

# The Lord's Day in a Secular Society: A Historical Comment on the Canadian Lord's Day Act of 1906\*

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## I

CONSIDERED FROM THE STANDPOINT of public policy, the observance of the Lord's Day raises a group of related questions usually debated somewhere in that No-Man's-Land which lies between dogmatic theology and political philosophy. What is the proper relationship between Church and State? What is a Christian society? What is the Catholic doctrine of Law, and how is it to be applied at the present time?

Large metaphysical issues such as these are important to a society unified by faith. But nowadays, it is said, we live in a "secular" society.<sup>1</sup> The traditional *questions* interest a diminishing minority of the faithful. Meanwhile, new questions have arisen, both for the Church and for the uncommitted majority, upon many of which the traditional *authorities* are incompetent to make a pronouncement.

One such question, falling more within the province of the social scientist than the theologian, is raised by the passage and subsequent history of the Dominion Lord's Day Act of 1906.<sup>2</sup> *How far is it possible for Christians as a class to influence public policy in a secular society?*

In the first place, it is essential to elucidate the adjective "secular" in the context of the question. I shall begin, therefore, by defining a concept, the "degree of secularity," intended to bring some relief from the hopeless imprecision which has marred most of the discussion since Bonhoeffer made it respectable for Christians to speak of a world "come of age." Using the concept, I shall then review in some detail the circumstances of the Canadian Lord's Day Act, showing them to have been paradigmatic of the difficulties which confront any attempt, in the English-speaking world of the twentieth century, to establish a polity which refers to theological principle, right or wrong.

## II

It is important to isolate the meaning of the adjective "secular," used descriptively to qualify the noun "society," from the cluster of meanings

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1. See, in particular, D. L. Munby, *The Idea of a Secular Society* (London: Oxford University Press, 1963), pp. 11-14 and *passim*.

2. *Revised Statutes of Canada* (1952), c. 171.

which surround the abstract noun "secularism" derived from it. The secularism of Holyoake and Bradlaugh was representative of hardly more than a bizarre sect of English Protestant dissent, and as such has shared in the general decline of Nonconformity.<sup>3</sup> But many human societies of the modern world, and pre-eminently those of the "North Atlantic Triangle," possess certain common characteristics which it is convenient to classify and describe as "secular."

Most attempts to do so, whether with the object of assigning praise<sup>4</sup> or blame,<sup>5</sup> have centred upon the causal function of ideology. But this is to imply a hypothesis of the nature of man consistent indeed with the position of those who repudiate the secular society as godless, but possibly repugnant to that of its advocates and defenders. The causative role of ideas, strictly considered, is a metaphysical concept. Old-fashioned liberals like the late Lord Keynes could be gloriously inconsistent and get away with it;<sup>6</sup> modern and more thorough-going secularists must rigorously eschew all questions of being, causation, and purpose, the more so if—as Christians—their concern is to present "Christ without myth." No doubt those Christians who have welcomed the secular society in print could defend themselves from the charge of metaphysical thinking, or, alternatively, distinguish between metaphysics and mythology—to their own satisfaction at least. But it is safer to be purely empirical. Instead of thinking of a secular society, therefore, as one in which certain ideas and beliefs are held or not held either collectively or by individuals, let us describe it in terms of observable social phenomena. In particular, since we are here concerned with public policy as expressed in law, let us erect a model of the secular society in terms of the economic effects of legislation.

In a modern society, such as exists in Canada, legislation is the resultant of the actions of many different pressure groups with divergent aims. Usually it will be the tactic of any group seeking particular legislation to represent it as beneficial to society as a whole, or at least as neutral in its aggregate effect, if positively beneficial only to the sponsor.

The criteria of beneficence are many; they include, for example, the theological, moral, equitable, aesthetic, and economic. In practice, however, it will be difficult to secure effectual agreement upon the mode of verifying any but the last. In other words, a comparison of the *economic* advantage

3. Cf. Alasdair MacIntyre, "God and the Theologians," in J. A. T. Robinson and D. L. Edwards (eds.), *The Honest to God Debate* (London: S.C.M. Press, 1963), p. 227 (reprinted from *Encounter*, Sept., 1963).

4. E.g., D. L. Munby, *The Idea of a Secular Society*, who does, however, begin in a "descriptively" sociological way in ch. 1; P. van Buren, *The Secular Meaning of the Gospel* (New York: Macmillan, 1963), p. 20: "The modern revolt against Idealism is loosely what we have in mind when we speak of Secularism."

5. E.g., H. Blamires, *The Christian Mind* (London: S.P.C.K., 1963); Trevor Huddleston, c.r., in the *Sunday Telegraph*, 31 March 1963.

6. Cf. J. M. Keynes, *General Theory of Employment, Interest and Money* (London: Macmillan, 1936), pp. 383-4: ". . . the ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else . . . soon or late it is ideas, not vested interests, which are dangerous for good or evil."

or disadvantage will be the most telling argument respecting any proposed legislation.

This is not a universal law, but simply a description of society in the English-speaking world of today. In a community dominated by a cultivated aristocracy, for example, aesthetic or moral considerations might prevail over economic ones. In a society of intellectuals, equity might be the governing principle. And in a society unified by some religion, the precepts of theology might overrule all others in the choice of legislation. "Human positive laws," in this last case, would be admitted either to regulate those areas of conduct upon which the divine law and the natural law are silent ("merely" human laws), or to provide sanction for such higher laws ("mixedly" human laws).<sup>7</sup> In such a "sacral" society, as Munby calls it,<sup>8</sup> "Human Laws are measures in respect of men whose actions they must direct; howbeit such measures they are, as have also their higher rules to be measured by, which rules are two, the Law of God and the Law of Nature."<sup>9</sup>

At the present time, it would appear that society is "pluralistic"; no one ideology or religion unifies the constituency to the point where it can allow moral, equitable, aesthetic, or theological considerations to override economic factors. No pressure group (or alliance of pressure groups), that is to say, can hope for much success in achieving legislation unless it can be demonstrated that no positive social cost will result from its enactment.

