upon his premises, [for him on that day] shall not be subject to prosecution (under this Act) for performing or permitting to be performed work or labour on the first day of the week [on the Lord's day]; . . .¹²⁸

Wording the amendments in such a fashion placed the onus of respecting freedom of conscience upon the Jewish employer *vis à vis* his Jewish employees. If the Jewish employer was a religiously conscious Jew who wished to derive benefit from the exemption for himself and his religiously conscious Jewish employees, he had to completely shut down all operations on Saturday.¹²⁹ In so doing, it appeared that Saturday would be the legal, national day of rest for everyone in that firm.¹³⁰ Otherwise, if the employer was a religiously conscious Jew who personally abstained from working on Saturday, but allowed any of his employees to work on Saturday, or, if the employer was not a religiously conscious Jew who worked on Saturday, he had to completely close on Sunday.¹³¹ In this situation, the whole of Sunday would be observed by everyone in the firm as the legal, national day of rest.¹³²

Furthermore, the word “trade” appeared in the amendment exemptions and not in Section 11. Its addition halted any attempt on the part of the Jewish employer to reap supplementary financial rewards and clarified

and strengthened the contention of limiting Jewish owned firms to a six-day work week. By the terminology of Section 11, it was possible, where there existed a store connected with a manufacturing establishment, that the Jewish employer “could have his employees work (anywhere) on Saturday and on Sunday he could have them work (strictly) in the factory;¹³³ as long as everyone took either Saturday or Sunday as their legal, national day of rest.¹³⁴ Allowing for this gave the Jewish employer an opportunity for additional income, although legally done, but it appeared “he would have been breaking his own religious law in order to make profit by retail trade on Saturday and breaking our (the national) law by having (religiously conscious) Jewish employees work on Sunday.”¹³⁵ Merely adding the word “trade” to Section 11 was insufficient to close the firm one day a week, but including it in the amendment exemptions made it virtually impossible for the Jewish employer to have an opportunity to gain additional monies while keeping his firm open seven days a week. Therefore, the amendment exemptions strictly limited the Jewish owned firm to a six-day work week.¹³⁶

Even though the Bourassa and Fielding amendments satisfactorily covered these two complaints, another one arose which was the most important of all. It dealt with the economic position of the first-day Christian, especially the religiously conscious one. This was the major complaint against granting any type of exemption,¹³⁷ yet this point held a special significance with the amendment exemption.¹³⁸ Despite restricting first-day Christians to taking only Sunday off as their legal, national day of rest¹³⁷ and the fact that it was up to the Jewish employer which day he wished to choose as the firm’s legal, national day of rest,¹⁴⁰ a factor which created the possibility of first-day Christians abstaining from labour for two days a week,¹⁴¹ it was argued that under the amendment exemptions the present condition of things would not change. In “all” Jewish owned firms, Jews were the heads, while the majority of the employees were first-day Christians. Because of this, these establishments habitually stayed open on Saturday. Therefore, the Jewish owned firms could not take advantage of the amendment exemption in having Sunday labour for the religiously conscious Jew because the employer either operated or had his place operated for him on that day.¹⁴² Under these conditions, the first-day Christian would not be placed in any financial distress. This rounded off the outstanding complaints in granting exemptions which were not covered by Section 11. The resulting effect of the amendment exemptions (either of them) in replacing Section 11 as the exemption clause, would be

the retention of the financial status quo.¹⁴³

However, the amendments (most significantly Bourassa's) not only cleared up complaints of Section 11 to bring about some sort of reconciliation, but clarified possible misconceptions in both Section 11 and the amendments themselves for the benefit of the religiously conscious Jew. The point of significance was the subclause of the Bourassa amendment.¹⁴⁴ It affirmed that the day of rest and worship which the religiously conscious Jew would be taking as his legal, national day of rest would be the one according to his religious beliefs and not the universally reckoned time period of day which the bill itself endorsed.¹⁴⁵ Being limited to a five-day retail work week, this consideration gave the religiously conscious Jewish retailer, whether he was a big time entrepreneur or a petty merchant, the opportunity to make money by trading Saturday evening once his religious Sabbath ended, until midnight, the beginning of the nation's legal day of rest.¹⁴⁶ It not only aided Jewish employees and shop owners but also the Jewish populace who purchased items from them, because of religious adherence for the necessity of family sustenance.¹⁴⁷ Jewish sentiment was taken into account through the amendment exemptions to aid and protect the religiously conscious Jew and not the irreligious one who was protected and gained from Section 11.¹⁴⁸

Up until this point, both amendments were identical in thought and content but the practical application of each amendment differed greatly. Aside from the possibility of the variation in interpretation of the time slot recognition of the Jewish Sabbath,¹⁴⁹ the difference between the amendments was the location where Sunday labour should be allowed. Under the Bourassa amendment, the work or labour could be done anywhere while the Fielding amendment strictly limited the activity to "inclosed buildings."¹⁵⁰ In the latter instance, work would have to be done behind closed doors in the home, shop or establishment so that the work was hidden from public view as compared to work or labour which could be done in the open.¹⁵¹ This bone of contention was characteristic of the personal viewpoints of the respective movers but was a crucial one because neither would vote for the other's recommendation.¹⁵² Other than this point, the ideas expressed in the amendments were identical. They overcame the loopholes of Section 11 (and the arguments against the amendment exemptions themselves),¹⁵³ as well as possible in both theory and practical application in an honest attempt to make an exception in favour of the religiously conscious Jew. While so doing, the amendment exemptions remained consistent with the principles and features of both the bill and

the exemption.¹⁵⁴ Yet, they added strength to the opposition's point of contention that the granting of any type of exemption was too difficult.

Despite the arguments presented by the movers of the amendment exemptions, opposition to the changes developed. As the amendments were proposed to alleviate the problems of the original exemption and to accommodate the movers' personal views, opposition to them along personal and individual lines was evident among the supporters of an exemption. For various reasons, the latter wanted Section 11 to remain as the exemption clause. Since the proposal of granting an exemption was made by a parliamentary select committee, it was often recognized as a rule that the House should accept the findings of such a committee,¹⁵⁵ even more so in this instance. The committee to which the Lord's Day Bill was referred worked hard and diligently and gave its utmost consideration to the problem. After hearing the arguments of the complainants, checking into other countries where similar laws existed; and placing into context the ramifications of such an exemption with respect to the effect of the measure upon the general community, this group of individuals had incorporated Section 11. Because of the existing problems, it was to them the best and most workable conclusion and the one which they felt would be most acceptable to the Commons.¹⁵⁶ In their earnest attempt to have Section 11 sustained, their arguments against the amendment exemptions also aided the opposition in its stand against the passage of any sort of exemption.¹⁵⁷

These men, the opposition amendment exemption core, countered the concept of extending the exemption to any religious dissenting minority in the country on the grounds that it would be too wide in application. The only groups which they felt should receive the benefit of an exemption were those who presented their case and petitioned for one,¹⁵⁸ thereby limiting it to only seventh-day observers. It was also argued that since Christianity in Canada was part of the law and "especially connected with British institutions," limiting the exemption to seventh-day observers coincided with this idea because "Christianity as based upon the Holy Writ" established the existence of two Sabbaths, Canada should also.¹⁵⁹ Therefore, by not granting the benefit of an exemption to those who were not represented, practical problems of the present day were taken care of,¹⁶⁰ as opposed to the unknown and un contemplated problems which could occur in extending the exemption to its greatest degree.¹⁶¹

Further complaints about the width of application surrounding the amendment exemptions were not limited to which groups it would apply

to, but stretched into another perspective. This new consideration was the type of work which should be allowed on Sunday by ones who benefited from an exemption. Some contended that the Bourassa amendment (which in this context was the same as found in Section 11)¹⁶² went too far because work or labour could be done in the open even though done on the exemptee's own premises. In this case, such work would have a detrimental effect because of its visibility to the general public who would be observing Sunday as a day of rest.¹⁶³ On the other hand, a counter, but similar argument appeared against the Fielding amendment where work or labour was restricted to an "inclosed building." In this instance, the exemption was not protecting certain groups who could benefit from the clause.¹⁶⁴ It failed to cover people such as farmers who worked in the open on their own premises.¹⁶⁵ Jewish farmers were small in numbers,¹⁶⁶ but the predominate agricultural group was the Seventh-Day Adventist.¹⁶⁷ It was evident that personal prejudice and bias played a role in the opposition to the amendment exemptions in this instance.

The substantial issue of the economic well being of both Jews and first-day Christians was once again the crucial matter. Even though both amendment exemptions limited Jewish firms to a six-day work week¹⁶⁸ and kept Sunday as the first-day Christian's legal, national day of rest,¹⁶⁹ the point of contention was the effect of the exemption on the first-day Christian employees of Jewish firms. Despite the contention that the amendment exemptions retained the financial status quo,¹⁷⁰ it was felt that the wording of the exemption which allowed the choice of the day of rest to be left to the Jewish employer, with the possibility of first-day Christians being limited to a five-day work week, was more likely than under Section 11.¹⁷¹ This being the case, first-day Christians would work only five days and not six, thereby losing one day's pay if the Jewish employer closed down on Saturday. The first-day Christian would be placed in financial difficulty, unlike his fellow Jewish worker in the same firm, in contrast to other first-day Christians who did not work for Jews. In trying to resolve the Jewish dilemma, the first-day Christian was placed in one. In the final analysis, the position of first-day Christians, being the majority in the nation, had to be taken into consideration; their conscientious convictions, moreover, were placed above those of the Jew.¹⁷²

Nevertheless, within this opposition amendment exemption group, support for the original exemption came forth in order to show that the complaints lodged against the amendment exemptions would be amply covered by Section 11 itself. The businessman (the Jew being notoriously

good at this profession) would operate his firm in a manner most beneficial to his own financial interests, with or without an exemption. By granting an exemption, it would be foolish for the Jewish employer to close down his shop on Saturday when full production could be carried on by a majority, especially first-day Christian staff, as opposed to being open on Sunday with a minimal staff under restricted labour conditions. The work on Saturday would be done by a majority of the employees, while the religiously conscious Jew utilized it as his day of rest. The Jewish owner, however, would be foolish to open his shop for the few religiously conscious Jews on Sunday because the work they would do would not be substantial enough to cover the owner's cost of keeping the place open. Under these conditions, the intention of Section 11 would be carried out. The Jewish employer could not benefit financially because he would lose money in trying to do so, thereby limiting him to a six-day work week. In addition, first-day Christians would be working six days a week with Sunday being their legal, national day of rest. Accordingly, they would be able to take home their full week's pay.¹⁷³

Surprisingly, the arguments in favour of Section 11 presented by its respective supporters were a replica of those which favoured the amendment exemptions over Section 11 itself. The problems surrounding the granting of an exemption were specifically covered by the amendment exemptions although implied by Section 11. In light of this development in the financial-economic realm, combined with the width of application entertained in the amendment exemptions, the arguments for sustaining Section 11 over the substitutional clauses as the exemption proviso, re-enforced the opposition's arguments of not granting any type of exemption at all.¹⁷⁴ The vote was ready to take place.

With the heat of the June night compounding the intensity of the debate, temperatures were exceedingly high among the legislators. The controversy was thoroughly dissected and had reached its saturation point; the remaining decision entailed choosing which exemptions would be implemented, if any at all. The votes were cast and counted. The Bourassa amendment was overwhelmingly defeated¹⁷⁵ and was followed subsequently by the defeat of the Fielding amendment.¹⁷⁶ With the rejection of these two amendments, two more were immediately proposed.

Herbert A. Ames proposed a substitute clause very similar to that of Bourassa's with the exception that the extent of the exemption was limited to the religiously conscious seventh-day observer. With this change, he was hopeful of winning support; but the amendment lost on division.¹⁷⁷

Following this, Armand Lavergne proposed an amendment which merely protected the religiously conscious person of any dissenting minority from being forced to work on his religious day of rest and worship; but it did not provide for Sunday labour. This merely respected religious convictions of which the enactment itself¹⁷⁸ and Canadian judicial opinion¹⁷⁹ sustained, but did not alleviate financial-economic disabilities of the religiously conscious member of any dissenting minority. Despite the reasoning of the proposal, it was voted down,¹⁸⁰ thus ending the train of amendment exemptions.

At this point, the issue went to its final stage and the only exemption which could be implemented was the select committee's proposal, Section 11. The vote was taken and the decision of the legislators was recorded 79 to 57 in favour of not granting an exemption.¹⁸¹ The Jewish Exemption Issue had reached its conclusion. The stormy controversy which began on March 15, 1906 was over on June 27, 1906.¹⁸²

VI

THE DENIAL OF THE JEWISH EXEMPTION IN THE CANADIAN PERSPECTIVE

Federal Sunday law was introduced and legislated upon for the interest of the nation at large;¹⁸³ therefore, justification for the loss of a Jewish exemption was based on the legislator's interpretation of the various exemptive clauses and their effects upon the nation. One of the areas of concern was the viewpoint of the individual legislator about which non-conforming religious sects would be able to avail themselves of the exemption, and about what types of work ought to be allowed. The amendment exemptions¹⁸⁴ merely intensified opposition to any exemption.¹⁸⁵ The aforementioned factors, however, were not conclusive enough to account for the wide discrepancy of support for Section 11 over that of the amendments, nor to outrightly deny an exemption at all. Another area was the crucial and deciding factor.

As the exemption was requested by the Jews and granted by the select committee because of the economic difficulties incurred by the religiously conscious Jew,¹⁸⁶ the major justification in denying an exemption was based upon the same considerations when the first-day Christian majority was taken into consideration.¹⁸⁷ Both the parliamentary opposition and supporters of an exemption sought a common objective — the protection of the first-day Christian majority. The former believed this goal would be secured by not granting an exemption while the latter speculated that the

first-day Christian majority could be protected even with the granting of an exemption.¹⁸⁸ The financial-economic implications were consistently outlined in all the amendment exemptions.¹⁸⁹ Yet, the amendments differed from the original exemption proposal because Section 11 merely suggested financial implications.¹⁹⁰

Under the amendment exemptions the legislators came to the conclusion that the greatest financial-economic hardships would be endured by first-day Christians. By taking advantage of any of the exemptions, the Jewish employer would not be gaining anything over his first-day Christian competitor. However, an advantage was noted for the Jew over the first-day Christian in the labouring aspect. Here, the Jewish labourer fared better because he had a six-day work week while his first-day Christian counterpart lost one-day's pay during the week, thereby only working five days and receiving five days' wages. The situation was effectively summarized by Ralph Smith:

If there is anything in the contention that the Jewish employer has a conscience, then these factories must be closed against (first-day) Christian workmen on Saturday and the factory will be closed by law against (first-day) Christian workmen on Sunday.¹⁹¹

Accordingly, the first-day Christian was financially hurt, which implied a gain for the Jew.¹⁹² Because of this, the opposition was overwhelmingly against the amendment exemptions, and, as a consequence, the Bourassa amendment was defeated by a substantial majority of forty-six. Both Section 11 supporters and the opposition exemption members joined hands.

Section 11 was defeated as well but the roles were reversed because the fiscal hardship was not evident against the first-day Christian. Here, there existed the possibility of extended privileges to the Jew which should not exist. Taking advantage of Section 11, the religiously conscientious Jewish labourer and his first-day Christian counterpart fared equally because both were able to work six days a week and receive six days' pay. The extra privilege was noted for the Jewish employer. It was possible for him to obtain additional financial rewards because his place of business could remain open for seven days a week. This gave the Jewish employer an advantage over the first-day Christian employer who could not take advantage of the exemption. Once again, Ralph Smith defended the anti-exemptionist position:

. . . We would be perfectly reasonable in assuming that a Jewish employer would take advantage of this law, if it was passed to operate his factory on every day of the week.¹⁹³

Accordingly, it was possible that the Jew could be given a direct gain

which in turn revealed an indirect injustice toward the first-day Christian.¹⁹⁴ Because of this, Section 11 received more support than did the amendment exemptions but was still defeated by a majority of twelve. Here, the supporters of the amendment exemptions added minimal strength to the case of the opposition exemption crew.¹⁹⁵

The question over an exemption in its final analysis was a simple one for the legislators. Despite the enthusiasm for an exemption by supporters who speculated that the first-day Christian would not be adversely affected, and that the Jew would not gain any special privileges because of the exemption,¹⁹⁶ the vote in support of an exemption failed. Speculation was an inadequate ground upon which to provide for an exemption. A certainty was that the concession of any type of an exemption would give the Jew, in the words of Ralph Smith again, "a commercial advantage over the (first-day) Christian competitors in the same business."¹⁹⁷ An unawareness of the existing conditions of the Jewish and first-day Christian working relationship,¹⁹⁸ along with the probability that if and when an exemption was put into practise, the first-day Christian majority would suffer, doomed an exemption clause. These reasons, based upon monetary ramifications, were sufficient for the legislators to deny the religiously conscious Jew an exemption.

