The Mediation of Ideology: How Conciliation Boards, Through the Mediation of Particular Disputes, Fashioned a Vision of Labour's Place within Canadian Society

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INTRODUCTION

In recent years, legal scholars (and especially legal historians) have spent considerable effort attempting to define the relationship between law and economic processes. In circles influenced by Marxist historical analysis, the new political economy, or that emanation of the New Left, Critical Legal Studies, the question is usually posed in terms of the relationship between ideology and material forces. Is the ideological realm (particularly law itself) simply a projection of relations within the economic sphere (the simplest reading of Marx's base-super structure metaphor)? Is ideology either divorced from or prior to material relations, so that one can ignore questions of economics and concentrate solely on ideological deconstruction (as some critical legal scholars would have us believe?).[2] Or is the ideological realm merely 'relatively autonomous' from the economic? If so, how?

These questions assume added immediacy when one tries to explain the activity of judges, administrative agencies, or other agents charged with deciding controversies within society. To what extent do economic forces shape their interpretation and application of norms? What happens when there are no clear, authoritative standards to guide them—especially when, as in labour disputes, the parties themselves have dramatically different conceptions of the just? Where do the agencies find the norms they apply?

This paper proposes a framework for understanding these questions, at least within a specific historical context (the activities of conciliation boards in labour disputes between 1907 and 1925)—and perhaps more generally. It adopts a precise definition of 'ideology', a definition which contains significant analytical content, content which I suggest may be useful in the study of all normative systems. It then summarises how this concept explains the activity of conciliation boards in Canada during the first decades of this century.

As with most theories drawn from historical analysis, the explanation proposed here is partly the result of questions brought to the material by the author, and partly the result of reflections prompted by the author's encounter with the traces of past events. The context of the inquiry has been influential in framing the theoretical issues. It will be useful, then, to summarise briefly the study giving rise to these observations.

This paper draws on my analysis of the reports of conciliation boards under the *Industrial Disputes Investigation Act*, S.C. 1907, c. 20 (I.D.I.A.).[3] The I.D.I.A. governed labour disputes between 1907 and 1944 in undertakings considered crucial to the development of the Canadian economy, such as railways, mines, street railways, municipal utilities, and, in wartime, industries related to the war effort. It dominated Canadian labour law in the first half of this century, establishing the pattern of non-binding, conciliatory intervention so characteristic of the state's regulation of industrial conflict in Canada.

The act itself consisted of one simple mechanism: strikes and lockouts were banned until a conciliation board had investigated the dispute, tried to obtain a settlement, and made a non-binding, public report. Boards were appointed on an ad hoc basis for each dispute upon application of the employees, or on rare occasions of the employer. The boards consisted of one member nominated by the employer concerned, one by the employees, with the chair chosen by the first two (or, if they could not agree, by the Minister of Labour). Almost always, a board would first attempt to resolve the dispute through mediation—meeting with the parties, getting them talking (sometimes under the guise of gathering evidence), exploring possibilities for compromise, and proposing solutions. If mediation were unsuccessful, it would make a formal report containing recommendations for settlement. These recommendations usually represented a compromise between the positions of the parties, often supported by reasons.

Most studies of the I.D.I.A. have concentrated on the conciliatory nature of boards' intervention (Selekman, 1927; Jamieson, 1968; Atherton, 1972; Woods, 1973; Ferns and Ostry, 1976; Craven, 1980; Webber, 1985; Russell, 1987; Webber, 1988a. But see Stockett, 1918). There are good reasons for this: the desire to avert strikes through mutual compromise (largely without regard to the substantive outcome in a particular dispute) was a central feature of the regime.[4] But there was more to boards' activity than an apparently normless search for compromise. Even during the mediation phase of their proceedings, boards used arguments about just wages and fair returns to capital to procure concessions and support proposals for settlement. Boards' invocation of normative criteria became all the more pronounced when mediation was unsuccessful and a formal report became necessary. My study attempts to take this normative element seriously.

When I began the inquiry, I expected to find the emergence of definite rules through a process of incremental decision-making by boards. I found nothing of the kind. Norms did not emerge over time; rather a comprehensive justificatory framework seemed to be present from the beginning

of the regime. This framework did not take the form of a bundle of rules, justified on their own merits or on the basis of past experience, but rather of a structure of very general criteria purporting to reconcile the justifications advanced by employers and employees in support of their bargaining positions. The framework was best explained as a reasonably-comprehensive vision of labour's place within Canadian society, with the boards determining the implications of this vision in each particular dispute. Boards were not developing systems of rules, then, but were applying a general conception of the social order—an ideological world-view—to the specific case. This brings us to the notion of ideology pursued in this paper.

'Ideology' Defined

Few terms of art have had as many meanings thrust upon them as has ideology. Indeed, a review of the debate over the relationship between economic forces and ideology reveals substantial disagreement over the latter's content.[5] I adopt the following definition: An ideology is a comprehensive vision of how society should be ordered, a vision tied to the interests of a particular segment or class in society and used by that segment to justify its pursuit of those interests. The vision is comprehensive, purporting to describe the proper ordering of society as a whole, particularly the society's economic relations. An ideology may be elaborated in considerable detail, or may simply prescribe the broad outlines of social organisation.[6]

Under this definition, the essence of ideology is justification: it purports to establish the legitimacy of a proposed (or existing) order of society. To serve as an effective basis for justification, it aspires to comprehensiveness and internal consistency, specifying the role of each segment or class in terms of a vision of the whole. But an ideology need not be a carefully-constructed academic creation. It may be a broadly-shared view of the world evident in the statements of the members of a particular segment, members who are not themselves intellectuals. (The participation of intellectuals in the formulation of the ideology may, however, increase the latter's ability to persuade by improving its internal consistency or adapting form or content to appeal to a greater proportion of the population.) An ideology may be largely implicit, revealed by the pattern of decisions taken by actors in particular cases. The existence of ideology is not dependent on the means used to express the vision of society, then, but on the perception that social action tends to be justified on the basis of a reasonably-coherent vision of how society as a whole should be organised. Common assumptions about the ordering of society—assumptions which, through their implicit acceptance, serve to legitimate social phenomena—can sometimes be divined from conduct.[7]