The extent to which this is actually the case may be quantified—in principle, at least. More precisely, what I shall call the "degree of secularity" in any society may be defined as the proportion of future real national income which that society refuses to sacrifice by the enactment of laws for the sanction of religious principle. This definition does justice to the evident fact that some societies are more "secular" than others. A perfectly secular society, by my definition, would be one in which the degree of secularity was unity—that is, one in which no legislation in support of religious principle could be passed if any future sacrifice of income were expected at all. A perfectly "religious" (or "sacral") society, on the other hand, would be one in which religious principle would always be sanctioned, even to the point at which all future income is extinguished.<sup>10</sup>

Like many other concepts in economics, that of the degree of secularity, despite its mathematical formulation, is more apt for qualitative, than for

7. R. Hooker, *Of the Laws of Ecclesiastical Polity*, I, x, 10.

8. D. L. Munby, *The Idea of a Secular Society*, p. 17 and *passim*.

9. R. Hooker, *Ecclesiastical Polity*, III. 9. 3. Hooker is here paraphrasing the Latin of St. Thomas Aquinas, *Summa Theologiae*, Ia-IIae, 95, 3.

10. Let  $Z$  be the present value of all expected annual values of real GNP (capitalized at the best estimate of average interest rates). Let  $C$  be the present value of all changes to the forecast series of annual incomes expected to result from the marginal unit of religious legislation. (The "marginal unit of religious legislation" is to be understood as that Bill the expected social cost of which—i.e., value of  $C$ —is just sufficient to leave the constituency undecided as whether to enact it or to reject it.) Let  $S$  be the *degree of secularity*. Then  $S \equiv 1 - C/Z$ , when  $1 \geq C/Z \geq 0$ .

quantitative, analysis.<sup>11</sup> Without exaggerating its claims, however, it may be acknowledged as a device for relating social to economic history with at least as much precision as, say, the much debated Weber Thesis.<sup>12</sup>

In this paper, the concept will be employed in connection with the religious condition of Canadian society during the passage of the Lord's Day Act, and its probable development since that time.

### III

*An Act for the better observation and keeping holy the Lord's Day commonly called Sunday*,<sup>13</sup> passed by the English Parliament in 1677 during the reign of Charles II, became the basis of all later Sunday legislation throughout the English-speaking world. Earlier acts remain on the statute books,<sup>14</sup> and later ones amplify<sup>15</sup> or modify<sup>16</sup> that of 1677; but for those nations which began life as British colonies, the Caroline Lord's Day Act (forbidding all persons to carry on their ordinary business under pain of a five-shilling fine or two hours in the stocks) is really the starting point.

Acting under the Constitutional Act of 1791, the first session of the legislature of Upper Canada (1792) made the Imperial Statutes part of the law of the Province,<sup>17</sup> but there also was later legislation, both before<sup>18</sup> and after<sup>19</sup> Confederation, intended to increase the rigour and effectiveness of the Sunday Law. By the end of the nineteenth century most provinces had passed similar acts;<sup>20</sup> whereupon, in 1903, the whole situation was thrown into confusion by the ruling of the Privy Council in *A.G. for Ontario v.*

11. Its usefulness and limitations are of the same order as Keynes's "marginal efficiency of capital." Its value depends upon society's expectations of the future, and it requires the simplifying assumption of a single rate of interest.

12. This latter theory, even in the greatly modified form given it by R. H. Tawney, *Religion and the Rise of Capitalism* (New York: Harcourt Brace & Co., 1926), connected social and economic development too closely with the religious changes of the sixteenth century to do justice to the facts of medieval economic life. What was being attempted was a hypothesis concerning the history of ideas; but even on this limited—and notoriously slippery—ground, it failed to account for all the available evidence, as Luethy has lately shown (Herbert Luethy, "Once Again: Calvinism and Capitalism," *Encounter*, Jan. 1964, pp. 26–38). If I am right, a study of the long-term trend of the degree of secularity would afford a model of the relationship between economic and socio-religious history in Europe, uncluttered by those vast uncertainties which Sombart's "Geist" inflicts upon us.

13. 29 Car. II, c. 7.

14. E.g., 27 Hen. VI, c. 5, restricting Sunday trading in fairs and markets; the Acts of Uniformity of Edward VI and Elizabeth I, making attendance at church compulsory; 1 Car. I, c. 1, and 3 Car. I, c. 2, both restricting Sunday trading, etc.

15. E.g., 21 Geo. III, c. 49, penalizing Sunday entertainments.

16. 34, 35 Vict., c. 87, provides that no prosecution for penalties under the Act be instituted except with consent in writing of the Chief Officer of Police, or two magistrates.

17. Cf. G. S. Holmsted, *The Sunday Law in Canada* (Toronto: Arthur Poole & Co., 1912), pp. 66ff.

18. 8 Vict., c. 45 (U.C.).

19. 48 Vict., c. 44 (Ont.); 60 Vict., c. 14, s. 95 (Ont.).

20. A historical summary of provincial Lord's Day legislation is included in the judgment of Lord Blanesburgh in *Lord's Day Alliance of Canada v. A.G. for Manitoba*; cf. *The Law Reports: Appeal Cases* (1925), 390ff.

