

CANADA AND THE INTERNATIONAL BILL OF RIGHTS

“THE BEST OF A BAD JOB”: CANADIAN PARTICIPATION IN THE
DEVELOPMENT OF THE INTERNATIONAL BILL OF RIGHTS, 1945-1976

By JENNIFER TUNNICLIFFE, B.A., B.Ed., M.A.

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TITLE: “The Best of a Bad Job”: Canadian Participation in the Development of the
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of Waterloo) B.Ed. (University of Western Ontario) M.A. (University of Waterloo)

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Abstract

This thesis provides a historical study of the Canadian government's changing foreign policy toward the development of an international bill of rights at the United Nations from the 1940s to the 1970s. Canada was initially reluctant to support international human rights instruments because the concept of 'universal human rights' articulated at the UN challenged customary understandings of civil liberties in Canada, and federal policy makers felt an international bill of rights would have a negative impact on domestic policy. By the 1970s, however, the Canadian government was pushing for the ratification of the International Covenants on Human Rights and working to present Canada as an advocate for the UN's human rights regime. This study considers this change in policy by examining the domestic and global factors that influenced the government's approach to international human rights.

Within Canada, rights activism led to increased public awareness of human rights issues, and transformed Canadian understandings of rights and of the role of government in promoting these rights. This led to pressure on the Canadian government to support human rights initiatives at the United Nations. In this same period, the geopolitics of the Cold War and the rise of anti-colonialism shaped debates at the UN over human rights. As global support for the UN's human rights instruments grew, Canada became the subject of criticism from other states. Concerned about the negative implications, at home and within the international community, of appearing to stand in opposition to the principles of human rights, Ottawa changed its policy. Despite the government's new rhetoric of support for the international bill of rights, however, federal policy makers continued to question the benefit of these instruments for Canada. This lack of commitment accounts, at least in part, for Canada's continued failure to fully implement its international human rights obligations.

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List of Abbreviations

Association for Civil Liberties: ACL

British Foreign and Commonwealth Office: FCO

British North America: BNA

Canadian Association for Adult Education: CAAE

Canadian Association of Administrators of Labour Legislation: CAALL

Canadian Association of Statutory Human Rights Administers: CASHRA

Canadian Bar Association: CBA

Canadian Broadcasting Corporation: CBC

Canadian Civil Liberties Union: CCLU

Canadian Congress of Labour: CCL

Canadian Education Association: CEA

Canadian Jewish Congress: CJC

Canadian Labour Congress: CLC

Co-operative Commonwealth Federation: CCF

Defence of Canada Regulations: DOCR

Economic and Social Council (of the United Nations): ECOSOC

International Labour Organization: ILO

International Year for Human Rights: IYHR

Jewish Labor Committee of Canada: JLC

Judicial Committee of the Privy Council: JCPC

Library and Archives Canada: LAC

Member of Parliament: MP

New Brunswick Archives: NBA

New Democratic Party: NDP

Non-Governmental Organization: NGO

Saskatchewan Archives: SA

Trade and Labor Congress: TLC

Trent University Archives: TUA

United Nations Archives: UNA

United Nations Children's Fund: UNICEF

United Nations Educational, Scientific and Cultural Organization: UNESCO

United Nations: UN

Universal Declaration of Human Rights: UDHR

Introduction: ‘The Best of a Bad Job’

In April 2013, the United Nation’s Human Rights Council conducted an evaluation of Canada’s progress in the field of human rights under its Universal Periodic Review (UPR). The final report identified a number of concerns, and included a broad sense that Canada was failing to implement its international human rights commitments.¹ Member states of the United Nations (UN) questioned Canada’s refusal to ratify or give full effect to UN instruments such as the Optional Protocol to the Convention against Torture, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, and the United Nations Declaration on the Rights of Indigenous Peoples. Human rights organizations further criticized the Canadian government for its response to the UPR.² Canada explicitly rejected, at least in part, more than half of the 68 recommendations made by the Council, arguing that within its federal structure these issues fell under multiple jurisdictions, making it difficult to institute national programs. Several human rights groups accused Canada of using this federal argument to avoid meeting its international obligations. Amnesty International wrote,

Partially because of the complexities of federalism, partially because of a lack of political will, and partially because of a failure of leadership, concern about the growing gap between Canada’s commitment to international norms on the one

¹ Concerns included: the lack of a national action plan to reduce high levels of poverty; excessive use of force by police against citizens in marginalized communities; a failure to uphold the basic rights of Indigenous peoples; gender inequality; and violence against women and children. “Report of the Working Group on the Universal Periodic Review – Canada,” accessed online at http://www.upr-info.org/IMG/pdf/a_hrc_24_11_e.pdf, retrieved 4 March, 2014.

² A coalition of national human rights groups submitted a report to the UPR Working Group. “Empty Words and Double Standards: Canada’s Failure to Respect and Uphold International Human Rights,” accessed online at Amnesty International, <http://www.amnesty.ca>, retrieved 4 March 2014.

hand, and action to implement and live up to those norms on the other hand, has mounted considerably over the past decade.³

In highlighting how recent developments threatened Canada's "strong record of accepting international obligations," Amnesty's report illustrated a deeply engrained aspect of Canadian political culture;⁴ specifically, the belief that Canada has historically supported the development of the international human rights regime, and the implementation of its principles. The federal government propagates this idea by presenting Canada as a country that "has been a consistently strong voice for the protection of human rights and the advancement of democratic values, from [its] central role in the drafting of the Universal Declaration of Human Rights in 1947/1948 to [its] work at the United Nations today."⁵ Non-governmental organizations further perpetuate the idea of Canada as a historic advocate for international human rights when they attack Stephen Harper's federal Conservative Government for eroding "Canada's traditional reputation as a human rights leader."⁶

This type of rhetoric ignores the extent to which Canadian policy makers have historically resisted efforts at the United Nations to introduce and implement international treaties relating to human rights. Situating Canada's response to the UPR in its historical

³ Amnesty also produced its own report. "Matching International Commitments with National Action: A Human Rights Agenda for Canada," accessed online at Amnesty International, <http://amnesty.ca>, retrieved 4 March 2014. Amnesty also reported on Canada's response to the Review. "Canada Gives Human Rights the Cold Shoulder: Disgraceful Response to UN Human Rights Review Contains No New Commitments," 19 September 2013, accessed online at Amnesty International, <http://amnesty.ca>, retrieved 4 March 2014.

⁴ "Matching International Commitments with National Action," 6.

⁵ "Canada's International Human Rights Policy," accessed online at Government of Canada, Foreign Affairs and International Trade, <http://www.international.gc.ca/rights-droits/policy-politique.aspx>, retrieved 4 March 2014.

⁶ This criticism is common among human rights and left-wing organizations in Canada. Maude Barlow, "Common Causes: Human Rights Policies Eroding under Harper," the Council of Canadians, 29 January 2013, accessed online at <http://www.canadians.org/fr/node/3472>, retrieved 4 March 2014.

context reveals that Canada's reluctance to be bound by international human rights law is not a recent trend. To the contrary, Canada opposed the development and implementation of the UN's first human rights initiative, the International Bill of Rights, which included the Universal Declaration of Human Rights (UDHR) and its associated covenants and optional protocol. The Canadian government resisted the adoption of the UDHR in 1948, and throughout the 1950s and early 1960s, opposed the development of the two International Covenants on Human Rights. Even when the Government voted to support the adoption of the Covenants at the UN in 1966, and later ratified those instruments, there remained cause to question the extent to which Canadian federal policy makers genuinely supported a strong implementation of international human rights law. The purpose of this dissertation, therefore, is to examine Canada's historic attitudes toward human rights initiatives at the UN, to consider the factors that influenced changes in Canadian foreign policy toward the International Bill of Rights from the 1940s to the 1970s, and to assess the meaning of this history for Canadians and Canadian policy.

Recent Scholarship

The subject of Canada's relationship to the development of international human rights, or of the role that human rights ideas have played in Canada's foreign relations, has received relatively little attention from Canadian scholars. The broader field of human rights history, however, has grown substantially since the 1990s. According to Canadian historian Janet Miron, examining history through a paradigm of human rights allows for a deeper analysis of the "broader implications and complexities of power, discrimination,

and cultural ideas and practices.”⁷ Historical studies of the development of human rights consider how these rights and freedoms have been defined, denied, violated or asserted throughout history. Within the literature of the history of international human rights, recent debate has focused on the origins of the movement itself. Scholars such as Samuel Moyn and Mark Mazower reject the more traditional analyses of historians Paul Lauren and Lynne Hunt that place the development of ideas of human dignity, justice and rights into a linear progression, which inevitably culminated in the universalism of the post-Second World War human rights movement.⁸ Historians such as Moyn and Roland Burke also challenge the portrayal of the late 1940s as the pivotal movement in the “triumph” of human rights, with Moyn pointing to key developments in the 1970s and Burke focusing on the influence of decolonization rather than the Second World War.⁹ One of the limitations of this debate, according to historian Reza Afshari, is that it does not address the disconnect between historic achievements in codifying human rights principles into international law, and the failure of states to properly implement these instruments. Afshari argues historians ought to focus more closely on how “weaknesses so obviously

⁷ Janet Miron, ed., *A History of Human Rights in Canada: Essential Issues* (Toronto: Canadian Scholars’ Press, 2009), 3.

⁸ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge Massachusetts: The Belknap Press of Harvard University Press, 2010); Mark Mazower, “The Strange Triumph of Human Rights, 1933-1950,” *The Historical Journal* 47, no. 2 (June 2004): 379-398; Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998); Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton, 2007).

⁹ Moyn, *The Last Utopia*; Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010). Other scholars who have examined the development of international human rights include Jack Donnelly, *Universal Human Rights in Theory and Practice, 2nd Ed.* (Ithaca: Cornell University Press, 2003); Stefan-Ludwig Hoffman, ed., *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2011); A.W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, New York: Oxford University Press, 2001); Rhoda Howard-Hassman, *Human Rights and the Search for Community* (Boulder, Colorado: Westview Press, 1995).

apparent in the enforcement process signify the lack of vigor in the normative consensus” of human rights instruments in the first place.¹⁰ In their broad history on the human rights movement at the United Nations, Roger Normand and Sarah Zaidi offer a more critical examination of the historical origins and impact of the international human rights system, highlighting the extent to which debates over universal justice were politically and ideologically charged, and the meaning of ‘human rights’ constantly shifting.¹¹ Historians such as Sarah Snyder have also expanded the analysis of the international human rights regime to include the important role of non-state actors and the transnational networks that played a significant role in breaking down some of the divisions between states over how to best define and implement human rights law.¹² My dissertation builds upon this work by using Canada, a state traditionally understood as having supported international human rights, as an example to illustrate how and why governments often resisted the development of human rights instruments at the UN, to investigate the factors causing these governments to change their policies, and to question whether or not these changes were sufficient to allow for the proper implementation of international human rights principles into domestic law.

A study of Canada’s approach to the development of international human rights at the United Nations offers a unique opportunity to explore the intersections between international relations, Canadian foreign policy, Canadian legal history, cultural

¹⁰ Reza Afshari, “On Historiography of Human Rights: Reflections on Paul Gordon Lauren's ‘The Evolution of International Human Rights: Visions Seen’,” *Human Rights Quarterly* 29, no. 1 (February 2007): 1-67.

¹¹ Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington and Indianapolis: Indiana University Press, 2008).

¹² Sarah Snyder, *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network* (Cambridge: Cambridge University Press, 2011).

understandings and practices of rights in Canada, and rights activism. Despite this, Canadian scholars, and Canadian historians in particular, have been slow to focus on the topic. Legal scholars William Schabas and A.J. Hobbins both examined Canada's opposition to the Universal Declaration of Human Rights in 1948, publishing work in time for the fiftieth anniversary of the adoption of this instrument by the UN.¹³ Yet neither of these studies examined the roots of Canada's resistance to the idea of international human rights law, or how and why Canada's position changed over time. Historian George Egerton examined the religious dimensions of Canadian human rights policy, arguing that an unwavering belief that rights documents must maintain the supremacy of Christian values, even in the light of pluralist societies, limited Canada's approach to rights domestically and internationally.¹⁴ In contrast, historian Michael Behiels has argued that Canada's hesitant policy toward international human rights instruments was a product of the decentralist nature of Canadian federalism, as federal policy makers did not have the authority to implement treaties on human rights that infringed on provincial jurisdiction.¹⁵ In their own way, each of these studies takes a narrow approach to the relationship between domestic understanding of rights in Canada and Canadian foreign policy. To date, however, the only sustained studies of Canada's foreign policy approach to international human rights have come from political scientists.

¹³ William A. Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights," *McGill Law Journal* 43, no. 2 (1998): 403-41; A.J. Hobbins, "Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of the UDHR," *International Journal* 53, no. 2 (1998): 325-42.

¹⁴ George Egerton, "Entering the Age of Human Rights: Religion, Politics and Canadian Liberalism, 1945-50," *Canadian Historical Review* 85, no. 3 (2004): 451-479.

¹⁵ Michael Behiels, "Canada and the Implementation of International Instruments of Human Rights: A Federalist Conundrum, 1919-1982" in *Framing Canadian Federalism: Historical Essays in Honour of John T Saywell*, ed. Dimitry Anastakis and P.E. Bryden (Toronto: University of Toronto Press, 2009): 151-184.

A 1988 edited collection from Robert Matthews and Cranford Pratt assessed the extent to which concern for human rights has historically affected Canadian foreign policy, arguing that until the 1970s no Canadian government was willing to speak with any force on human rights or assign resources to promote international respect for human rights.¹⁶

More than two decades later, Andrew Lui argued that the fact that Canada underperformed on human rights from the very start of the postwar era needs to be explained, and he has worked to provide a theoretical basis for Canada's changing foreign policy.¹⁷ Accepting Lui's challenge, the purpose of this dissertation is to take a more historical approach to the question of how, why, through what mechanisms, and to what extent Canada's foreign policy toward international human rights instruments changed from the 1940s to the 1970s; to historicize the decisions of Canadian federal policy makers, taking into consideration both international and domestic developments; to emphasize the way in which shifting understandings of rights in Canada influenced Canadian policy; and to underline the key role of Canadian rights activists in the process.

Methodological Orientations

This study is intimately connected with both international and domestic relations, and I have framed it accordingly. In considering the influence of international

¹⁶ Robert O. Matthews and Cranford Pratt, eds., *Human Rights in Canadian Foreign Policy* (Kingston and Montreal: McGill-Queen's University Press, 1988), 285-311.

¹⁷ Andrew Lui, *Why Canada Cares: Human Rights and Foreign Policy in Theory and Practice* (Montreal & Kingston: McGill-Queen's University Press, 2012). Chios Carmody has also edited a collection of legal studies examining the relationship between domestic and international law in Canada and the question of Canada's implementation, or lack thereof, of international law. Chios Carmody, ed., *Is Our House in Order? Canada's Implementation of International Law* (Kingston & Montreal: McGill-Queen's University Press, 2010).

developments, my research has been guided by questions such as: how did Canada respond to calls at the United Nations in the 1940s for a body of international law to protect a set of ‘inalienable’ and ‘universal human rights’; how were these terms understood differently by member states of the UN; in what way did Canada’s position in the postwar world, including its evolving relationships with its major allies, influence federal policy makers in this area; and how did the tensions of the Cold War, pressures from decolonization, and changing understandings of the role of the United Nations influence Canadian policy?

This is also, at its heart, an examination of Canadian public policy. It is not, however, simply a state-centered interpretation of policy development. I have worked to consider the influence of non-state actors, and the role that public opinion, and changing cultural attitudes toward rights within Canadian society had on federal policy making. Human rights history can be studied using a top-down approach that considers human rights only from the point of view of legislative developments, state actors and legal decisions. While these play a significant role in this story, I also follow the lead of Canadian historians such as James Walker, Ruth Frager and Carmela Patrias, Ross Lambertson, and Dominique Clément in considering the role of minority groups, rights activists and social movement organizations in using grass-roots strategies to reshape the discourse of rights in Canada, and the laws designed to protect these rights.¹⁸ The work of

¹⁸ James W. St.G. Walker, “Race”, *Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Toronto and Waterloo: Osgoode Society for Canadian Legal History and Wilfrid Laurier University Press, 1997); James W. St.G. Walker, “The ‘Jewish Phase’ in the Movement for Racial Equality in Canada,” *Canadian Ethnic Studies* 34, no. 1 (Spring 2002): 1-29; Carmela Patrias and Ruth A. Frager, “‘This Is Our Country, These Are our Rights’: Minorities and the Origins of Ontario’s Human Rights Campaigns,” *Canadian Historical Review* 82, no. 1 (2001): 1-35; Ross Lambertson, *Repression and*

these and other Canadian historians also highlights the tensions that existed within the human rights movement in Canada, not only between activists with competing political or ideological orientations, but also more generally over how to define human rights and to whom these rights applied.¹⁹ These tensions contributed to the uncertainty of Canadian policy makers as to the effect of international human rights instruments on Canadian law and policy. Finally, this study also builds upon the work of historians Christopher MacLennan and Stephanie Bangarth, whose research on activism surrounding a national bill of rights and the treatment of citizens of Japanese ancestry during and after the Second World War both serve to illustrate the ways in which the universalist discourse of human rights that emerged out of the United Nations in the mid-twentieth century influenced human rights activism and policy in Canada.²⁰ The way in which Canadian activists appropriated the UN's language of human rights, worked to increase public awareness of rights using UN instruments such as the UDHR to give authority to their demands, and the effect this had on federal policy regarding international human rights, is

Resistance: Canadian Human Rights Activists, 1930-1960 (Toronto: University of Toronto Press, 2005); Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937-1982* (Vancouver: UBC Press, 2008).

¹⁹ Ross Lambertson points to the ways in which the political and ideological differences between rights activists in Canada from the 1930s to the 1960s prevented the development of a national movement. Lambertson, *Repression and Resistance*. Other scholars highlight how entire groups, including women, Aboriginals, and gays and lesbians, were often excluded from the rights discourse. See Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951," *Canadian Historical Review* 72, no. 4 (December 1991): 532-557; Ruth Frager and Carmela Patrias, "Human Rights Activists and the Question of Sex Discrimination in Postwar Ontario," *Canadian Historical Review* 93, no. 4 (December 2012): 583-610; J.R. Miller, "Human Rights For Some: First Nations Rights in Twentieth-Century Canada," in David Goutor and Stephen Heathorn, *Taking Liberties: A History of Human Rights in Canada* (Don Mills: Oxford University Press, 2013): 233-260; Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995* (Toronto: University of Toronto Press, 1999).

²⁰ Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960* (Montreal & Kingston: McGill-Queen's University Press, 2003); Stephanie Bangarth, *Voices Raised in Protest: Defending North American Citizens of Japanese Ancestry, 1942-49* (Vancouver: UBC Press, 2008).

key to this dissertation. Therefore, rather than working to determine whether Canadian foreign policy toward human rights at the United Nations was more affected by international pressures, domestic institutional factors, or Canadian societal pressures, this study attempts to show the interconnectivity of all of these factors.

Archival research is the backbone of this dissertation. My primary research included materials from the Canadian civil service, private manuscripts of political leaders and diplomats, and documents from the archives of the United Nations. Provincial archives provided a rich resource to test the argument that jurisdictional concerns played a significant role in determining Canadian policy toward human rights instruments at the UN, and to reveal changing provincial attitudes towards human rights.²¹ In order to ascertain information about how rights were understood and discussed within the wider Canadian public, and discrimination challenged by individuals and organizations, I also examined daily and popular news sources, trade and academic journals, legal case studies, the archival materials of voluntary organizations and labour groups, and the private collections of prominent individuals such as John P. Humphrey, Frank R. Scott, Walter Tarnopolsky and Roland de Corneille.

²¹ In addition to materials about provincial governments gathered at the federal level, I selected four case studies for further research: Saskatchewan, Ontario, Quebec, and New Brunswick. This selection was geographically diverse, represented both English-Canadian and French-Canadian attitudes, and exemplified provinces along a spectrum of the development of provincial human rights policies. For example, Saskatchewan was the first province to enact a provincial bill of rights, but Ontario had developed the most sophisticated human rights infrastructure by the 1960s. New Brunswick was later to develop its own human rights act and commission, but was very supportive of UN human rights instruments in the 1960s and 1970s. Quebec had virtually no human rights policies until the 1970s, and while its government supported the principles of the UDHR and the International Covenants during the period of ratification, Quebec was the last province to confirm its support for Canada's accession in 1976.

Terminology

Before proceeding, it is useful to discuss the assumptions that underlie this dissertation, and the key terminology being used. First, I accept public policy scholar Kim Richard Nossal's definition of "Canada's foreign policy" as, "the external objectives of the Canadian government, its orientation to the international system, its relations with other governments, its positions and attitudes on world politics, and its decisions, programmes and actions."²² In using the term "Canada," I refer to the state rather than its citizens, relying on Steven Kendell Holloway's definition of the state as, "a generally unified and relatively autonomous institution that claims sovereignty over a given territory and people and pursues on their behalf objectives understood in terms of the national interest, though this may involve internal and external resistance."²³ Throughout this dissertation, I use the terms "Canada," "the Canadian government," "the federal government," and "Ottawa" interchangeably to refer to the state in its role as the architect of Canadian foreign policy.

It was the federal government that had the sole authority to negotiate treaties at the United Nations. Although the implementation of these treaties fell within the power of provincial governments, and concerns over jurisdiction influenced policy decisions, federal policy makers set Canada's foreign policy toward the International Bill of Rights. In the period under review, the federal department most involved in this was the Department of External Affairs. In their work on the history of Canadian foreign policy,

²² Kim Richard Nossal, *The Politics of Canadian Foreign Policy*, 3rd ed. (Scarborough: Prentice-Hall, 1997), 7.

²³ Steven Kendell Holloway, *Canadian Foreign Policy: Defining the National Interest* (Peterborough, ON: Broadview Press, 2006), 8.

Greg Donaghy and Robert Bothwell argue that the ministers and public servants within External Affairs had unusual political latitude in setting Canadian foreign policy from the 1940s to the early 1970s.²⁴ Historian J.L. Granatstein dubbed the federal civil servants of this period as the “Ottawa Men,” characterizing them as an “extraordinary group” who “collectively had great influence and power in Ottawa.”²⁵ Accordingly, unless otherwise specified, when referring to “federal policy makers” or “federal officials,” I am referring specifically to those ministers or public servants working within the Department of External Affairs on the UN human rights portfolio. These policy makers had tremendous autonomy in determining Canada’s approach to the International Bill of Rights in the 1940s and 1950s. By the 1970s, however, rights activism, growing public awareness of rights issues, the permeation of human rights into other governmental departments, provincial developments, and changing directions in foreign policy, resulted in increased oversight of Canada’s policy toward human rights at the United Nations.

In addition to the state actors who influenced Canada’s approach to the UN’s human rights instruments, this dissertation is concerned with direct and indirect pressures coming from within the domestic public sphere. I use the term “the Canadian public” to refer to Canadian residents who were not employed by the state and therefore not directly involved in the development of government policy. I rely on Gerard Hauser’s work on the

²⁴ Robert Bothwell, “Foreign Affairs a Hundred Years On” in Robert Bothwell and Jean Daudelin, eds., *Canada Among Nations, 2008: 100 Years of Canadian Foreign Policy* (Montreal and Kingston: McGill-Queen’s University Press, 2009): 19-39; Greg Donaghy, “A Sad, General Decline?”: The Canadian Diplomat in the 20th Century,” in Robert Bothwell and Jean Daudelin, eds., *Canada Among Nations, 2008: 100 Years of Canadian Foreign Policy* (Montreal and Kingston: McGill-Queen’s University Press, 2009): 41-59.

²⁵ J.L. Granatstein, *The Ottawa Men: The Civil Service Mandarins, 1935-1957* (Toronto: Oxford University Press, 1982), xi.

role of rhetoric and discourse within democratic states to define the “public sphere” as a network of interconnected “spaces,” outside the formal authority of the state, within which Canadian citizens engaged in debate over issues of human rights.²⁶ Increasingly, Canada’s foreign policy toward the UDHR and the Covenants became a topic for discussion within this public sphere. The federal government responded to both direct pressures from individuals and non-governmental organizations, as well as to what federal policy makers perceived as changing “public opinion.”²⁷

Second, I acknowledge that the meaning of the terms ‘universal human rights’ and ‘fundamental freedoms’ were constantly shifting in the period under study. For this reason, I will use the terms as the participants did themselves. Marie-Bénédicte Dembour has identified four schools of thought in defining human rights: the *natural school*, which recognizes human rights as entitlements one possesses simply by virtue of being a human being; the *deliberative school*, which understands human rights as political values that liberal societies *choose* to adopt through societal agreements; the *protest school*, which sees human rights not as entitlements, but as claims and objectives that allow the status quo to be challenged to help the oppressed; and finally the *discourse school*, which argues that human rights exist only because people talk about them.²⁸ As Dembour’s classification serves to remind us, not everyone conceives of human rights in the same way. Conflict over how to define rights and how principles of equality and justice should

²⁶ Gerard Hauser, “Civil Society and the Principle of the Public Sphere,” *Philosophy and Rhetoric*, vol. 31, no. 1 (1998), 31; Gerard Hauser, *Vernacular Voices: The Rhetoric of Publics and Public Spheres* (Columbia: University of South Carolina Press, 1999).

²⁷ “Public opinion” is defined as is a constantly evolving representation of the views that emerge out of the public sphere with the widest level of support.

²⁸ Marie-Bénédicte Dembour, “What are Human Rights? Four Schools of Thought,” *Human Rights Quarterly* 32, no. 1 (February 2010): 1-20.

be enshrined in the provisions of the International Bill of Rights generated intense discussions at the United Nations, and at home in Canada, in the postwar era.

Any attempt to define separate categories of rights is a difficult task, yet diplomats, policy makers and activists frequently relied on classifications to debate which types of rights should be included in the UN's human rights instruments. For example, the desirability of separating civil and political rights from economic, social and cultural rights became an important topic for discussion in 1949, after the introduction of the first draft Covenant on Human Rights. Traditionally, civil and political rights have been understood to relate to individual liberties, such as property rights, basic legal rights, the right to vote and take part in political life, the right to peaceful assembly and association, and the freedom to worship, of movement, thought, and expression.²⁹ Social and economic rights, on the other hand, are those that enable people to meet basic human subsistence and socioeconomic needs, including the right to an adequate standard of health, the right to work and earn an adequate wage in favourable working conditions, support for families, and the right to education.³⁰ Member states of the UN disagreed over the extent to which economic and social rights could, or should, be implemented in the same manner as civil and political rights. States also came into conflict over the importance of enshrining individual versus collective rights into UN human rights instruments. These same debates influenced the evolution of a rights discourse in Canada.

²⁹ Walter Tarnopolsky was the Canadian scholar most associated with this classification of rights. Walter Surma Tarnopolksy, *The Canadian Bill of Rights* (Toronto: Carswell Company, 1966).

³⁰ For a wider discussion of the categorization of rights, and other conceptions of rights, see Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003); or Asbjorn Eide, Catarina Krause, and Allan Rosas, eds., *Economic, Social and Cultural Rights*, 2nd ed. (Dordrecht: Nijhoff, 2001), especially Chapter 2.

Throughout the first half of the twentieth century, most Canadians used the term ‘civil liberties’ to refer to a narrow set of individual civil and political rights. By the 1960s, however, there was a push for a more egalitarian definition of human rights, including the right to live free from discrimination on a series of grounds, such as race, colour, creed, religion, national origin, gender, and sexual orientation.³¹ Minority and group rights also became an increasingly important component of debates over rights in the late 1960s and early 1970s, as issues such as language rights and indigenous rights became more prominent. In my first chapter, I outline the historic roots of Canadian understandings of rights and freedoms leading to the end of the Second World War, to provide context for the use of terms such as ‘civil liberties’ or ‘civil rights,’ and to explain why Canadian policy makers had such difficulty with the new term ‘human rights.’ Throughout the remainder of this dissertation, I discuss how the language and understanding of rights changed and explain how these changes influenced Canadian foreign policy toward the International Bill of Rights.

The terminology surrounding the different United Nations’ instruments must also be clarified. The International Bill of Rights consisted of a declaration of human rights, two covenants on human rights, and an option protocol. According to the UN, the term ‘declaration’ is often purposefully selected to indicate that the parties involved want to

³¹ These distinctions form a significant part of historical writing on Canada’s human rights movement, and the development of rights legislation in Canada. See, in particular, James W. St. G. Walker, “The ‘Jewish Phase’ in the Movement for Racial Equality in Canada,” *Canadian Ethnic Studies*, 34, no. 1 (Spring 2002): 1-29; and Ross Lambertson, “Suppression and Subversion: Libertarian and Egalitarian Rights up to 1960,” in Janet Miron, ed. *A History of Human Rights in Canada: Essential Issues* (Toronto: Canadian Scholars’ Press, 2009): 27-42.

declare certain principles or aspirations, rather than set binding obligations on states.³²

When the UN Commission on Human Rights drafted the UDHR in 1948, it was presented to member states as a statement of principle or a moral guide. Over time the UDHR has gained considerable authority and has become more powerful than states originally expected, but in the period under consideration, members states of the United Nations envisaged the UDHR as having less direct influence than a covenant.

The terms ‘covenant’ and ‘convention’ are used interchangeably by the UN to refer to specific forms of treaties, either bilateral or multilateral, which are first adopted by the General Assembly and then opened for signature and ratification by member states.³³ A covenant includes provisions that, once the instrument is ratified by a state, are “binding” on that state. The extent to which a covenant is truly binding depends upon the measures of implementation provided in the document. For example, the International Covenant on Civil and Political Rights (ICCPR) provides for both a system of reporting designed to induce moral suasion on member states, and the establishment of a Committee on Human Rights to accept, consider and respond to petitions from states and individuals regarding rights violations. The International Covenant on Economic, Social and Cultural Rights (ICESCR) only provided for a system of reporting. The measures of implementation were the last articles of the Covenants to be debated, and so member states were unsure until the mid-1960s to how these instruments would be enforced. This was significant as policy makers and diplomats based their policy on how they believed

³² United Nations Organization, “Definition of key terms used in the UN Treaty Collection,” available online at <https://treaties.un.org>, retrieved 9 June 2014.

³³ United Nations Organization, UNESCO, “Glossary,” available online at <http://www.unesco.org>, retrieved 9 June 2014.

the Covenants would impact both their own domestic policies, and those of other member states. In his text on human rights in international relations, David Forsythe defines human rights as “soft law,” meaning they are “legal rules that are not the subject of court decisions, but which nevertheless influence extra-judicial policy making.”³⁴ Particularly in the 1940s and 1950s, Canadian policy makers worried that the binding nature of a covenant would have a significant impact on Canadian policy, but understandings of the legal force of a covenant evolved over the period of study. That evolution is an important component of the story of Canada’s approach to the International Bill of Rights. Finally, an optional protocol to a treaty or covenant is an instrument that provides for additional rights or obligations to which not all states agree. In the case of the Optional Protocol to the International Covenant on Civil and Political Rights, the instrument sets the details for how the Committee on Human Rights would receive and consider complaints from *individuals* rather than *states*. A member state could ratify the covenant, and not the optional protocol, meaning that state would only be bound to the provisions in the covenant. The Optional Protocol to the ICCPR was designed because there was disagreement over whether or not individuals should be permitted to register complaints.

Thematic Approach

To accomplish its task, this dissertation proceeds as follows. Chapter One situates the new international concepts of human rights and fundamental freedoms that were

³⁴ Forsythe defines one of the long term goals of many advocates of international human rights as the transformation of international legal principles into “hard law,” or specific rules that would have concrete protections that would be regularly tested in national and international courts. David P. Forsythe, *Human Rights in International Relations, 2nd Ed.* (Cambridge: Cambridge University Press, 2006), 12.

coming out of the United Nations beginning in 1945 into the context of Canadian domestic understandings of civil liberties, rights and freedoms in the immediate postwar era. It outlines customary definitions and the existing scholarship on rights in early twentieth-century Canada, legal and legislative developments, experiences of repression and discrimination, and the activism that accompanied perceived violations of rights. I argue that the limited vision of federal policy makers regarding human rights, and an absence of public awareness or interest in rights-related activities at the UN, caused the Canadian government to resist the development of the International Bill of Rights, and the Universal Declaration of Human Rights in particular. Only in the face of international pressure, did Canada change its vote to support the UDHR in 1948.

Chapter Two examines Canadian participation in the debates at the United Nations over the first draft covenant on human rights in the late 1940s and early 1950s. This period represents Canada's most intense opposition to international human rights instruments. Federal policy makers refused to accept an expansive definition of human rights, and resisted the idea of submitting Canadian policy to international human rights standards. Although the onset of the Cold War diminished pressure from Canada's allies to support a covenant, this chapter outlines domestic developments that set the stage for the Canadian government to temper its opposition to the Covenants by the mid-1950s.

Chapter Three examines Canada's participation in the article-by-article debates of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Covenant on Civil and Political Rights, from 1954 to 1966. It explores how and why the Canadian

government's approach to these instruments changed in this period to the extent that Canada supported their adoption at the UN in 1966. It will argue that, while federal policy makers continued to oppose the expansive definition of universal human rights articulated in the Covenants and continued to fear their impact on Canadian policy, the Government was persuaded, by what it understood to be international and Canadian public opinion, that it was in Canada's best interest to support the documents.

Finally, Chapter Four examines the process by which Canada ratified the International Covenants on Human Rights, including government debates, the interaction of federal and provincial officials, the influence of Canadian participation in International Year for Human Rights, the social and political environment in Canada in the late 1960s and early 1970s, and strategic considerations between Canada and its allies. It will also consider the way in which Canadian rhetoric surrounding international human rights changed in this period, and in doing so assess the extent to which Canada's new position toward human rights instruments at the United Nations represented a genuine shift in the understanding of civil liberties, rights and freedoms within the Canadian government.

Conclusion

While this study is structured as a chronological narrative of Canada's changing foreign policy toward human rights instruments at the UN, I am not arguing that Canadian human rights history has evolved in a linear, or inherently progressive manner. As international human rights scholar Micheline R. Ishay has effectively argued, all human rights projects generate contradictions and inconsistencies in how rights are

understood and applied.³⁵ Achievements are often followed by setbacks, and Canada is no exception to this. Nor am I suggesting that the government's ultimate support for the UDHR or the Covenants on Human Rights was the inevitable conclusion of the story of Canada's response to the United Nation's attempts to develop an international standard for the protection of human rights. Instead, the purpose of this dissertation is to reveal that Canada's resistance to the International Bill of Rights was the consequence of competing visions over what 'human rights' were intended to protect, the proper role for governments in this protection, and the relationship between domestic and international law.

³⁵ Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2008), 4.

Chapter One: Canadian Attitudes toward International Human Rights in the 1940s

Canada played only a minor role in the development of international human rights in the 1940s. Its government remained on the periphery of attempts to include human rights objectives into the charter of the newly formed United Nations (UN), and actively resisted efforts to adopt the Universal Declaration of Human Rights (UDHR) in 1948. The Canadian government's official explanation for its objections to the UDHR related to Canada's constitutional arrangement; because property and civil rights fell within the jurisdiction of provincial governments, the provinces could challenge the authority of the federal government to implement international agreements involving human rights. Officials therefore argued that the federal government was not in a position in 1948 to commit to any international human rights initiatives. At the United Nations, the Canadian delegation attempted unsuccessfully to delay the adoption of the UDHR. Repeatedly citing constitutional constraints, Canada participated very little in discussions leading to the final vote on the adoption of the Declaration, intending to abstain. Only in the face of international pressure did the government decide at the last minute to support the UDHR, and it did so with officially stated reservations.¹

The legitimacy of the Canadian government's claim that it could not support the UDHR due to jurisdictional issues has been the subject of debate among historians. In the government's defence, Michael Behiels argues that Canada's position was influenced by jurisdictional problems it experienced when negotiating treaties through the International

¹ Lester B. Pearson, "Statement on the Universal Declaration on Human Rights," Third General Assembly of the United Nations, 10 December 1948, File 5475-DP-40, Vol. 3701, RG25, Library and Archives Canada (hereafter LAC).

² Behiels refers to the 1937 *Labour Conventions* case in which the provinces successfully challenged laws passed by the federal government to give domestic effect to three ILO conventions. Michael Behiels,

Labour Organization (ILO) in the 1930s.² He outlines a “fundamental federalist conundrum” that existed for Canada in this period, whereby treaty-making powers were under the jurisdiction of the federal government, but powers of implementation belonged to the provinces.³ According to Behiels, this conundrum caused the federal government to appear to be ambivalent toward the development of international human rights when, in fact, it was powerless.⁴ Yet officials within the Canadian government were aware in 1948 that, as a declaration, the UDHR only had the force of a recommendation. Unlike the ILO conventions of the 1930s, an international declaration on human rights would not necessitate domestic legislative changes that could be challenged by the provinces. Behiels’ argument does not explain why the federal government continued to focus on constitutional issues without acknowledging, or using to its advantage, the quasi-legal nature of a declaration. William Schabas claims the government did so because constitutional constraints provided a convenient mask to hide more substantive opposition to the UDHR.⁵ He argues that a lack of a “human rights culture” within the Department of External Affairs and Cabinet caused officials to be indifferent, and sometimes outright hostile, to the idea of international human rights.⁶ The government therefore “misled both domestic and international public opinion” by using the pretext of constitutional constraints to avoid committing to an international human rights regime it did not

² Behiels refers to the 1937 *Labour Conventions* case in which the provinces successfully challenged laws passed by the federal government to give domestic effect to three ILO conventions. Michael Behiels, “Canada and the Implementation of International Instruments of Human Rights,” 154.

³ Behiels, 151.

⁴ Behiels, 151. See also Christopher MacLennan, *Toward the Charter*, 63-64.

⁵ William A. Schabas, “Canada and the Adoption of the Universal Declaration of Human Rights,” 403-441.

⁶ Schabas, 406.

support.⁷ Schabas does not, however, expand upon the type of rights culture that did exist within the federal government in the 1940s.

George Egerton has examined the religious dimensions of Canadian attitudes toward the development of domestic and international human rights policies. He argues that, as the human rights discourse became increasingly pluralistic, it challenged both Anglo-Canadians' concepts of a British Protestant nation and French-Canadian Catholic culture, and was therefore resisted by government.⁸ Egerton states that an unwavering belief that rights policies must maintain the supremacy of Christian values, and more specifically an insistence upon a reference to God in the Declaration's first article, influenced Canada's approach to international human rights.⁹ Within the Department of External Affairs and Cabinet, however, there is little direct evidence that policy makers worried about a lack of Christian values in international human rights instruments, and Canada made little effort at the UN to lobby for a reference to God in the UDHR.

This purpose of this chapter is to provide a detailed historical study of how Canadians conceived of civil liberties and envisioned their protection in the first half of the twentieth century, to build upon the work of Behiels, Schabas and Egerton. It argues that the roots of Canada's resistance to human rights initiatives at the UN can be found in the narrow understanding of rights held by federal policy makers in the 1940s, shaped by a legal tradition that did little to protect citizens from discrimination or promote rights and freedoms. Worried that the expansive definition of 'universal human rights' articulated in

⁷ Schabas, 441.

⁸ George Egerton, "Entering the Age of Human Rights," 451-479.

⁹ Egerton, 458.

the UDHR would negatively impact Canadian policy, the federal government was reluctant to support its adoption. This chapter also considers the domestic and international contexts within which the government was making its decisions. The Canadian delegation was able to openly resist the adoption of the UDHR in 1948 because there was little public awareness of the document in Canada, and no sustained pressure on the federal government to support human rights at the UN. Despite this, the government ultimately voted in favour of adoption because to do otherwise would suggest to members of the international community that Canada was unsympathetic to the principles of human rights. Given the widespread support at the UN for human rights initiatives, particularly from Canada's closest allies, this was an image the government was afraid to promote.

A Reluctant Participant: Canada and the Universal Declaration of Human Rights

The United Nations organization was an important component of the peace plan designed by Allied nations in the early 1940s. Intended to promote security and stability for the world, the UN would replace the defunct League of Nations, which had been created at the end of World War I. Human rights provisions had not been a part of the League, although its covenant did contain a series of clauses to recognize the collective rights of ethnic minorities in certain states in Eastern and Central Europe. Entry into the League for these new territories was conditional upon their willingness to guarantee the life and liberty of their citizens, without distinction of nationality, and to ensure certain

linguistic and religious rights for minorities.¹⁰ The League's minority clauses were an early attempt to use international law, enforced through an international body, to limit how a sovereign state could treat its citizens.¹¹ The failure of this rights regime was a reflection of both weaknesses within the League itself, and the marginal interest among nations in creating strong international protection for rights in the interwar period.¹²

The end of the Second World War saw new demands for the development of a system of international human rights law, rooted this time in individual rights. Wartime atrocities, the experience of the Nazi regime with its disregard for the rights of the individual, and the dismal failure of the League of Nations to protect minority rights, all contributed to a desire to include the protection of individual rights as a central aspect of the newly formed United Nations.¹³ At the founding conference in San Francisco, non-governmental organizations, largely from the United States, called for the inclusion of human rights provisions in the UN Charter. These organizations had the support of member states from Latin America, and representatives from Chile, Cuba and Panama submitted proposals to include a legally binding bill of rights into the Charter.¹⁴ The

¹⁰ "Covenant of the League of Nations," accessed online at The Avalon Project, http://avalon.law.yale.edu/20th_century/leagcov.asp, retrieved 11 February 2014. See also Paul Gordon Lauren, *The Evolution of International Human Rights*; and Mark Mazower, "The Strange Triumph of Human Rights," 381-2.

¹¹ Mazower, 382-387; MacLennan, 61; and John P. Humphrey, "The International Law of Human Rights in the Middle Twentieth Century," in *The Present State of International Law and Other Essays: Written in Honour of the Centenary Celebration of the International Law Association, 1873-1973*, ed. Maarten Bos (Deventer, Netherlands: Kluwer, 1973): 75-105.

¹² John P. Humphrey, *Human Rights & the United Nations: a great adventure* (New York: Transnational Publishers Inc., 1984), 6.

¹³ Mazower, 388-9.

¹⁴ Samuel Moyn argues that American advocacy groups and smaller states kept human rights on the agenda for San Francisco. The addition of a Domestic Jurisdiction Clause alleviated concerns that human rights obligations would allow outside intervention into the internal affairs of a state. Samuel Moyn, 62. See also Mazower, 391-393; and Roger Normand and Sarah Zaidi, *Human Rights at the UN*, 127-128.

United States, Britain and the Soviet Union were concerned that, because these rights could fall within domestic jurisdiction, their inclusion could threaten national sovereignty. Yet it was difficult to ignore the pressure from the non-governmental organizations, particularly when Allied forces had championed human rights during the war. The introduction of a clause to protect domestic jurisdiction finally convinced the major powers to include human rights provisions, although not a complete bill of rights, into the Charter.¹⁵

For the most part, Canada remained on the margins of these debates. One exception to this was John P. Humphrey, a Canadian legal scholar who became the first Director of the United Nations Division of Human Rights in 1946. In this capacity, Humphrey was the principal author of the first draft of the Universal Declaration of Human Rights and played a key role in development of early international human rights law. The Canadian government has used Humphrey's accomplishments as proof of Canada's historic commitment to the UN's human rights program, but during this period he worked for the UN Secretariat and not the Canadian government. Humphrey did advocate within Canada, and abroad, for the adoption of an international bill of rights, but he played no role in setting, nor was he privy to, Canadian policy toward human rights initiatives at the UN.¹⁶ To equate his role in developing the UDHR with the Canadian federal government's position is therefore misleading.

¹⁵ Article 2(7) states that the United Nations has no authority to intervene in matters which are within the domestic jurisdiction of any State. United Nations, *Charter of the United Nations*, Article 2(7), 24 October 1945, 1 UNTS XVI, accessed online at <http://www.un.org/en/documents/charter/>, retrieved 24 May 2014.

¹⁶ For an account of Humphrey's work with the UN Division of Human Rights, see Humphrey, *Human Rights & the United Nations*; and A.J. Hobbins, ed., *On the Edge of Greatness: The Diaries of John*

The first official within the federal government to promote the inclusion of human rights into the UN Charter was Escott Reid, a member of the Department of External Affairs who joined Canada's delegation to the San Francisco Conference. In January 1945, Reid prepared a draft charter for the United Nations, which he hoped to distribute to Canadian diplomats prior to the conference to help guide Canada's participation. This document contained an entire chapter on the importance of human rights, but the Canadian Department of External Affairs refused to allow Reid's charter to be included in their official documents.¹⁷ Liberal Prime Minister Mackenzie King, Under-Secretary of State Norman Robertson, and long-time diplomat Hume Wrong all shared the concerns of the United States, Britain and the Soviet Union that human rights provisions could infringe on domestic jurisdiction. As a result, at San Francisco, Canada remained non-committal in its comments, speaking only in broad support of the principles and objectives of human rights.¹⁸

Canada's reluctance in this regard was consistent with its more general position toward international affairs in the immediate post war era. Canadian foreign policy was isolationist prior to the outbreak of the Second World War, a position the public widely

Humphrey, First Director of the United Nations Division of Human Rights, Volume 1, 1948-1949 (Montreal: McGill University Libraries, 1994), particularly Chapters 1 and 2.

¹⁷ The Department did allow Reid to publish his draft charter anonymously. Schabas, 408; and Escott Reid, *On Duty: A Canadian at the Making of the United Nations, 1945-1946* (Toronto: McClelland and Stewart, 1983), 18-23.

¹⁸ Kim Richard Nossal, "Cabin'd, Cribb'd, Confin'd?: Canada's Interests in Human Rights," in *Human Rights in Canadian Foreign Policy*, ed. Robert O. Matthews and Cranford Pratt (Kingston and Montreal: McGill-Queen's University Press, 1988), 49-50; John W. Holmes, ed., *The Shaping of Peace: Canada and the Search for World Order, Vol. II* (Toronto: University of Toronto Press, 1979), 44.

supported.¹⁹ The government had taken a cautious and somewhat unenthusiastic attitude toward the League of Nations under the leadership of Mackenzie King. King's primary goals within the League were the promotion of Canada as an independent nation at the international level, a minimal commitment for Canada to collective security, and assurance that the League would not interfere in domestic affairs such as immigration or taxation.²⁰ Although Canada wanted to see the League take a role in resolving and mediating international disputes, the King government displayed little interest in taking part in or developing this role.²¹

The invasion of Poland in 1939 convinced King, and the Canadian Parliament, to take an active role in the war against Germany. While Canada provided considerable military and industrial support to Britain, the federal government seemed content to allow the British, later in conjunction with the Americans, to determine the high policy of the war.²² By 1945, the experience of two world wars had caused many Canadians to believe that, to preserve future domestic security, Canada would need to take a more active role to promote security abroad; yet King remained careful in his approach.²³ Aware that the public was in favour of Canadian participation in the United Nations, the federal

¹⁹ For a more detailed examination of Canadian foreign policy prior to the Second World War, see Robert Bothwell, "The Canadian isolationist tradition," *International Journal* 54 (Winter 1998-99): 76-87; Adam Chapnick, "On protocols and fireproof houses: The re-emergence of Canadian exceptionalism," *International Journal* 61, no. 3, North American Security and Prosperity: Annual John W. Holmes Issue on Canadian Foreign Policy (Summer, 2006); 713-723.

²⁰ Richard Veatch, *Canada and the League of Nations* (Toronto and Buffalo: University of Toronto Press, 1975), 181.

²¹ *Ibid.*

²² Robert Bothwell, *Alliance and Illusion: Canada and the World, 1945-1984* (Vancouver: University of British Columbia Press, 2007), 14 and 362.

²³ Bothwell, *Alliance and Illusion*, 11.

government worked to strike a balance between internationalism and isolationism.²⁴

Within the Department of External Affairs itself, there were two conflicting views on the proper future for Canadian foreign policy. Some officials, led by Lester B. Pearson and Escott Reid, wanted to see Canada play an enhanced role in world affairs. Norman Robertson and Hume Wrong often worked to rein in these ideas, arguing that Canada should continue to act cautiously.²⁵ As this latter position was in line with King's own approach, in the immediate post war period Canadian foreign policy was more careful and far less committed to that of a middle-power than the public was aware.²⁶ In characterizing King's form of internationalism after the war, Robert Bothwell has noted, "King might rhetorically embrace the service of humanity, but he knew that it was his task to represent only the Canadian section thereof."²⁷

The Charter of the United Nations called upon its member states to promote "universal respect for, and observance of, human rights and fundamental freedoms."²⁸ In 1946, the UN's Economic and Social Council (ECOSOC) established a Commission on Human Rights to fulfill these obligations. The Commission consisted of representatives from eighteen member states, and was chaired by the American delegate, Eleanor Roosevelt. Canada was not a member. There had been support at the first session of the General Assembly to immediately debate the adoption of an international bill of rights in

²⁴ A 1945 Canadian Institute of Public Opinion Poll found that 90% of Canadians, and 79% of Quebecers, supported Canada's membership in the United Nations. Cited in Adam Chapnick, *The Middle Power Project: Canada and the Founding of the United Nations* (Vancouver: University of British Columbia Press, 2005), 115.

²⁵ Chapnick, *The Middle Power Project*, 4.

²⁶ *Ibid.*, 114.

²⁷ Bothwell, *Alliance and Illusion*, 18.

²⁸ Human rights obligations are also set out in the Preamble and Article 1 of the Charter. United Nations, *Charter of the United Nations*, Article 55, 24 October 1945. See also Normand and Zaidi, 133.

the committee of the whole, but this was opposed by the US, British and Soviet delegations.²⁹ Questions over how to define and implement the Charter's human rights provisions had become increasingly political; collaboration between the wartime allies collapsed almost as soon as the UN was established, and the organizations came to serve as a battleground for the Cold War. All five permanent members of the Security Council had representatives on the eighteen-member Commission on Human Rights in 1946, and they preferred the smaller forum for settling disputes as to the form of any international bill of rights.³⁰ Pressure from these influential states caused the General Assembly to hand over the responsibility for designing the UN's first human rights instruments to the Commission on Human Rights.

Within a year, the Commission had completed a draft international bill of rights, which included three parts: a declaration that would act as a broad statement of principle, a covenant that would be binding to all signatory states, and a document to outline measures for implementation.³¹ This tripartite structure was a compromise, as member states could not agree on what type of instrument to use to outline an international standard for the promotion of human rights. The United States and the Soviet Union spoke out against adopting a binding treaty or any measures of implementation, arguing that a declaration was more appropriate. The majority of other states on the Commission

²⁹ The representative from Panama introduced this proposal. Normand and Zaidi, 146.

³⁰ The original membership included: Australia, Belgium, Byelorussia, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, the Philippines, the Soviet Union, Ukraine, the United Kingdom, the United States, Uruguay, and Yugoslavia. There were no permanent members on the Commission. Representatives were elected for a three year term, with one-third of the seats coming up for election each year.

³¹ For an overview of the history of UN human rights formulation and definition, see Louis B. Sohn, "A Short History of United Nations Documents on Human Rights," *The United Nations and Human Rights*, 18th report (New York: Commission to Study the Organization of Peace, 1968): 39-186.

supported the adoption of a covenant. Concerns that disagreement over the format of the instrument would stall the process before it started caused the Commission to draft three documents and, anxious to adopt a human rights instrument quickly, the majority of states supported an American proposal to focus first on adopting a declaration, and moving to a covenant at a later date.³² Throughout 1948, the draft Declaration was revised by the Human Rights Commission, debated at ECOSOC and then within the General Assembly, before it was put to a final vote on December 10.³³

Public servants working within the federal Department of External Affairs were the primary architects of Canadian policy toward an international declaration of human rights.³⁴ Officials within the department's UN Division were responsible for coordinating Canadian policy toward the draft Declaration, while the Legal Division commented on the details of the instrument. These two divisions communicated regularly. They worked together to respond to any queries the department received relating to international human rights, and prepared the instructions for the Canadian delegation to the United Nations relating to the Declaration. While these instructions were subject to the approval of the minister, the prime minister, and Cabinet, their substance was shaped largely by the work of public servants. Diplomats from within the department, including Lester Pearson,

³² For a detailed examination of the debates surrounding the format of a bill of rights, see A.W. Brian Simpson, *Human Rights and the End of Empire*, 414-436.

³³ For a copy of the Universal Declaration of Human Rights, see Appendix A-1. For copies of the various draft copies of the UDHR, including John Humphrey's original draft of June 1947, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 271-314.

³⁴ For a wider discussion of the role of Canadian public servants in setting Canadian policy in this period, see J.L. Granatstein, *The Ottawa Men*; Doug Owsram, *The Government Generation: Canadian Intellectuals and the State, 1900-1945* (Toronto: University of Toronto Press, 1986); Robert Bothwell, "Foreign Affairs a Hundred Years On," 19-39; and John Hilliker, *Canada's Department of External Affairs: The Early Years*, vol. 1 (Montreal and Kingston: McGill-Queen's University Press, 1990).

Norman Robertson, Escott Reid, and Robert Riddell, were members of the Canadian delegation to the UN in 1948. Prime Minister Mackenzie King's trusted minister, Louis St. Laurent, held the position of Secretary of State for External Affairs until he became Prime Minister in November 1948. Pearson replaced St. Laurent as the Minister of External Affairs in time for the final deliberations and votes on the UDHR. Supported by St. Laurent, and sustained by a "disciplined Liberal majority in Parliament," Pearson and his advisors in External Affairs had unusual political latitude.³⁵ In his research on Canadian diplomacy and the Department of External Affairs in the twentieth century, historian Greg Donaghy argues that from the 1940s to the 1960s, the views of the department were "reinforced by a broad national consensus on foreign policy, which freed Canadian diplomats from critical oversight and public challenges to their policy prescriptions."³⁶

Within External Affairs itself, there was broad agreement as to how the government should approach the draft Declaration. Under the directorship of Mackenzie King, External Affairs had expanded and become increasingly professionalized since the 1930s. The department was not noted for its diversity, however. Foreign Service workers were overwhelmingly white, male, middle-class, university-educated liberals who had significant ties with Britain and the United States. French Canadians were underrepresented, and other racial minorities and indigenous groups were excluded

³⁵ Robert Bothwell, "Foreign Affairs a Hundred Years On," 29. In the 1945 federal election, Mackenzie King's Liberals won a majority government with 125 of the 245 seats in the House of Commons. This majority grew in the summer of 1949 when St. Laurent's Liberals won 190 of the 262 seats. Parliament of Canada, "Electoral Results by Party," accessed online at the Government of Canada, <http://parl.gc.ca>, retrieved 29 May 2014.

³⁶ Donaghy, "A Sad, General Decline?" 50.

altogether.³⁷ Women were not permitted to join the department until 1947, and remained a small percentage of its work force into the 1970s.³⁸ This homogeneity of External Affairs in the post war period, coupled with the influence of Mackenzie King and his closest advisors in selecting and training its staff, provided for a relatively unified voice within the department in regards to policy toward the UDHR. By 1948, even Escott Reid, whose views on the importance of human rights in foreign affairs had conflicted with that of King and senior officials in 1945, shared the concerns of the department over the UDHR and its possible negative consequences for Canada.

When the UN Commission on Human Rights first declared its intention to introduce an international bill of rights, the Canadian government struck a Joint Committee of both Houses of Parliament to consider how the human rights obligations set out in the UN Charter could best be implemented in Canada, and the legal and constitutional implications of these obligations.³⁹ Jointly chaired by Minister of Justice J.L. Isley and Senator L.M. Gouin, the Committee met eighteen times from June 1947 to June 1948, and heard evidence from officers of the departments of External Affairs and Justice, as well as from John Humphrey of the United Nations.⁴⁰

Members of the Parliamentary Committee spent most of their first meetings working to understand the language of an international bill of rights. The terms ‘human

³⁷ Between 1949 and 1965, 21% of foreign service workers were francophone (as compared to 28% of the population.) Donaghy, 52. For a discussion of the composition of the Department of External Affairs, see also Bothwell, *Alliance and Illusion*, Chapter 1; and J.L. Granatstein, *The Ottawa Men*.

³⁸ Even by the 1970s, women comprised only 8% of foreign service workers. Donaghy, 52.

³⁹ Canada, Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms, *Minutes of Proceedings and Evidence* (Ottawa: King’s Printer, 1947), vi.

⁴⁰ R.G. Riddell and E.R. Hopkins of External Affairs, and F.P. Varcoe of Justice, were present at most of the Joint Committee’s meetings in 1947. Humphrey attended on 27 June 1947 to answer questions, but was clear with the committee that he was a representative of the UN Secretariat and not the federal government.

rights’ and ‘fundamental freedoms’ were not well understood and all member states of the UN struggled to comprehend how ‘human rights’ aligned with or diverged from their own customary understandings of rights. Part of the difficulty for Canadians was a lack of definition of the terms in Canadian law. The *British North America* (BNA) *Act* contained only two provisions for rights: one concerning rights for religious schooling, and the other to protect the French and English languages in federal and Quebec courts and legislatures.⁴¹ Authority over “property and civil rights” was given to the provinces, but there was no explicit listing or definition of these rights and Canada had nothing resembling a national bill of rights.⁴² Senator Gouin noted that human rights may be “so evident that it was not necessary to define them,” but as a result they came out as “rather vague.”⁴³ In attempting to better define human rights, the Parliamentary Committee debated whether or not these rights would fall under provincial or federal jurisdiction. Committee members also spent considerable time discussing the different force of an international declaration versus a covenant in order to understand the implications of these instruments for domestic policy. These questions consumed discussions in 1947.

In the spring of 1948, the Department of External Affairs asked the Joint Parliamentary Committee to comment specifically on the draft Declaration provided by the UN’s Commission on Human Rights. Ottawa also created an Interdepartmental Committee on Human Rights, consisting of civil servants from the departments of

⁴¹ The Constitution Act, 1867, 93 and 133, accessed online at the Canadian Legal Information Institute, <http://canlii.ca/t/ldsw>, retrieved 11 February 2014.

⁴² The Constitution Act, 1867, section 92 sub 13.

⁴³ Canada, Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms, *Minutes of Proceedings and Evidence* (Ottawa: King’s Printer, 1947), 3.

External Affairs and Justice, to brief federal policy makers on the extent to which the articles found in the draft Declaration were already covered by Canadian law.⁴⁴ Both committees reported their findings to Cabinet in the summer of 1948. Within its report, the Parliamentary Committee treated an international declaration as a moral guide for nations that, although not legally binding, would “influence the course of legislation.”⁴⁵ With this in mind, the Committee suggested that the UN draft would be more effective if it was shorter and limited to general statements of principle rather than specific articles that defined the duties of the state.⁴⁶ Having debated the importance of reflecting Christian values in human rights agreements, both domestic and international, members of the Parliamentary Committee also urged the Canadian government to push for an explicit recognition of God within the Declaration.⁴⁷ The Interdepartmental Committee was less concerned about the spirit of the draft Declaration, and more focused on the implications of specific articles on existing Canadian legislation and government policy. Committee members pointed to statutes in Canada that discriminated based on race, ethnicity, religion, or political purpose, thereby contravening articles within the draft

⁴⁴ Memo from R.G. Ridell to Under-Secretary of State for External Affairs, 27 April 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

⁴⁵ “Second and Final Report of the Special Joint Committee on Human Rights and Fundamental Freedoms” to the House of Commons of Canada, 25 June 1948, File 5475-W-2-40, Part 1.2, Vol. 6281, RG25, LAC.

⁴⁶ Ibid.

⁴⁷ Canada, Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms, *Minutes of Proceedings and Evidence* (Ottawa: King’s Printer, 1948), 52-57. There was debate over a motion to propose an amendment to the Declaration that would explicitly reference God in the document. The motion was proposed by Liberal MP Eugène Marquis, and supported by Senator L.M. Gouin and MPs Benoît Michaud, James Turgeon, T.A. Crerar, H.W. Harridge and Ernest Hansell. See Egerton, “Entering the Age of Human Rights,” 463-464.

Declaration.⁴⁸ Specifically, the committee cited: federal and provincial election acts prohibiting Aboriginals, Doukhobors, Hutterites, or Mennonites from voting; Quebec's 'Padlock Law,' which limited the activities of communists; laws in British Columbia limiting the employment of Japanese Canadians in the lumber and fishing industries; and the federal orders in council which controlled the mobility of Canadians of Japanese ancestry during and after the war, including deportation orders.⁴⁹ Committee members questioned how the draft's article guaranteeing the right to life would influence laws surrounding capital punishment, or how the right to asylum might limit Canada's ability to set its own immigration policies. Despite these examples, the committee argued that, for the most part, the broad principles outlined in the UN's instrument were not only acceptable, but already law in Canada.⁵⁰

Neither the Parliamentary nor the Interdepartmental Committee supported the inclusion of economic and social rights into a declaration, and both reports acknowledged possible constitutional constraints for the federal government. It was clear, however, that each committee understood that a declaration would be a quasi-legal document, and that its authority within Canada would take the form of a recommendation or moral guide. For this reason, and not wanting to appear to oppose the protection of human rights, both committees supported the idea of a declaration in principle and urged the federal

⁴⁸ The Committee pointed specifically to two articles of the draft Declaration: Article 3, which guaranteed rights to everyone without distinction of any kind; and Article 12, which set out the right to everyone in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights. Interdepartmental Committee on Human Rights, "Draft International Declaration of Human Rights," April 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

⁴⁹ The Interdepartmental Committee highlighted the BC Provincial Elections Act, the Dominion Elections Act, the Alberta Elections Act, the Alberta Land Sales Prohibition Act, Quebec's Padlock Law, the Japanese Placement Order (PC 946) and the Japanese Fishing License Order (PC 251). Ibid.