In viewing the denial of an exemption with respect to the enactment itself and the happenings in Parliament during the debates, the characteristic feature of the controversy was its 'individualism.' Every clause of the bill which was debated upon fell under one of the following categories: a unanimous adoption; complete rejection; or else adoption by majority vote where the principle of the clause was accepted by some form of compromise. But this was not the case for any of the Jewish exemption proposals. They were all voted upon and their underlying principle was not accepted. The Jewish exemption was the only clause in the bill which was debated and whose fate was rejection when the measure appeared in its final form.

As for the individual members of the Government, an approach was taken which may be termed unconventional because of their actions surrounding the exemption issue. The bill, as a whole, was a Government supported measure.¹⁹⁹ But this was not so for the Jewish exemption clause.²⁰⁰ The cabinet itself was thoroughly split on the issue. Some members advocated an extension of the exemption to its greatest degree; others desired a restricted exemption; still others desired no exemption at all.²⁰¹ It was especially noteworthy that Prime Minister Laurier and the

Minister of Justice, Aylesworth, were at complete odds on the issue.²⁰² Because of the difference of opinion among the cabinet members themselves, the principle behind an exemption provision was the only clause in the bill which was not supported by the Government.

Within the cabinet, another event occurred. It was always assumed that the Minister in charge of a bill made the motion to adopt a clause,²⁰³ but not so in this instance. Aylesworth, being totally against granting an exemption, refused to comply with routine procedures. In light of this fact, the Minister of Agriculture, Sydney A. Fisher, a supporter of the Section 11 exemption, moved the adoption of the select committee's proposal.²⁰⁴ This being the cabinet's position, its members acted not as a group but as individuals.

This approach was not limited to cabinet members but to the legislators in the Commons as a whole. "I had stated," commented Aylesworth:

... the position of the government with respect to that provision [Section 11] of the Bill to be that it was a detail of the measure which was not presented by the government as part of their measure, but in regard to which every individual member of the House, as well as the government would vote as he pleased.²⁰⁵

This was the manner in which the Jewish Exemption Issue was presented, debated and voted upon by the individual legislators. No attempt was made to reconcile the consciences of the members of Parliament. Rather, as Laurier remarked, "everybody has (had) to do the best he can (could) according to his own views."²⁰⁶ In so doing, discrepancies between supporters and opponents of the various exemption proposals revealed the importance of the individual parliamentarian's voting pattern. The vote on Section 11 as reported by *The Toronto Globe*, was carried over to the voting pattern on the proposed amendment exemptions:

Party lines were practically wiped out and Provincial lines were not regarded, so that it would be difficult to classify the opposing forces.²⁰⁷

Individualism characterized its defeat which in itself revealed that the politics of the Jewish Exemption Issue made strange bedfellows.²⁰⁸

In the defeat of a Jewish exemption on individualistic voting, consolidation through individualism was a noteworthy feature throughout the entire debate. An analysis of the statements derived from the legislators who expressed their opinions would seem to indicate the presence of various voting patterns in relation to a Jewish exemption. It was evident that the French Canadian members of Parliament as a whole favoured granting the Jew some sort of exemption, but varied in the degree to which the exemption ought to be conceded. Being a minority within the Dominion, as

the Jew was a minority among minorities, the French Canadians had something in common with them and, accordingly, sympathized with them. This attitude was further enhanced because the French Canadians fought for something for another minority in the country which they themselves, the largest ethnic²⁰⁹ and religious²¹⁰ minority in the country, failed to receive at that time:²¹¹ respect for Roman Catholic conscientious convictions. Armand Lavergne outlined the French Canadian position:

As a Roman Catholic, as a French Canadian, I am forbidden by this Bill of doing many things to which my conscience does not object. But thanks to God, this is not an objection to me or a reason I should not want another minority to be deprived of what they have a right to do.²¹²

The French Canadians appeared to be gallant crusaders for a Jewish exemption.

The English Canadians, on the other hand, were decisively split in the exemption issue. This group's ideas varied from being totally in favour of the most extended exemption to that of not granting any type at all. This group was the dominant majority both ethnically and religiously within the country. As such, there existed no common tie with the Jew. The Lord's Day Bill originated from the Lord's Day Alliance of Canada, which, while favouring the measure, was totally against the granting of a religious dissenting minority exemption.²¹³ The Alliance represented a religious group which was largely Protestant and which composed over half the Canadian population.²¹⁴ Its convictions and sentiments were adequately covered within the enactment. Even though some of the parliamentarians sympathized with the Jews in their dilemma, all those legislators who opposed the exemption proposals came from this segment of society. The English Canadian position was adequately summarized by Henry H. Miller:

... The people of this country, the clergymen of the various denominations are not in favour of any such principle as we have in Section 11 [the proposed exemptions].²¹⁵

The English Canadians appeared to be the devil's advocate in the Jewish Exemption Issue.

Overall, the supporters of an exemption displayed respectable solidarity and unity, but, in the particulars, they revealed incohesion. They wanted to concede some sort of exemption. Their arguments for granting an exemption based upon conscientious convictions of the Jewish minority broke down when the manner and approach with which to fulfill their ob-

ject was tested. In arguing against the various exemption proposals among themselves, they strengthened the opposition's contentions as to possible loopholes, inconsistencies and future problems which would not occur if an exemption was not given. In this respect, the personal prejudices and biases of each member, together with the anticipated financial-economic ramifications of an exemption, revealed the significant role which individualism played in the issue.

On the other hand, the opposition exemption group was a solid, united entity which fought against the principle behind a Jewish exemption. Even if the supporters could have rallied together and found one acceptable resolution, their numerical strength was insufficient to surpass that of the opposition exemption group; the exemption proposals, even the Lavergne proposal which did not provide for an exemption, were defeated.²¹⁶ Nor were the supporter's arguments influential or convincing enough to sway any opponents to their way of reasoning behind the latter's contentions were sound. In the end, the convictions of those opposing the exemption were sustained. As such, the prejudice and bias of each member of this group accompanied their fears of what could happen, for ultimately the effects would be detrimental to the economy of the nation if an exemption was granted. The situation was effectively summarized by Prime Minister Laurier:

It is useless to argue upon this question [a Jewish exemption]. Men have their convictions made in advance, and their convictions are largely the result of education, early training and circumstances. You may reason until doomsday and you may pile up your arguments but it would be impossible to convince those whose early training has fixed their convictions on this subject.²¹⁷

It was the anonymous individual in the select committee who was opposed to the issue of a Jewish exemption initially who gave it its life and breath.²¹⁸ Yet, in deferring judgement to Parliament on this issue, the vote of the Commons confirmed the convictions of the anonymous member of the select committee and brought suffocation and death to the Jewish Exemption Issue. The onus of the enactment as a whole fell upon the legislators;²¹⁹ in part, with respect to a Jewish exemption it was more accurate because of its dependency upon the individual member.

The inevitable occurred regarding the Jewish Exemption Issue in the Lord's Day Bill. From the beginning, Minister of Justice Aylesworth realized the difficulties with legislation for a national day of rest, and prophetically remarked on the tenderness of this particular issue:

... The religious and conscientious convictions of equally well meaning citizens looking at this question from different view points, are unable to be reconciled.²²⁰

And, to further supplement Aylesworth's prediction, Henri Bourassa speculated as to the results of the Jewish exemption controversy prior to its being put to the vote:

Therefore it comes to this that the only exception which this House is prepared to refuse is the (Jewish) exception that will be based on reasons of conscience.²²¹

Because of these preconceived notions, the issue of the Jewish exemption was narrow, limited and confined to the point of knowing what lay ahead. Its defeat was a forgone conclusion.

The loss of a Jewish exemption revealed the consistency which characterized the enactment itself. Because the measure was directed to the general welfare of Canadian society, the provisions of the bill typified this objective. Also, the provisions remained in concert with the principle and purpose of the measure, being the creation of a national day of rest, one day in seven. Since Parliament had the constitutional power to deal with religio-moral issues in this instance, it merely confined itself to the moral aspects of rest-day legislation, being the secular-labouring aspects of the day and the religiosity of Sunday was ignored throughout.²²²

The measure had no religious effect whatsoever on any segment of the Canadian population. One was free to fulfill his religious obligations any day of the week as the individual saw fit and there existed no religious requirements to be fulfilled on the national day of rest.²²³ Moreover, the Act, through its provisions, did not equate the national day of rest with any religious significance at all.²²⁴ But, if a Jewish exemption had been conceded, the avoidance of religious significance in the enactment would not hold true. All the exemption proposals gave cognizance to the religious significance of Sunday and some other day, in which all, except the Lavergne amendment, specifically designated the national day of rest as Sunday, the Lord's Day or the first day of the week as a 'holy day.' In this context, all the amendment exemptions recognized the religious significance of Sunday and some other day as a day of rest and worship.²²⁵ Omitting a Jewish exemption based on these considerations maintained the idea that the national day of rest was strictly limited to the secular-labouring aspects because the religious connection was non-existent.

While legislating for the benefit of the nation as a whole, stability among the members of the labour forces in the country was an important result. Sunday was chosen as the national day of rest because the ruling majority was first-day Christian.²²⁶ But in so doing, the effects of the measure fell equally upon all, because all that was required by everyone

was to observe the national day of rest by abstaining from labour and to follow the regulations of the measure so as to allow his fellow man the right to rest.²²⁷ At the outset, this was the Government's intention behind the measure, but exceptions to the rule had to be made.

With the measure directed for the general welfare and betterment of the nation, exceptions were provided to sustain this directive within the purpose and principle of the enactment.²²⁸ Majority interest could not be infringed upon. The exemptions were compatible with the norms of Christianity adhered to by the nation but they were seen from a secular-labouring point of view. This revealed the "degree of secularity" in Canada by 1906.²²⁹ Opposition to the measure in general was based upon dollars and cents²³⁰ because the secular interests vied for exemptions; a Jewish exemption was denied for the same reason. The financial-economic ramifications of an exemption within the measure could have had a detrimental effect upon the majority of the people.²³¹ Because of this, the nation as a whole would adversely be affected. As a consequence, a Jewish exemption would not have been beneficial to the general welfare of the country as were the other exemptions. Denying a Jewish exemption was in the best interest of the majority but more so for the nation as a whole:

The loss of income suffered by these groups [the religious dissenting minority] as a result of the Act, even when multiplied for its final effect upon the national income, was a negligible social cost to incur for the sake of religious principle.²³²

In this light, the arguments presented both by the exemption's supporters and opponents tended to favour the opposition's contentions. Denying a Jewish exemption upheld the purpose, principle and directive of the Lord's Day Bill and was an indication of the consistency of the enactment.

As an Act providing for a national day of rest, the omission of a Jewish exemption revealed an expression of nationalism. There were only two groups which received exemptions because their intentions coincided with the purpose, principle and directive of the Act: firstly, the secular interests which received an exemption under the works of necessity and mercy;²³³ and secondly, religious interests whose convictions were adhered to through the recognition of provincial rights.²³⁴ The bill, as described by Senator L. O. David in his praising of Parliament's handling of the measure, confirmed such recognition:

The Bill is not a triumph of a party, of a religious denomination, or of a national association. It is the triumph of justice, of liberty, of provincial autonomy, of all those who think that in this country we must work the confederation on the principle upon which it was based, namely, mutual concession. Mutual forbearance is the price of harmony and of the national and material progress of Canada.²³⁵

The ones who received an exemption made the measure what it turned out to be in the Canadian context.

The Jews were not so fortunate as the two above-mentioned groups because an exemption in their favour was not as important as the exemptions which were conceded. The granting of an exemption to the Jews would have been a liability to the Canadian nation because of the detrimental economic effects experienced by the nation as a whole. The underlying theme in the parliamentary decision over a Jewish exemption was best described by a member of the opposition exemption contingent, George Smith, of letting "sleeping dogs lie."²³⁶ Denying the Jews an exemption in light of the purpose, principle and directive of the measure revealed an expression of nationalism.²³⁷

Religious interests were the easiest to dispose of,²³⁸ and the Non-conformist element of Canadian society presented the least difficulty. It was defeated, a defeat which was based upon logical, well-founded and justifiable conclusions. In Senator H. J. Cloran's description of the handling of the entire bill, he analyzed the crux of the matter involving the Jewish (religious dissenting) minority in the country:

. . . Human wisdom is too finite, too restricted to frame a law that will meet the consciences of all men. The Almighty Himself could not do it.²³⁹

The decision came from Parliament Hill and the Jewish Exemption Issue legally died.

CANADIAN JEWRY AND THE DENIAL OF AN EXEMPTION

Reaction to the parliamentary decision by the Lord's Day Alliance and Canadian Jewry, the two major lobby groups which pressed their viewpoints on the legislators, was to be expected. The former was most content²⁴⁰ with the final outcome of the Jewish Exemption Issue and did not question Parliament's reasons for not acquiescing to the Jewish demands.²⁴¹ The Alliance recognized the fact that the Jews were well represented by an influential deputation and counsel which "evidently impressed the (parliamentary select) Committee,"²⁴² but in the final analysis failed to move the whole parliamentary body. Accordingly, the Alliance emerged as the victor in the struggle.²⁴³

The Jews, on the other hand, were discontented with Parliament's failure to grant them an exemption. They viewed the Lord's Day Act as "unique, without precedent or parallel." It exemplified the impossible

task of framing a Sunday law to suit modern business conditions by allowing an exception to the rule of mandatory rest for commercial reasons, while an exception based upon religious convictions was a violation of the rule of mandatory rest and it was deemed a punishable offence.²⁴⁴ It was evident that the Jewish community in Canada did not accept parliamentary justification based on the financial-economic, secular-labour aspects of the national day of rest. The Jews felt that, since exempted groups could work on Sunday as well as other people able to work a six-day week and maintain their religious convictions while the Jews could not, the Lord's Day Act was "nothing but a piece of legislative humbug with a touch of bigotry."²⁴⁵

Bigotry in the eyes of the Jews did not end with the Act but extended to the legislators who formulated it. The Jews viewed the actions of the English Canadian Protestants as intolerable because it was assumed that these legislators would uphold British fair play and defend the right of freedom of conscience. But this was not the case. The issue opened Jewish eyes "to the intolerance of those whom we [the Jews] regard as friends of religious freedom and upholders of British fair play."²⁴⁶ Canadian Jewry's feeling was shared by their brethren in England who also commented on the situation; it was disappointing, stated *The London Jewish Chronicle*, "to find a great British colony which prides itself upon its progressive qualities lagging behind the motherland."²⁴⁷ The victories which the Jews gained up to the time of parliamentary decision ended abruptly in defeat. This defeat was a bitter one which the Jews could not accept in their hearts because they felt an injustice had been done. Yet, they had to respect Parliament's decision so far as following the prescribed regulations, because they felt themselves to be an intrinsic part of the Canadian nation, not merely a separate entity posing as Canadian residents.