*Hamilton Street Railway*.<sup>21</sup> This judgment, which was followed by the Supreme Court of Canada two years later in *In re Legislation Respecting Abstention from Labour on Sunday*,<sup>22</sup> declared the Sunday Law to have as its object some moral and religious purpose, which, inasmuch as this involved the "fixing of rules of conduct (with the usual sanctions),"<sup>23</sup> falls within the Criminal Law and is thus the exclusive prerogative<sup>24</sup> of the Dominion Parliament.<sup>25</sup> The effect of this decision was to deprive Canada of any coercive Sunday Law; existing provincial acts were *ultra vires* so far as their prohibitory clauses were concerned, and the Federal Government—sensitive to the divisive effects of religious issues—had hitherto resisted all demands for action. There, in all probability, the matter would have been allowed to rest, but for the single-minded energy and determination of one man, the Reverend J. G. Shearer, Presbyterian minister, founder and first General Secretary of the Lord's Day Alliance of Canada, editor of the *Lord's Day Advocate*, and later Secretary of the Moral and Social Reform Department of the Presbyterian Church in Canada.<sup>26</sup>

The Lord's Day Alliance had begun very modestly in 1895, when the idea was conceived by Dr. Shearer at a meeting of the Hamilton Presbytery.<sup>27</sup> Under his masterly guidance it grew very rapidly, spreading to all the provinces within a few years; by October, 1907, the circulation of its periodical had risen to 40,000, with an estimated clientele of "perhaps 125,000, including the most intelligent and influential of our citizens."<sup>28</sup> All major Protestant denominations actively supported its work, and it received the cordial encouragement of the Roman Catholic hierarchy. The Anglican Archbishop of Montreal was honorary president until his death in 1906, when he was followed by the Archbishop of Toronto, who also succeeded him as Primate. Many Members of Parliament were active in their support of the Alliance, and the Leader of the Opposition, R. L. Borden, was a vice-president.

21. *Ibid.*, (1903), 524.

22. *Reports of the Supreme Court* (1905), 587.

23. *Ibid.*, 592.

24. Cf. 30–31 Vict., c. 3 (B.N.A. Act, 1867), s. 91, sub-sect. 27.

25. For discussion of the constitutionality of the Lord's Day Acts in Canada see Holmsted, *The Sunday Law*, pp. 66–70; D. A. Schmeiser, *Civil Liberties in Canada* (London: Oxford University Press, 1964), pp. 101–10; and, best of all, a note by Bora Laskin in *Canadian Bar Review*, 42 (1964), 147–56.

26. Cf. H. J. Morgan (ed.), *The Canadian Men and Women of the Time*, 2d ed. (Toronto: William Briggs, 1912), p. 1015. The *Lord's Day Advocate* (N.S., Vol. IV, No. 7 [July 1907]), commenting on his resignation to take up the new job with the Presbyterian Church, said: "Largely through the efforts of Dr. Shearer, the Ontario Lord's Day Alliance grew from small beginnings (in 1895) to strength and effectiveness. Through his visits to other provinces, similar Alliances were organized, and these now being united in the L.D.A. of Canada, constitute a national organization with its branches in every part of every province. . . . He has been largely instrumental in securing the Lord's Day Act of Canada. . . . Dr. Shearer's strong convictions and tenacity of purpose, combined with his statesmanlike breadth of view and graciousness of manner have made him a leader of men. . . ." (p. 4). It is evident from Hansard and the national press for 1904–6 that Shearer was generally recognized as a man of formidable ability, and universally credited (either as hero or as scapegoat) with the final passage of the Dominion Lord's Day Act of 1906.

27. *Lord's Day Advocate*, Nov. 1907, p. 7.

28. *Ibid.*, Oct. 1907, p. 1.

In September, 1903, immediately following the calamitous decision of the Privy Council, a massive campaign was launched by the Alliance. The *Lord's Day Advocate* was put on a monthly basis; a "Lord's Day Week" (in co-operation with similar bodies in Britain and the United States) was planned for the second week after Easter 1904; and petitions were drawn up to be presented to both houses of Parliament at the next session.

Between Wednesday, 16 March, and Friday, 22 April, these were submitted upon twenty-one different occasions. In several cases more than one petition was received and in all cases the signatories were numerous and influential.<sup>29</sup> Public opinion was not yet ready,<sup>30</sup> however, and the Government stalled,<sup>31</sup> deciding to have a provincial act drafted for submission to the Supreme Court of Canada. On 27 February 1905, the Supreme Court ruled that the draft act was *ultra vires* of a provincial legislature,<sup>32</sup> and when the Cabinet decided to refer the matter for a second time to the Privy Council, their application for leave to appeal was refused. Final word did not come to the Government until July 26, by which time it was too late for any action in the 1906 session of Parliament.

Nothing daunted, the Alliance settled down to a hard winter of campaigning with some appearance of relish.<sup>33</sup> The events of the last eighteen months had brought much publicity, some of it hostile,<sup>34</sup> but the tide was beginning to turn, and the support of Archbishop Bruchési of Montreal on the one hand, and of organized labour on the other, was giving the movement an altogether broader front. In two years the circulation of the *Advocate* nearly doubled, and the yearly receipts of the Alliance had come to exceed 10,000 dollars. At the annual meeting of the Executive Board in November, 1905, strategy for the next—and crucial—phase was enthusiastically agreed upon:

1. Written communications were to be sent to the Prime Minister and the Minister of Justice, "who have already practically committed themselves in favour of the measure."

29. *Journals of the House of Commons: General Index 1904-1915*, p. 512; Vol. XXXIX, pp. 19-113.

30. Cf. *Saturday Night*, Vol. 17, No. 21 (April 2, 1904) p. 1: "If the Alliance and its sympathizers constituted a majority of the tax-payers and voters of the country, it would be only reasonable that their ideas should prevail. But when such a comparatively small body of kickers persist in keeping up such a racket and constant worry as they do, . . . both political parties should get a little backbone in them and cease to pay so much attention to minority agitation."

31. *Lord's Day Advocate*, April 1904, p. 4.

32. Cf. *Reports of the Supreme Court* (1905), 581.

33. "It is probable that the coming winter will be marked by the most extensive and important legislative effort in the history of the Movement, and the *Advocate* looks forward with the greatest hopefulness as to the result." 's' (J. G. Shearer) in the *Lord's Day Advocate*, Aug.-Sept. 1905, p. 4.