⁵⁰ Ibid.

government to do so as well. The Interdepartmental Committee went so far as to argue that Canada must “take a firm stand for the adoption of a Declaration of Rights,” stating that a lack of support may be understood within the international community as an admission that “our house not being in order, we refuse to clean it up.”⁵¹

Some of the recommendations from the Parliamentary and Interdepartmental Committee made their way into the instructions External Affairs sent to the Canadian delegation to the UN in the fall of 1948. Delegates brought forward suggestions to make the Declaration more concise, and argued for the removal of articles relating to economic and social rights. External Affairs also instructed delegates that Canada should “at least place on the record the view that the name of God should be embodied in the first article of the Declaration.”⁵² When the Brazilian delegation submitted an amendment suggesting this very thing, Canada was therefore prepared to offer its support despite opposition from the United States.⁵³ The amendment was withdrawn, however, and the Canadian delegation did not pursue the question. An explicit reference to God never made its way into the UDHR, and debates over the importance of reflecting Christian values in the instrument did not reappear in correspondence between officials within External Affairs, politicians such as Lester Pearson, and the delegation at the United Nations.

Rather than taking a “firm stand” to support the draft Declaration, however, External Affairs pushed unsuccessfully to delay consideration of the document by the

⁵¹ “Report on the Draft International Declaration on Human Rights by the Inter-Departmental Committee on Human Rights,” 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

⁵² “Commentary for the Use of the Canadian Delegation,” from the Department of External Affairs, 21 September 1948, File 5475-DG-3-40, Part 2, Vol. 3699, RG25, LAC.

⁵³ “Report on Draft Declaration of Human Rights up to 23 November,” from the Canadian Delegation in Paris to External Affairs, 25 November 1948, File 5475-DM-1-40, Vol. 3700, RG25, LAC; Egerton, “Entering the Age of Human Rights,” 465-66.

General Assembly until the following year. This decision was influenced by the advice of the Canadian Bar Association (CBA), and its president John Hackett. In September, the CBA adopted a resolution calling for the draft declaration to be examined “with the utmost care in all its juridical aspects before further action is taken.”⁵⁴ Hackett, a Progressive Conservative Member of Parliament (MP) who opposed the idea of an international bill of rights, met with Louis St. Laurent in October to discuss the topic, and also corresponded with Lester Pearson. In a letter to Hackett dated October 28, Pearson indicated that Canada would focus on proposing that the draft declaration be sent to the International Law Commission for review before passing it on to the General Assembly.⁵⁵ This proposal was repeated throughout October and November 1948 but found little support among other member states. By October, External Affairs had also begun to focus increasingly on possible issues arising from provincial jurisdiction over rights to property ownership, marriage, employment and education.⁵⁶ The department instructed its delegates at the UN to avoid taking a prominent part in the discussions of specific articles while the government decided on a new course of action.

Three options were under review: to support a simplified Declaration with an officially stated reservation concerning constitutional issues; to abstain from voting on the basis of a lack of federal jurisdiction; or to vote against the Declaration. External Affairs

⁵⁴ Canadian Bar Association, *1948 Yearbook of the Canadian Bar Association and the Minutes of Proceedings of the Thirtieth Annual Meeting* (Ottawa: National Printers, 1949), 142.

⁵⁵ See correspondence between Mr. John T. Hackett, Canadian Bar Association and Lester B. Pearson, Under-Secretary of External Affairs, October to November 1948, File 5475-DP-40, Vol. 3701, RG25, LAC. For more information on Hackett’s role, see Schabas, 428-429; A.J. Hobbins, “Humphrey and the Old Revolution: Human Rights in the Age of Mistrust,” *Fontanus VIII* (1995): 122; and Egerton, 467-468.

⁵⁶ For example, see Memo from the Canadian Delegation to Lester B. Pearson, 4 October 1948, File 5475-DG-2-40, Vol. 3701, RG25, LAC.

originally suggested Canada's abstention. Cabinet fully supported this decision but, as the debates at the UN continued, diplomatic considerations came into play. At the end of November, Lester Pearson wrote to his department, "by abstaining we might find ourselves in a rather undesirable minority – including principally the Soviet bloc and South Africa."⁵⁷ Instead, the Canadian delegation abstained in the preliminary vote in the General Assembly's Third Committee on December 6 to make its point, but changed its position to support the Declaration in the final vote at the plenary session on December 10. The Canadian government could therefore claim it voted in favour of the UDHR, though fear of negative diplomatic implication was the primary reason it did so.

Justifying its Position: Canada's Constitutional Concerns

Within the debates leading to the final vote on the adoption of the draft Declaration, the Canadian delegation repeatedly brought forward concerns to the United Nations that the instrument would pose jurisdictional challenges for Canada. Yet Canadian officials and legal experts had repeatedly assured the government that a declaration on human rights would not infringe on provincial authority. As early as 1945, the Department of External Affairs conducted a study of the jurisdictional implications of international human rights. In this study, Canadian diplomat Hume Wrong looked at the effect of the proposed human rights provisions in the Dumbarton Oaks proposal and concluded that there was nothing that would constitute an invasion of the authority of the

⁵⁷ South Africa was not seen in the same negative light as the Soviet Union in this period. Canada remained supportive of South Africa at the UN in the early postwar years. Telegram from the Canadian Delegation to the Secretary of State for External Affairs, 23 November 1948, File 5475-DG-2-40, Vol. 3701, RG25, LAC.

provinces.⁵⁸ The question of jurisdiction came up again at the first meeting of the Joint Parliamentary Committee in 1947, when committee members compared the proposed International Bill of Rights to labour legislation negotiated at the International Labour Organization in the 1930s. In the case of the ILO, federal states were obliged to refer all treaties to their sub-governments for legislative implementation.⁵⁹ When, in 1935, the Parliament of Canada enacted three laws to implement ILO conventions relating to working hours and wages, the provinces challenged this legislation on the basis that it was outside of the authority of the federal government. The Judicial Committee of the Privy Council (JCPC) supported this challenge two years later, stating in its decision that the federal government could not use its treaty-making powers to expand its authority to implement treaties without provincial support.⁶⁰ Members of the Joint Parliamentary Committee asked whether these same principles would apply to Canada's attempts to negotiate human rights treaties. Several witnesses were brought before the committee to outline the different legal obligations of a declaration versus a convention on human rights. E.R. Hopkins, a legal advisor for the Department of External Affairs, described a declaration as a "quasi-juridical force, a moral force having the character of a strong recommendation" whereas a convention would require ratification after which it would be binding on all signatory states.⁶¹ In its final report to the House of Commons in 1948, the Parliamentary Committee pointed specifically to the limited authority of a declaration

⁵⁸ MacLennan, 65.

⁵⁹ The obligations of federal states are outlined in Article 19 of the ILO Constitution. Behiels, 153; and Canada. Parliament. Special Joint Committee on Human Rights and Fundamental Freedoms. *Proceedings*. 20th Parliament. 3rd and 4th Sessions. Ottawa, 1947-8, 18.

⁶⁰ Behiels, 154.

⁶¹ Canada. Parliament. Special Joint Committee on Human Rights and Fundamental Freedoms. *Proceedings*. 20th Parliament. 3rd and 4th Sessions. Ottawa, 1947-8, 13.

when urging the government to support the instrument drafted by the UN Commission on Human Rights.⁶² In the House of Commons, Joint Committee chair J.L. Isley explained to Members of Parliament that the UN's draft Declaration would *not* be legally binding on the state.⁶³ The differences between a declaration and a covenant were also made clear to Canadian delegates to the United Nations in instructions sent by the Department of External Affairs in September 1948.⁶⁴ Both civil servants and elected officials alike were therefore aware that the UN's Declaration of Human Rights would not obligate the Canadian government to take any action that would interfere in provincial authority.

Despite this, the correspondence between External Affairs and diplomats at the UN illustrates that provincial jurisdiction continued to be a point of discussion. In an October 4, 1948 memo, delegates Lionel Chevrier and Ralph Maybank expressed concern that proponents of provincial rights might “misinterpret the government’s position in supporting the Declaration.”⁶⁵ The government had no direct evidence that the provinces would object to the federal government’s support of the UDHR, however; nor did policy makers make any attempt to test provincial support for the instrument. There was no consultation between the federal government and the provinces regarding actions taken by the UN relating to human rights. When Senator P.F. Bouffard suggested at the Joint Parliamentary Committee that it would be useful to have provincial representatives

⁶² “Second and Final Report of the Special Joint Committee on Human Rights and Fundamental Freedoms” to the House of Commons of Canada, 25 June 1948, File 5475-W-2-40, Part 1.2, Vol. 6281, RG25, LAC.

⁶³ Canada, *House of Commons Debates*, J.L. Isley, 9 April 1948, 2844.

⁶⁴ “Commentary for the Use of the Canadian Delegation,” 21 September 1948, File 5475-DG-3-40, Vol. 3699, RG25, LAC.

⁶⁵ Memo from the Canadian Delegation to Secretary of State for External Affairs, 4 October 1948, File 5475-DG-2-40, Vol. 3701, RG25, LAC.

appear before the Committee to consider jurisdictional issues, co-chair Senator L.M. Gouin told him representatives of the federal Department of Justice would appear instead to answer these questions.⁶⁶ The Joint Parliamentary Committee did send a letter to all provincial attorney generals and the heads of Canadian law schools in 1947, but this letter focused on the issue of a Canadian Bill of Rights rather than the UN instruments.⁶⁷ When the question of international human rights came before the House of Commons in April 1948, Progressive Conservative Member of Parliament John Diefenbaker proposed that the question be dealt with by a referral to the Supreme Court. He suggested, “Let us ascertain for once and for all whether or not we have the power to discharge, first, our responsibility as a nation in the United Nations, and, second, if a [national] bill of rights is necessary for Canada.”⁶⁸ Diefenbaker argued a referral was essential so “no longer will anyone be able to hide behind the concept that under our confederation Canada cannot maintain the fundamental freedoms of Canadians within Canada.”⁶⁹ The Liberal Government refused to refer the question to the Supreme Court on the basis that the Joint Parliamentary Committee on Human Rights and Fundamental Freedoms had been struck for the very purpose of ascertaining the legal and constitutional situation in Canada in

⁶⁶ Canada. Parliament. Special Joint Committee on Human Rights and Fundamental Freedoms. Proceedings. 20th Parliament. 3rd and 4th Sessions. Ottawa, 1947-8, 3.

⁶⁷ Joint Committee member John Diefenbaker suggested this letter, stating, “There has been so much said about the attitude of the provinces that we should find out what the attitude of the provinces is.” The question posed to provincial representatives related to the power of Parliament to enact a comprehensive bill of rights applicable to all of Canada. *No similar letter was sent relating to international human rights.* Canada. Parliament. Special Joint Committee on Human Rights and Fundamental Freedoms. Proceedings. 20th Parliament. 3rd and 4th Sessions. Ottawa, 1947-8, 111.

⁶⁸ Canada, *House of Commons Debates*, John Diefenbaker, 9 April 1948, 2847.

⁶⁹ *Ibid.*

respect to human rights, and that a referral would therefore be redundant.⁷⁰ Although the Parliamentary Committee concluded that the draft Declaration would not impose legal obligations upon the Canadian government, federal officials never explained to provincial authorities, or the public, the difference between a declaration and a covenant to convince advocates of provincial rights that Canadian support for the instrument would not infringe on provincial jurisdiction. One of the options open to the federal government from the onset had been to support the UDHR with official reservations that would outline the jurisdictional concerns, yet for months, External Affairs and Cabinet both supported the more severe approach of abstention. Then, when it became clear that abstention would have an unfavourable diplomatic effect, policy makers quickly reversed their position to support the UDHR with reservation despite nothing having changed in their understanding of the possible constitutional constraints.

Canada's Limited Vision of Rights

The question is, then, why did the federal government resist the adoption of the Universal Declaration of Human Rights if policy makers understood the quasi-legal nature of a declaration and knew Ottawa could support the instrument with reservations designed to address possible provincial concerns? Clues to the answer can be found in a speech given by Lester Pearson to the United Nations just before the final vote on December 10, 1948. Pearson assured the UN that Canada supported the general principles

⁷⁰ Canada, *House of Commons Debates*, J.L. Isley, 12 April 1948, 2869.

of the Declaration, referring to it as “inspired by the highest ideals.”⁷¹ In outlining Canada’s reservations to the document, Pearson cited constitutional constraints, but he included references to other areas of concern, including the language of the Declaration, problems with the definition of rights expressed in the document, and differences between the Declaration and Canada’s traditional methods of protecting rights.⁷² Further exploration into these areas reveals that the government had three significant objections to the instrument. First, officials argued that the codification of rights that characterized the UDHR challenged the principles of British parliamentary democracy. Second, policy makers were uncomfortable with how the Declaration defined and articulated ‘universal human rights.’ Finally, they saw the UDHR as an unnecessary legal instrument that would interfere with Canadian sovereignty and possibly make Canada vulnerable to propaganda attacks. This is not to say that there was no support within the government, or from individuals and non-governmental organizations in Canada, for universal human rights or the codification of rights more generally. To the contrary, there was such support, as will be examined later in this chapter, but it remained marginal until the 1960s. The policy makers within External Affairs, and the politicians interested in and with the authority to influence Canada’s position, were unified in both their support for the British tradition of protecting rights in Canada and their concern for the possible effect of an international declaration on Canadian policy.

⁷¹ Lester B. Pearson, “Statement on the Universal Declaration on Human Rights,” 10 December 1948, File 5475-DP-40, Vol. 3701, RG25, LAC.

⁷² Ibid.

The codification of rights that characterized efforts at the UN in the 1940s was a significant departure from Canada's customary methods for protecting rights and freedoms, and officials in External Affairs saw this as a challenge to the principles of British parliamentary democracy. Understandings of rights in Canada were heavily influenced by classic liberalism and British constitutionalism. In 1867, the *British North America Act* created the federal dominion of Canada and endowed upon it "a Constitution similar in Principle to that of the United Kingdom."⁷³ While the BNA Act set the framework for how the Canadian government would work and outlined the division of powers between federal and provincial authorities, it was clearly rooted in constitutional conventions arising from centuries of British practice. Authority over "property and civil rights" went to the provinces, but there was no explicit definition of these rights.⁷⁴ Instead, Canadians turned to the British tradition of relying upon the principles of parliamentary supremacy and the rule of law to promote individual liberty. British ideas of liberty had evolved over centuries, but by the time of Canadian Confederation, the term 'civil liberties' was closely linked to an individual's right to own property, to participate in the nation's political system, and to live free from unwarranted government interference.⁷⁵ These rights were not absolute, but were limited by Parliament.

⁷³ The Constitution Act, 1867, 30 & 31 Vict, c 3, accessed online at the Canadian Legal Information Institute, <http://canlii.ca/t/lsw>, retrieved 11 February 2014.

⁷⁴ The Constitution Act, 1867, section 92 sub 13.

⁷⁵ For a brief discussion of the evolution of ideas of liberty in Britain, see David Goutor and Stephen Heathorn, eds. *Taking Liberties: A History of Human Rights in Canada* (Don Mills: Oxford University Press, 2013), 3-4. See also J.C.D. Clark, *The Language of Liberty, 1660-1832* (Cambridge: Cambridge University Press, 1994); Julian Hoppit, *Land of Liberty? England 1689-1727* (Oxford: Oxford University Press, 2002); Geoffrey Robertson, *Freedom, The Individual and the Law* (London: Penguin, 1993); and Steven Pincus, *1688: The First Modern Revolution* (New Haven, CT: Yale University Press, 2009).

There were competing visions of rights in early Canada. Historian Elsbeth Heaman argues that conservative and collective discourses of rights were also entrenched in Canadian history.⁷⁶ When colonials invoked the rights of British subjects for political representation and to parliamentary institutions in the 1760s, for example, they did not use a discourse of individual rights, but claimed a historical right they felt they deserved as a result of their British status.⁷⁷ It was not uncommon in this period to attach rights to a group. The British signaled their willingness to at least partially recognize the collective rights of French Canadians when the Quebec Act of 1774 reinstated French law regarding civil matters in Quebec. Indigenous understandings of rights were also collective. J.R. Miller explains that, for Aboriginal peoples in Canada, “rights were recognized and respected by an elaborate system of kin and clan requirements, and individual rights were subordinate to those of the collectivity.”⁷⁸ When Aboriginals negotiated treaty rights with the British government in the eighteenth century, or the Canadian government after Confederation, indigenous communities did not approach these negotiations seeking individual rights, but particular local or ethnic rights that would protect their continued way of life and their culture, such as hunting or fishing rights.⁷⁹

Historian Michel Ducharme also demonstrates how competing understandings of ‘liberty’ in early nineteenth century Upper and Lower Canada influenced Canadian

⁷⁶ E.A. Heaman, “Rights Talk and the Liberal Order Framework,” in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, ed. Michel Ducharme and Jean-François Constant (Toronto: University of Toronto Press, 2009): 147-175.

⁷⁷ *Ibid.*, 157.

⁷⁸ J.R. Miller, “Human Rights for Some,” 234.

⁷⁹ Heaman, 168.

history, creating the political conflict that culminated in the Rebellions of 1837.⁸⁰ Revolutionaries attacked the *Ancien Régime* and colonial dependency based on a “republican” concept of freedom, inspired by French and American philosophers. Whereas “modern” ideas of liberty, which emerged out of the British Glorious Revolution, focused on rights within the context of a representative parliamentary system, “republican” ideas were rooted in a set of natural rights that existed outside of the state. Ducharme concludes, however, that after the suppression of the rebellions, “modern” ideas of liberty triumphed in Canada. Heaman agrees, stating that by the late nineteenth century liberalism had become hegemonic in Canada. Early Canadians largely understood civil liberties as individual rights, which would be upheld and also limited by Parliament. Certainly for Aboriginal peoples, whose collective vision of rights was incompatible with Euro-Canadians’ emphasis on the individual, this hegemony meant their voices were increasingly silenced.⁸¹

In 1885, Albert V. Dicey wrote *Introduction to the Study of Law and the Constitution*, strengthening the influence of British liberal understandings of rights on Canadian law.⁸² Dicey was a British constitutional lawyer and a legal scholar, and his analysis of the British constitution had an enormous impact on the thinking of lawyers, judges, and policy makers in Canada.⁸³ His work, published at the height of British

⁸⁰ Michel Ducharme, *Le Concept De Liberté Au Canada À L'époque Des Révolutions Atlantiques 1776-1838* (Montreal & Kingston: McGill-Queen's University Press, 2010).

⁸¹ Miller, 234.

⁸² A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: Macmillan, 1902) reprinted by Elibron Classics series, Adamant Media Corporation, 2005, 198 and 194. For a discussion of Dicey’s influence on the understanding of British constitutionalism, see Simpson, 33-37.

⁸³ For a historical examination of Dicey’s influence, see Richard A. Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (London: Macmillan Press, 1980); T.H. Ford, *Albert Venn Dicey: The Man*

political and cultural influence, functioned to illustrate the alleged superiority of British constitutional principles.⁸⁴ In the United Kingdom, Parliament had absolute sovereignty over the ability to create, change or repeal legislation for the state. This legislative authority was not limited by a written constitution or the courts, but by the will of the people as expressed through democratic elections.⁸⁵ Dicey argued that, as a central principle in British political institutions, parliamentary supremacy allowed for more effective and democratic governance; it promoted popular sovereignty and was flexible enough to allow government to act quickly when necessary and adapt the constitution alongside legal and political developments.⁸⁶ The role of the courts was to interpret the law and ensure that all citizens were both subject to and enjoyed equal protection under this law. Dicey therefore believed a codified set of individual rights was unnecessary in Britain because the rule of law provided inherently for civil liberties that could and would be upheld by Parliament. The British constitution was composed of judicial decisions and legal precedents, all of which dealt with the rights of private individuals. For this reason, Dicey claimed “individual rights are the basis not the result of the law of the constitution,” and as such are protected by the “ordinary law of the land.”⁸⁷ This method for protecting rights was seen as being more effective and natural than an “artificial”

and His Times (Chichester: B. Rose Publishers, 1985); and Bernard J. Hibbits, “The Politics of Principle: Albert Venn Dicey and the Rule of Law,” *Ango-American Law Review* 23, no. 1 (1994).

⁸⁴ Ian Green, *The Charter of Rights* (Toronto: J. Lorimer, 1989), 17.

⁸⁵ Howard Davis, *Human Rights and Civil Liberties* (Cullompton: Willan Publishing, 2003), 14.

⁸⁶ Dicey, 86.

⁸⁷ Dicey, 198 and 194.

constitution or bill of rights, and Dicey's ideas remained largely unchallenged in Britain leading into the Second World War.⁸⁸

In Canada, Albert Dicey's conceptions of civil liberty continued to influence Canadian lawyers and politicians into the 1940s. In 1946, Cabinet Minister Paul Martin defended Canada's tradition of protecting rights and freedoms, claiming all possible rights that could be explicitly laid out in a bill of rights were already basic principles within the Canadian tradition. Martin argued that the most effective way to protect civil liberties in Canada was to recognize "that these great unwritten powers are as effective in the implicit understanding of the law, rather than being set down categorically in the form of a completely written constitution."⁸⁹ He insisted the remedy for any violation of civil liberties was not a bill of rights, but British common law, which he argued "proved to be the most lasting and effective guarantee of human liberty the world has ever known."⁹⁰ Later that year, Liberal MP Ian Mackenzie quoted Albert Dicey directly to the House of Commons, arguing that, while the British constitution defines no specific rights, it was "worth a hundred articles guaranteeing constitutional liberty."⁹¹ Many Members of Parliament supported Martin and Mackenzie's views on the superiority of the British legal tradition.

In practice, however, the Canadian system did not promote equal protection of the law in the 1940s. Many individuals experienced prejudice and discrimination as a daily part of their lives. Canadian society privileged white, British, middle-class, Protestant

⁸⁸ G.W. Jones, "The British Bill of Rights," *Parliamentary Affairs* 43, no. 1 (January 1990): 27-40.

⁸⁹ Canada, *House of Commons Debates*, Paul Martin, 7 May 1946, 1311.

⁹⁰ *Ibid.*

⁹¹ Canada, *House of Commons Debates*, Ian Mackenzie, 16 May 1947, 3142.

males, and the federal and provincial parliaments used their legislative powers to adopt legislation that protected this group of subjects above others. In doing so, governments put laws in place regulating areas such as property ownership, employment, education, voting and immigration that disadvantaged women, lower-classes, and religious and racialized minorities. For example, at the time Albert Dicey was arguing that the principle of parliamentary supremacy allowed for more democratic government, only propertied males in Britain and Canada had the right to vote and several provinces had adopted legislation expressly disqualifying people from the franchise on the grounds of gender and race.⁹² Canada's *Indian Act* further discriminated against Aboriginal peoples in Canada by restricting their travel and property rights, outlawing traditional ceremonies and rituals, banning the use of native languages, and allowing for the establishment of residential schools.⁹³ Other historical examples of legal discrimination in this period include: explicitly racist immigration policies; restrictive covenants against the presence of certain ethnic, racial or religious groups within neighbourhoods; discriminatory enlistment policies during the First World War; segregated schooling; and restricted access to services based on gender, race or religion.⁹⁴

⁹² For example, in 1875 British Columbia passed legislation stating "no Chinaman or Indian" could vote. *An Act to Make Better Provision for the Qualification and Registration of Voters*, S.B.C. 1875, c. 2.

⁹³ For an overview of how Aboriginal rights fit into Canadian discourses of rights, see Miller, 233-60.

⁹⁴ Selected texts relating to discrimination in Canada in the first half of the twentieth century include Mariana Valverde, *The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland and Stewart, 1991); J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989); Carol Lee Bacchi, *Liberation Deferred? The Ideas of the English-Canadian Suffragists, 1877-1918* (Toronto, University of Toronto Press, 1983); Linda Keeley ed., *A Not Unreasonable Claim: Women and Reform in Canada, 1880s-1920s* (Toronto: Women's Press, 1979); Patricia E. Roy, *A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858-1914* (Vancouver: UBC Press, 1989); Irvig Abella and Harold Troper, *None is Too Many: Canada and the Jews of Europe 1933-1948* (Toronto: Lester & Orpen Dennys, 1983); Alan Davies, ed., *Antisemitism in Canada: History and Interpretation* (Waterloo: Wilfrid

In some cases, individuals who felt their rights had been violated turned to the courts and the safeguards of Parliament. Unfortunately, the Canadian system offered very little in the way of legal remedy for discrimination. The courts offered two options. A person who felt his or her rights had been infringed upon by another individual, or a private organization, could sue for damages. Since rights were not explicitly protected in law, however, the only legal argument open to an individual against government abuses was that the government was working outside of its scope of power or jurisdiction. The BNA Act outlined the areas under which the federal or provincial legislatures were supreme and the Canadian judiciary had the expanded role of interpreting the constitutional division of powers and judging whether or not laws fell within the jurisdiction of the legislature that created them.⁹⁵

James Walker and Constance Backhouse have both used legal case studies from the first half of the twentieth century to demonstrate how racialized minorities used the courts to challenge discriminatory laws in Canada. Victims of racial discrimination expected the courts to uphold their rights on the basis of the British principle of the rule of law. The law was understood to be an “ally” in the struggle against racial discrimination, but in many cases individuals were denied rights by a judicial system that

Laurier University Press, 1992); William Janzen, *Limits on Liberty: The Experience of Mennonite, Hutterite, and Doukhobor Communities in Canada* (Toronto: University of Toronto Press, 1990); Thomas Berger, *Fragile Freedoms: Human Rights and Dissent in Canada* (Toronto: Irwin Press, 1981); Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia, 2nd ed.* (Montreal and Kingston: McGill-Queen's University Press, 1990); and James W. St.G. Walker, *Racial Discrimination in Canada: The Black Experience*, (Ottawa: The Canadian Historical Association, 1985).

⁹⁵ F.R. Scott, “Dominion Jurisdiction Over Human Rights and Fundamental Freedoms,” *Canadian Bar Review* XXVII, no. 5 (1949), 502-04. See also Ian Greene, *The Charter of Rights* (Toronto: J. Lorimer, 1989).

maintained a historic systemic racism in Canadian society.⁹⁶ Judicial decisions were influenced by “common sense” attitudes that reflected ideas of a racial hierarchy, whereby certain races were considered unfit to participate equally in Canadian society or qualify for all of the rights and privileges inherent to Canadians of European ancestry.⁹⁷ Laws were interpreted in ways that worked to maintain the power of ‘whites’ in Canada, and the courts played a central role in the construction and definition of ‘race,’ perpetuating ideas of racial differences.⁹⁸ In doing so, many judges and lawyers justified their actions using notions of the fairness and superiority of the British judicial system.⁹⁹

In cases where individuals sued for damages as a result of discrimination, Canadian judges debated the limits of equal treatment before the law, particularly when it came to private interactions. In 1899, a Quebec court awarded damages in a case when management denied admission to certain parts of a theatre to individuals simply because of their colour.¹⁰⁰ Despite this initial decision, federal and provincial courts throughout the first half of the twentieth century upheld the right of taverns, restaurants and theatres to serve, or refuse to serve, whomever they wanted.¹⁰¹ In 1940, the Supreme Court

⁹⁶ James W. St.G. Walker, “Race,” *Rights and the Law in the Supreme Court of Canada*, 3 and 6.

⁹⁷ Walker, 13.

⁹⁸ Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: Osgoode Society for Canadian Legal History, University of Toronto Press, 1999), 17 and 279.

⁹⁹ *Ibid.*

¹⁰⁰ *Johnson v. Sparrow* [1899] Q.S.C. 104. The plaintiff sued a Montreal theatre for denying him and a friend a seat in the orchestra section of a public theatre after they had purchased tickets. The judge held that although a theatre is a private facility, it holds a public license and was therefore obliged to serve all members of the public.

¹⁰¹ See *Loew's Montreal Theatres Ltd. v. Reynolds* [1921] 30 R.J.Q. (Quebec K.B.); *Franklin v. Evans* [1924] 55 OLR 349 (Ont H.C.); *Christie v. The York Corporation* [1940] 1 DLR 81 (S.C.C.); *Rogers v. Clarence Hotel Co. Ltd.* [1940] 3 DLR 583 [B.C.C.A.]. See also: Walker, “Race,” *Rights and the Law*; Backhouse, *Colour Coded*; and Henry L. Molot, “The Duty of Business to Serve the Public: Analogy to the Innkeeper’s Obligation,” *Canadian Bar Review* 46, no. 4 (December 1968): 612-642.

considered the case of Fred Christie, who was refused service in Montreal's York Tavern because it was the establishment's policy not to serve "Negroes." In its decision the Court stated, "Any merchant is free to deal as he may choose with any individual member of the public. It is not a question of motives or reasons for deciding to deal or not to deal; he is free to do either."¹⁰²

In cases where individuals challenged discriminatory laws, the Judicial Committee of the Privy Council (JCPC) in London, which served as Canada's highest court until 1949, decided early on that discrimination on racial grounds was not a basis for invalidating legislation.¹⁰³ In 1899, the JCPC did determine that a provision in the BC *Coal Mines Regulation Act* stating no "Chinamen" could be employed in any mine was illegal, but not because of racial discrimination. The judges held that the Act was *ultra vires* the jurisdiction of the provincial legislature because the federal government had exclusive authority over the rights, privileges and disabilities of classes of persons as set out by the federal *Naturalization Act*.¹⁰⁴ Four years later, the Committee found that the BC *Elections Act*, which explicitly denied the vote to any "Chinamen, Japanese or Indian," was not illegal because voting legislation related to political rights that were in the jurisdiction of the provinces.¹⁰⁵ The same argument was used in a 1914 case involving Quong Wing, a naturalized Canadian born in China who was convicted of employing white female servants contrary to a Saskatchewan law prohibiting "Chinamen" from

¹⁰² *Christie v. York Corporation* [1940] S.C.R. 139, at 142.

¹⁰³ Walter Tarnopolsky, *Discrimination and the Law* (Toronto: Richard De Boo Ltd., 1982), 6.

¹⁰⁴ The law also prohibited women from working in any mine. *Union Colliery Company of British Columbia v. Bryden* [1889] A.C. 580.

¹⁰⁵ *Cunningham v. Homma* [1903] A.C. 151, C.C.S. 45.

hiring or managing white females.¹⁰⁶ The Committee found that the law dealt with “property and civil rights,” which were under the authority of the provincial governments, and so was legal. In the written decision, Justice J. Davies explained that the role of the Council was to determine whether or not the law infringed on Dominion jurisdiction, not to consider the “justice or the motives which prompted its passage.”¹⁰⁷ These three cases highlight the view of judges in the early twentieth century that, because of parliamentary supremacy, they had no power to stop violations of civil liberties unless the law that caused the violation breached the federal division of powers.¹⁰⁸ Legal scholar Ian Greene has argued that, from the late 1800s to the 1960s, parliamentary supremacy was thought as having “sacrosanct properties” and this hindered any judicial enforcement of civil liberties into the 1970s.¹⁰⁹

Beginning in the 1930s, courts began to consider a new legal question; could Canadian laws that violated rights and freedoms considered to be fundamental to the principles of British constitutionalism be subject to judicial review? Judges looked to the BNA Act and its explicit reference to the constitution of the United Kingdom, and questioned the extent to which the civil liberty principles that existed prior to 1867 as a

¹⁰⁶ *An Act to prevent the Employment of Female Labour in certain capacities*, Statutes of Saskatchewan 1912, c. 17.

¹⁰⁷ *Quong-Wing v. The King* [1914] 49 S.C.R. 440, at page 448.

¹⁰⁸ There are a few exceptions in which provincial or federal Supreme Court justices attempted to uphold civil liberties in spite of parliamentary supremacy, but these justices held only the minority position. For example, in regards to a second case before the Supreme Court of Saskatchewan involving white women being employed by “Chinamen,” Chief Justice Haultain concluded that the regulations prohibiting this were “not aimed at the regulation of restaurants, laundries, and other places of business and amusement or of the employment of female labour, but were devised to deprive the Chinese, whether naturalized or not, of the ordinary rights of the inhabitants of Saskatchewan.” Haultain was a minority of one. Cited in Walker, “‘Race,’ Right and the Law,” 98.

¹⁰⁹ Greene, *The Charter of Rights*, 15-16.

part of Britain's unwritten constitution were an essential component of Canada's constitution.¹¹⁰ The Supreme Court faced this question in 1938 in a landmark reference known as the Alberta Press Case. In this case, the Court examined several laws enacted by Alberta's Social Credit government, including one limiting the ability of the press to criticize the government.¹¹¹ In a six to three decision, the Court struck down the laws as outside the authority of the provincial government.¹¹² One justice wrote that press regulation should be considered part of the federal government's power over criminal law. Two further justices, Chief Justice Duff and Justice Cannon, argued that freedom of the press was too fundamental of a right to be left entirely to the provinces; only the federal government had the right to limit such fundamental rights. In his decision, Chief Justice Duff wrote that the federal government had sole authority to legislate in the area of public discussion, including freedom of the press. Justice Cannon took this decision further to state that Canadians "enjoy freedom of expression as an incident or privilege of their citizenship status."¹¹³ The decision in the Alberta Press Case supported the argument that, although the provinces did have some authority over rights, the federal government had primacy in the area of fundamental freedoms. While this case had an impact on questions of jurisdiction, it did little to help individuals in their fight against discrimination. Simply put, in 1940s Canada, the courts were of limited use in the day-to-day struggle for greater equality. Not only were there barriers to access for vulnerable

¹¹⁰ Greene, 19.

¹¹¹ *Reference Re Alberta Statutes* - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act, 1938 CanLII 1 (SCC), [1938] SCR 100.

¹¹² *Reference re Alberta Statutes*, 132-134.

¹¹³ *Reference re Alberta Statutes*, 149.

groups, but the courts also perpetuated systemic forms discrimination. Despite this, federal policy makers continued to argue that rights protections were implicit in the Canadian constitution, and adequately enforced.

Part of the problem was that there was almost no legislation in Canada, federally or provincially, to explicitly protect civil liberties. Provincial governments had been the first to move to add amendments to existing legislation to prevent discrimination. In 1932, the Ontario legislature amended its *Insurance Act* to make it an offence to discriminate based on race or religion.¹¹⁴ A year later, the government of British Columbia amended its *Unemployment Relief Act* to make it an offence to discriminate in employment on the grounds of political affiliation, race or religion.¹¹⁵ Then, in 1934, the Manitoba legislature added an amendment to its *Libel Act* to outlaw libel against a race or creed that would likely expose a person of that race or creed to hatred, contempt or ridicule.¹¹⁶ Canada's first explicitly anti-discrimination legislation, Ontario's *Racial Discrimination Act*, was passed in 1944. The Act prohibited the publication or public display of any signs or advertisements that discriminated on the basis of race or creed.¹¹⁷ The province of Saskatchewan adopted a more comprehensive piece of human rights legislation in 1947, becoming the first Canadian province to enact a bill of rights.¹¹⁸

The application of these new laws, however, was inconsistent and weak. While Ontario's *Racial Discrimination Act* was enforced through the courts, it was restricted to

¹¹⁴ *Ontario Insurance Act* S.O. 1932, c.24, s. 4.

¹¹⁵ B.C. *Unemployment Relief Act*, S.B.C. 1933, c.71.

¹¹⁶ *Manitoba Libel Act*, S.M. 1934, c. 23.

¹¹⁷ *Statutes of Ontario*, 1944, c. 51.

¹¹⁸ *Saskatchewan Bill of Rights Act*, 1947, S.S. 1947, c.35.

public acts, leaving discrimination that occurred within the private interactions of individuals or businesses acceptable.¹¹⁹ Few cases were ever formally tried under the *Saskatchewan Bill of Rights*.¹²⁰ Walter Tarnopolsky, a Canadian human rights advocate and legal scholar, argued that part of the difficulty was that the judiciary was reluctant to convict for discrimination at this time based on a belief that discrimination was not really illegal.¹²¹ Convictions were difficult to attain because early legal interpretations of discrimination never strayed far from the original idea that an act of discrimination must include an element of intent. Discrimination was associated with “ill-willed behaviour caused by bigotry, prejudice and intolerance” rather than any larger societal issues, and as a result enforcement for early anti-discrimination laws used a quasi-criminal approach that required proof beyond a reasonable doubt.¹²² Individual cases were therefore difficult to prove, and the legislation failed to address policies or actions that were neutrally motivated but which nonetheless resulted in discrimination. The 1950s saw campaigns for fair practices legislation in most jurisdictions, including the federal level, and the push for a federal bill of rights. A federal Fair Employment Practices Act was passed in 1951, but the first federal bill of rights was not enacted until 1960. Therefore, the codification of rights that characterized the United Nations’ efforts in the late 1940s was a significant

¹¹⁹ James W. St.G. Walker, “Human Rights, Racial Equality, Social Justice: Can We Get There From Here?” paper presented to ‘Domain Seminar on Social Justice and Multiculturalism’: at the University of British Columbia Centre for Policy Studies in Education, Department of Canadian Heritage, 1999, 23.

¹²⁰ Despite this, Carmela Patrias has argued that the Saskatchewan Bill of Rights reshaped how rights were conceived in Canada. Carmela Patrias, “Socialists, Jews, and the 1947 Saskatchewan Bill of Rights,” *The Canadian Historical Review* 87, no. 2 (June 2006): 265-292.

¹²¹ Tarnopolsky, “Address to the Conference of Human Rights Ministers.”

¹²² Béatrice Vizkelety, *Proving Discrimination in Canada* (Toronto, Calgary, Vancouver: Carswell Co. Ltd., 1987), 2.

departure from the customary methods of the Canadian federal government for protecting the rights and freedoms of its citizens.

In this regard, Canada was in a similar position to its closest Commonwealth allies, Australia and New Zealand. These states also inherited the British common law tradition, and neither had a codified bill of rights nor any significant rights-related legislation in place at the time of the debates over the UDHR.¹²³ The United Kingdom also did not have a national bill of rights in 1948, although it was involved in discussions over the possibility of a European Charter of Human Rights.¹²⁴ Of these states, however, only Canada resisted the adoption of the UDHR. The British, Australian and New Zealand governments had pressed strongly for the inclusion of human rights provisions into the UN Charter, and advocated for the adoption of the International Bill of Rights in its entirety in 1948.¹²⁵ Canada was in a minority position in its resistance to the UDHR, even among its own allies.

In speeches before the United Nations, Canadian delegates often made reference to the strength of the Canadian tradition of protecting civil liberties, rights and freedoms. Louis St. Laurent told an audience that included Eleanor Roosevelt, the Chair of the UN Commission on Human Rights, that there was no better example than Canada of the use

¹²³ In fact, Canada was the first of these three nations to implement a national bill of rights. Australia adopted various anti-discrimination laws from the 1970s to the 1990s but has no official national bill of rights. New Zealand enacted a statutory bill of rights in 1990, and a human rights act in 1993. For a comparison of Canada and Australia's human rights development, see Dominique Clément, "The Rights Revolution in Canada and Australia," in *Taking Liberties: A History of Human Rights in Canada*, ed. David Goutor and Stephen Heathorn (Don Mills: Oxford University Press, 2013): 88-113.

¹²⁴ Simpson, Chapter 12.

¹²⁵ Simpson, *Human Rights and the End of Empire*; Annemarie Devereux, *Australia and the Birth of the International Bill of Human Rights 1946-1966* (Annandale: Federation Press, 2005); and Colin Aikman, "New Zealand and the Origins of the Universal Declaration," *Victoria University of Wellington Law Review* 29 (1999): 1-9.

of British institutions to protect rights and freedoms.¹²⁶ St. Laurent pointed specifically to the preservation of linguistic and religious rights for French Canadians within Canada as his example. In October 1948, Canadian delegate Ralph Maybank told the Third Committee of the General Assembly that, while Canada had no national declaration of human rights, these rights had instead “developed over many years as the result of the daily concept of free men living together and sharing common basic objectives of individual liberty.”¹²⁷ Lester Pearson also explained to the General Assembly that rights in Canada were protected by means of common law and parliamentary statutes rather than a bill of rights. In outlining Canada’s position toward the UDHR prior to the final vote, Pearson said that while Canada was willing to support the Declaration, “... in doing so we should not wish to suggest that we intend to depart from the procedures by which we have built up our own code under our own federal constitution for the protection of human rights.”¹²⁸ Pearson was making it clear to member states of the United Nations that Canadians preferred their traditional methods of protecting rights, those rooted in British parliamentary democracy.

The Canadian government also resisted the UDHR because policy makers were uncomfortable with how the Declaration defined and articulated human rights and fundamental freedoms. When Canadians spoke of rights or freedoms, they commonly used the terms ‘civil liberties’ or ‘civil rights.’ These terms were used interchangeably

¹²⁶ Louis St. Laurent, “Address to the Montreal Branch of the United Nations Association of Canada,” 24 February 1947, File 5475-B-40, Part 32, Vol. 5111, RG25, LAC.

¹²⁷ Ralph Maybank, “Statement to the Third Committee of the General Assembly,” 1 October 1948, File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC.

¹²⁸ Lester B. Pearson, “Statement to the Third General Assembly of the United Nations,” 10 December 1948, File 5475-DP-40, Vol. 3701, RG25, LAC.

throughout the first half of the twentieth century to describe the rights and freedoms guaranteed through law and custom. This included the protection of an individual's right to formulate or express his or her own opinion, to act freely upon this opinion in the private sphere without undue government interference, and to equal treatment before the law. Walter Tarnopolsky argued that, had the fathers of Confederation been asked to identify a set of fundamental freedoms, they most likely would have pointed to "speech, press, religion, assembly, association" and such legal rights as "*habeas corpus* and to a fair and public trial."¹²⁹ Property and civil rights, as outlined in the BNA Act, referred more specifically to the right to enter freely into contract, to own or lease property, and to sue in case of a breach of contract.¹³⁰ The concept of equality simply referred to the equal protection of the law and did not include a sense that all people should be treated as equals or have the same political, economic, social, and civil privileges.¹³¹

The term 'human rights' was not widely used in Canada prior to the Second World War, and encompassed a much broader interpretation of rights than was customary in Canada. In its preamble, the UDHR referred to "the equal and inalienable rights of all members of the human family."¹³² French Catholic philosopher Jacques Maritain published his *Les droits de l'homme et la loi naturelle* in 1942, in which he argued that human rights were rooted in natural law and that natural rights were fundamental and

¹²⁹ Walter Tarnopolsky, "Address to the Conference of Human Rights Ministers", 8 November 1974, Walter Tarnopolsky Papers, File 14, Vol. 31, MG31 E55, LAC.

¹³⁰ For an example of how legal scholars interpreted "property and civil rights" in the 1940s, see Frank R. Scott, "Section 94 of the British North America Act," *Canadian Bar Review* 20 (1942): 525-544.

¹³¹ Walter Tarnopolsky, *The Canadian Bill of Rights 2nd ed.* (Toronto: Oxford University Press, 1964), 13.

¹³² Universal Declaration of Human Rights, 1948, Preamble.

inalienable.¹³³ Maritain helped to shape the draft Declaration at the United Nations, and was widely read among Catholics, and in French Canada.¹³⁴ His philosophical view on rights had little influence on policy makers within the federal government, however, who continued to have difficulty with the inalienability and universalism of human rights as defined by the UN. Historically in Canada, both levels of government felt justified in limiting the rights of citizens, and so policy makers and politicians worried about the implications of a truly universal set of human rights on Canadian policy. For example, members of the Interdepartmental Committee on Human Rights questioned how Article 12 of the draft Declaration, guaranteeing everyone's right to recognition as a person before the law, would influence Canadian policies toward convicted criminals, people with disabilities, minors, or "lunatics."¹³⁵ Of even greater concern was the way in which the UDHR articulated a definition of human rights that explicitly included economic and social rights, such as the right to social security, work and education. The Joint Parliamentary Committee and the Interdepartmental Committee on Human Rights had both opposed the inclusion of these rights on the basis that they were a matter of social legislation and economic policy, and not human rights, a view held by most of the

¹³³ Jacques Maritain, *Les droits de l'homme et la loi naturelle* (New York: Éditions de la Maison Française, 1942); *The Rights of Man and Natural Law*, trans. Doris C. Anson (New York: Charles Scribner's Sons, 1943).

¹³⁴ Maritain provided the most influential wartime Catholic commentary on human rights, and his book was widely distributed in Quebec. He visited Canada frequently from the 1930s through the 1950s, often teaching summer sessions at the Toronto Pontifical Institute of Medieval. He had a significant influence on both Anglophone Catholics and among young Quebec Catholic intellectuals and leaders where support for human rights was problematic in the years of the Duplessis government. Egerton, "Entering the Age of Human Rights," 453-4; George Egerton, "Public Religion in Canada from Mackenzie King to Trudeau: Entering the Age of Pluralism, 1945-1982," in *Cambridge History of Religions in America, Volume III: 1945 to Present*, Stephen Stein, ed. (Cambridge: Cambridge University Press, 2012): 28-56.

¹³⁵ Report of the Interdepartmental Committee on Human Rights, April 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

government.¹³⁶ Even Canadian rights activists themselves prioritized legal and political rights over social rights in the 1940s.¹³⁷ Many human rights organizations active in Canada in the 1940s took what Dominique Clément has termed a “minimalist approach to human rights,” equating human rights with civil and legal rights only.¹³⁸ The draft Declaration of Human Rights was therefore articulating a concept of inalienable and universal human rights that encompassed a much wider definition of rights than Canadian policy makers were willing to accept.

Apprehension over how the concept of human rights was defined within the UDHR was tied to a larger concern over the implications of international human rights on Canadian sovereignty. Despite the Domestic Jurisdiction Clause laid out in Article 2 of the UN Charter, and the quasi-legal nature of the Declaration, policy makers worried about how the UDHR would influence the ability of the government to set its own policies in relation to rights and freedoms. The Interdepartmental Committee examined the possible impact of the UDHR on Canadian legislation and identified a number of provincial and federal statutes that would have to be altered or repealed to meet all of the standards of the UDHR.¹³⁹ The most common example was elections acts. Other laws singled out by the Committee were Quebec’s Padlock Law, which prevented the

¹³⁶ “Second and Final Report of the Special Joint Committee on Human Rights and Fundamental Freedoms” to the House of Commons of Canada, 25 June 1948, File 5475-W-2-40, Part 1.2, Vol. 6281, RG25, LAC; and Report of the Interdepartmental Committee on Human Rights, April 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

¹³⁷ See Dominique Clément, *Canada’s Rights Revolution*.

¹³⁸ Clément, *Canada’s Rights Revolution*, 12. See also Ross Lambertson, “Domination and Dissent: Equality Rights Before World War II,” in *A History of Human Rights in Canada*, ed. Janet Miron (Toronto: Canadian Scholars’ Press Inc., 2009): 11-24.

¹³⁹ “Report of the Interdepartmental Committee on Human Rights,” April 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

dissemination of communist materials, and the Order in Council restricting Japanese Canadians after the Second World War. Louis St. Laurent and Minister of Justice Stuart Garson also questioned how the adoption of the Declaration would limit Canada's ability to pursue less formal policies, such as preventing the spread of communism.¹⁴⁰

These concerns were further exacerbated by the sense, held by many federal officials, that Canadian citizens did not need international human rights protection. At a meeting of the Joint Parliamentary Committee in 1947, Senator Thomas Crerar defined human rights as free expression, free criticism of government, freedom of religion, free thought, security of the person and the right to live free from undue government interference, stating, "We have all those now pretty well."¹⁴¹ Ralph Maybank confidently told the Third Committee of the United Nations that the problems minorities experienced elsewhere simply did not exist in Canada.¹⁴² It was the opinion of the Interdepartmental Committee that a declaration on human rights was unnecessary for states like Canada, which promoted individual freedom; instead it was designed for "totalitarian" states that disregarded human rights.¹⁴³ The belief that the rights and freedoms of Canadians were already well protected led some policy makers to believe international human rights law would provide no benefit, but there was a fear that it could open Canada up to unnecessary restrictions and possible propaganda attacks. Canadian policy makers recognized that the UN's human rights instruments could be used as a tool against

¹⁴⁰ "Observations by Mr. Garson on First Draft of International Covenant on Human Rights," 27 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC; and Memo from Louis St. Laurent to the Canadian Delegation, October 1948, File 5475-DP-40, Vol. 3701, RG25, LAC.

¹⁴¹ Joint Parliamentary Committee, 64.

¹⁴² Ralph Maybank, "Statement on Minorities and Minority Rights" to the Third Committee, 27 November 1948, File 5475-DM-1-40, Vol. 3700, RG25, LAC.

¹⁴³ "Report of the Interdepartmental Committee on Human Rights," 2-3.

Western states by the Soviet bloc. This threat was not significant enough, however, to place human rights issues high on the Department of External Affairs' agenda in the late 1940s. A survey of Department documents for the Third Session of the General Assembly, the session in which the UDHR was adopted, reveals that very little of the communication between federal officials and the Canadian delegation at the UN involved any discussion of human rights or the Declaration. A thirty-page policy guide outlining "Views on Canadian Matters Before the United Nations" did not even mention human rights initiatives.¹⁴⁴

Domestic Attitudes and Awareness Surrounding the UDHR

A key factor influencing the Canadian government's attitude toward human rights initiatives at the United Nations in the 1940s was the lack of awareness of these initiatives within the Canadian public. In this period, rights activism in Canada was focused on domestic issues and there was no significant pressure from activists, or the public more broadly, for the government to support an international bill of rights. While William Schabas argues that the government used concerns over jurisdiction to "mislead" the Canadian public, in truth the public cared very little about international human rights.

Prior to the Second World War, rights activism remained on the margins of Canadian society and there was no national movement to protect rights and freedoms. Aboriginal peoples had been in negotiation with the federal government over treaty rights since the eighteenth century. These rights derived from treaties between indigenous

¹⁴⁴ "Views of Canada on Matters Before the United Nations," Third General Assembly of the United Nations, General File, File 5475-DG-2-40, Part 1, Vol. 3699, RG25, LAC.

groups and the British Crown or Canadian government, often including land reserves and certain rights such as hunting and fishing. Treaty negotiations have not traditionally been understood as a form of rights activism, however, in part because indigenous people understand their treaty rights as inherent, collective rights, resulting from their original occupation of the land before European settlement.¹⁴⁵ Aboriginal peoples have consequently been excluded from discourses of rights in Canada, with little recognition of their contribution to Canada's rights movement prior to the 1960s.¹⁴⁶

The late nineteenth century is a more conventional period in which to locate the origins of rights activism in Canada. Suffragists began organizing in the 1870s to expand rights for women, and had, by the end of the First World War, successfully gained the federal vote for 'white' women.¹⁴⁷ This period also saw the birth of the Canadian labour movement, as workers campaigned for better treatment and improved working conditions.¹⁴⁸ By the 1930s, a growing interest in rights led to the rise of Canada's first civil liberties associations, but these groups were organized around very specific causes, namely opposition to Section 98 of the federal government's Criminal Code, and the

¹⁴⁵ Historian Jim Miller argues that there has been a "systematic, continuous, and enduring refusal to recognize First Nations' human rights in Canada." J.R. Miller, "Human Rights for Some," 257.

¹⁴⁶ First Nations leader and activist Harold Cardinal reported hearing the term 'Aboriginal rights' for the first time in the 1960s. Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), 169.

¹⁴⁷ Lambertson, "Domination and Dissent," 16. For a more detailed discussion of the women's suffrage movement in Canada, see Bacchi, *Liberation Deferred?*; and Keeley, *A Not Unreasonable Claim*.

¹⁴⁸ For an overview of the history of Canada's labour movement, see Irving Abella, ed., *On Strike: Six Key Labour Struggles in Canada, 1919-1949* (Toronto: James Lorimer & Company, 1975); Craig Heron, *The Canadian Labour Movement: A Short History, 2nd ed.* (Toronto: Lorimer, 1996); Bryan Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991, 2nd ed.* (Toronto: McClelland and Stewart, 1992); Bryan Palmer and Joan Sangster, eds., *Labouring Canada: Class, Gender and Race in Canadian Working-Class History* (Don Mills: Oxford University Press, 2008); and Laurel Sefton MacDowell and Ian Walter Radforth, *Canadian Working-class History: Selected Readings, 3rd ed.* (Toronto: Canadian Scholars' Press, 2006).

province of Quebec's Padlock Law.¹⁴⁹ Section 98 allowed the federal government to abandon the presumption of innocence in cases involving any person belonging to an organization that encouraged the violent overthrow of the government. This section was widely understood to target Communist organizations, and civil liberties activists argued it violated both free speech and freedom of association.¹⁵⁰ Newly formed organizations such as the Canadian Civil Liberties Union (CCLU) made similar arguments against Quebec's Padlock Law, a law authorizing the Quebec government to shut down any building used for the creation or dissemination of communist materials, without regard for due process.¹⁵¹ The law also targeted Jehovah's Witnesses, whose religious beliefs caused them to criticize the Roman Catholic Church. The Padlock Law was applied fifty times in Quebec between November 1937 and January 1938, and in response the CCLU called for a constitutional amendment to the BNA Act and the entrenchment of a national bill of rights.¹⁵² Few Canadians supported the fight for minority rights in this period, however, in part because the minority groups most affected by Section 98 and the Padlock law, Communists and Jehovah's Witnesses, were unpopular.¹⁵³

There was very little cohesion or cooperation among civil liberties organizations and rights activists in the 1930s. Significant differences existed between groups

¹⁴⁹ Ross Lambertson, *Repression and Resistance*, 16-67.

¹⁵⁰ The arrest of eight leaders of the Communist Party of Canada in 1931 led to a nation-wide campaign for the repeal of Section 98. See Lorne Brown, *When Freedom Was Lost: The Unemployed, the Agitator, and the State* (Montreal/Buffalo: Black Rose Books, 1987); Lambertson, *Repression and Resistance*; and McLennan, *Toward the Charter*, Chapter 1.

¹⁵¹ Lambertson, *Repression and Resistance*, 25.

¹⁵² William Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto, Buffalo, London: University of Toronto Press, 1989), 20.

¹⁵³ Quebec politicians painted Communists and Jehovah's Witnesses as enemies of both the state and the Catholic Church. For example, see Canada, *House of Commons Debates*, Eugène Marquis, 19 May 1947, 3223. See also Egerton, 459-450.

organizing for greater rights for women, Communists, Jehovah's Witnesses, labour interests, and marginalized ethnic groups in the early twentieth century. Ross Lambertson argues that, despite some solidarity, human rights communities were fragmented along both geographic and ideological lines in this period.¹⁵⁴ Their efforts focused mainly on specific violations of rights rather than a push for a more positive role for government in promoting these rights. This changed during and immediately after the Second World War, as several high profile cases of violations of civil liberties strengthened rights activism in Canada, helping to bring together these groups to advocate for campaigns for expanded domestic protection of rights.

The first issue involved a series of emergency wartime powers put in place by Mackenzie King's government during the Second World War, which limited traditional civil liberties to allow the government to more effectively run the war effort. These powers, listed in the Defence of Canada Regulations (DOCR), caught the attention of rights activists who argued they violated free speech, *habeas corpus*, freedom of the press and rights to due process.¹⁵⁵ While Canadians were willing to accept the suspension of civil liberties in certain cases as a necessary part of the war, continued pressure by activists who argued the government was going too far led to the creation of a House of Commons Special Committee on the DOCR in 1940. As a result of this committee, the

¹⁵⁴ Lambertson, *Repression and Resistance*, Chapter 1.

¹⁵⁵ For an examination of civil liberties violations in Canada during WWII, see Reg Whitaker and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State* (Toronto: University of Toronto Press, 1994), 7-10; William Kaplan, *State and Salvation*; Lambertson, *Repression and Resistance*, Chapter 2; Clément, *Rights Revolution*, 39-40; MacLennan, *Toward the Charter*, 23-30.

Canadian government revised its regulations, and the process allowed for a public discussion of rights and freedoms in Canada, and their reasonable limits.

The federal government's attempts to deport Canadians of Japanese ancestry at the end of the Second World War further stirred rights activism in Canada.¹⁵⁶ The decision in 1942 to relocate and intern Japanese Canadians along the West Coast met with little opposition from the broader Canadian public.¹⁵⁷ When the war ended, however, the Canadian government not only kept the restrictions on Japanese Canadians in place, but also took steps to go ahead with deportation. This led to significant criticism from the public, and recognition of the injustice of discrimination based solely on race or ethnicity. The treatment of Japanese Canadians motivated individuals and minority group activists in Canada to work together to attack racial discrimination.¹⁵⁸ Public protest eventually caused the repeal of the deportation legislation and resulted in a Royal Commission to consider the government's actions. Stephanie Bangarth argues that this set of events marked "Canada's earliest significant involvement with the discourse on human rights."¹⁵⁹ Rather than relying on traditional British liberties and the safeguards of Parliament, these activists used the new discourse of human rights emerging out of the United Nations to articulate their claims and pressure the Canadian government.

¹⁵⁶ For a study of the treatment of Canadians of Japanese ancestry during WWII, see Ken Adachi, *The Enemy That Never Was: A History of Japanese Canadians* (Toronto: McClelland and Stewart, 1991); Patricia E. Roy, *The Triumph of Citizenship: The Japanese and Chinese in Canada, 1941-67* (Vancouver: UBC Press, 2007); and Stephanie Bangarth, *Voices Raised in Protest*.

¹⁵⁷ Bangarth, 2.

¹⁵⁸ For an examination of the emergence of an egalitarian rights coalition surrounding this issue, see Bangarth, *Voices Raised in Protest*; and Lambertson, *Repression and Resistance*, Chapter 3.

¹⁵⁹ Bangarth, 2.

In 1946, a third major civil liberties issue became public as Canadians learned that Igor Gouzenko, a Soviet cipher clerk working in Ottawa, had defected and provided the federal government with details of a Soviet “spy ring” operating in Canada.¹⁶⁰ Prime Minister King kept the details of the affair secret, using the *War Measures Act* to suspend the normal rules of legal procedure to hold a series of secret trials. When the news of the Gouzenko Affair broke, King announced a Royal Commission on Espionage to officially hear testimony in relation to Gouzenko’s charges. The public learned that detainees and many witnesses were denied the right to consult counsel or speak to family during the earlier trials, and had not been made aware of their proper rights. Activists objected to such flagrant violations of civil liberties, and their protests built upon the mobilized dissent that surrounded the DOCR regulations and the treatment of Japanese Canadians. These three issues were discussed widely, both in academic journals and in the media.

Historically, published debate over civil liberties in Canada was limited to law review journals where legal scholars commented on and discussed important court decisions and debated issues of constitutional law. Beginning in the 1930s, these legal scholars began to offer their views on the high profile civil liberties issues of the day. In the late 1930s, Eugene Forsey, a lecturer at McGill, wrote a series of articles criticizing Quebec’s Padlock Law for the *Canadian Forum*, a left-leaning political and cultural magazine.¹⁶¹ In 1942, Harold Laski of the London School of Economics wrote “Civil

¹⁶⁰ For a study of the Gouzenko Affair, see Dominique Clément, "The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy," *Journal of the Canadian Historical Association* 11, no. 1 (2000): 151-172; and Amy Knight, *How the Cold War Began: The Igor Gouzenko Affair and the Hunt for Soviet Spies* (New York: Carroll & Graf Publishers, 2005).

¹⁶¹ The *Canadian Forum* was a left-wing literary, cultural and political publication that began publication in 1920. Eugene Forsey, "The Padlock Act Again," *Canadian Forum* 17, no. 205 (February,

Liberties in Canada and Great Britain During the War,” asking whether or not the Canadian executive was working within the scope of its authority when it curtailed civil liberties in order to further war efforts. Laski argued that, in Canada more so than in Britain, the government used its wartime emergency powers to eliminate forces within society that were critical of government or politically unpopular, but which did not interfere with the war effort.¹⁶² Other legal scholars, such as Andrew Brewin and H. Clokie, also published articles examining the Canadian government’s violation of civil liberties during the war.¹⁶³

The most prolific writer in the area of civil liberties in the 1930s and 1940s was Frank R. Scott.¹⁶⁴ Scott began his career of writing and speaking out in defense of the rights of minorities in the 1930s. In 1932, he defended the rights of Communists in an article in the *Queen’s Quarterly*.¹⁶⁵ Over the next few years, he spoke out in opposition to government infringements on the freedoms of speech and association.¹⁶⁶ In his writing, Scott called for the development of active civil liberties associations across Canada,

1938): 382; "Under the Padlock," *Canadian Forum* 17, no. 208 (May 1938): 41-44; "The Padlock - New Style," *Canadian Forum* 18, Vol. XVIII, No 218 (March 1939): 362-363; "Mr. Lapointe and the Padlock," *Canadian Forum* 18, no. 211 (August 1938): 148-150.

¹⁶² Harold Laski, "Civil Liberties in Canada and Great Britain During the War," *Harvard Law Review* 55, no. 6 (April 1942), 1018.

¹⁶³ Andrew Brewin, *Civil Liberties in Canada during Wartime* (1941); and H. McD. Clockie, "The Preservation of Civil Liberties," *Canadian Journal of Economics and Political Science / Revue canadienne d'Economie et de Science politique* 13, no. 2 (May, 1947): 208-232.

¹⁶⁴ Some examples include F.R. Scott, "Racial Discrimination and Public Policy," in *Information and Comment* published by the Canadian Jewish Congress Committee on Social and Economic Studies, 2 (March 1946); "Duplessis versus Jehovah," *Canadian Forum* (1947): 222-223; "The Rights of Man," *United Nations Weekly Bulletin* 3, no. 25 (16 December 1947): 813; "Dominion Jurisdiction over Human Rights and Fundamental Freedoms," *Canadian Bar Review* 27 (1949): 497.

¹⁶⁵ F.R. Scott, "The Trial of the Toronto Communists," *Queens Quarterly* 39 (1932): 512.