The arguments presented by Canadian Jewry²⁴⁸ in their appeal to Parliament for an exemption were not accepted by the legislative body, but were rather effectively used to justify Parliament's denial of an exemption. With the introduction of a federal Sunday law in Parliament which omitted an exemption for the religious dissenting minority, questions arose concerning the legality of the situation. Since the religious majority's sentiments had been taken into consideration, the Jews felt that they should be given the same treatment. The main concern of Canadian Jewry in this situation was to aid their religiously conscious brethren who would be at a financial disadvantage because of the law. To achieve this goal they struggled for an exemption clause which they felt would cover

their case under the banner of respect for religio-conscientious convictions. The Jewish element believed that everyone's conscientious convictions would be respected in the granting and enforcement of such an exemption.²⁴⁹ They also felt that if an exemption was not given, freedom of conscience and religion would be curtailed,²⁵⁰ equality of religious denominations would not be maintained²⁵¹ and the Christian Church would have been firmly established in the Canadian constitution.²⁵²

Yet, contrary to Jewish opinion, freedom of conscience and religion continued to exist in Canada²⁵³ because everyone was free to conscientiously follow their religious convictions with impunity.²⁵⁴ Equality of religious denominations was similarly maintained.²⁵⁵ Parliament still viewed denominations as voluntary associations which were recognized by law. Their property was protected and state interference with religious organization and faith was non-existent unless civil (secular) rights were violated.²⁵⁶ In this light, the Lord's Day Act was initiated and enforced for the benefit of all Canadians regardless of religious profession and beliefs.²⁵⁷

Also, as Canada had no established church in terms of dogma, tenets, doctrine or form of worship,²⁵⁸ status quo was maintained in spite of the Lord's Day Act. Extricating itself from any religious obligations of the day, Parliament dealt with the moral aspect of the national day of rest, the cessation from labour. Since this was in compliance with the moral values of all (monotheistic) religions — one day's rest in seven,²⁵⁹ no religious entity was ever constitutionally endorsed by the enactment.²⁶⁰ Therefore, the only reason Parliament (or the constitution) ever appeared to infringe upon the religious rights or privileges of the Jews was that Sunday was chosen as the national day of rest. It was implemented to conform to the dictates of the ruling majority in a democratic society.²⁶¹ None of these freedoms were curtailed, but were rather sustained in the passage of the Lord's Day Act within the framework of Canadian law.

The final argument presented by Canadian Jewry based on conscientious convictions was one which would be deeply felt by those for whom an exemption was intended. As the exemption was initiated to protect Jews who adhered to the laws, customs and traditions of their religion, the Jewish interests indicated that no matter what the ultimate decision over an exemption was, Canadian Jewry was obliged to obey the law because their religion taught them to do so.²⁶² With the difficulties placed upon the Jew because of Sunday law compounded by this religious dilemma, Canadian Jewry was hopeful that this emotional religious appeal might attract

support to their side. This religious law is known as *dina d'malkhuta dina* — “the law of the kingdom (the state) is the law.”²⁶³

Canada was a diasporic country with a considerable Jewish population. The Lord’s Day Act was a secular enactment under the criminal law which was specified as an offence against religion. Parliament, with its authority to legislate on religious matters where civil [secular]²⁶⁴ rights were concerned, did so on a moral concept which was accepted by all monotheistic religions, that of the secular-labouring aspects of a day of rest.²⁶⁵ Parliament created a national day of rest for Canada, void of implication regarding religious adherence. Since the Act was directed toward the welfare of the country, Sunday was accepted as the rest day because the ruling majority were first-day Christians.²⁶⁶ In spite of this, the measure was not discriminatory to Jews: it was enacted for everyone’s benefit based on a principle which provided for at least one day of rest in seven in which cessation from labour was mandatory. The law, therefore, fell equally upon everyone.²⁶⁷ Even though Sunday was designated as the legal day of rest, the measure forced no one to observe the day in any religious manner. The enactment neither hindered one from observing his religious Sabbath, nor did it force one to break any tenet of his religion. Most importantly, it did nothing to nullify Judaic law whatsoever.²⁶⁸

The Lord’s Day Act fell neatly within the limits of *dina d'malkhuta dina* despite the omission of an exemption. According to the Jewish religion, the Canadian Jew had to abide by the regulations of the Lord’s Day Act because of the diasporic code of “the law of the land is the law.” Therefore, the legal and religious arguments used by Canadian Jewry to acquire an exemption were effectively suited to justify Parliament’s decision to deny the Jews an exemption.

Moral affiliations were the focal point in Parliament’s reasoning behind a national day of rest. Parliament dealt with the issue with moral obligation in mind (that of granting the populace of Canada a day’s rest from labour each week); yet, in doing so, Parliament had to take into account the moral considerations of the Canadian populace (that is, which day would be the most beneficial to the Canadian people as the national day of rest). A religiously oriented problem arose regarding the Jews: since Sunday was the preferred day of rest by the first-day Christian majority, would the religious dissenting minority be allowed an exemption? Canadian Jews found themselves in a predicament in that their moral considerations, one day’s rest in seven, were accounted for by Parliament, yet that day which the Jews religiously held as their Sabbath, Saturday, did

not coincide with the national day of rest, Sunday, as in the case of the first-day Christian majority.

Morally, however, the Jewish cause in the Lord's Day Act was without a strong base, for "in politics of a constitution, claims based on moral principles are often less successful than those based on specific legal guarantees."²⁶⁹ Canadian Jewry did have specific guarantees in which equality of religious denominations was granted through constitutional and legal citations; but when moral considerations involving the nation at large were the main concern, legal interpretation would not side with the Jewish cause.²⁷⁰ Equality of religious rights in the context of the Lord's Day Act did not constitute respect for minority rights. This being the case, legal considerations would not support the oppressed.

Yet, over and above these considerations, majority rule in Canada was of primary importance in determining whether the Jews would receive an exemption. In a democratic society the majority must rule. In such a society, which exists in Canada, "minorities must depend on persuading majorities of the justice of their cause."²⁷¹ Any religiously grounded moral affiliations would be based generally on custom, practical considerations or political expediency as seen by the ruling majority.²⁷² Since the first-day Christian majority saw no practical validity for granting a minority exemption along any of these lines, the Jewish Exemption Issue was completely dropped in the Federal Lord's Day Act of 1906.

APPENDIX

6 EDWARD VII

Chapter 27

An Act respecting the Lord's Day.
[Assented to 13th July, 1906.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:-

1. In this Act, unless the context otherwise requires, —
 - (a) "The Lord's Day" means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon;
 - (b) "Person" has the meaning which it has in the Criminal Code, 1892;
 - (c) "Vessel" includes any kind of vessel or boat used for conveying passengers or freight by water;
 - (d) "Railway" includes steam railway, electric railway, street railway

and tramway;

(e) "Performance" includes any game, match, sport, contest, exhibition or entertainment;

(f) "Employer" includes every person to whose orders or directions any other person is by his employment bound to conform.

(g) "Provincial Act" means the charter of any municipality or any public Act of any province whether passed before or since Confederation.

2. It shall not be lawful for any person on the Lord's Day, except as provided herein or in any Provincial Act or law now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day any work, business, or labour.

3. Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy, and for greater certainty, but not so as to restrict the ordinary meaning of the expression "work of necessity or mercy," it is hereby declared that it shall be deemed to include the following classes of work:-

(a) Any necessary or customary work in connection with divine worship;

(b) Work for the relief of sickness and suffering, including the sale of drugs, medicines and surgical appliances by retail;

(c) Receiving, transmitting, or delivering telegraph or telephone messages;

(d) Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product or to the plant or property used in such process;

(e) Starting or maintaining fires, and ventilating, pumping out, and inspecting mines, when any such work is essential to the protection of property, life or health;

(f) Any work without the doing of which on the Lord's Day, electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes;

- (g) The conveying of travellers and work incidental thereto;
- (h) The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto;
- (i) Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;
- (j) Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;
- (k) Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yard crews in handling cars in railway yards;
- (l) Loading, unloading and operating any ocean-going vessel which otherwise would be unduly delayed after her scheduled time of sailing, or any vessel which otherwise would be in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;
- (m) The caring for milk, cheese, and live animals and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day;
- (n) The operation of any toll or drawbridge, or any ferry or boat, authorized by competent authority to carry passengers on the Lord's Day.
- (o) The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act;
- (p) Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;
- (q) The conveying His Majesty's mails and work incidental thereto;
- (r) The delivery of milk for domestic use, and the work of domestic servants and of watchmen;
- (s) The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch now regularly so operated;
- (t) Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any Department of the Government;

- (u) Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day in the taking of fish;
- (v) All operations connected with the making of maple sugar and maple syrup in the maple grove;
- (w) Any unavoidable work on the Lord's Day to save property in cases of emergency or where such property is in imminent danger of destruction or serious injury;
- (x) Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act and with the object of preventing undue delay, deem necessary to permit in connection with the freight traffic of any railway. The costs of all applications to the Board under this paragraph shall be borne by the applicant, and, if more than one, in such proportions as the Board determines. Notice of application, in which the reasons to be relied on shall be fully set out, shall be given to the Department of Railways and Canals. In all other respects the procedure under *The Railway Act, 1903*, shall, so far as applicable, apply.

4. Except in cases of emergency, it shall not be lawful for any person to require any employee engaged in any work described in paragraph (c) of section 3 of this Act or in the work of any industrial process or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour.

2. This section shall not apply to any employee engaged in the work of any industrial process in which the regular day's labour of such employee is not of more than eight hours' duration.

5. It shall not be lawful for any person, on the Lord's Day, except as provided in any Provincial Act or law now or hereafter in force, to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at any performance or public meeting elsewhere than in a church, at which any fee is charged, directly or indirectly, either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat.

2. When any performance at which an admission fee or any other fee is so charged is provided in any building or place to which persons are conveyed for hire the proprietors or managers of such performance or

by any one acting as their agent or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section.

6. It shall not be lawful for any person on the Lord's Day, except as provided by any Provincial Act or law now or hereafter in force, to run, conduct, or convey by any mode of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed shall not be deemed to be travellers within the meaning of this Act.

7. It shall not be lawful for any person to advertise in any manner whatsoever any performance or other thing prohibited by this Act.

2. It shall not be lawful for any person to advertise in Canada in any manner whatsoever any performance or other thing which if given or done in Canada would be a violation of this Act.

8. It shall not be lawful for any person on the Lord's Day to shoot with or use any gun, rifle or other similar engine, either for gain or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day.

9. It shall not be lawful for any person to bring into Canada for sale or distribution, or to sell or distribute within Canada, on the Lord's Day, any foreign newspaper or publication classified as a newspaper.

10. Every person who violates any of the provisions of this Act shall for each offence be liable, on summary conviction, to a fine, not less than one dollar and not exceeding forty dollars, together with the cost of prosecution.

11. Every employer who authorizes or directs anything to be done in violation of any provision of this Act, shall for each offence be liable, on summary conviction, to a fine not exceeding one hundred dollars and not less than twenty dollars, in addition to any other penalty prescribed by law for the same offence.

12. Every corporation which authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, shall be liable, on a summary conviction before two justices of the peace, for the first offence to a penalty not exceeding two hundred and fifty dollars and not less than fifty dollars, and

for each subsequent offence to a penalty not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence.

13. Nothing herein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province unless such railway is prohibited by provincial authority from so operating.

2. Nothing herein shall prevent the operation on the Lord's Day for passenger traffic by any railway company incorporated by or subject to the legislative authority of the Parliament of Canada of its railway where such operation is not otherwise prohibited.

14. Nothing herein shall be construed to repeal or in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when this Act comes into force; and where any person violates any of the provisions of this Act, and such offence is also a violation of any other Act or law, the offender may be proceeded against either under the provisions of this Act or under the provisions of any other Act or law applicable to the offence charged.

15. No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General for the province in which the offence is alleged to have been committed, nor after the expiration of sixty days from the time of the commission of the alleged offence.

16. This Act shall come into force on the first day of March, one thousand nine hundred and seven.

FOOTNOTES

1. *Globe*, 28 June 1906, quoted in Waterman, "Canadian Lord's Day Act of 1906," 116, n. 57.
2. (a) E.g. Opposition Exemption: Legislators who went along with the Alliance's contentions. See *Debates*, Commons, LXXVII (1906): col. 6283-6284, G. Smith, col. 6292, Barr; Legislators who went along with the Jewish interests. *Ibid.*, col. 6295, Aylesworth.
(b) E.g. Exemption Supporters: Legislators who went along with the Jewish interests. *Ibid.*, col. 6296, Lavergne, col. 6356-6358, Gervais; Legislators who went along with the Alliance's contentions. *Ibid.*, LXXVI (1906): col. 5636-5637, Bourassa.
3. Grimaud, "Brief," 8-9 — "... The House of Commons was largely made up of conservative (first-day) Christians, while the Prime Minister and some of his followers, (among others,) being moderates."
4. *Debates*, Commons, LXXVII (1906): col. 6336, Paterson.
5. *Ibid.*, col. 6328-6329, Lancaster.

6. *Ibid.*, col. 6283, G. Smith, col. 6331, Gagnong. Also, *Ibid.*, col. 6292, Barr, col. 6295, Aylesworth, col. 6305, Miller, col. 6329, Lancaster; *Ibid.*, LXXVI (1906): col. 5644, Sproule; *Debates*, Senate, Session 1906: 1207, Macdonald.
7. See *Above*, Ch. I, 25-26, n. 144-149.
8. *Ibid.*, n. 135; *Debates*, Commons, LXXVII (1906): col. 6335, Paterson, col. 6328, Lancaster; *Ibid.*, LXXVI (1906): col. 5644, Sproule.
9. See *Above*, Ch. I, 24-25, n. 136-141; *Debates*, Commons, LXXVII (1906): col. 6335, Paterson, col. 6332-6333, R. Smith, 5294, Aylesworth.
10. See *Above*, Ch. I, 24, n. 130; *Debates*, Commons, LXXVII (1906): col. 6335, Paterson.
11. *Ibid.*, LXXVI (1906): col. 5644, Sproule; *Debates*, Senate, Session 1906: 1207, Macdonald.
12. *Debates*, Commons, LXXVI (1906): col. 5644, Sproule.
13. *Ibid.*, LXXVII (1906): col. 6329, Kennedy, col. 6328, Lancaster, col. 6363, Carvell.
14. *Ibid.*, col. 6292, Barr.
15. *Ibid.*, col. 6285, Kennedy.
16. *Ibid.*, col. 6305, Miller.
17. *Ibid.*, col. 6329, Lancaster.
18. *Ibid.*, col. 6363, Carvell, col. 6296, Aylesworth; *Ibid.*, LXXVI (1906): col. 5643, Sproule.
19. *Ibid.*, LXXVII (1906): col. 6364, Sproule.
20. *Ibid.*, col. 6345, McKenzie.
21. *Ibid.*, col. 6345, Sproule.
22. *Ibid.*, LXXVI (1906): col. 5644, Sproule.
23. *Ibid.*
24. *Ibid.*, col. 5623, Aylesworth.
25. *Ibid.*, LXXVII (1906): col. 6295, Aylesworth.
26. *Ibid.*, col. 6296, Aylesworth.
27. *Ibid.*, col. 6294, Aylesworth.
28. *Ibid.*
29. *Ibid.*, col. 6304, Miller.
30. See *Above*, Ch. IV, 118, n. 12.
31. *Debates*, Commons, LXXVII (1906): col. 6292, Barr, 6332, R. Smith.
32. *Ibid.*, col. 6332-6333, R. Smith.
33. *Ibid.*, col. 6332, R. Smith — 75-80% Jews worked on Saturday.
34. *Ibid.*, col. 6333, R. Smith.
35. *Ibid.*, col. 6331, Gagnong.
36. *Ibid.*, col. 6332, R. Smith, col. 6331 Gagnong — 90% (first-day) Christians employed; *Ibid.*, col. 6342, Foster — 80 or 90% (first-day) Christians employed.
37. *Ibid.*, col. 6342-6343, Foster.
38. *Ibid.*, col. 6342, Foster.
39. *Ibid.*
40. *Ibid.*, col. 6342-6343, Foster.
41. *Ibid.*, LXXVI (1906): col. 5644, Sproule.
42. See *Above*, Ch. IV, n. 3.
43. *Debates*, Commons, LXXVII (1906): col. 6215, Bickerdike. Also, *Ibid.*, col. 6290, Lavergne, col. 6315, Fielding, col. 6311 W. Laurier, col. 6300, Bristol, col. 6344,

Fisher.