34. Cf. *Saturday Night*, Vol. 17, No. 24 (April 23, 1904), p. 1: "*La Presse* of Montreal accuses the Lord's Day Alliance of attempting to foist the opinions of Protestant Ontario upon Roman Catholic Quebec. If *La Presse* were a little better posted on affairs in Ontario it would never have made such a statement. Protestant Ontario cannot be held responsible for the vagaries of the LDA. . . . They no more represent public opinion in this Province than do the Christian Scientists or the Single-Taxers."

2. These honourable gentlemen<sup>35</sup> were to be interviewed personally before the end of the year.

3. A delegation was to wait upon the full Cabinet about the time of the opening of Parliament.

4. Petitions were to be circulated again throughout the Dominion for signature, and were to be presented to both houses of Parliament by members of each.

5. As far as possible, interviews were to be arranged with each Member of Parliament by his constituents before he went up to Ottawa.<sup>36</sup>

It is evident, moreover (though this is never overtly referred to),<sup>37</sup> that private understandings must have been reached with the editors of some of the more important newspapers. Those which, like the *Toronto Globe*, had been lukewarm in 1904 came out strongly in support in 1906.<sup>38</sup> *Saturday Night*, in 1904 a bitter enemy, remained totally silent in 1906 until the bill was finally passed in July, when it allowed itself one muted comment on Sunday newspapers and streetcars.<sup>39</sup> Small wonder that the leaders of the movement were supremely confident that their cause was the wave of the future.<sup>40</sup>

When the Governor General opened the new session of Parliament on 8 March, he informed members that "a measure for the better observance of the Lord's Day will be submitted for your consideration."<sup>41</sup> On the third day of the session, Bill No. 12—substantially that drafted by the Alliance<sup>42</sup> and petitioned for in the late winter—was presented for first reading by the Minister of Justice.<sup>43</sup> On 3 April Mr. Fitzpatrick moved that the bill be read a second time and referred to a select committee, and this was agreed to after a short debate.

The Select Committee (which included a vice-president of the Dominion Lord's Day Alliance) was intended to be representative. Besides the Minister of Justice himself, a Montreal Irish Catholic of great distinction, there were eleven other members, of whom five were Liberals or "Reformers" (two Catholic, five Protestant) and four were Conservatives (one Catholic, three Protestant).<sup>44</sup> Nine sittings were held between 9 April and 1 June, the

35. Sir Wilfrid Laurier was Prime Minister; Charles Fitzpatrick, Minister of Justice.

36. *Lord's Day Advocate*, Dec. 1905, pp. 1-2.

37. It was sometimes alluded to in passing, however. Cf. *ibid.*, Aug.-Sept. 1905, p. 6: "The *Mail and Empire* is one of the best journalistic friends the L.D.A. has. . . . But it has trouble occasionally in keeping some members of its staff in line. The kicker used to be Flaneur, but for a long time he has been kept silent."

38. The *Globe* published four leading articles during the campaign, giving powerful support: Nov. 11, 1905; Mar. 16, 1906; April 2, 1906; July 9, 1906.

39. *Saturday Night*, Vol. 19, No. 27 (July 7, 1906).

40. Cf. J. G. Shearer in the *Lord's Day Advocate*, Feb. 1906, p. 5: "The real fight is yet future. Let us put our trust in God, do all in our power, and rest assured that in the end we shall win, resolute that we shall not weary till we do!"

41. *House of Commons Debates*, 1906, 6.

42. Except that a clause was inserted allowing certain exceptions in the case of Quebec.

43. *House of Commons Debates*, 1906, 19.

44. *Journals of the House of Commons*, Vol. XLI, Appendix, Part I, (referred to below as *Minutes*), p. iii; and *Parliamentary Guide* (Ottawa: 1906).

first six of which were given over to public hearings. Interests heard by the committee, in order, were: (1) transportation corporations, (2) manufacturers and trading interests, (3) labour interests, (4) public health interests, and (5) religious interests.<sup>46</sup> Dr. Shearer and counsel for the Lord's Day Alliance, R. U. McPherson, were in constant attendance.

*Public Health* interests were represented by a Dr. Black, M.P., who appeared for a medical association in support of the bill. *Labour interests* took up less than half a day, but their testimony was conflicting. The Secretary of the Trades and Labour Congress of Canada hoped that the Committee would "see its way clear to adopt the bill as it now stands",<sup>46</sup> the Railwaymen's representative declared, however, that "the opinion of the railway men of the country is divided, but the majority of them are against the transportation clauses of the bill."<sup>47</sup> When asked why, he replied, "They fear that the law would interfere with their earning power, that the freight business would pass to the Canadian railways' competitors to the South. It is a matter practically of dollars and cents, and the commercial interests of the country and themselves."<sup>48</sup> When Dr. Shearer testified later, he claimed that 89 per cent of the railwaymen, on the contrary, were in favour of the bill,<sup>49</sup> but the Alliance afterwards admitted that this was an exaggeration.<sup>50</sup>

The other three factions provided most of the discussion, raising those issues which were to awaken the bitterest controversy in Parliament, the respective fortunes of which go far to illuminate the degree of secularity of Canadian society during that period. Of the three, *religious interests* were eventually the easiest to dispose of.

Certain Quebec members of Parliament, especially Bourassa and Lavergne, made repeated attempts in the House and at public meetings to revive the charge made by *La Presse* in 1904: *viz.*, that the bill was an attempt on the part of Protestant Ontario to coerce Catholic Quebec.<sup>51</sup> Montreal was the centre of resistance; the (Protestant) Mayor and City Council passed a resolution deploring the bill, and on 30 June, while the Commons were concluding three days of acrimonious wrangling in Committee of the Whole, Bourassa and others addressed a mass protest meeting of five thousand in the Champs de Mars. Much of the ground had already been cut from under their feet, however, by the powerful statement of the Roman Catholic archbishops of Canada submitted to the Select Committee on 27 April.<sup>52</sup> It is impossible to decide whether Bourassa's opposition proceeded from a genuine belief that the bill was inimical to Quebec's interests<sup>53</sup> or from personal and political hostility to Laurier, as the latter himself seemed to

45. *Minutes*, vii-viii, and 1-202 *passim*.