Also crucial to the notion of ideology is the link between the world-view and the interests of a particular segment or class. An ideology is not simply a political or economic theory. It is a theory embraced by a particular segment or class and actively employed in the pursuit of that class's interests. To an outsider, an ideology often appears to be an attempt by that class

to have its interests accepted as 'the public interest'. It is this practical link between theory and interest that gives the notion of ideology its bite. An ideology plays a prominent role in society because it is a tool to justify power. Thus, one should not draw too stark a dichotomy between ideology and simple material interest as motives for an agent's actions. Frequently the two are not mutually-exclusive, but co-ordinate and mutually-reinforcing. Actors do not merely use force and threats of force to further objectively-determined interests; they also suggest why those interests are appropriate in terms of the social order as a whole. This claim of propriety —this marriage of interest and justification—permits society to function on a basis other than bare coercion, for each party is encouraged to assent to its assigned role within the larger vision.

Thus, ideology serves a legitimating role, reinforcing commitment to the vision and purporting to demonstrate why that vision demands the allegiance of all. But the recognition of a legitimating role does not necessarily imply that ideology deludes subordinate groups into supporting, against their better interest, an order dictated by another class. Indeed, the very need for legitimation suggests that the target groups possess some power, power which must be accommodated (at least to some extent) in order to gain their allegiance. Dominant ideologies—and the forms of government which they support—may very well be the result of compromise designed to secure this allegiance, reflecting a mediation of ideology similar to that described later in this paper (cf. Taylor, 1985: 279). Dominant ideologies therefore reflect the influence (and the varying degrees of influence) of numerous segments or classes. Whether a given social order should be tolerated by a class depends not on the mere fact of legitimation, then, but upon a more complex calculation of the precise nature of the compromise and the costs of rejection.[8]

But does this relationship of ideology to interest mean that material power is primary and justification purely derivative? Is ideology simply an epiphenomenon produced by relations in an economic sphere? It seems to me that part of the problem with the simple base-superstructure metaphor (where the economic base directly determines the content of the ideological superstructure without itself being affected by that superstructure), and with modifications to that metaphor in which the base sets absolute constraints within which variation in the superstructure can exist, is that they take the balance of power in the economic realm as determined wholly by material conditions. The economic base is given, and any effect of the ideological realm, to be counted as an effect, must change the outcome that the base would have produced in the absence of ideology. The fault in this model is that the economic base is not determined independently. Material relations are themselves constituted in part by ideology (cf. Thompson, 1977: 261ff; Godelier, 1982).

This is evident in the field of labour relations, which is after all the arena in which conflict between labour and capital is most acute. There is a marked tendency in the literature to see the 'natural' outcome of a strike to be the result that a pure test of economic strength would produce. Then

when one looks for the impact of ideology, one looks for ways in which parties were dissuaded from using the full measure of their power. But of course the parties' power is itself very much affected by ideological factors. The employees' power depends upon their solidarity, and this is shaped by arguments of legitimacy and justification. (The effects of ideology are not, then, directed solely towards persons outside the segment embracing the ideology. They may also serve to consolidate, mobilise and indeed aid in the definition of the segment itself.) The ability of either party to draw support from outside the immediate relationship (through, for example, sympathetic strikes, public demonstrations of support, the ability to recruit strikebreakers, or the intervention of militia or police) also depends heavily on justification. At a more fundamental level, the parties' most basic expectations are shaped by non-economic factors. One remembers Marx's observation that that most material of conditions, subsistence, is itself culturally specific.[9]

I am not arguing that purely material factors are irrelevant. Physical power—who has the guns, for example—does matter. Our perception of interests, although shaped by ideological factors, also speaks to material conditions, recognising material constraints. I am simply arguing that ideology and material power should be seen as an interdependent complex, each tending to reinforce, to shape the other. Social action is not the simple pursuit of independently-defined interests through force; we also attempt to justify our actions in terms of a conception of society as a whole. And this justification in turn shapes our practical action, for its very efficacy requires that there be some consistency (at least apparent) between justification and action (cf. Thompson, 1977: 263ff).

There is another way in which ideological constructs are not simply the epiphenomena of economic relations. The fact that ideologies are closely tied to the interests of particular classes does not mean that those interests produce the components of the ideologies. The process is more one of selection than of production. As is clear from the definition of ideology proposed above, I do not take ideology to be co-extensive with all cultural phenomena; the notion of 'ideology' applies to a very particular kind of phenomenon. The larger cultural realm has its own dynamic, dependent in part on considerations (for example, religious or ethical claims, ethnic or linguistic solidarity) that are not simply the product of economic relations. These cultural characteristics also shape ideology. Ideologies may thus result from the evolution of cultural creations; it is just that these creations (or the world-views formed from them) catch fire (perhaps with adaptations) when they are embraced by members of a segment or class to justify the pursuit of that segment's interests.[10]

Ideologies that serve similar justificatory functions can therefore display variations in detail attesting to the impact of broader cultural factors. In my examination of concilation boards I ran across one clear example of this. An important feature of board recommendations on wages was a recognition of the humanity of labour, but in a way which did not challenge the prerogatives deriving from the employer's ownership of property (see

infra, at page 19ff). Boards held that employees had a right to a living wage regardless of the wage that would result from supply and demand in the labour market, yet they also held that beyond this wage, the employer was entitled to the surplus resulting from the production process. Now, this basic structure for determining wage entitlements was common to two cultural traditions very influential in turn-of-the-century Canada: Catholic social teaching and the Protestant social gospel. There remained significant differences between these traditions, however: Catholic social doctrine postulated an expressly hierarchical social order, accepted that the value of labour was capable of objective definition, and was skeptical of state involvement in labour relations; those reformers within the Protestant tradition tended to be more egalitarian, questioned the existence of an intrinsic value of labour, and saw the state as an instrument for reform.[11] The reports of boards shared the general structure but also reflected the cultural differences. Preliminary observations suggest that the Protestant approach was used by the predominantly anglophone I.D.I.A. boards, but that the Catholic approach influenced the awards of francophone tribunals under arbitration schemes in Quebec (Webber, 1988c: 222–225).