¹⁶⁶ Frank R. Scott, "The Privy Council and Minority Rights," *Queen’s Quarterly* 37 (1930): 668-78; "Civil Liberties," *Canadian New Leader* (October 1933): 6-7; "Freedom of Speech in Canada," *Papers and Proceedings of the Canadian Political Science Association* (1933): 169-89; Scott, "The Trial of the Toronto Communists," 512-13.

arguing that, while existing local civil liberties groups were taking up specific causes, “the principles at stake concern every Canadian.”¹⁶⁷ He was also one of the first Canadian legal scholars to engage with the question of international human rights. In writing on the International Bill of Rights in 1947, Scott emphasized the importance of proper measures of implementation stating, “It is not so difficult to formulate rights; the problem is to secure their enforcement.”¹⁶⁸ To facilitate this, he supported a cooperative study of human rights and fundamental freedoms between member states of the UN, arguing that such a study would improve the chance of proper implementation of a declaration of rights once it was adopted.

Issues of civil liberties also had also become a more frequent topic in the daily and weekly press by the 1940s. The internment and scheduled deportation of Canadians of Japanese ancestry was heavily commented on in the press throughout the 1940s.¹⁶⁹ Stephanie Bangarth argues that newspapers and magazines such as *Canadian Forum*, the *Toronto Daily Star*, the *Toronto Globe and Mail*, the *Winnipeg Free Press*, the *Ottawa Citizen*, and *Saturday Night* regularly printed articles opposing the government’s policies, reflecting an “increasing awareness of the importance of human rights as a principle” in the treatment of Japanese Canadians.¹⁷⁰ Throughout the spring and summer of 1946, newspapers across the country also reported heavily on the espionage trials, as did magazines such as *Maclean’s*, *Saturday Night* and *Canadian Forum*, and professional

¹⁶⁷ F.R. Scott, “Duplessis versus Jehovah,” 223.

¹⁶⁸ F.R. Scott, “The Rights of Man,” 813. Scott used this quote in other articles as well.

¹⁶⁹ For an examination of support for and opposition to the treatment of Canadians of Japanese ancestry in the press from 1942 to 1949, see Bangarth, *Voices Raised in Protest*, 101-7.

¹⁷⁰ Bangarth, *Voices Raised in Protest*, 101.

magazines such as the *Dalhousie Law Review*, the *Canadian Bar Review* and the *Fortnightly Law Journal*.¹⁷¹ These reports did not simply outline the details of the Royal Commission on Espionage and the Gouzenko Affair, they debated the limits of civil liberties and of government power within Canadian society.¹⁷²

Increasingly in the 1940s, questions of civil liberties became tied to the debate over a domestic bill of rights. There were calls for such a bill as early as the 1930s, by scholars such as Arthur Lower, J.S. Woodsworth and F.R. Scott and organizations such as the Canadian Bar Association, but there was insufficient support from both the public and within government. A bill of rights took on new meaning after the events of the war, in the wake of the question of Japanese Canadians and the Espionage Trials.¹⁷³ In 1945, Alistair Stewart of the Co-operative Commonwealth Federation (CCF) introduced a resolution into the House of Commons to create a Canadian Bill of Rights.¹⁷⁴ This resolution was defeated, but Conservative MP John Diefenbaker attempted in 1946 to have a bill of rights added to the Liberal Government's Citizenship Act.¹⁷⁵ Diefenbaker suggested the creation of a committee of the House of Commons to determine the status of rights in Canada and the question of a bill of rights. His motion caused extensive debate in the House of Commons over the idea of a national bill of rights.¹⁷⁶ Objections focused on three main arguments: that a bill of rights would break from the British

¹⁷¹ Clément, "The Royal Commission on Espionage," 158.

¹⁷² The Canadian legal press was highly critical of the methods of the Royal Commission on Espionage, attacking the Commission abuse of civil liberties. Daily newspapers were split, with some supporting the actions of the Commission and others criticizing perceived abuses of power. For a detailed examination of the press reaction to the espionage trials, see Clément, "The Royal Commission on Espionage."

¹⁷³ See MacLennan, Lambertson.

¹⁷⁴ Canada, *House of Commons Debates*, Alistair Stewart, 10 October 1945, 900.

¹⁷⁵ Canada, *House of Commons Debates*, John Diefenbaker, 3 May 1946, 1214.

¹⁷⁶ *Ibid.*, 7 May 1946, 1300-1303; 8 May 1946, 1339-40; 16 May 1946, 1584-5.

tradition of parliamentary sovereignty; that it would infringe on provincial rights in the area of “property and civil rights”; and that it was not necessary as the existing judicial system in Canada already guaranteed for the protection of civil liberties. These same objections became key elements in the opposition to an international bill of rights. While it would not be until 1960 that Diefenbaker, as Prime Minister, would introduce and pass his Canadian Bill of Rights, there was much discussion throughout this period about the appropriateness of codifying a set of rights into Canadian law, and these discussions intersected with debates over human rights at the United Nations.

The public discourse over civil liberties in Canada reflected a growing conviction that traditional social and political safeguards were insufficient to protect individual rights, and that certain fundamental freedoms needed to be protected in law. According to an editorial in the *Winnipeg Free Press*, “all these disquieting developments have compelled Parliament to ask itself whether the citizen’s civil rights, assumed under the BNA Act are, in fact, safe when a provincial or federal government undertakes to violate them.”¹⁷⁷ Debate focused on whether or not governments were infringing upon basic rights despite the traditional safeguards to protect them, and if so, whether new safeguards should be put in place to protect rights and freedoms for Canadians.¹⁷⁸ Individuals also questioned whether civil liberties and fundamental freedoms were the exclusive domain of the federal government, the provinces, or held in common and scholars continued to debate the definitions of the terms civil liberties, civil rights and

¹⁷⁷ Bruce Hutchinson, ed., “Bill of Rights for Canada,” *Winnipeg Free Press Pamphlet* no. 13, 1947. This pamphlet reprinted articles from the editorial pages of the *Winnipeg Free Press* from 30 May to June 3, 1947. “Parliament’s Alarm,” *Bill of Rights - 1944-1953*, F.R. Scott papers, Volume 3, MG30-D211, LAC.

¹⁷⁸ *Ibid.*

property rights. These debates were more than academic as, according to the BNA Act, “property and civil rights” were under the jurisdiction of the provinces.

Throughout all of the public debate over rights, freedoms and civil liberties in Canada, the focus remained on domestic rights. Other than Frank Scott, there is little evidence that scholars were writing about Canada’s participation, or lack thereof, with international human rights instruments at the UN. French Canadian humanist Richard Arès wrote several articles in the Jesuit journal, *Relations*, exploring Catholic teachings on human rights and supporting the development of an international bill of rights, but the earliest of these was published in December 1948.¹⁷⁹ There were few press reports on human rights developments at the United Nations, or that referenced the draft Declaration of Human Rights, unless it was to use the discourse of universal human rights emerging from the UN to help defend rights in Canada. John Humphrey was the most active advocate for the UDHR in Canada, using his position at the UN to try to generate enthusiasm for the instrument at home. He had some success within the CCF Party and from individuals such as R.G. Nik Cavell, the chair of the Canadian Institute for International Affairs.¹⁸⁰ More often, however, he met opposition to the Declaration, or indifference. The opposition came primarily from the Canadian Bar Association, which felt the UDHR was too “socialist,” or conservative business circles, which worried about

¹⁷⁹ Arès was influenced by developments within the Church and the writings of scholars such as Jacques Maritain. Richard Arès, S.J., “Les droits de l’homme devant les nations unies,” *Relations* 8, no. 96 (December 1948): 348. Arès continued to write articles relating to the UDHR, including “La déclaration universelle des droits de l’homme,” *Relations* 9, no. 97 (January 1949); “Quand les nations unies s’occupent de dieu,” *Relations* 9, no. 99 (March 1949); and “D’où viennent les droits de l’homme?” *Relations* 9, no. 100 (April 1949).

¹⁸⁰ A.J. Hobbins, “Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of the UNDHR,” *International Journal* 53, no. 2 (1998): 325-342.

the implications of economic rights.¹⁸¹ Most Canadians, including rights activists, were either unaware of developments at the UN, or did not consider them a priority for Canada. In a letter to Cavell, Humphrey expressed his frustration at being unable to stimulate more interest in the UDHR, stating,

One thing that has appalled me since coming down here is the realization that, in our own country Canada, there is relatively less interest in this question than in certain other countries which we sometimes think are less democratic than our own.¹⁸²

By the late 1940s, then, there were two parallel discourses on rights: a domestic discourse, which was gaining momentum; and an international discourse from which the Canadian public was largely disengaged.

The United Nations' human rights initiatives did lead to debate in the Canadian House of Commons, although domestic interests continued to override concern over Canada's position toward the UDHR. When the UN Commission on Human Rights was first established in 1946, Progressive Conservative MP Gordon Graydon asked Prime Minister King what Canada's position was in regards to the proposed international bill of rights. King replied simply that, as Canada had yet to see a draft copy, the government had formed no opinion.¹⁸³ The matter did not come up again until 1947 when Ian Mackenzie, the Liberal Minister of Veterans Affairs, moved that a joint committee be struck to consider Canada's human rights obligations within the United Nations. This led to a debate over rights protection in Canada, with some MPs arguing that these rights

¹⁸¹ Ibid., 332.

¹⁸² John Humphrey, as quoted by A.J. Hobbins, "Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights," 333.

¹⁸³ Canada, *House of Commons Debates*, Gordon Graydon, 17 June 1946, 2537.

were not adequately protected.¹⁸⁴ The debate tended to focus on domestic rights protections, as John Diefenbaker, and CCF Members Alistair Stewart and Stanley Knowles, took the opportunity to call for a Canadian bill of rights. Social Credit Party members J.H. Blackmore, Ernest G. Hansell, and Norman Jacques spoke out against a bill of rights, either for Canada or at the United Nations, arguing such legislation was an unnecessary limit on government, providing rights to undeserving groups such as Communists or Jehovah's Witnesses.¹⁸⁵ Several MPs from Quebec, including Liberals Eugène Marquis and Roch Pinard, also opposed a Canadian bill of rights, reflecting the Duplessis government's position that the Catholic faith provided the surest protection for human rights.¹⁸⁶

A year later, there was a more heated exchange between Diefenbaker and the Liberal Government. Diefenbaker asked Mackenzie King directly in February 1948 if the government had made any recommendations to the UN regarding the International Bill of Rights, and he was told at that time it was "under consideration."¹⁸⁷ In April, after the UN deadline for comments from member states had already passed, the Liberals told MPs that the government had written a letter to the Secretary-General of the United Nations informing him of Canada's "inability" to provide the necessary comments because it had not had adequate time to allow its legislature to consider the draft.¹⁸⁸ Diefenbaker stood

¹⁸⁴ Canada, *House of Commons Debates*, 16-19 May 1947, 2861-67.

¹⁸⁵ Canada, *House of Commons Debates*, John Diefenbaker, Alistair Stewart, Stanley Knowles, J.H. Blackmore, Norman Jacques, 16-19 May 1947, 2861-67.

¹⁸⁶ Canada, *House of Commons Debates*, Eugène Marquis, 19 May 1947, 3323; Roch Pinard, 16 May 1947, 3175. Pinard was only opposed to an international bill of rights if it did not contain a reference to God. Egerton, "Entering the Age of Human Rights," 457-8; MacLennan, *Toward the Charter*, 102-3.

¹⁸⁷ Canada, *House of Commons Debates*, John Diefenbaker, 12 Feb 1948, 1127; 13 Feb 1948, 1181.

¹⁸⁸ Canada, *House of Commons Debates*, J.L. Ilsley, 9 April 1949, 2842-47.

and chastised the Liberals for the little support they gave to the idea of an international bill of rights. He questioned why, if the Government received a copy of the draft Declaration in January it waited until April 9, six days after the deadline for feedback to the United Nations, to present the draft to the House of Commons. He pointed to the fact that two months earlier he had asked outright if Ottawa had received a copy of the draft. Diefenbaker stated that he was amazed that the Government had shown so little interest in the International Bill of Rights; in the two years since it the draft was first published, Canada provided no recommendations to the UN and made no attempt to send a representative to the Commission on Human Rights. The Liberal Government also did not make the draft available to Members of Parliament, non-governmental organizations or the public since it had received it in January. In contrast, Diefenbaker pointed to the fact that the American government had sent more than 350 copies of the draft Declaration to non-governmental organizations throughout the country for feedback.¹⁸⁹ Diefenbaker also questioned the lack of discourse between the federal and provincial government on the issue of Canada's participation in the development of the International Bill of Rights. He warned that, if Canada did not sort out its jurisdictional issues quickly, it would "be in the position of being not in the vanguard but in the rearguard of the march on the part of the nations of the world to these better things conducive of international peace."¹⁹⁰ Despite these pointed criticisms by Diefenbaker, opposition parties did not pressure the King government to take action regarding the UDHR. Even Diefenbaker himself was much more interested in a national bill of rights than he was international human rights, and he

¹⁸⁹ Canada, *House of Commons Debates*, John Diefenbaker, 9 April 1948, 2857-59.

¹⁹⁰ *Ibid*, 2859.

did not follow up on his comments, which allowed the Liberals to avoid having to justify their actions. The House of Commons adjourned in mid-1948, and was not in session when the Declaration was being debated at the United Nations. As a result, the federal government was able to take the position it wanted toward the UDHR without fear of significant backlash within the Parliament.

The lack of awareness or any sense of relevance within Canada to international human rights is further illustrated by the absence of any public reaction to either the government's decision to abstain from the vote on the UDHR in the Third Committee, or its subsequent decision to support the UDHR in the final vote. With the House of Commons adjourned, there was no comment in Parliament. The major newspapers were silent on the issue of Canada's abstention. In fact, the only press clipping sent to the Department of External Affairs was from the December 7 edition of the *New York Times*, which mentioned Canada's abstention.¹⁹¹ Even the adoption of the Declaration on December 10 was not big news. Papers such as the *Winnipeg Free Press*, the *Montreal Gazette*, the *Toronto Globe and Mail* and the *Ottawa Citizen* ran only small front-page stories on the United Nations' "historic document on rights."¹⁹² While these papers explained that, after voting in support of the UDHR, Lester Pearson gave a speech to the General Assembly indicating that the Canadian government had no intention of infringing on provincial rights, no reference was made to the abstentions. Ironically, the papers did

¹⁹¹ A copy of this article was sent to External Affairs. File 5475 –DP-40, Vol. 3701, RG25, LAC.

¹⁹² "UN General Assembly Adopts Historic Document of Rights," *Winnipeg Free Press*, 11 December 1948, 1. Similar stories ran in the *Ottawa Evening Citizen*, *Montreal Gazette* and the *Globe and Mail*.

make a point of emphasizing the “bitter Russian opposition” to the Declaration.¹⁹³ Other Canadian newspapers, such as *Le Droit*, the *Toronto Star*, and the *Ottawa Evening Journal*, barely mentioned the UDHR, focusing instead on the closing of the UN Session.¹⁹⁴

International Pressures: Canada Supports the UDHR

Despite the lack of public support, and the reluctance on behalf of Canadian policy makers to commit to international human rights instruments, Canada did change its final vote to support the Universal Declaration of Human Rights on December 10, 1948. It did so in response to international pressures. Canadian delegates felt this pressure directly from Canada’s allies at the United Nations. More importantly, within the context of the immediate post war period, Canada feared the diplomatic implication of being associated with states such as the Soviet Union and its allies, or South Africa, all of whom also abstained from supporting the Declaration.

As support for international human rights grew at the United Nations throughout 1948, the Canadian government worked to convince member states that, despite its reservations to the draft Declaration, Canada supported the principles of human rights. The challenge for politicians and the Canadian delegates was to balance their public support for the UN’s broad goals in the area of human rights with a policy of avoiding

¹⁹³ “U.N. Ending Session,” *Ottawa Evening Citizen*, 11 December 1948.

¹⁹⁴ *Le Droit* reported the closing of the Session on 11 December, and on 13 December included a reference to the UDHR in an article outlining the achievements of the UN Session.

any real commitment to the protection of these rights.¹⁹⁵ Louis St. Laurent publically assured Eleanor Roosevelt, Chair of the Commission on Human Rights, of Canada's "sympathetic interest" in the work of the Commission.¹⁹⁶ Canadian delegate Ralph Maybank told the Third Committee of the General Assembly that Canada had established a "sensitive and deep-rooted devotion to the further development of rights."¹⁹⁷ This rhetoric held little meaning, however, when the Canadian delegation was not actively participating in the debates over the draft Declaration.

One of the difficulties for Canada was the fact that its two greatest allies, the United Kingdom and the United States, both wanted to see a declaration of human rights adopted in 1948. Pressure for an international system of human rights had come, in part, out of American President Franklin D. Roosevelt's Four Freedoms Speech in 1941. After Roosevelt's death and with the intensification of the Cold War, the State Department's enthusiasm for the International Bill of Rights diminished, but the American government saw the propaganda value in a non-binding human rights instrument, which would include no measures for implementation, and would reflect a Western interpretation of individual rights. The State Department instructed the head of their delegation to the UN, Eleanor Roosevelt, to push through the Declaration quickly, with little debate.¹⁹⁸ British officials, although initially skeptical as to the enforceability of an international human

¹⁹⁵ MacLennan, *Toward the Charter*, 61.

¹⁹⁶ Louis St. Laurent, "Text of Address to be delivered by the Rt. Hon. L.S. St-Laurent, Secretary of State for External Affairs, Montreal Branch of the United Nations Society," 24 February 1947, Vol. 5111, File 5475-B-40, Part 32, RG25, LAC.

¹⁹⁷ Ralph Maybank, "Statement by Ralph Maybank, M.P., Canadian Representative in the Third Committee, General Assembly, Concerning the Draft Declaration of Human Rights," 1 October 1948, File 5475-DP-40 Part 2.1, Vol. 6425, RG25, LAC.

¹⁹⁸ Relating to the United States' position toward the UDHR, see Mary Ann Glendon, *A World Made New*; or Normand and Zaidi, *Human Rights at the UN*, chapter 6.

rights instrument, saw the UDHR as both a means of raising human rights standards around the world, and a weapon of political warfare.¹⁹⁹ Historian A.W. Brian Simpson argues that the British Foreign Office considered human rights to be a matter of foreign relations, and not a domestic issue. Believing Britons to be the inventors of liberty, it was taken for granted that Britain would play a positive role in the development of international human rights.²⁰⁰ It was not until after the adoption of the UDHR, with the rising influence of anti-colonial arguments in ECOSOC that Britain's Colonial Office convinced other British officials of the implications for international human rights instruments on Britain itself.²⁰¹

In September, there was a meeting of Commonwealth representatives to the UN to discuss Britain's view on the draft Declaration. This included representatives from Australia, New Zealand, South Africa, Pakistan, India and Ceylon. At this meeting, the British representative made it clear that, on the whole, the United Kingdom was in favour of having the Declaration adopted, with minor changes relating to the right to asylum, the right of equal pay and the right to work.²⁰² Britain wanted to keep the textual changes to a minimum, however, in order to speed up adoption. Later that same month, Canadian delegates in Paris met with Eleanor Roosevelt and the American delegation. At this meeting, Roosevelt also expressed her desire to see the Declaration adopted in 1948. The

¹⁹⁹ In 1947, the British government drafted a proposed Bill of Rights it hoped would form the basis for any instrument that would come out of the UN Commission on Human Rights. This draft contained a preamble and 18 articles, all of which existed within British law. The draft contained no economic and social rights, and was designed to have as little impact on Britain as possible. See Simpson, Chapter 8.

²⁰⁰ Simpson, 336.

²⁰¹ Ibid.

²⁰² Letter from the High Commissioner for Canada to Escott Reid, Department of External Affairs, 8 September 1948, File 5475-DG-2-40, Vol. 3699, RG25, LAC.

Canadian delegates reported to the Department of External Affairs that, while there were certain aspects of the Declaration the United States did not like, it was willing to support the document without any major changes to avoid prolonged discussions. For Mrs. Roosevelt, the opportunity to adopt a human rights document that would act as a “moral authority” for the world outweighed any concerns over specific elements of the Declaration.²⁰³ The Canadian delegation was also well aware that its constitutional concerns were not shared by other federal states. The United States and Australia, both federal states, supported a quick adoption of the Declaration and seemed unconcerned about jurisdictional issues. By October, the Canadian delegation was reporting to External Affairs that, in addition to Britain and the United States, the Declaration had the support of India, New Zealand, the Western European countries and Latin America.²⁰⁴ Lester Pearson responded that the government was feeling pressure from the “Western powers and in particular the delegation of the United States” for Canadian support for the UDHR.²⁰⁵ Even with these pressures, Canadian representatives remained committed to abstaining in the final vote, stating, “we must avoid embarrassing the government on the provincial rights issue, at the same time recognizing that any hesitation might be construed as opposition to human rights by those who are active in their support.”²⁰⁶ All public addresses given at the United Nations in November and early December 1948 were

²⁰³ Memo from Canadian Delegation to Secretary of State for External Affairs, 29 September 1948, , File 5475-DG-2-40, Vol. 3699, RG25, LAC.

²⁰⁴ Memo from Canadian Delegation to the Secretary of State for External Affairs (Lester Pearson), 4 October 1948, File 5475-DG-2-40, Vol. 3701, RG25, LAC.

²⁰⁵ Memo from Pearson to the Canadian Delegation, 7 October 1948, File 5475-DP-40, Vol. 3701, RG25, LAC.

²⁰⁶ Memo from Canadian Delegation to Secretary of State for External Affairs, 29 September 1948, , File 5475-DG-2-40, Vol. 3699, RG25, LAC.

drafted and redrafted in an attempt to convey that Canada supported the protection of human rights, but was limited by its constitution.²⁰⁷

Despite these warnings, many UN delegates were surprised by Canada's abstention in the Third Committee on December 6, 1948. Immediately after the vote, representatives from the United States and Britain approach the Canadian delegation, urging support for the final vote on December 10th. Canadian delegates reported to External Affairs that their allies stated that they regarded Canada's abstention as "a serious weakening of the propaganda position which they were hoping to achieve."²⁰⁸ In its weekly progress report, the Canadian delegation wrote, "There was considerable surprise at this association of Canada with the Slavs. It certainly is regrettable that it had to occur, but in view of the message from Ottawa, we felt we had no alternative."²⁰⁹ John Humphrey, the Canadian diplomat who helped to draft the Declaration and urged Canada to support it, wrote in his diary that he was shocked by Canada's decision.²¹⁰ Other members of the UN Commission on Human Rights, including drafting committee members Eleanor Roosevelt, P.C. Chang and Charles Malik, told the Canadian delegation they were at a loss as to why Canada had taken such a stand.²¹¹

By this point, it was obvious to the Department of External Affairs, and the Canadian government more generally, that Canada was in a minority in its continued

²⁰⁷ These drafts can be found at: File 5475 –DP-40, Vol. 3701, RG25, LAC.

²⁰⁸ Memo from Canadian Delegation to the Department of External Affairs, 8 December 1948, File 5475-DP-40, Vol. 3701, RG25, LAC.

²⁰⁹ Telegram No. 566, Canadian Delegation to the Department of External Affairs, 7 December 1948, File 5475-DP-40, Vol. 3701, RG25, LAC.

²¹⁰ Hobbins, *On the Edge of Greatness*, 89.

²¹¹ Memo from the Canadian Delegation to the Secretary of State for External Affairs, Memo 562, 7 December 1948, File 5475-DN-40, Vol. 3700, RG25, LAC.

opposition to the UDHR. Out of a total of 59 member states of the United Nations in 1949, zero had opposed the draft Declaration in the Third Assembly, and only eight abstained: Saudi Arabia, South Africa, the Soviet Union, Byelorussia, the Ukraine, Poland, Czechoslovakia, and Yugoslavia.²¹² Lester Pearson convinced the government to change Canada's final vote expressly to avoid being in this company. The government was willing to vote in favour of the Declaration, disregarding its substantive opposition and alleged constitutional constraints, to avoid the international stigma of voting alongside states that were considered totalitarian, and which largely represented the 'Soviet-bloc' in the early era of the Cold War. Policy makers were aware that the UDHR might exert moral pressure but would not be legally binding, would not require ratification or necessitate legislative change in Canada. This allowed the government to change its position quickly without having to consider the legal ramifications on Canadian policy, and Canada voted in favour of the adoption of the Universal Declaration of Human Rights on December 10, 1948.

Conclusion

By the end of the 1940s, the Canadian government could say it had supported the adoption of the first component of the United Nations' international bill of rights. Yet those officials in External Affairs responsible for setting Canada's position remained as resistant to the idea of international instruments to protect human rights as they had in

²¹² For membership, see "Growth in United Nations Membership, 1945-present," United Nations Organization, accessed online at <http://www.un.org/en/members/growth.shtml>, retrieved 11 February 2014; for voting results, see "Final Report: Universal Declaration of Human Rights," Canadian Delegation to the Department of External Affairs, December 1948, File 5474-DM-1-40, Vol. 3700, RG25, LAC.

1947. Very little had changed in Canada in regards to rights in the two years between the introduction of the draft International Bill of Rights and the adoption of the UDHR. The government continued to struggle to accept a human rights instrument that was so different than Canada's own customary methods for protecting rights, and worried that the codification of a set of inalienable and universal human rights would limit Canada's ability to determine its own domestic policy. The interpretation of rights embodied in the Declaration was still much broader than policy makers were willing to accept. The government's attempts to resist the adoption of the UDHR had failed, not because its position changed or due to pressure from within Canada, but as a result of international pressures.

The work of the United Nations' Commission on Human Rights was not finished in 1948. The Declaration represented only one part of the proposed International Bill of Rights. Only months after the adoption of the Declaration, the Commission on Human Rights distributed a draft Covenant on Human Rights to act as a clearer articulation of the principles outlined in the UDHR. A covenant on human rights would be legally binding on all signatory states, and provided a much greater challenge to Canadian policy makers than the Declaration. Throughout the 1950s, then, the Canadian government would once again find itself in opposition to international human rights law.

Chapter Two: Canadian Opposition to the First Draft Covenants, 1949 to 1954

Less than a year after the adoption of the UDHR, the United Nations released the second component of its International Bill of Rights, a draft Covenant on Human Rights. This document generated intense debate, as member states disagreed over how to best define human rights, and on the appropriate role for national and international law in promoting these rights. Whereas the Universal Declaration could accommodate competing visions because it was understood to be a moral guide only, a covenant was a form of multilateral agreement, which included obligations that would be binding on signatory states.¹ Nations were therefore much less willing to commit to an instrument that did not reflect their own legal and political traditions. Mounting Cold War tensions and the pressures of decolonization further complicated discussions at the United Nations over rights, and as a result progress on the development of a covenant stalled in 1950.

Having voted for the adoption of the UDHR to satisfy international pressure rather than out of genuine support for the document, the Canadian government had little enthusiasm for another international human rights agreement. Federal policy makers continued to point to constitutional constraints as their greatest area of concern, but Canada's resistance was again influenced by reservations over how the draft Covenant articulated and defined rights, and how these rights would be implemented and enforced. From 1949 to 1952, the most contentious issue surrounding the document was the question of whether or not to include articles providing for economic and social rights.

¹ The terms covenant and convention are used interchangeably to describe international agreements that can be bilateral or multilateral. According to the Canadian government, "A convention (covenant, treaty)

Canadian policy makers strongly opposed the inclusion of these rights in an international agreement, and Canadian participation in this period was shaped by attempts to have these articles removed. Working with, although not always supporting, the position of the United States and Britain, Canadian policy makers also pushed for the inclusion of federal state and colonial clauses.² Unsure as to whether or not these demands would be met, the Canadian government instructed its delegates to the United Nations to remain on the periphery of debates and to avoid making any comments that could be interpreted as support for the draft. There was little pressure on the government to take a more positive approach, as rights organizations and activists in Canada continued to focus on domestic developments throughout this period.

As a result of the fierce debate among member states, the UN's General Assembly voted in 1951 to instruct the Commission on Human Rights to rework its first draft into two distinct covenants, separating economic and social rights from the more traditional civil and political rights. This process took two years, and in 1953 the Commission presented its draft Covenant on Civil and Political Rights, and its draft Covenant on Economic, Social and Cultural Rights to members of ECOSOC. The debates among member states of the United Nations between 1949 and 1953, therefore, determined the shape of and the general principles behind these covenants. This chapter will examine Canadian participation in these debates, and argue that this period represents Canada's most intense opposition to human rights initiatives at the United Nations. Policy makers

² A federal state clause would allow federal states to agree to a covenant that may include articles falling within the jurisdiction of their constituent states or provinces, without obligating those states or provinces to implement those articles. A colonial or territorial clause would permit colonial states to determine to what extent, if at all, a covenant would apply to dependent territories.

refused to accept the expansive definition of universal human rights, and resisted the idea of submitting Canadian policy to the scrutiny of standards set at the UN. At the same time, developments at home set the stage for a change in policy, generating pressure on the government to be more supportive of a covenant on human rights by the late-1950s.

Canada's Response to the Draft First Covenant on Human Rights

A single covenant on human rights had been drafted as part of the International Bill of Rights in 1947. As the United Nations focused on adopting its Declaration of Human Rights, however, there was no time to consider this covenant. Only after the adoption of the UDHR in December 1948, did the Commission on Human Rights return its attention to the other components of its Bill of Rights. The purpose of a covenant was to act as a clearer articulation of both the specific rights outlined in the Declaration, and their limitations. A covenant would create a binding multilateral agreement for the promotion and protection of the rights outlined in the UDHR, and set specific measures for their implementation.

Throughout its fifth session in 1949, the Commission on Human Rights resolved to revise the draft Covenant and hand it to the General Assembly within a year.³ Determined to achieve a speedy adoption, the Commission excluded the articles that had generated the most controversy in debates over the Declaration: articles twenty-two through twenty-seven, protecting the right to work, to just working conditions, social security, education, adequate health, and to participate in cultural life. Instead, the draft

³ 11 UN ESCOR Supp (No 5) 1950; UN Doc E/CN.4/SR.377-9

Covenant was limited to civil and political rights such as the right to life and liberty, fundamental freedoms, legal rights allowing for equal protection under the law, and the prohibition of slavery and torture. The Commission styled this as a “First Covenant,” with the intention that economic and social rights would be included in a later document.⁴

A revised version of the draft First Covenant was released to member states with a request for comments. The federal Department of External Affairs resumed its responsibility for reporting to the UN, and preparing instructions for the Canadian delegates, subject to the approval of Cabinet and the prime minister. Recognizing the different legal implications of a covenant, External Affairs sought the advice of both its own Legal Division, and the Department of Justice. Minister of Justice and Attorney General Stuart Garson provided specific comments on the draft Covenant, and External Affairs relied upon these comments heavily in setting its policy. The government also resurrected its Interdepartmental Committee on Human Rights to provide support, which included representatives from External Affairs, Justice and the Privy Council.⁵ Other federal departments expressed only limited interest.⁶ The draft First Covenant did not generate much discussion within the House of Commons, and there is little evidence that Members of Parliament questioned the emergence of a discourse of universal human

⁴ Memo to Cabinet from the Department of External Affairs, 1950, File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC.

⁵ Memo from A.J. Pick to Under-Secretary of State for External Affairs, 10 July 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

⁶ Ibid. Initially, the interest of other departments was limited to one or two articles. For example, Citizenship and Immigration was only interested in Article 8 of the draft Covenant, on freedom of movement.

rights at the UN, or the Liberal Government's position toward a covenant.⁷ When MPs did broach questions of rights, it was almost exclusively in a domestic context, using the language of civil liberties. As it was not in the interest of External Affairs to solicit broader political or public opinion on Canada's policy to an international covenant on human rights, they did not.⁸ The majority of Canadians remained unaware of the developments at the United Nations. There was also no dialogue in this period between the federal and provincial governments relating to the draft Covenant.⁹ Instead, it was a select group of federal civil servants and politicians, largely from External Affairs and Justice, many of whom had resisted the adoption of the UDHR, who determined Canadian policy toward the United Nation's first attempt at a covenant on human rights.¹⁰

Within the larger context of Canadian foreign policy in the early 1950s, international human rights remained a low priority. The government was involved at the UN in post war reconstruction efforts and the resettlement of war refugees. Cold War

⁷ Two private members resolutions were submitted to have Parliament ratify the UDHR, but in each case the Liberals disposed of the issue by explaining the UDHR did not require ratification. There was no prolonged discussion of how the instrument defined rights. Canada. *House of Commons Debates*. 21 May 1951, 28 February 1952, and 7 December 1953.

⁸ Within the records of the Department of External Affairs relating to the Covenants on Human Rights in this period (File 5475, RG25, LAC), there are a small number of unsolicited letters from individuals or organizations outside of government inquiring as to the status of, or providing opinions on the adoption of these instruments. There is little evidence as to how, or if, External Affairs responded. There is also no evidence of any studies of how opposition parties, non-governmental organizations, or the broader public would respond to a covenant on human rights.

⁹ In 1956, External Affairs reported that, to date, there had been no communication with the provinces over the UDHR or Covenants. E.G. Lee to File, 20 November 1956, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC.

¹⁰ The two divisions of External Affairs most involved in the development of an international covenant on human rights were the UN Division (headed by Robert Riddell) and Legal Division (led by A.J. Pick). Lester Pearson was the Secretary of State for External Affairs, although there is little evidence he took an active role in setting policy toward the draft Covenant. Arnold Heeney (the Under-Secretary), Escott Reid (Deputy Under-Secretary), and Léon Mayrand (Assistant Deputy Under-Secretary) were more heavily involved. Within the Department of Justice, Minister Stuart Garson commented regularly on the draft Covenant and David Mundell sat on the Interdepartmental Committee.

tensions had reached new heights, and erupted into conflict in Korea. Policy makers in External Affairs were focused on establishing Canada's position in a newly aligned world, particularly given the decline of Britain's Empire and the rise in power of the United States.¹¹ Given these other concerns, Canadian officials questioned both the need for an international treaty on human rights, and its usefulness to Canada.

Concerns over international human rights were more visible in the foreign policy of Canada's closest allies. British legal historian A.W. Simpson argues, for example, that the British Cabinet saw the protection of rights and freedoms as a major component of British foreign policy in Europe in the late 1940s, and so advocated the quick adoption of a binding covenant on human rights at the UN.¹² The British Foreign Office viewed human rights as a matter of foreign relations, and a "resource" to be used in dealing with other states, particular the Soviet Union.¹³ While international human rights may not have been a priority for the United States, the American government also recognized the propaganda value of a covenant on human rights, particularly one that reflected Western understandings of rights. The Australian government supported a covenant for more ideological reasons. Under the leadership of Labor Prime Minister Ben Chifley and Minister of External Affairs H.V. Evatt, Australia advocated the inclusion of economic and social rights into the UN's human rights instruments, viewing a covenant as a tool to

¹¹ For an examination of Canadian foreign policy interests in the 1950s, see Robert Bothwell, *Alliance and Illusion*; Steven Kendall Holloway, *Canadian Foreign Policy: Defining the National Interest* (Peterborough: Broadview Press, 2006); Greg Donaghy, ed. *Canada and the Early Cold War, 1943-1957* (Ottawa: Department of Foreign Affairs and International Trade, 1998); Reginald Whitaker and Steve Hewitt, *Canada and the Cold War* (Toronto: Lorimer, 2003); and Philip Buckner, ed., *Canada and the End of Empire* (Vancouver: UBC Press, 2005).

¹² A.W. Brian Simpson, *Human Rights and the End of Empire*, 337.

¹³ *Ibid.*

promote higher levels of governmental responsibility over economic and social programs among member states of the UN.¹⁴ Australia was therefore actively involved in the UN Commission on Human Rights and debates over the draft First Covenant. The Canadian government was far less enthusiastic.

The Department of External Affairs attributed its lack of interest in a covenant to “skepticism as to the value of the international instruments to protect rights.”¹⁵ Minister of Justice Stuart Garson declared in 1950 that Canadian law already provided most of the provisions included in the draft, and argued it could only have been designed to improve conditions in *other* countries.¹⁶ Having already supported a declaration on human rights, officials within these departments were unsure as to the need for another instrument, particularly one that would bind signatory states. Canada would not be able to take the same position toward a covenant as it had with the UDHR, supporting it with officially stated reservations.¹⁷ David Mundell, a Justice representative on the Interdepartmental Committee, suggested the United Nations should go no further than the UDHR in its attempts to legislate international human rights. He argued it was “hopeless” to expect a covenant could ever be implemented because those states in need of such a convention would never follow it, while states for which it was unnecessary, like Canada, would only be opening themselves up to propaganda attacks through the use of the new machinery of

¹⁴ Australia’s support for both economic and social rights, and the draft Covenant, waned in the 1950s. Annemarie Devereux, *Australia and the Birth of the International Bill of Human Rights 1946-1966*.

¹⁵ Department of External Affairs to Heads of Canadian Posts Abroad, 31 December 1953, File 5475-W-40-9, Vol. 6409, RG25, LAC.

¹⁶ Stuart Garson, Minister of Justice, to Lester Pearson, Secretary of State for External Affairs, 30 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

¹⁷ A.D.P. Heeney, Under-Secretary of State for External Affairs, to N.F.H. Berlis, Secretary of the Canadian Permanent Representation to the European Office of the United Nations, 4 July 1949, File 5475-DS-1-40, Vol. 3701, RG25, LAC.

the international human rights regime.¹⁸ Given the onset of the Cold War, this was not an unrealistic assessment. Many civil servants within the Department of External Affairs shared Mundell's views.¹⁹

The Canadian government did not respond to the Commission on Human Rights' request for comments on the draft Covenant. The different groups involved in advising the government on Canada's position, including External Affairs, Justice, and the Interdepartmental Committee, prepared reports summarizing their views on both the content of the instrument and its impact on Canadian policy.²⁰ These reports were similar in many ways, which is not surprising considering that the Interdepartmental Committee was comprised largely of officials from External Affairs and Justice, and that External Affairs relied so heavily on Stuart Garson's comments in their own report. The reports eventually became the basis for Canada's criticisms of the Covenant, and centered around several key concerns, many of which were present during debates over the UDHR: the language of the document, its definition of rights, the question of economic and social rights in particular, the possible impact of a covenant on Canadian policy, proposed measures of implementation, and questions over jurisdiction.

There were differences in how officials advised the government to proceed at the UN. None of the reports suggested Canada should push for a quick adoption of the draft,

¹⁸ "Minutes and Comments of the First Meeting of the Interdepartmental Committee," 26/27 July 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

¹⁹ *Ibid.*, A.D.P. Heeney to the Chairman of the Canadian Delegation to the United Nations, 13 July 1950.

²⁰ "Draft Statement of Canadian Views on the International Covenant on Human Rights," A.J. Pick, Department of External Affairs, 19 April 1950, File 5475-W-40 2.1, Vol. 6407, RG25, LAC; Stuart Garson, Minister of Justice, to Lester Pearson, Secretary of State for External Affairs, 30 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC; and Statement by L. Mayrand, Assistant Secretary of State for External Affairs, to the Special Senate Committee on Human Rights and Fundamental Freedoms, 3 May 1950, File 5475-W-8-40, Vol. 8118, RG25, LAC.

or viewed a covenant as beneficial to Canadian domestic or foreign policy. Instead, Stuart Garson and civil servants within the Ministry of Justice and the Legal Division of External Affairs were inclined to focus more on how the draft Covenant would negatively impact specific legislation in Canada, and were therefore strongly opposed to its adoption. David Mundell argued a covenant on human rights might set a precedent for international agreements that set limits on Canada's freedom of action, and for that reason advised Canada not to support it.²¹ Stuart Garson agreed that, if the government had a free choice in the matter, Canada should oppose the draft.²² Members of the Interdepartmental Committee, however, felt that Canada may already be bound to support a covenant because of the obligations incurred in signing the Charter of the United Nations, and Canada's support for the UDHR. The Interdepartmental Committee went so far as to report to Cabinet that, "The protection of human rights is now a matter of international concern and has ceased to be one of exclusive domestic jurisdiction of States."²³ While this committee did not support the draft Covenant in its current form, and had many of the same reservations as Garson, rather than advising the government to oppose the document outright, it suggested Canadian delegates, "state that the present text of the draft Covenant is not satisfactory and will require substantial revision, particularly as regards its form, before Canada will be in a position to vote in favour of it."²⁴ External Affairs remained

²¹ "Minutes and Comments of the First Meeting of the Interdepartmental Committee," 26/27 July 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

²² Stuart Garson, Minister of Justice, to Lester Pearson, Secretary of State for External Affairs, 30 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

²³ Memo to Cabinet, from the Interdepartment Committee on Human Rights, 8 September 1950, File 5475-W-40, Part 3.1, Vol. 6408, RG25, LAC.

²⁴ *Ibid.*, 7.

undecided throughout 1950 and 1951 on which approach to take, and therefore sent no comments to the UN Commission on Human Rights outlining Canada's position.

Officials felt it was “inadvisable to make even preliminary comments which might be interpreted as committing the Canadian government to a particular position before the whole document was subjected to detailed scrutiny.”²⁵ As it had in 1948 with the UDHR, the department instructed delegates to hold off on participating in debates over specific articles at the UN, encouraging them instead to reiterate Canada's general support for human rights principles and outline the government's more general concerns.²⁶

Of these concerns, delegates almost exclusively pointed to constitutional issues when justifying Canada's hesitation at the UN. Under-Secretary of State A.D.P. Heeney told the Canadian delegation to emphasize that the draft First Covenant could cause “difficult domestic problems” for Canada as a result of possible conflicts of jurisdiction between the federal and provincial governments.²⁷ Federal-provincial relations were a significant issue for Canadian politicians. In the late 1930s, Mackenzie King had established the Rowell-Sirois Commission to study the distribution of powers between the provincial and federal governments. Aided in part by the recommendations of this commission, King obtained agreement from the provinces to centralize power to aid efforts in the Second World War and help guide post war reconstruction. By the late

²⁵ Memo to the Special Senate Committee on Human Rights and Fundamental Freedoms, 24 April 1950, File 5475-W-8-40, Vol. 8118, RG25, LAC.

²⁶ Telegram from the Secretary of State for External Affairs to the Permanent Representative of Canada at the UN, “Instructions re: Covenant,” 13 July 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

²⁷ A.D.P. Heeney, Under-Secretary of State for External Affairs, to N.F.H. Berlis, Secretary of the Canadian Permanent Representation to the European Office of the United Nations, 4 July 1949, File 5475-DS-1-40, Vol. 3701, RG25, LAC.

1940s, however, provinces such as Nova Scotia, Quebec, Ontario and Alberta were challenging this centralized federal authority.²⁸ None of these provinces posed a specific concern for policy makers relating to the draft Covenant, however. Even Quebec, which in the 1970s would demand its own authority in the field of international relations, was disinterested in the 1950s in human rights initiatives at the UN. There were legitimate concerns, however, as to whether the federal government would have the authority to enforce the provisions of a covenant on human rights that fell within provincial jurisdiction, particularly in the provinces that were already resisting centralization. It was therefore in the best interest of the federal government to show respect for Canadian federalism when working at the United Nations. Within the Ministry of Justice, there was a sense that Canadian support for the Covenant could be “a political weapon of considerable force” for proponents of provincial rights.²⁹ Officials warned that it would be unwise to agree to support the instrument without consultation with provincial governments.

Historian Michael Behiels argues that, because a covenant was a similar instrument to the ILO conventions that had proven so problematic for Canada’s federal government in the 1930s, it was natural that Canadian policy toward the draft Covenant would be driven primarily by constitutional constraints.³⁰ Officials within External Affairs

²⁸ For an overview of federal-provincial relations in this period, see Dimitry Anastakis and P.E. Bryden, eds., *Framing Canadian Federalism: Historical Essays in Honour of John T. Saywell* (Toronto: University of Toronto Press, 2009).

²⁹ “Observations by Mr. Garson on First Draft of International Covenant on Human Rights,” 27 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

³⁰ Michael Behiels, “Canada and the Implementation of International Instruments of Human Rights,” 151-184.

were therefore only being honest with the international community when they stated that the implementation and enforcement of the draft Covenant's articles would be difficult given Canada's federal system. To take this further, it could be argued that the Canadian government should be commended for its honesty and realism when other states, such as the United States or the Soviet Union, both of whom supported the adoption of a covenant in the late 1940s, had no genuine intention to implement its provisions. Canada was also in a much different position than its Commonwealth allies; Britain and New Zealand were unitary states, and although Australia had a federal system, its states were very weak. From this perspective, Canada's approach to the draft Covenant is understandable. The problem, however, is that too close a focus on Canada's constitutional issues obscures the extent to which Canadian federal policy makers also opposed the *substance* of the draft Covenant and had little desire to see its provisions implemented or enforced.

Jurisdictional issues aside, the civil servants responsible for setting Canada's policy were reluctant to support the instrument because the concept of universal human rights it articulated conflicted with their own limited vision of rights, particularly in its inclusion of articles to protect economic and social rights, and collective rights. Even in regards to civil and political rights, they worried that if articles were too narrowly written they would restrict the ability of the Canadian government to set its own policies and to decide to whom these policies applied. These concerns, which had been apparent in debates over the UDHR, became more pronounced when Canadian policy makers considered the impact of a binding international human rights instrument. Federal officials simply could

not, and would not, accept the need for an international covenant that included such an expansive interpretation of human rights.

The genuine concerns over jurisdiction therefore benefited policy makers who opposed the content of the draft Covenant but were afraid to make this opposition public lest they be accused of opposing human rights more generally. The federal government did not mislead the international community when it spoke of its constitutional constraints, but it made no attempt to resolve the issue. It was not in the interest of the Department of External Affairs to discuss the draft First Covenant with the provinces or test provincial attitudes throughout the 1950s, so it did not.³¹ Federal officials did nothing to persuade provincial authorities, or Canadians more generally, of the urgency of adopting international agreements protecting universal human rights because they did not want to take any positive action toward international instruments they saw as both unnecessary and potentially embarrassing for Canada.

Instead, External Affairs instructed delegates to make clear that the addition of a federal state clause was required in order for Canada to support any covenant on human rights. This clause would allow states to become party to the Covenant without being bound by international law to carry out obligations that would be under the jurisdiction of its provincial governments. The push to include the federal state clause came to define Canada's participation in debates over international human rights throughout the 1950s. Representatives from other member states of the UN accused Canada of linking its

³¹ E.G. Lee to File, 20 November 1956, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC.

support of the Covenants to the federal clause in order to provide a future justification for failing to support or ratify the instruments.³²

Canadian Opposition to the Draft Covenant

A.J. Pick, a legal advisor within External Affairs, complained that, because human rights in Canada were largely a matter of common law, it was difficult to comment critically on the First Covenant because Canada had no basis for comparison.³³ As a legal document, officials agreed that a covenant needed proper statutory language and should be as precise as possible, but had questions as to whether it should include general rules only or list specific limitations and exceptions to each article. If limitations and exceptions were included, how could the document possibly accommodate the range of different legal and social systems represented in the United Nations? From the standpoint of Canada's political alignment, did officials really want a covenant that accommodated all of these systems?³⁴ Canadian delegate G. Davidson complained to members of ECOSOC that, in attempting to find common ground between member states, the UN Commission had drafted articles that were often inconsistent, sometimes with "burdensome detail" while at other times too vague.³⁵ The problem, as Minister of Justice Stuart Garson saw it, was that the draft Covenant was neither clear nor comprehensive,

³² M. Cadieux to Legal Division, Department of External Affairs, 17 October 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

³³ Memo from A.J. Pick, Legal to E. Reid, Department of External Affairs, 19 April 1950, File 54-75-W-40, Part 2.1, Vol. 6407, RG25, LAC, p. 1.

³⁴ "Instructions for Canadian Delegates at the 11th Session of ECOSOC," Department of External Affairs, 17 June 1950, File 5475-DS-10-40, Part 1, Vol. 6436, RG25, LAC.

³⁵ Speech by G. Davidson to ECOSOC, 25 July 1950, File 5475-W-40, Part 3.1, Vol. 6408, RG25, LAC.

acting as “some sort of hybrid between a general statement and an American style Bill of Rights.”³⁶ The uneven language and structure of the document alarmed Canadian policy makers, especially those in the Ministry of Justice.

All of the Canadian civil servants involved in the internal discussions over Canada’s policy approach to the draft Covenant had difficulty coming to terms with the way in which rights were defined in the document. As they had with the Declaration, officials argued for a more simplistic definition of rights that focused on individual civil and political rights. This was in line with the position of most Western powers at the UN at the time. Accordingly, Canada opposed any articles in the First Covenant it believed articulated collective rights. It did so on the basis that these were neither rights nor principles under international law. Canada used these arguments to justify its opposition to the inclusion of articles on self-determination. While the delegation assured other member states that it was sympathetic to the “problem” of self-determination, Canada could not support its inclusion in a covenant because it saw the issue as “more of a goal than a right” and “a collective matter rather than an individual human right.”³⁷ Canada met privately with other delegations that were opposed to the inclusion of an article on self-determination to discuss how best to proceed, including the United Kingdom, France, Belgium, the Netherlands, Norway, Denmark, Sweden, Turkey, Australia, New Zealand,

³⁶ Stuart Garson, Minister of Justice, to Lester Pearson, Secretary of State for External Affairs, 30 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC, p. 1.

³⁷ “Final Report on Item No. 28: Draft International Covenants on Human Rights,” 1955, File 5475-W-40, Part 12, Vol. 6923, RG25, LAC.

and Brazil.³⁸ The Canadian government also opposed suggestions from Yugoslavia to include articles to protect the language and other rights of minorities. External Affairs instructed its delegates, “As a country of immigration and a country where all residents are substantially treated equally, we would be reluctant to support such legal provisions for the perpetuation of minority characteristics.”³⁹ This comment illustrates the extent to which these policy makers ignored the discrimination that many Canadians experienced daily. It also reflects a continued association of human rights with a classic liberal understanding of individual rights or civil liberties.

Canada’s official position against the inclusion of collective rights into the draft Covenant did not reflect the diversity of Canadian opinion on the issue of human rights, or the historic examples in Canadian law of protecting minority rights. Since 1867, minority language rights and the educational rights of religious minorities had been constitutionally guaranteed. Francophones in Canada had always understood their language rights as a collective issue. Aboriginal groups in Canada also defined rights in collective terms, and the federal government historically assigned rights to, or restricted, Aboriginal peoples as a group. The Numbered Treaties negotiated between the British government and Aboriginal groups in the late nineteenth and early twentieth century, and the Indian Act regulating the relationship between the federal government and indigenous

³⁸ The Canadian delegation makes reference to these meetings in its report to External Affairs. This report describes Australia, Turkey and “the colonial powers” as taking a hard line against self-determination, and the relatively “progressive” position of the Scandinavian states and Brazil in recognizing self-determination as a right but not wanting to see this right expressed in a covenant on human rights. Canada is presented as joining New Zealand in taking a “middle position.” Ibid, 17.

³⁹ A.J.Pick, Department of External Affairs, “Instructions for the Canadian Delegation to the ECOSOC Session at Geneva on Particular Articles of the Draft Covenant on Human Rights,” File 5475-DS-10-40, Part 1, Vol. 6923, RG25, LAC.

peoples, are examples of this. In 1950s Canada, however, the dominant discourse of rights within the federal government, particularly among the policy makers in External Affairs and Justice responsible for setting Canada's policy toward the Covenant, was that of individual rights, inherited from the British liberal tradition. This dominant discourse shaped Canada's response to the draft Covenant.

Economic and social rights provided an even greater challenge for these Canadian officials. The Canadian delegation was told to support any attempt to exclude these rights from the Covenant and, if the majority of states supported inclusion, to avoid participating in the debate and abstain on all votes.⁴⁰ Canada's position was that civil and political rights were fundamentally different from economic and social rights. The former were "safeguards against the abuse of power by Parliaments and Governments" whereas the latter were "essentially matters of detailed social legislation and economic and financial policy on both the national and international scale."⁴¹ According to this argument, economic and social rights, such as the right to work or to education, could not be achieved by simply declaring them in a covenant. They required the application of legislation, and for this reason were not considered legitimate rights by Canadian policy makers.⁴² At the United Nations, the Canadian delegation argued that economic and social rights could not be protected in the same manner as civil and political ones, largely because there was no way to create practical and enforceable legal remedies in the case of

⁴⁰ "Memorandum to Cabinet: General Instructions to the Canadian Delegation to the Thirteenth Session of ECOSOC," 23 July 1951, File 5475-DS-18, Part 1.1, Vol. 8126, RG25, LAC.

⁴¹ Statement by L. Mayrand to the Senate Committee on Human Rights and Fundamental Freedoms, 3 May 1950, File 5475-W-8-40, Vol. 8118, RG25, LAC.

⁴² "Memorandum to Cabinet: General Instructions to the Canadian Delegation to the Thirteenth Session of ECOSOC," 23 July 1951, File 5475-DS-18-40, Part 1.1, Vol. 8126, RG25, LAC.

their violation.”⁴³ In 1953, the Deputy Attorney General of Canada commented on economic, social and cultural rights by saying, “I am somewhat dubious about the effect of numerous articles which ‘recognize the right’ to certain things, but I presume that these have a certain value as an enunciation of idealistic objectives.”⁴⁴ Other delegates were far less supportive, such as L.A.D. Stephens who claimed that the Latin American and Asian countries that advocated for economic and social rights were looking to create a “welfare world.”⁴⁵

Opposition to the inclusion of economic and social rights into the draft Covenant was not limited to civil servants within the departments of External Affairs and Justice. It reflected a dominant understanding of rights within both the Liberal and Progressive Conservative parties in this period. Many party members were suspicious of economic and social rights, believing these rights to be a threat to the traditional values of individual freedom, the rule of law, and freedom in the marketplace.⁴⁶ Throughout the 1940s, the Liberal Government had opposed calls for a domestic bill of rights in part due to concerns over the inclusion of economic and social rights.⁴⁷ In 1948, Social Credit MP Ernest Hansell stood in the House of Commons and accused members of the Civil Rights Union, a civil liberties group advocating a national bill of rights that included economic rights, of

⁴³ Ibid., Part 1.3, Lester Pearson to Canadian Delegation to the Thirteenth Session of ECOSOC, 24 August, 1951.

⁴⁴ N.E. Curie, Department of External Affairs Memo, 22 October, 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

⁴⁵ “Canada and the United Nations 1951-52, Section II – Economic and Social,” L.A.D. Stephens, United Nations Division, Department of External Affairs, 14 June 1952, File 5475-W-40, Part 6, Vol. 6409, RG25, LAC.

⁴⁶ R. Brian Howe, “The Evolution of Human Rights Policy in Ontario,” *Canadian Journal of Political Science* 24, no. 4 (December 1991): 786.

⁴⁷ Ibid.

being Communists and “traitors” to the Canadian way of life.⁴⁸ While this was an extreme view, advocacy for these types of rights was believed to be the domain of the CCF, not the Liberals or Conservatives.⁴⁹

Tied to Canadian policy makers’ limited vision of rights was a narrow understanding of the role of governments in implementing human rights policies. Officials argued that the concept of rights embodied in the Universal Declaration and the draft First Covenant required state involvement not only in the protection of political and civil rights, but also to promote the economic, social and cultural well being of all. Civil servants within the departments of Justice and External Affairs noted that the First Covenant contained articles that called for greater government interference than was the tradition in Canada. Under-Secretary of State for External Affairs Jules Léger claimed this degree of interference was incompatible with Canada’s form of parliamentary democracy.⁵⁰ The Interdepartmental Committee had expressed this same concern during the process to adopt the Declaration, stating that some of the articles were “based on the premise that the State should be paternalistic” and that this may not be acceptable to the Canadian government, whose thinking was “laissez-faire.”⁵¹ The quasi-legal nature of the Declaration had soothed these concerns somewhat, but the draft First Covenant caused them to resurface.

⁴⁸ Canada, *House of Commons Debates*, Ernest G. Hansell, 12 April 1948, 2872.

⁴⁹ Carmela Patrias, “Socialists, Jews, and the 1947 Saskatchewan Bill of Rights,” 269.

⁵⁰ Jules Léger to the Minister, 29 Aug 1957, File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC.

⁵¹ “Report of the Interdepartmental Committee on Human Rights,” April 1948, File 5475-W-2-40, Part 1.1, Vol. 6281, RG25, LAC.

The Canadian government also had difficulty reconciling the obligations inherent in a covenant with their desire to maintain national sovereignty. In its initial response to the draft, the Department of External Affairs indicated it felt that the way in which rights and freedoms were promoted and protected in individual states was a matter of decision for that state, in accordance with its own constitution and traditions.⁵² By drafting international treaties that explicitly guaranteed a set of rights and freedoms for individuals around the world, the United Nations was implying that the way in which a state treated its citizens was no longer simply a matter for domestic law.⁵³ Minister of Justice Stuart Garson worried that a covenant on human rights might place Canadian legislation “under subordinate statutory authority” to international law, and asked why the government would want to “barter away” control over its own affairs.⁵⁴

Contrary to claims made by delegates at the United Nations that Canadian law already included all of the principles outlined in the draft Covenant, federal civil servants discussed in private their concerns over how an international instrument could be used to challenge existing legislation. The Interdepartmental Committee examined how the universality of the rights outlined in the draft Covenant would impact domestic policy and identified a number of provincial and federal statutes that would have to be altered or repealed to meet its standards. The most obvious examples continued to be federal and provincial elections acts, which continued to discriminate based on religion and race until

⁵² “Observations by Mr. Garson on First Draft of International Covenant on Human Rights,” 27 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

⁵³ Christopher MacLennan, *Toward the Charter*, Chapter 3.

⁵⁴ “Observations by Mr. Garson on First Draft of International Covenant on Human Rights,” 27 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC.

the 1960s.⁵⁵ Officials also cited provincial examples, such as Alberta's Communal Property Act, which prevented Hutterites from purchasing land in close proximity to other Hutterite communities, or Quebec's "Padlock Law."⁵⁶ Deputy Minister of Citizenship and Immigration, Laval Fortier, wrote a letter to External Affairs in defense of Canada's selective immigration policy, stating he was unwilling to enter into an international debate over the appropriateness of that policy.⁵⁷ Fortier also worried that some of the civil and political rights outlined in the draft Covenant could limit Canada's policy of deportation and its restrictions on issuing passports and visas.⁵⁸ Robert Gordon Robertson of Northern Affairs and Natural Resources wrote a similar letter to Jules Léger regarding Canada's policies toward "Eskimos" and other Aboriginal groups, claiming a covenant, "might well leave us vulnerable to outside criticism from those who do not, or who will not, understand the peculiar conditions of the north at this stage of human history."⁵⁹ The letters from Léger and Robertson illustrate a common understanding among federal officials at this time; that Canadian laws that discriminated did so in a manner that was acceptable within the particulars of Canadian society, but that this would

⁵⁵ Universal adult suffrage was not fully achieved federally until 1960, with the unqualified extension of voting rights to all Aboriginals under the *Act to Amend the Canada Elections Act*. It was not fully achieved provincially until 1969, when Quebec became the last province to remove its voting restrictions (on Aboriginals.) The federal government and provinces such as British Columbia and Alberta also denied franchise to Doukhobors, Hutterites and Mennonites until 1955.

⁵⁶ Hutterite communities had to be at least 40 km from existing communities, and the size of their land holdings was limited. *Alberta Communal Property Act*, S.A. 1947, c.16. The Interdepartmental Committee on Human Rights had noted these laws, and laws in Quebec limiting women and Jehovah's Witnesses, as conflicting with the principles of the International Bill of Rights.

⁵⁷ Laval Fortier to Under-Secretary of State for External Affairs, 22 February 1955, File 1-24-27, Part 1, Vol. 81, RG26, LAC.

⁵⁸ Letter from Laval Fortier, Citizenship and Immigration, to M.H. Wershof, External Affairs, 13 November 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

⁵⁹ Letter from R.G. Robertson, Deputy Minister of Northern Affairs and Natural Resources, to Jules Léger, External Affairs, 12 March 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

not be well understood by outsiders. This fear was enhanced because Canadian officials were unsure as to exactly how a covenant on human rights would be implemented and enforced, as the measures for implementation remained incomplete. They questioned the type of UN committee that would be created to enforce the Covenant, who would inform the judgments of this committee and what relationship would exist between this committee and Canadian authorities.⁶⁰

Finally, the departments of External Affairs and Justice were also concerned that activists within Canada would use the adoption of an international covenant to pressure the government into adopting domestic laws it did not support. For example, Stuart Garson worried that a covenant would provide ammunition for advocates of a national bill of rights.⁶¹ The Liberal Party had opposed a Canadian bill of rights since the 1940s on the basis that these rights were already inherently protected by Parliament and the rule of law.⁶²

Canadian Participation in Debates over a Covenant at the United Nations

Canada was in a minority position at the United Nations in its lack of support for a covenant on human rights. Its closest allies, the United States and Britain, had

⁶⁰ “Draft Statement of Canadian Views on the International Covenant on Human Rights,” A.J. Pick, Department of External Affairs, 19 April 1950, File 5475-W-40 2.1, Vol. 6407, RG25, LAC; Stuart Garson, Minister of Justice, to Lester Pearson, Secretary of State for External Affairs, 30 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC; and Statement by L. Mayrand, Assistant Secretary of State for External Affairs, to the Special Senate Committee on Human Rights and Fundamental Freedoms, 3 May 1950, File 5475-W-8-40, Vol. 8118, RG25, LAC.

⁶¹ “Observations by Mr. Garson on First Draft of International Covenant on Human Rights,” 27 June 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC; Dispatch to the Chairman of the Canadian Delegation to ECOSOC from the Department of External Affairs, 13 July 1950, File 5475-W-40, part 2.2, Vol. 6408, RG25, LAC.