46. *Ibid.*, 121.

48. *Ibid.*, 116.

50. *Lord's Day Advocate*, May, 1906, p. 5, and July, 1906, p. 10.

51. Cf. n. 34, above. Lavergne, moreover, was evidently an old enemy of Sproule (one of the Ontario members most active in support of the bill), an Irish Protestant and Grand Master of the Loyal Orange Association. See their exchange over the role of the Orange Order (*House of Commons Debates*, 1906, 4720-30).

52. *Minutes*, 147-8.

53. As *Saturday Night* (July 21, 1906) believed.

47. *Ibid.*, 115.

49. *Ibid.*, 174-5.



think.<sup>54</sup> Either way, it was a failure. The only live religious issue sustained throughout the entire debate was the question of the strict Sabbatarians ("Saturdarians" as the *Advocate* sneeringly called them),<sup>55</sup> the Jews and the Seventh Day Adventists.

The Adventists were weak in numbers and resources, mainly agricultural, and entirely dependent upon parent bodies in the United States for help. Although they conducted a spirited defence, the brunt of the fighting was born by the Jews of Montreal and Ottawa, who succeeded in persuading the Select Committee to insert the following clause:

Notwithstanding anything herein contained, whoever conscientiously and habitually observes the seventh day of the week as the Sabbath and actually refrains from work and labour on that day, 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 other persons in the observance of the first day of the week as holy time, and that the place wherein the same is performed be not open for traffic on that day.<sup>56</sup>

As soon as the amendment became known, powerful opposition was organized by the Alliance. It so happened that most of the major Protestant churches and dioceses were holding annual synods or assemblies during the month of June, and at many of these Dr. Shearer and other representatives of the Lord's Day Alliance called for—and received—strongly worded resolutions calling upon the Government to preserve the bill inviolate. The Government itself was divided, however, and throughout the whole afternoon and evening of 27 June there was a long-drawn-out debate on the controversial clause. "It is a long time since the House of Commons evinced such intense and steadfast interest in a subject as was shown today in the third day's debate on the Lord's Day Bill," reported the *Toronto Globe*.

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. Party lines were practically wiped out and Provincial lines were not regarded, so that it would be difficult to classify the opposing forces. The desire to speak was so great that sometimes half-a-dozen members would rise at once. . . .<sup>57</sup>

Finally the substantive clause was put to the vote, and defeated by 79 votes to 57. Laurier, the Prime Minister, Borden, the Leader of the Opposition, Fisher, Brodeur, and Monk were among the minority which supported the Jews. Aylesworth, the new Minister of Justice,<sup>58</sup> Bourassa the arch-rebel, and Sproule the Orangeman voted together to throw out the clause.

The religious and indeed specifically Christian character of the legislation

54. "Last year I was met with the cry of 'Sbaretti!' This year I am met with the cry of 'Shearer!'" he complained to the House on 21 June (*House of Commons Debates*, 1906, 5797).

55. *Lord's Day Advocate*, May, 1906, p. 4, and elsewhere.

56. *Minutes*, xiii.

57. *Globe*, June 28, 1906, p. 4.

58. Fitzpatrick had been elevated to the Supreme Court of Canada in June and Aylesworth, formerly Postmaster-General, replaced him.

had been vindicated—albeit by a majority of twelve. As Charles Fitzpatrick had said when moving the second reading in April:

One of the first obstacles . . . will be the religious convictions of some elements in our community; but as the Archbishop of Canterbury pointed out in a recent debate in the English House of Lords, it is not desirable for us to be too considerate of the wishes of alien immigrants who, as he justly said, while they are obtaining the benefits which this country is affording them, will not be subjected to undue hardship if they are obliged, in the public interests, to obey any rules which we, as a Christian Community, find it necessary to lay down for the observance of Sunday.<sup>59</sup>

*Manufacturers and trading interests* were drawn chiefly from the mining and metallurgical industries, but there were also representatives from oil and chemical companies, brewers, newspapers, lumber firms, and cement works.<sup>60</sup>

The original draft of the bill appearing in the petition of the Lord's Day Alliance to both houses of Parliament had provided exemptions for certain "works of necessity or mercy." The relevant clause included:

Maintaining fires, doing urgent repairs in cases of emergency or other work of a like incidental character when such fires, repairs or work are essential to any manufacturing process actually in operation when the Lord's Day begins, and which is of such a nature that without the doing of such work on the Lord's Day such process cannot be carried on during the other six days of the week.<sup>61</sup>

This was adopted by the Government in its first draft with one small change—the omission of the word "and" before the words "which is of such a nature, etc."<sup>62</sup>

Those "Manufacturers and Producers of Minerals, Metals and Electric Power," represented at the Select Committee by Mr. Henry Aylen, K.C., submitted a draft amendment deleting the clause and inserting the following:

(f) Starting or maintaining fires, or doing repairs or work of maintenance or other work, when such fires, repairs or other work are essential to any industry which is of such a nature that without the doing thereof on the Lord's Day such industry cannot be continuously and safely carried on during the other six days of the week.

(g) The production and use of electric current, the smelting, reducing, treating and refining of ores, minerals and metals, the manufacture of things used therein and other operations incidental thereto.<sup>63</sup>

59. *House of Commons Debates*, 1906, 1014.

60. The following firms were represented at the hearings of the Select Committee: Dominion Iron and Steel Co., Deseronto Iron Co., Wilson Carbide Co., Atikokan Iron Co., Lake Superior Copper Co., "the Industries at Shawinigan Falls," Canadian Copper Co., Peck Rolling Mills, Ltd., Hamilton Steel Co., John McDougall & Co., Northern Aluminum Co., Algoma Steel Co., Canadian Iron and Furnace Co., Londonderry Iron and Mining Co., "the Industries at Sault Ste Marie," Montreal Rolling Mills, Walker Oil and Gas Co., Nicholls Chemical Co., the Brewers and Maltsters Association, the *Vancouver Colonist*, St. Anthony Lumber Co., Hull Cement Works, Sun Cement Co.