44. *Ibid.*, col. 6347, Daniel.
45. *Ibid.*, col. 6297, Lavergne. Also, *Ibid.*, col. 6343, Daniel, col. 6292, Bourassa. See *Above*, Ch. I, n. 139.
46. *Debates*, Commons, LXXVII (1906): col. 6305, Devlin.
47. *Ibid.*, col. 6302, Conmee. Also, *Ibid.*, col. 6285-6286, Bickerdike, col. 6291, Macdonell, col. 6297, Lavergne, col. 6301, Bristol, col. 6308, Devlin, col. 6310, W. Laurier, col. 6313, Fielding, col. 6334, Lemieux, col. 6349, Parmalee; *Debates*, Senate, Session 1906: 1206, Kerr, 1207 [Dandurand].
48. *Debates*, Commons, LXXVII (1906): col. 6349, Parmalee.
49. *Ibid.*, col. 6350, Parmalee.
50. *Ibid.*, col. 6386, Bickerdike.
51. *Ibid.*, col. 6301-6302, Conmee.
52. *Ibid.*, col. 6296, Lavergne; *Debates*, Senate, Session 1906:1207, [Dandurand]. Also, *Debates*, Commons, LXXVII (1906): col. 6284, G. Smith, an opposition exemption exponent — He suggested the principle of applying the Mosaic Law in this consideration. Also, Matthew 7:12 — “Therefore all things whatsoever ye would that men should do to you, do you even so to them.”
53. *Debates*, Commons, LXXVII (1906):col. 6303, Bergeron.
54. *Ibid.*, col. 6298, Bristol.
55. *Ibid.*, col. 6309, W. Laurier, col. 6347, Daniel, col. 6331, 6351, Bourassa.
56. *Ibid.*, col. 6282, 6354, 6355, Bourassa, col. 6360, Fielding, col. 6344, Fisher.
57. *Ibid.*, col. 6351, Bourassa, col. 6311, W. Laurier, col. 6343, Fisher; *Debates*, Senate, Session 1906:1206, Kerr.
58. *Debates*, Commons, LXXVII (1906): col. 6340, Bourassa, 6338, R. Borden.
59. *Ibid.*, col. 6298, Bristol, col. 6313, Fielding.
60. See *Above*, Ch. IV, 123, n. 43-45.
61. *Debates*, Commons, LXXVII (1906): col. 6313, Fielding.
62. *Ibid.*, col. 6282-6283, Bourassa.
63. *Ibid.*, col. 6349, Parmalee. 64.
64. *Ibid.*, col. 6286, Bickerdike.
65. *Ibid.*, col. 6296, Lavergne. See *Above*, Ch. III, 105, n. 85.
66. *Debates*, Commons, LXXVII (1906): col. 6301, Bristol.
67. See *Above*, Ch. IV, 124-125, 53-57.
68. *Ibid.*, 124-125, n. 53-60.
69. *Debates*, Commons, LXXVII (1906): col. 6301, Bristol, col. 6343, Fisher, col. 6312, W. Laurier, col. 6349, Parmalee, col. 6286, Bickerdike. *Debates*, Senate, Session 1906:1206, Kerr.
70. *Debates*, Commons, LXXVII (1906): col. 6344, Fisher. *Debates*, Senate, Session 1906:1206, Kerr.
71. *Debates*, Commons, LXXVII (1906): col. 6312, W. Laurier, col. 6344, Fisher, col. 6351-6352, Bourassa.
72. *Ibid.*, col. 6312, W. Laurier, col. 6314, Fielding.
73. See *Above*, Ch. IV, 125, n. 61.
74. *Debates*, Commons, LXXVII (1906): col. 6314, Fielding, col. 6344, Fisher, col. 6346, Bourassa.
75. See *Above*, Ch. IV, 125, n. 60.
76. *Debates*, Commons, LXXVII (1906): col. 6344, Fisher.

77. *Ibid.*, col. 6301, Bristol.
78. See *Above*, Ch. IV, 124, n. 52.
79. *Debates*, Commons, LXXVII (1906): col. 6301, Bristol, col. 6310, Ma lean, col. 6339, R. Borden.
80. *Ibid.*, col. 6287, Lavergne.
81. *Ibid.*, col. 6287, Macdonell, col. 6301, Bristol.
82. *Ibid.*, col. 6303, Bergeron.
83. *Ibid.*, col. 6356, Gervais.
84. *Ibid.*, col. 6301, Bristol, col. 6308, Devlin. Also, see *Ibid.*, col. 6362, Fielding — He mentioned a recent consideration of toleration which was given to the Jews in Great Britain.
85. *Ibid.*, col. 6289-6290, Macdonell, col. 6301, Bristol. Also, see *Above*, Ch. II, 59, n. 75(b).
86. *Debates*, Commons, LXXVII (1906): col. 6308, Devlin. Also, *Ibid.*, col. 6312, Conmee.
87. *Ibid.*, col. 6334, Lemieux.
88. *Ibid.*, col. 6356, Gervais. Also, see *Above*, Ch. II, 47, n. 8.
89. *Debates*, Senate, Session 1906:1206, Kerr.
90. *Debates*, Commons, LXXVII (1906): col. 6291, Macdonell.
91. See *Above*, Ch. IV, 125, n. 62, 63.
92. *Ibid.*, 125, n. 56.
93. *Debates*, Commons, LXXVII (1906): col. 6303, Bergeron.
94. *Ibid.*, col. 6297, Lavergne.
95. *Ibid.*, col. 6347-6348, Ames, col. 6346-6347, Daniel, col. 6348, Macdonell, col. 6352-6353, Bourassa.
96. *Ibid.*, col. 6347-6348, Ames — 90% Jewish labour. Also, *Ibid.*, col. 6348, Macdonell.
97. *Ibid.*, col. 6348, Ames.
98. *Ibid.*, col. 6352-6353, Bourassa.
99. *Ibid.*, col. 6346, Daniel.
100. *Ibid.*, col. 6352-6353, Bourassa.
101. *Ibid.*, col. 6347, Daniel.
102. *Ibid.*, col. 6313, Fielding.
103. *Debates*, Commons, LXXVII (1906): col. 6281, 6283.
104. *Ibid.*, col. 6362.
105. *Ibid.*, col. 6280, 6351, Bourassa, col. 6315, 6360, Fielding.
106. *Ibid.*, col. 6280, 6282, 6351, Bourassa — The contention that the day which was to be observed by the religious dissenting minority, must be the individual's religious day of rest and worship, was further strengthened by clause 2 of the Bourassa amendment. *Ibid.*, col. 6313-6314, Fielding. See *Above*, Ch. IV, 118-119, n. 14-18 — The Opposition exemption group called the exemption a piece of class legislation but for different reasons.
107. The legislators limited their scope to dealing strictly with Jewish employers throughout the debate. This is found in the body of the paper. However, this author noted other problems which the legislators had overlooked while debating an exemption. But in so doing, this author used various principles which the legislators had enunciated. Indication of these will be noted with a *.
108. *Debates*, Commons, LXXVII (1906): col. 6280, Bourassa, col. 6315, Fielding. See *Above*, Ch. III, 88-89, n. 26, 27.
109. *Ibid.*, Ch. V, n. 5(c).*

110. *Debates*, Commons, LXXVII (1906): col. 6351, Bourassa, col. 6314, Fielding. See *Above*, Ch. III, 89, n. 28.
111. *Debates*, Commons, LXXVII (1906): col. 6351, Bourassa, col. 6314, Fielding. See *Above*, Ch. IV, 121-122, n. 35-38, Ch. III, 88-89, n. 26, 27, 30.
112. (a) *Re Cribben and the City of Toronto* [1891], 21 O.R. 330 — “The term used in the by-law is the Sabbath-day in place of Sunday. In the Imperial Dictionary ‘Sabbath’ is defined not ‘as strictly synonymous with Sunday. Sunday is the mere name of the day; Sabbath is the name of the institution. Sunday is the Sabbath of the Christians. . . .’”
 (b) Also, “Physical Necessity of the Lord’s Day,” 41; McDough, *Sunday Our Sabbath*, 41 — The term Sabbath is collinear with the rest of God. J. B. Parker, “The Change of the Day,” in *Sunday Rest in the Twentieth Century*, ed. Dr. A. Jackson (Cleveland, 1905), 174. “The Sabbath Question,” *Yearbook of the Central Conference of American Rabbis* XII (1902): 105.
113. See *Above*, Ch. IV, 121, n. 35-37.
114. One exception to this rule was the Roman Catholic, but his case was also covered.
115. *Debates*, Commons, LXXVII (1906): col. 6352, Bourassa. See *Above*, Ch. I, 25-26, 144-149, N.B. 145, 149; Ch. IV, 117, n. 4 — opposition exemption; Ch. IV, 123, n. 43-45 — exemption supporters.
116. *Ibid.*, Ch. V, 142-143, n. 10(a).
117. *Ibid.*, n. 5(c).*
118. *Debates*, Commons, LXXVII (1906): col. 6280, Bourassa.
119. *Ibid.*, Also, *Laurier Papers*, vol. 415, Paul Arch de Montréal à Sir Wilfrid, Montréal, 13 juin 1906, 111158.
120. See *Above*, Ch. I, 1, n. 1-3.
121. *Ibid.*, Ch. V, 144, n. 14.
122. *Ibid.*, n. 13.
123. Therefore, up to this point, Sunday was definitely protected as the legal, national day of rest for first-day Christians. For the Non-conformists, Saturday was protected for the Jews. Any other day from Monday to Friday inclusive, was protected for “Others” as their legal, national day of rest. However, notwithstanding the remainder of the amendment, the Non-conformists day of rest was only somewhat protected as their legal, national day of rest. See *Below*, Ch. V, 147, n. 28, 30. *passim*.)
124. See *Above*, Ch. V, 142, 5(c).*
125. *Debates*, Commons, LXXVII (1906): col. 6280, Bourassa. Also, *Ibid.*, 6281, Bourassa. See *Above*, Ch. III, 89, n. 28. *Ibid.*, n. 45(c).
126. *Ibid.*, 89, n. 28, 29; Ch. V, n. 5(e).
127. *Ibid.*, n. 13, 14.
128. (a) [] and () — The wording of the Fielding amendment which differed from that of Bourassa’s.
 (b) Under the amendment exemptions the alignment of the staff changed from that which was found in Section 11. (See *Above*, Ch. V, n. 5(d).) Since the exemption was extended to all Non-conformists, the alignment of the staff had to be altered. Under this consideration, the staff alignments are: the employer — I Jew, II First-day Christian, III “Other”; who employed single or any combination of the following; Jews, first-day Christians and “Others.”
129. (a) *Debates*, Commons, LXXVII (1906): col. 6281, 6282, 6351, Bourassa, col. 6314, Fielding.
 (b) The same consideration is applicable to the “Other” employer and his “Other” employees regarding the “Other” day.*
130. The following is the alignment of which would be the legal, national day of rest under the amendment exemptions. One must account for Jews, first-day Christians and

"Others." In this consideration, they would be employers or employees. Also, the number of days the work week would entail must be taken into consideration:

I Under a Jewish Employer.

A. For the Jewish employer and his Jewish staff — Saturday, legal, national day of rest — six-day work week.

B. For the first-day Christian staff — Sunday, legal, national day of rest; Saturday, (legal recognition, therefore) day of non-employment — five-day work week.

C. For the "Other" staff

(1) non-religiously conscious — Sunday, legal, national day of rest; Saturday, day of non-employment — five-day work week.

(2) religiously conscious — "Other" day, legal, national day of rest; Saturday, day of non-employment — five-day work week.

II Under a First-day Christian Employer.

A. For the first-day Christian employer and his first-day Christian staff — Sunday, legal, national day of rest — six-day work week.

B. For the Jewish staff

(1) non religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; Saturday, (no legal recognition, therefore) Religious Sabbath — five-day work week.

C. For the "Other" staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; "Other" day, Religious Sabbath — five-day work week.

III Under an "Other" Employer.

A. For the "Other" employer and his "Other" staff — "Other" day, legal, national day of rest — six-day work week.

B. For the first-day Christian staff — Sunday, legal, national day of rest; "Other" day, day of non-employment — five-day work week.

C. For the Jewish staff

(1) non-religiously conscious — Sunday, legal, national day of rest; "Other" day, day of non-employment — five-day work week.

(2) religiously conscious — Saturday, legal, national day of rest; "Other" day, day of non-employment — five-day work week.*

131. *Debates*, Commons, LXXVII (1906): col. 6281, 6331, 6351, 6352, Bourassa.

132. The following is the alignment of which day would be the legal, national day of rest under the amendment exemptions. One must account for Jews, first-day Christians and "Others." In this consideration, they would be employers or employees. Also, the number of days the work week would entail must be taken into consideration.

I Under a Jewish Employer.

A. For the Jewish employer

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; Saturday, Religious Sabbath — five-day work week.

For the Jewish staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; Saturday, Religious Sabbath — five-day work week.

B. For the first-day Christian staff — Sunday, legal, national day of rest — six-day work week.

C. For the “Other” staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; “Other” day, Religious Sabbath — five-day work week.

II Under a First-day Christian Employer.

A. For the first-day Christian employer and his first-day Christian staff — Sunday, legal, national day of rest — six-day work week.

B. For the Jewish staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; Saturday, Religious Sabbath — five-day work week.

C. For the “Other” staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; “Other” day, Religious Sabbath — five-day work week.

III Under the “Other” Employer.

A. For the “Other” employer

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; “Other” day, Religious Sabbath — five-day work week.

For the “Other” staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; “Other” day, Religious Sabbath — five-day work week.

B. For the first-day Christian staff — Sunday, legal, national day of rest — six-day work week.

C. For the Jewish staff

(1) non-religiously conscious — Sunday, legal, national day of rest — six-day work week.

(2) religiously conscious — Sunday, legal, national day of rest; Saturday, Religious Sabbath — five-day work week.*

IV Therefore, under this consideration (and see *Above*, Ch. V, n. 28, *passim*), it is evident that first-day Christians had one choice for their legal, national day of rest. Sunday was always protected. It is also evident that Jews and “Others” had two choices for their legal, national day of rest. But, their Religious Sabbath was not always protected as their legal, national day of rest.

V Therefore, under this consideration (and *Ibid.*), the work week for everyone fluctuated between five or six days.

133. *Debates*, Commons, LXXVII (1906): col. 6281, Bourassa.

134. See *Above*, Ch. V, 146, n. 24.

135. (a) *Debates*, Commons, LXXVII (1906): col. 6281, Bourassa.

(b) See *Above*, Ch. III, n. 45(c).

(c) *Ibid.*, Ch. V, 142-143, n. 9-11.

(d)

(1) With reference to Bourassa’s statement about breaking religious law, it holds

true that the Jewish employer would have broken Judaic law if he worked on Saturday. If the Jewish employer completely abstained from labour and observed the Sabbath according to religious dogma but allowed his employees to work on Saturday, then the employer, depending upon his motives for allowing the work to be carried out, might or might not have broken Judaic law. For Judaic law regarding work done by a non-Jew, for a Jew, on the Sabbath, see Rabbi S. Ganzfried, *Code of Jewish Law, Kitzur Shulhan Aruch. A Compilation of Jewish Laws and Customs*, revised edition, trans. by H. E. Goldin (New York, 1961), Ch. 73, 68-70, N.B. no 1-5(c); Chapter 90, 125-30, N.B. no. 2, 13, 14, 16.

(2) With respect to the national law, its intentions would have been broken, but not the law according to its wording. (See *Above*, Ch. V, n. 23.)

(e) See *Above*, Ch. V, n. 5(c) — Similar conditions may be applied to Gentile employers*

(1) The “Other” employer would be taking advantage of someone else’s religious position with respect to the exemption by making profit from retail trade on Saturday and having work done behind closed doors on Sunday. He would be breaking the intention of the national law. With respect to breaking religious law, it depended upon the regulations set forth by the “Other” employer’s religion.