⁶² MacLennan, *Toward the Charter*.

championed the UDHR, and in 1949 supported the quick adoption of a covenant as well. In contrast, Canada's approach wavered between a desire that the Covenant would either be abandoned altogether, hope that if it was completed its content would be such that Canada could easily oppose it, and a fear that if it emerged in a form Canada felt obliged to sign, it would contain articles that would be problematic.⁶³ While the United States pushed in early 1950 to have the draft First Covenant passed quickly to the General Assembly, the Canadian delegation supported a more detailed examination in both ECOSOC and the Commission on Human Rights, hoping to delay its progress.⁶⁴

The Canadian government worried that any active participation in the debates would be interpreted as a sign that Canada was committed to the Covenant. Officials urged Canadian delegates to refrain from participating in the discussions over articles it opposed, and to abstain from voting on many proposals and amendments. Uncertain of the status of a federal clause, the Canadian delegation was also instructed not to participate in discussions in areas deemed to be outside federal jurisdiction. Even relating to articles it supported, the delegation was told to avoid specific statements of support or enthusiasm because the most modest expressions of support could potentially be awkward. In 1951, members of External Affairs became upset when a Canadian delegate referred to the covenant as an “admirable project” and a “positive achievement.”⁶⁵ Deputy

⁶³ This indecisive approach to the Covenants was noted in a 1956 internal memo of the Department of External Affairs. M. Cadieux, 23 October 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

⁶⁴ Margaret Meagher, Canadian Delegation to the United Nations, to John Holmes, 24 August 1950, File 5475-W-40, 3.1, Vol. 6408, RG25, LAC.

⁶⁵ “Statement by Delegate of Canada, Mrs. R.J. Marshall, In the Third Committee of the Sixth Session of the General Assembly on the Draft International Covenant on Human Rights,” 1951, File 5475-W-40, Part 6, File 5.2, Vol. 6409, RG25, LAC.

Under-Secretary of State for External Affairs Escott Reid worried how this wording would misrepresent a government that, in his own words, “considers that the project is far from admirable and sincerely hopes that it will be stillborn.”⁶⁶ Reid and A.D.P. Heeney contacted the head of the Canadian delegation in Paris and requested that, from that point forward, Stuart Garson do all the speaking.⁶⁷ Canada also refused an invitation to sit as a representative on the UN Commission on Human Rights out of fear that such ‘active’ participation would be interpreted as support for the Covenant. When Canada was approached to join this Commission in 1953, Acting Under-Secretary of State S. Morley Scott argued that, as its attitude towards the Covenants had been so “luke-warm,” the government would gain little from a seat.⁶⁸

The contributions Canada did make to negotiations over the Covenant were largely critical. Policy makers took a very legalistic approach to the document because a covenant was a binding agreement. This led to two seemingly contradictory criticisms. First, officials, particularly in the Department of Justice, claimed the language used in the draft was too imprecise to be effective, pointing to the use of vague terms such as democracy, peoples and nations, and ambiguous statements like “within a reasonable time.”⁶⁹ Yet these same officials also resisted attempts to make the Covenant more specific through the inclusion of lists of restrictions and limitations. Stuart Garson warned that such lists could have the effect of overriding the basic rights outlined in the

⁶⁶ Ibid., Escott Reid to A.D.P. Heeney, 3 January 1952.

⁶⁷ Ibid., A.D.P. Heeney to David M. Johnston, Permanent Delegate of Canada to the UN, 4 January 1952.

⁶⁸ “Report on work of Sixteenth Session of ECOSOC,” S. Morley Scott, 1952, File 5475-W-40, Vol. 6409, RG25, LAC. Canada did not sit on the Commission on Human Rights until 1963.

⁶⁹ A.J. Pick to Escott Reid, 19 April 1950, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

Covenant.⁷⁰ At times these two criticisms appeared in the same documents. The challenge was in drafting a covenant that was consistent, precise and definite *without* listing limitations and exceptions within each article. The Canadian government seemed disinclined to help work towards this goal, however, and Canada offered few amendments to improve the details of the draft. Instead, delegates were instructed to only support the text for articles that included a clear statement of principle with no details about how the article would be implemented, or any comprehensive definition of the right. In all other cases, the delegates were to refrain from participating in the discussions and abstain in all votes.⁷¹ This excluded Canada from the majority of discussions, preventing delegates from constructively contributing to the development of the Covenant.

During this same period, many of Canada's closest allies began to reevaluate their own position toward an international covenant on human rights. Under the leadership of Democratic President Harry Truman, the US State Department had reluctantly supported American involvement in the development of an International Bill of Rights. Shortly after Republican President Dwight Eisenhower was elected in 1952, however, newly appointed Secretary of State John Foster Dulles announced that, due to an unfavourable climate at home, the United States did not plan to ratify the Covenant.⁷² Human rights issues had

⁷⁰ "Draft Statement of Canadian Views on International Covenant on Human Rights," 19 April 1950, File 5475-W-40, Part 2.1, Vol. 6407, RG25, LAC. This criticism appeared in the same report as that which called for more precise language: A.J. Pick to Escott Reid, 19 April 1950.

⁷¹ These instructions came as early as July 1950. Memo from A.D.P. Heeney to the Chairman of the Canadian Delegation to the United Nations, 13 July 1950, File 5475-W-40, Part 2.2, Vol. 6408, RG25, LAC. They were reiterated when the General Assembly began its article-by-article examination of the Covenants in 1956. "Report of the Eleventh Session of the Third Committee," 1956, File 1-24-27, Part 2, Vol. 82, RG26, LAC.

⁷² The American member of the Commission on Human Rights (Mrs. O.B. Lord) repeated this announcement at the United Nations on 8 April 1953. *Ibid.*, 205.

become progressively political by the early 1950s, and American politicians were less convinced the final form of a covenant on human rights would be compatible with American interests.⁷³ Consequently, the US government instructed its delegates to withdraw from active participation in the debates. By mid-decade, Canada's Department of External Affairs reported that other "friendly" states such as Britain, Australia and, to a lesser extent, New Zealand, were all becoming increasingly "unsympathetic" toward a covenant on human rights.⁷⁴ These shifts in policy were the result of a changing domestic and international environment, as the process to adopt an international treaty on human rights was hampered by the mounting political and ideological divisions of the 1950s

International Tensions

In their broad history on the human rights movement at the United Nations, Roger Normand and Sarah Zaidi argue that the divisions among member states in the 1950s over human rights illustrate the "reemergence of competing national interests" after a brief period of consensus at the end of the Second World War.⁷⁵ Conflicts over how to articulate the concept of universal human rights into a legally binding covenant were shaped by many international factors. The emergence of the Cold War heightened political and ideological tensions between the Soviet Union and the United States, and the process of decolonization brought anti-imperial discourses into discussions over rights.

⁷³ Mary Ann Glendon, *A World Made New*, Chapter 11.

⁷⁴ Jules Léger to John Diefenbaker, 29 August 1957, File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC.

⁷⁵ Roger Normand and Sarah Zaidi, *Human Rights at the UN*, 241.

These pressures were made more complex when added to the desire of world powers to protect their own national sovereignty by resisting strong measures of implementation.

The United States, Britain and the Soviet Union had initially objected to the inclusion of human rights provisions into the Charter of the United Nations on the grounds that such provisions would infringe on national sovereignty.⁷⁶ These concerns had been alleviated by the inclusion of a domestic jurisdiction clause. In 1948, both the United States and Britain supported the adoption of the UDHR, recognizing the opportunity to promote human rights principles without imposing legal obligations on states, and taking the opportunity to promote their own understandings of rights throughout the post war world. The Soviet Union opposed the Declaration, however, arguing it was a Western document, and feeling anxious as to how it would impact national policy. When the draft First Covenant was presented to member states for comment, the Soviets and their allies supported the inclusion of articles on economic and social rights, but argued that these rights would be best enforced by increasing the power of national governments in these areas rather than forcing states to be accountable to an international supervisory system.⁷⁷ Both the Soviets and the Americans opposed all measures of implementation except annual reports. In 1949, the United States went so far as to propose the inclusion of a general limitation clause that would allow states to

⁷⁶ Samuel Moyn, *The Last Utopia*, 62; Mark Mazower, 391; and Normand and Zaidi, 113-120.

⁷⁷ The Canadian delegation mentioned the Soviet position toward implementation several times in its telegrams to External Affairs. For example “Report from UN on the work of the Human Rights Commission,” 14 June 1952, File 5474-W-40, Part 6, Vol. 6409, RG25, LAC; Normand and Zaidi, 201.

disregard articles that were inconsistent with their domestic laws.⁷⁸ The majority of other Western states, including Canada, supported strong measures of implementation, but this position was undermined by their insistence on the inclusion of clauses that would limit the application of a covenant in federal states or dependent territories.⁷⁹ The Canadian Department of External Affairs recommended to Cabinet that Canada continue to investigate the possibility of inserting some form of reservation clause into the draft.⁸⁰ This position frustrated Canadian John Humphrey and other members of the Human Rights Commission, who argued the great powers were attempting to undercut the authority and scope of the draft Covenant.⁸¹

By 1950, the tensions of the Cold War were out in the open and causing evident conflict within the United Nations. Events such as the 1948 Communist coup in Czechoslovakia and the 1948-49 Berlin Blockade had a tremendous impact on relations between the Soviet Union and Western states. This carried over into debates at the United Nations, as human rights became a propaganda tool in the ideological war between the Soviets and the Americans, and their allies.⁸² Cold War events further aggravated the

⁷⁸ Even Eleanor Roosevelt considered pushing for weak implementation measures out of fear that the United States would never ratify a covenant on human rights. Glendon, 195; and Normand and Zaidi, 202.

⁷⁹ In 1950, the Canadian delegation to the Fifth Session of the General Assembly reported to Lester Pearson on the debates over implementation at the UN. "Report from the Canadian Delegation on Fifth Session of the General Assembly," 28 October 1950, File 5475-W-4-, Part 3.2, Vol. 6408, RG25; also Normand and Zaidi, 200.

⁸⁰ "Memo to Cabinet on Covenant," Canadian Department of External Affairs, 8 September 1950, File 5475-W-40, Part 3.1, Vol. 6408, RG25, LAC.

⁸¹ A.J. Hobbins, ed., *On the Edge of Greatness*, 174.

⁸² For a wider discussion of the impact of the Cold War on the United Nations, see Stanley Meisler, *United Nations: The First Fifty Years* (New York: Atlantic Monthly Press, 1995); Norrie MacQueen, *The United Nations, Peace Operations and the Cold War, Second Edition* (New York: Addison-Wesley Longman, 2011). For a discussion specific to the impact of the Cold War on human rights initiatives at the UN, see Normand and Zaidi, especially 197-200.

already difficult atmosphere at the UN. The Eleventh Session of ECOSOC, during which member states debated the content of the draft First Covenant, began only days after the outbreak of the Korean War. A final decision over the inclusion of economic and social rights into the Covenant was delayed until 1951, due in part to the Soviet boycott of UN functions over the issue of Chinese representation.⁸³ Debates over the draft Covenant became bogged down in Cold War rhetoric. Most vocal within the Soviet bloc were delegates from the Soviet Union and Poland, who attacked Western states for perpetuating racially discriminatory laws, and condemned the United States for, “its warmongering policies and its economic exploitation of underdeveloped countries.”⁸⁴ The United States, and to a lesser extent Britain and France, responded by accusing the Soviet Union of “totalitarian” rule, and attacking communist states for their lack of political freedom and legal rights.⁸⁵ The Canadian delegation reported that these five states consumed most of the time dedicated to discussing the draft Covenant as debates over individual articles were constantly being interrupted with bickering, insults, and points of order that involved lengthy, repetitive and tiresome discourses.⁸⁶ Canada remained on the margins of these discussions.

Particularly in debates over the inclusion of economic and social rights, the Cold War created an ideological divide between the Soviet bloc, which backed a socialist

⁸³ Not only did these events influence the tone and content of debates, but they were remarked upon by Canadian delegates in their reports to External Affairs. See “Report - Survey of Political Climate and Work of 13th Session of ECOSOC,” 12 November 1951, File 5475-DS-16-40, Part 2, Vol. 8126, RG25, LAC.

⁸⁴ *Ibid.*; and “Report on the Work of the Human Rights Commission,” 14 June 1952, File 5475-W-40, Part 6, Vol. 6409, RG25, LAC.

⁸⁵ *Ibid.*

⁸⁶ “Report - Survey of Political Climate and Work of 13th Session of ECOSOC,” 12 November 1951, File 5475-DS-16-40, Part 2, Vol. 8126, RG25, LAC.

vision of human rights coordinated through centralized state planning, and Western Europe, North America, Australia and New Zealand, which supported individualism and a free market. This divide influenced the attitude of individual states toward the instruments on human rights, and caused two of Canada's closest allies, the United States and Australia, to reconsider their initial support for the draft First Covenant. Anti-communism was the driving force behind American domestic and foreign policy by the 1950s, and American officials worried about Soviet influence over the content of the UDHR and the Covenant. In 1949, the inclusion of articles on economic and social rights into the Declaration caused Frank E. Holman, president of the American Bar Association, to refer to the document as a manifesto on "pink paper" that would "promote state socialism, if not communism, throughout the world."⁸⁷ The American government responded by demanding that any covenant on human rights include only civil and political rights. When it became obvious this would not be the case, the United States withdrew its support. A rise in anti-communist and anti-socialist sentiments in Australia by the 1950s also caused the Australian government to take a more negative approach to the draft. The Liberal Government of Robert Menzies reversed the earlier Australian policy of advocating for the inclusion of economic and social rights, and Australian policy makers began to view the draft Covenant as a document that needed to be contained.⁸⁸ Canadian officials shared the desire of both the United States and Australia to limit the influence of a covenant on human rights, but Cold War rhetoric did not permeate the debates among federal policy makers over Canada's position toward the draft

⁸⁷ Glendon, 193.

⁸⁸ Devereux, 51-57.

Covenant. Political scientist Denis Stairs explains this by arguing that Canada's foreign policy throughout the Cold War period was shaped by calculations over power and national interest, not ideology.⁸⁹ Canadian delegates did comment in their reports to External Affairs on the unrelenting use of propaganda by the Soviets in debates over rights, but this was more of a general observation than a comment intending to inform policy. If anything, Canadian policy makers hoped the divisions caused by the Cold War would induce members of the United Nations to abandon the project of a covenant on human rights. For example, in 1952 Under-Secretary of State Arnold Heeney told the Canadian delegation that Cabinet and the ministers of External Affairs and Justice hoped the project of a covenant on human rights would be "delayed for a long, perhaps indefinite, time."⁹⁰ Heeney went on to say, however, that this "real view" of the ministers could not be expressed in public.⁹¹

In addition to Cold War tensions, the process of decolonization influenced discussions over the First Covenant in ECOSOC and at the General Assembly. There was tremendous pressure on European colonial powers to grant independence to their colonies after the Second World War, but the slow pace of this decolonization became the subject

⁸⁹ Denis Stairs, "Of medium powers and middling roles," in *Statecraft and Security: The Cold War and Beyond*, ed. Ken Booth (Cambridge: Cambridge University Press, 1998): 270-288; see also Andrew Lui, *Why Canada Cares: Human Rights and Foreign Policy in Theory and Practice* (Montreal & Kingston: McGill-Queen's University Press, 2012), 51; and Robert Bothwell, *The Big Chill: Canada and the Cold War* (Ottawa: Canadian Institute of International Affairs, 1998).

⁹⁰ Confidential memo from A.D.P Heeney to David M. Johnston, Permanent Delegate of Canada to the United Nations, 4 January, 1952, File 5475-W-40, Part 5.2, Vol. 6409, RG25, LAC.

⁹¹ *Ibid.*, 2.

of a great deal of criticism at the UN.⁹² The most vocal anti-colonial states were those who had only just won their own independence, such as India, Pakistan and the Philippines.⁹³ These states supported the inclusion of economic and social rights, and an article on self-determination, into the draft Covenant, and they openly criticized the position of what they characterized as the ‘Western colonial states.’⁹⁴ Latin American nations, such as Chile, Mexico and Peru, supported these anticolonial arguments and there was a growing and visible gap between ‘developed’ and ‘under-developed’ member states. Soviet delegates attempted to take advantage of this gap, often attacking the West for its history of colonialism, racial discrimination and overseas exploitation, fashioning the USSR as the champion of colonial peoples.⁹⁵ This was initially effective, but Western states learned to take the offensive by pointing out the poor conditions behind the Iron Curtain, the absorption of the Baltic states, and the suppression of political and religious freedom in Soviet territory.⁹⁶ Human rights were a powerful political weapon, but one that cut in many ways. By the early 1950s, therefore, Canadian delegates were reporting to External Affairs that there were three main alliances within the debates over the draft Covenant on Human Rights: the Western bloc, led by the United States and Britain; the

⁹² For a wider discussion of the impact of decolonization on human rights at the United Nations, see Roland Burke, *Decolonization and the Evolution of International Human Rights*; and Normand and Zaidi, especially Chapter 7.

⁹³ Ibid.

⁹⁴ In 1957, the Department of External Affairs reported that increasingly debates over the Covenants were reduced to “acrimonious debate” between anti-colonial and so-called colonial countries. Jules Léger to John Diefenbaker, 29 August 1957. See Normand and Zaidi, *Human Rights at the UN*.

⁹⁵ The Soviets continued to use anti-colonial discourse in its attacks on the US and other Western states into the 1960s. For example, see “Report to Under-Secretary of State for External Affairs, from UN Division,” 17 October 1962, File 5475-W-15-40, Part 10, Vol. 5118, RG25, LAC.

⁹⁶ Ibid.

Soviet bloc; and the non-aligned states.⁹⁷ In his account of the first fifty years of the United Nations, Stanley Meisler argues that as these non-aligned states became increasingly vocal in debates over issues of economic and social development, they realized that, because of their numbers, they could control the debate and the fate of the resolutions presented in the General Assembly.⁹⁸ This is what happened, to a large extent, in debates over economic and social rights.

The Debate over Economic and Social Rights

By 1950, the desirability of including economic and social rights into the same covenant as civil and political rights had become a clear issue for debate.⁹⁹ When the Commission on Human Rights submitted the draft First Covenant to ECOSOC for consideration, it included eighteen articles covering civil and political rights, along with articles of implementation. The Commission also referred the question of whether or not to include economic and social rights into the Covenant. ECOSOC dedicated a full week to debate the merits of the draft, and economic and social rights figured largely in this debate. Some states, such as Canada, were satisfied with the focus on civil and political rights and opposed any inclusion of economic and social rights. These states argued that economic and social rights differed from civil and political rights because they were not immediately realizable and justiciable; they claimed that, because economic and social rights were not easily adjudicated and enforced by traditional court systems and the legal

⁹⁷ Memo from the Canadian Delegation to the Department of External Affairs, 8 November 1955, File 1-24-27, Part 1, Vol. 81, RG26, LAC.

⁹⁸ Stanley Meisler, 208.

⁹⁹ Normand and Zaidi, 200-212.

process, they should not be included in a covenant.¹⁰⁰ The United States argued that economic and social rights were too different from civil and political rights, and that their inclusion in the First Covenant would slow down the process of adoption.¹⁰¹ Canada and Britain both agreed with this sentiment, proposing that economic and social rights be added at a later date. Despite all of the internal communications to the contrary, Canadian delegates publicly told members states of the UN that Canada did *not* oppose the inclusion of economic and social rights, but felt their inclusion in 1950 was “over-ambitious and premature” and could “jeopardize, if not make impossible” the adoption of the Covenant.¹⁰²

Other states insisted a covenant that did not include economic and social rights was not in the true spirit of the Universal Declaration.¹⁰³ Chile, Mexico, Brazil and Peru, amongst others, argued that without economic and social rights, a covenant on human rights was incomplete.¹⁰⁴ Not all states that supported inclusion were from Asia or Latin America. Prior to the defeat of Ben Chifley’s Labor government in 1949, Australia was a leading advocate for the addition of “fundamental economic and social rights” into the

¹⁰⁰ “Report on the work of the Human Rights Commission,” from the Canadian Delegation to the Department of External Affairs, 14 June 1952, File 5475-W-40, Part 6, Vol. 6409, RG25, LAC.

¹⁰¹ “Report of 6th Session of HR Commission to 11th Session of ECOSOC,” 21 Aug 1950, File 5475-W-40 3.1, Vol. 6408, RG25, LAC.

¹⁰² Canadian delegates realized that the states that supported the inclusions of economic and social rights were strongly supportive of a covenant on human rights. Therefore, the government attempted to use the argument that economic and social rights would jeopardize the whole project in order to persuade these states to hold off on pushing for their inclusion. Ironically, Canada supported neither economic and social rights, nor a covenant on human rights. “Instructions for the Delegation of the 13th Session of ECOSOC,” Department of External Affairs, 23 July 1951, File 5475-DS-18-40, Part 1.1, Vol. 8126, RG25, LAC.

¹⁰³ For a discussion of the larger political debates over economic and social rights in UN human rights debates, see: Normand and Zaidi, 200-212.

¹⁰⁴ “Report of 6th Session of HR Commission to 11th Session of ECOSOC,” 21 Aug 1950, File 5475-W-40 3.1, Vol. 6408, RG25, LAC.

First Covenant, insisting that if the number of this type of article was limited, the Covenant could be adopted within a year.¹⁰⁵ The ‘red-scare’ in Australia in the late 1940s undermined the Labor Party’s policies, and led to the election of the openly anti-communist Liberal Party of Robert Menzies, who reversed Australia’s position toward economic and social rights.¹⁰⁶ The Soviet Union and its satellite states also supported the inclusion of economic and social rights into the First Covenant, but opposed any serious measures of implementation.

At the end of the ECOSOC session, the American delegation pressed strongly to have the First Covenant sent directly to the General Assembly, hoping it could be taken to a final vote quickly to avoid further debate on economic and social rights. Before the General Assembly could take a serious look at the content of the instrument, a lobby group of states convinced the majority within the Assembly that the document was inadequate. The most vocal delegates in this lobby represented Latin American states and the Soviet bloc.¹⁰⁷ Based on their arguments, the Covenant was returned to the Commission on Human Rights with instructions to include a clearer expression of economic, social and cultural rights. Seriously concerned at this point, the Canadian government instructed its delegates to avoid any participation in the debates.¹⁰⁸ Canadian delegates met privately with representatives from other states that opposed the inclusion

¹⁰⁵ Ibid. For a wider examination of Australia’s approach to international human rights, see Devereux, *Australia and the Birth of the International Bill of Human Rights*.

¹⁰⁶ Phillip Deery, “Communism, Security and the Cold War,” *Journal of Australian Studies* 54/55 (1997): 162-175.

¹⁰⁷ Draft International Covenant on Human Rights and Measures of Implementation: Report of the Third Committee, 37-41) – see N/Z footnote 29, page 395 -- ** Summary of the debate: Draft Int’l Cov, Section III, 8-12.

¹⁰⁸ Internal Memo, Department of External Affairs, “Commentary for Canadian Delegation,” 26 January 1951, File 5474-DS-13-40, Part 1.1, Vol. 8126, RG25, LAC.

of economic and social rights into a covenant hoping to find a middle ground through which compromise could be achieved; states involved in the consultation were Canada, Britain, the United States, France, India, Belgium, Sweden and Uruguay.¹⁰⁹ These states discussed the possibility of putting forth a resolution to have the Commission on Human Rights prepare two separate covenants to be introduced and debated simultaneously, one including civil and political rights and the other including economic and social rights. The delegates from the United States, opposed to the inclusion of economic and social rights, but recognizing they were in the minority within the General Assembly, suggested this alternative as a way to keep the two types of rights apart. Canadian delegates felt the US was willing to support two covenants “for reasons of international propaganda,” and had their own reservations.¹¹⁰ Policy makers argued that the two-covenant solution seemed to “prejudice the issue as to whether there should be a covenant to include economic, social and cultural rights,” and they also questioned which of the two covenants would take priority.¹¹¹

When the idea of two covenants was proposed at ECOSOC, it generated further debate over whether or not separation would lead to a hierarchy of rights. The majority of member states at the UN supported the inclusion of economic and social rights, but were at this point divided into two camps: those that supported a unitary covenant, and those advocating for two covenants to be presented simultaneously.¹¹² In its instructions to the

¹⁰⁹ Memo from the Canadian Permanent Delegation in Geneva to the Under-Secretary of State for External Affairs, 27 September 1951, File 5475-DS-16-40 1.3, Vol. 8126, RG25, LAC.

¹¹⁰ *Ibid.*, 6.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

Canadian delegation to the UN in 1951, External Affairs expressed its desire to prevent the creation of two covenants but admitted this would be difficult to do without making Canada look like it opposed human rights. In a memo, the Department argued the inclusion of economic and social rights was “unworkable and inadvisable” and, as these were already covered by the UDHR, would “tend to weaken the position of the Universal Declaration.”¹¹³ The Canadian government therefore found itself in a dilemma; it opposed a single covenant that included both civil and political, and economic and social rights, yet it also objected to the creation of two covenants, because one would be dedicated to economic and social rights, which the government opposed. One covenant with only civil and political rights was no longer an option, and so federal policy makers had to make a difficult decision. In January 1952, the Canadian delegation voted against the Chilean resolution to include economic and social rights in the same covenant as civil and political rights, and in favour of two covenants. Preferring to abstain in the vote on two covenants to show its displeasure, the Canadian delegation had to vote in support instead because the vote was so close that the government was worried that, by abstaining, Canada would help those in favour of a unitary covenant carry the vote.¹¹⁴ In the final vote, 30 states voted in favour of drafting two separate covenants, while 24 were opposed to dividing the First Covenant, and 7 states abstained; because abstentions did not count as a negative vote, the motion passed.¹¹⁵ Beginning in 1952, the Commission on Human

¹¹³ Ibid., 7.

¹¹⁴ “Final Report on IteI 29: Draft International Covenant on Human Rights – Report of ECOSOC,” 12 February 1952, File 5475-W-40, Part 5.2, Vol. 6409, RG25, LAC.

¹¹⁵ The states that supported the split included India, New Zealand, Britain, the United States, Australia, Canada, France, and China. Those opposed included Pakistan, Saudi Arabia, the Soviet Bloc and Latin

Rights prepared revised drafts for the two covenants. Canada played no role in this process, as only member states sitting on the Commission were involved. Two years later, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, received first reading.

The Federal State and Colonial Clauses

In addition to losing the debate over economic and social rights, Canadian policy makers were unhappy with the lack of progress to include a federal state clause into the draft Covenant to alleviate jurisdictional concerns. In 1950, the Department of External Affairs proposed the following text for the proposed clause:

In the case of a Federal State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the federal government shall, to this extent, be the same as those parties which are not federal states;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of the legislative authority of the constituent states, provinces or cantons, the federal government shall bring such articles, with favourable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.¹¹⁶

Canadian delegates were instructed to resist sending the First Covenant to the General Assembly for a vote until this clause, or a similar version, was included. The United States, another federal state anxious to limit the Covenant's authority on domestic policy,

America. Those that abstained included the Philippines, Thailand, Dominican Republic, and Guatemala. "Report of the history of the Covenant," 26 February 1962, File 5475-W40, Part 5.2, Vol. 6409, LAC.

¹¹⁶ This text was taken from conventions of the ILO.

was Canada greatest ally in this. States such as Britain and India supported Canada in principle, but argued a federal clause put a greater legal obligation on unitary states.¹¹⁷

The vast majority of states, however, opposed a federal clause, arguing all states should have an equal responsibility to uphold the obligations of the Covenant. Pakistan went so far as to accuse the Canadian government of fabricating the constitutional concerns.¹¹⁸

The Canadian delegation was therefore unsuccessful in its push to include a federal clause in the draft First Covenant, although Canada continued to repeat its constitutional concerns at every opportunity.

The call for the addition of a colonial clause limiting the application of the Covenant into the dependent territories of a colonial state also provoked heated debate. This clause would provide colonial powers with the choice as to whether or not they would extend the application of the instrument to all or any of these territories. Colonial states such as Britain, France, Belgium, and Denmark had the mild support of smaller powers such as Canada and Australia in their push for the inclusion of such a clause. In a memo to Cabinet in 1950, the Interdepartmental Committee on Human Rights recommended Canada vote in favour of a colonial clause because it was important to Britain, and because this could help secure British support for a federal state clause.¹¹⁹ Yet again, any limitation on the application of the Covenant was strongly opposed by the majority of states. Latin American and Asian member states argued that this clause would provide an excuse for Britain, France and Belgium to circumvent the obligations of the

¹¹⁷ “Report of the 6th Session of the Human Rights Commission,” 21 August 1950.

¹¹⁸ Ibid.

¹¹⁹ Memo to Cabinet from the Interdepartmental Committee on Human Rights, 8 September 1950, File 5475-W-40, Part 3.1, Vol. 6408, RG25, LAC.

Covenant, perpetuating the already inequitable treatment of colonial peoples.¹²⁰ These opposing states considered both the federal and colonial clauses as loopholes designed to suit the interests of colonial powers and their allies, and Canadian delegates reported that Asian and Latin American states were becoming “loud and frank about their discontent, despite the way in which this might influence American versus Soviet alignment.”¹²¹

By the mid-1950s, the Canadian government had become increasingly dissatisfied with the status of international human rights. Canadian officials had been unenthusiastic over the first draft Covenant released to member states in 1949, but by 1954 the situation seemed much more complicated. The evolution of the early debates over the form of a covenant on human rights, the decision to draft two separate instruments in order to incorporate economic and social rights, and the continued exclusion of a federal clause, alarmed policy makers. With support for the covenants on the decline among Canada’s closest allies, most federal civil servants working on Canadian policy toward the International Bill of Rights in the departments of External Affairs and Justice could not envision a situation in which it would be in Canada’s best interest to support an international covenant on human rights.

Developments at Home

During debates over the adoption of the UDHR in 1948, there had been very little domestic pressure on the Canadian government to offer its support. Little had changed by the time the draft First Covenant was released for comment a year later. The late 1940s

¹²⁰ “Report of the 6th Session of the Human Rights Commission,” 21 August 1950.

¹²¹ “Report – Survey of Political Climate and Work of the 13th Session of ECOSOC,” 12 November 1951, File 5475-DS-16-40, Part 2, Vol. 8126, RG25, LAC.

and early 1950s were a period of change within Canada's domestic human rights movement, however. A broader variety of individuals and organizations became connected with the movement. Activists adopted the new language of 'human rights' developed at the UN, and used Canada's support for the UDHR, to demand that governments in Canada expand legislative protection for rights and freedoms. By 1954, rights campaigns had successfully ushered in fair practices legislation in several provinces and the federal government.¹²² These new laws, although limited, called on the government to play a new role to discourage discrimination by intervening into private interactions between businesses and individuals in Canadian society.

Along with the movement for a national bill of rights, campaigns for fair practices legislation challenged the long standing tradition of British parliamentary supremacy and the understanding that Canadians did not need codified rights because these rights were adequately protected by common law. Rights activists worked with marginalized Canadians to promote public awareness over issues of human rights. Domestic movements intersected with international human rights in education programs sponsored by the United Nations' Educational, Scientific and Cultural Organization (UNESCO), and in annual celebrations of the adoption of the UDHR. While the early 1950s did not witness a complete "rights revolution" in Canada, it did set the stage for changes in public

¹²² Ontario passed the first Fair Employment Practices Act (1951) and Equal Pay Act (1951). Subsequent acts were adopted in Saskatchewan (Equal Pay, 1952), Manitoba (Fair Employment Practices, 1953), British Columbia (Equal Pay, 1953) and Ontario (Fair Accommodation Practices, 1954). The federal government adopted a Fair Employment Practices Act in 1953.

understandings of rights that would influence Canadian policy toward the Covenants starting in the mid-1950s.¹²³

Canadian human rights activism in this period remained primarily focused on campaigns for domestic legislation and on abuses of rights and freedom in Canada, not activities at the United Nations.¹²⁴ This is not to say that activists in Canada were disinterested in international human rights, but they focused on campaigns for enhanced domestic legislation because this was seen as more relevant to Canadians.¹²⁵ In 1951, on the eve of the third anniversary of the UDHR, the Toronto Civil Rights Union wrote to the Privy Council Office urging the government to mark the anniversary by committing to protect basic civil rights in Canada and testing the constitutionality of Quebec's controversial Padlock Law. The UN's Covenant on Human Rights was not even mentioned.¹²⁶ Kathleen Bowlby of the United Nations Association of Canada claimed there was little interest in Canada for international human rights in the 1950s.¹²⁷ Having no desire to fuel this interest, the government worked to downplay its commitment to the

¹²³ The term "rights revolution" has been used by Michael Ignatieff and Dominique Clément to describe the significant changes in understandings of rights that occurred in Canada from the 1940s to the 1970s. Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi Press, 2000); Dominique Clément, *Canada's Rights Revolution*.

¹²⁴ Studies of early Canadian human rights activism focus almost exclusively on the push for domestic legislation. See, for example Lambertson, *Repression and Resistance*; MacLennan, *Toward the Charter*; and Clément, *Canada's Rights Revolution*.

¹²⁵ The idea that activists had limited resources and time, and so dedicated their efforts on campaigns for domestic rather than international human rights is supported by interviews conducted with both rights activists of the period, and civil servants involved in the expansion of provincial human rights. Interviews were conducted with Harish Jain (rights activist), Allan Borovoy (rights activist), Roland de Corneille (rights activist), Thomas Symons (Ontario Human Rights Commission), and Roy Romanov (Attorney General of Saskatchewan).

¹²⁶ Letter to the Privy Council Office, from Toronto Civil Rights Union to the Privy Council, 9 December 1951, File U-41-H-3, Vol. 206, RG2, LAC.

¹²⁷ Memo to File re: Phone Conversation between P. McDougall of External Affairs and Kathleen Bowlby, UN Association of Canada, File 5475-DP-3-40, Part 1, Vol. 6950, RG25, LAC.

Covenants. When External Affairs was listing non-governmental organizations that may be interested in UNESCO publicity about the UDHR, G.C. McInnes warned against appearing too supportive of international human rights instruments in the cover letter sent to organizations. He wrote, “the Canadian Government is by no means sold on the idea of an international covenant on human rights.” McInnes argued it would put the government in a difficult position if organizations in Canada became too enthusiastic and petitioned the government for action.¹²⁸ Action was what officials hoped to avoid. Ottawa also had no desire to see a convergence of the universalist discourse of human rights and domestic activism, and so tried to keep them separate.

In 1949, shortly after the adoption of the Declaration, opposition members from the CCF asked Prime Minister Louis St. Laurent if Canada intended to bring all Canadian legislation in line with the new document.¹²⁹ St. Laurent told the House he believed Canadian law already incorporated all of the principles of the Declaration. When several MPs stood and asked if the government was therefore prepared to end sex discrimination, get rid of the closed shop, and promote equal pay for equal work, it seemed the worries of federal policy makers about the influence of the UDHR on Canadian policy had come to pass.¹³⁰ St. Laurent dismissed their comments, however, and nothing more was said on the topic. In 1952 and then again in 1953, Members of Parliament put in private members resolutions to have the government affirm Canada’s acceptance of the UDHR into Canadian law, but in each case these motions were quickly dismissed as the government

¹²⁸ G.C. McInnes to Mr. Thibault, 13 April 1951, File 5475-DM-1-40, Part 2.1, Vol. 8125, RG25, LAC.

¹²⁹ Record of House of Commons Exchanges Relating to the UDHR, 18 January 1949, File 5475-DP-40, Vol. 3701, RG25, LAC.

¹³⁰ Ibid.

explained the quasi-legal nature of the Declaration.¹³¹ Unfortunately, other than these brief exchanges, international human rights was not a topic for discussion in the House of Commons, and there is no evidence that the draft Covenant was ever the focus of debate.

There was, however, a continued growth in public awareness and discourse of human rights. The number and type of volunteer organizations openly discussing and advocating for greater government protection against discrimination increased in the 1950s, and these organizations often relied on the language of universal human rights coming out of the UN. Organized labour provides a good example of a group that became more engaged in issues of rights at this time, to the extent that historian Dominique Clément has argued that labour was the “most powerful force within the human rights movement” in this period.¹³² The Co-operative Commonwealth Federation, created during the Depression by a coalition of progressive, socialist and labour groups, was an established political party by the 1940s, winning 22 seats in the 1945 federal election with 15 per cent of the popular vote.¹³³ A year earlier, the CCF had won the provincial election in Saskatchewan. It was under CCF leadership that Saskatchewan adopted Canada’s first provincial bill of rights. This same period experienced a growth in organized labour in

¹³¹ Canada. *House of Commons Debates*. 28 February 1952 (submitted by David Croll), and 7 December 1953 (submitted by Alistair Stewart).

¹³² Dominique Clément, *Rights Revolution*, 50. For a further study of the role of organized labour in the early human rights movement, and the inconsistencies of labour’s position, see Bryan D. Palmer, *Working-Class Experience*, 298-99; Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement*, 4th Edition (Montreal and Kingston: McGill-Queen’s University Press, 1998), 202-212; Frank Hall, “Labour’s Concern for Human Rights,” *Canadian Labour* 7 (January 1968): 5-7; Arnold Bruner, “The Genesis of Ontario’s Human Rights Legislation: A Study in Law Reform,” *University of Toronto Faculty of Law Review* 37 (1979): 236-253; Agnes Calliste, “Sleeping Car Porters in Canada: An Ethnically Submerged Split Labour Market,” in *Canadian Working Class History*, ed. Laurel Sefton McDowell and Ian Radforth (Toronto: Canadian Scholars’ Press 1992).

¹³³ Parliament of Canada, “Election Results by Party,” available at <http://www.parl.gc.ca>, accessed 31 May, 2014.

Canada, with union membership increasing significantly.¹³⁴ Organizations such as the Canadian Congress of Labour (CCL) and the Trades and Labor Congress (TLC) began to connect the basic needs of the trade union movement in the area of human rights to the needs of other marginalized groups in Canadian society.¹³⁵ The Jewish Labor Committee of Canada (JLC), based in Montreal, encouraged other labour organizations to establish human rights committees and these committees circulated bulletins and reports to their membership that spoke out against racial discrimination.¹³⁶ While labour organizations were inconsistent in their opposition to racial prejudice, labour leaders were intimately involved in campaigns to pressure government for expanded rights protection. Labour leaders were also able to use developments at the United Nations, and within the International Labour Organization, to support their domestic goals. In 1952, the CCL's National Committee on Racial Discrimination lobbied the federal Minister of Labour to support national fair practices legislation by invoking the UDHR. In its memo to the Ministry, the CCL argued that, since the government supported the Declaration, and the basic principles of the proposed legislation were recognized by the Declaration, the government had no basis to oppose the legislation.¹³⁷ While there is little evidence that the Department of External Affairs had specific concerns that an international covenant would embolden the labour movement, Deputy Minister of Labour A.H. Brown

¹³⁴ Craig Heron, *The Canadian Labour Movement: A Brief History*, 2nd ed. (Toronto: J. Lorimer, 1996), Chapter 3.

¹³⁵ MacLennan, *Toward the Charter*, 93-94.

¹³⁶ MacLennan, 94.

¹³⁷ "A Fair Employment Practices Act and Policy," 27 May 1952, CLC Papers, vol. 230, file 17, and by the Canadian Association for Adult Education, *Should We Have Fair Employment Practices in Canada?* (1948); and MacLennan, 95.

questioned the impact of an article guaranteeing the “right to work” on Canadian labour relations, arguing that labour and working conditions fell under the field of operations of the ILO and not human rights.¹³⁸

Groups other than organized labour also spoke out against discrimination in Canadian society, and connected calls for enhanced rights in Canada with developments and the discourse of human rights at the United Nations. The National Council of Women of Canada and the Canadian Federation of University Women focused their campaigns on sex discrimination and the status of women in general, arguing for equal pay for equal work, and an end to discriminatory hiring practices.¹³⁹ The United Nation’s Sub-Committee on the Status of Women and the UDHR drew the attention of women’s organizations in Canada, and the Canadian Federation of University Women actively pressured the Canadian government to take an active role in this committee.¹⁴⁰ The Canadian Jewish Congress (CJC) also pressured the federal government to take a more active role in international human rights activities at the United Nations.¹⁴¹ The CJC worked with other voluntary organizations such as the Canadian Association for Adult Education (CAAE) to educate the public about discrimination and the need for fair

¹³⁸ Memo to the Under-Secretary of State for External Affairs, from A.H. Brown, Deputy Minister of Labour, 14 November 1956, File 5475-W-40, Part 5.2, Vol 6927, RG25, LAC.

¹³⁹ “To the Senate Committee on Human Rights and Fundamental Freedoms,” Diefenbaker Papers, 1940-1956 series, vol. 4, microfilm reel M-7415, 002691-3.

¹⁴⁰ For example, the Tenth Annual Convention of the Saskatchewan Women’s Co-operative Guild passed a resolution in 1951 calling on federal and provincial governments to “consider ways and means, possibly through Dominion-Provincial Conferences, to have a commission set up to divide the provisions of the U.N. Universal Declaration of Human Rights, and take steps to have legislation passed on subject.” Women’s organizations also wrote letters to the Department of External Affairs and the Privy Council Office on the matter of Canada’s participation on UN bodies such as the Sub-Committee of the Status of Women. See File U-41-H, Vol. 206, Privy Council Office fonds, RG2, LAC.

¹⁴¹ MacLennon, 96.

practices legislation.¹⁴² According to historian Ross Lambertson, the CJC, along with the JLC and the Toronto-based Association for Civil Liberties (ACL), became the center of Canada's human rights movement.¹⁴³

The rights organizations of the late 1940s and early 1950s were very different than civil liberties groups of the 1930s. Not only were they committed to a more general application of equality rather than specific instances of rights violations, they learned to work in coalitions to achieve their goal of greater rights protection. A primary example of this type of organizing was a 1949 campaign in Ontario for anti-discrimination laws.¹⁴⁴ A coalition of individuals and organizations, led by the CJC and the ACL, supported by a variety of ethnic and religious organizations, and connected to social, political and intellectual elites in Ontario, successfully pressured Progressive Conservative Premier Leslie Frost to adopt Canada's first Fair Employment Practices Act and the first Female Employee's Fair Remuneration Act.¹⁴⁵ Similar campaigns were launched throughout Canada, and within three years fair employment practices legislation or equal pay acts were adopted in Saskatchewan, Manitoba, and British Columbia; the federal government also passed legislation prohibiting discrimination in the area of employment in 1953. This

¹⁴² Carmela Patrias and Ruth A. Frager, "'This Is Our Country, These Are our Rights.'" For an examination of the role of women's organizations in campaigns for equal pay legislation, see: Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951," *Canadian Historical Review* 72, no. 4 (December 1991): 532-557.

¹⁴³ Lambertson, *Repression and Resistance*, 224.

¹⁴⁴ "A Brief to the Premier of Ontario," 24 January 1950, Records of the Joint Community Relations Committee, File 1950, Box 72; MacLennan, 95; James Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies*, 34, no. 1 (Spring 2002): 1-29

¹⁴⁵ Several historians have examined the campaigns for Ontario's fair practices legislation, including James W. St.G. Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies*, 34, no. 1 (Spring 2002): 1-29; Patrias and Frager, "'This Is Our Country, These Are our Rights.'"; Howe, "The Evolution of Human Rights Policy in Ontario," 783-802.

new legislation represented an important step in the evolution of human rights law in Canada because it articulated for the first time the understanding that it was illegal to discriminate in the area of employment based on race, creed, colour, nationality, ancestry or place of origin.

Despite this increase in activism, many groups were excluded from Canadian discourses on human rights. For example, there was very little talk of gender equality or Aboriginal rights in mainstream civil liberties organizations.¹⁴⁶ Rights activism most commonly focused on race, colour, ethnicity and religion. Coalitions such as the one that lobbied the Ontario government in 1949 included very little representation from Aboriginal communities, gay and lesbian groups, women, or the physically and mentally challenged. Ross Lambertson argues that, while these groups experienced significant discrimination, they were not a public concern in 1940s and 1950s Canada, and so their voices were silent in the calls for enhanced rights protection.¹⁴⁷

While no national human rights movement emerged in the 1950s, there were some attempts to develop national human rights associations. Groups such as the Association for Civil Liberties and the League for Democratic Rights attempted to attract national membership, but these were ultimately unsuccessful. Rights activism was in its early stages in Canada, and the regional nature of Canadian politics frustrated national

¹⁴⁶ For an examination of the exclusion of women's rights in the human rights discourse, see Ruth Frager and Carmela Patrias, "Human Rights Activists and the Question of Sex Discrimination in Postwar Ontario," *Canadian Historical Review* 93, no. 4 (December 2012): 583-610; and Dominique Clément, *Equality Deferred: Sex Discrimination and British Columbia's Human Rights State, 1953-84* (Vancouver: UBC Press, 2014). For a study of how aboriginal rights fit into the human rights discourse, see J.R. Miller, "Human Rights for Some," 233-60; and David Long, "Culture, Ideology, and Militancy: The Movement of Native Indians in Canada, 1969-91," in *Organizing Dissent: Contemporary Social Movements in Theory and Practice*, ed. W.K. Carroll (Toronto: Garamond Press, 1997): 151-170.

¹⁴⁷ Lambertson, 14.

organization.¹⁴⁸ There was a resurgence, however, in demands for a national bill of rights. In November 1949, Senator Arthur Roebuck tabled a draft bill of rights into the Senate, challenging the St. Laurent's Liberal Government to discuss the matter at the upcoming Dominion-Provincial conference in January 1950. Roebuck had been an Ontario MPP in the 1930s, serving as Ontario's Attorney General from 1934 to 1937. In 1945, Prime Minister Mackenzie King appointed Roebuck to the Senate, and throughout the post war period he was an important advocate for the civil liberties movement.¹⁴⁹ The federal government wanted to avoid placing human rights on the agenda of the Dominion-Provincial conference because the primary goal at this meeting was to draft an amending formula for the constitution, and there was a sense that a discussion over human rights could disrupt the proceedings.¹⁵⁰ To avoid this, the government suggested a Special Senate Committee to study human rights and fundamental freedoms and invited Roebuck to act as chair. Roebuck agreed and withdrew his bill.¹⁵¹

The Senate Committee held eight public sessions and heard from thirty-six witnesses from April to May 1950. While it was ultimately concerned with the question of whether or not Canada ought to have a national bill of rights, in its first sessions the Senators heard from several witnesses in regards to United Nations' interests and

¹⁴⁸ Lambertson, 280.

¹⁴⁹ Roebuck opposed the federal government's suspension of civil liberties following the Gouzenko Affair in 1945. In the 1930s, he promoted the rights of Jewish Canadians and trade unions.

¹⁵⁰ Maurice Duplessis, the Premier of Quebec, was particularly outspoken against federal interference into provincial human rights law, MacLennan, 102. Angus Macdonald, the Premier of Nova Scotia, was also outspoken, T. Stephen Henderson, *Angus L. Macdonald: A Provincial Liberal* (Toronto: University of Toronto Press, 2007), Chapter 4.

¹⁵¹ Senate Debates, 3 November 1949, 219; Canada. Parliament. Senate. Special Senate Committee on Human Rights and Fundamental Freedoms. *Minutes of Proceedings and Evidence*. (Ottawa: King's Printer, 1950)

activities in the field of human rights.¹⁵² Many of the individuals and organizations that attended as witnesses to the committee invoked UN human rights instruments to provide justification for their demands. B.K. Sandwell of the Civil Liberties Association, an organization that had submitted a draft bill of rights to the committee, argued that all of the rights listed in this bill were consistent with those listed in the UDHR. Sandwell reminded the committee that the UDHR had been considered and discussed for over two years before being approved by Canada and forty-seven other nations. He argued,

In subscribing to the United Nations Universal Declaration of Human Rights, Canada undertook to promote by progressive measures, universal and effective recognition and observance of human rights and fundamental freedoms in its territory. We feel that Canada would be setting an example for the rest of the world if it now proceeded to implement this undertaking.¹⁵³

The fact that Sandwell, along with organizations such as the National Japanese Canadian Citizens Association, and individuals such as F.R. Scott, used UN instruments to support their arguments revealed changes taking place in understandings of rights in this period.¹⁵⁴ Rights advocates were relying on the language of the UN and the universality of human rights in their call for enhanced rights protections in Canada, rather than the language of British civil liberties. While they were not campaigning directly for Canada to support the International Covenants at the UN, non-governmental organizations argued that there was

¹⁵² On April 25, the Senate Committee heard from legal expert F.R. Scott and King Gordon of the UN Division on Human Rights. On May 3, the Senate Committee heard from Mr. L. Maynard. See Memo to Senate Committee on Human Rights and Fundamental Freedoms, 24 April 1950, File 5475-W-8-40, Vol. 8118, RG25, LAC.

¹⁵³ B.K. Sandwell, Statement to the Senate Committee on Human Rights and Fundamental Freedoms, 5 May 1950, 7.

¹⁵⁴ F.R. Scott, "Brief Prepared for the Senate Committee on Human Rights and Fundamental Freedoms" 1950, File D211-28-7, MG30, LAC; and "Human Rights and Fundamental Freedoms, J.C.C.A. Submission to the Senate Committee, 1950" File 14, MG28, LAC.

a connection between domestic and international human rights. Sandwell also reflected the attitude of many rights activists of the time when he insisted that a national bill of rights would be more relevant to Canadians than an International Covenant on Human Rights.¹⁵⁵ Activists were more interested in how they could use international instruments to press for domestic developments, rather than pressuring for further developments at the UN. In June 1950, the Senate Committee released a report of its findings to Parliament. Persuaded by the arguments of the witnesses, the Senate Committee on Human Rights and Fundamental Freedoms concluded by recommending an entrenched bill of rights for Canada, and suggested that as an interim measure, Parliament enact a declaration of rights based largely on the UDHR.¹⁵⁶ This direct link between the UDHR and a national bill of rights was exactly what Minister of Labour Stuart Garson had feared when discussing the impact of international human rights on Canadian policy.

Despite the work of the Senate Committee, the Liberal Government did not initiate a bill of rights. In 1951, a year after the release of the report, when no action had been taken, more than three hundred activists representing labour, women's groups, churches, ethnic organizations, and civil liberties groups, met with Prime Minister St. Laurent, Minister of Justice Stuart Garson, and Secretary of State for External Affairs Lester Pearson to call on the government to implement a bill of rights. Although the government ultimately did nothing, the Senate Committee and the public protest brought

¹⁵⁵ Ibid., 15.

¹⁵⁶ Canada. Parliament. Senate. Special Senate Committee on Human Rights and Fundamental Freedoms. *Minutes of Proceedings and Evidence*. (Ottawa: King's Printer, 1950)

the issue of rights to public attention.¹⁵⁷ However, according to Christopher MacLennon, “much of the fire among civil libertarians dissipated after the 1950 Senate committee and the march on Parliament Hill in 1951.”¹⁵⁸

While campaigns for fair practices legislation and a national bill of rights helped build public awareness of rights issues in Canada, the United Nations worked with domestic organizations to also increase awareness of international developments. In 1949, the UN passed a resolution encouraging member states to educate citizens about the UDHR and its meaning, and requiring states to report back to the Secretary-General on any domestic progress in the field of human rights.¹⁵⁹ UNESCO, the education division of the UN, printed copies of the UDHR in multiple languages and distributed them to member states. The Canadian Citizenship Council and the United Nations Association of Canada worked with the Canadian government to supply interested organizations, individuals and educational institutions with these leaflets. French copies were disseminated through la Société canadienne d’Enseignement postsecondaire and la Société d’Education des Adultes.¹⁶⁰ Several federal government departments also included a copy of the text of the Declaration in departmental bulletins, often providing some commentary on the relevance of international human rights to Canadians.¹⁶¹ UNESCO prepared

¹⁵⁷ Canada, *House of Commons Debates*, Louis St. Laurent, 12 May 1951, 3209.

¹⁵⁸ MacLennon, 106.

¹⁵⁹ United Nations. General Assembly. Resolution 217 III D, 1949.

¹⁶⁰ In 1952, for example, Canada received 2000 leaflets from the United Nations and sent 1000 of these to the UN Association of Canada and the rest to different educational bodies across the country. Another 2000 copies of the leaflets were requested as demand was high. Department of External Affairs, Internal Memo, “Summary of Commemoration of HR Day 1953,” 3 November 1952, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

¹⁶¹ See for example, “The Universal Declaration of Human Rights,” *External Affairs*, vol 1, no. 1, Jan 1949. The Ministry of Labour produced a similar article.

educational resources specifically for teachers, including a teaching guide, a series of booklets on the rights outlined in the UDHR, radio programs, films, and booklets for debating clubs. Schools were also able to obtain a UN Human Rights Filmstrip entitled, “The Declaration of Human Rights,” which came with a set of posters including the text of the UDHR, and a discussion guide.¹⁶²

Much of this public education took place around the anniversary of the adoption of the UDHR, as the United Nations encouraged its member states to commemorate the occasion. This became official in 1950, when the General Assembly adopted a resolution to declare December 10th “Human Rights Day.”¹⁶³ The Canadian government initially had reservations about this resolution, preferring to combine a day to celebrate human rights with United Nations Day, observed on October 24. The majority of member states supported the idea, however, and Canadian delegates decided to vote in favour of the resolution. In preparation for the yearly celebrations, UNESCO created a pamphlet suggesting possible initiatives to be taken by either governmental or non-governmental organizations. Examples included: in-school curricula such as projects, essay contests, exhibits, or readings; public ceremonies such as addresses, concerts, proclamations; media attention including reprinting the UDHR, writings articles and editorials, drawing cartoons; radio programming including concerts, readings of the UDHR, speeches by

¹⁶² “UN Associon of Canada - 2nd Anniversary Commemoration”, File 5475-DP-1-40, Vol 3701, RG25, LAC.

¹⁶³ “UN General Assembly Resolution to Create Human Rights Day,” 5 December 1950, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

national authorities; and film and visual displays.¹⁶⁴ Canadian programming for the first few anniversaries of the UDHR was minimal, and coordinated largely through programming of the Canadian Broadcasting Corporation (CBC). In 1949, the CBC aired a special recording that included a rebroadcast of the New York Junior Symphony Orchestra and a reading of the UDHR. The following year, the CBC rebroadcast the reading of the UDHR followed by an interview with Canadian John King Gordon, the human rights and information officer for the United Nations Secretariat.¹⁶⁵ By the third anniversary of the adoption of the UDHR, Canada's commemoration programs had expanded to include both national and regional programs.¹⁶⁶ The federal government sent letters to all provincial governments asking for details on provincial activities organized for UN Day. Quebec, Ontario, New Brunswick and Saskatchewan all replied, outlining programs that were being run, primarily through their ministries of education in primary and secondary schools.¹⁶⁷ There is no evidence of replies from the other provinces. On the fifth anniversary in 1953, Lester Pearson addressed the Canadian public on Human Rights Day, speaking to international developments in the field of human rights since 1948, and of Canada's tradition and experience with supporting the principles of the UDHR. He told Canadians that not all nations around the world were as lucky as Canada, as many people

¹⁶⁴ Letter from UNESCO to the Department of External Affairs, "Celebration of First Human Rights Day," 22 October 1951, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

¹⁶⁵ Gordon had been the UN correspondent to the CBC in the late 1940s, and became the human rights and information officer for the UN Secretariat in 1950, holding this position until 1960. Department of External Affairs, Internal Memo, "Summary of Commemoration of HR Day 1952," 25 November 1952, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

¹⁶⁶ Letter from CBC to the Department of External Affairs, "Special Programming HR Day 1951," 4 December 1951, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

¹⁶⁷ For example, see Memo from the Ontario Department of Education to the Department of External Affairs, December 1951, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

continued to live without rights. Pearson outlined the difficulties encountered at the UN in reaching a consensus over human rights, but urged people to resolve to “press forward on the long and difficult road” leading to enhanced human rights.¹⁶⁸

The public education campaigns led by rights activists, minority groups, and through UN-sponsored commemoration programs, did contribute to a growing awareness of and support for human rights more generally in early-1950s Canada. Awareness of specific initiatives was largely restricted to government officials, rights activists and elite intellectuals, but the public awareness campaigns involving the CBC, voluntary organizations and the public school system had percolated an awareness of human rights issues into the Canadian public more generally. This, in turn, influenced federal policy as politicians modified their party platforms to accommodate issues of rights. Owen Carrigan, in his study of Canadian national party platforms from the nineteenth century through to the late 1960s, reveals a significant increase in references to either individual or collective rights from the late 1940s to the late 1950s.¹⁶⁹ Federal political parties understood that Canadians were becoming more responsive to human rights. While none of the developments in Canadian human rights law and culture led to direct pressure on the government to support the Covenants on Human Rights, it was becoming increasingly obvious to federal policy makers that Canadians would likely support the principles of the covenants.

¹⁶⁸ Speech given by Lester B. Pearson, 10 December 1953, Department of External Affairs, Internal Memo, “Summary of Commemoration of HR Day 1952,” 25 November 1952, File 5475-DP-1-40, Part 2.1, Vol. 8125, RG25, LAC.

¹⁶⁹ Robert O. Matthews and Cranford Pratt, eds., *Human Rights in Canadian Foreign Policy*, 29; Owen D. Carrigan, *Canadian Party Platforms, 1867-1968* (Urbana: University of Illinois Press, 1968).

Conclusion

By 1954, conflicting national positions at the United Nations had forced a compromise transformation of the draft First Covenant on Human Rights into two instruments: The International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Since the introduction of the first draft in 1949, the Canadian government strove to participate as little as possible and to refrain from committing itself in any way to support a covenant on human rights. As a result, the Canadian delegation was often isolated and the subject of criticism by other member states. Although policy makers used jurisdictional problems and the need for a federal clause as its primary justification for its position, in reality officials also had significant substantive concerns with the draft. Especially in regards to economic and social rights, the government was reluctant to accept the expansive definition of human rights that other member states wanted to see embodied in the instrument.

Cold War tensions and the pressures of decolonization stalled the progress of the First Covenant, as did the serious concerns of states over enforcement. Despite this, the divisions within ECOSOC and the General Assembly also demonstrated to the Canadian government that Canada was in a minority position in its opposition to the Covenants. At home, a small but growing rights movement was working to challenge historic understandings of civil liberties and make the public aware of the importance of human rights, both at home and at the United Nations. As a result of both these international and domestic factors, by 1954 when the two International Covenants on Human Rights were introduced to the General Assembly for article-by-article review, the Canadian

government began to question its position toward international human rights. The changes in the early 1950s would set the stage for Canadian policy makers gradually shift away from their opposition to the International Covenants on Human Rights, to working to improve the text of these covenants so that Canada could ultimately vote in favour of their adoption by 1966.

Chapter Three: Canada's Changing Approach to the Covenants, 1955-1966

The draft Covenant on Civil and Political Rights, and the draft Covenant on Economic, Social and Cultural Rights were handed to the General Assembly of the United Nations in 1954 for article-by-article debate. It took more than ten years for member states to revise and adopt these instruments, and the debates over their form and content reflect the deepening political and ideological divisions of the Cold War period. While questions over how to best articulate and implement international human rights were influenced by international relations and the expanding membership of the UN, the foreign policy approach of individual member states was also significantly influenced by domestic developments of the 1950s and 1960s. As a result, some member states that had been enthusiastic about a covenant on human rights, such as the United States, withdrew their support. Canada worked in reverse, as officials initially resisted the idea of a binding human rights instrument but reluctantly came to support the Covenants by 1966.

Throughout the 1950s, the Canadian government was hesitant to commit support to either draft covenant, as policy makers remained uncomfortable with the implications of these instruments on Canadian law and policy. The Department of External Affairs instructed the Canadian delegation to the UN to resist active participation in the article-by-article debates, hoping the Covenants would prove too contentious for adoption. Delegates continued to use jurisdictional concerns as the primary justification for Canada's inability to commit its support. Slowly this position began to change, however. Growing support from within the UN for the Covenants led Canadian policy makers to realize the instruments would eventually be adopted, and increased criticism of Canada's

position from other member states caused officials to question how the failure of Canada to support the Covenants would affect its international image, particularly in light of Cold War claims that Western states promoted the principles of democracy and individual freedom. At home, increased rights activism from a wide range of sources, legislative developments, and a new public awareness of human rights, caused federal officials to fear a backlash from the public if Canada refused to support the adoption of the Covenants. By the 1960s, the Department of External Affairs was therefore instructing its delegation to contribute more constructively to the article-by-article debates in order to make the Covenants more amenable to Canadian policy. Even after learning, in 1963, that there would be no federal clause to alleviate jurisdictional concerns, Canada continued to participate in negotiations at the UN and voted to support the adoption of both covenants in 1966.

This chapter will examine Canada's participation in the discussions over the Covenants at the General Assembly, from 1954 to 1966, and explore how, why and through what mechanisms the Canadian government's approach to these instruments changed in this period. It will argue that, while federal policy makers continued to oppose the expansive definition of universal human rights articulated in the Covenants and fear their impact on Canadian policy, the government was persuaded, by what it understood to be international and Canadian public opinion, that it was in Canada's best interest to support the documents.

The Draft Covenants: the Article-by-Article Debates

Having developed out of the same original document, the two draft covenants shared a common preamble as well as an identical first article outlining the right of self-determination. The Covenant on Civil and Political Rights was a longer document, consisting of twenty substantive articles protecting: the right to life, liberty, dignity and security of the person; legal rights allowing for due process and equality before the law; freedom of movement, expression, religion, thought, opinion, assembly, association, and marriage; and the right of all humans to be recognized as persons. An additional sixteen articles outlined measures for implementation, including rules requiring member states to provide periodic reports on their progress as well as provisions to establish a human rights committee to administer the covenant, and review complaints of violations of its articles. The Covenant on Economic, Social and Cultural Rights contained eleven substantive articles, defending: the right to education; the right to work, in just conditions, to join unions and access social security; the right to an adequate standard of living, including sufficient food, clothing and housing; and the right to the highest attainable standard of health. Due to previous debates over the difficulty of enforcing economic and social rights, and the appropriateness of including these rights in a covenant, this instrument required periodic reporting but did not establish a committee to oversee implementation.