61. *Lord's Day Advocate*, Dec. 1905, p. 6.

62. Bill No. 12, 2nd Session, 10th Parliament, 6 Edward VII, 1906, First Reading, March 12, 1906 (Xerox copy from Library of Parliament).

63. *Minutes*, 3.

The manufacturers had taken the precaution of communicating with Dr. Shearer before submitting these amendments, and had been assured by him that the Lord's Day Alliance had no desire to interfere with the operation of blast furnaces,<sup>64</sup> which would, very possibly, have been obliged to shut down altogether had either previous draft become law.

As a result of this submission, and the testimony of the chemicals, oil, and cement firms, the Select Committee adopted the proposed sub-section (f) with two significant changes: "industry" was amended to "industrial process"; and "nature" was qualified by the adjective "continuous." "We consented to a slight modification of the language of the Manufacturers' clause permitting certain [*sic*] continuous processes and certain exceptional repairs," conceded Dr. Shearer in his report on "The Battle at Ottawa" in the May number of the *Advocate*, apparently<sup>65</sup> unaware of the immeasurable consequences of these changes. Sub-section (f), though renumbered, suffered very little in the later stages of the debate. "Industry or" was inserted before "industrial process"; "to such industry, or" was inserted after "serious injury"; and all that followed "used in such process" was omitted.<sup>66</sup> The manufacturers got everything they asked for,<sup>67</sup> and there was none to say them nay.

With the *transportation corporations*,<sup>68</sup> however, there was at first no possibility of peaceful negotiation. Sunday trains, boats, and tram-cars were the outward and visible sign of Sabbath-breaking which, above all, the Alliance had always sought to repress.<sup>69</sup> Blast-furnaces, oil-wells, and even cement factories could be winked at: but not the open scandal of the excur-

64. *Ibid.*, 133.

65. But cf. n. 89, below.

66. *Revised Statutes of Canada* (1952), c. 171, s. 11, sub-section (d).

67. Their proposed sub-section (g) was satisfactorily accommodated in s. 11 of the final bill, *ibid.*, sub-sections (d), (e), (f).

68. Canadian Pacific, Grand Trunk, Canadian Northern, St. Lawrence and Adirondack, Pere Marquette, MacKenzie & Mann, Canadian Southern—railway companies; the Dominion Marine Association representing 36 major water-carriers; and "many other companies numbering in all some 60 different corporations and representing practically all the freight and passenger transportation interests of the inland waters named, including not only large Lake carriers both of freight and passengers, but also the interests of minor inland waters" (*Minutes*, vi-vii).

69. The earliest attempt at Christian action respecting the Lord's Day is a resolution of the twelfth General Assembly of the Presbyterian Church in Canada following the report of the Committee on Sabbath Observance: "The General Assembly, profoundly convinced of the importance of preserving to the whole community the blessing of the Christian Sabbath, is deeply concerned to witness the extent to which the rest of the sacred day is invaded by secular labour, especially railway traffic. The only servile work which the Assembly can regard as allowable is that which can justly claim to be *work of necessity and mercy* [my italics; 20 years later this phrase found its way into the Act]. The Assembly would solicit the co-operation of other branches of the Christian Church in Canada in making most earnest efforts to free our land from the reproach and sin of tolerating the systematic and persistent violation of our Sabbath laws. . . ." (*Acts and Proceedings of the Twelfth General Assembly of the Presbyterian Church in Canada* [Toronto: Presbyterian Printing and Publishing Co., 1886].) Shearer was a second-year theology student at Knox College in 1886, and Canada had to wait more than a decade before the clause concerning "co-operation" was implemented. See also an undated petition to the Mayor and Council of the City of Toronto from the period 1886-1897 (in the Victoria College Archives) concerning a proposed referendum on Sunday trams. Paragraph 3 declares that God's blessing has rested upon the city of Toronto in the past because of "Our observance according to His command of this Day of Rest."

sion train or the pleasure steamboat.<sup>70</sup> The railway companies, at least, were equally adamant in their refusal to compromise. As one member of the Select Committee<sup>71</sup> plaintively put it:

... Mr. King [one of counsel for the Transportation corporations] practically says that the legislation he would like would be something that would wipe out the whole effect of the Bill so far as transportation is concerned. . . . It rather creates the impression . . . *that the railway companies and shipping interests shall not be prevented from earning a single dollar that they are now permitted to earn.*<sup>72</sup>

There is no doubt that the transportation clauses of the petitioned bill<sup>73</sup> (which had been adopted in their entirety by the Government) would have inflicted enormous losses on the industry. The Alliance, recognizing this at last, proposed various modifications, and the Select Committee urged Dr. Shearer and the rail companies to "get together with their proposed amendments and see if they cannot unite in some agreement that would be acceptable to both."<sup>74</sup> The steamships and express companies were by this time prepared to negotiate, and several important amendments were conceded by McPherson and Shearer; but with the railroad corporations a deadlock was reached. Eventually, "the railway magnates left the conference without saying what their intentions were, and we have not heard from them since."<sup>75</sup> No one heard, indeed, until after the bill passed the third reading in the Commons and was sent to the Senate, by which time the substance of the Alliance's concessions<sup>76</sup> had been agreed upon by the Lower House. Shearer described the last phase of the battle in these words:

Perhaps the most signal of the victories won in the now historic campaign was that over the supposedly all-powerful transportation interests. . . . They failed before the Select Committee and in the House of Commons, but in the Senate their finest work was done, and almost all they asked for freely granted by the "independent guardians of the people's interests". But, appeal being made to the Government, they refused in the House of Commons to concur in the amendments the Senate had made . . . and the Senate thought it prudent "not to insist."<sup>77</sup>

The "victory," alas, was more apparent than real. The railway companies simply refused to obey the new law, and the pages of the *Advocate* are

70. It was commonly believed—no doubt correctly—that there was a high degree of hypocrisy in all this. See, for example, *Saturday Night*, Vol. 19, No. 15 (April 14, 1906), p. 2.