(2) The first-day Christian employer would also take the aforementioned advantage. In this case, he might or might not be breaking religious law. (*Ibid.*, n. 15-17.) But, he would be breaking the intention of the national law.

136. *Ibid.*, n. 5(c) — The same applies to Gentile employers. Their firms were limited to a six-day work week.*

137. *Ibid.*, Ch. IV, n. 35-40;

(1) Nonetheless, even with the amendments worded in such a fashion, both Jews and “Others” could incur financial disabilities. (*Ibid.*, Ch. V, n. 28, 30, *passim*.) But Parliament was only concerned with first-day Christians in this situation. *Ibid.*, n. 35, Ch. IV, 130-132, n. 95-101.

(2) A noted indifference to this point by a legislator who supported an exemption was Fielding when he was questioned by Bristol (another exemption supporter). *Debates*, Commons, LXXVII (1906): col. 6315, Fielding — He just wanted to make sure that the first-day Christian would not work on Sunday.

138. See *Below*, Ch. V, 154-155, n. 66-70.

139. See *Above*, Ch. V, 144, n. 13, 14.

140. *Ibid.*, 146-147, n. 26.

141. (a) *Ibid.*, n. 28, *passim*.

(b) *Ibid.*, n. 36.

142. *Debates*, Commons, LXXVII (1906): col. 6330, 6352-6353, Bourassa.

143. In this consideration, this author contends that the “Other” employer would do the same as the Jew and keep his place open for business on his religious day of rest. The employer, being a businessman, would be more interested in material success rather than religious pursuit. (See *Above*, Ch. IV, 131-132, n. 98-101. Also, see *Below*, Ch. V, 155-156, n. 71.) Therefore, the financial status quo for first-day Christians would still prevail under the “Other” employer.*

144. See *Above*, Ch. V, 140-141, n. 1.

145. (a) *Debates*, Commons, LXXVII (1906): col. 6282, Bourassa.

(b) Assuming in 1906 that the sundown to sundown concept would have been recognized for the legal, national day of rest in the amendment exemptions, clause 2 of the Bourassa amendment merely clarified this point. Otherwise, the subclause of the Bourassa amendment was necessary to substantiate this point.

146. *Debates*, Commons, LXXVII (1906): col. 6282-6283, Bourassa.

147. See *Above*, Ch. II, 55057, n. 58-64.

148. (a) *Ibid.*, Ch. V, n. 33(d)(2). *Debates*, Commons, LXXVII (1906): col. 6282, 6354, 6355, Bourassa, col. 6360, Fielding.
 (b) The same is applicable to the "Other" group.*
 (c) In this consideration, the first-day Christian who worked for a Jew could not work on Saturday night. Even though he took Saturday (daylight hours) off, Saturday was not his religious day of rest and worship. (See *Above*, Ch. V, 144, n. 13, 14.) The same argument is applicable for the "Other" person who worked for a Jew. (*Ibid.*, n. 5(e.) *Ibid.*, n. 46(a) — The only person who could take advantage of this exemption was the religiously conscious Jew.*
149. *Ibid.*, 150, n. 45.
150. *Ibid.*, 140-141, n. 1, 2.
151. *Debates*, Commons, LXXVII (1906): col. 6314-6316, *passim*, col. 6360-6361, Fielding.
152. *Ibid.*, col. 6327-6328, 6359, Fielding.
153. See *Below*, Ch. V, 156, n. 72 — It covered the arguments against the amendment exemptions.
154. The amendment exemptions also covered the contentions brought forth by this author which were not dealt with by the legislators.*
155. *Debates*, Commons, LXXVII (1906): col. 6303, Bergeron, col. 6307, Piché. Also, see *Above*, Ch. III, 101, n. 72.
156. *Debates*, Commons, LXXVII (1906): col. 6287, 6289-6291, Macdonell, col. 6301, Bristol, col. 6307-6308, Piché.
157. Because of the interrelation of arguments against the amendment exemptions by both supporters and opponents of an exemption, legislators will be designated by the following:
 O.E. — Opposition Exemption
 S.E. — Supporter of All Exemptions
 S(S.11)E. — Supporter of Section 11 Exemption
 S(B.A.)E. — Supporter of Bourassa Amendment Exemption
 S(F.A.)E. — Supporter of Fielding Amendment Exemption
 S.E.?O.E. — Doubtful on how the individual would vote or if he favoured an exemption or not.
158. *Debates*, Commons, LXXVII (1906): col. 6287, Macdonell, col. 6301, Bristol, col. 6339, R. Borden, S(S.11)E.
159. *Ibid.*
160. *Ibid.*, col. 6347, Fisher, S(S.11)E.
161. *Ibid.*, col. 6308, Monk, S(S.11)E. col. 6341-6342, Foster, col. 6345-6346, Sproule, O.E.
162. See *Above*, Ch. III, 88, n. 25, Section 11; *Ibid.*, Ch. V, 140-141, n. 1; See *Below*, Ch. V, n. 62(b).
163. See *Above*, Ch. V, 151, n. 48, 49, Fielding, S(F.A.)E. *Debates*, Commons, LXXVII (1906): col. 6345, McKenzie, O.E.
164. (a) See *Above*, Ch. V, 151, n. 48, Fielding, S(F.A.)E.; *Debates*, Commons, LXXVII (1906): col. 6349, Parmalee, S(S.11)E.
 (b) *Ibid.*, col. 6351, Bourassa, S(B.A.)E. — "The Seventh-Day Adventists will be just as well protected by my amendment as by the existing clause in the Bill [section 11]."
165. *Ibid.*, col. 6350-6351, Lewis, S.E.?O.E.
166. *Journals*, Commons, XLI (1906): 115 — A petition was presented in favour of exempting Jewish farmers. Also, see R. A. Grunier, "Jewish Immigration into Canada, 1896-1910: A Survey" (Major Paper, University of Windsor, 1974), 39, 41-46.
167. See *Above*, Ch. V, n. 62(b). *Debates*, Commons, LXXVII (1906): col. 6349, Parmalee,

- S(S.11)E. Minutes of Evidence, 19 April 1906, 39, Foolinsbee.
168. *Debates*, Commons, LXXVII (1906): col. 6315, Bristol, S(S.11)E, col. 6330-6331, Gagnong, col. 6342, Foster, O.E. Also, see *Above*, Ch. V, 146-148, n. 26-34, *passim*.
169. *Debates*, Commons, LXXVII (1906): col. 6315, Bristol, S(S.11)E, col. 6332, R. Smith, col. 6342, Foster, O.E. Also, see *Above*, Ch. V, 144, n. 13, 14.
170. *Ibid.*, 148, n. 35, 36.
171. *Debates*, Commons, LXXVII (1906): col. 6346, Daniel, col. 6315, Bristol, S(S.11)E, col. 6332, R. Smith, col. 6342, Foster, O.E.
172. *Ibid.*, col. 6346, Daniel, S(S.11)E, col. 6330-6331, Gagnong, col. 6332, R. Smith, col. 6342, Foster, O.E.
173. (a) *Ibid.*, col. 6346-6347, Daniel S(S.11)E.
 (b) See *Above*, Ch. V, n. 5(c) — Since Daniel favoured Section 11 over the amendment exemptions, his contentions are also applicable to Gentile employers.
174. (a) Furthermore, the areas where the amendment exemptions patched the loopholes found in Section 11, namely, keeping Sunday for the first-day Christians, their legal, national day of rest and limiting Jewish firms to a six-day work week — Section 11 supporters contended that the opposite occurred with the amendment exemptions. They argued that the amendment exemptions did not keep Sunday as the first-day Christian legal, national day of rest nor was the Jewish firm limited to a six-day work week because of the proposals wording. Section 11, argued its supporters, did not make any special provision for the aforementioned points of contention nor was there any intent for such a provision.
 (1) *Debates*, Commons, LXXVII (1906): col. 6352, 6355-6356, Demers, S(S.11)E. — He argued that first-day Christians could work on Sunday because it was specifically provided for by the amendment exemptions. For a counter argument presented by the amendment exemption supporters, see, *Above*, Ch. V, 142-144, n. 9-14.
Debates, Commons, LXXVII (1906): col. 6344, Fisher, S(S.11)E. — He stated that Section 11 specifically designated the exemptees. For a counter argument presented by the amendment exemption supporters, see *Above*, Ch. V, 142-144, n. 9-21.
 (2) *Debates*, Commons, LXXVII (1906): col. 6340-6341, Borden, S(S.11)E. — He complained about the employer-employee relationship and the work which could or could not be done, and by whom. For a counter argument by the amendment exemptions supporters, see *Above*, Ch. V, 146-148, n. 22-34.
175. *Debates*, Commons, LXXVII (1906): col. 6759 — The recorded vote was 94-43.
176. *Ibid.* The vote was not recorded. 177. *Ibid.*
178. See *Above*, Ch. IV, 118, n. 10, 124, n. 54, 55.
179. *Ibid.*, Ch. II, 47, n. 1-8.
180. *Debates*, Commons, LXXVII (1906): col. 6759 — There was no recorded vote.
181. *Ibid.* There was a recorded vote.
182. The actual issue ended at this point despite further attempts to give the Jews an exemption.
Ibid., col. 6659-6660 — On June 29, 1906, Bickerdike (S.E.) introduced a new exemption clause:
 Notwithstanding anything herein contained, whoever for conscience sake habitually and invariably observes the fourth commandment, shall not be subject to prosecution for performing work or labour on the first day of the week, provided that such work or labour does not disturb or cause a nuisance to any other persons in the observance of the first day of the week as the Lord's day, and that no premises be open for traffic on that day.
 A point of order was brought forth by Barr (O.E.) and the ruling of the Deputy Speaker was that Bickerdike's motion was out of order "because it would be asking the committee to reverse its judgment. . . ."

183. See *Above*, Ch. IV, 117-118, n. 8, 127-128, n. 76, 77.
184. When referring to the amendment exemptions heretofore, the Bourassa, Fielding and Ames proposals are considered. For the reasons why the Lavergne amendment is excluded, see *Above*, Ch. V, 157, n. 76-78.
185. For the areas of personal prejudices and bias', see *Ibid.*, 142, n. 4, 151, n. 48-50, 152-154, n. 56-65.
186. See *Above*, Ch. II, n. 76, Ch. V, n. 54(a).
187. Alliance, *Act and Seventh-Day People*, 1 — In this article the Alliance mentioned the economic difficulties. "In the debate upon the bill before the House the fact was adduced that in factories owned by Seventh-Day people, only five in one hundred of the employees observed the Seventh Day, whilst ninety-five observed the first day. If, therefore, a Seventh-Day exemption clause had been embodied in the Act, the burdened complained of would have been lifted from the five and placed upon the ninety-five. FOR THESE REASONS THE RECOMMENDATION OF THE (SELECT) COMMITTEE WAS REFUSED." (Author's emphasis.)
188. See *Above*, Ch. IV, 121-122, n. 35-40, 130-132, n. 95-101.
189. *Ibid.*, Ch. V, 144, n. 13, 14, 146-147, n. 26. These two factors made it explicit.
190. *Ibid.*, 155-156, n. 71 — This factor made it implicit.
191. *Debates*, Commons, LXXVII (1906): col. 6332.
192. The same would be applicable with respect to the "Other" employer and his first-day Christian employees.*
193. *Debates*, Commons, LXXVII (1906): col. 6332.
194. See *Above*, Ch. V, n. 5(c) - The same would be applicable to first-day Christian and "Other" employers. Therefore, especially with respect to first-day Christians, some would be gaining advantage over their own brethren. The realism of this situation is not farfetched.
195. See *Below*, Ch. VI, 183-184, n. 34, 35 — These are the reasons for minimal strength.
196. See *Above*, Ch. VI, n. 7.
197. *Debates*, Commons, LXXVII (1906): col. 6332.
198. *Ibid.*, col. 6348, Galliher, S.E.?O.E.
199. See *Above*, Ch. I, 20, n. 93.
200. *Debates*, Commons, LXXVII (1906): col. 6338-6339, R. Borden, S(S.11)E; col. 7224-7225, R. Borden, S(S.11)E, Aylesworth O.E.
201. A divisional breakdown on the voting of the cabinet.
Commons:
S.E. — W. Laurier, Lemieux
S(F.A.)E. — Fielding
S(S.11)E. — Brodeur, Fisher
O.E. — Aylesworth, Paterson
S.E.?O.E. — R. Borden, Emmerson, Templeman, Hyman, Oliver (Silent)
Senate:
S(S.11[17]E. — Scott
S.E.?O.E. — Cartright (Silent)
202. *Debates*, Commons, LXXVII (1906): col. 7224, R. Borden, S(S.11)E.
203. *Ibid.*, col. 6350, Emmerson, S.E.?O.E.
204. *Ibid.*
205. *Ibid.*, col. 7226.
206. *Ibid.*, col. 6312.
207. *Globe*, 28 June 1906, 4, quoted in Waterman, "Canadian Lord's Day Act of 1906," 116, n. 57.

208. For other noted features on individualism, see *Above*, Ch. V, n. 80(b); see *Below*, Ch. VI, n. 31(b).
209. *Canada Yearbook, 1912*, second series (Ottawa, 1913), 23, Chart #13, "Origins of the people in 1901 and 1911, with increase in the ten years and ratios percent of population."
- 1901 — Total population — 5,371,315
 — French (Canadian) — 1,649,371
- 1911 — Total population — 7,206,643
 — French (Canadian) — 2,054,890
210. *Ibid.*, 28, Chart #16, "Religions of People 1881, 1891, 1901 and 1911."
- 1901 — Total population — 5,371,315
 — Roman Catholic — 2,229,600
- 1911 — Total population — 7,206,643
 — Roman Catholic — 2,833,041
211. See *Above*, Ch. I, 27, n. 156.
212. *Debates*, Commons, LXXVII (1906): col. 6296.
213. (a) See *Above*, Ch. II, 61-63, n. 79-84, Ch. III, 92-93, n. 36-38k, 94-96, n. 47-56. (b) There were also M.P.'s who were members of the Alliance. With the available evidence, the closest figure was thirty-one members. (*Alliance, M. B. 1901-1918*, Annual Meeting of the Executive Board, 9 November 1905, 7; "Jews and Other Saturdarians Answered," *The Lord's Day Advocate*, 6.) A noted feature was the individualism displayed by these M.P.'s in their voting pattern on a Jewish exemption.
- S.E. — Ames, Bickerdike
 S(S.11)E. — R. Borden
 O.E. — Miller, McKenzie, R. Smith
214. (a) See *Above*, Ch. I, 5, n. 26. Also, *Canada Yearbook, 1912*, 28, Chart #16 — Out of this grouping so as to establish the numerical strength of these dominant Protestant sects, this author used Anglicans in place of Church of Englanders because the latter did not appear in the statistics. Also, Reformed Episcopalians did not appear in the statistical table but no substitution was made.
- 1901 — Total population — 5,371,315
 — Protestants — 2,787,090
- 1911 — Total population — 7,206,643
 — Protestants — 3,654,953
- (b) *Ibid.*, 23, Chart #13.
- 1901 — Total population — 5,371,315
 — British (English Canadian) — 3,063,195
- 1911 — Total population — 7,206,643
 — British (English Canadian) — 3,896,985
215. (a) *Debates*, Commons, LXXVII (1906): col. 6306.
 (b)
- (1) Within this context, other notable consolidations were apparent, yet offshoots of the cultural diversity. Limitation is set to those legislators who spoke during the debate on Section 11. Aside from the ethnic connection, in a religious breakdown, every Roman Catholic spoke in favour of an exemption. The Protestants varied from wanting to grant any type of exemption to not wishing to grant one at all. Excluding French Canadians, because the vast majority were Roman Catholic, English Canadian Roman Catholics were: Conmee, Macdonell, Devlin and Monk (split parentage).
- (2) Furthermore, aside from religious affiliation, it is noticed that English Canadians who lived in Quebec also favoured a Jewish exemption. (French Canadians who lived outside of Quebec remained SILENT during the debate.) The English Canadian legislators were: Fisher, Ames, Bickerdike and Monk (split parentage).