One final point about the nature of ideology: I have said that it is a world-view tightly linked to the interests of a particular segment or class in society. I use the word 'segment' here because I want to avoid the implication that ideology attaches exclusively to the interests of capital as a whole, labour as a whole, or any other class as a whole. Often, distinct segments of a class possess interests varying from those of other segments, variations reflected at the level of ideology. This is especially apparent, for example, in the attitudes of businessmen towards public ownership in Canada during the first years of this century: representatives of finance capital and their allies generally opposed all public ownership; small manufacturers and merchants favoured public ownership of certain utilities as a check on monopoly power (Nelles, 1974; Armstrong, 1981; Armstrong and Nelles, 1986). There were substantial elements in common between these world-views. Indeed, both shared the belief that the expansion of private property should remain the dominant value within Canadian society; it is just that the small manufacturers saw public power as conducing to this end. I think one can say that there are different levels of ideology corresponding to larger and smaller aggregations of economic interests within society. Smaller, more homogenous groups tend to embrace world-views having the greatest specificity. Larger, more diverse groups still may share many perceptions about how society should be ordered, but these world-views tend to be expressed in more general terms. Substantially all businessmen—members of both segments—would have shared a common ideology, then, although one with restrained content.

There is therefore a kind of summation of ideologies at work, with some fundamental similarities existing among members of a class, while nevertheless allowing for some significant divergence in detail. It may well be that within a broad social class (such as the bourgeoisie) the similarities are much more important than the differences. The depth of the divide in interest and ideology between labour and capital may be much more

thorough-going than the division between haute and petite bourgeoisie. But on specific issues (such as government ownership), the internal divisions of a class may be crucial to a sensible explanation of the outcome.

Conciliation Boards as Mediators of Ideology

The above, then, sets out the notion of ideology used in the larger study. I will now review some of that study's conclusions, showing how the concept helps one make sense of the activity of boards.[12]

Ideologies aspire to comprehensiveness and internal consistency because of their role in justification. The interests of a particular segment or class are justified in terms of a larger vision of society, a vision which purports to describe the proper organisation of society as a whole, specifying the role of each segment or class within that organisation.

The very nature of conciliation boards' activity under the I.D.I.A. produced a similar tendency to appeal to a comprehensive social vision. Virtually all tribunals try to portray their decisions as legitimate—as consistent with a conception of the social order which has some degree of adherence among those interested in the tribunal's decisions. Under the I.D.I.A., this tendency was especially pronounced because of the non-binding character of the boards' intervention. Because they possessed no power to impose their recommendations, boards relied exclusively on the persuasive force of their reasoning to give effect to their reports. Boards based this reasoning in part on the economic cost of strikes—arguing, then, that confrontation would hurt the parties' material interests. But they also made assertions of right, claiming that compromise would produce a just result. To make these normative arguments effective, they tried to assure the parties that the boards' conception of justice gave adequate consideration to the interests of all. This required a framework of justification extending beyond the matters in issue in the particular case, a framework purporting to explain the appropriate roles of all parties in a manner that accommodated the concerns of all sufficiently to secure at least some degree of adherence, while alienating none. Boards' efforts to secure compliance, then, led them to base their recommendations on a vision of the industrial order in which the interests of labour and capital could be reconciled.

The boards did not develop a carefully-crafted, complete statement of this vision. In their reports they tended to emphasise individual criteria without presenting a systematic analysis of how these criteria fitted together. But although boards did not formulate a comprehensive analysis, one can discern such a vision in the character of the norms invoked and the relationships established between them. In the vast majority of cases, particular recommendations formed part of a reasonably-coherent vision of the whole, and it was the presence of this largely-implicit vision that gave the recommendations the persuasiveness of a normative system, allowing them to escape characterisation as a mere jumble of ad hoc criteria combined with platitudinous declarations of industrial harmony.

This is not the place to demonstrate that the boards' arguments tended towards coherence and comprehensiveness, nor to describe the nature of the boards' vision in all its complexity.[13] I will, however, sketch the vision's general form, because that will permit discussion of one of the more interesting conclusions of the study—one which argues that in their formulation of industrial standards, conciliation boards not only acted as mediators of contractual demands but also as mediators of ideological world-views.

One of the central strands in the boards' justificatory framework was a recognition of the humanity of labour. The primary consideration invoked in wage recommendations was not supply and demand in an individualised labour market (the preference of most employers) but the need to provide a living wage to the worker and his family (invariably assuming a male breadwinner). Supply and demand was rejected precisely because it treated the worker as a commodity, ignoring his presumed entitlement to a decent standard of living. In 1913 the chair and employer's nominee of one board, after noting that supply and demand in the labour market should, especially in public utilities, be 'modified to the extent of paying every man a living wage', captured accurately the accepted definition:

> By a living wage the undersigned do not understand an amount merely sufficient to enable employees to keep body and soul together. . . . it is believed that the wages should be such as to justify a young man to make a life career of it, that is, that the wage schedule should be such as to enable him, by the exercise of that thrift and economy, which is compulsory on all persons not born with a silver spoon in their mouths, to within a reasonable time found a home and rear a family.[14]

Similarly, respect for the dignity of the individual worker shaped recommendations on union recognition. Boards argued that workers should be free to participate in associations chosen by the workers themselves, without discrimination. They also routinely held that employers should meet with delegations of employees seeking to voice grievances, although employers had no obligation to enter into formal negotiations with these committees nor, according to most boards, to receive delegations including persons who were not themselves employees (typically union officers).