The Third Committee of the General Assembly was responsible for dealing with issues regarding humanitarian affairs and social development, and therefore hosted the debates over the draft Covenants on Human Rights. In its ninth session in 1954, the committee undertook a first reading of the drafts, allowing only for a general discussion

of their content and the procedure by which they would be debated. Canadian delegates participated very little in these initial negotiations, but did take the opportunity to restate the constitutional problems facing Canada given that neither draft contained a clause accommodating the division of powers in a federal state.¹ The general discussion at the ninth session had the effect of highlighting those issues over which states were most divided: the article on self-determination, the inclusion of economic and social rights, the federal state and territorial application clauses, the possibility of allowing reservations to the Covenants, and questions over who would be allowed to petition any human rights committee established by the Covenant on Civil and Political Rights. In reporting on the session, the Canadian delegation wrote, “the general debate had a sobering effect on the self-appointed champions of human rights in the Third Committee” because it underlined the “fundamental differences still separating various groups of states in spite of the painstaking efforts of the Human Rights Commission to produce drafts which would provide a common denominator.”²

A lengthy debate over the order in which the draft articles would be discussed suggested the process to adopt the two covenants would be difficult and take longer than originally expected. The Soviet bloc and member states from Latin America, Asia and Africa called for an immediate discussion of Article One on self-determination, arguing this article was a precondition of the enjoyment of all other rights.³ Canada joined other

¹ K.G. Montgomery, Speech in the Third Committee of the General Assembly, 2 November 1954, reprinted in “Final Report: Draft International Covenants on Human Rights,” 252, File 5475-W-15-40, Part 4, Vol. 6412, RG25, LAC.

² Ibid, 250.

³ The five Soviet bloc countries, Greece, Indonesia, Saudi Arabia, Iraq, Syria, Afghanistan, the majority of Latin American states, Iran, Egypt, Philippines, China, and Yugoslavia all desired an article on self-

Western delegates in proposing to hold off this debate. Britain argued that an “article-by-article” debate did not require the articles to be discussed in order and suggested the Committee start with “less controversial items.”⁴ In private communications with its High Commissioners in Canada, Australia, New Zealand and South Africa, the Commonwealth Relations Office expressed concern that “rabid anti-colonials” would pressure the Third Committee to begin its debates with the article on self-determination, thereby “plunging the Committee into acrimonious debate at the very onset.”⁵ Britain’s predictions were correct, as the majority of member states did vote to start debate in 1955 with the preamble and common first article, to be followed by the substantive articles of the Covenant on Economic, Social and Cultural Rights, then those of the Covenant on Civil and Political Rights, and ending with the articles on implementation. This decision forced member states to deal with the most divisive articles of the Covenants first.

Earnest debate and voting on specific articles commenced in 1955. The Canadian delegation reported that the debates were “exhausting,” and the committee was only able to get through four to six articles per session on average.⁶ Intense deliberation, lengthy speeches and frequent proposals for revision to each article were common to all of the sessions. For example, the Third Committee dedicated thirty-eight meetings in 1956 to examining Articles 6 through 13 of the draft Covenant on Economic, Social and Cultural

determination, although they differed in the extent to which they wanted the current draft to be revised. For an examination of the debate over the article on self-determination, see Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 47.

⁴ Telegram to High Commissioners in Canada, Australia, New Zealand, South Africa, from the Commonwealth Relations Office, 15 September 1955, File 5475-W-15-40, Part 4, Vol. 6412, RG25, LAC.

⁵ Ibid, 3.

⁶ Department of External Affairs Memo, G. Grondin, UN Division, to Information Division, 24 October 1958, File 5475-DP-1-40, Part 3, Vol. 6950, RG25, LAC.

Rights, and member states participated in more than one hundred votes over amendments and sub-amendments.⁷ It took until 1963 for the Third Committee to discuss and vote on all of the substantive articles for each covenant. At this point, the committee turned its attention to the implementation provisions, and member states debated the extent to which either covenant would be subject to an international supervisory system. The article-by-article debates concluded three years later, and on December 16, 1966 the General Assembly voted to adopt both International Covenants on Human Rights.

Canada's Early Participation: The Reluctant Critic

After its general discussion of the Covenants in 1954, the Third Committee invited member states and the UN's specialized agencies to comment on the drafts.⁸ The Canadian government did not offer a submission, purposefully refraining from taking a decided stand with respect to the Covenants because the government remained undecided as to whether or not it could support the instruments. Policy makers continued to question the need for an international treaty on human rights for Canada. In an internal memo, officials within the Department of External Affairs noted that, while the draft Covenant on Civil and Political Rights seemed to be satisfactory and provide for rights and freedoms already enjoyed by Canadians, the articles in the draft Covenant on Economic, Social and Cultural Rights were still too vague, and officials continued to doubt the

⁷ "Draft International Covenants on Human Rights: Background," Department of External Affairs, Twelfth Session of the General Assembly, 1957, File 5475-W-15-40, Part 10FP, Vol. 5118, RG25, LAC.

⁸ The following member states submitted comments: Australia, Austria, Ceylon, People's Republic of Hungary, Netherlands, Pakistan, Thailand, United Kingdom, USSR, and Yugoslavia. The following specialized agencies submitted comments: UNESCO, and the ILO. "Report of the Third Committee re: Draft International Covenants on Human Rights," United Nations Organization, A/3077, 8 December 1955, File 5475-W-15-40 Part 5.1, Vol. 6927, RG25, LAC.

appropriateness of including these rights in a binding treaty.⁹ The Department also pointed to ongoing concerns over the article on self-determination, and the absence of meaningful federal state and colonial clauses. For these reasons, External Affairs described its position toward the Drafts as “very guarded, unenthusiastic and non-committal.”¹⁰

In part, Canada’s indecision was shaped by the changing positions of its closest allies. Whereas in the late 1940s Canada had been under intense pressure from the United States and Britain to support the UN’s human rights initiatives, by the 1950s these states seemed to have lost interest in a covenant. Even the United States’ strongest advocate for international human rights, Eleanor Roosevelt, realized the difficulty of designing a binding international human rights instrument that would be acceptable to the American government in the Cold War era.¹¹ In 1953, the new Eisenhower administration replaced Roosevelt as the American delegate to the UN Commission on Human Rights with Mary Lord. Lord had experience as a civic worker in several charitable organizations, including the US Committee for UNICEF, and had been heavily involved in Eisenhower’s electoral fundraising. She had no diplomatic experience and very little knowledge of the American

⁹ Department of External Affairs Memo re: Statement of the Government of Canada on United Nations Draft Covenants on Human Rights, March 1954, File 5475-W-15-40, Part 2, Vol. 6412, RG25, LAC.

¹⁰ Department of External Affairs Memo, S.F. Rae, UN Division, 5 March 1954, File 5475-W-15-40, Part 2, Vol. 6412, RG25, LAC. For a detailed explanation of Canada’s position in 1954, see “Report on Civil and Political Rights” and “Report on Economic, Social and Cultural Rights” in File 1-24-27, Part 2, Vol. 82, RG26, LAC.

¹¹ Mary Ann Glendon, *A World Made New*, 195. Although Eleanor Roosevelt was a champion of human rights at the UN, she drew a distinction between international human rights and the civil rights discourse within the United States. Historian Carol Anderson has referred to Roosevelt as a “master of symbolic equality,” arguing she prioritized political and legal rights over economic and social rights. Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955* (Cambridge: Cambridge University Press, 2003), 3-5.

position toward human rights at the UN.¹² In contrast to Eleanor Roosevelt, Lord appeared disinterested in a covenant on human rights.¹³ Secretary of State John Foster Dulles announced later that year that the US would no longer participate in the Commission's work to draft a binding human rights instrument, and did not intend to ratify the Covenants. The official justification for this change was that the Covenants would not be effective because of the widespread lack of respect for human rights, and were unlikely to be widely ratified.¹⁴ Among Canadian policy makers, the first part of 1954 was therefore dedicated to discussions over what Canada would do having lost its greatest ally in the fight for a federal state clause.

Britain, while publicly supportive of the principles of the Covenants, had also ceased to take a lead role in human rights work at the UN. British delegates were pessimistic that an effective covenant could be adopted, and discouraged by the way in which their attempts to shape the documents were received by other member states. In a report on the progress of the UN Commission on Human Rights, Samuel Hoare of the British Home Office claimed that British proposals were repeatedly viewed with suspicion by other delegates who argued Britain was either protecting its colonial power,

¹² Mary Lord was often referred to as Mrs. Oswald B. Lord. Prior to her work at the UN, she served on the Charity Organization Society in New York, the Junior League of the City of New York, the Office of Civilian Defence, the National Civilian Advisory Committee of the Women's Army Corp, and the US Committee for UNICEF. She represented the US on the UN Commission on Human Rights and ECOSOC from 1953 to 1961. "Biographical Note," Mary Lord Papers, 1941- 1972, Dwight D. Eisenhower Library, AC. 71-6, 71-6/1, 73-22, available online at http://eisenhower.archives.gov/Research/Finding_Aids/pdf/Lord_Mary_Papers.pdf, accessed 31 May 2014.

¹³ René Cassin characterized Lord's lack of interest as "injurious to the Covenants." Roger Normand and Sarah Zaidi, *Human Rights at the UN*, 227-229; John P. Humphrey was also extremely disappointed with the American approach (including Roosevelt's) to the Covenants. Glendon, *A World Made New*, 197.

¹⁴ Lord made this announcement to the Commission on Human Rights on 8 April 1953. The Department of State Bulletin. [Washington, D.C.]: Office of Public Communication, Bureau of Public Affairs, 1939, Bulletin 28, 579-82.

working to design an instrument that reflected only British law, or attempting to “hamstring” any article it did not approve.¹⁵ Frustrated, Britain continued to participate in debates over the draft Covenants at the UN, but focused its support on the new European Convention for the Protection of Human Rights, a regional document that was more in line with its own traditions.¹⁶ Even Australia, which had enthusiastically advocated the inclusion of economic and social rights and supported the draft First Covenant in 1949, changed its position. The Cold War led to a rise in anti-communism in Australia, and the Labor Party was replaced with a Liberal Government that worked to limit both the content and the power of the Covenants throughout the 1950s.¹⁷

Despite the concerns expressed by states such as Britain and Australia, only the United States took a definitive stance against ratifying the Covenants. The Canadian government was unwilling to state such a strong opinion, fearful of criticism. Officials within the Department of External Affairs worked to give their “true opinion” on the Drafts minimal publicity, focusing instead on jurisdictional problems.¹⁸ Participation in the article-by-article debates was to be marginal, in case delegates appeared either too critical or too supportive of the documents, committing Canada to a course of action. Minister of Justice Stuart Garson claimed it was too early to make a decision as to

¹⁵ Brian Simpson, *Human Rights and the End of Empire*, 817-819. Canadian delegates noted Britain’s change in position. Memo from Stuart Garson, Minister of Justice, to Lester Pearson, Secretary of State for External Affairs, 14 July 1954, File 5475-W-15-40, Part 2, Vol. 6412, RG25, LAC.

¹⁶ Anthony Lester, “Fundamental Rights: The United Kingdom Isolated?” *Public Law* (Spring 1984), 955; Simpson, *Human Rights and the End of Empire*, especially Chapter 13.

¹⁷ For an examination of Australia’s changing policy toward the Covenants, see Anne Marie Devereux, *Australia and the Birth of the International Bill of Human Rights*, 51-60.

¹⁸ Department of External Affairs Memo, S.F. Rae, UN Division, 5 March 1954, File 5475-W-15-40, Part 2, Vol. 6412, RG25, LAC.

whether or not Canada would vote to support the Covenants.¹⁹ External Affairs provided few specific instructions to its delegates at the UN, preferring them to speak in generalities and abstain in votes where possible.²⁰ Even two years into the article-by-article debates, Marcel Cadieux, legal adviser to the Department of External Affairs, noted that little progress had been made in determining Canada's position. Rather than taking an active role in shaping the International Covenants on Human Rights, Canada was excessively cautious and therefore often peripheral to their development. In an internal departmental memo, Cadieux observed, "The fundamental question which does not appear to have been answered definitely is whether the Canadian government is really interested in the covenants being drafted in a form which will facilitate signature and ratification by Canada."²¹ Unfortunately for the government, which preferred Canadian delegates to remain on the periphery, the Third Committee's decision to begin by debating the articles on self-determination, and social and economic rights, meant early discussions focused on the aspects of which Canada had its greatest reservations. While Canada's role in these early debates was largely characterized by its lack of participation, when Canadian delegates did speak it was almost exclusively in a critical manner. As a result, other member states increasingly viewed Canada's claim to support the principles of the Covenants with skepticism.

¹⁹ Memo from Stuart Garson, Minister of Justice, to the Department of External Affairs, 31 August 1954, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

²⁰ See for example, K.G. Montgomery, Speech in the Third Committee of the General Assembly, 2 November 1954, reprinted in "Final Report: Draft International Covenants on Human Rights," 252, File 5475-W-15-40, Part 4, Vol. 6412, RG25, LAC.

²¹ Department of External Affairs Memo, Marcel Cadieux, UN Division, to Legal Division, re: Draft Covenants on Human Rights – 11th Session of the General Assembly, 17 October 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

From the first debates in 1955, Canadian delegates found themselves in a minority position because Canada opposed the inclusion of an article on self-determination. The “self-determination of peoples” was mentioned explicitly in Articles 1 and 55 of the UN Charter, but was recognized as a principle rather than a right. As such, it was not included in the Universal Declaration of Human Rights in 1948. The idea of self-determination evolved in the postwar period, however, and was heavily shaped by both the socialist doctrine of self-determination, traced back to Marx and Lenin, and a growing anti-colonial movement.²² By the 1950s, members from Latin America, the Soviet bloc and a number of newly independent states were calling on the UN to move beyond the “principle” of self-determination to recognize instead the “right” for peoples to organize as a state. The proposed text to be included in Article One of each covenant was, “All peoples and all nations shall have the right of self-determination, namely the right freely to determine their political, economic, social and cultural status.”²³ This right would also include “permanent sovereignty over their natural wealth and resources.”²⁴ The meaning of these terms remained unclear. Canadian delegate Paul Martin argued that the notion of self-determination was “susceptible to multiple interpretations” and that the question of

²² Both Marx and Lenin argued that nations oppressed by imperialism have the right to self-determination. For a discussion of the evolution of ideas of self-determination, see Patrick Thornberry, “Self-Determination, Minorities, Human Rights: A Review of International Instruments,” *International and Comparative Law Quarterly* 38 (October 1989): 867-889; Frederic L. Kirgis, Jr., “The Degrees of Self-Determination in the United Nations Era,” *American Journal of International Law* 88, no. 2 (April 1994): 304-310; Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Pennsylvania: The University of Pennsylvania Press, 1996), 33; and Cassese, *Self-Determination of Peoples*, 44-48.

²³ In the final version, this article was changed to read: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” See Appendix A-2 and Appendix A-3, Article 1(1).

²⁴ *Ibid.* Article 1(2).

who would be entitled to such a right remained “too loose, too vague to be defined with the desirable accuracy” in a covenant on human rights.²⁵

While there is no evidence within internal discussions among officials within the departments of External Affairs or Justice that Canada’s opposition to self-determination was linked to fears of domestic nationalist movements, it is possible that federal policy makers worried about the implication of Article One on minority groups in Canada, including French Canadians and Aboriginal peoples. The debates over self-determination in the 1950s took place prior to the Quiet Revolution in Quebec and the rise of the Parti Québécois, however, and before the White Paper on Indian Policy and the national organization of Aboriginals around the concept of self-government. It is more likely that Canada’s opposition was linked to its continued support for British imperialism, particularly as the Canadian government worked closely with its Commonwealth allies in setting policies toward the Covenants on Human Rights in this period.

Canada joined Belgium, the Netherlands, Australia, New Zealand, Britain, and Turkey in arguing that discussions over self-determination were premature and should take place in another forum.²⁶ The Canadian delegation tried to assure member states that Canada did not merely pay lip service to the issue of self-determination, but that it was cautious. They questioned whether self-determination could be easily achieved overnight

²⁵ “Final Report to the 10th Session of the General Assembly re: Human Rights,” Department of External Affairs, 1955, File 5475-W-40, Part 12, Vol. 6923, RG25, LAC.

²⁶ States that routinely spoke out against the article on self-determination were: Canada, Britain, Australia, New Zealand, Belgium, the Netherlands, Turkey, Brazil, Ethiopia, Israel, Norway, Sweden and Denmark. “Final Report: Draft International Covenants on Human Rights,” File 5475-W-15-40, Part 4, Vol. 6412, RG25, LAC.

through the creation of an article in a covenant.²⁷ Despite these assurances, Canada was criticized for its position. The majority of member states within the Third Committee argued that self-determination was an essential component of any draft covenant, and that opponents of this article were supporting colonialism.²⁸ The debate over Article One lasted for twenty-six meetings, consuming most of the time allowed by the Third Committee in 1955 to discuss the draft Covenants. Eventually, the article was adopted, with 33 states voting in support, 12 including Canada voting in opposition, and 13 abstaining.²⁹ For the Canadian government, it was not the ideal way to establish Canada's policy toward the Covenants.

Canada received further criticism for its position toward the substantive articles of the Covenant on Economic, Social and Cultural Rights. Reluctant to oppose these rights, but also unwilling to support many of them, Canada abstained in eight of the eleven votes. Delegates justified their position by pointing to the Canadian federal government's lack of authority to negotiate international treaties that infringed on provincial jurisdiction. For example, delegates abstained on the articles guaranteeing the right to work, to just working conditions and to free compulsory education, arguing these articles would impose obligations in areas falling under the power of Canada's provincial governments. In the case of Article 8, on the right to join trade unions, delegates

²⁷ For an overview of Canada's position, see "Final Report on Item 28: Draft International Covenant on Human Rights," 20 April 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

²⁸ States in favour of and article on self-determination: the five Soviet bloc countries, Greece, Indonesia, Saudi Arabia, Iraq, Syria, Afghanistan, the majority of Latin American states, Iran, Egypt, Philippines, China, and Yugoslavia.

²⁹ Those states opposed included Australia, Belgium, Canada, France, Luxembourg, the Netherlands, New Zealand, Norway, Sweden, Turkey, the UK, and the US. Abstaining states include Brazil, Burma, China, Cuba, Denmark, the Dominican Republic, Ethiopia, Honduras, Iceland, Iran, Panama, and Paraguay.

abstained insisting the inclusion of the right to perform specific functions, such as the right to strike, also infringed on provincial jurisdiction.³⁰ Canadian delegates spoke critically of the vague language used in the articles on economic and social rights. They also argued that articles on the right to social security, to an adequate standard of living and to protection of the family were too imprecise to be included in an international treaty. Even in the case of articles the delegation supported, such as articles on the right to adequate health and to participate in cultural life, Canada was clear that its support was dependent on the inclusion of a federal state clause.³¹ During the first two years of the article-by-article debates, therefore, a pattern of Canadian participation emerged. The delegation began each session with a reminder that Canada's division of power made it impossible for the government to commit to a covenant that did not include a suitable federal clause; delegates spoke infrequently, but critically about the text of the articles; and Canada abstained on all articles that could even potentially fall under provincial jurisdiction.³²

³⁰ N. Currie, "Statement in the Third Committee," 4 January 1957, reprinted in "Draft Covenant on Economic, Social and Cultural Rights," File 5475-W-15-40 Part 5.2, Vol. 6927, RG25, LAC.

³¹ Ann Shipley, "Speech in the Third Committee," 20 December 1956, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC.

³² Canada voted in favour of Article 13 on the right to the highest attainable standard of health because, based on its existing measures of social security because the government felt the article did not "introduce any new or revolutionary ideas." Canada voted in favour of Article 14 on the right to education because the obligation to provide compulsory primary education free of cost, and progressively free secondary education, was already recognized in Canada. Canada also voted in favour of Article 16 on the right to the enjoyment of cultural life. It abstained on Articles 6 (work), 7 (condition of work), 8 (unions), 9 (social security), 10 (protection of family), 11 (food and clothing), 12 (standard of living), and 15 (compulsory education). "Report (backgrounder) on Covenants for Other Departments," Department of External Affairs, 1956, File 1-24-27, Part 2, Vol. 82, RG26, LAC; "Comments on the Draft Covenant on Economic, Social and Cultural Rights," File 5475-W-15-40, Part 4, Vol. 6412, RG25, LAC.

In 1956, the Canadian delegation reported to External Affairs that Canada's position was under attack.³³ Delegates argued that Canada supported articles "of such a weak and declamatory nature that the majority of the Committee was not disposed to pay much attention to what the delegation said."³⁴ In addition to this, the Department's instructions were often inconsistent or contradictory. In early versions of the draft Covenants, the government had instructed delegates to work to remove technical terms and detailed provisions from the draft Covenant in favour of general terms in order to find common ground between the various legal systems of member states. Three years later, the government was arguing that the responsibilities and obligations to be undertaken in these same documents must be closely defined and that the excessive generality of the draft Covenants was therefore a problem.³⁵ These inconsistencies eroded the credibility of the delegation within the Third Committee. In January 1957, delegates expressed their frustration, insisting that, while they understood that the provinces might misinterpret a vote in favour of articles that could fall within provincial legislative jurisdiction, some flexibility must be provided. Unless the delegation was free to participate in the debates, working under the assumption that a federal clause would be included, "our approach to the majority, if not all, of the articles of substance will necessarily be so negative that the value of our participation in the discussion should be questioned."³⁶ Delegates worried

³³ "Report of the Eleventh Session of the Third Committee," Department of External Affairs, 1956, File 1-24-27, Part 2, Vol. 82, RG26, LAC.

³⁴ Ibid.

³⁵ These contradictions were pointed out by officials within External Affairs. Memo from Marcel Cadieux, UN Division, to Legal Division, 23 October 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

³⁶ Telegram from Canadian Delegation, to Department of External Affairs, re: Human Rights Covenants, Constitutional Problems, 10 January 1957, File 5475-W-15-40, Part 6.1, Vol. 6927, RG25, LAC.

that the government's instructions would force them to put forward extremely unpopular proposals to "water down" each article and that, in the end, when Canada inevitably abstained, it would have "incurred the displeasure of the other members of the Committee for taking up its time unnecessarily and to no avail."³⁷

These concerns caused policy makers within External Affairs to question the government's approach to the draft Covenants, and in particular toward the federal state clause. The question of how a binding human rights instrument would impact federal-provincial jurisdiction had persisted since the International Bill of Rights was first introduced in 1947. There was a fear that, without provincial agreement, the Government of Canada would not be able to enforce articles relating to areas under provincial jurisdiction, and that by agreeing to the Covenants Canada would therefore be signing on in bad faith. Nonetheless, there were officials and public intellectuals who argued that the jurisdictional arguments were questionable. Legal scholars Frank Scott and George Szablowski published articles in the 1950s claiming the federal government *did* have the authority to enforce international treaties and agreements.³⁸ Szablowski argued that, unless a treaty dealt with matters expressly assigned to the provinces, if it was deemed of national importance, Parliament had the power to implement the treaty through the "Peace, Order and good Government" clause of the BNA Act.³⁹ To test this, the Ministry of Justice conducted a thorough study of the articles of the draft Covenants on Human

³⁷ Ibid.

³⁸ F.R. Scott, "Dominion Jurisdiction over Human Rights and Fundamental Freedoms," *Canadian Bar Review* 27, no. 5 (May 1949): 497-505, 531-3; F.R. Scott, "Centralization and Decentralization," *Canadian Bar Review* 29, no. 10 (Dec 1951): 1095-1125; G.J. Szablowski, "Creation and Implementation of Treaties in Canada," *Canadian Bar Review* 34, no. 1 (Jan 1956): 28-59.

³⁹ Szablowski, "Creation and Implementation of Treaties," 53-54.

Rights. Deputy Attorney General F.P. Varcoe reported to External Affairs that, while some of the articles within the drafts dealt with matters that were primarily under provincial power, all of the articles involved some form of federal jurisdiction and none of the articles dealt with issues wholly under the authority of the provinces.⁴⁰ Having never consulted the provincial governments, federal officials had no specific information as to how advocates of provincial authority would respond to the instruments. If, as Varcoe suggested, it was within the power of the federal government to enforce the Covenants, federal officials worried that Canada could be criticized for misrepresenting itself by focusing too closely on jurisdiction.

At the same time, official within External Affairs recognized the opportunity that Canada's federal system offered, allowing them to abdicate responsibility in an area where they were not strongly favourable to UN action. Jurisdictional issues could be viewed as a potential solution to Canada's lack of enthusiasm for the Covenants. With this in mind, the UN Division of External Affairs wrote to Stuart Garson, suggesting it was time to consider whether or not the government truly wanted to support the Covenants, and if not, whether the government should instruct its delegates to simply cease to work for the inclusion of a satisfactory federal state clause to provide sufficient justification for Canada's abstention.⁴¹ Garson was reluctant to take this approach. At the United Nations, advocates for a federal state clause were already being openly accused of

⁴⁰ Varcoe pointed to only three articles that dealt with issues primarily under provincial jurisdiction: Articles 14 and 15 of the International Covenant on Economic, Social and Cultural Rights, and Article 22 of the International Covenant on Civil and Political Rights. Letter from F.P. Varcoe to J.S. Nutt, 12 November 1956, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC.

⁴¹ Letter from the Department of External Affairs to Stuart Garson, Minister of Justice, 26 May 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

using their constitutional systems as an excuse to avoid committing to international human rights. Even Canada's allies questioned the government's intentions. At a meeting of Commonwealth States in 1956, the British delegation noted that Canadian officials seemed pleased to be able to use the lack of a federal state clause to absolve themselves of concern over the covenants.⁴² Rather than offering a reasonable justification for Canada's resistance to the drafts, the federal state clause was causing other member states to question Canada's sincerity. This did not sit well with federal officials such as Secretary of State for External Affairs, Lester Pearson, who, it is reported, was unhappy to have his department "hiding behind its federal constitution in treaty matters."⁴³

Policy makers also worried about what would happen if a suitable federal state clause *did* make its way into the Covenants. By repeatedly tying its inability to support the Drafts to issues of jurisdiction, officials speculated that Canada might be placing itself in a position whereby, if a federal state clause was inserted, it could hardly refrain from supporting the Covenants without coming off badly.⁴⁴ This was of equal concern to policy makers because constitutional constraints were not the only reason the Canadian government was reluctant to support the draft Covenants. Other concerns included the broad concept of universal human rights articulated in the documents, and the way in which this concept could potentially challenge Canadian domestic policies given Canada's traditionally limited understanding of rights. Despite the adoption of fair

⁴² Ibid.

⁴³ "Correspondence relating to the Draft International Covenants on Human Rights," 2, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC.

⁴⁴ For an example of these concerns, see Department of External Affairs Memo, M. Cadieux, UN Division to Legal Division, re: Draft Covenants on Human Rights, 11th Session of the General Assembly, 17 October 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

practices legislation throughout Canada, the federal government recognized that many Canadian laws discriminated in ways that could conflict with the provisions of the draft Covenants. This included federal and provincial voting acts, federal policies toward Aboriginals, and selective immigration policies.

By the end of 1956, then, officials within Canada's Department of External Affairs were sensitive to two competing pressures: a continued indecision as to whether or not to support the development of binding international covenants on human rights; and unease as to how Canada's participation in debates at the UN, or lack thereof, was being perceived by other member states and at home. According to Marcel Cadieux, Canada had been "dithering" for several years between "hope that the covenants would emerge in such a form that we wouldn't be able to sign them and a fear that, if we did in the end feel obliged to sign them, they might contain articles which would be embarrassing to us."⁴⁵ Cadieux went on to say that policy makers had been "reluctant to take an active part in framing the covenants for fear we would give the impression that we were interested" and he argued it was time for Canada to "get off this particular fence."⁴⁶ Even Stuart Garson, the Justice Minister who so opposed the first draft, was encouraging Canada to "make the best of a bad job" by working to improve the Covenants.⁴⁷ Despite these arguments, the government was slow to change its policy and, from 1956 to 1963, remained reluctant to commit to the treaties. It was only after this point, with mounting international and domestic pressure, that Canada finally moved to actively contribute to

⁴⁵ Ibid, 1.

⁴⁶ Ibid.

⁴⁷ Memo from F.M. Tovell, United Nations Division, to M. Scott, re: Human Rights – Mr. Garson's Views, 10 March 1952, File 5475-W-40, Part 5.2, Vol. 6409, RG25, LAC.

the development of human rights initiatives at the United Nations, and show its support for the International Covenants.

Pressure to Change: International Developments

The real impetus for the Canadian government to begin to change its policy toward the draft International Covenants on Human Rights was the realization that the instruments would eventually be adopted in some form by the General Assembly. From their introduction in 1949, the Covenants had proved divisive, and Canadian policy makers hoped these divisions would prevent the instruments from reaching the final stage of adoption. By the late 1950s, however, Canadian delegates recognized that a strong enough majority supported the idea of binding human rights instruments, and were determined to see covenants on human rights adopted, even if reaching agreement on the details caused progress to be extremely slow. The delegation warned the Department of External Affairs that Canada needed to be prepared to make a decision as to whether or not to vote to support the draft Covenants.⁴⁸ Policy makers had several options: to continue with the current policy and use the lack of federal clause as justification for Canada's hesitation; to actively oppose the Covenants on the basis of their content; to follow the lead of the United States and support the principles of the Covenants, but announce that Canada would not be ratifying the documents; or to take a more active role

⁴⁸ For example, see Telegram from the Canadian Delegation to the Department of External Affairs re: Human Rights Covenant, 10 January 1957, File 5475-W-15-40, Part 6.1, Vol. 6927, RG25, LAC; and "Final Report on the Thirteenth Session of the Third Committee of the General Assembly," 8 January 1959, File 5475-W-15-40, Part 7.2, Vol. 6928, RG25, LAC.

in shaping the Covenants with the intention of voting in favour of their adoption.

Ultimately, the government decided to take a more positive role, not just in the debates over the Covenants, but also in human rights programs at the UN more generally. It did so for three reasons. First, pressure to support the Covenants from within the UN came largely from new members who criticized those states that did not support the documents. Canadian officials continued to worry about Canada's image among these newly established, and often non-aligned states. Robert Bothwell argues these concerns were a matter of self-interest; in order for Canada to exert any influence in the post war, post-colonial world, it had to maintain the image of the "honest broker" and this required the support, and respect, of non-aligned states.⁴⁹ Second, many of Canada's allies began to change their approach to the Covenants to, once again, become more supportive of adoption. Finally, and most significantly, legislative and cultural developments at home created an environment in which federal policy makers felt increasingly uncomfortable opposing international human rights initiatives. By 1963, these pressures had combined to significantly change Canadian policy toward the Covenants from opposition to support by 1966.

Attitudes toward the draft Covenants on Human Rights were influenced by the changing membership of the United Nations, which expanded from 51 states in 1945, to 133 by 1966.⁵⁰ Sixty-three new states joined in the period of the article-by-article debates

⁴⁹ Robert Bothwell, *Alliance and Illusion*, 8.

⁵⁰ "Growth in United Nations Membership, 1945-present," accessed online at United Nations Organization, <http://www.un.org/en/members/growth.shtml>, retrieved 17 June, 2012.

alone.⁵¹ This new membership included a wider representation from Asia and Africa, causing the proportion of European and American nations to drop.⁵² Many new states had only recently gained independence, and they denounced the slow pace of decolonization. The most outspoken were former colonial states such as Lebanon, Afghanistan and Saudi Arabia, who condemned member states they believed were opposing or attempting to weaken the draft Covenants, arguing these states were supporting colonial rule.⁵³ For differing reasons, these arguments found support from nations in Latin American and from the Soviet Bloc.⁵⁴ As a result there was a large majority within the Third Committee that was prepared to vote to support the adoption of the Covenants. Canadian delegates often referred to this group collectively as the “anti-colonial majority.”⁵⁵ This was, of course, an over simplification of the position of these states, as regional and national differences, and Cold War ideology, continued to permeate the debates over individual articles. While this slowed the process tremendously, Canada and other Western states became convinced that it was “inevitable” that the Covenants would be adopted, and that any states choosing to oppose or even abstain from supporting their adoption would be cast as opposing the fundamental principles of human rights.

⁵¹ Ibid.

⁵² Asian membership increased by 14 between 1946 and 1957, and African membership increased by 30 between 1956 and 1962. The proportion of European and American nations dropped from over 70% to 50% in just over 15 years. Ibid.

⁵³ Roland Burke, *Decolonization and the Evolution of International Human Rights*, especially Chapter 3, 35-58. Other vocal states included Indonesia, the Philippines, and Syria.

⁵⁴ The Soviet Bloc tried to use anti-colonial arguments to win support from non-aligned states, but increasingly Western nations argued that the Soviet Union was a colonial power in its own right.

⁵⁵ The delegation described the anti-colonial majority in detail to External Affairs in 1956. “Final Report on Item 28: Draft International Covenant on Human Rights,” Report from the Canadian Delegation to the Department of External Affairs, 20 April 1956, File 5475-W-15-40, Part 5.1, Vol. 6927, RG25, LAC.

This realization caused a number of Western states to modify their approach to the debates.⁵⁶ In 1959, officials within External Affairs reported to the Minister that, “during the past few sessions certain countries have tended to consider these covenants not as legal documents but as ideals and principles to serve as a guide for national legislation.”⁵⁷ Countries became less anxious about the legal implications of a covenant on human rights, which allowed them to support its principles, as they had with the UDHR. The Canadian Department of External Affairs suggested two explanations for this. First, after fifteen years of experience within the United Nations system, and ten years of debating the specifics of how to articulate human rights principles into international instruments, member states recognized that consensus was impossible and that there would be some flexibility in the implementation process. Understanding the Covenants would eventually be adopted, some member states were working to improve the text of articles to make the instruments acceptable enough for adoption. Second, other states, such as the United States, no longer intended to ratify the Covenants and so ceased to argue legal points.⁵⁸ Canadian representatives routinely met with officials from friendly states such as Australia and New Zealand to discuss the progress of the Covenants and to exchange reports to help inform policy decisions. These communications confirmed for Canadian officials that, while there was still widespread disillusionment with how the debates over

⁵⁶ Canadian delegates noticed these changes, and reported them to External Affairs. Memo to Minister, 2 September 1959, File 5475-W-15-40, Part 8, Vol. 6928, RG25, LAC.

⁵⁷ Ibid.

⁵⁸ “Canadian Position on Draft Internatioanl Covenants on Human Rights,” Department of External Affairs, 25 January 1962, File 5475-W-15-40, Part 9, Vol. 5118, RG25, LAC.

the Covenants had developed at the UN, by the 1960s the “main Western countries” were prepared to support the Covenants project to its completion.⁵⁹

As a result, the Department of External Affairs and the Interdepartmental Committee on Human Rights discussed whether or not Canada should continue to approach the Covenants from a legal standpoint or to give more weight to political considerations.⁶⁰ Policy makers in the departments of Justice and the Legal Division of External Affairs felt strongly that there was still a good argument for taking a hard line against the Covenants based on legal arguments, but recognized this would leave Canada in a minority position once again. Reminiscent of Pearson’s memo before the vote on the UDHR in 1948, a 1962 departmental memo on the implications of an abstention stated,

Given the present inclination of some of the Western countries [to support the Covenants], we might find ourselves isolated with a few countries such as South Africa, Portugal and China. Abstention in such circumstances is likely to be misunderstood not only by the non-aligned countries but perhaps even within Canada itself.⁶¹

The government was loath to put itself in a position in which it would appear to stand opposed to the universal protection of human rights, and recognized that its objections on constitutional grounds would not be accepted by other member states of the UN. Despite this, Canadian policy makers may have been willing to hold off support for the International Covenants had they not been worried as to how this foreign policy decision would be received at home.

⁵⁹ “Report on the Seventeenth Regular Session of the General Assembly of the United Nations,” New Zealand Government Report, File 5475-W-15-40 Part 10, Vol. 5118, RG25, LAC. This folder contains other reports from the New Zealand government. For samples of report froms Australia, see Vol. 5116 (W-40, Part 17), Vol. 4215 (W-40, Part 11).

⁶⁰ “Report of the Fourteenth Session of the Third Committee of the General Assembly,” Department of External Affairs, 1959, File 5475-W-15-40, Part 8, Vol. 6928, RG25, LAC.

⁶¹ Ibid.

Domestic Developments: Canada's Early "Rights Revolution"

Throughout the 1940s and 1950s, Canadian policy makers had been able to resist the adoption of the Universal Declaration and the draft Covenants in part because there was no public support for international human rights within Canada. By the 1960s, this had changed. There was still little pressure on the government relating specifically to the draft Covenants, but there was a growing support for Canada's participation in UN programs more broadly, and individuals and organizations lobbied federal politicians to more proactively support the UN's human rights initiatives. This was the result of an important cultural shift in how Canadians understood the concept of 'rights,' and the role governments should play in promoting equality and protecting freedom.⁶² A growing literature on the history of rights activism in Canada, led by scholars such as Dominique Clément, James Walker, Ruth Frager, Carmela Patrias, Christopher MacLennan and Ross Lambertson, highlights the development of a "rights culture" in postwar Canada.⁶³ This work illustrates how campaigns for the development of anti-discrimination legislation, and increased social movement activity at both the provincial and federal levels, led to a growing awareness of rights issues more generally in Canada. Rights-based activism brought the UN's language of universal human rights into public discourse and spread ideas about human rights to the broader Canadian public. UN-sponsored public education

⁶² Adam Chapnick, *The Middle Power Project*, 147-8.

⁶³ Christopher MacLennan, *Toward the Charter*; Ross Lambertson, *Repression and Resistance*; Michael Ignatieff, *The Rights Revolution*; Dominique Clément, *Canada's Rights Revolution*; James W. St. G. Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," 1-29; Carmela Patrias and Ruth A. Frager, "This is our Country, These are our Rights," 1-35.

programs and annual celebrations of the adoption of the UDHR served to reinforce the link between international human rights instruments and domestic rights protection.

Legislative developments in the early 1960s reflected the effect of the early stages of Canada's rights revolution on policy. Changes in political leadership, and new initiatives, were influenced by and reinforced a rethinking of Canada's customary methods of protecting liberties and freedom, and the position of marginalized peoples within Canadian society. Prime Minister John Diefenbaker's enactment of the Canadian Bill of Rights, the Quiet Revolution in Quebec, and Prime Minister Lester Pearson's subsequent launch of the Royal Commission on Bilingualism and Biculturalism, were all indicative of a cultural shift taking place. This new domestic environment caused federal policy makers to believe that Canadians would not only support the principles of the International Covenants on Human Rights, but also criticize any government that failed to support them.

Legislative Developments

Between the introduction of the UN's International Bill of Rights in 1947 and the adoption of the two International Covenants on Human Rights in 1966, the legislative foundation for Canada's human rights state was established. Canada transformed from a nation with virtually no statutory protection for rights and freedoms to one in which most jurisdictions had enacted anti-discrimination or human rights laws, and the federal government had adopted a national bill of rights. This transformation was the result of what historian James Walker has described as "organized" and "sustained" campaigns for

legislative reform to enhance rights protection in Canada, and began well before the 1940s and the United Nations' efforts to promote human rights.⁶⁴ The international human rights discourse, and the example of the UDHR, did shape Canada's domestic statutory human rights regime, however.

The Department of External Affairs was conscious of Canadian developments in the area of human rights protection because states were obligated to provide periodic reports on their progress to the Secretary-General of the United Nations. The UN's annual *Yearbook on Human Rights* contained extracted texts and summaries of significant constitutional provisions, legislative acts, executive orders and judicial decisions for each member state, documenting how each either promoted or limited the observance of human rights within that state.⁶⁵ In 1956, ECOSOC adopted a resolution requiring states to also produce triennial reports summarizing progress made and difficulties encountered in safeguarding human rights.⁶⁶ Within the Canadian government, the departments of Labour, Justice, External Affairs, Citizenship and Immigration, and National Health and Welfare were responsible for generating these documents, and officials could be working on several at one time. In 1957, for example, public servants were working on material for the *Yearbook*, a tri-annual report, and specialized reports on arbitrary arrest, discrimination with regard to religious practice, discrimination in employment and

⁶⁴ James W. St.G. Walker, "Decoding the Rights Revolution," in *Taking Liberties: A History of Human Rights in Canada*, ed. David Goutor and Stephen Heathorn (Don Mills: Oxford University Press, 2013): 29-58.

⁶⁵ The *Yearbook on Human Rights* was published from 1946 to 1988. United Nations. Secretariat. *Yearbook On Human Rights*. New York: United Nations.

⁶⁶ ECOSOC resolution 624B (XXII), "Periodic reports on human rights," 1956.

occupation, and discrimination in the field of political rights.⁶⁷ Federal officials worked hard to demonstrate in their reports that Canada continued to make progress, and their efforts illustrate how important it was to the government that Canada be seen as a nation that supported human rights.

By the end of the 1950s, Canadian officials were able to report to the UN that most jurisdictions had passed fair practices legislation in the areas of employment and accommodation, prohibiting discrimination based on a set list of prohibited grounds. Several had also enacted equal pay legislation.⁶⁸ During the period of the article-by-article debates, provincial governments enacted legislation dealing with a number of the rights outlined in the draft Covenants, including workers' compensation, mothers' allowance, mandatory education, and living accommodations for the aged.⁶⁹ Provincial and federal voting acts were amended to drop racial and religious disqualifications, and the federal government changed immigration regulations to take out discrimination based on colour, race, or country of origin.⁷⁰ Property laws were amended to prohibit discrimination in the sale or leasing of a property, and social welfare programs were

⁶⁷ Federal officials found this an onerous process, and often felt the "victim" of the UN's reporting system. Department of External Affairs Internal Memo, from D. Osborne to J. Holmes, re: Reports on Subjects concerning Human Rights, File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC.

⁶⁸ For an outline of the development of provincial anti-discrimination laws, see Brian Howe, *Restraining Equality: Human Rights Commissions in Canada*, (Toronto: University of Toronto Press, 2000), 8.

⁶⁹ These developments were all reported to the Secretary-General of the United Nations. For example, "Report on Human Rights in Canada," Department of External Affairs, File 5475-W-7-40, Part 3.2, Vol. 6926, RG25, LAC; "Report on the UN Yearbook on Human Rights - 1959," Department of External Affairs, File 5475-W-7-40, Part 3.2, Vol. 6926, RG25, LAC; and "Report on the UN Yearbook on Human Rights - 1959," Department of External Affairs, File 5475-W-7-40, Part 3.2, Vol. 6926, RG25, LAC.

⁷⁰ Voting Acts were changed in British Columbia, Manitoba, Ontario, Nova Scotia, Newfoundland, the North West Territories, Saskatchewan, the Yukon and for the federal government. In 1962, the Progressive Conservative Government introduced new immigration regulations granting admission to Canada on the basis of an applicant's "education, training, skills or other qualifications." In 1967, the Liberal Government established a "points system" to rate applicants on the basis on qualifications, and removed "race" from the text of Canadian immigration law.

created or modified to promote health, old age security, and unemployment insurance. By 1966, three of the provinces had adopted human rights acts, with Ontario having also developed a human rights commission, which was responsible for the administration, promotion, and enforcement of human rights.⁷¹ James Walker refers to this stage in the development of Canada's rights regime as the "protective shield," whereby governments enacted laws to guard citizens from overt acts of discrimination, but did not attack the institutional and systemic roots of this discrimination.⁷² As a consequence, many marginalized groups within Canadian society continued to be inadequately protected.⁷³ Nonetheless, this legislation signaled the recognition by governments of the need for statutory protection of rights and freedoms, and for an enhanced role of the state in maintaining stability and ensuring the equality of its citizens. This was a departure from the earlier insistence that Canadians were sufficiently protected by British common law.

In some cases, Canada's courts also offered protection for individuals suffering from discrimination. In 1956, the Supreme Court of British Columbia considered a case in which a woman was barred from inheriting her father's estate so long as she was "married to a Jew." The Court set aside the clause on the grounds that it was racial discrimination, and contrary to public policy and the public interest.⁷⁴ In *Roncarelli v.*

⁷¹ Ontario enacted its code and established the Ontario Human Rights Commission in 1962. The Nova Scotia Human Rights Act was adopted in 1963, and the Alberta Human Rights Act was adopted in 1966.

⁷² Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," 2.

⁷³ It was not until the 1970s that human rights codes in Canada began to prohibit discrimination on grounds such as disability, sexual orientation or political creed. Several scholars have examined the extent to which women were excluded from early rights legislation. Ruth Frager and Carmela Patrias, "Human Rights Activists and the Question of Sex Discrimination in Postwar Ontario," 583-610; Dominique Clément, "Equality Deferred: Sex Discrimination and the Newfoundland Human Rights State," *Acadiensis* 41, no. 1 (Winter/Spring 2012): 102-127; Shirley Tillotson, "Human Rights Law as Prism," 532-557.

⁷⁴ *Hurshman, Mindlin v. Hurshman* [1956] 6 D.L.R. 615 (B.C.S.C.)

Duplessis [1959], the Supreme Court ruled that the premier of Quebec had committed a civil wrong when he revoked the liquor license of Frank Roncarelli on the grounds that Roncarelli frequently provided bail for Jehovah's Witnesses charged for distributing pamphlets attacking Roman Catholicism.⁷⁵ The Court's decision set a legal precedent for the rule of law in Canada. More often than not, however, when the courts decided in favour of civil liberties claims in the 1950s and 1960s, they focused on whether or not a law was within the authority of a government based on the constitutional division of powers rather than considering on the rights themselves. In *Saumur v. The City of Quebec* [1953], a group of Jehovah's Witnesses challenged the validity of a Quebec City by-law banning distribution in the streets of books, pamphlets or other written materials without the permission of the Chief of Police, arguing it had the effect of religious and political censorship.⁷⁶ In a 5-4 decision, the Supreme Court struck down the by-law on the grounds that it was outside the power of the province to authorize municipalities to prohibit the distribution of publications in this way. Four years later, in *Switzman v. Elbling* [1957], the Supreme Court struck down Quebec's infamous Padlock Law, ruling the creation of "the crime of promoting communism" was *ultra vires* the provincial government.⁷⁷ With these decisions, judges within Canada's highest court chose not to advance the earlier suggestion, arising out of the Alberta Press Case, that laws could be subject to judicial review for violating a set of fundamental rights and freedoms that were implied within the

⁷⁵ *Roncarelli v. Duplessis* [1959] S.C.R. 121, 16 D.L.R. (2d) 689.

⁷⁶ *Saumur v. City of Quebec and Attorney General of Quebec* [1953] 2 SCR 299.

⁷⁷ *Switzman v. Elbling* [1957] SCR 285.

BNA Act.⁷⁸ As a protection for rights was not explicitly entrenched in Canada's Constitution, most judges believed that the legislature was a more appropriate forum to resolve civil liberties questions.⁷⁹

The movement for the entrenchment of a Canadian bill of rights reemerged in the late 1950s, based in part on the 1957 victory of John Diefenbaker's federal Progressive Conservative Party. Diefenbaker had been outspoken in the 1940s about the need for a national bill of rights to protect Canadians from the civil liberties abuses of the Liberal Government. Under pressure from rights activists to follow through on his words, in 1958 he introduced Bill C-60, *An Act for the Recognition and Preservation of Human Rights and Fundamental Freedoms*. The bill included a preamble, which recognized the supremacy of God and primacy of the rule of law in promoting freedom, as well as three articles enumerating a set of fundamental rights and freedoms.⁸⁰ Bill C-60 recognized the right to life, liberty, personal security, the enjoyment of property, and equal protection under the law; it also recognized freedom of religion, speech, assembly, association, and of the press. It was a federal statute rather than an amendment to the constitution, and so would only apply to federal matters, but it did prohibit discrimination based on race, national origin, colour, religion and sex.⁸¹ Diefenbaker's Bill of Rights focused on legal and political rights, not economic and social rights, which was consistent with the government's continued reluctance at the UN to support the Covenant on Economic,

⁷⁸ For a detailed discussion of this, see Robin Elliot, *Cases and Materials in Civil Liberties* (Vancouver: Faculty of Law, University of British Columbia, 1986); and Robin Elliot, "Civil Liberties and The Supreme Court of Canada" unpublished, University of British Columbia, Faculty of Law, 1982; and Ross Lambertson, "The BC Court and Appeal and Civil Liberties," *BC Studies* 162 (Summer 2009): 81-109.

⁷⁹ Ian Greene, *The Charter of Rights* (Toronto: James Lorimer & Company, 1989), 33.

⁸⁰ Government of Canada. *Canadian Bill of Rights, S.C. 1960, c. 44*.

⁸¹ *Ibid.*

Social and Cultural Rights. The legislation was heavily influenced by the UDHR; some articles in the Canadian Bill of Rights were duplicates of those found in the UDHR, such as Section 2(b), which used the same wording as Article 5 of the Declaration to prohibit cruel and unusual treatment.

For eighteen months, the public debated the merits of Diefenbaker's Bill of Rights before it was adopted in 1960.⁸² Critics questioned Diefenbaker's commitment to and understanding of human rights. Activists within the bill of rights movement, such as Arthur Roebuck and Bora Laskin, attacked Diefenbaker's decision to introduce a statute rather than a constitutional amendment, arguing the legislation had no teeth and provided for only limited rights.⁸³ Examining the legislation and Diefenbaker's motivations in retrospect, historians Christopher MacLennan and Ross Lambertson maintain that Diefenbaker's support for a bill of rights was not grounded in a liberal concern for the rights of individuals, but rather in a fear of executive despotism and a desire to reaffirm British tradition and the role of Parliament in upholding individual liberty.⁸⁴ Diefenbaker himself was a strong defender of the British parliamentary tradition, and his bill of rights focused on civil and political rights such as speech, religion, peaceable assembly and

⁸² For an overview of the development of the Canadian Bill of Rights and Diefenbaker's role, see MacLennan, *Toward the Charter*, Chapter 6; Lambertson, *Repression and Resistance*, 118-121; Greene, *The Charter of Rights*, 21-29; and Richard W. Pound, *Chief Justice W.R. Jacket: By the Law of the Land* (Toronto & Kingston: McGill-Queen's University Press, 1999), 115-121.

⁸³ Senator Arthur Roebuck argued that, because the Bill established no new rights and broke no new ground in protecting rights and freedoms, it did "very little for the people of Canada." Legal scholar and rights activist Bora Laskin called the document "timid" and claimed it was worse than had Diefenbaker done nothing. MacLennan, *Toward the Charter*, 158; Lambertson, *Repression and Resistance*, 362. For legal critiques, see Bora Laskin, "Canada's Bill of Rights: A Dilemma for the Courts," *International and Comparative Law Quarterly* 11, no. 2 (April 1962): 519-536; and W.S. Tarnopolsky, *The Canadian Bill of Rights* 2nd ed. (Toronto: McClelland and Stewart, 1975).

⁸⁴ Lambertson, *Repression and Resistance*, 157, 330-31, 362; MacLennan, *Toward the Charter*, 46, 118-121.

legal rights, rather than economic and social rights. For these reasons, it was out of line with the more expansive concept of universal human rights coming out of the United Nations by the 1960s.⁸⁵

Regardless of the effectiveness of Diefenbaker's Bill of Rights in promoting equality in Canada, it had a tremendous impact on both public awareness of issues of rights and on Canada's foreign policy toward human rights initiatives at the UN. Bill C-60 brought the question of how to codify rights and freedoms into law into public discussion. In 1958, a coalition of voluntary organizations, including churches, trade unions, women's organizations, and ethnic groups, had worked together to develop a brief to present to the Progressive Conservative government advocating the adoption of a national bill of rights.⁸⁶ Journals such as *Saturday Night*, *Canadian Forum*, *MacLean's*, *Rélations*, and numerous legal reviews printed articles on the topic.⁸⁷ In 1960, Parliament set up a special committee on human rights and fundamental freedoms to discuss the issue.⁸⁸ Most significantly, according to Ross Lambertson, the organizations and individuals that appeared before this Parliamentary committee were not radicals, but "moderate and "respectable" individuals and groups, signaling an acceptance, at least in

⁸⁵ The earliest concept of human rights coming out of the UN focused on restraining state power over the individual, much in the same way as Diefenbaker's Bill of Rights. By the 1960s, this had expanded to include obligations on the state to also protect the economic, social and cultural well being of its citizens.

⁸⁶ Lambertson, *Repression and Resistance*, 364

⁸⁷ See, for example "Le bill fédéral des droits de l'homme," éditoriaux, *Rélations* 237 (septembre 1960), 226; Maclean, "That Bill of Rights," editorial, *Saturday Night*, 27 September 1958; Pauline Jewett, "Mr. Diefenbaker's Proposed Bill of Rights," *Canadian Forum*, December 1958; M.S. Donnelly, "Why Pass a Useless Bill of Rights?" *Maclean's*, 3 January 1959; *Canadian Bar Review* 37 (March 1959); A.R.M. Lower, "The Bill of Rights," *Canadian Commentator* 3 (March 1959), 2-3;

⁸⁸ Government of Canada. *Minutes of Proceedings and Evidence of the Special Committee on Human Rights and Fundamental Freedoms, 1960*. Ottawa: Queen's Printer, 1960.

English Canada, of the need for greater legislative protection for human rights.⁸⁹ By the time the Canadian Bill of Rights was passed in 1960, while international human rights remained on the periphery of foreign policy considerations for the Progressive Conservative Government, Canadians had examples of provincial and federal legislation to provide perspective to attempts to codify rights under the UN's human rights regime.

Rights Activism, Public Awareness, and the Origins of Canada's Culture of Rights

While John Diefenbaker has received much credit for the adoption of a national bill of rights, human rights developments in Canada were the result of intense campaigning by individuals and organizations all across the country.⁹⁰ Campaigns for greater legislative protection in the 1950s and 1960s increased public awareness of rights and of the prevalence of discrimination in society, and made the new language of human rights more understandable to Canadians. Yet, there was no central or nationally organized human rights movement in this period. Historians have accounted for this by highlighting ideological divisions among activists, regional differences, Canada's federal structure, and the fact that many activists focused their attention on a single issue or group rather than human rights as a whole.⁹¹ Most of the formal rights associations of the 1930s were dormant by the 1950s.⁹² Despite this, there were significant developments in the

⁸⁹ Few francophones took part in the campaign for a national bill of rights, and the Quebec government under Duplessis remained opposed to the idea. Lambertson, *Repression and Resistance*, 367.

⁹⁰ MacLennan, *Toward the Charter*, 81.

⁹¹ Ross Lambertson, "Suppression and Subversion: Libertarian and Egalitarian Rights up to 1960," in *A History of Human Rights in Canada*, Edited by Janet Miron (Toronto: Canadian Scholars' Press, 2009): 27-36; Lambertson, *Repression and Resistance*, 373-375; Clément, *Canada's Rights Revolution*, 49-55; MacLennan, *Toward the Charter*.

⁹² Clément, *Canada's Rights Revolution*, 49; Lambertson, *Repression and Resistance*, 373;

field of human rights. To better understand this explosion of human rights-related activity, External Affairs asked the federal Department of Citizenship and Immigration in 1961 to study the nature of human rights advocacy in Canada. The author of the subsequent report, George Davidson, made note of the lack of national rights-based organizations.⁹³ He argued that while there were some national outlets for public opinion and information relating to human rights, citing committees such as the National Council of Women or communications organizations such as the National Film Board and the CBC, “The geographic pattern of voluntary involvement in human rights is by no means clear-cut.”⁹⁴ Davidson argued that to understand rights activism, one had to look beyond self-described civil liberties or human rights organizations. He explained that groups that may not, by name alone, be identified as “human rights” organizations, including labour, citizenship or community groups, were nonetheless responsible for channeling a great deal of literature to local communities to increase public awareness of issues of rights, prejudice and discrimination.⁹⁵

Minority groups also played an important role in helping the public “discover” the racism and discrimination that existed in Canadian society.⁹⁶ Groups such as African, Japanese and Jewish Canadians led grass-roots campaigns to convince Anglo-Canadians to fight for legislative protection of rights, while groups such as Jehovah’s Witnesses in

⁹³ George F. Davidson, Deputy Minister of Citizenship and Immigration, to Under-Secretary of State for External Affairs, 3 August 1961, File 1-24-27-3, Vol. 82, RG26, LAC.

⁹⁴ *Ibid.*, 3.

⁹⁵ Davidson argues that the Canadian Labour Congress was perhaps the best example of an organization heavily involved in the dissemination of materials relating to human rights, and having a human rights committee active on all levels.

⁹⁶ Frager and Patrias, “This is Our Country,” 2-3.

Quebec used the courts to dispute the legitimacy of discriminatory policies and laws.⁹⁷ Rights campaigns publicly challenged traditionally held ideas about race, religion and ethnicity, often referencing United Nations' instruments to support their cause. This was certainly true in the campaign for a national bill of rights, where advocates relied on the concept of the universality of human rights as the basis of their arguments. In some cases, groups representing different interests worked together to pressure the government. With no national human rights movement, however, it was a patchwork of organizations from across the country that brought these issues to public attention in the 1950s and early 1960s, helping to initiate what Ruth Frager and Carmela Patrias have characterized as “a fundamental reconsideration of the concepts of democracy and equality that guided postwar reconstruction.”⁹⁸

Advocates for the protection of civil liberties and human rights understood that public education was key to gaining the necessary support to force change. Voluntary organizations and government departments produced resources to help make the public aware of the effect of prejudice and inequality. These resources helped to educate victims of discrimination about their rights and legal options, and to train appropriate groups and individuals on how to implement the new laws. By the 1960s, rights and freedoms had become the topic of a growing number of formal and informal educational programs, and

⁹⁷ Ibid. For more detail about the use of the court by Jehovah's Witnesses in Quebec, see William Kaplan, *State and Salvation*.

⁹⁸ Frager and Patrias, “This is Our Country,” 19.

all regions saw the development of workshops and seminars for employees in specialized fields such as teaching, health care, police and government work.⁹⁹

Although rights advocates often used the language of the United Nations and referenced instruments such as the UDHR to spread awareness of the importance of human rights, activism and training programs were primarily focused on domestic developments. In order to make a stronger link between domestic and international human rights, the United Nations sponsored education programs and encouraged member states to host annual programs to commemorate the adoption of the UDHR. UNESCO produced pamphlets, radio programs, films and other resources outlining the purpose of the UN, and the progress and importance of international human rights initiatives.¹⁰⁰ These resources were available in both English and French, and distributed to organizations throughout Canada.¹⁰¹

Human rights had also become a field of study for credit in Canadian universities and an area of wider academic research. Legal and constitutional scholars such as F.R. Scott, Douglas Schmeiser, Bora Laskin, S.J. Godfrey, and Andrew Brewin, wrote extensively on civil liberties and Canadian federalism, civil liberties and the Supreme

⁹⁹ “Report on Human Rights in Canada (Report/DEA) [1957-59],” File 5475-W-7-40, Part 3.2, Vol. 6926, RG25, LAC.

¹⁰⁰ For example, in the early 1950s, UNESCO developed a film entitled, “The Declaration of Human Rights,” and offered it for distribution along with commentary, a set of posters, printed texts of the UDHR and a discussion guide entitled, “Our Rights as Human Beings.”

¹⁰¹ Throughout the 1950s, UNESCO materials were sent to national organizations such as the Canadian Bar Association, the Royal Society of Canadian Public Archives, L’Académie canadienne-française, Association of Civil Liberties, the National Council of Women, the National Council of Jewish Women, the Canadian Jewish Congress, the Canadian Congress of Labour, the Trades and Labour Congress of Canada, the Canadian Association for Adult Education, l’Association canadienne des éducateurs de langue française, the Canadian Institute of International Affairs, and the Federation of University Women’s Clubs. The government received many requests for materials from provincial government departments, provincial bar associations, and provincial and regional organizations. Vols. 5139, 8125, and 6950, RG25, LAC.

Court of Canada, the legal impact of federal and provincial rights legislation, race relations, and discrimination in Canadian society.¹⁰² In 1959, the CBC broadcast a series of talks hosted by F.R. Scott on Canada's constitution and human rights.¹⁰³ The literature on rights was not limited to legal experts, however. There was an increase in reporting on rights in newspaper articles, editorials, trade journals and popular magazines. Publications such as *Saturday Night*, *Relations*, *Maclean's* and *Canadian Forum* all produced articles on the meaning of human rights, campaigns for further human rights laws, the work of the UN and the significance of international human rights instruments.¹⁰⁴

A significant area of focus for public education programs relating to human rights was the public school system. In June 1963, the Canadian Education Association (CEA) produced a report outlining the extent to which teaching about human rights and the United Nations had made its way into the curriculum, with their information provided by provincial departments of education.¹⁰⁵ In many provinces these topics were covered in elementary and secondary school, in social studies, history, civics or citizenship classes. This included Quebec, where the UN and human rights were taught in both Protestant and

¹⁰² For example, F.R. Scott, *Civil Liberties & Canadian Federalism* (Toronto: University of Toronto Press, 1959); Douglas Schmeiser, *Civil Liberties in Canada* (London: Oxford University Press, 1964); Edward McWhinney, "Mr. Justice Rand's Rights of the Canadian Citizen-The Padlock Case," *Wayne Law Review* 4 (1957): 115; Bora Laskin, "Canada's Bill of Rights: A Dilemma for the Courts," *International and Comparative Law Quarterly* 11, no. 2 (April 1962): 519-536; and S.J. Godfrey, "Freedom of Religion and the Canadian Bill of Rights," *Faculty Law Review* 22 (1964): 60.

¹⁰³ Canadian Broadcasting Corporation, and University of the Air (Radio Programme). *The Canadian Constitution and Human Rights: Four Radio Talks as Heard on CBC University of the Air*. Canadian Broadcasting Corporation, 1959.