(c) Through the parliamentarians who spoke during the debate, party consolidation was definitely non-existent.

216. See *Above*, Ch. V, 157, n. 76-78.

217. *Debates*, Commons, LXXVII (1906): col. 6310.

218. See *Above*, Ch. III, n. 43-46.

219. *Ibid.*, Ch. I, 21, n. 104.

220. *Debates*, Commons, LXXVI (1906): col. 5625.

221. *Ibid.*, LXXVII (1906):col. 6353.

222. Contemporary viewpoints on this subject stated that the Lord's Day Act was passed by Parliament under the criminal law thereby making the Act: purely religious, prescribed religious obligations, supported a Christian tenet and that Christianity constituted part of the law of the land. (See *Robertson v. Queen*, 485, 487; Laskin, "Sunday Bowling Case," 149-150; Ontario Law Reform Commission, *Report*, 59, 351; Canadian Jewish Congress, "Brief on Sunday Observance Legislation," no. 125, submitted to the Ontario Law Reform Commission (Toronto, 1970), 2, 5-6; Ontario — Quebec Conference of the Seventh-Day Adventist Church, "A Brief on Sunday Observance Legislation," submitted to the Ontario Law Reform Commission (Toronto, 1970), 2, 9, 13; Grimaud, "Brief," 2, 7-8.)

Turning directly to the opinion of the Canadian Supreme Court, the aforementioned is clearly evident. In his dissent, Cartright, J. stated "that the purpose and effect of the Lord's Day Act are to compel, under penal sanctions of the criminal law, the observance of Sunday as a holy day by all the inhabitants of Canada. . . ." (*Robertson v. Queen*, 488.) On the other hand, the ruling of the Supreme Court expressed by Ritchie, J. concurred that the effect of the Act upon those who observed a day other than Sunday as their religious day of rest was purely monetary. The purpose of the Act to Ritchie was irrelevant. (The purpose of the Act to Ritchie was the same as Cartright's. See *Ibid.*, 494.) This author contends that both interpretations were wrong. The purpose and effect of the Lord's Day Act upon EVERYONE was PURELY MONETARY. The power which Parliament possessed under the criminal law to deal with rest-day legislation was the SECULAR-LABOURING ASPECTS OF THE DAY — VIA MORAL OBLIGATIONS — INHERENT IN ALL (MONOTHEISTIC) RELIGIONS.

Because of the author's interpretation of the Lord's Day Act of 1906, he affirms that the ruling of the Supreme Court concerning the purpose and effect of the Act, was a misinterpretation of the Act as intended by the legislators. Therefore, in contemporary times, the Act is also misunderstood. This author believes that the whims of the ruling majority were respected in choosing Sunday as the National Day of Rest. However, contemporary sources have viewed this as due to the religious affiliation of the ruling majority upholding Christian dogma. Therefore, contemporary sources did not account for the important secular-labouring aspects of majority rule.

Furthermore, this author contends that substituting a title for the Lord's Day Act (i.e., An Act to Create a National Day of Rest) but retaining its provisions, the Act would retain its constitutional validity no matter which day of the week was chosen for the National Day of Rest. See *Below*, Ch. VI, n. 42(b).

223. See *Above*, Ch. I, 23-24, n. 128-134, Ch. IV, 118, n. 10, 124-125, n. 54-56. Butler, "Legislation? . . . Grounds and Limitations," 197, 200

224. (a) *Ibid.*, Ch. I, 23-24, n. 129-133.

(b) A question arises concerning the title — An Act respecting the Lord's Day: *Debates*, Senate, Session 1906: 1224-1225 — The title was changed to "An Act respecting Sunday." *Debates*, Commons, LXXVII (1906): col. 7664-7666 — The House did not concur with this amendment. The title reverted back to the original one. Aylesworth called the change "mere verbal alteration" and argued that the term, Lord's Day, had been traditionally used in Great Britain and in Canada through

- legislative recognition. Nonetheless, the importance of the title with respect to this author's religious arguments was effectively stated by Aylesworth. See *Ibid.*, col. 7665 — “. . . There is nothing in the change to affect the meaning of operation of the statute.”
225. See *Above*, Ch. III, 86, n. 19, Ch. V. 140-141, n. 1, 2, 157, n. 75-78.
228. *Ibid.*, Ch. I, 25-26, n. 144, 145. Butler, “Legislation? . . . Grounds and Limitations,” 179. Jamieson, *Nation and the Sabbath*, 132.
227. See *Above*, Ch. I, 23, n. 122-124, 24, n. 137, Ch. IV, 117, n. 4, 118, n. 11, 123, n. 43-45, 125, n. 57, Ch. VI, n. 40.
228. Butler, “Legislation? . . . Grounds and Limitations,” 198-199.
229. See *Above*, Ch. I, 22, n. 115(a).
230. *Ibid.*, n. 115(b).
231. (a) *Ibid.*, Ch. IV, 121-122, n. 35-40, O.E., Ch. V, 146, n. 23-25, S(B.A.)E, 154-155, n. 66-70, S(S.11)E.
 (b) A. Hurt, *Truth About the Jews. Told by a Gentile*, with an introduction by Dr. R. H. Bell (Chicago, 1922), 233 — All religious denominations “are engaged in a political war against one another, but every object of strife is overshadowed by the economic consideration.”
 (c) Ontario Law Reform Commission, *Report*, 59-60 — It claimed with respect to the Lord's Day Act “that secular objects were sought or allowed only in so far as they were compatible with Christianity. The Sabbatarian exemption clause, for example, was considered incompatible with the protection of the Christian Sabbath and was defeated.”
 (d) Schmeiser, *Civil Liberties*, 55-56 — It was held up until 1917 that Christianity constituted part of the law of England. This ruling was also applicable to Canada. But, in that year, the British judiciary overruled such a contention in the case *Bowman v. Secular Society, Limited* [1917], A.C. 406. The court claimed that Christianity did not constitute part of the law of England, thereby making the same hold true for Canada. A new precedent was established.
232. Waterman, “Canadian Lord's Day Act of 1906,” 121, n. 90 — “Economists calculate the effect upon (aggregate) national income of an initial change in the expenditure of any point in the economy by multiplying this change by a coefficient derived from the propensity of the community to save a proportion of incremental income.”
233. See *Above*, Ch. I, 27, n. 150, 151.
234. (a) *Ibid.*, 27, n. 156.
 (b) It appeared that the legislators were upholding a maxim of legal interpretation regarding provincial rights as contrasted with minority rights. During the time period in which the Lord's Day Act was adopted, the Privy Council had safeguarded provincial rights, not minority rights. (F. R. Scott, “The Privy Council and Minority Rights,” *Queen's Quarterly* XXXVII (Autumn 1901:667). This was an example where the French Canadians combined minority rights and provincial rights. However, for Canadian Jewry, minority rights was insufficient to secure an exemption.
235. *Debates*, Senate, Session 1906: 1219-1220.
236. *Debates*, House, LXXVII (1906): col. 6285.
237. (a) “Religious Liberty,” *The Lord's Day Advocate* V, no. 10 (September 1908), 11 — “This is the nation's law, not the church's, and it deals not with the religious recognition of the Sabbath, but with the observance of the day solely from the standpoint of rest and that in the interest of national well being.”
 (b) This author strictly adheres to the decision that the denial of a Jewish exemption was an expression of nationalism in its own unique context. Despite the time period being one of anti-semitism in Canada (See *Above*, Ch. II, 52-55, 38-57), the decision by Parliament was not in an anti-semitic vein. The legislators who opposed a Jewish ex-

emption did not make direct anti-semitic remarks. Furthermore, other Non-conformists who lived in Canada were not of Semitic origin, but were also affected by Parliament's decision. Anti-semitism and parliamentary judgement did not coincide whatsoever.

238. See *Above*, Ch. I, n. 153.
239. *Debates*, Senate, Session 1906:1148.
240. The Alliance's ally, organized labour, was also content. Forsey, "Labour and the Lord's Day Act," 6 — John G. O'Donoghue, Parliamentary Solicitor of the Canadian Trades and Labour Congress, stated, in his capacity as the labour representative, that he was against a Jewish exemption. It was opposed on principle because the results of such a provision would be dangerous.
241. See *Above*, Ch. VI, n. 3(b), 5.242. *Alliance, Act and Seventh-Day People*, 1.
243. On other aspects of the Act, the Alliance was not victorious. See *Above*, Ch. I, n. 115(b)-(f).
244. *The Jewish Times*, (Montreal), 13 July 1906.
245. Rosenberg, *Jewish Community in Canada*, 180.
246. *The Jewish Times*, (Montreal), 13 July 1906.
247. *The London Jewish Chronicle*, 20 July 1906.
248. Throughout the debate in Parliament on Section 11, these arguments received support from the legislators who favoured an exemption. See *Above*, Ch. IV, 123-132, n. 42-102, *passim*.
249. (a) *Ibid.*, Ch. III, 84-85, n. 9, 10.
(b) While the Jews were primarily interested in taking care of their own by means of an exemption clause, they had done to the non-Jew that which they claimed the Alliance had done to them. When the Alliance gave the draft bill to Fitzpatrick to introduce in the Commons, the Alliance did not respect the conscientious convictions of any group other than first-day (Protestant) Christians. Likewise, the Jews did not respect the conscientious convictions of any group outside of their own (and other seventh-day observers). While vying for an exemption, the Jewish interests did not consider the non-Jews who worked in Jewish-owned firms and how the exemption would affect these non-Jewish labourers. The Jewish interests, when questioned about this, merely stated that the non-Jew would have to look after his own conscientious convictions. (*Ibid.*, 88-89, n. 26, 27.) Therefore, the denial of an exemption appeared to be an act of retributive justice because the Jewish interests had claimed throughout their struggle for an exemption, that they were in concert with the concept of "not forcing an individual to choose between his financial stature and his religious convictions." *Ibid.*, 84, n. 9.
250. *Ibid.*, Ch. II, 57-58, n. 69, 59, n. 75. Canadian Jewish Congress, "Brief," 6. *Robertson v. Queen*, 485 — This was the reason for the appeal.
251. See *Above*, Ch. III, 103, n. 78.
252. *Ibid.*, n. 80.
253. Canada, Laws, Statutes, etc. *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms*, 1960, 8-9 Eliz. II, ch. 44, *Statutes of Canada*, 1960 I:519 (pt. 1, sec. 1). *Chaput v. Romain et al* [1956], 1 D.L.R. (2d) 246 (C.A. 1955). *Saumier v. City of Quebec and Attorney-General of Quebec* [1953], 4 D.L.R. 668.
254. See *Above*, Ch. VI, n. 40, 49(d). Butler, "Legislation? . . . Grounds and Limitations," 201.
255. Schmeiser, *Civil Liberty*, 56. Brodey, "Status of Jews in Canada," 167-169, *passim*.
256. *Dunnet v. Forneri* [1872], 25 Gr. 199 per, Proudfoot V.C. 206, quoted in Schmeiser, *Civil Liberties*, 56, n. 1.
257. See *Above*, Ch. VI, n. 45, 49(d).

258. A. H. Young, "A Fallacy in Canadian History," *Canadian Historical Review* XV, no. 4 (December 1934): 351, quoted in Schmeiser, *Civil Liberties*, 55, n. 1.
259. See *Above*, Ch. I, 23, n. 126-129.
260. (a) H. W. Rodgers, "An Address," in *The Sunday Problem; Its Present Day Aspects*, ed. Rev. W. W. Atterbury *et al.* (Boston, 1894), 209.
 (b) Canadian Jewry complained that the Alliance wanted to make people more religious by law, rather than by moral suasion in which Judaism held its strength. (See *Above*, Ch. II, 57, n. 65, 58, 80.) But the Lord's Day Act itself would not make people more religious. Rather, it gave people the opportunity to do so if they desired. Even though the Jews tried to secure an exemption for those who wished to sustain their religious convictions while not incurring financial hardships, the denial of an exemption should not provoke Jews to lose sight of their religious consciousness despite the complexity of modern economic conditions. Jewry does not need legal enactments to make an individual religious. The pious, Orthodox Jew, will remain faithful to his religion under any circumstances. For an argument regarding the economic situation of the Sabbath and its observance in the modern world, see Grunfeld, *The Sabbath*, 77-87.
261. (a) See *Above*, Ch. VI, n. 44.
 (b) Rabbi J. Berger, "The Guarantees of Liberty in the Canadian Constitution," in *Jewish Daily Eagle. Centennial Jubilee Edition, 1832-1932*, ed. B. G. Sack (Montreal, 1932), 29 — "The main principle underlying the (Canadian) constitution is that man has certain 'natural rights' and that society controls his exercise of those rights only to the extent necessary to give proper play to the like rights of his fellow men."
262. See *Above*, Ch. II, 56, n. 60.
263. L. Landman, *Jewish Law in Diaspora: Confrontation and Accommodation* (Philadelphia, 1968), 2 — "The Talmud states that with regard to civil [secular] law, the law is always to be decided in accordance with the opinion of Samuel." *Ibid.*, 115, 22, 148, 39, 15 — The diasporic law was conceived on the premise of the difficulties which the Jews would encounter while living in diaspora. It provided the Jewish people with a *modus vivendi* in solving the problems where Judaic law and secular law conflicted. In this manner, the Jew could remain loyal to his ancestral way of life while living in harmony with the laws of the nation in which he dwelled. The diasporic law was expounded in the third century, C.E. by the Babylonian sage Samuel. This law was constantly developed to meet the prevailing conditions in every nation at all times. Even though Jews had to abide by secular law, Rabbinical consensus indicated that secular law never assumed the status of Jewish law.
264. Civil in this case means as opposed to religious.
265. See *Above*, Ch. VI, 185-186, n. 40, 41.
266. *Ibid.*, n. 44.
267. *Ibid.*, 187, n. 45, 185-186, n. 40.
268. *Ibid.*, n. 49(d), n. 41, *Conclusion*, 204, n. 19-21.
269. Cook, *Minority Rights*, 62-63.
270. See *Above*, Ch. VI.
271. C. B. Sissons, "The Rights of Minorities in a Democracy," *Transactions of the Royal Society of Canada*, ser. III, XLVIII, sec. 2 (June 1954):106.
272. With provincial rights being recognized in the Act (See *Above*, Ch. I, n. 152), Canadian Jewry still had a chance to be exempted from the provisions of the Lord's Day Act. However, an exemption would be limited strictly on a provincial level. In 1906, the Quebec Legislature passed an exemption clause in the provincial Sunday law for seventh-day observers. This law was similar to the proposed exemption, Section 11, of

the Federal Lord's Day Bill. No other provincial Sunday law in Canada contained a similar provision. Nonetheless, the Jewish exemption in Quebec's Sunday law was abrogated in 1936. See Quebec, Laws, Statutes, etc. *An Act Respecting Sunday Observance, 1906*, 7 Ed. VII, Ch. 42, *Statutes of the Province of Quebec, 1907*, 84 (sec. 6). Also, *Ibid.*, *An Act to Repeal Section 7 of the Sunday Observance Act, 1936*, 13. Also, see Ontario Law Reform Commission, *Report*, 353.

The Canadian Connections Of An American Jew: The Case Of Mordecai M. Noah*

JONATHAN D. SARNA

Résumé

Pour autant que les Juifs des Etats-Unis aient été concernés, le Canada aurait pu devenir le quatorzième état de l'Union. Les liens de sang restèrent puissants en dépit des frontières nationales tracées lors de la Révolution Américaine, et, Juifs Américains et Canadiens continuèrent à se rendre visite, à négocier et à se nouer par les liens du mariage.

L'intérêt porté par Mordecai M. Noah envers le Canada — et qui dura toute sa vie — illustre les multiples facettes des relations entre les Juifs des Etats-Unis et les Juifs du Canada.