This recognition of the dignity of labour did not include any notion that employees were partners in industry, however. The boards continued to conceive of the employment relationship in terms of the employer's proprietary rights. The productive enterprise remained the exclusive property of the owners of capital. Employees were seen as outsiders coming into the enterprise, with no inherent right to remain within the enterprise nor any claim upon a portion of the product. Employees were not entitled, then, to higher wages simply because the employer was receiving higher profits; as long as a living wage was paid, profit belonged to capital. This led one employees' nominee to suggest that employees should not be fooled by the fact that wages often rose when product prices rose; this did not affect:

> the basic principle that undertakings are not entered upon primarily for the benefit of the employees per se, but for the profits that may be derived therefrom; and any advantage that the worker may extract from the proceeds of his efforts is incidental only, not fundamental.[15]

Boards did hold that wages could be depressed because of an employer's inability to pay (although, they suggested, not below a living wage), but this was justified on the separate ground that without some return on capital, the enterprise—and therefore the jobs—would not exist. Of course, this ostensible pragmatism assumed (usually without argument) an economy based on the private ownership of capital.

The boards' deference to the employer's proprietary rights was also raised with particular poignancy in a number of reports dealing with remedies for discriminatory firings. The common-law contract of employment imposed few constraints on an employer's power of dismissal, usually requiring only very brief notice or payment in lieu thereof. If an employer wished to get rid of an employee for any reason whatsoever he could do so virtually without delay and without offering any justification. Boards had great difficulty reconciling this utter insecurity of employment with their disapproval of discrimination. When an employer could dismiss his employee at his whim, how could he be prevented from dismissing him for union activities?[16]. The report of one chairman reveals the perceived quandary:

> . . . I am not clear that there is any authority to recommend a reinstatement of Kennedy [the dismissed employee] with or without compensation, or that any benefits would arise from such recommendation, as the employers under the contract of hiring might do just what they did and cannot be required to re-engage him unless there is some agreement or provision or rule to such an effect with or without compensation for the time lost; but I see no reason why the employers should not re-engage Kennedy in the circumstances, as I am quite satisfied that had there been no activity on Kennedy's part about the formation of the union amongst the employees, there would have been no dismissal on the twenty-seventh of April, 1918.[17]

Because of this conflict between contractual right and the boards' disapproval of discrimination, and because board reports were unenforceable, formal findings of discrimination coupled with recommendations for reinstatement had little chance of success. On a number of occasions boards were able to procure reinstatement, but they tended to do this through informal mediation or by disguising the issue in a face-saving report (e.g. a report finding that discrimination had not been proven, but recommending reinstatement nevertheless).

Finally, the boards' respect for the employers' property rights was apparent in their support for the employer's right to manage the enterprise as he saw fit. Although boards suggested that it was only fair that an employer should meet with committees of his employees, most also believed that he had no obligation to seek their agreement on proposed changes to wages and working conditions (although in the closing months

of World War I and after, one does find a number of boards approving a more extensive role for the union). In the end the employer was free to take his own, independent decision, subject only to the minimal constraints imposed by the individual contracts of employment.

Thus, although boards did attempt to induce employers to treat their employees in a manner consistent with employees' humanity (refraining from firing union activists; meeting with committees of employees; giving workers a living wage), boards did not challenge the foundation of the employer-employee relationship: the individual contract of employment and the employer's authority within the enterprise. The recommendations of boards assumed the continuation of that foundation, and often expressly recognised that the employer could legitimately avail itself of those contractual rights. Board recommendations tended to be phrased, then, in terms of industrial morality: the basic structure was accepted and the employer's legal rights were given; boards merely suggested how those rights should be exercised.[18]

But what was the source of this world-view propounded by boards? Some elements were borrowed from the chief arguments advanced by each party. The most obvious borrowing from labour was the notion of the living wage—a concept central to the wage demands of all segments of labour, organised and unorganised, labourite and socialist. Other considerations were taken from the arguments of employers. Thus, boards also accepted that wage increases should be limited by the employer's inability to pay, a principle supported in turn by a strong commitment to economic development defined in terms of the expansion of privately-owned capital. Still other elements had more general currency within Canadian society. Boards often drew upon notions of freedom of contract and freedom of association, although it is difficult to gauge the extent to which these concepts shaped the boards' discourse (the abstract freedoms offered little guidance to decision-making; employers and employees often agreed that the freedoms were valuable, but disagreed on how they should be balanced against competing values).

This appropriation of the parties' arguments was selective. Certain considerations were excluded, chiefly because they were anathema to one of the parties involved. As we have seen, boards routinely rejected employers' arguments that wages be determined by supply and demand in the labour market. This criterion was utterly unacceptable to employees' representatives, for it would have undermined any attempt to obtain better conditions through collective action.[19] At the same time boards also excluded arguments questioning the legitimacy of private ownership. This not only included submissions based on socialist visions of society, but also on the much more widespread support for public ownership of transportation, communication, electric and gas utilities in early-twentieth-century Canada. The majority opinions of boards universally refrained from commenting upon the desirability of public ownership, even when the company under investigation was on the verge of expropriation. On the very rare occasions that board members did voice socialist or pro-public ownership arguments, they were always in dissent.

The boards' process of sifting through the parties' arguments and hammering out an acceptable compromise was also conditioned by the structure of conciliation itself. The primary objective of the conciliation regime was the prevention of industrial strife. Boards pursued this objective within the context of a particular dispute. They were appointed on an ad hoc basis for each dispute, and they were composed of nominees chosen by the parties involved in that dispute. The focus of board activity was very much the settlement of a highly specific conflict, then. Those parties, not society at large, were the boards' primary audience. There was an in-built bias for solutions that would work immediately, implemented by the parties themselves. There was therefore a tendency to take general social conditions as given. Even if board members believed that more fundamental social change were necessary, they were encouraged by the nature of their role to accept the structure of industrial relationships as the context within which they operated.