¹⁰⁴ For example, M.L. Ross, "Freedom with Strings Attached," *Saturday Night* 76 (June 1961), 2; "Maintient le droit," *Canadian Forum* 43 (July 1963):76-7; and G. Labrosse, "'Pacem in Terris' et notre déclaration des droits de l'homme," *Rélations* 23 June 1963): 177-78.

¹⁰⁵ "Teaching about the United Nations – Progress Made Since 1959," Department of External Affairs, 25 June 1963, File 5139-CZ-40, Part 6, Vol. 6950, RG25, LAC.

Catholic schools.¹⁰⁶ The report also noted that the UN Association of Canada's *World Review* publication, and UNESCO and CBC publications were useful resources that were well utilized by provincial school systems. School-wide activities such as celebrations of UN Day in October, Human Rights Day in December, model UN clubs, annual UNICEF collections, and a number of other activities supported the official curricula.

The United Nations Association of Canada played a key role in promoting public awareness of the UN and its human rights instruments, and provided services for educators and educational institutions. The Association produced its monthly *World Review* publication and an annual catalogue of materials on the United Nations, including pamphlets encouraging schools to form UN clubs. The UN Association of Canada reported that, by 1963, there were more than 2000 students in junior UN clubs in Saskatchewan, Manitoba and British Columbia alone, and over 350 UN clubs across the country.¹⁰⁷ Most universities in Canada hosted branches of the Student UN Association and more than twenty model General Assemblies were held country-wide, pulling from high schools. A week-long leadership-education seminar on the UN and world affairs was hosted in twelve centers across the country and the first interprovincial seminar was held in April 1963, involving 32 senior secondary school students who were addressed by UN Secretary-General U. Thant himself.

The majority of educational programs about human rights initiatives at the United Nations centered around Human Rights Day, which continued to be celebrated annually

¹⁰⁶ Ibid.

¹⁰⁷ "Educational Role of the United Nations Association in Canada," ECOSOC Report, 1963, File 5139-CZ-40, Part 6, Vol. 6950, RG25, LAC.

on December 10. Early commemoration programs had been limited to activities for school-age children and young adults, a surge in resources coming out of voluntary organizations, public radio programming and events organized through local groups such as churches and ethnic associations. During the period of the article-by-article debates, however, the United Nations celebrated the tenth and the fifteenth anniversaries of the adoption of the UDHR, and member states were encouraged to organize more substantial national commemoration and educational programs.

An analysis of the differences between Canada's efforts to commemorate the tenth anniversary of the adoption of the Universal Declaration in 1958 and efforts for the fifteenth anniversary in 1963 provides an interesting reflection of Canada's changing policy towards the International Covenants. In 1958, the government was very reluctant to take an active role in celebrations. Voluntary organizations arranged for a national and four regional conferences to observe the anniversary, but the major push came from a handful of these organizations. The conferences focused on domestic issues, with discussions over the need for a national bill of rights dominating the events and in reflecting on the success of the conferences, organizers questioned the true extent of support for human rights in Canada. Five years later, the government took a much more active role in the commemoration process, both at the UN and within Canada. A wider variety of voluntary organizations participated in the planning, and several provincial governments helped organize provincial celebrations. As a result, the fifteenth anniversary was a more extensive affair, although it did continue to focus on domestic and not international human rights issues.

Commemorating the UDHR: Canada's 10th and 15th Anniversary Celebrations

The impetus for the tenth anniversary celebration came from within the United Nations. The UN Commission on Human Rights passed a resolution in 1956 calling on member states to facilitate “the widest possible celebration” of the tenth anniversary of the UDHR, recommending governments encourage “leading civil or social organizations” to arrange for national conferences and meetings on human rights in 1958.¹⁰⁸ This focus on non-governmental organizations suited officials within External Affairs, who feared government participation would either lead to questions about Canada's position toward the Covenants, or signal too great a commitment to international human rights.¹⁰⁹ The Canadian government turned down the opportunity to sit as a member on the UN's committee to organize the celebrations, stating, “Unless we are firmly convinced that a refusal would be badly regarded and considered as an open manifestation of disinterest we would prefer that Canada should not repeat not be nominated.”¹¹⁰

Federal officials were nervous about the impact of wide-scale celebrations for the tenth anniversary in Canada. Laval Fortier of the Department of Citizenship and Immigration wrote,

I must confess that I do not view the 1958 celebrations without some apprehension. It is doubtful that in a country like Canada, the proposed

¹⁰⁸ This resolution was endorsed by both ECOSOC and the General Assembly. ECOSOC, E/CN.4/735, 11 February 1957; and Letter from the Secretary-General of the United Nations re: Resolution on the Tenth Anniversary, 9 September 1957, File 5475-DP-1-40, Part 3, Vol. 6950, RG25, LAC.

¹⁰⁹ Letter from the Department of External Affairs to the Department of Citizenship and Immigration re: Government Involvement in Celebration of Tenth Anniversary, 1 March 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

¹¹⁰ Department of External Affairs Internal Memo, 1 April 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

seminar will be used to “celebrate” any advance in the field of human rights; it will more likely turn into a critical analysis of certain situations where these rights are not yet fully enjoyed. Furthermore, it is the experience of this Department that whenever such study is undertaken by community leaders, governments are likely to be apportioned more than their fair share of the blame. It is therefore my view that the whole project should not be given too much encouragement.¹¹¹

Fortier did not expand on the “certain situations” in which rights were not fully enjoyed, and he was reluctant to acknowledge the important role of community leaders and activists in critically assessing existing laws so as to propose changes that would result in enhanced protection for all. A.H. Brown of the Department of Labour also opposed the organization of a national conference on human rights, arguing that government coverage and observance would be enough.¹¹² R.G. Robertson, Deputy Minister of Northern Affairs and National Resources, formally of External Affairs, cautioned the other ministers that “While it is true, as you mention, that Canada voted in favour of the Declaration in 1948, my impression is that we did so without any real enthusiasm and generally because of a feeling that it would be extremely hard to do otherwise.”¹¹³ Robertson, who was critical of the effect of the UN’s human rights instruments, went on to say, “I think a good many Canadians would feel that the first problem was to demonstrate that the adoption of the resolution [the UDHR] has signified anything whatsoever.”¹¹⁴ After this negative feedback from the other departments, N. Currie of External Affairs sent a letter to non-governmental groups interested in a national

¹¹¹ Ibid., Letter from Laval Fortier, Department of Citizenship and Immigration, to Jules Léger, Department of External Affairs, 6 March 1957.

¹¹² Ibid., Letter from A.H. Brown, Deputy Minister of Labour, to Jules Léger, Department of External Affairs, 11 March 1957.

¹¹³ Ibid., Letter from R.G. Robertson, Deputy Minister of Northern Affairs and Natural Resources, to Jules Léger, Department of External Affairs, 12 March 1957.

¹¹⁴ Ibid, 2.

conference, stating it would be inappropriate for the government to be too involved because the UN resolution stated clearly that such a conference should be organized and led by voluntary organizations.¹¹⁵

John P. Kidd of the Canadian Citizenship Council and Max Swerdlow of the Canadian Labour Congress took the lead in organizing the Human Rights Anniversary Committee for Canada, established in 1957 to organize a national conference to be held in Ottawa on December 10, the following year.¹¹⁶ In preparation for the conference, the Commission solicited briefs from four national organizations: the Canadian Welfare Council, the Canadian Labour Congress, the Canadian Jewish Congress, and the National Council of Women in Canada.¹¹⁷ These organizations were selected because they were well established within Canada's human rights movement, and they had participated in previous anniversary celebrations. Many of Canada's most vulnerable groups, including the physically and mentally disabled, new immigrants, gays and lesbians, and indigenous peoples, were not invited, and participated very little in the anniversary celebrations of the UDHR. This illustrates the extent to which, even within the activist community, certain disadvantaged groups, racialized minorities for example, were understood to have greater claim to rights protection than others, such as gay men.

¹¹⁵ Letter from N. Currie, Department of External Affairs, to J.P. Kidd, Canadian Citizenship Council, 13 Marh 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

¹¹⁶ Ibid. Department of External Affairs Internal Memo, 27 February 1957.

¹¹⁷ Compilation of Briefs presented to The Citizens' Commission on Human Rights, National Human Rights Conference, December 1958, File 1-24-17, Part 3, Vol. 82, RG26, LAC.

By November 1957, a number of national volunteer organizations were involved in the planning the tenth anniversary celebrations.¹¹⁸ In outlining proposed themes for the conference, representatives focused on the need for increased domestic protections, a national bill of rights, and the possibility of writing the UDHR into domestic law.¹¹⁹ Gordon Hockin, of the Canadian Congress of Labour, stated the purpose of the conference should be to help make the Canadian public more aware of the real human rights problems many Canadian face on a daily basis, and to provide reports and a source of information to be used by the federal government in instructing its representatives at international conferences regarding Canadian attitudes toward human rights.¹²⁰ Very little was said about the draft International Covenants on Human Rights by anyone except John Humphrey. Humphrey continued to work for the UN, but he spent a great deal of time in Canada promoting the UN's work in the field of human rights. At the tenth anniversary conference, Humphrey spoke very negatively about the drawn-out process of the article-by-article debates, telling his audience that the text of the Covenants had become "progressively worse."¹²¹ Other than Humphrey, Government observers reported that none of the representatives at the meetings showed any interest in the possible ratification of the Covenants or seemed unduly disturbed by the Canadian constitutional position.¹²²

¹¹⁸ More than 40 organizations were involved, although many acted largely as observers. The organizations most heavily involved in the planning were the Canadian Labour Congress, the Canadian Association for Adult Education, the Canadian Citizenship Council, the Jewish Labour Committee (JLC), the UN Association of Canada, the Canadian Institute on Public Affairs, and the Canadian Welfare Council.

¹¹⁹ "Report on Preparations for 1958 Conference on HR," Department of External Affairs, 7 Nov 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

¹²⁰ Ibid.

¹²¹ Ibid., Speech by John Humphrey, "Report on Preparations for 1958 Conference on HR," 7 Nov 1957.

¹²² Ibid., 5.

P. McDougall, who attended the planning meeting as an observer for the Department of External Affairs noted that most of the representatives, except for those from the Canadian Congress of Labour and the Canadian Jewish Congress, “seemed to be leery of going all out for the suggestion of a national conference.”¹²³ Kathleen Bowlby of the UN Association of Canada expressed doubts that a national conference on human rights would garner a response from a wide variety of Canadian non-governmental organizations.¹²⁴ Bowlby was concerned that the idea for the conference stemmed from Canadian labour circles, and that if labour organizations formed the majority of the groups involved, the focus of the conference would be too narrow rather than providing a broad cross-section of ideas about rights as the UN intended.¹²⁵ Government representatives that attended meetings of the planning committee for the anniversary in 1957 and 1958 expressed this same concern, observing that members of the Canadian Congress of Labour “dominated the discussion.”¹²⁶ Whether this was accurate or not, it reflected the negative perception federal officials had of the usefulness of widespread celebrations to commemorate the adoption of the UDHR alongside a fear that the event would be captured by the CCL.

¹²³ Ibid.

¹²⁴ Department of External Affairs Internal Memo re: Proposed National Conference on Human Rights, 26 September 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

¹²⁵ Ibid.

¹²⁶ Memo from Mr. Summers to the UN Division of External Affairs, 2 November 1957; Department of External Affairs Memo to the Minister re: Government Committee to Study 1958 Conference on Human Rights, 23 January 1958, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

Throughout the summer and fall of 1958, the Human Rights Anniversary Committee continued to meet.¹²⁷ In a press release advertising the anniversary celebrations, the planning committee wrote that nineteen Canadian organizations, representing national groups in the areas of “church, education, welfare, labour and women’s groups” were holding a national conference to explore “Canadian life in relation to the principles set forth in the three main areas of the Universal Declaration – civil liberties, social rights and economic rights.”¹²⁸ The committee’s plan included community action through encouraging community organizations to devote time to discussing human rights; five regional conferences, to be held in Vancouver, Winnipeg, Ottawa, Montreal and Halifax; and a national conference to be held from December 8th to 10th in Ottawa.¹²⁹

The regional and national conferences went ahead as scheduled, and were well attended. The national conference included a keynote address on “The Universal Declaration of Human Rights – Its Influence in Canadian and International Scenes,” as well as panels on the nature of civil liberties, economic, and social rights within Canada.¹³⁰ The most widely publicized panel was one on the proposed federal bill of rights. The regional conferences included similar panels, and also included more specific workshops on a variety of topics including “Human Rights and Racial Problems,” “Canadian Immigration Laws,” “Legal Rights,” “Labour Relations,” “The Indian,” “The

¹²⁷ Letters and Minutes of meeting of the Human Rights Anniversary Committee for Canada, 18 September 1958, File 5475-DP-3-40, Part 1.2, Vol. 6950, RG25, LAC.

¹²⁸ Ibid.

¹²⁹ Documents from the Ad Hoc Committee for the Tenth Anniversary, 19 March 1958, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

¹³⁰ “Programme – The National Human Rights Conference,” 8-10 December 1958, File 1-24-27, Part 3, Volume 82, RG26, LAC.

Eskimo” and “Threats to Human Rights.”¹³¹ Members of voluntary associations questioned the true impact of the Tenth Anniversary celebrations, however. Muriel Jacobson of the Canadian Association for Adult Education wrote that, while “almost everyone is for human rights,” feelings ranged from “skepticism about the existence of sufficient public interest” to an “opaquely complacent view that human rights in Canada were not burning issues,” except to those most directly affected.¹³² For her most telling evidence, Jacobson mentioned the fact that very few governmental or non-governmental organizations would even provide financial support for the celebration of the tenth anniversary.¹³³

Five years later, as the fifteenth anniversary approached, the Department of External Affairs wrote, “it must be admitted that on the occasion of the celebration of the tenth anniversary of the Universal Declaration the Canadian government took little initiative other than to have several departments issue special publications or press releases to mark the anniversary.”¹³⁴ By 1963, the government was willing to take a more central role in organizing the celebrations, both at the United Nations and at home. Canada co-sponsored a resolution at the UN to prepare plans for the fifteenth anniversary and volunteered to sit on a special organizing committee.¹³⁵ External Affairs encouraged

¹³¹ Letter from the Human Rights Anniversary Committee for Canada, to Sponsoring Organizations, 17 November 1958, Folder 1631, Vol. 207, MG28-I10, LAC.

¹³² Muriel Jacobson, “Human Rights: Where Do We Stand,” *Food for Thought* 19 no. 5 (February 1959).

¹³³ Ibid.

¹³⁴ Memo from N.A. Robertson to the Minister of External Affairs re: Fifteenth Anniversary Celebrations, 27 May 1963, File 5475-DP-3-40, Part 1.2, Vol. 6950, RG25, LAC.

¹³⁵ UN General Assembly, Resolution 1775(XVII). The special committee was to consider suggestions for the format of celebrations, and to provide information about resources that might be useful for member

other federal departments to take a lead in domestic preparations, and in response the Department of Citizenship and Immigration chaired a meeting with representatives from voluntary organizations to establish the Canadian Anniversary Conference of Canada Committee. Those attending the Committee's first meeting in August 1963 debated the purpose of a nation-wide anniversary celebration, deciding it would both recognize the gains made in the field of human rights and assess what remained to be done to fulfill Canada's international and domestic obligations.¹³⁶ Rather than focusing on a handful of regional conferences and a single national conference, as had been the case for the tenth anniversary, the Anniversary Committee for 1963 concerned itself with stimulating public and community participation at a grass roots level by facilitating the development of materials to be used, working with local organizations and communities to plan events, and providing information about Canadian human rights achievements since 1958.¹³⁷

While voluntary organizations once again took the lead in planning these initiatives, the government helped produce and distribute materials, and representatives from several federal agencies acted as consultants to the Anniversary Committee, including: the English and French networks of the CBC, the Department of Citizenship and Immigration, the Canadian National Commission for UNESCO, the Department of

states in their national preparations. For communications regarding Canada's participation, see File 5475-DP-3-40, Part 1.2, RG25, LAC.

¹³⁶ Minutes and Documentation for founding meeting of Canadian Anniversary Conference of Canada, June to August 1963, File 5475-DP-3-40, Part 1.2, Vol. 6950, RG25, LAC.

¹³⁷ For example, the Committee consulted with the French and English networks of the CBC, with a number of national presses, the Canadian Film Institute and the National Film Board in order to encourage a variety of media resources for local communities.

External Affairs, the Department of Labour, and the National Film Board.¹³⁸ Non-governmental organizations that had been heavily involved five years earlier continued to play a role in 1963, but were joined by a broader variety of organizations from across the country, such as: l'association canadienne des éducateurs de langue française, the Canadian Bar Association, the Canadian Daily Newspapers Association, the Canadian Federation of Mayors and Municipalities, the Canadian Home and School and Parent-Teacher Federation, the Canadian Teachers' Federation, le confédération de syndicats nationaux, l'institut canadien d'éducation des adultes, and the National Federation of Canadian University Students.¹³⁹

In some case, the provinces were more actively involved in organizing celebrations for the fifteenth anniversary of the UDHR than they had for the tenth. The Ontario government was particularly enthusiastic, with Premier John Robarts proclaiming a province-wide celebration culminating with a special ceremony at the Ontario legislature.¹⁴⁰ The Nova Scotia government established an interdepartmental committee on human rights, established a Human Rights Day committee, wrote to service clubs in the province suggesting steps they could take to celebrate the anniversary, and facilitated

¹³⁸ "Canadian Anniversary Conference on Human Rights – Executive Committee Meeting," 13 August 1963, File 5475-DP-3-40, Part 2, Vol. 6950, LAC. An important initiative of the Anniversary Committee was to develop a "programme guide" that would list relevant resources, important contact information, suggestions for local celebrations, and details about ceremonies and special events being held across Canada. The Department of Citizenship and Immigration was responsible for creating this programme. The Department of Labour contributed by publishing a special edition of its Labour Gazette dedicated to the anniversary.

¹³⁹ For a full listing of voluntary organizations that attended the meeting, see: File 5475-DP-3-40, Part 2, Vol. 6950, RG25, LAC.

¹⁴⁰ "Report to the United Nations' Secretary-General on Canada's Celebrations, 1962), 27 February 1963, File 5475-DP-3-40, Part 2, Vol. 6950, LAC.

the distribution of UNESCO resources.¹⁴¹ The Department of External Affairs wrote to the provincial governments, inquiring as to their level of participation in the anniversary. New Brunswick and Alberta both responded that they had no plans to hold special ceremonies beyond the customary educational programs run through their schools. New Brunswick went so far as to argue that commemorative programs for the UDHR were “of a federal nature” and therefore would be most appropriately organized from a federal rather than a provincial point of view.¹⁴² Other provinces, including Quebec, British Columbia and Saskatchewan, did not reply to the federal government’s inquiry.

Among voluntary organizations, the observance of the fifteenth anniversary of the adoption of the Universal Declaration was diverse and widespread, involving schools, churches, ethnic groups, and governmental and non-governmental organizations at local, provincial and national levels. The federal government’s interest and involvement in this programming, particularly in light of its lack of participation only five years earlier, reflects the view of policy makers that Canada needed to take action to satisfy interested groups and individuals at home, as well as to demonstrate to other member states at the UN that Canadians did support the principles of human rights.

Political Pressure to Support Human Rights Initiatives at the UN

Lester Pearson’s 1957 Nobel Peace Prize for his role in resolving the Suez Crisis provided Canadians with pride in their nation’s achievements at the United Nations.

¹⁴¹ Letters from the Provinces re: 15th Anniversary, June 1963, File 5475-DP-3-40, Part 2, Vol. 6950, LAC.

¹⁴² Attorney General of New Brunswick to N.A. Robertson, Under-Secretary of State for External Affairs, 24 June 1963, File 5475-DP-3-40, Part 2, Vol. 6950, RG25, LAC.

Historian Adam Chapnick argues that, by the 1960s, Canadians believed they had a special leadership role to play at the UN, to promote peace and security throughout the world.¹⁴³ This leadership role carried with it obligations to act as a model, and certain rights advocates and politicians called on the government to fulfill these obligations by taking positive action in relation to human rights initiatives at the UN. With all of the attention placed on the Universal Declaration of Human Rights, in annual anniversary celebrations and in resources provided by UNESCO, rights advocates in Canada tended to overlook the draft Covenants on Human Rights. Rather than pressuring the federal government to take a more positive approach to the Covenants, for example, several individuals and groups asked Parliament to incorporate the UDHR into Canadian law.

Private members' resolutions throughout the 1950s called on the federal government to officially affirm Canada's support of the Declaration.¹⁴⁴ This was, in part, an attempt to pressure the government to introduce a national bill of rights, but it also demonstrated an interest in Canada's approach to international human rights instruments. Prime Minister St. Laurent had previously informed Parliament that, since the Declaration was not a legal instrument, the government was not required to endorse its approval.¹⁴⁵ Upon request, the permanent delegation to the UN reported to members of the House of Commons that the UDHR had not been endorsed in the legislature of any other member

¹⁴³ Adam Chapnick, "The Canadian Middle Power Myth," 194-195.

¹⁴⁴ The Department of External Affairs kept notes on these submissions. See File 5475-W-15-40, Part 3, Vol. 6412, RG25, LAC; and File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC. Liberal MP David Croll introduced a private members' bill on 28 February 1953, CCF MP Alistair Stewart brought it forward again on December 7, 1953, and it was debated in January 1954.

¹⁴⁵ Canada, *House of Commons Debates*, Prime Minister Louis St. Laurent, 21 May 1951.

state.¹⁴⁶ Nonetheless, pressure continued from voluntary organizations and individuals who wanted the government to make a formal statement of commitment to the principles embodied in the UDHR.¹⁴⁷

Rights advocates also vocally called on the federal government to take a greater international role in promoting the status of women. In 1956, External Affairs reported that, “pressure from women’s organizations for a more active participation by Canada in the activities of the United Nations in the field of human rights has been building up steadily at least for the past 9 years.”¹⁴⁸ Activists wrote letters and briefs to the government, admonishing federal officials for their lack of commitment to the status and situation of women around the world, and for failing to support UN resolutions and instruments.¹⁴⁹ These letters focused on issues such as Canada’s lack of representation on the UN Human Rights Commission or the Commission on the Status of Women, and calling on the federal government to ratify the Convention on the Political Rights of Women, which was adopted by the General Assembly in 1953.¹⁵⁰ External Affairs noted that the most vocal organizations, including the Federation of Women’s Institutes in Canada, the Canadian Federation of Businesses and Professional Women, the National Council of Women, the National Board of the Y.W.C.A. and the Canadian Federation of

¹⁴⁶ Collection of documents relating to House of Commons debates, collected 14 January 1954, File 5475-DP-40, Part 2.1, Vol. 6425, RG25, LAC.

¹⁴⁷ For example, in 1957, individuals from the Canadian Jewish Congress submitted a brief calling on the government to either create a national bill of rights, or write the Declaration into Canadian domestic law. Department of External Affairs Internal Memo, P. McDougall re: Tenth Anniversary, 7 November 1957, File 5475-DP-3-40, Part 1.1, Vol. 6950, RG25, LAC.

¹⁴⁸ Department of External Affairs Memo to File, “Interest of Canadian Non-Governmental Organizations in U.N. Activities in the Field of the Status of Women,” 19 July 1956, File 5475-W-40, Part 14.1, Vol. 6924, RG25, LAC.

¹⁴⁹ Ibid.

¹⁵⁰ Canada ratified the Covenant on the Political Rights of Women in 1957.

University Women, had branches throughout Canada, including French-speaking branches in Quebec. Their pressure on the federal government represented early attempts to hold the Canadian government accountable to international human rights law.

Broader Challenges to British Tradition in Canada

Finally, Canada's changing policy toward the draft Covenants at the United Nations must be taken in the context of the broader political and cultural changes taking place in Canada in this period. When John Diefenbaker's Progressive Conservatives defeated the Liberal Government in 1957, it ended 22 years of Liberal Party rule. It also signaled a break in liberal tradition, which had established the Canadian postwar welfare state.¹⁵¹ The Progressive Conservatives won the 1957 election by offering a new vision of Canada at a time when Canadians were questioning their nation's role within the Empire and the larger world, the meaning of citizenship, and the place for marginalized peoples within society.¹⁵² Diefenbaker attempted to answer these questions with his "New National Policy" and his concept of "one unhyphenated Canada," a single Canadian nation where people of all ethnic backgrounds could live under a government that would

¹⁵¹ For a study of the Liberals in this period, see Reginald Whitaker, *The Government Party: Organizing and Financing the Liberal Party of Canada, 1930-58* (Toronto: University of Toronto Press, 1977); Jean-François Constant and Michel Ducharme, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009); and Penny Bryden *Planners and Politicians: Liberal Politics and Social Policy, 1957-1968* (Montreal: McGill-Queen's University Press, 1997).

¹⁵² For a discussion of how the 1950s set the stage for these types of questions, see José E. Igartua, *The Other Quiet Revolution: National Identities in English Canada, 1945-71* (Vancouver: UBC Press, 2006); Philip Massolin, *Canadian Intellectuals, the Tory Tradition, and the Challenge of Modernity, 1939-1970* (Toronto: University of Toronto Press, 2001); Nancy Christie and Michael Gauvreau, eds., *Cultures of Citizenship in Postwar Canada, 1940-1955* (Montreal-Kingston: McGill-Queen's University Press, 2003); Leonard Kuffert, *A Great Duty: Canadian Responses to Modern Life and Mass Culture, 1939-1967* (Montreal-Kingston: McGill-Queen's University Press, 2003); and Phillip Buckner, ed., *Canada and the End of Empire* (Vancouver: UBC Press, 2005).

respect their fundamental rights and freedoms.¹⁵³ In 1957, he appointed Ellen Fairclough as Secretary of State, making her the first female to serve as a federal Cabinet Minister. Three years later he brought in the Canadian Bill of Rights, and that same year ended all federal voting restrictions on Aboriginal peoples.¹⁵⁴ Diefenbaker also promoted a new imperial tradition, one that took into account the pluralist nature of Canadian society, the changing international environment, and which saw the Commonwealth as “a diverse group of nations united by the common bond of British parliamentary democracy and liberalism.”¹⁵⁵ Despite these ideals, the Progressive Conservatives experienced little political success while in office, in part due to an economic downturn in Canada that began in 1958, and in part due to Diefenbaker’s leadership. In his biography of the prime minister, Denis Smith refers to Diefenbaker as “a romantic parliamentarian of the Edwardian era” and “a man out of time and place in twentieth-century Ottawa,” with an impractical vision of Canada.¹⁵⁶

In terms of foreign policy, and particularly Canada’s approach to human rights initiatives at the United Nations, the Progressive Conservatives did not differ greatly from

¹⁵³ For a study and critique of Diefenbaker’s policies, see Denis Smith, *Rogue Tory: The Life and Legend of John G. Diefenbaker* (Toronto: Macfarlane, Walter & Ross, 1995); Garrett Wilson and Kevin Charles Wilson, *Diefenbaker for the Defence* (Toronto: James and Lorimer, 1988); Lanny Boutin, *John Diefenbaker: The Outsider Who Refused to Quit* (Toronto: Jackfruit Press, 2006); Arthur Slade, *John Diefenbaker; An Appointment With Destiny* (Toronto: XYZ Publisher, 2001); and Thad McIlroy, *Remembering the Chief* (Toronto: Doubleday Canada Ltd., 1984).

¹⁵⁴ Beginning in 1960, aboriginal Canadians were no longer required to give up their treaty rights and renounce their status under the Indian Act in order to qualify for the vote.

¹⁵⁵ Carla Spittal, “The Diefenbaker Moment,” unpublished PhD dissertation, University of Toronto, 2011, available online at <https://tspace.library.utoronto.ca/bitstream/1807/29878/3/Spittal_Cara_201106_PhD_thesis.pdf>

¹⁵⁶ Stairs, Prologue, iv.

the Liberal Party.¹⁵⁷ Diefenbaker's foreign policy advisor was Basil Robinson, a career civil servant who had worked in the field of foreign affairs under the Liberals for twelve years.¹⁵⁸ Several of the senior civil servants working in the Department of External Affairs also retained their positions when Diefenbaker came to power, providing for much continuity within the department. For example, Norman Robertson had joined External Affairs under Mackenzie King, and served a second term as Under-Secretary of State from 1958 to 1964. John Holmes had joined External Affairs in 1943, and was the Permanent Delegate to the United Nations from 1950 to 1953 and then Assistant Under-Secretary of State from 1953 until his retirement in 1960. A.E. Gotleib worked in the legal division of External Affairs in the 1950s, and was the Assistant Under-Secretary of State through to the end of the 1960s. These three public servants advised both the Liberal and Progressive Conservative Governments in regards to their position toward the UDHR and the draft Covenants. Diefenbaker, who had criticized the Liberal Government for its lack of action toward the International Bill of Rights in 1948, was more interested in a domestic bill of rights when he was prime minister, and did not take an active role himself in Canada's approach to the Covenants.

In 1963, the "Diefenbaker Interlude" ended as the Liberal Party was elected back into power, now under the leadership of Lester Pearson.¹⁵⁹ As Pearson's Liberals attempted to draft their own vision of an independent Canada as a force within the

¹⁵⁷ Kevin A. Spooner, *Canada, the Congo Crisis, and UN Peacekeeping, 1960-64* (Vancouver: University of British Columbia Press, 2009), 2.

¹⁵⁸ See Denis Stairs, Chapter 8.

¹⁵⁹ This term is taken from the title of Peter Regenstreif's 1965 monograph. Peter Regenstreif, *The Diefenbaker Interlude* (Toronto: Longmans Canada, 1965).

international system, they encountered many of the same challenges that had faced Diefenbaker. Within Canada, the most significant of these was the rise of nationalist sentiments in Quebec. The death of Premier Maurice Duplessis in 1959 changed the political, economic and cultural landscape of that province. The resulting “Quiet Revolution” was a period of intense change in Quebec, characterized by modernization of the state, economic reform, growing secularization, and the development of a welfare state. While this had a tremendous impact on the people of Quebec, it also had significant repercussions for Quebec’s relationship with Ottawa. A new generation of politicians challenged the role of francophones in developing Quebec society, and the place of the French language and culture within Canada.¹⁶⁰

In response, and to promote the image of a government eager to serve both English and French-speaking citizens, Pearson established a Royal Commission on Bilingualism and Biculturalism shortly after his election. The Commission’s task was to investigate “the existing state of bilingualism and biculturalism in Canada” and to make recommendations for policies to “develop the Canadian Confederation on the basis of an equal partnership between the two founding races.”¹⁶¹ The commission's findings, which were released in a preliminary report in 1965, and in a final report in 1969, led to changes in French education across the country, the adoption of the Official Languages Act, and allowed for the creation of the federal department of multiculturalism. The Commission

¹⁶⁰ José Igartua, “The Sixties in Quebec,” in *Debating Dissent: Canada in the 1960s*, Edited by Lara Campbell, Dominique Clément and Greg Kealey (Toronto: University of Toronto Press, 2012), 249-51; and Matthew Hayday, “Reconciling the Two Solitudes? Language Rights and the Constitutional Question from the Quiet Revolution to the Victoria Charter,” in *Debating Dissent*, 233.

¹⁶¹ Hayday, “Reconciling the Two Solitudes?” 235; and A. Davidson Dunton, André Laurendeau, Jean-Louis Gagnon, “Final Report, Royal Commission on Bilingualism and Biculturalism,” Government of Canada, 1967.

concluded that, as a result of problems in the relationship between English and French-Canadians, Canada was “passing through the greatest crisis in its history.”¹⁶² The creation of the Royal Commission, its recommendations, and debate surrounding the topic of language rights in Canada added a new dimension to discussions of rights in Canada, particularly since language rights were understood collectively rather than as individual rights.

Social unrest in this period was not limited to Quebec. The 1960s and early 1970s were a tumultuous time in Canadian history, against a backdrop of a boom economy that generated a sense of optimism for Canada’s future.¹⁶³ In a recent collection on the “long 1960s,” Lara Campbell and Dominique Clément describe this era as “a historical moment that fomented a revolution in education, racial divisions, anxieties about national security, consumerism, Aboriginal mobilization, anti-Americanism, the search for national identity, clashes between capital and labour, innovations in public policy, and debates surround the family, health and the environment.”¹⁶⁴ This extensive activism, while only beginning during the period of the article-by-article debates at the UN, caused federal officials to be wary about how its foreign policy toward universal human rights might be received by Canadians.

¹⁶² Ibid., and Hayday, 236.

¹⁶³ For research on the 1960s in Canada, see Bryan D. Palmer, *Canada's 1960s: The Ironies of Identity in a Rebellious Era* (Toronto: University of Toronto Press, 2009); José E. Igartua, *The Other Quiet Revolution*; Lara Campbell, Dominique Clément, and Gregory S. Keeley, eds., *Debating Dissent: Canada and the Sixties* (Toronto: University of Toronto Press, 2012); C.P. Champion, *The Strange Demise of British Canada: The Liberals and Canadian Nationalism, 1964-1968* (Montreal: McGill-Queen's University Press, 2010); and M. Athena Palaeologu, ed., *The Sixties in Canada: A Turbulent and Creative Decade* (Montreal: Black Rose Books, 2009).

¹⁶⁴ Lara Campbell and Dominique Clément, “Time, Age, Myth: Towards a History of the Sixties,” in *Debating Dissent*, 6.

By 1963, the Department of External Affairs understood that the legislative and cultural changes that were taking place in Canada were closely linked to how Canadians understood rights and freedoms, whether those were language rights, political rights, social rights, or the right to live free from discrimination. External Affairs reported to the United Nations that the following broad developments were most relevant to Canada's human rights development: growing attention to bilingualism and biculturalism in Canada; a new focus on the "third element" and Canadians of non-French and non-English origin; federal legislative changes, culminating in the Canadian Bill of Rights; provincial legislative changes; changes experienced by certain minority groups in the country; and public education and community awareness of human rights.¹⁶⁵ The absence of any specific reference by External Affairs to Aboriginal or Indian rights in this list is important in two ways: it is indicative of the lack of formal Aboriginal activism or national political organization around rights by indigenous peoples in the mid-1960s, and it reflected the paternal relationship between the government and Aboriginals which influenced how policy makers approached Aboriginal communities. J.R. Miller argues the state treated Aboriginals as children, and as such did not confer on them the same rights as other marginalized groups. Even with the omission of Aboriginal issues, External Affairs' report to the UN signaled federal officials' understanding that significant changes were taking place in Canada in relation to public expectations of a government's role in promoting the human rights of citizens. As a result, Ottawa worried that if the Canadian government elected to abstain in a vote on the adoption of the Covenants on Human

¹⁶⁵ Department of External Affairs Internal Memo re: Draft Report on Human Rights in Canada, 1960-62, June 1963, File 1-24-27, Part 4, Vol. 82, RG26, LAC.

Rights, this abstention would be misunderstood within Canada as opposition to the development of human rights, and there would be a backlash from the Canadian public.

Changing Policy: Canadian Support for the International Covenants on Human Rights

Federal officials recognized the need to change Canada's approach to the draft Covenants, but there were in no hurry to do so. They were content with the slow pace of progress at the UN. When Greece, Morocco and Tunisia put forth a resolution in 1958 suggesting the General Assembly expedite the drafting of the Covenants, External Affairs advised its delegates that, while Canada would not want to appear to wish to put off the Covenants forever, it had no desire to accelerate their consideration. Canadian delegates consequently told other member states that, "another ten or fifteen years in their drafting would not unduly delay the advent of the era of Human Rights when viewed in the long prospect of world history."¹⁶⁶

The first real step External Affairs took to change its policy was to collect information from other federal departments to help provide more detailed instructions to its delegates.¹⁶⁷ Little effort had been made between 1951 and 1955 to get feedback relating to human rights developments at the United Nations, and to correct this, External Affairs sent a copy of the draft Covenants to other departments in late 1956, along with a summary of the progress of the debates in the Third Committee, asking for comments on specific articles. They received a prompt response, in most cases mirroring their own

¹⁶⁶ "Final Report on the Thirteenth Session, Third Committee of the General Assembly," 8 January 1959, File 5475-W-15-40, Part 7.2, Vol. 6928, RG25, LAC.

¹⁶⁷ "Draft International Covenants on Human Rights – Correspondence," 1957, File 5475-W-15-40, Part 6.1, Vol. 6927, RG25, LAC.

views: a general support for the principles of the instruments, but concern over the way in which specific articles conflicted with existing policy and could therefore embarrass Canada. Laval Fortier, the Deputy Minister of Citizenship and Immigration, pointed to articles within the Covenant on Civil and Political Rights he felt would affect Canada's practice of deportation, restrictions on issuing passports and visas, and the political and electoral organization of Canada's "Indian Bands."¹⁶⁸ Fortier also indicated that his department was not prepared to enter into an international debate over the detailed provisions of Canada's immigration laws and regulations.¹⁶⁹ The Federal Department of Labour worried about the impact of the Covenant on Economic, Social and Cultural Rights, and in particular the article on the right to work, arguing the instrument dealt with matters that were more appropriately handled by the I.L.O.¹⁷⁰ R.G. Robertson of the Department of Northern Affairs and Natural Resources worried that the instruments would cause Canada's policies toward "Eskimos" to be the subject of criticism.¹⁷¹ Robertson argued, "While we are in agreement with the broad principles covered by the draft Covenants, I feel there is a great amount of detail in the Articles which could be made embarrassing to Canada, or any other country, if referred to out of context and

¹⁶⁸ Letter from Laval Fortier, Department of Citizenship and Immigration, to M.H. Wershof, Department of External Affairs, 13 November 1956, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC.

¹⁶⁹ Memo from Laval Fortier, Memo to Minister, Department of External Affairs, February 1955, File 1-24-27, Part 1, Vol. 81, RG26, LAC.

¹⁷⁰ Letter from A.H. Brown, Deputy Minister of Labour, to M.H. Wershof, Department of External Affairs, 14 November 1956, File 5475-W-15-40, Part 5.2, Vol. 6927, RG25, LAC. A.H. Brown argued the article providing for the right to work was vague and open to multiple interpretations, potentially causing problems for Canada.

¹⁷¹ Letter from R.G. Robertson, Deputy Minister of Northern Affairs and Natural Resources, to Jules Léger, Under-Secretary of State for External Affairs, 22 November 1956, File 5475-W-15-4, Part 5.2, Vol. 6927, RG25, LAC.

without relation to the special circumstances that may exist.”¹⁷² These comments from other departments helped External Affairs to determine which aspects of the Covenants Canada should resist. Officials instructed delegates to continue to oppose or abstain from votes relating to these issues. In other areas, delegates were given more flexibility and were encouraged to work with other member states to make the text of the drafts more in line with the Canadian position.

Despite this slightly greater flexibility, the policy approach to the draft Covenants did not change significantly while Diefenbaker was prime minister. Many of the internal reports and summaries simply recycled the points, and in some cases entire paragraphs, of older reports.¹⁷³ The Department’s internal communications contained the same objections over the vagueness of the instruments’ language, the need for a federal state clause, and the persistence of articles that should not be included in a covenant. Diefenbaker, while passionate about a Canadian Bill of Rights, took little personal interest in the adoption of the International Covenants on Human Rights. Even the adoption of the Bill of Rights did not have an immediate impact on the instructions the government sent to its delegates at the UN. In September 1960, the government told the UN it would review the articles of the Covenants in light of the provisions of the Canadian Bill of Rights, and instructed delegates to stress the importance of the new legislation, “wherever to do so would be considered helpful or advisable.”¹⁷⁴

¹⁷² Ibid.

¹⁷³ There is a remarkable continuity in reports from January 1957 (when the Liberals were in power), to the Twelfth and Thirteenth Sessions of the General Assembly (in 1958 and 1959) under Diefenbaker’s administration. See Vols. 6425, 6927, 6928, and 6535 of RG25, LAC.

¹⁷⁴ “Commentary for the Canadian Delegation to the Fifteenth Session of the United Nations General Assembly,” 27 September 1960, File 5475-W-15-40, Part 8, Vol. 6928, RG25, LAC.

The Canadian government did take positive action toward several other UN declarations and conventions relating to human rights in this period. In the late 1950s, Canada ratified the Conventions on the Political Rights of Women, and on the Nationality of Married Women, supported the Declaration of the Rights of the Child, and helped to develop the Convention on the Elimination of All Forms of Racial Discrimination.¹⁷⁵ Conventions held the same legal weight as covenants within the UN system, but it was easier for Canada to support the conventions relating to women's rights that came out of the UN Commission on the Status of Women because they dealt entirely with civil and political rights. A declaration on children's rights also posed less difficulty for Canada. Historian Dominique Marshall argues that, during the Cold War, children's rights were one issue upon which the UN Human Rights Commission could agree.¹⁷⁶ In a much bolder move, federal government's Interdepartmental Committee suggested in 1961 that Canada apply for the vacant seat on the Human Rights Commission. The Committee argued that, while Canada had never been a representative on this committee, growing interest in the field of human rights in Canada had been stimulated by the recent adoption of Canada's Bill of Rights, and that it was therefore time for Canada to take a greater role in developing international human rights.¹⁷⁷ Canada was elected to sit on the

¹⁷⁵ Convention on the Political Rights of Women [ratified by Canada in 1959]; Convention on the Nationality of Married Women[1959]; Declaration of the Rights of the Child [1959]; Convention on the Elimination of All Forms of Racial Discrimination [signed in 1966].

¹⁷⁶ The League of Nations first created a Declaration of the Rights of the Child in 1924, and this was revised by the UN after the Second World War. Dominique Marshall, "Children's Rights from Below," in *Taking Liberties: A History of Human Rights in Canada*, ed. David Goutor and Stephen Heathorn (Don Mills: Oxford University Press, 2013): 190-212.

¹⁷⁷ Department of External Affairs Memo to the Minister, re: Canada's candidature for the Human Rights Commission, File 5475-W-40, Parts 16.1 and 16.2, Vol. 6924, RG25, LAC.

Commission, and its three-year term officially began on January 1, 1963.¹⁷⁸ This was a significant departure from the official position of the government ten years earlier, which had declined the invitation for Canada to sit on the Commission out of fear that this would commit Canada to supporting the human rights instruments.¹⁷⁹

Canada took an active role during its tenure on the Commission on Human Rights. Representatives were involved with three main tasks: organizing studies of specific rights or groups of rights; collecting triennial reports from member states; and developing advisory services in the field of HR. These advisory services consisted of a series of international institutes and training courses that would allow member state to exchange views and experiences in human rights matters in the hope of improving the development of these rights and freedoms in all countries. Canadian officials discussed the possibility of holding a regional seminar in Canada, to be attended by representatives from North and South America and Europe, and possibly last six to eight weeks.¹⁸⁰ During this period, Canada also sat on the special committee appointed by the Secretary-General to help prepare plans for the celebration of the fifteenth anniversary of the Universal Declaration. Canada's greater role in human rights committees at the UN influenced the instructions federal policy makers sent to delegates, as public servants believed that Canada would now be "expected to take a much more active part in the debates on

¹⁷⁸ The UN Commission on Human Rights had solicited Canadian membership on a number of occasions, most likely because the United States and Britain wanted to see more Western representation on the Commission. Canada had refused these previous invitations. Department of External Affairs Memo to the Minister re: United Nations Commission on Human Rights: Nomination of Canadian Representative to the Commission, 5 October 1962, File 5475-DP-40, Part 2.2, Vol. 6425, RG25, LAC.

¹⁷⁹ "Report on work of Sixteenth Session of ECOSOC," S. Morley Scott, 1952, File 5475-W-40, Vol. 6409, RG25, LAC.

¹⁸⁰ Department of External Affairs Memo to the Minister, N.A. Robertson re: Canadian Focus while on the Human Rights Commission, 18 February 1963, File 5457-W-40, Part 18, Vol. 5116, RG25, LAC.

Human Rights in the Third Committee” and “could not afford to abstain as frequently” for fear of sending a mixed message to other members.¹⁸¹ In 1966, Canada also worked with other member states to submit a draft resolution on the creation of the post of High Commissioner for Human Rights, and in the Preparatory Committee for the International Year for Human Rights (1968) Canada suggested awarding a prize in the field of Human Rights during the year.¹⁸²

The return of the Liberal Party to power in 1963 coincided with both the beginning of Canada’s term on the Human Rights Commission, and the completion of the debates on the substantive articles of the draft Covenants at the UN. At this point, M.H. Wershof, one of the key policy makers within External Affairs, conceded that there was no real prospect of a federal clause being included in the final form of the Covenants. He told senior officials within the Department that it was time to decide, based on this, whether or not Canada would support adoption of the Covenants when they came before the General Assembly in their final form, arguing, “Although we know that Canada’s record in respecting human rights is very good, it will nevertheless be embarrassing – or worse – for Canada to be unable to accede to the Covenants, and perhaps unable even to vote for their adoption.”¹⁸³ Wershof suggested assembling a panel of professors and other experts in the field of human rights to “discuss the problem of Canada’s constitutional

¹⁸¹ Memo from the UN Division to the Legal Division, Department of External Affairs re: Canadian Position on Draft International Covenants on Human Rights (Civil and Political Rights), 25 January 1962, File 5475-W-15-40, Part 9, Vol. 5118, RG25, LAC.

¹⁸² “Human Rights Policy and Plans – United Nations Human Rights Commission (1966-67)” File 45-13-1-1, Part 4, Vol. 14949, RG25, LAC.

¹⁸³ Memo from M.H. Wershof, Department of External Affairs, to UN Division re: Canada’s Position on the Human Rights Covenants, 17 December 1963, File 45-13-2-3, Part 1, Vol. 13112, RG25, LAC.

capacity to carry out the Covenants,” and possibly even consult the Attorney Generals of the provinces on their views.¹⁸⁴

The federal government rejected the idea of involving non-governmental organizations, and also argued against consulting the provinces lest such consultation be seen as a commitment to requiring prior agreement with the provinces before making a decision to support the adoption of the Covenants.¹⁸⁵ External Affairs identified eight articles in the draft Covenant on Civil and Political Rights, and four articles in the draft Covenant on Economic, Social and Cultural Rights that related to matters falling under provincial jurisdiction.¹⁸⁶ Officials from within the UN Division suggested that, despite the concerns with these articles, Canada vote in favour of the adoption of both draft Covenants in the final votes at the General Assembly, with the understanding that it would not be able to immediately ratify the treaties. Policy makers, particularly within the Legal Division of External Affairs and the Ministry of Justice, had previously rejected this suggestion because they believed supporting adoption at the UN would put Canada in a bad position if it was later unable to accede to the Covenants, and proponents of provincial power could use this against the government. By 1964, however, analysts within the UN Division felt that it would be more embarrassing for Canada to be one of

¹⁸⁴ Ibid, 1.

¹⁸⁵ This was reminiscent of an earlier argument, put forth by J.G.H. Halstead and John Holmes when the draft First Covenant was released in 1949. J.G.H Halstead, Department of External Affairs Internal Memo, 6 October 1950, File 5475-W-40, Part 3.2, Vol. 6408, RG25, LAC.

¹⁸⁶ The report pointed to Articles 2, 3, 9, 11, 22, 23, 24 and 25 of the Covenant on Civil and Political Rights, and Articles 3, 8, 13, and 14 of the Covenant on Economic, Social and Cultural Rights. Memo from E.G. Lee to G.S. Murray re: Procedure for Study of Canadian Constitutional Position on the Human Rights Covenants, 20 January 1964, File 45-13-2-3, Part 1, Vol. 13112, RG25, LAC.

the only countries not to support the adoption of the Covenants.¹⁸⁷ They argued the cost of abstention might be that the government appeared to oppose core values of the international human rights regime: freedom, respect for universal human dignity, equality of peoples, and peace among nations.¹⁸⁸ In the end, the government decided to consult with its allies and align its policy as closely as possible to Britain, Australia, New Zealand and the United States, voting with the majority.¹⁸⁹

The Third Committee did not have an opportunity to consider the final articles of the draft Covenants, those on implementation, until its twenty-first session in September 1966. These articles outlined the reporting procedure for both Covenants, and the complaints process for the Covenant on Civil and Political Rights. Canada had supported these provisions when they were first introduced in 1954. A sub-committee composed of France, the United States, Britain and India had been largely responsible for drafting the articles of implementation, and so these articles enjoyed the support of most of Western states. The Canadian delegation reported that some of the newly independent states in Africa and Asia were nervous of the impact of the international supervisory system outlined in these articles on their recently gained national sovereignty. From the

¹⁸⁷ Memo from the UN Division, to the Legal Division, Department of External Affairs re: Canadian Position on Draft International Covenants on Human Rights, 25 January 1962, File 5475-W-15-40, Part 4, Vol. 5118, RG25, LAC.

¹⁸⁸ As an example, officials pointed to a series of restrictive clauses that had recently been added to the draft Covenants prohibiting racial discrimination and the spread of war propaganda. They asked, how could Canada possibly abstain from supporting these articles when its government had recently taken a stand in a number of international forums against racial and religious discrimination and nuclear testing? *Ibid.*

¹⁸⁹ Officials discussed this as early as 1962, and began to consult more closely with the United States, which had previously decided to support the Covenants at the UN but not ratify the instruments. See Memo from the UN Division, to the Legal Division, Department of External Affairs re: Canadian Position on Draft International Covenants on Human Rights, 25 January 1962, File 5475-W-15-40, Part 4, Vol. 5118, RG25, LAC; and Memo from the Canadian Embassy, Washington, to the Under-Secretary of State for External Affairs re: 17th Session of the United Nations General Assembly, Draft Covenants, 1 August 1962, File 5475-W-15-40, Part 9, Vol. 5118, RG25, LAC.

beginning, the Soviet Union and its allies had taken the stance that human rights were a matter for national enforcement, and so opposed the articles on implementation. Of greatest consequence to member states were the articles outlining the complaints process for the Covenant on Civil and Political Rights, which involved the creation of a new body to be known as the Human Rights Committee. When the UN Commission on Human Rights first decided to include the extra level of supervision for this covenant, there was significant debate over who would have the power to appeal to this committee. When the draft First Covenant was introduced in 1949, the Canadian government argued that the right to petition should be limited initially to signatory states, and not individuals or non-governmental organizations.¹⁹⁰ By 1966, however, Canadian officials were discussing the “advantage” of Canada taking a strong stand for implementation and supporting the right to individual petition. This position gained support among officials for several reasons: other “like-minded” Western states supported these measures, strong articles on implementation would place the Soviet Union on the defensive, and it would demonstrate Canada’s belief that the Covenants should be properly enforced.¹⁹¹ For these reasons, Canada voted in favour of the measures of implementation when they came before the General Assembly, including the Optional Protocol to the Covenant on Civil and Political

¹⁹⁰ Memo from A.J. Pick, Legal Division, External Affairs to E. Reid, 19 April 1950, File 5475-W-40, Part 2.1, Vol. 6407, RG25, LAC.

¹⁹¹ Canadian officials did have concerns about allowing individuals to petition to the Human Rights Committee, but in an internal memo they recognized a growing trend in international law to “recognize the enhanced status of the individual” and believed before long the individual may be “generally recognized as being a legal unit in international law.” For this reason, External Affairs instructed delegates that if the majority of members supported the individual petition, Canada could also support it. *Ibid.*, 5.

Rights, which outlined the mechanisms for creating the Human Rights Committee and setting the parameters of the complaint process.¹⁹²

By 1966, therefore, the Canadian government was in a very different position than it had been in 1954, when it instructed delegates to remain detached from discussions at the UN relating to human rights. Having decided to support the two covenants and the Optional Protocol, it was in Canada's best interest to downplay its earlier resistance to the UDHR and the draft Covenants. The government's rhetoric reflected this change, as policy makers put forward an image of Canada as having always supported the principles behind international human rights. In a press release to commemorate the fourteenth anniversary of the adoption of the UDHR, the government stated,

In the United Nations, Canada has consistently taken a strong stand in favour of the full application of the principles expressed in the Universal Declaration and has emphasized that the rights and freedoms therein guaranteed are intended to be enjoyed in all corners of the world.¹⁹³

From 1963 to 1966, politicians often referred publically to Canada's role on the UN Commission on Human Rights, and its work to promote the UN's human rights initiatives. This was made easier when, on December 16, 1966, Canada voted in favour of the adoption of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹⁹⁴ Canada also

¹⁹² The Optional Protocol to the International Covenant on Civil and Political Rights is a separate instrument from the covenant itself. It sets up the Human Rights Committee, and outlines process for dealing with communications from individuals claiming to be victims of violations of any of the rights set out in the Covenant.

¹⁹³ Letter from the Department of External Affairs, to the Prime Minister re: Statement for Human Rights Day, 7 December 1962, File 5475-DP-3-40, Part 1.2, Vol. 6950, RG25, LAC.

¹⁹⁴ For a copy of the International Covenant on Civil and Political Rights, see Appendix A-2. For a copy of the International Covenant on Economic, Social and Cultural Rights, see Appendix A-3.

supported the adoption of the Optional Protocol to the Covenant on Civil and Political Rights, which outlined the complaint procedure to the Human Rights Committee.¹⁹⁵

Conclusion

Canada's decision to support the adoption of United Nations' instruments on human rights was influenced more by concerns over the political implications of not doing so, than by genuine support from within the government for the concept of universal human rights or the provisions within the Covenants themselves. Throughout the 1950s, Canada participated very little in the article-by-article debates, hoping the Covenants would prove too contentious to adopt. When Canadian delegates did speak, they were most often critical. As it became obvious by the late 1950s that Canada was in a minority position, and that the Covenants would eventually come into effect, policy makers had to decide whether or not to support them. Whereas in 1948, Canada had been primarily concerned with its international image if it chose to abstain from supporting the UDHR, in 1966 the government was also wary of generating criticism at home if it abstained in the votes on the Covenants, given the cultural changes taking place in Canada and new domestic understandings of the importance of human rights. With this in

¹⁹⁵ For the Covenant on Economic, Social and Cultural Rights (A/RES/2200(XXI)A), 104 states voted in favour, 0 opposed, 0 abstained, 18 did not vote. For the Covenant on Civil and Political Rights (A/RES/2200(XXI)B), 102 states voted in favour, 0 opposed, 3 abstained, 17 did not vote. [Opposing states were Algeria, Bulgaria, Byelorussian SSR, Congo (Brazzaville), Cuba, Czechoslovakia, Guinea, Hungary, India, Mali, Mongolia, Nepal, Poland, Romania, Syria, Ukrainian SSR, USSR, and the United Republic of Tanzania.] For the Option Protocol to the Covenant on Civil and Political Rights (A/RES/2200(XXI)C), 76 states voted in favour, 18 opposed, 13 abstained, 15 did not vote. [Abstaining states were Afghanistan, Burundi, Ethiopia, France, Guatamala, Japan, Libya, Mauritania, Sudan, Thailand, Togo, Tunisia, and Yugoslavia.] "United Nations Research Guides and Resources," accessed online at the Dag Hammarskjöld Library, <http://www.un.org/depts/dhl/resguide/r21_en.shtml>, retrieved 15 May 2014.

mind, the Canadian government voted in favour of both Covenants and their measures of implementation.

In supporting the adoption of international treaties on human rights that did not include any federal state exemptions, the Canadian government decided that the cultivation, at home and abroad, of an image of Canada as an advocate of human rights, fundamental freedoms and international justice was more important than any potential constitutional conflicts that could arise as a result of this decision. Federal officials knew, however, that the Covenants would not be binding on Canada unless the government decided to ratify the instruments. Other nations, such as the United States, also supported the adoption of the Covenants without any intention of ratification. This offered Canadian politicians the opportunity to speak publically throughout the late 1960s and early 1970s about Canada's commitment to the UN's human rights regime, and its historic support for both the UDHR and the Covenants in the General Assembly, without having to commit Canada to any legislative or policy changes, which suited the federal government.

At the same time, federal officials also knew that they could not longer put off a dialogue with provincials governments over Canada's relationship to international human rights law.¹⁹⁶ In September 1966, two months before the Covenants were adopted, the Department of External Affairs drafted a letter to the deputy attorneys-general of each province, and to Mr. Claude Morin, Deputy Minister of Federal-Provincial Affairs in

¹⁹⁶ In October 1965, Jean H. Lagassé, the Director of the Citizenship Branch of the Department of Citizenship and Immigration, inquired as to the level of provincial consultation that had taken place. In response, W.H. Barton, the head of the UN Division of External Affairs, wrote that not only had the federal government not consulted with the provinces, the Department had no intention to invite the provinces to any meetings in the near future regarding possible ratification of the documents. Letter from W.H. Barton, Head of UN Division of External Affairs, to Jean H. Lagassé, Department of Citizenship and Immigration re: Provincial Consultations, File 17-2-4, Part 1, Vol. 146, RG6, LAC.

Quebec. The letter brought provincial officials up to date on the developments relating to the Covenants, and indicated that the federal government would be in contact in the near future to discuss the possibility of ratification by Canada.¹⁹⁷ It would take another ten years for the Canadian government to make the decision to sign and ratify both International Covenants, a period which bore witness to even greater political and cultural change in Canada, at the United Nations, and throughout the world.

¹⁹⁷ Draft letter from UN Division of Department of External Affairs to the Deputy Attorney-Generals of the Provinces, and to Mr. Claude Morin, Deputy Minister of Federal-Provincial Affairs in Quebec), 21 September 1966, File 45-13-2-3, Part 1, Vol. 13112, RG25, LAC.

Chapter Four: Canada's Ratification of the Covenants on Human Rights, 1967-1976

At the twenty-first session of the General Assembly of the United Nations in 1966, the Canadian government voted in favour of the adoption of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the Covenant on Civil and Political Rights.¹ Canadian federal civil servants and politicians recognized that a growing understanding of and support for the principles behind the Covenants had created an environment in which any decision not to support the instruments could be interpreted, by Canadians and in world opinion, as opposition to the promotion and protection of human rights. Thus Canada lent its support to instruments it had resisted for almost two decades.

The vote in the General Assembly did not commit Canada to become a party to the Covenants. The government needed approval from Parliament authorizing ratification, which by tradition also required a formal agreement from all ten provincial governments that they would adopt any necessary legislation to bring Canada into compliance with the instruments. Federal officials initiated this process, yet they felt no sense of urgency. While the appointment of Pierre Trudeau as the leader of the Liberal Party and successor to Prime Minister Lester Pearson in April 1968 brought many changes to the Party and to Canadian politics, ratification of the Covenants remained a low priority for the government.

¹ The Optional Protocol outlined the procedures by which individuals could petition the Human Rights Committee in regards to their rights under the Covenant. It did not address any new substantive areas to the

Throughout this same period, the United Nations' decision to proclaim 1968 as International Year for Human Rights (IYHR) stimulated awareness of the growing body of international human rights law, and of the need for government action to strengthen domestic and foreign policies toward human rights. Within Canada, the program to celebrate International Year for Human Rights tapped into a resurgence of social movement activity, resulting in extensive discussion, research and public education in the field of human rights. This not only influenced the development of Canada's domestic human rights infrastructure, it led to mounting pressure on the federal government to take action to accede to the International Covenants on Human Rights. By 1971, Trudeau had publicly committed to ratifying the Covenants, but continued apathy on behalf of senior officials with the Liberal Government and the failure of Quebec to provide support caused the process to take another five years. It was not until 1975 that the federal government organized federal-provincial meetings to achieve the consensus required for accession, and even at that point it took pressure from outside Canada to convince the Trudeau Government to take the necessary steps to gain Quebec's support and ratify the three instruments.

This chapter will examine the process by which Canada ratified the International Covenants on Human Rights, including government debates, the interaction of federal and provincial officials, the influence of Canadian participation in International Year for Human Rights, the social and political environment in Canada in the late 1960s and early 1970s, and strategic considerations between Canada and its allies. It will also consider the way in which Canadian rhetoric surrounding international human rights changed in this

period, and in doing so assess the extent to which Canada's new position toward human rights instruments at the United Nations represented a genuine shift in the understanding of civil liberties, rights and freedoms within the Canadian government.

The Pearson Government and Ratification

A month after the adoption of the International Covenants on Human Rights at the United Nations, Leader of the Opposition John Diefenbaker stood in the House of Commons and asked Prime Minister Lester Pearson if the Liberal Government intended to ask Parliament to ratify the Covenants.² In his response, Pearson referred to the instruments as “a significant step forward by the international community” and reminded members of the House that Canada had voted in support of their adoption.³ Pearson also told Diefenbaker that, as a number of the Covenants' provisions fell within provincial jurisdiction, the government needed to consult with the provinces before any steps could be taken toward ratification to ensure Canada would be able to implement the instruments.⁴

As a matter of law, the federal government had the authority to negotiate and ratify international treaties. Ratification required only that the Governor-General exercise Royal Prerogative, which could be obtained through an Order in Council from Cabinet. The federal government did not, however, have the power to implement by legislation a

² Canada, *House of Commons Debates*, John G. Diefenbaker, 19 January 1967, 11983.

³ Canada, *House of Commons Debates*, Lester B. Pearson, 23 January 1967, 12101. In his original response to Diefenbaker, Pearson stated, “I am not as familiar as I perhaps should be with these particular international covenants,” and indicated he would look into them and then respond to Diefenbaker's question. Canada, *House of Commons Debates*, Lester B. Pearson, 19 January 1967, 11984.