Qu'il se soit agi de politique, d'économie et de famille, tout retint son attention sur le Dominion du Nord.

Grâce à son sens de l'observation, il souligna certaines des influences marquantes qui séparèrent les Juifs américains de ceux du Canada. Chose qui frappe, ce fut les mêmes influences qui divisèrent les Américains des Canadiens.

Jonathan D. Sarna, auteur de cette recherche, présente en premier lieu, l'enfance et la croissance de Mordecai Noah dont les aspirations furent à 25 ans: le journalisme, la politique et le drame. En dépit d'une pétition signée par 27 citoyens des Etats-Unis d'Amérique et adressée au Président des Etats-Unis de l'époque M. Madison, le Secrétaire d'Etat du Canada, M. Robert Smith ne fut pas impressionné par cette pétition et le pria d'abandonner de sitôt ce projet "l'invitant à se tourner vers un Consulat d'Europe."

Suivant les conseils du Secrétaire d'Etat du Canada, Mordecai Noah fut récompensé pour sa patience et sa sagesse alors que le 4 juin 1811 il était nommé premier consul américain en poste à Riga en U.R.S.S.

Avant que le Consul Noah puisse s'y rendre, la guerre éclata.

Lorsqu'en 1813, il décida finalement de mettre à la voile, sa destination avait changé, il se rendait à Tunis. Il fut rappelé en 1815 sous le prétexte

*The term "America" used in this article refers to the United States.

de la religion.

M. Noah eut vers 1820 l'idée d'acquérir Grand Island, une ville en frontière près de Buffalo, afin d'en faire un lieu de refuge pour les Juifs du monde entier. De plus, mis à part le dessein premier que visait M. Noah, il pensait également que l'île pourrait également servir de poste de garde, de centre commercial et de colonie d'agriculture. Mais l'Angleterre ayant déclaré que Grand Island faisait partie du Canada, elle en réclama la remise.

Cinq ans plus tard, en 1825, le 15 septembre, une fois que Grand Island eut reçu le statut Américain, il posa la première pierre de la colonie juive qui devait s'appeler Ararat. Il fut déçu. Personne ne s'y établit.

Mordecai Noah se tint au courant de la vie du Bas-Canada par les journaux. Il rendit également visite à tous les Hart de Trois-Rivières. Vers 1830, le Canada vécut une période critique de son histoire.

Plusieurs personnes espéraient que le Canada ferait partie des Etats-Unis. De leur côté, les Américains accueillaient favorablement l'idée de l'unité de l'Amérique du Nord. Mais l'éventualité d'une guerre ne semblait pas être des plus rassurantes: les routes vitales du commerce seraient coupées, une tension plus forte avec l'Angleterre et ceci pourrait aboutir à la formation de gouvernements défavorables aux Etats-Unis.

Les points de vue changeants de Mordecai Noah à propos de l'indépendance canadienne reflètent les tensions d'aujourd'hui. Sa contradiction est celle d'un homme déchiré entre des loyautés conflictuelles. Il était à la recherche d'une solution politique idéale et utopique qui satisferait sa conscience, son pays, son parti politique (les libéraux) et ses parents Juifs du Canada. A propos de Louis Joseph Papineau, il publia un article dans le journal *Evening Star* (du 5 janvier 1835) où il exprima ses réserves et ses doutes à propos du Canada et de son orientation.

Selon Noah et d'après ce que l'auteur nous en rapporte, "un Canada puissant desservait tout à fait les intérêts de l'Amérique". M. Noah souhaitait "assurer les privilèges de tous par une représentation équitable, avec respect de la propriété et du droit de culte, ainsi que la prorogation des avantages de l'enseignement et enfin que les rouages administratifs de la Justice soient plus rapides, (afin que) le Canada soit une province puissante, calme et prospère."

Mais Noah prêcha dans le désert. Et lorsque les Français Canadiens tentèrent de se gouverner, il ne fut pas d'accord ayant ses réserves surtout après l'affaire d'Ezekiel Hart. "L'idée d'un tel peuple prenant les armes pour soutenir la liberté" était "absurde."

En dépit du fait que M. Noah se soit senti Américain avant tout, il n'en est pas moins demeuré que les relations entre les Juifs d'Amérique et ceux du Canada ont divergé. On ne peut nier aujourd'hui, malgré les liens qui unissent les deux communautés juives, que le Canada et l'Amérique sont deux pays séparés et distincts.

As far as early American Jews were concerned, Canada could have been the fourteenth state in the Union. Although the American Revolution had created national borders where none had previously existed, ties of blood still remained strong. Canadian and American Jews continued to visit one another, trade with one another, and marry one another.¹ Mordecai M. Noah's interest in Canada — an interest which persisted throughout his life — illustrates many facets of the American Jewish relationship with Canada. Politics, economic opportunities and relatives all brought the Northern Dominion to his attention. But his interest in Canada also illustrates some of the forces which divided American and Canadian Jews. Unsurprisingly, they were the very forces which separated Americans and Canadians generally.

I

Mordecai M. Noah (1785-1851) was one of the most important Jews in early America. He is best known today for his abortive Ararat Plan — his effort to create a Jewish colony on Grand Island, New York. But in his own day, his fame rested on his journalism, his dramatic writings, his politics, his dramatic career, and his unofficial post as “representative Jew” in the United States. He was the first person who ever attempted to be a leading American and a leading Jew at one and the same time.²

As a child, Noah was orphaned. His debt-ridden father escaped to Europe and his mother died. Responsibility for raising the boy fell to Jonas and Rebecca Phillips, his grandparents. After a few years, they apprenticed their charge to a carver and gilder. They wanted the boy to learn a productive trade. Unfortunately, Noah's “taste and ambition did not harmonize with his employment.” He was often beaten and flogged, and he never learned to carve and gild. Instead, his master soon set him to a more typical Jewish profession. He became a salesman; a peddler of his master's wares. Details of this period in Noah's life are lamentably sparse, and retrospective comments place him in a variety of locations. What emerges clearly, however, is the fact that Noah used his apprenticeship to

travel and make friends. His later familiarity with New York State and Lower Canada may be traced to these early wanderings.³

By 1810, the now twenty-five year old Noah had settled down to the three careers that would occupy him for most of his life: journalism, politics and drama. Unfortunately, not one of these professions paid him a living wage. He therefore looked to a different means of attaining wealth — one that promised him prestige as well. He sought appointment to a diplomatic post. Noah understood that as a diplomat he could tacitly earn money on the side, quite apart from any government salary or expense account. He also knew that he could use a diplomatic position to develop various kinds of business connections. He may even have hoped eventually to see the world. But his initial goal was more modest. He applied to be America's agent assigned to protect the interests of citizens trading with Lower Canada.

Noah's application came at an opportune time. More Americans than ever were trading with Lower Canada. They needed an agent to protect them. Traders faced press gangs and various other hazards on the St. Lawrence River. Further difficulties hampered them once they moved inland. A government agent, by dealing directly with Lower Canadian officials, could cope with problems expeditiously, and stimulate commerce besides.⁴

Twenty-seven "citizens of the United States residing within the Province of Lower Canada and in the State of New York" (mainly in Troy, New York) petitioned President Madison to consider Noah's application favorably (see appendix I). They pointed approvingly to Noah's "frequent intercourse with the Province [of Lower Canada], his knowledge of the country, its commerce and resources." They pronounced the young man "competent to discharge the duties attached to the station." Then they signed their names. The last signer's name stands out starkly: "Ephraim Hart, New York." Ephraim Hart was Noah's uncle (the husband of his father's sister) and his business stood to gain from any increase in trade with Lower Canada. More than likely, the petition to President Madison was engineered by him.⁵

Secretary of State Robert Smith was unimpressed with the "citizens' " petition, and he suggested to Noah "the propriety of abandoning this project." He urged the aspiring diplomat to "apply for a Consulate in Europe" instead. Wisely, Noah followed the suggestion. On June 4, 1811, he was rewarded with an appointment as America's first consul to Riga.⁶

Before Consul Noah could depart, war broke out. When he finally did

set sail, in 1813, his destination was the far more important consular post of Tunis. But his North African tensure proved short. In 1815, he was recalled — allegedly because of his religion.⁷

II

Though he soon left the diplomatic corps for good, Noah did not abandon his interest in Lower Canada. In 1820, he petitioned the New York legislature to sell him Grand Island, a border town near Buffalo inhabited by squatters and Indians. He wanted the land to serve as a refuge for the Jewish people of the world. Besides serving as an asylum, Noah thought that the island could be a watchpost, a trading center and an agricultural colony. He foresaw prosperity once the Erie Canal was completed. His overly ambitious project, however, soon faced an insuperable obstacle. Britain claimed that Grand Island was part of Canada, and demanded its return. The resulting diplomatic wrangle ended up in the hands of a boundary commission. Meanwhile, Noah tried to find another site for his colony. Five years later, after Grand Island's status as an American possession was assured, Noah reverted to the Grand Island scheme. On September 15, 1825 he laid the corner-stone for a Jewish colony to be called Ararat. To his very great disappointment, no settlers arrived. Ararat was stillborn, and soon abandoned.⁸

The ensuing years saw Noah return frequently to Lower Canada. "We know the Canadians [and] have been frequently in Canada," he reported in 1837.⁹ His newspapers were received by his cousins, the Harts of Three Rivers. His aunt, Frances Noah Hart (wife of Ephraim Hart) lived with her daughter, Harriet Judith Hart (husband of Benjamin Hart) in Montreal. Noah doubtless paid them all visits. He also read Canadian newspapers, and considered himself well-informed about Canadian affairs.¹⁰

III

The 1830s were a critical period in Canadian history. Both Lower Canada and Upper Canada were seething against British rule. Rebellions loomed, and many hoped that Canada would become part of the United States. For their part, Americans welcomed the idea of North American unity. But the prospects of war in the Northern Dominions seemed frightening. War would disrupt vital trade routes, heighten tensions with England, and might result in the formation of governments unfriendly to the United States. Problems would result even if Canada joined the Union. Added states would re-open the question of slavery by upsetting

the delicate balance between free states and slave states.¹¹

Mordecai Noah's changing views on Canadian independence reflect the tensions of the day. His inconsistency is the inconsistency of a man torn between conflicting loyalties. He searched for a policy that would at once satisfy his conscience, his country, his party (the Whigs), and his Canadian Jewish relatives. He searched for a Utopian solution that could not be found.

Noah's "Papineau and the Canadas," a brief article in his *Evening Star* (January 5, 1835), gave expression to his mixed feelings regarding the Canada issue. On the one hand, he praised the spokesman for reform in Lower Canada, Louis-Joseph Papineau, as a "distinguished leader." He gave considerable coverage to "the distinguished leader's" monumental "address of twelve columns" (likely his Ninety-Two Resolutions) dealing with colonial grievances. He lauded his "style of imposing eloquence, abounding in luminous, bold and original thoughts and expressions of ardent patriotism and devotion to liberty. On the other hand, he expressed grave doubts about Papineau. He accused him of exaggeration and self-glorification:

We could feel more confident in Mr. Papineau's declarations if they were tinctured with less malignity and bitterness of feeling and less coarse and vulgar language. There is a vein of bombastic egotism, turgid declamation, and unsparing denunciation throughout which disfigures [the] production.¹²

Noah felt that Canada should join the Union and become one of the United States. He declared, in response to Canadian criticism, that "geographical position, kindred interests, language and laws, sympathy of origin and destiny, to say nothing of the oppressions of a hard-hearted stepmother, must ultimately sooner or later place the Canadas under the *Aegis* of this empire." He assured his Canadian friends that statehood would improve their commerce and trade, and would guarantee a "golden harvest." He had no thoughts, however, of immediate union. His was a plan for some indefinite day in the future:

These speculations may seem daydreams, but we advise our neighbors to ponder upon them, for what *must* be, *will* be.¹³

Events took Noah by surprise. Within two years, union with Canada seemed a real possibility. Some Canadians had determined that incorporation into the United States might be the only means of achieving true liberty. Others held up the possibility of union as bait in an effort to capture American support for Canadian rebels. Noah, in an abrupt *volte-face*, supported neither group. America was mired in a deep economic and

social crisis in 1837. Workers, nativists and abolitionists all sought drastic changes in fundamental American policies. Alarmed at “the many conflicting interests and jarring claims” already battling for supporters, Noah feared that “more conquests” or “new possessions” would rend the country’s social fabric asunder. He worried that union with Canada would pose problems for the southern states which, as a pro-slavery advocate, he supported. He also worried that union might stimulate Canadian immigration southward which, as a nativist, he opposed. He therefore advocated a policy aimed at “friendly and cordial good feelings between the two countries, founded only on mutual interests.” He concluded that a strong Canada was very much in America’s interests.¹⁴

Hoping to promote his own policy, Noah offered “a little friendly advice as to the best means of producing tranquility and unity of sentiment and action in Canada.” His “friendly advice turned out to be a bold, eight point program for unity and democracy under British rule (Appendix II). First, he called for “union of the two provinces,” to his mind the most vital and urgent of his proposed measures. Then he proposed a new governmental structure. The Crown would select a governor and a commander-in-chief. The people, voting by county, would select a “house of commons”. The governor and commander-in-chief would select a legislative council, whose members would be appointed for life. Also appointed, although not for life, would be an executive council which would function as a cabinet. The judiciary would be independent, but seemingly subservient. The Crown would select a chief justice and chancellor, while the governor and council would select inferior judges.

With regard to matters of policy, Noah had four principal suggestions:

- all rights guaranteed to the French population in the Treaty of Quebec should be confirmed,
- the alliance with Britain should be made perpetual,
- the national capital should be set up “as nearly in the centre of the province as possible”,
- income from clergy reserves — the vast tracts of Canadian public land which England set aside in 1791 in order to guarantee the establishment of a Protestant clergy — should be applied to the support of educational institutions “without reference to sects or denominations.”¹⁵

The Noah plan was not really original. It was rather a carefully selected composite of various ideas put forward by concerned, unaligned citizens on both sides of the border. The aims were noble ones:

- {to} secure the privileges of all by fair representation, with protection to property and

religious rights, extending the benefits of education and the speedy administration of justice, (to) make Canada a powerful, tranquil and prosperous province.

But in hoping to satisfy all groups, Noah succeeded in satisfying none. His proposals fell on deaf ears.¹⁶

IV

In November 1837, supporters of Louis Papineau staged a rebellion aimed at securing Lower Canada's independence. Many Anglophobic, freedom-loving Americans rejoiced that a movement of national liberation had sprouted so close to America's shores. Even Anglophilic Whigs hoped to use the Canada issue to embarrass the President. Noah disagreed. He doubted that the French Canadians were capable of ruling themselves. He worried that they would demand American assistance, a move which might encourage the kind of statehood petition which he dreaded. Most of all, he feared for the fate of his Jewish relatives. The Lower Canadians "are from their nature and education intolerant," he insisted. As proof, he described in his *Evening Star* the thirty year old case of Ezekiel Hart — without, of course, mentioning the family connection:

The District of Three Rivers at several elections returned Mr. Hart, a highly respectable native, to the provincial parliament, but the Canadians refused to allow him his seat on the ground that he professed the Jewish religion. The British Government decided in his favour at several periods, but the Canadians, who are said to have no power, uniformly prevented him from taking his seat.