Moreover, the effect of board decisions depended wholly on the willingness of each party to accept the board's recommendations. This affected the kinds of norms invoked by boards in two ways. First, the non-binding nature of their recommendations was itself sufficient to require that criteria anathema to one or the other of the parties be rejected. Employees would never agree to the determination of wages by market forces alone; employers would reject any recommendations based upon a denial of their right to make a profit. Second, boards had no power to change the fundamental structure of the employment relationship, had they wanted to. The parties' legal rights were out of their hands, determined by the courts. This pushed board recommendations to take the form of prescriptions for industrial morality, binding in conscience but not in law (although board recommendations often went beyond mere indifference to legal rights, accepting the desirability of the existing legal framework.)

Very specific characteristics of the I.D.I.A. regime also left their imprint on the substantive outcomes proposed by boards. The boards' advocacy of committee recognition was probably a direct result of the character of their own intervention. The I.D.I.A. was designed to prevent strikes by bringing the parties to the same room, getting them talking, and hoping through mutual accommodation to achieve a settlement. Given this objective, it was natural that boards should encourage the parties to meet before a board had been appointed. The proposal for committee recognition was little more than this; the parties should talk before fighting.

Through this process of selection and reconciliation—a process shaped in part by the nature of the boards' intervention—boards attempted to fashion a structure of right which, while it might not claim the unqualified adherence of either party, at least included many of each parties' arguments within a comprehensive vision of labour's place within Canadian society. It was on this vision that boards founded their efforts at persuasion.

But what effect did this comprehensive, compromise vision have on the relationship between employer and employees? Given the interdepen-

dence of ideology and economic interest, it is difficult to trace with any precision the impact of arguments of justification on the parties' economic relations. One suspects that much of this effect occurred subtly over a long period of time, as the framework of analysis used by conciliation boards influenced and perhaps came to dominate the language in which parties mobilised support for their positions, justified their demands (even within their own ranks), and presented their arguments to the opposing party and the community at large. The officially-sanctioned framework and proposals compatible with it would become the medium for public appeals, arguments between parties, and, to some extent, internal debate. Inconsistent forms of justification would be marginalised, confined to the internal discourse of groups specially-resistant to the dominant line (whether because of isolation from the general society, the wielding of economic power sufficient to secure considerable autonomy from other segments of society, or the possession of a robust, independent ideology). To describe fully this influence in a given case, one would have to follow the parties' arguments over time, attempting to determine how the discourse evolved in response to alternative frameworks of justification. Ideally, this examination would go beyond those actors most concerned with relations across segments (such as union leaders or employer nominees on I.D.I.A. boards) to include the structure of debate within the parties' own ranks. That kind of study is beyond the scope of this paper (and indeed was beyond the scope of the larger study on which it is based), but one can point to certain characteristics of boards' activity that suggest that such a process was occurring.

First, it is clear that the parties' representatives displayed a strong tendency to adopt—at least for the purposes of particular investigations—the justificatory discourse used by boards. At a time when a number of unions were frankly socialist in ideology, for example, it was very rare that union nominees on boards, or union representatives before the boards, challenged the legitimacy of profits derived from the private ownership of capital. No doubt many of these representatives retained their personal commitment to a radical transformation of society and used the language of compromise merely as a tactical manoeuvre designed to secure immediate gains. They may also have split their discourse, using one kind of argument when dealing with conciliation boards and employers, another with their own membership. But one suspects that the acknowledgement of the legitimacy of their opponents' interests in the often-public forum of the conciliation boards must have tended to undermine the thoroughgoing quality of their critique of capitalist society.[20]

One sees a similar process of socialisation into a dominant discourse on the employers' side. Some employers adamantly refused to participate in board proceedings, resisting even that limited acknowledgement of employees' entitlement to act collectively. In virtually all of these cases, the board used its power of subpoena to secure the employer's attendance. Once there, the employer would discuss the merits of the employees' demands with the board (usually in the guise of giving evidence). Gradually the employer would be drawn into justifying its position, frequently

in terms approaching those used by the board. Indeed, in at least ten of the disputes in which the employer refused to nominate its representative on the board, the employer not only participated but also agreed to a settlement achieved through the board's mediation.

I am not arguing that the adoption of the board's language by either employer or employees fully represented that party's sentiments and actions. It did not. Although the freedom of employees to associate was part of the boards' discourse, for example, many employers continued to harass and fire union officers. But the reshaping of the parties' public justification did occur, and one suspects that the changing justification in turn influenced the evolution of the parties' relationship (although not to the extent indicated by their rhetoric alone).

There is some direct evidence that board opinions on the legitimacy or illegitimacy of certain demands affected the kinds of settlements parties were able to achieve. In 1908, for example, the secretary of the Canadian Manufacturers' Association, G.M. Murray, and that organisation's journal, Industrial Canada, claimed that the I.D.I.A. had prevented unions from aggressively pursuing their demands for the closed shop (Craven, 1980: 309–310). Indeed, throughout the period examined here I.D.I.A. boards consistently resisted the closed shop demand, and there are few references to unions obtaining such protection through job action alone. The manner in which the boards' rejection of the closed shop might have shaped the outcome of particular disputes is suggested in then-Deputy Minister W.L. Mackenzie King's remarkable description of his own mediation of a dispute in the Lethbridge coalfields.[21] In that dispute, the United Mine Workers of America wanted a closed shop; the employer was reluctant to acknowledge even the union's right to exist. In his first meeting with the employer, King made clear that he himself accepted 'the true liberty of the individual, viz; The right to join or not to join an organisation as one might deem best'. When he detected a weakening of the employer's opposition to unionisation, he attributed this to the employer's perception of the unfairness of its position. In his discussions with the union, King impressed upon its representatives the 'impossibility of any settlement being made on the basis that only Union men should be employed . . .'. And when the union refused to abandon its demand, King argued that insistence upon a closed shop 'would give the Company a weapon to be used against them, which would justify the Government in sending in men to assist the Company as the Public would never stand for a refusal of allowing to [sic] Company to employ non-union men'. Thus, by using arguments of legitimacy in tandem with threats of public blame and even state repression (the latter both being based on the initial argument of legitimacy), King moved the parties away from their original positions, eventually achieving a settlement which did not establish a closed shop, but which did prohibit discrimination by the employer against union members.[22]