⁴ Canada, *House of Commons Debates*, Lester B. Pearson, 23 January 1967, 12101.

treaty whose subject matter fell under provincial jurisdiction, or force provincial governments to execute domestic policies that fell under provincial authority. Since the 1937 Labour Conventions case, Ottawa had secured formal agreement from all provinces that they were willing accept and fulfill any necessary legislative obligations before the government would accede to treaties involving matters under provincial authority.⁵ With this in mind, in February 1967 the Department of External Affairs forwarded copies of the text of both covenants and the Optional Protocol to the provincial governments. A letter followed from Pearson asking the premiers to study the instruments, to indicate their willingness to enact the necessary legislation, and informing the provinces of the government's intention to initiate a federal-provincial dialog on the topic of the Covenants in the near future.⁶

The Department of External Affairs convened a meeting of the federal Interdepartmental Committee on Human Rights to formulate recommendations for Cabinet concerning the question of ratification. One option was for Canada to begin by signing the instruments, which would act as a more formal endorsement of their principles, and signal the government's intention to take steps to ratify at a later date. Glen Shortliffe, a career civil servant within the UN Division of External Affairs, suggested an early signature could be used to counter pressure from non-governmental

⁵ The requirements to ratify the Covenants and the Optional Protocol were discussed throughout the period from 1967 to 1976. The arguments for and against obtaining provincial support are best laid out in a confidential memo written to Cabinet in 1976. Memo to Cabinet from the Department of External Affairs, re: Accession to the UN Covenant on Civil and Political Rights, April 1976, File 45-13-2-3, Part 10, Vol. 13650, RG25, LAC. See also Michael Behiels, "Canada and the Implementation of International Instruments of Human Rights," 151-184.

⁶ The steps taken by the federal government to consult the provinces are recorded in a statement written by R.J. Buchan of the Legal Operations Division of the Department of External Affairs. "Canada in the International Field of Human Rights," 10 May 1974, File 45-13-2-3, Part 9, Vol. 13650, RG25, LAC.

organizations and opposition politicians such as Diefenbaker.⁷ The Interdepartmental Committee felt that pressure for ratification would grow, citing a brief Cabinet received from the Canadian Labour Congress (CLC) barely a month after the adoption of the Covenants, calling on the Liberals to ratify the documents.⁸ The committee therefore recommended Canada sign on to the instruments at the earliest possible date, and the federal government work quickly to achieve the consensus required for ratification.⁹

This was a major change in approach for civil servants who had, only a decade earlier, worried about the perceived negative impact a covenant on human rights would have on domestic policies. These concerns had diminished by the late 1960s, however, for several key reasons. First, as a result of legislative developments, many of the laws that had posed specific concerns were no longer in place. The Supreme Court of Canada declared Quebec's Padlock Law to be unconstitutional in 1957.¹⁰ Legislation in Alberta to prevent the sale of land to "enemy aliens, Hutterites, and Doukhobours," was amended in 1960.¹¹ With regard to immigration, the 1960s saw several reforms that virtually

⁷ Canada had taken a similar path with the Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the UN on 7 March 1966, signed by Canada on 24 August 1966, and ratified on 14 October 1970. Memo from W.H. Barton, Chair, to the Interdepartmental Committee on Human Rights, 26 January 1967; and from G.S. Shortliffe, Department of External Affairs, to W.H. Barton, 8 February 1967, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

⁸ Minutes, Interdepartmental Committee on Human Rights Meeting, 9 February 1967, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

⁹ Ibid.; and Memo from G.S. Shortliffe, Department of External Affairs, to W.H. Barton, 8 February 1967, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

¹⁰ John Switzmann challenged the Padlock Law as a violation of freedom of speech and as outside of the authority of the provincial government. In an 8 to 1 decision, the Supreme Court found in favour of Switzman on both issues. *Switzmann v. Elbling* [1957] SCR 285.

¹¹ The Alberta Land Sales Prohibition Act was amended, but the Communal Property Act, restricting the amount of land that could be owned communally by religious groups, was not repealed until 1972.

eliminated racial discrimination as a major feature of immigration policy.¹² In 1967, the Pearson Government established the Points System for evaluating prospective immigrants, easing the anxiety that Canada's policy would contravene the human rights commitments embodied in the Covenants.¹³ Federal and provincial voting laws had also changed to allow for universal adult suffrage; restrictions based on gender, race, ethnicity and religion were removed.¹⁴ The Diefenbaker and Pearson Governments also expanded the Canadian welfare state. Under the Progressive Conservatives, permanent programs for the funding of hospitalization, higher education and vocational rehabilitation were introduced or extended. The Liberals built on this, implementing the Canadian Pension Plan, the Canada Assistance Plan, and Medicare in 1966.¹⁵ In its annual reports for the UN Yearbook on Human Rights, the Canadian government regularly pointed to the extension of the welfare state to demonstrate Canada's progress. For example, the 1967 report highlighted new provincial laws to increase minimum wage, guarantee equal pay for female employees, provide vacation pay, and extend workmen's compensation.¹⁶ These laws made officials in the departments of External Affairs and Justice feel more comfortable that Canada's social and economic policies were in line with the

¹² After 1962, prospective immigrants could no longer be denied entry to Canada on the basis of colour, race, or nationality.

¹³ Immigrants had to pass a test graded on 100 points. Points were awarded based on criteria such as education, employment, and language abilities. While this system removed explicit discrimination in areas such as nationality, race, and colour, it continued to disadvantage applicants from the developing world.

¹⁴ In 1955, the ban on conscientious objectors having the right to vote was lifting, providing Doukhobors, Mennonites, and Hutterites with the right to vote. In 1960, all non-enfranchised Aboriginal peoples in Canada won the right to vote.

¹⁵ The Canada Pension Plan established a national compulsory pension plan; the Canada Assistance Plan consolidated the Unemployment Assistance Act with legislation providing social assistance to the physically disabled, and made federal funding available for assistance to single parents and for a range of services, including daycare. The Medicare Act established a national system of personal health insurance.

¹⁶ "Report for the United Nations Yearbook on Human Rights for 1967," File 566-11, Part 5, Vol. 887, RG76, LAC.

International Covenant on Economic, Social and Cultural Rights. At the same time, several provincial governments were expanding their human rights infrastructure. By 1967, Ontario, Nova Scotia, New Brunswick, and Alberta had all adopted human rights acts, with the first three establishing human rights commissions to administer these acts. Two provinces, Alberta and New Brunswick, had created the office of “Ombudsman” to help safeguard individuals against discriminatory acts by government. These changes did not solve the problem of discrimination in Canadian society; several provinces had yet to enact human rights legislation, and even within those that had, many vulnerable groups remained unprotected. They were sufficient, however, to cause the public servants in External Affairs and Justice who were responsible for Canada’s policy toward human rights at the UN to feel comfortable advising the federal government to move forward with the ratification process.

Second, diplomats within External Affairs were also less worried about the binding nature of the Covenants on Human Rights because their approach to the United Nations had changed. After more than two decades of experience at the UN, members of Canada’s Foreign Service understood its limitations. In the 1950s, the divisions of the Cold War had paralyzed the UN, as had the veto power of the Soviets, the Americans, the British, the French, and the Chinese in the Security Council. Gaining any consensus over the content, form, and measures of implementation for a set of binding instruments on human rights had been virtually impossible, yet in 1966 the General Assembly adopted the two Covenants on Human Rights unanimously. The Canadian delegation reported that member states were increasingly viewing these instruments as ideals and principles to

serve as a guide for legislation, rather than legal documents.¹⁷ The covenant to which the Canadian government had been most strongly opposed, the International Covenant on Economic, Social and Cultural Rights, would be enforced only through annual reporting and moral suasion. Canadian policy makers' had a clearer understanding of what a "binding" covenant would mean for Canadian policy, and they were experienced enough to appreciate that Canada would remain in control of its own domestic policies. This alleviated many of the earlier concerns.

Finally, the ideological environment in which the human rights instruments were being debated had also changed. The strength of Soviet influence was reduced, both as a result of the death of Joseph Stalin in 1953 and due to fractures within the Eastern bloc. The Hungarian Revolution in 1956, which involved a revolt against the Hungarian People's Republic's and its Soviet-imposed policies, exposed discontent with the totalitarian nature of Soviet-style communism. Not only did this signal the first challenge to Soviet control in Eastern Europe, it also made the USSR vulnerable to criticism for failing to support basic civil and political rights. In comparison, changes in American and British policy made the Western powers less open to attack. In 1964, President Lyndon Johnson signed the Civil Rights Act, banning discrimination based on "race, color, religion, sex or national origin" in employment and accommodation. The following year, the United States adopted its Voting Rights Act, prohibiting discrimination in voting and providing fuel for American claims that it was making progress in the field of human rights. At the same time, the British government took steps to counter the attacks of anti-

¹⁷ "Canadian Position on Draft International Covenants on Human Rights," Department of External Affairs, 25 January 1962, File 5475-W-15-40, Part 9, Vol. 5118, RG25, LAC.

colonialists at the UN. In 1960, Prime Minister Harold Macmillan declared Britain's intent to grant independence to many of its territories in Africa. His "Wind of Change" speech, as it came to be referred, marked the resumption of Britain's process of decolonization. While these developments did not have a direct impact on Canada's policy toward the Covenants, they contributed to the overall sense among officials within External Affairs that Western states, including Canada, were in a relatively good position to push forward with ratification.

Despite recommendations to this effect, and the arguments of the Interdepartmental Committee, the ratification process took almost another decade. The provinces were slow to reply to Pearson's letter because international covenants on human rights were not a priority for these governments either; by the end of 1967 only Alberta's Social Credit Government had provided formal support for ratification.¹⁸ British Columbia, Nova Scotia, Ontario and New Brunswick had provided an interim reply, tentatively supporting ratification. External Affairs had received no reply from the other provinces, but officials were unconcerned. Under the leadership of Lester Pearson, the federal Liberal Party's foreign policy was more focused on arms control and peacekeeping initiatives at the United Nations, Canada's role within the North Atlantic Treaty Organization (NATO) and the North American Air Defense (NORAD) system, increasing international trade, and reducing global economic disparity.¹⁹ Domestically,

¹⁸ On May 29, 1967, the Alberta government wrote to the federal government recommending Canada ratify the Covenants. Confidential Internal Memo, Department of External Affairs, 28 June 1967, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

¹⁹ The Pearson Government outlined these priorities in five Throne Speeches. Government of Canada, "Speeches from the Throne," 17 May, 1963 – 9 May, 1967, accessed online at Parliament of Canada <http://www.parl.gc.ca/Parlinfo/compilations/parliament/ThroneSpeech.aspx>, retrieved 15 May 2014.

Pearson's Government was interested in economic and industrial expansion, national unity and the relationship between Canada's two founding cultures, the repatriation of the Constitution, and a review of policies dealing with national health care, labour standards, pensions, unemployment insurance and immigration.²⁰ While the governing Liberals were not opposed to the idea of ratifying the International Covenants on Human Rights, the instruments were not a priority. Nothing came of the Interdepartmental Committee's suggestion that Canada sign on early to the Covenants, and the Canadian government did not schedule a federal-provincial meeting to discuss international human rights. More than a year after Pearson sent his letter to the premiers, the Canadian delegation told the United Nations that Canada was "awaiting affirmative reply" from the provinces before pressing forward.²¹ Having made initial contact with the premiers, Pearson and his Government felt no sense of urgency to sign or ratify the Covenants. It took a surge in human rights activism in the late 1960s to cause the federal government to reconsider this position.

International Year for Human Rights

The designation of 1968 as International Year for Human Rights stimulated tremendous activity around the globe. A series of international conferences allowed Canadians to discuss, with representatives from other states, how to best implement the

²⁰ For an analysis of the Pearson Government's policies and priorities, see John English, *The Worldly Years: The Life of Lester Pearson, Volume II: 1949-1972* (Toronto: Vintage Books Canada, 1992); Norman Hillmer, ed. *Pearson: The Unlikely Gladiator* (Kingston & Montreal: McGill-Queen's University Press, 1999); and Lester B. Pearson, *Mike: The Memoirs of the Right Honourable Lester B. Pearson* (Toronto: University of Toronto Press, 1972).

²¹ Mme Roquet, Speech to the Third Committee of the General Assembly, 29 November 1968, File 45-13-1-6, Part 6, Vol 14952, RG20, LAC.

principles of the UDHR into domestic law. Within Canada, voluntary organizations worked with government to launch a massive public education campaign, to push for further legislative developments, including the ratification of the Covenants, and to host human rights-related events at the local, provincial and national level. The year also coincided with a more general resurgence of social movement activity in North America and Europe, causing a swell in human rights activism in the late 1960s and early 1970s. In this way, International Year for Human Rights provided an opportunity for the Canadian human rights movement to intersect with the global movement. The result was the development of a more sophisticated human rights infrastructure in Canada, with a shift toward a broader definition of human rights and an expectation that government would play a key role in promoting and protecting these rights. This period also saw the first significant pressure on the federal government to ratify international conventions relating to human rights.

In the early-1960s, there was an effort within the United Nations to reinvigorate the international human rights movement. The process to adopt the International Covenants had taken more than fifteen years and was still incomplete, and many member states felt disillusioned. As early as 1961, the General Assembly discussed the possibility of a Human Rights Year to facilitate more intensive efforts and undertakings by national governments in the field of human rights.²² The year 1968 was selected because it marked the twentieth anniversary of the adoption of the UDHR. Canada's Department of External Affairs had misgivings about the utility of designating a year to celebrate human rights,

²² The official designation of 1968 as International Year for Human Rights occurred immediately after the adoption of the Covenants. United Nations Resolution A/RES/21/2217, 19 December 1966.

but quickly realized this position was in the minority at the UN, and voted in support of the related resolutions.²³ The UN Human Rights Commission established a committee with representatives from 34 states to consider the possibility of holding an international conference to review the progress made in human rights since 1948, and to assess the effectiveness of the UN in the field. As a member of the Human Rights Commission at the time, Canada was elected to sit on the Committee for International Year for Human Rights, and the Canadian government took an active role in the preparations for the year, both at the United Nations and at home.²⁴

More than two years of planning went in to the program of International Year for Human Rights. The major event organized by the United Nations was an inter-governmental conference held in Tehran, Iran. This conference was designed to review the total UN effort to further human rights, and to discuss how the international body ought to move forward.²⁵ Delegates from over 80 nations attended the conference, which was limited to representatives from states and specialized agencies of the UN. Canada sent six representatives.²⁶ The Canadian delegation took an active role in Tehran, introducing a resolution urging all countries to develop a legal aid system, which received

²³ Report of the 20th Session of the General Assembly, 1965, File 17-2-4-1, Vol. 146, RG6, LAC.

²⁴ Canada was active in the UN Commission on Human Rights at this time, working with other members to submit a resolution on the creation of a post of High Commissioner for Human Rights. While sitting on the Committee for International Year for Human Rights, Canada also proposed the establishment of a prize in the field of human rights to be awarded by the UN in 1968.

²⁵ Myer Belkin, Head of the Human Rights Division, Citizenship Branch, "Report on International Conference on Human Rights Held In Tehran, April 22 – May 13, 1968," *Resource: a publication of the Canadian Commission, International Year for Human Rights*, no. 9 (July/August 1968).

²⁶ The Canadian delegation was led by Under-Secretary of State G.G.E. Steele, and included Canadian Ambassador to France Paul Beaulieu, Director of the Ontario Human Rights Commission Daniel G. Hill, the Honourable James M. Harding, the Honourable Harry Batshaw, and Ronald St. John Macdonald, Dean of Law at Toronto.

widespread support, and co-sponsoring resolutions on rights for refugees and on fuller implementation of the Declaration of the Rights of the Child.²⁷ Mirroring the challenges experienced at the UN, however, a substantial amount of time at the Tehran Conference was spent on political issues. For this reason, the agenda for the conference was split into two parts: one to consider human rights questions in general, emphasizing the technical problems involved in defining and protecting human rights; the other to discuss more political questions such as Apartheid, colonialism in Rhodesia, and conflict in the Middle East.²⁸ Even in the more technical sessions, delegates disagreed over how to best implement the human rights principles outlined in the various UN declarations and conventions, illustrating once again the difficulty in reaching consensus among states with vastly different legal, cultural and political systems.²⁹ The Tehran Conference did, however, result in a number of constructive resolutions to improve the protection of women's rights and the rights of detained persons, as well as to eradicate illiteracy and improve education around the globe.³⁰

A number of individuals and organizations interested in contributing to the discussions at Tehran were unable to attend the conference because it was restricted to state representatives. In response, the Johnson Foundation of Racine, Wisconsin

²⁷ "International Year for Human Rights – OHRC 1968," Records of the Ontario Human Rights Commission, Barcode B270372, 76-3-0-1353, RG76-3, Archives of Ontario (hereafter AO).

²⁸ Report on UK-Canada talks on ECOSOC questions from 1967, 23 June 1967, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

²⁹ Belkin, "Report on International Conference on Human Rights Held In Tehran."

³⁰ For a more detailed analysis of the Tehran Conference, see Roland Burke, "From Individual Rights to National Development: The First UN International Conference on Human Rights, Teheran, 1968," *Journal of World History* 19, no. 3 (2008): 275-96; and Andrew Thompson, "Teheran 1968 and the Origins of the Human Rights Council?" presented at the 2011 Annual Meeting, Academic Council on the United Nations System.

sponsored a World Assembly on Human Rights to be held in Montreal in advance of the inter-governmental conference. Financial support for this event came largely through American non-profit organizations and private donors.³¹ The World Assembly provided a venue for non-state actors to discuss the current status of human rights at the UN, and produce a report of recommendations to be sent to the organizers in Tehran.³² Louis B. Sohn, a key architect of the UN and the international legal system, helped to organize the conference. Sohn wanted delegates at Teheran to adopt an official statement acknowledging the binding force of the UDHR, and hoped to use the World Assembly to promote this idea.³³

Thirty-five human rights experts from various nations met at the World Assembly for six days of meetings.³⁴ Participants debated the progress of initiatives at the UN, the prevalence of racial discrimination around the world, the urgency to put into effect the International Covenants on Human Rights, new dangers to rights and freedoms as the result of scientific developments, and how to induce national compliance to and public

³¹ The bulk of the money came from the Johnson Foundation, the Eleanor Roosevelt Memorial Foundation, Fund for Tomorrow, Inc., Lakeview Fund, Inc., and private donors such as Mr. Jacob Blaustein. Series 84, Box 3, File 3, “Montreal Assembly for Human Rights, December 1967-April 1968,” United Nations Archives, New York (hereafter UNA.)

³² For general information relating to the Montreal Assembly, and its connection to the Teheran Conference, see Series 84, Box 3, File 3, “Montreal Assembly for Human Rights, December 1967-April 1968,” UNA; for the goals of the Assembly, see Letter from Leslie Paffrath to Mr. C.V. Narasimhan, Chef de Cabinet, UN, 3 March 1967, 801.4 Series 0198, Box 3, File 8, “Human Rights – International Year for Human Rights,” UNA.

³³ Daniel Barstow Magraw, “Louis B. Sohn: Architect of the Modern International Legal System,” *Harvard International Law Journal* 48, no. 1 (Winter 2007): 1-11.

³⁴ There were participants from various states, including Canada, the U.S., Uganda, Belgium, United Arab Republic, Tanzania, France, Israel, Mexico, Turkey, Costa Rica, Iran, Ceylon, Uruguay, Switzerland, Brazil, Sweden, New Zealand, Finland, Indonesia, Britain, Senegal, Kenya, and Trinidad and Tobago.

awareness of international human rights.³⁵ Included in these discussions were many representatives from Canada: Maxwell Cohen, Dean of Law at McGill; Justice Harry Batshaw of the Superior Court of Montreal; John P. Humphrey, Law Faculty at McGill and former Director of the UN Human Rights Division; Ronald St. John Macdonald, Dean of Law at Toronto; and Gerard Rancourt, President of the United Council for Human Rights in Montreal.³⁶ In addition to these representatives, 45 Canadian observers attended the event.³⁷ The Assembly's final report contained 29 pages of statements on the condition of human rights in the world, calling on UN members to reaffirm their support for the human rights provisions outlined in the Charter of the UN, and to bring national legislation in line with the principles of the UDHR.³⁸ A key focal point in the Assembly's final report was the importance for all states of ratifying the two International Covenants on Human Rights and the Optional Protocol.

There were a number of other international conferences organized for 1968 to stimulate discussion and action relating to human rights. In September, UNESCO hosted the International Non-Governmental Organization (NGO) Conference on Human Rights at its headquarters in Paris. Canada sent two delegates to this conference, which brought

³⁵ "Montreal Statement of the Assembly for Human Rights," brochure, Series 84, Box 3, File 3, "Montreal Assembly for Human Rights, December 1967-April 1968," UNA.

³⁶ List of Participants, Montreal World Assembly for Human Rights, brochure, Series 84, Box 3, File 3, "Montreal Assembly for Human Rights, December 1967-April 1968," UNA.

³⁷ "Report on the Montreal Assembly for Human Rights," *Resource*, no. 10 (September 1968), File 45-13-1-1, Part 6, Vol. 14952, RG25, LAC.

³⁸ "Montreal Statement of the Assembly for Human Rights," *Journal of the International Commission of Jurists* 9, no. 1 (June 1968): 94-212; also brochure, "Montreal Assembly for Human Rights, December 1967-April 1968," UNA.

together representatives from over 300 organizations from around the world.³⁹ Many international associations sponsored annual meetings or conferences in 1968, using human rights as the theme. For example, in August the International Conference on Social Welfare was held in Helsinki, Finland.⁴⁰ Seventy-five Canadian delegates attended this event, which focused on “Social Welfare and Human Rights.” Canadian representatives also traveled to Dublin, Ireland to attend the annual meeting for the World Confederation of Organizations of the Teaching Profession, which discussed “Education and Human Rights.” Events such as these fostered an international discussion of human rights-related topics. A growing number of Canadians, outside of the circles of government, participated in these discussions and brought ideas relating to the international promotion of human rights, back to Canada.

The Canadian Program, IYHR

In addition to participating in seminars and conferences with an international focus, the Canadian government worked to create an extensive domestic program to commemorate International Year of Human Rights. Federal and provincial governments took an active role in sponsoring initiatives and coordinating public education relating to a wide variety of topics falling under the umbrella of human rights. As was the case in previous celebrations of the anniversary of the adoption of the UDHR, individuals and voluntary organizations worked with government to encourage human rights

³⁹ “Final Report of the International NGO Conference, Paris 16-20, September 1968,” File 45-13-1-6, Part 5, Vol. 14952, RG25, LAC.

⁴⁰ Information on a number of international conferences in 1968 can be found in File 45-13-1-6, Part 5, Vol. 14952, RG25, LAC.

developments in Canada, and to celebrate the principles of the Declaration. International Year for Human Rights differed, however, in terms of its scale, the level of participation of the provinces, and in its enhanced focus on Canada's status in relation to international human rights conventions.

When the planning began in 1965, the Canadian Citizenship Branch of the Department of Citizenship and Immigration noted that there was a receptive climate in Canada for the launching of a Human Rights Year.⁴¹ Officials pointed to the development of provincial commissions on human rights, the attention given to the new role of ombudsman, interest in issues of bilingualism and biculturalism, the growth of training in human rights in a variety of sectors, and the proliferation of national conferences on related topics, as signs that it was “unquestionably a period in Canadian life when governments, voluntary groups and individuals are vitally concerned with human rights issues.”⁴² The human rights movement, which had been steadily building in Canada since the 1940s, was further shaped by a rise in social movement activism in Canada in the 1960s, characterized by the second-wave women's movement, the student youth movement, the rise of a New Left in Canada, Aboriginal activism, and successive waves

⁴¹ In 1965, the Canadian Citizenship Branch was housed in the Department of Citizenship and Immigration and was responsible for the promotion of knowledge about Canada, its society, institutions, culture and languages, among Canadians and recent immigrants. In order to accomplish these goals, the Branch undertook a number of educational, training, and community development initiatives. When the Department of Citizenship and Immigration was dissolved in 1966, the Secretary of State took over responsibility for Citizenship Branch. “Proposal for Canadian Observance of International Year for Human Rights,” Canadian Citizenship Branch, Citizenship and Immigration, 14 May 1965, File 17-2-4-1, Vol. 146, RG6, LAC.

⁴² Ibid.

of protest demanding enhanced rights for marginalized groups.⁴³ Individuals and organizations within these movements dedicated themselves to addressing issues of discrimination and inequity. Many were heavily involved in the celebrations for International Year for Human Rights, and there was significant overlap of activists and government officials in the different events organized in the period around 1968. For example, Langlois Sirois of le Comité pour la defense des droits de l'homme organized a conference on human rights and immigration policy in Quebec. John Humphrey delivered a paper, as did Michael Rubinstein, the President of the Jewish Labour Committee, René Gauthier, the Director of Quebec's Immigration Service, and Richard Leslie, the President of the Negro Citizens' Association.⁴⁴ Human rights scholars, public servants, and representatives from non-governmental organizations worked together to spread awareness to the wider public. The Department of External Affairs tapped into the widespread support for IYHR, recognizing that it could benefit the federal government. The Department told Cabinet that, "the development of favourable public opinion through the activities of voluntary organizations at national and regional levels would add considerable weight to the federal position in negotiations with the provinces in such matters as a Charter of Human Rights, language rights legislation and ratification of international agreements."⁴⁵

⁴³ For research into this period, see Bryan D. Palmer, *Canada's 1960s*; José E. Igartua, *The Other Quiet Revolution*; Lara Campbell, Dominique Clément, and Gregory S. Keeley, eds., *Debating Dissent*; C.P. Champion, *The Strange Demise of British Canada*; and M. Athena Palaeologu, ed., *The Sixties in Canada*.

⁴⁴ "Conference on Human Rights and Immigration," April 1967, Jewish Labour Committee Papers, File 8, Vol. 39, MG28-V75, LAC.

⁴⁵ Memo to Cabinet from the Department of External Affairs re: Human Rights Program, October 1968, File 45-13-1, Part 6, Vol. 14952, RG25, LAC.

The federal Interdepartmental Committee on Human Rights expanded in the late 1960s to include representatives from External Affairs, Justice, National Health and Welfare, Labour, and Manpower and Immigration. The committee met with Citizenship Branch over a period of six months to discuss the form of Canada's observance for IYHR. This group suggested two main features: a national conference, and a nation program of promotion, coordination and liaison in the area of human rights.⁴⁶ Federal officials encouraged the development of a national committee, composed of representatives from Canadian voluntary organizations, to coordinate the conference and program.⁴⁷ The resulting Canadian Commission, IYHR met for the first time in 1966.⁴⁸ John Humphrey was the Commission's president, and human rights activist Kalmen Kaplanksy was chair. The Commission's executive invited more than three hundred Canadian organizations to a national consultation in Ottawa in September 1966. The response to this invitation foreshadowed the wide-ranging participation that characterized Canada's program for 1968.⁴⁹ Eighty delegates from more than seventy national associations and thirty representatives from federal and provincial governments met in Ottawa to set an agenda and discuss goals for the year.

⁴⁶ For an outline of the initial plans for the year, see "Proposal for Canadian Observance of International Year for Human Rights."

⁴⁷ Minutes of the Meeting of the Interdepartmental Committee on Human Rights, 4 April 1966, File 45-CDA-13-1-1, Part 1, Vol. 14947, RG25, LAC.

⁴⁸ The Canadian Commission, IYHR received the majority of its funding from the Canadian Citizenship Branch, which approved a grant of \$99,500 for the Commission in October 1967. Minutes, Meeting of the Executive Committee, Canadian Commission, IYHR, 15 September 1967, File 161-3-4/4, Part 2, Vol. 12, RG6, LAC. Additional funds were later granted by the Department of Secretary of State and the Canadian National Association for UNESCO.

⁴⁹ For a list of the representatives involved in the planning of IYHR and attending the national consultations and conferences, see Minutes of Executive Committee, IYHR 1967 and 1968," File 12-161-3, Part 4, RG4, LAC; Report on the National Consultation on International Year for Human Rights, 12-14 September 1966, File 17-2-4, Part 1, Vol. 146, RG6, LAC; and International Year for Human Rights, Walter Tarnopolsky Fonds, File 8, Vol. 8, MG31-E55, LAC.

At the National Consultation, Secretary of State Judy LaMarsh stated, “we in Canada can – and should – be in the forefront of the world community in our respect for and dedication to the basic rights of our citizens,” and urged delegates to see International Year for Human Rights as an opportunity for Canada to distinguish itself in the world community.⁵⁰ The delegates generated a long list of goals to be reached by the end of 1968, which included: the development of human rights legislation and a human rights committee in every province; the establishment of a national council for human rights; public support for ratification of the International Covenants on Human Rights; a review of existing legislation in Canada and a strengthening of the Bill of Rights; the establishment of Royal Commissions on the Indian, and on the Status of Women; and a culminating national conference to assess achievements and work still to be done.⁵¹

Planning for Canada’s IYHR program intensified in 1967. In April, the Canadian Commission held a second planning conference in Montreal, lasting three days. Government officials and private individuals chaired workshops on international human rights, as well as wide range of new topics, now understood to be under the umbrella of human rights, including social welfare, immigration, Indian affairs, the protection of minority groups, and the need for voluntary action.⁵² Keynote speaker, Maxwell Cohen, Dean of McGill’s Faculty of Law, repeated Judy LaMarsh’s earlier sentiments that Canada ought to act as a model in the world community. Cohen told delegates, “Canada

⁵⁰ Judy LaMarsh, Secretary of State, Speech to the National Consultation on Human Rights, 12 September 1966, File 161-3-4/4, Part 2, Vol. 12, RG6, LAC.

⁵¹ Report on the Genesis and Role of the Canadian Commission IYHR, December 1968, File 17-2-4, Part 4, Vol. 146, RG6, LAC.

⁵² Montreal Planning Conference, 31 March to 2 April 1967, File 161-3-4/4, Part 2, Vol. 12, RG6, LAC.

cannot have an international image of any significance in the human rights field, whether legal, political, economic or social, or even a “sense of community,” if she is not a good model at home of what is expected from abroad.”⁵³ This became a theme of the IYHR: the notion that Canada must bolster its domestic human rights regime and record in order to gain credibility and authority within the international system.⁵⁴ A second theme was the need for Canada to fulfill its international obligations by ratifying outstanding human rights instruments.⁵⁵

International Year for Human Rights was officially launched in Canada on December 15, 1967.⁵⁶ Everyone involved with the planning process agreed that public awareness and education were key to the long-term success of the year, and so all levels of governmental and non-governmental organizations created resources to inform Canadians about human rights issues, both general and specific. The Canadian Commission, IYHR acted as a clearinghouse to provide information about the year, the relevant UN instruments, and to gain support for the goals outlined at the National Consultation. This was so successful that only a month into 1968 the Commission became concerned that it could not support the cost of meeting the regular requests from

⁵³ Ibid. Cohen’s speech was reprinted by Canada’s Anti-Defamation League of B’nai B’rith in its newsletter. Maxwell Cohen, “Human Rights: A Cause or Catch-All,” *Intercom* (September-November 1971), B’nai B’rith Canada.

⁵⁴ This comment was focused more on what Canada could do domestically to clean up its image rather than what Canada could do in terms of foreign policy to develop a reputation as a leader in promoting human rights abroad. Robert Matthews and Cranford Pratt argue that it is not until the 1970s that the Canadian government was prepared to assign resources to promote international respect for human rights. Matthews and Pratt, ed. *Human Rights in Canadian Foreign Policy*, 285-311.

⁵⁵ At the Montreal Planning Conference, Dr. Manfred Saalheimer of the Canadian Jewish Congress gave a talk on this very topic. David Bartlett, a representative of the Canadian National Commission for UNESCO also chaired a workshop specifically on the ratification of the Covenants on Human Rights. Report on the Montreal Planning Conference, 1967, File 161-3-4/4, Part 2, Vol. 12, RG6, LAC.

⁵⁶ In total, 283 representatives from more than 150 different organizations attended the ceremony.

individuals, organizations, and school groups for human rights literature and educational materials.⁵⁷ The Commission sent out materials from various sources, and also printed 10,000 copies, in French and English, of a publicity leaflet on Human Rights Year itself. The Canadian Film Institute developed a catalogue of film resources covering rights-related issues, and the Canadian Teachers' Federation worked with UNESCO to produce a bibliography of human rights publications. Thirty thousand of these bibliographies were sent to schools around Canada, along with a list of more than seventy-five speakers that were available for school talks.⁵⁸ Federal departments also developed educational materials. The federal Department of Labour created a broadly based education program designed to increase awareness of the federal Fair Employment Practices Acts and the Female Employees Equal Pay Act. This included the distribution of pamphlets, posters, paid advertising, spot statements on radio and television, and special exhibits directed largely to employers, with some special materials designed for schools.⁵⁹ The Department of Secretary of State arranged for the production of two films relating to human rights, which could be distributed by schools or voluntary organizations.⁶⁰ These examples represent only a fraction of the various newsletters, pamphlets, recordings and reproductions that were made available to interested groups and individuals in 1968.⁶¹

⁵⁷ Canadian Commission, IYHR, Minutes of Meetings, 16 February 1968, File 161-3-4/4, Part 2, Vol. 12, RG6, LAC.

⁵⁸ Report by the Department of Citizenship and Immigration re: Origins of Canadian Involvement in IYHR, 20 December 1968, File 17-2-4/4, Vol. 146, RG6, LAC.

⁵⁹ Report by the Department of Citizenship and Immigration re: Origins of Canadian Involvement in IYHR, 20 December 1968, File 17-2-4/4, Vol. 146, RG6, LAC.

⁶⁰ Ibid.

⁶¹ Examples of these resources can be found in: File 45-CDA-13-1-1, Vol. 14947, RG25, LAC; File 161-3-4/4, Part 2, Vol. 12, RG6, LAC; and International Year for Human Rights, Ontario Committee (1967-68), Barcode B270204, RG76-3, AO.

Many Canadian organizations also conducted human rights-related studies to provide clearer information about the status of human rights in Canada. Some of these offered a broad overview of human rights developments, such as the Canadian Welfare Council's "Human Rights and Social Welfare, a Canadian Review." Others were provincially focused, such as the Ontario Royal Commission on Civil Rights' "Inquiry into Civil Rights in Ontario." Many of the studies, however, examined more specific cases. For example, the Indian-Eskimo Association of Canada⁶² examined "Community Development Services for Canadian Indian and Métis Communities," while the Canadian Mental Health Association produced a report on "The Law and Mental Disorder: Civil Rights and Privileges."⁶³ It is important to note that both of these subjects, Aboriginal rights and disability rights, had previously been excluded from the rights discourse in Canada. Rights advocates now used the results of these studies to justify the need for further legislative developments in Canada.

While the educational materials were useful in increasing awareness of human rights, the government and the Canadian Commission, IYHR also wanted to foster public discussion of the issues. To facilitate this, a variety of events were scheduled for the year, ranging from highly organized national conferences, to informal presentations in local

⁶² The Indian-Eskimo Association developed as a standing committee of the Canadian Association for Adult Education in 1957, established to study the problems of indigenous peoples in communities where they were living off reserve. In 1960, it officially incorporated as the Indian-Eskimo Association and expanded to include services for all people of native origin, both on and off reserves, and the natives of the north who were known as Eskimos.

⁶³ Canadian Mental Health Association, "The Law and Mental Disorder: Civil Rights and Privileges," 1968, Committee on Legislation and Psychiatric Disorder, published by the Canadian Mental Health Association.

churches, to essay writing contests for secondary school students.⁶⁴ The Canadian Commission published a monthly brochure, entitled *Resources*, which tracked “Action Notes” of many of the activities taking place throughout the year. A survey of these notes reveals that the groups involved were diverse in focus, and represented local, provincial and national interests.⁶⁵ National organizations such as the Canadian Council of Christians and Jews participated, as did provincial organizations such as le Groupement Latin-Canadien de Québec or the Home and School Federation of New Brunswick. Local groups with a wide range of interests, such as the Peace River Human Rights Committee, Sudbury’s Local 6500 of the United Steelworkers, and the Morell Women’s Institute, hosted a variety of events.

Provincial Involvement in IYHR

The federal government was particularly interested in intensive participation from the provincial governments. The Canadian Citizenship Branch of the Department of Citizenship and Immigration, the Interdepartmental Committee on Human Rights, and the Canadian Commission, IYHR, all saw Human Rights Year as a tool that could be used to draw the provinces into a national discussion of human rights.⁶⁶ This was quite a reversal from the federal position in 1950, which advised against consultation with the provinces

⁶⁴ There are many archival sources outlining the events that took place in Canada throughout 1968, see Report by the Government of Canada to the Secretary-General of the United Nations re: Canadian Involvement in International Year for Human Rights, 1969, File 17-2-4, Part 4, Vol. 146 RG6, LAC; and Donald MacDonald, President of the Canadian Labour Congress, to All Principal Officers, 10 July 1968, IYHR, List of Events, Canadian Labour Congress fonds, on microfiche, H-553.

⁶⁵ Copies of this publication can be found in File 45-13-1-6, Parts 5 and 6, Vol. 14952, RG25, LAC.

⁶⁶ “Proposal for Canadian Observance of International Year for Human Rights,” Canadian Citizenship Branch, Citizenship and Immigration, 14 May 1965, File 17-2-4-1, Vol. 146, RG6, LAC.

out of fear this would “paralyze all action.”⁶⁷ In 1967, Cabinet sent a letter to the premiers urging their participation in the planning for IYHR.⁶⁸ Of import is that Cabinet used the fact that parts of the UDHR and the International Covenants fell within provincial jurisdiction to encourage provincial input. The letter stated, “no Canadian observance of International Year for Human Rights would be really complete without some form of provincial participation.”⁶⁹ Federal officials recommended each province or region establish a committee to help plan an observance of IYHR. The Canadian Commission kept in contact with these committees to inquire as to any progress made, and to report to Canadians and the Secretary-General of the United Nations what actions Canada was taking to celebrate the year.

There was a range of provincial participation. Ontario, which had actively participated in celebrations for the fifteenth anniversary of the UDHR, ran the most extensive program for IYHR. Ontario was a leader in Canada in the development of human rights law, enacting the first Fair Practices laws in the 1950s, the Ontario Human Rights Code in 1962, and establishing the nation’s first provincial human rights commission.⁷⁰ Walter Tarnopolsky, a professor of law at Osgoode Hall and legal expert in human rights, chaired the Ontario Planning Committee for IYHR. In 1967 the committee sent letters to more than 700 organizations around the province to encourage

⁶⁷ J.G.H. Halstead, internal memo, Department of External Affairs, 6 October 1950, File 5475-W-40, Part 3.2, Vol. 6408, RG25, LAC.

⁶⁸ Cabinet approved the letter on 4 January 1967. Letter from Prime Minister Lester Pearson to the Provincial Governments, re: Federal Role in International Year for Human Rights, 1 February 1967, File 45-CDA-13-11, Vol. 14947, RG25, LAC.

⁶⁹ Ibid.

⁷⁰ Ontario passed the *Fair Employment Practices Act* and the *Female Employees Fair Remuneration Act* in 1951, and the *Fair Accommodations Practices Act* in 1954.

their involvement.⁷¹ Ontario's committee was so supportive that it wrote to the other provinces to encourage their full participation in the year. The committee described IYHR as "a golden opportunity" for advancements in the field of human rights, and suggested the provinces work together to exchange resources take advantage of the opportunity.⁷² The biggest project in Ontario was a provincial conference held in March, which included a panel dedicated specifically to the importance of ratifying the International Covenants on Human Rights.⁷³

New Brunswick was also particularly active. A year earlier, the province had established the New Brunswick Human Rights Commission, and the program for IYHR was heavily influenced by the enthusiasm of Commission Chair Noël Kinsella. A variety of groups from across the province, including religious institutions, university clubs and faculty, Aboriginal groups, women's organizations, and educational societies, held seminars and sponsored studies on the topic of rights throughout 1968. The province hosted a provincial conference in Fredericton in March, which focused on the status of equality of the two official languages and the day-to-day experiences of marginalized groups in New Brunswick.⁷⁴ The newly formed New Brunswick Human Rights

⁷¹ A summary of Ontario's participation can be found in International Year for Human Rights, Ontario Committee (1967-68), Barcode B270204, RG76-3, AO. See also Letter from W.A. Jones, Chair of the Planning Committee, Ontario Committee for Human Rights, 1 Feb 1968, Barcode B270392, Records of the Ontario Human Rights Commission, RG 76-3-0-1351.

⁷² Letter from the Ontario Committee, IYRH to provincial governments, Barcode B270392, Records of the Ontario Human Rights Commission, RG 76-3-0-1351.

⁷³ Report to the Canadian Committee, IYRH, reprinted in the May 1968 Edition of *Resource*, File 45-13-1-6, Part 5, Vol. 14952, RG25, LAC.

⁷⁴ A summary of New Brunswick's participation in IYHR can be found in the announcement, New Brunswick Department of Labour, March 1968, New Brunswick Archives (hereafter NBA).

Commission was very active in sponsoring events, and in reporting back to the Canadian Commission, IYHR.

Quebec did not have a strong history of protective legislation against discrimination. Maurice Duplessis' Union Nationale Government controlled the province until his death in 1959, and his government was known for its Padlock Law and the repression of many civil liberties rather than for expanded rights protection. The election of Jean Lesage's Liberal Party in 1960 was the beginning of the Quiet Revolution, and Quebec underwent tremendous changes throughout the 1960s. Lesage had been a federal Member of Parliament from 1945 to 1958, prior to his move to provincial politics. In 1950, he represented Canada as a delegate to the United Nations where he worked on the draft Covenant on Human Rights.⁷⁵ While there were no specific anti-discrimination or human rights laws adopted in Quebec under Lesage's rule, Quebec became more accepting of human rights principles and widely supported IYHR. In April 1968, the Lesage Government launched the Commission du Québec des Droits de l'Homme, which included 135 delegates from all regions of the province, representing approximately 70 different organizations.⁷⁶ This Commission set two goals for the year: the inclusion of all regions of the province in the year's celebrations; and to initiate a series of studies of human rights problems in the province in relation to the standards of the UDHR.⁷⁷ In reporting on its progress, Quebec's organizing committee made special note of its ability

⁷⁵ Lesage actually made a speech before the Third Committee of the General Assembly in 1950 justifying Canada's resistance to the draft Covenant. "Speech to Third Committee on First 18 Articles of Draft Covenant," 19 October 1950, File 5475-W-40, Part 3.2, Vol. 6408, RG25, LAC.

⁷⁶ A summary of Quebec's participation in IYHR can be found in "International Year for Human Rights (Quebec Commission), File 1, Part 1, Vol. 475, Canadian Labour Congress Fonds, MG28-1103, LAC.

⁷⁷ Ibid.

to attract participants from ten regions outside of Montreal, the city which had previously generated the majority of the province's human rights activities.⁷⁸ A number of activities took place in the province, culminating in two provincial meetings held in June and November.⁷⁹ Quebec was much more involved in the celebrations for IYHR than it had been for the tenth or fifteenth anniversary celebrations, signaling a growing interest in rights in the province.

Some provinces played a less active role in Human Rights Year. Saskatchewan, which strongly supported the protection of rights and freedoms under Tommy Douglas' CCF Government, enacting the nation's first bill of rights in 1947, was less committed under the leadership of the Liberal Party in the late 1960s. During IYHR, Saskatchewan held a provincial conference in December, but focused most of its attention on developing a constitution and a set of bylaws for its new Human Rights Association.⁸⁰ Prince Edward Island, which had not adopted any anti-discrimination legislation in the 1950s or 1960s, did not create a formal committee for IYHR, but did report some activities to the Canadian Commission.⁸¹ Newfoundland also had no rights-related legislation, and no strong structure of voluntary organizations. There were issues relating to rights that were of concern in Newfoundland, such as the right to work and the right to education, but the

⁷⁸ Ibid.

⁷⁹ Quebec's participation generated considerable media coverage. For example "All-out war on discrimination promised by Quebec," *Montreal Star*, 4 November 1968, 3; "Le gouvernement encourage la discrimination en ne faisant rien pour combattre la propagande haineuse," 4 November, 1968, *Le Soleil*, 11. Other examples can be found in the following papers: *Montreal Star* (8 October, 1968; 4 November 1968), *L'Action* (29 October 1968; 4 November 1968), *Journal de Québec et Montreal* (18 September 1968), *La Presse* (31 October 1968); *Le Devoir* (18 October 1968).

⁸⁰ Program, IYHR, Box 12, Part 2, Vol. 161, RG6, LAC.

⁸¹ PEI's activities were printed in the *Resource* newsletter, File 45-13-1-6, Part 6, Vol. 14952, RG25, LAC.

Newfoundland government did not identify these are human rights questions. Provincial officials also argued there was “no race problem” in the province.⁸²

The National Conference

The culminating feature of International Year for Human Rights was a three-day national conference held in early December. More than 500 delegates attended, representing 147 national voluntary organizations, provincial human rights committees, religious institutions, government departments, universities, ethnic groups, women’s groups, Aboriginal groups, and unaffiliated but interested individuals.⁸³ At a series of plenary sessions, federal and provincial governments provided a summary and analysis of Canada’s domestic human rights policies and programs. These sessions were followed by ten workshops, spread over several days, including topics such as Canada’s Constitution and a Charter of Human Rights, Social Welfare, Labour Rights, Human Rights Commissions, Women’s Rights, Aboriginal Rights, and Children’s Rights.⁸⁴ This was a much broader array of topics as compared to the tenth and fifteenth anniversary celebrations, which tended to focus on larger categories such as Civil and Political Rights, Economic and Social Rights, or a Bill of Rights.

⁸² The two most widely discussion rights issues in Newfoundland at this time were the right to work and the right to education. See Letters discussing Newfoundland’s participation in International Year for Human Rights, 17 July 1967, File 17-2-4, Part 3, Vol. 146, RG6, LAC; see also Dominique Clément, “Searching for Rights in the Age of Activism: The Newfoundland-Labrador Human Rights Association, 1968-1982,” *Newfoundland Studies* 19, vol. 2 (2003): 347-372.

⁸³ Report by the Department of Citizenship and Immigration re: Origins of Canadian Involvement in IYHR, 20 December 1968, File 17-2-4/4, Vol. 146, RG6, LAC.

⁸⁴ Program, Canadian National Conference IYHR, 1-3 December 1968, Ottawa, File 17-2-4-4, Vol. 146, RG6, LAC.

The underlying questions to be answered by participants in each workshop for Human Rights Year were how Canada measured up to the standards set by the Universal Declaration of Human Rights, what had been achieved in 1968, and what further action must be taken.⁸⁵ At the final plenary session, each workshop presented a report of its discussion and any recommendations coming from its participants. For example, the workshop on Canada's Constitution and a Charter of Human Rights urged federal and provincial governments to agree on an entrenched Bill of Rights.⁸⁶ The workshop on Human Rights Commissions recommended all jurisdictions in Canada review the adequacy of their human rights legislation with respect to the Universal Declaration.⁸⁷ The workshops on Women's Rights, and on Social Welfare and Human Rights both urged the federal government to take decisive steps to work with the provinces to implement the outstanding international conventions.⁸⁸ One general recommendation that came out of the plenary session was the creation of a national human rights commission that could continue on a permanent basis the work initiated by International Year for Human Rights.

For long-time activists such as John Humphrey, one important goal of the national conference was to highlight the shortcomings in Canada's domestic and international human rights policies in order to press for further developments. Humphrey told

⁸⁵ Two reports were generated in December 1968 to report on the achievements of IYHR: Report on the Genesis and Role of the Canadian Commission IYHR, December 1968; and Report by the Department of Citizenship and Immigration re: Origins of Canadian Involvement in International Year for Human Rights, 20 December 1968. Both can be found in File 17-2-4-4, Vol. 146, RG6, LAC.

⁸⁶ These reports were organized into a final report. "International Year for Human Rights National Conference – Report of Seminars," File 8, Vol. 8, Canadian Council for Human Rights, Walter Tarnopolsky Papers, LAC.

⁸⁷ Ibid., 1.

⁸⁸ Ibid., 11.

delegates, “We have lived with a national smugness for so long, believing we had such an advanced enlightenment toward equality for all people, that we are only beginning to recognize with a shock that we are just people after all.”⁸⁹ Humphrey described how he had been “embarrassed” by Canada’s decision to abstain in the vote on the adoption of the UDHR in 1948, and that he continued to be disappointed with the government’s lack of commitment to international human rights.⁹⁰ Other conference participants also tried to dispel the myth that Canada had a good domestic record of protecting its citizens from discrimination and an international reputation as an advocate for human rights at the UN. In explaining why there continued to be no sustained pressure on Canadian governments from the general public to enact stronger human rights laws, Allan Borovoy, a member of the Jewish Labour Committee, stated, “Canadians are not sufficiently in favour of human rights. We are not ‘hate-mongers’ we are ‘comfort-mongers.’ Our problems concern not the ill-intentioned wrong-doer, but the well-intentioned non-doer.”⁹¹

The Impact of International Year for Human Rights

International Year for Human Rights had a significant impact on Canada. It built upon existing human rights structures, which had resulted from the activism of the 1940s and 1950s, and encouraged a federal-provincial dialog on rights. The year’s activities also brought human rights to the forefront of public debate, increasing awareness and

⁸⁹ The Canadian Department of Labour reprinted excerpts from Humphrey’s speech in its monthly publication. “The Divine Right to be Human,” *Labour Gazette* (February 1969): 66-71.

⁹⁰ Krista Maecots, “Ex-UN official raps Canada on its human rights record,” *Ottawa Citizen*, 14 November 1968, 29.

⁹¹ The Canadian Labour Congress also reprinted excerpts from Borovoy’s speech in their associations monthly publication. “The Divine Right to be Human,” *Labour Gazette* (February 1969): 68.

broadening understandings of rights. These changes led to the first direct pressure on the federal government to take decisive action to ratify the International Covenants.

In setting goals for IYHR, participants at the National Consultation in 1966 had recommended the adoption of a human rights act by all of the provinces, the creation of federal and provincial human rights commissions, and the strengthening of the Canadian Bill of Rights. At that time, only Saskatchewan, Ontario, and Nova Scotia had a human rights act. By the end of IYHR, Alberta, New Brunswick, and Prince Edward Island had enacted similar laws, and by the mid-1970s all Canadian provinces had some form of human rights bill in place.⁹² The year was also instrumental in encouraging the creation of human rights associations throughout Canada. The federal government had called on all provinces to establish planning committees to prepare for the observance of the year, and several of these provisional committees evolved into permanent provincial human rights commissions. Nova Scotia, New Brunswick, Newfoundland, British Columbia, and Manitoba all either developed commissions immediately before or shortly after the celebration of IYHR.⁹³ Even the federal government developed a short-lived Canadian Council for Human Rights from 1969 to 1970, designed to continue the work of IYHR. The Canadian Commission, IYHR had transformed into the Canadian Council, carrying over its executive and original structure. From its inception, however, this federal commission struggled financially and members had difficulty agreeing on the best

⁹² Alberta Human Rights Act (1966); New Brunswick Human Rights Act (1967); PEI Human Rights Code (1968); BC Human Rights Act (1969); Newfoundland Human Rights Code (1969); Manitoba Human Rights Act (1970); Quebec Charter of Human Rights (1975). For the evolution of provincial human rights acts and commission, see Brian Howe, *Restraining Equality*, especially Chapter One.

⁹³ Brian Howe, *Restraining Equality*; Dominique Clément, “Searching for Rights in the Age of Activism,”; and Dominique Clément, “Alberta’s Rights Revolution,” *British Journal of Canadian Studies* 26, no. 1 (2013): 59-79.

possible agenda for the organization. One suggestion was for the council to campaign for the ratification of various UN covenants, but the majority of members opposed the focus on international instruments, feeling it was more prudent to focus on domestic endeavors.⁹⁴ Before a decision could be made, Council Chair Kalmen Kaplansky informed all members that there were insufficient funds to continue to meet.⁹⁵ In addition to government organizations, the period around 1968 saw the creation of a number of new non-governmental human rights organizations, such as the Canadian Foundation for Human Rights from Montreal.⁹⁶ While no concrete steps were taken to strengthen the Canadian Bill of Rights, Prime Minister Pierre Trudeau told provincial representatives at the First Ministers meeting in 1969 that his government intended to work toward a constitutionally entrenched bill of rights.⁹⁷ This topic was an important aspect of federal-provincial discussions on constitutional reform throughout the 1970s. Based on these developments, most of the goals set at the National Consultation were met.

The activity surrounding 1968 also fostered greater federal-provincial discussion. Prior to the adoption of the Covenants in 1966, Ottawa had initiated virtually no contact with the provinces relating to human rights initiatives at the UN. The provincial ministries of labour administered most of the early anti-discrimination laws, and these departments

⁹⁴ Arthur Stinson, Louis Saborin, Ranjit Hall, Kalmen Kaplansky and Neil Morrison all argued that a conference on the ratification of international covenants was not the best use of the Council's resources. Minutes of Meeting of Provisional Executive Committee, Canadian Council for Human Rights, 3 July 1969, File 8, Vol. 8, Walter Tarnopolsky Papers, MG31-E55, LAC.

⁹⁵ Letter from Kalmen Kaplansky to Members of the Provisional Executive Commission, Canadian Council for Human Rights, 5 Aug 1970, File 8, Vol. 8, Walter Tarnopolsky Papers, MG31-E55, LAC.

⁹⁶ Canadian Commission, IYHR, Minutes of Meetings, 8 April 1968, Box 12, Part 2, Vol. 161, RG6, LAC. Also Clément.

⁹⁷ "Secretariat Report on Proceedings" – Constitutional Conference, Committee of Ministers on Fundamental Rights, "Minister of Labour's General Correspondence, Barcode B355540, RG 7-1, AO.

met regularly under the umbrella of the Canadian Association of Administrators of Labour Legislation (CAALL). By the 1960s this association was setting aside more time to address human rights, but its focus remained more broadly on labour legislation.⁹⁸ Other than a 1965 conference of provincial human rights administrators organized by the Ontario Human Rights Commission, there had been little opportunity for government officials from across Canada to meet to discuss human rights problems.⁹⁹ After the federal government encouraged the participation of the provinces in the planning process for IYHR, provincial representatives attended the national consultation in 1966 and the Montreal planning conference in 1967. In each case there were workshops dedicated to discussing provincial human rights legislation, human rights commissions and provincial ombudsmen. Provincial governments also kept in contact with the Canadian Commission, IYHR, throughout the year, reporting their programs and any legislative developments. This communication opened the door for greater federal-provincial dialog over human rights in the future.

The educational resources and the multitude of events that stimulated discussion over the meaning of rights in 1968 were also a part of the wider evolution of the definition of human rights in Canada during this period.¹⁰⁰ When the International Bill of Rights was first introduced at the United Nations, and throughout the early years of debates over the form and content of the Covenants on Human Rights, one of the

⁹⁸ The CAALL was the predecessor of the Canadian Association of Statutory Human Rights Legislators, which formed in 1970. "History of CASHRA," accessed only at the Canadian Association of Statutory Human Rights Legislators, <http://www.cashra.ca/history.html>, retrieved January 5, 2014.

⁹⁹ Letter from Daniel Hill, Director of the Ontario Human Rights Commission, 31 March 1966, File 17-2-4, Part 2, Vol. 146, RG6, LAC.

¹⁰⁰ For an analysis of Canada's 'Rights Revolution,' see Michael Ignatieff, *The Rights Revolution*; Dominique Clément, *Canada's Rights Revolution*.

significant barriers to federal support for the instruments was the narrow understanding of rights held by federal officials, and Canadians more generally. By 1968, however, understandings of rights had changed significantly. While terms such as ‘civil liberties’ and ‘civil rights,’ which reflected an understanding of rights most synonymous with limited legal and political rights, were still in use, they were increasingly being replaced by the term ‘human rights.’¹⁰¹ In preparation for the launch of the year, the Canadian Commission produced a pamphlet entitled, “Canada & Human Rights: 21 Questions and Answers,” which worked to define human rights for the purpose of the year’s program.¹⁰² The Commission based its definition on the UDHR, describing human rights as “the conditions necessary for each individual to live truly as a human being in society.”¹⁰³ The human rights as outlined in this pamphlet were vastly different from the understanding of rights that guided the policies of External Affairs in the 1940s and 1950s. According to the Commission, human rights were universal and they should be designed to meet the needs of both individuals and minority groups; in categorizing which rights should be protected, the pamphlet listed political rights, legal rights, egalitarian rights and linguistic rights.¹⁰⁴ The pamphlet pointed out that significant portions of Canada’s population, including “Negroes, Prairie Métis, Northern Eskimos and most of Canadian Indians” had not historically been afforded these rights, and that the remedy for this would be to

¹⁰¹ This is based on a survey of archival material, at federal and provincial archives, relating to IYHR. This includes Library and Archives Canada, the Archives of Ontario, the New Brunswick Archives, and the Saskatchewan Archives (hereafter SA).

¹⁰² Canadian Commission, International Year for Human Rights, “Canada & Human Rights: 21 Questions and Answers,” 1968.

¹⁰³ Ibid.

¹⁰⁴ The pamphlet defined egalitarian rights as guarantees against discriminatory treatment by government or other action by reason of race, national origin, religion or sex.

enshrine the principles of the UDHR into the Canadian constitution, and then work to educate all Canadians as to these constitutional rights.¹⁰⁵

At the UN in the 1950s, the Canadian delegation fought to exclude group rights and economic and social rights from the Covenants because these were understood to be a matter of social policy rather than a matter of right. By 1968, however, the Canadian Commission, IYHR argued that individual rights were insufficient for many members of minority groups, and that these groups also needed the right to preserve their language and other cultural traits.¹⁰⁶ Economic and social rights had become a significant point of conversation, and the topic of many talks and workshops throughout 1968. Many social movement organizations of the late 1960s focused on the poor economic and social conditions of Canada's marginalized peoples, including women, children, Aboriginals, and new immigrants. Organizations such as Toronto's Just Society Movement organized anti-poverty rallies.¹⁰⁷ The Canadian Human Rights Foundation argued that a study of economic and social rights would not "demote civil and political rights to a status of minor importance," but instead allow for a more complex and self-fulfilling understanding of rights.¹⁰⁸ While federal officials continued to view rights more narrowly than this, it is worth note that public discussions of rights in the late 1960s were much broader than they had been two decades earlier.

¹⁰⁵ Canadian Commission, International Year for Human Rights, "Canada & Human Rights: 21 Questions and Answers," 1968.

¹⁰⁶ In this case, the Commission was referring explicitly to French-speaking populations in Canada. The pamphlet made reference to the importance of the Royal Commission on Bilingualism and Biculturalism in creating an "equal partnership" between French and English Canadians.

¹⁰⁷ Palmer, *Canada's 1960s*, 221, 261, 382.

¹⁰⁸ Canadian Human Rights Foundation, "Research into economic, social and cultural rights: Critical survey of human rights legislation in Canada," August 1974, File 45-13-2-3, Part 10, Vol. 13650, RG25, LAC.

In the 1940s, most Canadian politicians defended the traditional British system of protecting civil liberties through parliamentary supremacy and the rule of law. By the 1970s, this had also changed. In 1970, the government established a Special Joint Committee on the Constitution, which considered the constitutional bill of rights. In its report, the committee stated,

Parliamentary sovereignty is no more sacrosanct a principle than is the respect for human liberty which is reflected in a Bill of Rights. Legislative sovereignty is already limited legally by the distribution of powers under a federal system and, some would say, by natural law or by the common law Bill of Rights.¹⁰⁹

A year later, in an address to the Saskatchewan Human Rights Conference, NDP Attorney General Roy Romanow went so far as to suggest that the British legal system had been designed for a “homogeneous and stable population” and so did not necessarily apply to Canada today.¹¹⁰ Romanow used the October Crisis of 1970, to defend his point. This crisis involved the kidnapping of government officials in Montreal by the Front de libération du Québec (FLQ), a militant separatist group. Prime Minister Pierre Trudeau responded by invoking the War Measures Act, deploying Canadian troops into Quebec and Ottawa, and suspending citizens’ civil and political rights to suppress the FLQ. Critics of Trudeau’s actions, including Romanow, considered the actions excessive. Romanow argued that the federal government’s reaction, “point[ed] out in a dramatic way that it isn’t sufficient for us, as the British have done, to deal with violations of civil rights on a day to day basis as violations arise. It points to the need for a complete and

¹⁰⁹ Canada, Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, First Report (Queen’s Printer), 18-19.

¹¹⁰ Roy Romanow, Address to the Saskatchewan Human Rights Conference, 29 October 1971, File S-A468, GS 154, Vol. V, Roy Romanow Papers, SA.

comprehensive method of dealing with violations of civil rights.”¹¹¹ Early rights activists had made similar comments in the aftermath of the Gouzenko Affair in the 1940s, but in this case it was a provincial attorney general criticizing Canada’s reliance on the British legal tradition for protecting rights.

Interest in human rights issues, among academics and the general public, had grown considerably by the 1970s. Maxwell Cohen was asked to write an article explaining this trend, considering that only a generation earlier interest was so limited.¹¹² He explained that there had been a radical change in awareness about rights since the end of the Second World War, and that the 1950s and 1960s offered a more sensitive environment for new ideas about rights, and new standards in Canadian society.¹¹³ Cohen provided four reasons for this increased sensitivity: the lesson of the Holocaust, the influence of the anti-colonial movement, increased interaction between ‘white’ populations and people of colour, and the rise of the welfare state. In the international system, and at the UN, Cohen argued that decolonization and changes in the global power structure created a “new majority” and put pressure on privileged whites.¹¹⁴ Cohen also pointed to the growing use of the term human rights, and argued that the rights language that came out of the United Nations was a useful tool in calls for enhanced rights protection. He wrote, “No one could have predicted in 1945-46 the power or the semantic consequences of this kind of language, or its absorption into the wider area of political

¹¹¹ Ibid.

¹¹² Maxwell Cohen, “Human Rights: Programme or Catchall? A Canadian Rationale,” *Canadian Bar Review* XLVI, no. 4 (Dec 1968): 554-564.

¹¹³ Ibid., 554.