The moral was clear: "the idea of such people taking arms to sustain liberty" was "preposterous." Besides, Noah reminded his countrymen, Lower Canadians had fought against America in the War of 1812. "Canadians proper," he concluded, "harbor an interminable dislike to us yankees." He warned that "we can afford no sympathy in return for such hostility."¹⁷

Noah felt more sympathy toward the Upper Canada revolt led by William Lyon Mackenzie. Upper Canadians were ethnically and religiously more similar to Americans. They were not French Catholics, and Noah believed that they were therefore more tolerant. In the case of Mackenzie, at least, he was wrong. The rebel leader was a deeply prejudiced and cynical man. Although he praised America, he staged his rebellion in part to usher in "a government founded upon the heaven-born principle of Jesus Christ." He scorned Jews in particular. Many anti-Jewish comments appeared both in his books and in his newspapers.¹⁸

Noah only learned all of this later. During the rebellion, he said little about Mackenzie, and concentrated his attacks on Papineau. "On no ac-

count" was he prepared "to furnish men, money or arms" to any rebels. He had no qualms at all, however, about helping those who escaped onto American soil. His main aim was to keep the United States out of the struggle.¹⁹

When America was dragged into the struggle, Noah modified his editorial stance. Like his countrymen, he was deeply affected by the Canadian attack on the vessel *Caroline* which stood in American waters. He joined in the calls for investigation and retaliation, and began to look more warmly on independence-minded rebels. But though he mournfully lamented the "massacre" and righteously condemned the "aggressors," he still counseled patience. Even in the midst of patriotic fervor he did not forget the doubts and fears which prevented him from supporting the Canadian rebels in the first place.²⁰

V

Was Noah's deep interest in Canadian affairs unusual? Not for a Jew. Like Americans who lived in border towns, and French Canadian immigrants who worked in the United States, Jews were personally affected by Canadian affairs. Uncertainties, disturbances and rebellions threatened their families and disrupted their trade. In Noah's case, concern with Canada may have been even more personal. Rumor had it that he actually was born in Canada, and was brought to America only later. No known evidence supports this story. To the contrary, all the available facts back up Noah's contention that he was born in Philadelphia. But John L. Wilson, once governor of South Carolina, believed the charge and communicated it to the *New York Herald* (Appendix III). He claimed that his information came from Myer Moses, a distinguished Jewish resident of Charleston (and later New York) who unfortunately was dead by the time Wilson's letter appeared in print.²¹

Regardless of his birthplace, Mordecai Noah considered himself an American. He knew Canada, and felt at home with members of its Jewish community. His Canadian Jewish relatives felt equally at ease in New York. Much had changed, however, from the days of the American Revolution. The "fourteenth colony" had gone its own way. Its problems and its crises differed markedly from those which faced its neighbor to the south. Increasingly, political differences impinged upon familial and social ties. Two distinctive national identities were in the process of being formed.

In later years this process continued. American and Canadian Jews maintained close personal relations. Ties of marriage and friendship

bound the two communities, and travel back and forth became common. American and Canadian Jewish history, however, did not move along parallel paths. In Canada, Jewish immigration patterns, Reform Judaism, and Zionism all developed differently from the way they developed in America. Canadian Jewish communities faced — and still face — problems and threats most unlike those facing their neighbors to the South. Close ethnic, religious and familial ties have often shielded these differences from public view. Ultimately, however, no one can escape the fundamental fact that the United States and Canada are two nations, separate and distinct.²²

APPENDIX I

His Excellency James Madison,
President of the United States

We, the undersigned Citizens of the United States, residing within the Province of Lower Canada, and in the State of New York beg leave to represent to your Excellency, that the commercial intercourse between the United States and Lower Canada is rapidly increasing; and more security would be given to that intercourse by the appointment of an agent from the United States, for the protection of of [sic] the rights and privileges of our fellow Citizens trading to that Province. They trust that an institution of that kind will be found both necessary and useful; as tending to promote Commerce and prevent its diminution. They beg leave to state that the appointment of an Agent involves objects of a more important nature than the mere protection of trade. That portion of our fellow Citizens who navigate rafts down the river St. Lawrence are frequently exposed to the inconvenience of Press Gangs, who, though ultimately released when pressed into service, for want of prompt and immediate interference, have been compelled to undergo many embarrassments and vexatious privations. The security of our fellow citizens whose contingency of situation renders them dependant on the Province for the sale of their produce forms a primary object in this request; it likewise involves principles of minor consideration, but of relative importance. Viewing it in this light, and considering that the appointment of an agent authorized to render every service to his fellow citizens will be to promote their interest and prosperity, we feel confidant that your Excellency will afford every consideration to the subject, which its importance demands.

We further beg leave to recommend for the above appointment, our

fellow citizen M. M. Noah — the Bearer of this communication — who from his frequent intercourse with the Province, his knowledge of the country, its commerce and resources, is considered competent to discharge the duties attached to the station.

Quebec, August 25th, 1810

Abner Cushing—Quebec	Eli Ayer (?)—Ascot
Johnson Walker	Jared Moulton
Edward Franklin	
Asa Carter—Shipton	Wm. Barker—Hereford
Edwd. Carter—Montreal	

— State of New York²³ —

Ruggles Hubbard—Troy	Thos Turner—Troy
Solomon Wilbur, Jr.—Troy	James Adams (?)—Troy
Ebenezer W. Walbridge—Lansingburgh	
R. M. Livingston—Troy	William Pierce—Troy
Benjamin Gale—Troy	Joseph D. Selden—Troy
Samuel Gale—Troy	Daniel T. Wandell—Troy
G[uilford] D. Young—Troy	Ben Smith—Troy
Gilbert Reilay—Troy	James H. Price—Troy
S[olomon] Southwick ²⁴ —Albany	Solomon Allen—Albany
James B. Douglass—Albany	Eph[raim] Hart ²⁵ —New York

(General Records of the Department of State, Record Group 59, Applications and Recommendations for Public Office under President Madison, National Archives, Washington D.C.)

APPENDIX II

The following synopsis strikes us Americans as being the most expedient and judicious for the interests of all concerned:

1. Upper and Lower Canada to be united under the name and form of THE CANADAS, including all the boundaries and possessions claimed by both provinces, and under the control of a Governor and Commander-in-Chief, to be appointed by the Crown.

2. The Canadas to be divided into counties, and the ratio of representation to be governed by the population of each; and each county to elect a certain number of delegates to the House of Commons, to be freeholders, and to be elected by freeholders.

3. A legislative Council (or Senate) to consist of not more than thirty-two members taken from eight districts into which the province may be

divided, to be nominated for life by the governor and commander in chief and confirmed by the king.

4. An executive Council or Cabinet, to consist of the Heads of Departments who shall be paid by his official advisers.

5. The Judiciary to consist of a Chief Justice and Chancellor to be appointed by the king, and a certain number of puisne judges to be nominated by the Governor and Council; the Chief Justice to have a seat and not a vote in the Legislative Council.

6. All the seignorial properties, rights, and rights of primogeniture, and religious principles, as secured to the French population of Lower Canada by the treaty of Quebec, and the conditions of alliance to the British Crown, to be confirmed and secured [and] made perpetual.

7. A seat of government to be fixed upon as nearly in the centre of the province as possible.

8. All the income from the clergy reserves to be applied to the support of district or common schools — for the endowment of colleges, and the benefit of education, without reference to sects or denominations.

(*The Evening Star For the Country*, March 17, 1837, p. 2)

APPENDIX III

Charleston, September 20th, 1842

I perceive by the *Herald* that you are ignorant of the birthplace of M. M. Noah, lately a judge in your city. He is a native of Canada, and never has been made a citizen of the United States. During the last war with Great Britain, before the second election of Mr. Madison, he came on to Charleston (and it was supposed, was hired for the business) to enlist the *City Gazette* edited by E. S. Thomas²⁶ (the only important democratic paper in the city and the State), to favor the election of De Witt Clinton. He at first succeeded, and wrote a series of numbers, under the signature of "Dionysius Halicarnassus" in behalf of Clinton. An administration paper, the *Investigator*, was established to counter-act the movement. This was highly offensive to Mr. Noah. I was one of the editors, and ridiculed him in every way. Under the law of our State, at the time, the greatest truth was the severest libel. To ridicule a man was libellous. Noah indicted me for libel; and at the trial, I made the objection to the prosecution of the case, by an alien enemy, against a native citizen, as he could not sue for a debt, he should not prosecute. The point was argued at some length and the Court decided that Noah was no party to the case, as the

State and the defendant were the only parties. I was, of course, guilty of ridiculing him which was always continued. The court passed some paltry sentence, which the Governor remitted instantly. That he was an alien I had abundant evidence to prove. Mr. Meyer Moses,²⁷ who died in your city, gave me the information, and was one of my witnesses. He said Noah's parents came from Canada (where Noah was born) when he was young, and they settled in Philadelphia. If you make the proper inquiries in Philadelphia, you can easily get the facts. But it is scarcely possible that unless Noah knew I could prove him an alien, that he would have listened to long arguments when a word from him, if a citizen, and a demand for the proof, would have settled the question. I have no doubt of the fact of his alienage.

With respect, yours, &c,

John L. Wilson²⁸

(*New York Herald*, May 13, 1850, p.2)

FOOTNOTES

I am grateful to the National Foundation for Jewish Culture and to the Memorial Foundation for Jewish Culture for the support which they have so generously given to my research.

1. Michael Brown, "The American Connection of Canadian Jews: 1759-1914," *AJS Review* III (1978), pp.21-77.
2. My "Mordecai M. Noah: Jacksonian Politician and American Jewish Communal Leader — A Biographical Study" (Unpublished Ph.D., Yale University, 1979) is the most recent account. See also Isaac Goldberg, *Major Noah; American Jewish Pioneer* (Philadelphia: Jewish Publication Society, 1938); and Robert Gordis, "Mordecai Manuel Noah: A Centenary Evaluation," *Publications of the American Jewish Historical Society*, 41 (1951), pp.1-25.
3. Sarna, "Noah," pp.8-10; quote is from *Sunday Times and Noah's Weekly Messenger* (March 30, 1851), p.2.
4. Citizens of the United States to James Madison (August 25, 1810), General Records of the Department of State (R.G.59), Applications and Recommendations for Public Office Under President Madison, National Archives, Washington D.C.; Isaac Goldberg, "Mr. Noah, American," *The Menorah Journal*, 24 (Autumn 1936), pp.76-93.
5. On Ephraim Hart, see Joseph R. Rosenbloom, *A Biographical Dictionary of Early American Jews* (Lexington, Ky: University of Kentucky Press, 1960), pp.51-52, and sources cited therein.
6. Noah to Robert Smith (January 7, 1811), R.G.59, Applications and Recommendations for Public Office Under President Madison, National Archives; "Introductory note," microcopy 485, Despatches from United States Consuls in Riga, National Archives.
7. Mordecai M. Noah, *Travels in England, France, Spain and the Barbary States in the Years 1813-14 and 15* (New York: Kirk and Mercein, 1819).
8. *National Advocate* (January 24, 1820), p.2; (March 3, 1821), p.2; (March 6, 1820), p.6. The best known secondary account is Lewis F. Allen, "Founding of the City of Ararat on Grand Island by Mordecai M. Noah," *Buffalo Historical Society Publications*, I (1879), pp.305-28, and frequently reprinted. For other sources, see Sarna, "Noah," pp.130-62, 422-36.

9. *Evening Star* (December 5, 1837), p.2.
10. Hart Family Papers, file D-e, item 2 and D-f, item 4 refer to subscriptions for Noah's papers. On Noah's relatives, see *Publications of the American Jewish Historical Society*, 27 (1920), p.491. I am indebted to Mrs. Evelyn Miller and Dr. Malcolm Stern for their assistance on genealogical matters.
11. O.E.Tiffany, "The Relations of the United States to the Canadian Rebellion of 1837-1838," *Publications of the Buffalo Historical Society*, 8 (1905), pp.1-147; Albert B. Corey, *The Crisis of 1830-1842 in Canadian-American Relations* (New Haven: Yale University Press, 1941); William Kilbourn, *The Firebrand, William Lyon Mackenzie and the Rebellion in Upper Canada* (Toronto: Clarke, Irwin, 1956) and Joseph Schull, *Rebellion* (Toronto: Macmillan, 1971), provide background on the rebellion.
12. *Evening Star* (January 5, 1835), p.2.
13. *Evening Star* (January 29, 1835), p.2.
14. *Evening Star* (March 15, 1837), p.2; Leonard I. Gappelberg, "M.M.Noah and the Evening Star: Whig Journalism 1833-1840" (Unpublished Ed.D. thesis, Yeshiva University, 1970), pp.212-18; Samuel Reznick, "Social History of an American Depression, 1837-1843," *American Historical Review*, 40 (1835), pp.662-687; Marcus Lee Hansen, *The Mingling of the Canadian and American Peoples* (New Haven: Yale University Press, 1940), pp.115-38; and items cited in n.11.
15. *Evening Star* (March 15, 1837), p.2, reprinted in the "for the country" edition (March 17, 1837), p.2.
16. *Ibid*; compare W.P.M.Kennedy, *Documents of the Canadian Constitution 1759-1915* (Toronto: Oxford University Press, 1918), pp.223-553.
17. *Evening Star* (December 5, 1837), p.2; (December 8, 1837), p.2. On the case of Ezekiel Hart, see Julius Price, "Proceedings Related to the Expulsion of Ezekiel Hart from the House of Assembly of Lower Canada," *Publications of the American Jewish Historical Society*, 23 (1915), pp.43-53; and Benjamin G. Sack, *History of the Jews in Canada* (Montreal, 1945), I, pp.80-95, cf. 118.
18. On Mackenzie's anti-Jewish comments, many of which were directed against Noah, see Anthony W. Rasporich, *William Lyon Mackenzie* (Toronto: Holt, Rinehard & Winston, 1972), pp.4,8,14,122; *Workingman's Advocate*, 22 (August 24, 1844), p.1; *Herald* (August 26, 1844), pp.1,4,5; and the generally negative comments on Noah in Mackenzie's books: *Sketches of Canada and the United States* (London: E. Wilson, 1833); *The Lives and Opinions of Benjamin Franklin Butler and Jesse Hoyt* (Boston: Cook & Co., 1845); and *The Life and Times of Martin Van Buren* (Boston: Cooke & Co., 1846). Recent literature on Mackenzie is summarized in Paul Romney, "William Lyon Mackenzie as Mayor of Toronto," *Canadian Historical Review*, 56 (December, 1975), pp.416-36; cf. Louis Filler, *Appointment at Armageddon* (Westport: Greenwood, 1976), pp.50-60.
19. *Evening Star* (December 13, 1837), p.2; (December 21, 1837), p.2; (December 28, 1837), p.2.
20. *Evening Star* (January 4, 1838), p.2.
21. The rumor may be found in the *Charleston Investigator* (February 3, 1813), p.3; and in the *New York Herald* (October 16, 1842), p.2; and (May 13, 1850), p.2.
22. Jonathan D. Sarna, "Jewish Immigration to North America: The Canadian Experience (1870-1900)," *Jewish Journal of Sociology*, 18 (June 1976), pp.31-41; Lloyd P. Gartner, "North American Jewry," *Migration and Settlement* (London: Jewish Historical Society of England, 1971), pp.114-27; Albert Rose (ed.), *A People and Its Faith* (Toronto: University of Toronto Press, 1959); *The Emanu-El Story 1882-1960* (Montreal, 1960); Michael Brown, "The Beginnings of Reform Judaism in Canada," *Jewish Social Studies*, 34 (1972), pp.322-42; Marnin Feinstein, *American Zionism 1884-1904* (New York, 1965), p.87; Moshe Davis, "Centres of Jewry in the Western Hemisphere: A Comparative Approach," *Jewish Journal of Sociology*, 10 (December

- 1968), pp.177-220; Morton Weinfeld, "A Note on Comparing Canadian and American Jewry," *Journal of Ethnic Studies*, 5 (1977), pp.95-103.
23. For the identification of all the Troy residents except James H. Price, see A.J. Weise, *History of the City of Troy* (New York: W.H. Young, 1876) and A.J. Weise, *Troy's One Hundred Years* (New York: W.H. Young, 1891).
 24. Solomon Southwick (1773-1839) was the editor of the Albany Register (*Dictionary of American Biography*, vol. 17, pp.413-14).
 25. See note 5.
 26. See E.S. Thomas, *Reminiscences of the Last Sixty-Five Years* (Hartford: E.S. Thomas, 1940).
 27. On Myer Moses (1779-1833), see Rosenbloom, *Biographical Dictionary*, pp.121-22.
 28. John L. Wilson (1784-1849) was governor of South Carolina in the 1820s. *National Cyclopedia of American Biography*, vol. 12, pp.164-65.

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