Within a more confined compass, one can also find cases in which board recommendations on specific terms of settlement seem to have shaped the outcome. These do not in themselves imply the parties' adoption of the grand lines of the boards' justificatory framework, but they do

suggest that at the level of the particular dispute, boards' reasoning did have an effect not attributable to the use or threat of economic action. One cannot trace this effect in all disputes. In most, it is impossible to gauge the extent to which boards shaped the settlement because it is impossible to reconstruct the balance of power between the parties, the parties' perceptions of that balance, or their bargaining strategy. There are some instances, however, in which we know enough about the course of negotiations to suggest that the final settlement could not have been achieved through unaided negotiations.

The 1908 dispute in the mines of the Nova Scotia Steel and Coal Co. is one such dispute. In that case, the employees (members of the Provincial Workmen's Association) applied for an I.D.I.A. board, demanding a fifteen per cent wage increase from their employer. The company convinced the board that it was unable to pay any increase. It also noted that because of the variation in mining conditions between its different mines, employees in No. 3 mine made a great deal more than those in Nos. 1 and 5. It suggested that if any change were to be made, it should be a readjustment between mines. The board concluded that indeed a readjustment would be best, and approached the parties with the suggestion. The employees in No. 3 mine were, not surprisingly, strenuously opposed to the proposal, and those in Nos. 1 and 5 were very reluctant to gain at No. 3's expense. The board members, in their chairman's words 'the authors and advocates of an unpopular proposal', worked hard to persuade the employees to accept the readjustment. They obtained the company's agreement to contribute a modest sum to make the change less painful. Once the proposal had been put in the form of an award, the chairman and employees' nominee attended two of the miners' ratification meetings, 'to explain and defend their award'. The employees accepted the award by a two to one margin. In view of the union's great reluctance to consider such a divisive proposal, it seems unlikely that in the absence of the board the plan could have been given a civil reception, much less been adopted. The union leaders' reluctance was well-founded: shortly after the settlement, the miners in No. 3 left the P.W.A. to join the United Mine Workers of America.[23]

Other examples are less dramatic.[24] To obtain some impression of the extent to which boards influenced the content of settlements across the whole spectrum of investigations, it may be useful to examine the rate of acceptance of board reports by both parties. This rate is not an ideal measure of boards' influence. The preference of the government, most board members, and usually the parties themselves for a quiet settlement meant that only the most intractable disputes remained unsettled at the time of the report. This trend was reinforced by the tendency of some boards to inform the parties of the content of their decision prior to the filing of their report, to give the parties one last chance to settle the matter. Disputes in which boards may have had a crucial effect on the outcome, then, but which were settled prior to the board's report, are not represented in the rate of acceptance. Moreover, one cannot depend upon this rate to screen out those cases in which boards did not purport to weigh the justice of the parties'

demands, but merely proposed a plausible compromise. And on top of all these concerns, the department was apparently much less diligent about seeking out and recording acceptances during the war years than it was before and after. Nevertheless, the rate of acceptance is the only aggregate statistic bearing directly upon the effect of board persuasion on the eventual outcome. Except for the few instances in which a prior agreement was presented in award form, the rate of acceptance concerns cases where the parties had been unable to agree during the conciliation phase of the proceedings. Their subsequent acceptance of the board's report suggests that the terms of the award carried some authority.

According to the records of the Department of Labour, of 319 disputes unsettled at the time of report, both parties unequivocally accepted the recommendations in 75. In 25 cases, the settlement was based on the report. In only 23 cases did the department report a strike or lockout. Even when the parties resorted to job action, it seems that the board's report either retained considerable authority, or was a remarkably good prediction of the parties' economic power: eight of the 23 work stoppages ended in settlements substantially similar to the award.[25]

This leaves a large number of disputes (196) in which, on the basis of departmental records, we do not know whether the award was accepted, but in any case no cessation of work was reported. Without an extensive search of local newspapers, union records, etc., it is impossible to know what occurred in these disputes. Some may have been settled, perhaps on the basis of the award, the parties simply neglecting to respond to the department's inquiries (or the department neglecting to publish the response). In others, particularly the 26 disputes in which the employer but not the employees accepted the report, work probably continued on the terms of the award. No doubt in many of these cases, the employees were unhappy with the result yet were unwilling to risk a strike; they worked under conditions imposed by the employer, biding their time until the prospects for job action improved. Thus, the rate of acceptance suggests that board reports constituted the basis of settlement in a considerable number, though not a majority, of disputes remaining unsettled at the time of the report.[26]

My point in this discussion is not that settlements under the I.D.I.A. were predominantly a matter of right. Nor do I wish to deny that the boards' recommendations themselves were influenced by the balance of power evident in a specific dispute. Indeed, the above example drawn from King's Lethbridge mediation demonstrates how arguments regarding legitimacy were woven together with threats of force. There were certainly cases in which one party simply ignored a particular board's recommendations (or ignored the conciliation procedure altogether), relying instead on its own power to achieve its ends. But the kind of normative arguments found in board reports were not mere surplusage, masking the domination of material conditions alone. Through their language of justification, boards shaped the outcome of certain disputes, created a systematic bias against the achievement of demands they damned as illegitimate, and promoted a particular vision of the roles of labour and capital in industry.