¹¹⁴ Ibid., 555.

debate in this generation, and the ease with which it has become part of the political dialogue, part of the debating experience of peoples in all parts of the world, even those in affluent societies.”¹¹⁵

Pressure for Ratification

In addition to developing Canada’s human rights infrastructure and contributing to a shift in Canadian knowledge and understandings of rights, IYHR led to direct pressure on the Canadian federal government to accede to the International Covenants. The UN Commission on Human Rights adopted a resolution in 1966, calling on all member states to ratify these instruments by the end of Human Rights Year. Almost all of the international conferences, as well as those held in Canada, included information sessions on the UN’s human rights conventions. The fact that a number of these conventions had not yet been signed or ratified by Canada was widely publicized during and after the year.¹¹⁶ As a result of this, one of the major recommendations coming out of the national conference, from a range of governmental and non-governmental organizations, was that Canada ratify the International Covenants on Human Rights and the Optional Protocol at the earliest possible date.

Within the House of Commons, the UN’s human rights instruments became a more common point of reference. In several cases, MPs justified calls for legislative change by arguing Canadian legislation to be consistent with the principles of the UDHR. Progressive Conservative MP Robert Thompson took the occasion of the twentieth

¹¹⁵ Ibid., 557.

¹¹⁶ For example, . “The Divine Right to be Human,” *Labour Gazette* (February 1969), 71.

anniversary of the adoption of the UDHR to ask Trudeau to amend the Industrial Relations and Disputes Investigation Act, “in view of the fact that Canada has given such full and complete endorsement of [the] universal declaration.”¹¹⁷ This same argument was used repeatedly in 1969 and 1970 to promote hate propaganda amendments to the Criminal Code.¹¹⁸ There were also several direct calls on the federal government, from Members of Parliament, to ratify the Covenants.¹¹⁹

The most direct pressure on the Trudeau government to take action toward the Covenants was a nation-wide petition campaign, led by B’nai B’rith Canada’s League for Human Rights. B’nai B’rith was an international Jewish advocacy group that had an active branch in Canada, and had been involved in the movement for racial equality in the post war period.¹²⁰ At the Montreal World Assembly, B’nai B’rith’s representatives were particularly interested in the Assembly’s sense of urgency to have national governments ratify the International Covenants, and to arouse public awareness and support for the effective implementation of these covenants.¹²¹ In 1971, B’nai B’rith Canada established a League for Human Rights, and appointed Roland de Corneille, a human rights activist, Anglican priest, and member of the Canadian Conference of Christians and Jews, as its

¹¹⁷ Thompson was a long-time Social Credit politician. In 1967, he crossed the floor to the Progressive Conservative Party. *House of Commons Debates*, R.N. Thompson, 10 December 1968, 3743.

¹¹⁸ Canada, *House of Commons Debates*, Mr. Haidasz, 17 November 1969, 915; David Lewis, 17 November, 1969, 889; and Ian Wahn, 9 April 1970, 5700.

¹¹⁹ There was clearly confusion in the House between the UDHR and the Covenants as Andrew Brewin asked Prime Minister Trudeau if the government intended to adopt the UDHR and Trudeau replied that the federal government could not ratify the document without seeking the approval of the provinces. Canada, *House of Commons Debates*, John Gilbert, 8 May 1970, 6737; and Andrew Brewin, 26 June 1970, 8645.

¹²⁰ James W. St.G. Walker, “The ‘Jewish Phase’ in the movement for racial equality in Canada,” 1-22.

¹²¹ Interview with Roland de Corneille, February 2013.

national director.¹²² As one of his first tasks as director, de Corneille was instructed to initiate a petition campaign to pressure the federal government to ratify the International Covenants on Human Rights.¹²³ Neither covenant was promoted about the other; the campaign called for the ratification of both.

According to the League for Human Rights, the petition campaign was designed to “urge our Federal and Provincial Governments to exert their greatest efforts to the end that Canada become a party to the most fundamental and far reaching instruments in the field of human rights.”¹²⁴ In the initial planning meeting, members of the Petition Committee agreed that apathy was a major obstacle in the implementation of human rights in Canada, and for this reason public education became a key component of the campaign.¹²⁵ The League began by using its system of fraternal lodges to educate its members about human rights, and the UN instruments specifically. Members were encouraged to sign the petition, and then sent to visit as many Canadian organizations and religious and ethnic groups as possible to distribute resources about the campaign and obtain signatures for the petition.¹²⁶ The League for Human Rights targeted local, provincial, and federal politicians as well, seeking signatures and involving the media where possible. The Mayor of Oshawa, Ontario proclaimed “Human Rights Petition Week” when he provided his support for the campaign, and the Oshawa Times printed an

¹²² Ibid.

¹²³ For files relating to the League for Human Rights’ Petition Campaign, see Containers 105 and 106, Vol. 133, MG28, LAC.

¹²⁴ Pamphlet, League for Human Rights of B’Nai B’rith Canada, “Canada – Speak up for Human Rights!” File 3, F16, Vol. 19, League for Human Rights, Rev. Roland de Corneille Papers, MG31, LAC.

¹²⁵ Minutes of Meeting of Committee on Human Rights Covenants (“Petition Committee”), 22 July 1971, File 12, F16, Vol. 19, League for Human Rights, Rev. Roland de Corneille Papers, MG31, LAC.

¹²⁶ News Release, League for Human Rights of B’nai B’rith, 28 May, 1971, File 3, F16, Vol. 19, League for Human Rights, Rev. Roland de Corneille Papers, MG31, LAC.

article, a proclamation for the week and a photo of the mayor signing the petition.¹²⁷ This publicity gave the petition momentum.

As the campaign progressed throughout 1971, B'nai B'rith worked with many other organizations to promote ratification and educate the public about the Covenants. The UN Association of Canada involved hundreds of UN Clubs in schools across the country.¹²⁸ Other supporting organizations included: the National Indian Brotherhood, the Anglican Church of Canada, the Indian-Eskimo Association of Canada, the Ontario Human Rights Commission, the Human Rights Committee of the Ontario Federation of Labour, the National Council of Women of Canada, the Union of Ontario Indians, the World Federalists of Canada, and the National Council of Jewish Women.¹²⁹

The official petition campaign ran from October to December 1971. In total, almost 22,000 Canadians signed the petition, including 91 Members of Parliament, representing all of the major political parties.¹³⁰ A delegation of individuals involved in the campaign, led by de Corneille, met with Prime Minister Trudeau on December 10, 1971, and submitted to him the petition. In his response, Trudeau stated,

I am very pleased to be receiving today a petition signed by thousands of Canadians calling for Canada to become a party to the International Covenants. This petition, sponsored by the League for Human Rights of B'nai

¹²⁷ All three were printed in the November 24, 1971 edition of the paper. "Mayor Proclaims Human Rights Petition Week," 24 November 1971. Similar articles and photos appeared in other newspapers. For clippings, see File 12, F16, Vol. 19, League for Human Rights of B'nai B'rith, Rev. Roland de Corneille Papers, MG31, LAC.

¹²⁸ Letter from Rev. Roland de Corneille, League for Human Rights, to Lou Copeland, Chair of the Petition Campaign, 20 October 1971, File 12, F16, Vol. 19, League for Human Rights of B'nai B'rith, Rev. Roland de Corneille Papers, MG31, LAC.

¹²⁹ "Human Rights Petition Presentation Statement," 10 December 1971, File 12, F16, Vol. 19, League for Human Rights of B'nai B'rith, Rev. Roland de Corneille Papers, MG31, LAC.

¹³⁰ Anti-Defamation League, *Intercom*, published by the Anti-Defamation League of Canada/League for Human Rights of B'nai Brith (March 1972), F16, Vol. 19, Rev. Roland de Corneille Papers, MG31, LAC.

B’rith embodies the hopes and desires of large numbers of Canadians who seek to advance the cause of human rights both within Canada and internationally.... I welcome this particular initiative and pledge my support for its worthy objective.¹³¹

For the first time, Trudeau publicly supported the ratification of the Covenants. He did not, however, commit to any specific deadline. When Progressive Conservative MP David MacDonald asked Trudeau in the House of Commons a few days later whether or not the Liberals had a timeline for ratification, however, Trudeau simply reverted to the government’s stock response that consultation with the provincial governments was ongoing.¹³²

Although the petition campaign was complete, the League for Human Rights continued to spread awareness about the Covenants and issues of human rights. Roland de Corneille traveled throughout Canada, speaking to Canadians on a range of topics. In 1973, he told a crowd at the Jaycees National Convention in Kingston, Ontario that there was much to be done in Canada in the area of human rights, and that Canada had fallen off track. He said, “there is one thing we can do that will get us back on the track – that will give us back leadership in Human Rights. It is clear. It is simple. It is concrete. It is effective. It is to have Canada become a party to the International Human Rights Covenants.”¹³³

¹³¹ Pierre Trudeau, as quoted in “Reception from Trudeau,” *Intercom*: League for Human Rights, B’nai B’rith Canada (March 1972), File 12, F16, Vol. 19, Rev. Roland de Corneille Papers, MG31, LAC.

¹³² Canada, *House of Commons Debates*, David MacDonald and Pierre Trudeau, 13 December 1971, 10396.

¹³³ Rev. Roland de Corneille, Speech given to Jaycees National Convention in Kingston, Ontario, July 1973, File 7, F16, Vol. 19, Rev. Roland de Corneille Papers, MG31, LAC.

The Slow Road to Ratification

According to the Department of External Affairs, International Year for Human Rights, “resulted in very widespread public interest and participation in human rights programs across Canada,” and the year “developed expectations of continuing federal and provincial support for the realization of human rights goals.”¹³⁴ Indeed, in terms of domestic developments, the momentum of the year did continue into the 1970s, as provincial governments further enhanced human rights protections and the federal government pushed for an entrenched Charter of Human Rights. There was less development in the area of international human rights, however. Despite Trudeau’s positive response to B’nai B’rith’s petition campaign, the Government of Canada took no significant action between 1971 and 1974 to hasten the ratification of the Covenants. This was due in part to the Trudeau’s lack of interest in international human rights, but was also a consequence of the province of Quebec’s reluctance to commit its support to Canada’s accession.

The Trudeau government’s inaction was not the result of any opposition to the Covenants or the Optional Protocol. In fact, many of the Liberal Government’s policies, and indeed Trudeau’s own vision for a ‘Just Society,’ were premised on individual rights and equality of opportunity, and therefore consistent with the international human rights regime. Trudeau’s Just Society was focused on civil and political rights, however. In 1962, he had written an article for the McGill Law Journal on “Economic Rights,” arguing: ‘if this society does not evolve an entirely new set of values ... it is vain to hope

¹³⁴ Memo to Cabinet from the Department of External Affairs, “Human Rights Program,” October 1968, File 45-13-1, Part 6, Vol. 14952, RG25, LAC.

that Canada will ever reach freedom from fear and freedom from want. Under such circumstances, any claim by lawyers that they have done their bit by upholding civil liberties will be dismissed as a hollow mockery.”¹³⁵ Trudeau’s position on economic rights had changed by the time he was prime minister. When he proposed an entrenched Charter of Rights in 1968, he argued that it would be difficult to secure agreement on the issue of economic rights, and for that reason it was “advisable not to attempt to include economic rights in the constitutional bill of rights at this time.”¹³⁶ Trudeau was more dedicated to expanding language rights. In 1969, he acted on the recommendations of Lester Pearson’s Royal Commission on Bilingualism and Biculturalism and enacted the Official Languages Act, recognizing the right of both French and English speaking Canadians to access federal services in either language.¹³⁷ Also, recognizing the growing influence of the “Third Element” in Canadian society, the federal Liberals introduced a policy of official multiculturalism in 1971. This policy was designed to promote and protect cultural diversity within Canadian society, also addressing the rights of Aboriginal peoples and supporting the use of Canada’s two official languages.¹³⁸ Most importantly, Trudeau was determined to strengthen rights protection in Canada by entrenching a bill of rights into the Constitution. Between 1969 and 1971, the federal Liberals hosted five first

¹³⁵ Pierre Elliot Trudeau, “Economic Rights,” *McGill Law Journal* 8 (1961-62), 125.

¹³⁶ P.E. Trudeau, *A Canadian Charter of Human Rights* (Ottawa: Queen’s Printer, 1968), 27.

¹³⁷ Matthew Hayday, “From Repression to Renaissance: French-Language Rights in Canada Before the Charter,” in Janet Miron, ed., *A History of Human Rights in Canada* (Toronto: Canadian Scholars’ Press Inc., 2009): 191-195; and Maxwell Yalden, *Transforming Rights: Reflections from the Front Lines* (Toronto: University of Toronto Press, 2009), 46-47.

¹³⁸ Hugh Donald Forbes, “Trudeau as the First Theorist of Canadian Multiculturalism,” in Stephen Tierney, ed. *Multiculturalism and the Canadian Constitution* (Vancouver: UBC Press, 2007): 27-42.

ministers' conferences, at which Trudeau attempted, unsuccessfully, to enshrine individual rights and language rights into the Constitution.¹³⁹

These policies illustrate Trudeau's commitment to expanding human rights protection, but he concentrated his efforts on domestic policy. This was consistent with the priorities of many Canadian rights activists of the time, who advocated domestic and not international human rights initiatives because resources were limited and there was a sense that domestic developments were more urgent, and would have a more profound impact on the lives of marginalized Canadians.¹⁴⁰ Trudeau's focus on domestic issues was not limited to human rights. In fact, New Democrat MP Andrew Brewin complained that Trudeau's Throne Speeches barely mentioned international affairs.¹⁴¹ Domestic matters, constitutional reform, and the place of Quebec within the federation, stood highest on Trudeau's agenda, not international human rights instruments or human rights initiatives at the UN.¹⁴²

¹³⁹ Constitutional Conferences were held in February, June and December 1969, September 1970, and June 1971. Michael Behiels, "Canada and the Implementation of International Instruments of Human Rights: A Federalist Conundrum, 1919-1982," in Dimitry Anastakis and P.E. Bryden, eds., *Framing Canadian Federalism: Historical Essays in Honour of John T Saywell* (Toronto: University of Toronto Press, 2009): 151-184.

¹⁴⁰ This sentiment was expressed in several interviews conducted with human rights activists from the period, and in documents outlining the planning for the Canadian Council for Human Rights. Interviews with Thomas Symons, Roy Romanow, Harish Jain, and Roland de Corneille. Minutes of Meeting of Provisional Executive Committee, Canadian Council for Human Rights, 3 July 1969, File 8, Vol. 8, Walter Tarnopolsky Papers, MG31-E55, LAC.

¹⁴¹ Canada, *House of Commons Debates*, Andrew Brewin, 8 March 1974, 33.

¹⁴² For a more thorough examination of Trudeau's policies, and his balance of foreign and domestic issues, see J. L. Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1990); John English, *Citizen of the World: The Life of Pierre Elliott Trudeau Volume One: 1919–1968* (Toronto: Knopf Canada, 2006); John English, *Just Watch Me: The Life of Pierre Elliott Trudeau Volume Two: 1968–2000* (Toronto: Knopf Canada, 2009); and Pierre Elliot Trudeau, *Memoirs* (Toronto: McClelland & Stewart, 1993).

Despite Trudeau's lack of enthusiasm for the Covenants, had all ten provinces provided formal support for ratification, the Canadian government likely would have deposited its instruments of accession much sooner than it did. Federal officials within the Interdepartmental Committee on Human Rights and officials in the Department of External Affairs had been urging Cabinet since 1967 to push for ratification. Cabinet's ability to do so, however, was hindered by a lack of support from the province of Quebec. In 1971, four years after Prime Minister Pearson wrote to the provinces to ask them to officially confirm their willingness to enact the necessary legislation to implement the three instruments, Quebec had yet to send a response. Secretary of State for External Affairs, Mitchell Sharp wrote to Quebec Premier Robert Bourassa asking for the province's position toward ratification. Having received no formal reply, Sharp wrote a second letter in January 1973 indicating that eight of the ten provinces had indicated their agreement to Canada's accession to the Covenants and the Optional Protocol, and asking again for the Quebec position.¹⁴³

Bourassa finally replied to External Affairs in March 1973, six years after Pearson's initial letter. In his response to the question of Quebec's position toward ratification of the Covenants, Bourassa noted that a number of the articles in both instruments concerned matters falling under provincial authority.¹⁴⁴ Bourassa further stated that, while the Quebec had no objections to the principles and objectives of the

¹⁴³ Letters from Mitchell Sharp, Secretary of State for External Affairs, to Quebec Premier Robert Bourassa, November 1971, and 24 January 1973, File 45-13-2-3, Part 3, Vol. 13649, RG25, LAC.

¹⁴⁴ Bourassa wrote, "Plusieurs droits définies aux articles 2 à 15 du Pacte international relative aux droits économiques, sociaux et culturels ou aux articles 6 à 27 du Pacte international relative aux droits civils et politiques font déjà l'objet de plusieurs législations provinciales, en particulier au Québec, et l'Assemblée nationale peut être appelée dans l'avenir à se prononcer sur des projets de lois susceptibles de les affecter." Robert Bourassa to Mitchell Sharp, 16 March 1973, File 45-13-2-3, Part 3, Vol. 13649, RG25, LAC.

Covenants, and in fact supported them, the government had concerns with the modalities of provincial participation in the reporting and accountability system established by the three instruments. More specifically, the Government of Quebec wanted the authority to appear before international bodies to defend Quebec institutions or laws that may become the subject of a complaint at the UN, and provincial officials wanted the right to author and file any reports relating to provincial developments, as was the case in the I.L.O.¹⁴⁵

The Quiet Revolution had brought tremendous change to Quebec society, including a rise in nationalist sentiments that challenged traditional power structures in both provincial and federal governments. Civil servants and politicians in Quebec were continually looking for new opportunities to expand the powers and responsibilities of the provincial government.¹⁴⁶ The Quebec government wanted the power to represent itself within the international arena, particularly when dealing with matters that fell at least partially in provincial jurisdiction, such as the International Covenants. Pierre Trudeau, on the other hand, was an intense federalist who opposed any attempt by the provinces to infringe on the authorities of the federal government.¹⁴⁷ In 1973, however, Trudeau was not sufficiently interested in the ratification of the Covenants to bother too seriously with Quebec's demands.

¹⁴⁵ Ibid.

¹⁴⁶ Matthew Hayday, "Reconciling the Two Solitudes?" in Lara Campbell, Dominique Clément and Gregory S. Keeley, eds., *Debating Dissent*, 234.

¹⁴⁷ J. L. Granatstein and Robert Bothwell, *Pirouette*, 201.

The Rising Tide: Pressure on the Government for Ratification

Notwithstanding Trudeau's lack of interest, by 1974, the federal government was experiencing pressure from all sides to take more decisive action toward ratification. IYHR and its public education campaign had served to make individuals and organizations within Canada aware of the UN's human rights instruments, and of the federal government's failure to accede to these instruments. After three years of virtual inactivity relating to the International Covenants on Human Rights, Canadians began to write or informally inquire as to the federal government's timeline for ratification. Organizations such as the Canadian Unitarian Council prepared resolutions demanding the federal government take action.¹⁴⁸ Letters arrived from individuals, such as Betty Stillwell, a Canadian of Japanese heritage who supported ratification and sent copies of her letter to the Greater Vancouver Japanese Canadian Citizens' Association, the Toronto Japanese Canadian Citizens' Association, and the B.C. Civil Liberties Association.¹⁴⁹ Letters were sent to provincial governments as well. Saskatchewan Premier Allan Blakeney, vocally in support of ratification, forwarded letters his government received on the subject to the Prime Ministers and External Affairs for their consideration.¹⁵⁰ Human rights experts such as Roland de Corneille, John Humphrey and Walter Tarnopolsky continued to write on the subject, speak critically of the government's lack of action, and

¹⁴⁸ Letter from Barbara Arnott on behalf of the Canadian Unitarian Council, to the Department of External Affairs, 6 May 1974, File 45-13-2-3, Vol. 9, RG25, LAC.

¹⁴⁹ Letter from Betty M. Stillwell to the Department of External Affairs, 30 April 1974, File 45-13-2-3, Vol. 9, RG25, LAC

¹⁵⁰ Samples of letters written to the Saskatchewan government in 1973 and 1974 can be found in File 70, Parts 1-8, Vol. VIII, R-900, 82-127, Roy Romanow Papers, SA. Several of these letters were forward on to Prime Minister Trudeau.

encourage other individuals to pressure the government. Walter Tarnopolsky grabbed headlines in the media when he told a conference of human rights ministers from across the country in 1974 that racist conflict in Canada was a “time bomb” that would explode without immediate action, on both the domestic and international front.¹⁵¹

Support for ratification among federal officials had also grown since the 1960s. Officials within External Affairs noted that, of 15 international conventions adopted by the United Nations, Canada had ratified only 5.¹⁵² Concerned that this number reflected poorly on Canada’s commitment to international human rights, officials within the UN Division, such as W.H. Barton, called on the government to resolve this problem. Barton and others believed the momentum provided by IYHR would make gaining the support of the provinces easier. As time dragged on, however, and there was a possibility that Quebec would hold off its support indefinitely, officials in External Affairs began to question whether or not the federal government was really obligated to gain consent from the provinces before ratifying the international treaties. A.W. Robertson, the director of the Legal Advisory Division, wrote to other members of the Department that, “it would be unfortunate if the impression were to be given that this Department thought that the prior consent of provincial authorities was necessary from a legal, as opposed to

¹⁵¹ Walter Tarnopolsky, “The Development of Human Rights Legislation and Activity in Canada,” a paper delivered at the Conference of Human Rights Administrators, 8 November 1974, Victoria, British Columbia. A copy of this paper can be found in the Walter Tarnopolsky fonds, LAC. Subsequent media reports included Derek Sidenius, “Rights Issue ‘A Time Bomb,’” *Victoria Times*, 9 November 1974; “Osgoode Hall dean fears race clashes,” *Toronto Star*, 8 November 1974, A5.

¹⁵² According to the report, Canada had ratified conventions dealing with the prevention and punishment of the crime of genocide, the status of refugees, the political rights of women, the equality of married women, the slavery convention of 1926 with 1953 protocol, and the supplementary convention of 1956 on the abolition of slavery, the slave-trade, and institutions and practices similar to slavery. Memo from W.H. Barton, UN Division to A. Gotlieb, Legal Division, Department of External Affairs, 18 January 1968, File 45-13-1, Part 6, Vol. 14952, RG25, LAC.

(sometimes) a practical, point of view.”¹⁵³ The Federal-Provincial Coordination Division told other members of External Affairs to take care in responding to letters from the public asking why Canada had not ratified the Covenants so as to not over emphasize the role of provincial governments in case the government decided to move forward at a later date unilaterally.¹⁵⁴

Members of the federal Progressive Conservative and New Democratic Parties also took up the call for ratification in the mid-1970s. In 1973, when the Liberal Minister of Justice announced in the House of Commons that the government was proposing the creation of a new federal commission for the protection of egalitarian rights, several Members of Parliament took the opportunity to criticize the government for failing to fulfill its international obligations in the area of the human rights. Progressive Conservative Member Gordon Fairweather pointed out that “[t]wenty-five years after the United Nations voted for the Declaration of Human Rights Canada has not yet ratified some of the covenants on human rights adopted as long ago as 1966.”¹⁵⁵ New Democrat MP Andrew Brewin picked up on Fairweather’s comment and denounced Canada’s “poor record” in respect to the ratification of international conventions on human rights.¹⁵⁶

As provincial governments became more active in enforcing human rights protection, provincial officials also became more vocal in their demands on the federal

¹⁵³ AW Robertson, Director of Legal Advisory Division of Dept of EA, 22 July 1974, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

¹⁵⁴ Internal Memo, from R.G.H. Mitchell, Acting Director of the Federal-Provincial Coordination Division of External Affairs, 24 July 1974, File 45-CDA-13-1-1, Vol. 14947, RG25, LAC.

¹⁵⁵ Canada, *House of Commons Debates*, Gordon Fairweather, 10 December 1973, 8548.

¹⁵⁶ Canada, *House of Commons Debates*, Andrew Brewin, 10 December 1973, 8548. A statement was also made by René Matte who argued Canada needed to set a better example at the international level.

government. Noel Kinsella, Chair of the New Brunswick Human Rights Commission, argued that there was a role for the federal government to play in helping provincial human rights administrators keep abreast of human rights developments at the United Nations, and within Canada.¹⁵⁷ Kinsella told External Affairs that, within provincial governments, there was a sense that “the clock stopped in 1948” in regards to international human rights.¹⁵⁸ Instruments developed in the 1950s and 1960s were almost unknown to provincial officials. He argued that the work to ratify the International Covenants and the Optional Protocol would have been much quicker, and the work of the provincial governments much easier, “if they had been enabled to follow the development of the work of the Commission on Human Rights and the debate in the General Assembly and particularly in the Third Committee.”¹⁵⁹ To compensate for this lack of knowledge, Kinsella recommended that the Department of External Affairs sponsor seminars or courses for provincial human rights administrators and appoint a human rights officer to the Department’s UN desk to foster a federal-provincial dialog.¹⁶⁰ At the advice of Kinsella, the Canadian Association of Statutory Human Rights Administrators (CASHRA) organized a week-long course for provincial human rights officers in Ottawa in 1973.¹⁶¹ The course covered topics such as the UN Convention on the Elimination of All Forms of

¹⁵⁷ Noel Kinsella, “Involvement of Provinces in United Nations Human Rights Activities” Report prepared for the Department of External Affairs, 1 November 1972, File 45-13-2-3, Part 3, Vol. 13649, RG25, LAC.

¹⁵⁸ Ibid., 6.

¹⁵⁹ Ibid., page 5-6.

¹⁶⁰ Ibid.

¹⁶¹ CASHRA was established in 1972 out of the CAALL.

Racial Discrimination, women in society, the work of the ILO, UNESCO, and the effect of the UN's work in the field.¹⁶²

The Canadian Government's Strategy for Ratification

By 1974, sufficient pressure had mounted on the federal government for it to begin take the question of ratification seriously. In considering its different options, two questions arose for the government. First, was the government comfortable enough with the provisions of the two Covenants and the Optional Protocol to bind itself to their implementation? Second, if the government was prepared to ratify, what should be done about Quebec?

In order to answer the first question, the Department of Justice conducted a final analysis on the content of each of the covenants with respect to their compatibility with Canadian law. When similar studies had been conducted in the 1950s, federal officials had expressed concern that binding covenants would open Canada up to criticism in areas such as immigration and voting laws, and policies relating to Aboriginal peoples.

According to A.W. Robertson of External Affairs' Legal Advisory Division, the 1974 study revealed no serious impediments to Canada's accession to the Covenants. While minor legislative changes may be required upon accession, the Department of Justice had determined that any such change was already under consideration by policy makers.¹⁶³

The Department of External Affairs argued that, as the language of the Covenants

¹⁶² The course was sponsored by the Department of the Secretary of State. Memo from J.E. Thibault, External Affairs, to File, 21 February 1973, File 45-13-2-3, Part 3, Vol. 13649, RG25, LAC.

¹⁶³ Memo to File, Department of Justice re: "Canadian Accession to the Human Rights Covenants and Protocol, File 45-13-2-3, Part 9, Vol. 13650, RG25, LAC.

explicitly allowed for “progressive implementation,” any legislative changes that did need to be made could take place over a period of time.¹⁶⁴ More specifically, they pointed to Article 2(1) of the Covenant on Economic, Social and Cultural Rights, which stated,

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieve progressively the full realization of the rights recognized in the present Covenant, by all appropriate means, including particularly the adoption of legislative measures.¹⁶⁵

Officials within the Department of External Affairs argued that, with nine of the ten provinces already supporting accession and this type of flexibility built into the Covenant, Canada was in a good position to initiate the process of ratification immediately.

The Department of Justice did have a concern over Canada’s accession to the Optional Protocol, which set in place the complaint mechanism for the Covenant on Civil and Political Rights. Justice officials were concerned over the implication of the Optional Protocol on Canada, because it laid out that individuals who alleged that they were a victim of a violation by a state party to the Covenant on Civil and Political Rights could bring forward a complaint to the new Human Rights Committee once it was formed. The Department of External Affairs was not concerned about the implications of this new UN body, but the Department of Justice did not like the fact that the Human Rights Committee would be able to render a judgment that would supersede the decisions of

¹⁶⁴ Internal Memo, A.W. Robertson, Director of Legal Advisory Services, External Affairs, re: Government Positions on Ratification, 23 January 23 1975, File 45-13-2-3, Part 9, Vol. 13650, RG25, LAC.

¹⁶⁵ Ibid.

Canada's highest courts.¹⁶⁶ Therefore, the Department of Justice took the position that Canada should not accede to the Optional Protocol until the federal government was convinced it would not slip out of compliance of the Covenants.¹⁶⁷ Justice continued to try to bring this suggestion forward in interdepartmental discussions, but the Department of External Affairs was determined by this point to have the Covenants and the Optional Protocol ratified. Officials within External Affairs reminded their minister that Trudeau had publicly supported ratification of the Covenants in 1971, and maintained that the Canadian public would not understand why the government would later withdraw its support from one of the three human rights instruments.¹⁶⁸

The second major concern of the federal government was how to approach Quebec. By 1974, all of the other provinces had signaled their approval for ratification. The Quebec government had not indicated it would challenge Canada on the matter of accession, but continued to state its concerns over the protocols surrounding implementation. Federal politicians realized that the government would have to take action to resolve the stalemate regarding Quebec's position toward ratification, and so External Affairs, the Privy Council Office and the FCO created a two-prong strategy: Trudeau would take a personal approach with Bourassa, writing the premier and assuring him that Canada understood Quebec's concerns and was willing to work with Quebec on

¹⁶⁶ Letter from J.E. Harlick to Mr. Stanford re: "Briefing Book Entry: Canada's Proposed Accession to the International Human Rights Instruments," 21 May 1975, File 45-13-2-3, Part 10, Vol. 13650, RG25, LAC.

¹⁶⁷ Internal Memo, A.W. Robertson, Director of Legal Advisory Services, External Affairs, re: Government Positions on Ratification, 23 January 23 1975, File 45-13-2-3, Part 9, Vol. 13650, RG25, LAC.

¹⁶⁸ Memo to the Minister re: Canada's Accession to the Human Rights Covenants, 19 September 1975, File 45-13-2-3, Part 10, Vol 13650, RG25, LAC.

the technicalities of implementation; at the same time, federal-provincial meetings were set up for October and December 1975 to facilitate the negotiations.¹⁶⁹

The Federal-Provincial Conference on Human Rights, 1975

In October 1975, the federal government hosted a federal-provincial meeting to provide the necessary information to provinces on the technicalities of the process of ratification. The formal Federal-Provincial Conference on Human Rights would not be held until December, but the Canadian government hoped these preliminary discussions would alleviate some of Quebec's concerns over implementation and allow for an easy agreement. At the October meeting, federal representatives encouraged provincial support for Canada's accession to the Covenants and the Optional Protocol, once again emphasizing that the language of the covenants allowed for a "progressive implementation" of its provisions.¹⁷⁰ Thomas Symons, the provincial representative from Ontario, chaired an informal working group to discuss specific questions or problems, and it was in the meetings of this group that the provinces worked to develop a proposal to alleviate Quebec's concerns.¹⁷¹ Representatives from Ontario, Quebec, Saskatchewan, and Nova Scotia worked through the night to reach a tentative agreement that would make ratification more palatable for Quebec. The agreement included several key points:

¹⁶⁹ Trudeau sent a letter to Bourassa, and Bourassa did not reply although Quebec did express its intent to attend the federal-provincial meetings, however. Internal Memo, A.W. Robertson, Director of Legal Advisory Services, Department of External Affairs, re: Government Positions on Ratification, 23 January 23 1975, File 45-13-2-3, Part 9, Vol. 13650, RG25, LAC.

¹⁷⁰ Federal Provincial Meeting on HR – Talking Points, 28 October 1975, File 45-13-2-3, Part 10, Vol. 13650, RG25, LAC.

¹⁷¹ The representatives in the working group were Mr. Symons (Ontario), Mr McKay (Nova Scotia), Mr. Smith (Saskatchewan), Mr. Dufour (Quebec), and Mr. Copithorne (Federal Department of External Affairs); Interview with Thomas Symons.

the ability for provincial governments to renounce in the future their willingness to subscribe to any part of the instruments that fell under provincial jurisdiction; an agreement that the federal government would consult with the provinces when composing a Canadian delegation to the UN Committee on Human Rights; an agreement to allow any province under attack in the field of human rights to provide a representative to defend the province at the UN as part of the Canadian delegation; the ability of provincial governments to create the portions of any reports to the UN that dealt with provincial developments; and a proposal for annual federal-provincial meetings for continued consultation.¹⁷² This represented a major concession to provincial rights. At the conclusion of the October meeting, all of the provinces had indicated their satisfaction with the agreement reached by the working committee and resolved to return in December to make an official decision regarding ratification.¹⁷³ In advance of this second meeting, the federal Cabinet met and agreed that Canada would accede to both Covenants and the Option Protocol if all of ten provinces provided their official support. The Cabinet also indicated that, if the provinces did not unanimously agree, then External Affairs and the Secretary of State should report to Cabinet on both the pros and cons of acceding without unanimous consent.¹⁷⁴

In December 1975, Canada held a Federal-Provincial Conference on Human Rights to consider the ratification of the International Covenants on Human Rights. The

¹⁷² Federal-Provincial Conference on Human Rights, Ottawa, 27 and 28, October 1975, File 9, Box 32; Letter from Philippe LeBlanc, Coordinator, Federal-Provincial Conference on Human Rights Accession #01-003, Additions, Thomas Symons Papers, Trent University Archives (hereafter TUA).

¹⁷³ Memo from the Saskatchewan Department of the Attorney General to Mr. K. Lysyk, 10 November 1975, File 153, Vol. V, R-900, R-82-127, Roy Romanow Papers, SA.

¹⁷⁴ Memo from Cabinet to the Department of External Affairs, 4 December 1975, File 45-13-2-3, Part 10, Vol. 13650, RG25, LAC.

federal delegation was composed of representatives from the Departments of Justice, External Affairs, Labour, and the Secretary of State. In most cases, the ministers responsible for human rights represented their provinces, although Quebec was represented by Minister of Intergovernmental Affairs, François Cloutier. Mr. Cloutier outlined Quebec's position to the other delegates. He highlighted the province's accomplishments in the field of human rights, and made a particular note of the newly adopted Charter of Human Rights.¹⁷⁵ Cloutier indicated that Quebec subscribed, "without any reservations," to the objectives of the International Covenants on Human Rights. Cloutier also explained that the Premier of Quebec had exchanged letters with the federal government for three years, and he stressed the importance of "adequate participation of his government in enforcing international agreements."¹⁷⁶

At the Federal-Provincial Conference, the federal government negotiated with the provinces the details of the agreement relating to the implementation of the UN instruments. The Canadian government agreed in principle to the points set out in the agreement written in October, but federal officials proposed several changes. First, while Ottawa accepted that provincial governments would write reports to the UN relating to provincial developments, the federal government reserved the right to request edits to these documents as the Canadian government was ultimately responsible for and accountable to all reports submitted to the UN. Furthermore, while the federal government also accepted provincial representation on the Canadian delegation to the UN

¹⁷⁵ François Cloutier, "Preliminary Declaration of the Minister of Intergovernmental Affairs," December 12, 1975, Box 16, Accession #82-001, Human Rights, Thomas Symons fonds, TUA.

¹⁷⁶ Ibid.

Human Rights Committee in cases where provinces were facing a complaint, the federal officials stressed that these representatives would work with, and not independent from, the federal representatives.¹⁷⁷ With these changes in place, the federal government accepted the agreement written by the provinces in October, and at the conclusion of the Federal-Provincial Conference on Human Rights, all ten provinces agreed to the principle of acceding to the Covenants and on the modalities of their implementation. There was, however, a proviso from Quebec's representative that he needed authority from his Cabinet to formalize his agreement.¹⁷⁸ The Canadian government issued a press release outlining the agreement reached by all provinces and the federal government to "act in concert in the implementation of the Instruments."¹⁷⁹

The Final Push for Ratification

Despite having reached an agreement at the Federal-Provincial Conference in December, the Canadian government was in the same position it had been at the beginning of 1974; Quebec had yet to formally provide its support. The federal government's initial plan was to wait to hear from Quebec before moving forward, but Canadian policy toward international human rights once again was influenced by international developments. On December 23, 1975, Czechoslovakia became the thirty-fifth state to ratify the Covenant on Civil and Political Rights. Accordingly, the Covenant would officially enter into force three months later. Once the Covenant on Civil and

¹⁷⁷ Confidential Memo to Cabinet, from External Affairs, re: Accession to the UN Covenant on Civil and Political Rights, April 1976, File 45-13-2-3, part 10, Vol. 13650, RG25, LAC.

¹⁷⁸ Ibid.

¹⁷⁹ Communiqué, Federal-Provincial Conference on Human Rights, 12 December 1975, File 1, Box 16, Accession #82-001, Human Rights, Thomas Symons fonds, TUA.

Political Rights was in force, the Optional Protocol would also come into force, and the United Nations Human Rights Committee would come into existence within six months. In order to be eligible to have a representative sit on this committee, member states would have to ratify the Covenant on Civil and Political rights by May 19, 1976.¹⁸⁰

None of Canada's allies had ratified either Covenant on Human Rights by December 1975. The United States maintained its position that it did not plan to ratify the Covenants, and while the United Kingdom, Australia and New Zealand planned to ratify, none of these states had yet to file the necessary instruments of accession. Britain's Foreign and Commonwealth Office (FCO) contacted the Canadian government in early 1976. Noting that all of the Warsaw Pact states, except Poland, had become party to the Covenants, the FCO expressed expressing concern that there would be a "lack of Western influence" on the Human Rights Committee.¹⁸¹ According to the FCO, Britain would be unable to accede before the deadline and the British government hoped that Canada would be able to push through accession so that it could nominate a candidate for the committee.

In response to this request, External Affairs wrote to Cabinet explaining that Canada must decide by May 19, 1976 whether or not to accede in order to be able to nominate Canadian candidates to the Human Rights Committee, which "otherwise will be subject to very little Western influence and will in effect be controlled by representatives

¹⁸⁰ Memo from J.S. Stanford, Director of the Legal Advisory Division, 12 April 1976, File 45-13-2-3, part 10, Vol. 13650, RG25, LAC.

¹⁸¹ Ibid.

of various totalitarian regimes.”¹⁸² External Affairs informed Cabinet that only Quebec had yet to provide formal consent for ratification, but that Mr. Cloutier had provided tentative support at that time.¹⁸³ The memo went on to say External Affairs had learned, through unofficial channels within Quebec, that Cloutier had obtained the necessary approval from his government, but despite his knowledge of the important deadline, he had yet to reply to the federal government.¹⁸⁴ External Affairs expressed concern that the Quebec government may be using their formal agreement as a bargaining chip to obtain concessions from the federal government in other areas.¹⁸⁵

J.S. Stanford of the Legal Advisory Division of External Affairs advised the Minister that, in light of Quebec’s refusal to date to provide its formal agreement, and the tight deadline to be eligible for the Human Rights Committee, the Minister ought prepare a letter from the Prime Minister to Premier Bourassa to apply pressure onto Quebec.¹⁸⁶ At the same time, the Department discussed the possibility of ratifying the Covenants without unanimous support. Officials provided two past examples of similar circumstances, in which the federal government was forced to wait on one or two provinces to provide formal consent for Canada’s signature to an international treaty.¹⁸⁷

¹⁸² Confidential Memo to Cabinet, from External Affairs, re: Accession to the UN Covenant on Civil and Political Rights, April 1976, File 45-13-2-3, part 10, Vol. 13650, RG25, LAC.

¹⁸³ Ibid.

¹⁸⁴ Confidential Memo to Cabinet, from External Affairs, re: Accession to the UN Covenant on Civil and Political Rights, April 1976, File 45-13-2-3, part 10, Vol. 13650, RG25, LAC.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Memo from J.S. Stanford, Director of the Legal Advisory Division, 27 April 1976, File 45-13-2-3, part 10, Vol. 13650, RG25, LAC.

¹⁸⁷ The examples provided were the International Road Traffic Convention, for which the province of Newfoundland made the federal government wait, and the Vienna Convention on Consular Relations, for which British Columbia and Manitoba were the last provinces to agree.

In each of these cases the federal government waited rather than moving forward without unanimous support, and for that reason J.S. Stanford was concerned about the precedent that would be set if the Canadian government ratified the International Covenants without Quebec's agreement.¹⁸⁸ Stanford expected that, if Ottawa chose to move forward, Quebec would attack the government for acting unilaterally and overstepping federal jurisdiction. Despite these concerns, there was support within External Affairs for moving forward based on the argument that it had been publicly established that, on the question of substance, Quebec agreed to Canada's accession, and that the problems of modalities had been settled at the December conference. The question was whether or not it was more important to meeting the May 19 deadline, or wait for the Quebec government.

In the end, it did not matter. On May 11, 1976, the Secretary of State for External Affairs cabled François Cloutier, drawing attention to the urgency of Canada's accession to the Covenants. While waiting for Cloutier's reply, the Secretary of State for External Affairs sent a memo to the Governor General stating "policy approval, in principle, for Canada to become party, by accession, to the two Human Rights Covenants and the Optional Protocol, was granted on December 4, 1975."¹⁸⁹ Only days before the deadline, Quebec's formal agreement did come through, and on May 18 Secretary of State Allan MacEacern was able to tell Members of the House of Commons that the consultation with the provinces was complete and Canada's instruments of accession were to be filed with

¹⁸⁸ Memo from J.S. Stanford, Director of the Legal Advisory Division, 27 April 1976, File 45-13-2-3, part 10, Vol. 13650, RG25, LAC.

¹⁸⁹ Memo for Minister , 13 May 1976, File 45-13-2-3, Part 10, Vol. 13650, RG25, LAC.

the Secretary-General of the United Nations the following day.¹⁹⁰ Canada had finally ratified the International Covenant on Human Rights.

Myth Building

The momentum that had built surrounding Canada's policy toward international human rights was not limited to the Covenants on Human Rights. The International Bill of Rights, now complete, was only one aspect of the United Nations human rights regime. By 1975, the Canadian government had decided to reengage with international human rights more generally. Canada supported a resolution at the General Assembly to designate 1975 as the launch for International Decade for Action to Combat Racism and Racial Discrimination, and played an active role in the 1975 World Conference on International Women's Year, which was held in Mexico City. The same year, Canada also successfully applied to sit for its second term on the UN Commission on Human Rights. In this period, the Commission was most focused on human rights violations in Vietnam, Apartheid in South Africa, the colonial actions of Portugal, and human rights violations in the Middle East.¹⁹¹ Canadian efforts to play an active role in human rights developments at the United Nations intensified after the ratification of the Covenants. Canada continued to be a member of the Commission on Human Rights until 1978, and was represented on the Commission on the Status of Women and the Committee on the Elimination of All Forms of Racial Discrimination.¹⁹² The government successfully put

¹⁹⁰ Canada, *House of Commons Debates*, Allan MacEacern, 18 May 1976, 13609.

¹⁹¹ For general documents on the activities of the UN Commission on Human Rights in this period, see File 45-13-1-1, Folders 10-15, Vol. 13645, RG25, LAC.

¹⁹² When Canada's term on the Committee on the Elimination of All Forms of Racial Discrimination, the government tried, but failed, to be re-elected.

forth a candidate, Walter Tarnopolsky, for the new Human Rights Committee, and also put forward a candidate, Dean St. John Macdonald, for the position of Director of the UN Division on Human Rights.

Public awareness of human rights issues around the globe was also on the rise. In the 1970s, the Department of External Affairs experienced an increase in the number of letters and informal inquiries into Canada's foreign policy toward human rights abuses in other states. In a memo for the Minister, J.D. Livermore of the UN Division of External Affairs wrote, "The past few years have seen an increasing awareness and concern in Canada regarding human rights in the international context."¹⁹³ Livermore went on to say, "Given that public interest on human rights issues is likely to remain high, it has been thought worthwhile to re-examine the basis for our present policy, which has in the past been interpreted by some as a lack of real concern on the part of the government."¹⁹⁴

Livermore's comments caused External Affairs to make a more concentrated effort to change this vision of Canada's historic policy toward international human rights. What is perhaps most interesting in the story of Canada's policy toward the development of human rights at the UN is how quickly the federal government remade the story. Whenever possible, the federal government presented an image of Canada as having played a leadership role in shaping international human rights from their origins in 1945. This inclination to embellish Canada's role in early UN human rights initiatives was not new; in a news release launching the 1965 Federal-Provincial Conference on Human

¹⁹³ Memo for the Minister, Department of External Affairs, from J.D. Livermore, UN Division, re: "Canadian Representation on Human Rights" and "Tone of Letter to the Public," 1976, File 45-13-1-1, Folder 15, Vol. 13645, RG25, LAC.

¹⁹⁴ *Ibid.*, 2.

Rights in December, the Canadian government had stated, “The United Nations General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948. Since that time, Canada has played an active role in the preparation of international instruments designed to incorporate the objectives of the Declaration into law.”¹⁹⁵ Ten years later, on the eve of the adoption of the International Covenant at the UN, federal officials claimed that, “Canada has always expressed strong support for international agreements which are designed to promote international behavior and respect for the rights of the individual.”¹⁹⁶ Three years after ratification, the Department of External Affairs once again claimed, “Canada has been at the forefront of multilateral human rights initiatives designed to promote human rights.”¹⁹⁷ Today, this same department posts on its website that, “Canada has been a consistently strong voice for the protection of human rights and the advancement of democratic values, from our central role in the drafting of the Universal Declaration of Human Rights in 1947/48 to our work at the United Nations today.”¹⁹⁸ Clearly, Canada’s reluctance to ratify the International Covenants was forgotten.

¹⁹⁵ News Release, First Federal-Provincial Conference on Human Rights, Ottawa, 10 December 1975, File 1, Box 16, “Human Rights,” Accession #82-001, Thomas Symons fonds, TUA.

¹⁹⁶ Background Paper on the International Human Rights Covenants, September 1975, Container 47282, Human Rights Commission Papers RS972, New Brunswick Provincial Archives.

¹⁹⁷ V.M. Edelstein, “The Impact of Human Rights on Canadian Foreign Policy,” United Nations Division, Department of External Affairs, 18 May 1979, File 45-CDA-13-1-1, Part 2, Vol. 15901, RG25, LAC.

¹⁹⁸ “Canada’s International Human Rights Policy,” Government of Canada, Foreign Affairs and International Trade. Online at www.international.gc.ca/rights-droits/policy-politique.asp

Conclusion

In 1966, while the Canadian government was less resistant to the idea of binding international human rights instruments, it remained unenthusiastic about their ratification. Having taken initial steps to inform the provinces of the government's intent to begin the ratification process, federal officials were content to allow this process to take ten more years. To say, however, that the Canadian government's attitudes toward the Covenants had not changed would be to confuse apathy with resistance. The Trudeau government's priorities were decidedly domestic, but the principles behind many of Trudeau's initiatives were consistent with the principles of the International Bill of Rights. Despite the slow road to ratification, there was considerable support within the federal and provincial governments for the Covenants.

What had, undoubtedly, changed between 1966 and 1976 was the level of support outside of government for Canada's ratification of international conventions relating to human rights. Understandings of rights in Canada had evolved; the limited vision of rights that prevented federal officials from supporting the draft Covenants in the 1950s had broadened considerably. Legislative developments at the provincial and federal level brought Canada's human rights policies more in line with the principles of the UDHR. The growing awareness and support for human rights generally, which had been building since the late 1950s, exploded during 1968's International Year for Human Rights and led to direct pressure on Trudeau's government to accede to the Covenants on Human Rights. While this did not have an immediate effect, by 1975 the federal Liberals felt pressure from a variety of sources, and recognized that they could no longer put off ratification.

The road to ratification encountered an obstacle in the form of Quebec. Whereas the other nine provinces had provided their official support for Canada's accession by 1974, the politics of handling Quebec were more difficult. Enmity between the Trudeau and Bourassa Liberals developed as a result of failed attempts to amend the constitution in 1971, and deepened by the mid-1970s. The root of conflict was a struggle over power, and the question of whether federal or provincial governments had primacy within Canada's federal system.¹⁹⁹ In terms of the Covenants on Human Rights, this played out in negotiations over who would represent provincial interests relating to human rights at the United Nations. Ultimately, however, neither Ottawa nor Quebec wanted to appear to stand in opposition to the promotion of universal human rights. Pressures from the other provincial governments, the Canadian public, and Canada's allies at the UN accelerated the negotiations and led to the ratification of the International Covenants in 1976.

¹⁹⁹ John English, *Just Watch Me: The Life of Pierre Elliot Trudeau: 1968-2000* (Toronto: Alfred A. Knopf Canada, 2009), 139.

Conclusion

The international human rights movement was strengthened in the 1940s when the newly formed United Nations drafted its International Bill of Rights, articulating for the first time a proposed set of inalienable and universal human rights to be codified in international law. The subsequent adoption of the Universal Declaration of Human Rights in 1948 provided the foundation for the current international human rights regime. Drafted as “a common standard of achievement for all peoples and nations,” the UDHR outlined the basic civil, political, economic, social and cultural rights of all human beings and, over time, it has become widely accepted as the norm for human rights protection.¹ The two International Covenants on Human Rights, adopted in 1966, provided a clearer articulation of the principles outlined in the UDHR, and set in place mechanisms for monitoring the implementation of human rights standards. Together, these instruments offered a new framework for ideas of liberty and equality, and created a new rights-based language that could be used to define and shape understandings of individual and collective rights throughout the second half of the twentieth century.

Despite the unanimity with which the UDHR and the Covenants were eventually adopted, this dissertation has demonstrated that the process of negotiating the content and form of an International Bill of Rights led to tremendous conflict between member states of the United Nations from the 1940s to the 1960s. This conflict was not contained to the United Nations; domestically, governments, voluntary associations, religious groups,

¹ United Nations, Office of the High Commissioner for Human Rights, “International Human Rights Law,” accessed online at United Nations Human Rights, <http://www.ohchr.org>, retrieved 2 April 2014.

labour organizations, minority groups, and individuals all debated how to define human rights and articulate this definition into law. These debates are a vital component of our human rights history. Only by acknowledging the way in which human rights principles have been contested, and exploring the mechanisms through which a measure of consensus was eventually achieved, can scholars explain contemporary attitudes toward rights, and account for the continued gap between human rights rhetoric and the effective implementation of international standards into domestic law. A detailed study of the process through which member states of the United Nations negotiated the final form of the UDHR and the International Covenants on Human Rights also challenges the notion that this consensus was ever achieved.

The purpose of this dissertation was to examine Canada's historic attitudes toward human rights initiatives at the UN, to consider the factors that influenced changes in Canadian foreign policy toward the International Bill of Rights, and to assess the meaning of this history. In doing so, it has demonstrated how international pressures, national institutional interests, and evolving cultural understandings and practices of rights intersected from the 1940s to the 1970s to shape Canadian foreign policy toward international human rights.

First and foremost, this study reveals that the Canadian government did not support the United Nations' first human rights initiatives. Canada was not at the forefront of attempts to negotiate a set of international standards for the protection of universal rights. Instead, Ottawa cautiously followed the lead of other states, often finding itself in a minority position in opposition to the instruments. Canadian politicians and public

servants justified their resistance by highlighting jurisdictional concerns, arguing property and civil rights fell under provincial authority. Although these constitutional constraints certainly did shape Canadian policy toward the introduction of the UDHR and the Covenants on Human Rights, the roots of Canadian resistance to these instruments were more complex. Focusing too closely on constitutional issues obscures the fact that Canadian policy makers were also opposed to the content of the instruments. Canadians had a very narrow understanding of rights in the 1940s. There were few legislative protections in place to explicitly protect rights, and many Canadians experienced discrimination as a daily part of their lives. In fact, state-sanctioned discrimination in areas such as immigration policy, voting acts, property laws, policies toward Aboriginal communities, and regulations governing private business interactions were common at both the federal and provincial levels. Policy makers within the federal departments of External Affairs and Justice saw no benefit to Canada in adopting international laws to protect human rights for Canadians, particularly given the expansive definition of universal human rights embodied in these instruments. Accordingly, the Canadian federal government resisted the development of human rights policies at the UN much in the same way it resisted human rights policies at home. Changes in the federal government's approach to the International Bill of Rights were therefore externally driven.

Consequently, this dissertation explores the extent to which international pressures influenced the Canadian government's policy toward the International Bill of Rights. Canada only moved to support the adoption of the UDHR in 1948 in response to pressure from the United States and Britain, and the perceived consequences of voting in line with

the Soviet Bloc. Pressure from Canada's allies to support a covenant on human rights diminished in the 1950s with the onset of the Cold War, as political and ideological divisions and the growing influence of anti-colonial discourses caused many of Canada's closest allies to question their own support for these instruments. This period marks Canada's most ardent opposition to the content of the Covenants. Changes in the membership of the United Nations by the late 1950s, which resulted in mounting support for the UN's human rights initiatives and intense criticism of Canada by newly independent and often non-aligned states, convinced Canadian policy makers that it was only a matter of time before the draft Covenants were adopted. Public servants within Canada's Department of External Affairs were caught between two competing pressures: continued discomfort with the way in which the Covenants articulated human rights; and unease as to how Canada's participation in debates at the UN was being perceived by other member states. When the United States announced that it would not be ratifying the Covenants, and withdrew from active participation in the debates, rather than following the lead of its powerful neighbour and ally, Canada aligned its policy with its Commonwealth allies, and eventually voted to support the Covenants.

International pressures alone did not cause Canada to take a more positive approach to the draft Covenants. By the 1960s, policy makers were also deeply concerned with how opposition to UN human rights instruments would be received at home. Canada underwent a rights revolution in the twenty years it took the United Nations to negotiate the International Bill of Rights, and this revolution was characterized by major legislative developments and a changing definition of rights. Individuals, community groups, and

non-governmental organizations worked in a variety of ways to broaden customary understandings of rights and freedoms in Canada; their campaigns changed Canada's legal infrastructure so that it more effectively protected human rights and fundamental freedoms, and created an environment in which the Canadian government felt obligated to support human rights initiatives. The efforts of these community activists did not begin in 1945, but they were strengthened by the new language of human rights that developed out of the United Nations in the postwar period and the adoption of the UDHR. In the 1960s, Canada's emerging human rights movement intersected with the international movement, and a resurgence of social movement activity. The work of these activists, and the legislative developments that took place, fundamentally changed the way in which Canadians understood rights and envisioned their protection. Canada slowly retreated from its reliance on British common law and parliamentary supremacy to ensure equal application of the law, toward statutory protections of the rights and freedoms of its citizens.

The combination of international and domestic pressures finally convinced the Canadian government to reevaluate its policy toward the International Bill of Rights. Two decades of experience with the United Nations caused Canadian officials to be more confident in their policy toward UN initiatives, and the ongoing conflict between member states over how to translate human rights principles into law taught Canadian delegates that an agreement could only be reached if states understood the Covenants to be both legal and political documents. By the 1960s, the Department of External Affairs was instructing its delegates to contribute more constructively to the article-by-article debates

of the draft Covenants. In an effort to generate an image of Canada as an advocate for international human rights, Ottawa decided to take a more positive role in other human rights programs at the UN as well. Even after learning, in 1963, that there would be no federal clause to alleviate jurisdictional concerns, Canada continued to participate in negotiations at the UN and voted to support the adoption of both covenants and the Optional Protocol.

By 1966, therefore, Canadian politicians could claim Canada had supported the adoption of all of the components of the International Bill of Rights. Just how committed the federal government was to the implementation of these instruments, however, can be measured in part by Canada's ratification process. It took ten years for Canada to accede to the International Covenants on Human Rights. This delay was the result of three important factors: a continued lack of interest and support from the federal government in international human rights; the mechanics of obtaining official support from all ten provinces; and the province of Quebec's hesitation to give its support.

Domestic developments, spurred on by the 1968 celebrations for International Year for Human Rights, stimulated further development of the nation's human rights infrastructure, encouraged a federal-provincial dialog on rights that would help pave the way for ratification, and brought human rights to the forefront of public debate. For the first time, the federal government experienced direct lobbying in support of the UN's human rights instruments. Despite this, federal-provincial meetings to discuss the Covenants did not take place until 1975, and even at that point it took pressure from

outside of Canada to force the Trudeau government to take the necessary steps to gain Quebec's support and ratify the instruments.

Several questions remain. Why did the Canadian federal government ratify the International Covenants on Human Rights? What had changed between the late 1940s and the mid-1970s to provoke Canada to stop resisting and start supporting the International Bill of Rights? First, the level of support outside of government for international human rights had grown. Understandings of rights in Canada had evolved; the limited vision of rights that prevented federal officials from supporting the draft Covenants in the 1950s had broadened considerably. Legislative developments at the provincial and federal level brought Canada's human rights policies more in line with the principles of the UDHR. The growing awareness and support for human rights generally, which had been building since the late 1950s, exploded during 1968's International Year for Human Rights and led the Trudeau government to recognize that it could no longer put off ratification. Second, international developments caused Canada to want to be recognized as a nation that actively supported human rights, at home and abroad. Accordingly, the federal government took steps to increase its activity in the field of international human rights. Ratification of the Covenants was an important step in creating this image, and would allow Canada to sit on the newly established Committee on Human Rights. By the late 1970s, the Canadian government was remaking the story of its relationship to the development of the International Bill of Rights. The rhetoric of the late 1970s and early 1980s placed support for international human rights as a central component of Canada's identity.

To what extent, however, did federal policy makers genuinely support the strong implementation of international human rights? Even in the 1970s, Canadian politicians and civil servants did not see a need in Canada for international instruments to protect human rights. Rights activists themselves continued to prioritize domestic initiatives, which were understood as having a greater effect on the lives of Canadians. The concept of universal human rights enshrined in the UDHR and the Covenants, and in particular the inclusion of economic, social and cultural rights, remained a much broader interpretation of rights than was reflected in Canada law, even in the period after a charter of rights was entrenched in Canada's constitution. The Canadian Charter of Rights and Freedoms contains no explicit reference to the International Covenant on Economic, Social and Cultural Rights, or any of the provisions within the Covenant. In relation to civil and political rights, federal policy makers and politicians were comfortable, by the late 1970s, in their belief that Canadian law was, as much as politically necessary, in line with the requirements of the Covenants. Fears over the implications of the International Bill of Rights on Canadian law and policy eased, even as many policy makers continued to have doubts about the way in which the UDHR and the Covenants articulated human rights.

Final Thoughts

What can be learned from a study of Canada's changing policy toward the International Bill of Rights? First, it illustrates the agency of non-state actors in the development of foreign policy. As a result of the efforts of voluntary organizations,

minority groups, rights associations, and individuals across the country, Canada's rights culture changed enormously from the 1940s to the 1970s, altering the environment in which the federal government set its policy toward international human rights. As these non-state actors adopted the language of human rights and pushed for greater public awareness of rights issues, federal policy makers felt increased pressure to support the UN's human rights instruments.

Second, the debates over how to define human rights, and which rights ought to be included in law, demonstrate clearly that not all parties involved conceived of rights in the same way. Negotiating human rights laws requires prioritizing rights in ways that generate inconsistencies and contradictions, and which excluded entire groups from the debate. In Canada, many vulnerable groups such as women, Aboriginals, gays and lesbians, and the disabled, did not participate equally in the rights revolution in the period under study. Their silences teach us as much about human rights as do the debates I have detailed throughout this dissertation. Even Canadian rights activists themselves prioritized rights, both when they negotiated to whom rights should apply, and when they argued that domestic rights protections were more important to Canadians than the development of a set of international human rights. This study therefore reveals some of the limits to Canada's so-called 'Rights Revolution.' The universalist discourse of human rights that came out of the United Nations in the 1940s challenged the more limited discourse of civil liberties that existed in Canada, and as a result policy makers resisted the adoption of the UDHR. Although understandings of rights in Canada evolved, even by the 1970s

many Canadian activists struggled with the expansive definition of human rights articulated in the UN's human rights instruments.

Third, and in relation to the ongoing debate over the periodization of human rights history, a study of Canadian attitudes toward the International Bill of Rights demonstrates that the concept of universal human rights that emerged in the post war period did influence the way in which Canadians talked about, and ultimately understood, rights. As early as the 1940s, government officials, non-governmental groups, and individuals throughout Canada were talking about 'human rights,' not simply 'civil liberties' or 'British liberties.' Long before Ottawa formally supported the adoption of the Covenants on Human Rights, politicians, scholars, rights activists, and marginalized Canadians adopted the UN's language of human rights to reformulate customary understandings of rights and freedoms in Canada. It was not until the late-1960s, however, that Canada's domestic human rights movement intersected with the global human rights movement to the extent that it drove the federal government to take international human rights seriously.

Finally, by historicizing Canada's participation in the development of early human rights instruments at the United Nations, this study helps to situate current debates and criticisms over Canada's adherence to contemporary instruments. Canada has historically viewed international human rights law with skepticism, resisted the development of international human rights standards, and used Canada's federal structure as justification for this resistance. Many of the same arguments that existed at the time of the adoption of the UDHR and the Covenants continue to be used by federal policy makers today.

Canada's ultimate support for the International Bill of Rights did not signify the triumph of international human rights in Canadian society, despite the rhetoric of government. This is evidenced by the fact that, more than four decades later, Canada continues to be criticized for a lack of implementation of international treaties relating to human rights.

The Canadian government never fully embraced the idea of submitting Canada to international human rights standards. When the federal government posts on its website that Canada has been “a consistently strong voice for the protection of human rights” since 1947, and non-governmental organizations criticize current governments for eroding Canada's “traditional reputation as a human rights leader,” neither statement accurately represents Canada's historic relationship with international human rights law.

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Appendix A-1

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any fact or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purpose and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will

shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix A-2

The International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve

discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary- General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all

cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to

communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act

or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of

their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4. 2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of

the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written

communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply

any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Appendix A-3

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976, in accordance with article 27

Preamble The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Article 1

PART I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the

provisions of the Charter of the United Nations.

Article 2

PART II

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non- nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights

and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a

reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Article 16

PART IV

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on

the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1

of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.