71. Mr. Miller (Grey South), a Methodist and a "Reformer."

72. *Minutes*, 114 (italics mine).

73. The following were permitted: (a) "The continuance to their destination of trains in transit when the Lord's Day begins, which are loaded exclusively with livestock destined for immediate shipment at an ocean port, or with perishable goods, or both." (b) "The carriage to the next divisional point on any railway, or to the next regular port of call of any vessel or of any freight which is in transit by such railway or vessel when the Lord's Day begins." (*House of Commons Debates*, 1906, 1013.)

74. *Minutes*, 174.

75. *Lord's Day Advocate*, May, 1906, p. 5.

76. Essentially those incorporated in the existing Act: s. 11, sub-sections (g), (h), (i), (j), (k), and (l).

77. *Lord's Day Advocate*, July, 1906, p. 12.

burdened for many years after with sad tales of long and expensive prosecutions and appeals.

In the protracted and difficult passage of the bill through Parliament, there were several other changes of importance. A very inquisitorial section, permitting the police to enter and search premises where violation of the Lord's Day was suspected,<sup>78</sup> was quietly dropped. The clause making exception in the case of Quebec, not in the petitioned bill, was deleted by the Select Committee.<sup>79</sup> A provision was made for a holiday on some other day of the week for those obliged to work on Sunday.<sup>80</sup> A clause protecting provincial legislation already in force<sup>81</sup> was inserted by the Government to satisfy the demands of Quebec members, and a Senate amendment preventing prosecutions under the Act except by leave of the provincial Attorney General<sup>82</sup> was concurred in. On Friday, 13 July 1906, the bill received royal assent and became part of the Criminal Law of Canada.

#### IV

*How far is it possible for Christians as a class to influence public policy?* The two determinants are the degree of secularity and the expected economic consequences of the policy decision. The preceding section of this paper affords concrete illustration of their joint effect in one particular case selected from the recent history of this country.

The fundamental issue was grasped, at least in part, by two of the most distinguished contributors to the debate, Sir Wilfrid Laurier and Archbishop Bruchési. The latter, together with the other Catholic Archbishops of Canada, asked: "In a Christian community, is it not preferable that the production of material wealth . . .<sup>83</sup> should be restricted, rather than the nation should suffer by the degradation and de-christianizing of its members?"<sup>84</sup> In an earlier statement Bruchési had made it clear that he believed that Canada was, in fact, a Christian community, although he acknowledged the existence of a dissenting minority:

Our country is really a Christian one, and our governing bodies should keep this in mind in framing legislation. If it were necessary to accept certain statements which have been put forward in the name of liberty of conscience, it would follow that the civil power would have to abstain from enacting all laws for the observance of Sunday. . . . There may be some people in our country who have reached that conclusion. . . .<sup>85</sup>

Laurier, speaking in the Committee of the Whole on the principle of the bill, acknowledged that its purpose was "to give sanction to the divine

78. S. 9, sub-sect. 1; cf. *ibid.*, Dec. 1905, p. 5.

79. *Minutes*, xii.

80. *Revised Statutes of Canada* (1952), c. 171, s. 5.

81. *Ibid.*, s. 15.

82. *Ibid.*, s. 16.

83. The words I have omitted are: "For the benefit of a few individuals." It is clear that the benefits of any increment to national income will spread and ramify until they touch all citizens at some point—and vice versa.

84. *Minutes*, 147.

85. *Lord's Day Advocate*, June, 1906, p. 11.

precept that Sunday should be a day of rest, and that there should be no work on that day."<sup>86</sup> He went on to concede that "from the most ancient times" certain exceptions had been allowed; and proceeded to recognize that

*The world has developed a great deal since those days, and in our modern days, under our present civilization, the exceptions, which formerly were few and far between a few generations ago, have now to be multiplied, and the difficulty with this legislation is to provide for further exceptions which our modern civilization has made necessary.*<sup>87</sup>

The Archbishop understands the distinction between a Christian and a secular society; the Prime Minister is aware of the function of the Legislature in the former; but he is also aware (as the Archbishop apparently is not) that the degree of secularity—being to some extent a function of the state of technology—is continually increasing.

Despite Shearer's disarming words<sup>88</sup> on the amendments to the manufacturers' clause, it is clear that he and McPherson were perfectly aware that the Alliance was fighting a losing battle on the principle of Sunday Observance. "[The amendment] not only covers manufacturing processes, but every industry that is carried on in the country," McPherson objected to the Select Committee<sup>89</sup>—but in vain. Although the disputants could not be expected to envisage the extent to which oil-refining, continuous-process chemical and metallurgical plants, power production, and automation would come to dominate the Canadian economy by the middle of the twentieth century, it required no extraordinary powers of prophecy to perceive that such things were continually enlarging their share of national economic life. In the end, the choice was quite simple: *either* a strict observance of the "divine precept," thus committing Canada to permanent stagnation and eventual disappearance, *or* the conceding of an exception which would inexorably deprive the "sanction" of any visible effect. That Canada selected the second alternative demonstrates that the degree of secularity in the country was already considerable by 1906.

In the light of this argument it is easy to see why the clause exempting the Jews and Adventists could finally be defeated. There were about 40,000 Jews in Canada at that time, and the Adventists were numbered in the hundreds. The loss of income suffered by these groups as a result of the Act, even when multiplied for its final effect upon the national income,<sup>90</sup> was a negligible social cost to incur for the sake of religious principle. The history of the transportation clauses yields further support. Despite the protests of the railway companies, the concessions made in the Select Committee were

86. *House of Commons Debates*, 1906, 5638.