Accepting the boards' vision, then, even for the limited purpose of making submissions, necessarily involved ideological compromise. It required that one leave the purity (or impurity) of one's own vision of the world behind, and work within a vision that incorporated many of one's own demands, but also made room for the key demands of one's opponent. Participation in the framework involved acknowledging that the interests of labour and capital were reconcilable. Indeed, it usually meant considerably more than that: it meant attempting to reconcile those interests along the broad lines propounded by boards. In short, the boards sought to embrace the parties within an integrated vision of the structure of society, reworking the parties' own arguments into mutually-compatible forms, refining and reinforcing the definition of social roles, and shaping the parties' expectations—all in order to move the parties towards a stable relationship, less susceptible to major disruption.[27]

This is the 'mediation of ideology' that the title of this paper refers to.[28] Boards promoted compromise not simply on wages and working conditions, but between competing visions of society. The compromise proposed by boards was not static, establishing a kind of perpetual ideological equilibrium. Although many of its features did remain constant during the period, others evolved in response to general economic trends, the bargaining power of the parties in specific disputes, and gradual change in Canada's ideological landscape. Moreover, the parties' acceptance of the framework was never perfect. The investigations of boards, while they were forums for mediation and compromise, also constituted an ideological terrain contested by the parties. The parties were not simply absorbed into the compromise; they also attempted to push the compromise in directions favourable to them, building on previous gains to fashion new arguments, injecting new content into old concepts, or using concessions already obtained to free energies for further struggles. But the reasoning of boards did serve to dampen conflict between labour and capital, persistently encouraging the parties to admit each other's integrity, fashioning settlements through some form of accommodation.

Thus, attention to the concept of ideology as defined above permits one to make sense of the boards' use of normative arguments. One sees these arguments as attempts to work out a vision of a cohesive society in the midst of confrontation—to redefine conflict away from irreconcilable aims and into compromise and accommodation. This was not a compromise based merely on the sheer balance of power in a specific dispute (although power did enter into the equation). It was a compromise vision of right, taking the justificatory framework of each party—the ideology of each party—and attempting to hammer out a new framework upon which persuasion could be based.

CONCLUSION

This discussion of boards' activity has emphasised their role as mediators of ideology. Boards were not the only such mediators (although they did perform that role in a particularly significant context, where the interests of

capital and labour were in direct conflict). Indeed, one can find the broad lines of the boards' ideological compromise in other milieux as well (see Webber, 1988c: 322ff). The boards' mediation of ideology is one example of a larger phenomenon occurring in administrative agencies, legislatures, municipal councils, movements for social reform, churches, and a host of other institutions concerned with establishing and maintaining some degree of social harmony.

I said earlier that there appear to be different levels of ideology, possessing different degrees of specificity, associated with larger and smaller aggregations of interests in society. The process by which these broadly-held ideologies are summed may well be analogous to the activity of conciliation boards (although there may not be an analogous institution actively engaged in promoting the process). Other observers have noted that ideologies generally are shaped by their context, influenced by the group's position within the social hierarchy, striving to win converts and evolving to meet challenges from competing groups (Ansart, 1977: 77ff; Roy, 1988). Indeed, the very notion of justification implies an adaptation to the concerns of the group sought to be persuaded. All ideologies, then, are mediated. Perhaps this study simply adds that mediation occurs not only within a particular class or segment, but also at the level of society as a whole (although perhaps with less success because of the greater heterogeneity of interests).

This study also has interesting implications for normative institutions other than conciliation boards. It may provide a useful framework for the analysis of law generally. The context examined here is a peculiar one: the boards had no power to impose their recommendations; they had to rely on persuasion alone. They dealt with economic conflicts between groups which defined themselves largely in terms of their economic opposition—that were, to a significant degree, class-conscious. The boards' efforts to fashion a compromise vision of right therefore took a simplified form, concerned with a limited range of conflicts between established adversaries, the boards' decision-making unencumbered by authoritative texts and rules of precedent. Their normative discourse therefore showed few of the structural rigidities we normally associate with 'law'. But the difference between the normative activities of boards and those of other legal institutions is not as great as might at first appear. All tribunals rely to some extent on persuasion, not mere authority. All are concerned with establishing the legitimacy of their decisions. The kind of approach developed here may reveal interesting aspects of judicial and administrative decision-making in contexts very different from the settlement of bargaining disputes. The relative insulation of judges in our ordinary courts from economic confrontation, the (qualified) ability to enforce court orders, and the institutional definition of disputes as occurring between individuals rather than between segments or classes, may render these judges less concerned with the mediation of ideologies (as defined here) and more able to ground their decisions in moral or ethical arguments not specifically concerned with the reconciliation of divergent interests within society. But one suspects that on highly-controversial issues the kind of analysis used here remains crucial to

an understanding of the outcome. And in those forums in which fundamental societal conflicts are directly in issue (for example, in labour relations boards, arbitration tribunals, family courts), the effort to construct a compromise vision of right remains crucial.

Indeed, if it is true that all social action tends to be bound up with justification—that one rarely acts without suggesting that the action is appropriate (an explanation necessarily implying some vision of social organisation)—one would expect that institutions acting at the level of society would try to fashion a vision having some broad appeal, upon which to justify their actions. And to the extent that it is also true that particular visions of social organisation are rooted in specific segments or classes within society, any attempt to forge a common vision will involve the mediation of ideology.

REFERENCES

Allen, R. (1971) *The Social Passion: Religion and Social Reform in Canada 1914–28.* Toronto: University of Toronto Press.

Ansart, P. (1977) *Ideologies, conflits et pouvoir.* Paris: Presses universitaires de France.

Armstrong, C. (1981) *The Politics of Federalism: Ontario's Relations with the Federal Government, 1867–1942.* Toronto: University of Toronto Press.