87. *Ibid.* (italics mine).

88. Cf. p. 118, above.

89. *Minutes*, 180.

90. Economists calculate the effect upon (aggregate) national income of an initial change in expenditure at 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.

already adequate to protect the nation from significant loss of income, and for the rest, the law was ignored, and—in effect—allowed by society to be ignored.

The degree of secularity was already so great by 1906 that no religious legislation involving appreciable social cost could be achieved in Canada. Whether even the 1906 Act could have been passed but for the support of Labour is questionable.

Despite the testimony of J. H. Hall before the Select Committee, it is clear that organized Labour in Canada was generally favourable to the bill. There is no doubt, however, this this resulted from strictly economic, non-religious reasons.<sup>91</sup> Mr. Ralph Smith, "Pro-Labour" Liberal M.P. for Nanaimo, vice-president of the Dominion Lord's Day Alliance and a member of the Select Committee on Bill No. 12, regarded the amendment providing a free day for men obliged to work on Sunday as "the very principle of this bill."<sup>92</sup>

I should like to say further [he went on], that according to the opinion and desire of organized labour in this country if there is one principle that they are unanimously advocating and are anxious to have recognized, it is that if a workman is compelled to work on Sunday, he shall have one of the other days of the week for a day of rest.<sup>93</sup>

The unions drew their membership from "Catholics and Protestants, Jews and Gentiles, and adherents of all creeds and even of no creed at all,"<sup>94</sup> and were not authorized by their constituencies to "give sanction to divine precepts." But they were perfectly willing to lend their weight to a movement whose aims—whilst profoundly divergent at a fundamental level—could be harnessed for the time to a specific objective of their own.

Two things are clear from this. First, the temporary league between the labour unions and the Lord's Day Alliance was entered upon because each party supposed it could use the power of the other for its own purposes. There was, to be sure, some tradition of alliance between Methodism and the working class movement, but already by 1906 this was largely a memory, and since that time it is safe to assume that the proportion of union members professing "no creed at all" has increased steadily.

Secondly, some members of the Lord's Day Alliance themselves, such as Mr. Ralph Smith, were apparently under the impression that Bill No. 12 was, in essence, a piece of labour legislation. In view of the legal circumstances which gave rise to the bill, not to mention the distinctively "religious" tone given to its passage by Laurier and most others, this attitude is

91. Cf. *The Industrial Banner*, May, 1907: "Organized Labour strongly supported the L.D.A. in obtaining the passage of the Bill, not on religious but on economic grounds." See also *ibid.*, July, 1908.

92. *House of Commons*, 1906, 5758.

93. *Ibid.*

94. *The Industrial Banner*, July, 1908.

surprising. Still more surprising—in view of all subsequent judicial review<sup>95</sup>—is the occasional revival in our own time of this discredited position.<sup>96</sup>

It is probable, therefore, that temporary and local circumstances in pre-1914 Canada lent more efficacy to the attempts of Christians to influence public policy than might have been expected.<sup>97</sup> Notwithstanding the Preamble<sup>98</sup> to the Canadian Bill of Rights<sup>99</sup> and the latest ruling of the Supreme Court of Canada on the force of its religious clauses,<sup>100</sup> it seems almost certain that the degree of secularity has increased since 1906. It would appear that Christians as a class are unable to achieve more than a marginal impact upon public policy in any country as secular as Canada<sup>101</sup>—a conclusion which has been anticipated by those Christian jurists who are attempting to emancipate the doctrine of law from its Constantinian integuments.<sup>102</sup>

95. Bora Laskin, *Canadian Bar Review*, 42 (1964), 150, shows that any attempt to interpret the Lord's Day Act as Labour Law would be to "deprive it of its constitutional underpinning."

96. See, for example, the statement of the Reverend Ralph Clarke, a United Church minister, quoted in the *Winnipeg Tribune*, Oct. 31, 1959: "The Lord's Day Act, ridiculed by some and misunderstood by most, is a piece of Labour legislation *which the Church has found useful*" (italics mine).

97. Compare, for example, the complete failure of the Reverend Bee Wright and his supporters to achieve similar legislation in England 35 years before. The Act of 1871 resulted in a weakening of existing statute law which the bishops made no serious attempt to oppose in the Lords. See *Hansard*, 1871, III, June 13, 23, July 10, 25, 27, 31, Aug. 1, 7, 8, 10, 11, 15, 17, for the debates in the Imperial Parliament.

98. "The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God. . . ." Mr Noel Dorion, vice-chairman of the Special Committee on Bill C-79, was very insistent that a "Bill of Rights recognizing the authority of God would have a very high educational value and would be in the line of our delicious traditions." Cf. *Special Committee on Human Rights and Fundamental Freedoms* (1960), *Minutes of Proceedings and Evidence*, 717.

99. *Statutes of Canada* (1960), c. 44.

100. *Robertson and Rosetanni v. The Queen, Dominion Law Reports* (1963), 485. For detailed and critical comment see Bora Laskin in *Canadian Bar Review*, 42 (1964), 147-56.

101. An interesting sign of the increasing secularity of Canada is the changing legal status of Christianity. It used commonly to be held that Christianity was part of the Law of Canada; "Christianity, I need scarcely say, is recognised as part of the Law of Canada as it is of the British Empire" (A. B. Aylesworth, in the Committee of the Whole on the Lord's Day Bill, *House of Commons Debates*, 1906, 5623); but in 1917 it was held that it is *not* part of the Law of England (*Bowman v. Secular Society Limited* [*The Law Reports: Appeal Cases* (1917), 406]), "and this decision would probably be followed in Canada" (D. A. Schmeiser, *Civil Liberties in Canada*, p. 55).

102. See, for example, an excellent article by Jacques Ellul, "Concerning the Christian attitude towards Law," *Christian Scholar*, 42 (1959), 139-50.