—— and H.V. Nelles (1986) *Monopoly's Moment: The Organization and Regulation of Canadian Utilities, 1830–1930.* Philadelphia: Temple University Press.

Atherton, J.J. (1972) 'The Department of Labour and Industrial Relations, 1900–1911.' M.A. thesis, Carleton University.

Baker, W.M. (1983) 'The Miners and the Mediator: The 1906 Lethbridge Strike and Mackenzie King,' 11 *Labour/Le Travailleur* 89.

Cook, R. (1985) *The Regenerators: Social Criticism in Late Victorian English Canada.* Toronto: University of Toronto Press.

Craven, P. (1980) *'An Impartial Umpire': Industrial Relations and the Canadian State 1900–1911.* Toronto: University of Toronto Press.

Ferns, H. and Ostray, B. (1976) *The Age of Mackenzie King.* Toronto: Lorimer.

Godelier, M. (1982) "The Ideal in the Real," in R. Samuel and G.S. Jones, eds., *Culture, Ideology and Politics: Essays for Eric Hobsbawm.* London: Routledge and Kegan Paul.

Hulliger, J. (1958) *L'enseignement social des eveques canadiens de 1891 a 1950.* Montreal: Fides.

Hunt, A. (1985) 'The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law,' 19 *Law & Society Review* 11.

Hutchinson, A.C. and Monahan, P.J. (1984) 'Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought,' 36 *Stanford Law Review* 199.

Jamieson, S.M. (1968) *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900–66.* Ottawa: Task Force on Labour Relations.

Kerr, C. (1954–55) 'Industrial Conflict and Its Mediation,' 60 *American Journal of Sociology* 230.

Law & Society Review (1988) 22 *Law & Society Review.* 625ff (special issue on 'Law and Ideology').

Marx, K. (1967) *Capital.*, Vol. 1, trans. S. Moore and E. Aveling. New York: International Publishers.

Nelles, H.V. (1974) *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849–1941.* Toronto: Macmillan.

'Referum Novarum' (papal encyclicals of 15 May 1891) (1963), in A. Fremantle, *The Papal Encyclicals in their Historical Context.* New York: New American Library.

Roy, F. (1988) *Progres, Harmonie, Liberte: Le liberalisme des milieux d'affaires francophones de Montreal au tournant du siecle.* Montreal: Boreal.

Russell, B. (1987) 'State constructed industrial relations and the social reproduction of production: the case of the Canadian IDIA,' 24 *Canadian Review of Sociology and Anthropology* 213.

Selekman, B.M. (1927) *Postponing Strikes: A Study of the Industrial Disputes Investigation Act of Canada.* New York: Russell Sage Foundation.

Stockett, J.N. Jr. (1918) *The Arbitral Determination of Railway Wages.* Boston: Houghton Mifflin.

Sugarman, D. (ed) (1983) *Legality, Ideology and the State.* London: Academic Press.

Taylor, C. (1985) 'Legitimation Crisis?,' in Taylor C., *Philosophy and the Human Sciences.*, Vol. 2 of *Philosophical Papers.* Cambridge: Cambridge University Press.

Thompson, E.P. (1977) *Whigs and Hunters: The Origin of the Black Act.* Harmondsworth: Penguin.

Trubek, D.M. (1984) 'Where the Action Is: Critical Legal Studies and Empiricism,' 36 *Stanford Law Review* 575.

Webber, J. (1988a) 'Compulsion and Consent in Canadian Labour Law: Canada's Choice of Conciliation over Arbitration, 1900–1907.' Paper presented to the Australian Canadian Labour History Conference, Sydney (December 1988).

—— (1988b) 'Living Wage and Living Profit: Wage Determination by Conciliation Boards under the Industrial Disputes Investigation Act, 1907–1925,' in W.W. Pue and B. Wright, (eds) *Canadian Perspectives on Law and Society: Issues in Legal History.* Ottawa: Carleton University Press.

—— (1988c) 'Standards of Industrial Justice: Ideology and the Reports of Conciliation Boards under the Industrial Disputes Investigation Act, 1907–1925.' LL.M. thesis, York University.

—— (1985) 'The Malaise of Compulsory Conciliation: Strike Prevention in Canada during World War II,' 15 *Labour/Le Travail* 57.

Woods, H.D. (1973) *Labour Policy in Canada.*, 2nd ed. Toronto: Macmillan.

ENDNOTES

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2. See, for example, Hutchinson and Monahan (1984: 222ff). Few critical legal scholars go this far, but a persistent criticism of much critical legal scholarship remains its excessive emphasis on how thought structures experience, without sufficient attention to the reverse relation. For a useful discussion, see Trubek (1984).)
3. Webber (1988c). The study covers 642 applications for boards between 1907 and 1925, resulting in 419 boards producing 409 reports. (It also includes seven reports of a tribunal created during the closing months of World War I to hear appeals from the decisions of

conciliation boards.) Using the reports of conciliation boards, archival records dealing with the process of conciliation, and accounts of strikes, the study examines the manner in which boards intervened in labour disputes, evaluates the extent to which boards shaped the substantive outcome of disputes, reconstructs the justificatory framework invoked by boards in their reports on wages and recognition (recognition defined broadly to include anti-union discrimination, the ability to present grievances, the conclusion of collective agreements, and union security provisions), suggests the origin and evolution of this justificatory framework, and relates the arguments of boards to the submissions of the parties. For a description of the justificatory framework used in wage recommendations, see Webber (1988b).

4. For discussions of the Canadian government's objectives in enacting the regime, including its emphasis on the prevention of strikes and adoption of conciliation as the chief means for achieving this end, see Selekman (1927), Craven (1980), and Webber (1988a).
5. The literature is immense. For a sampling of recent discussions of ideology in legal scholarship, see Sugarman (1983), Hunt (1985), and Law & Society Review (1988) (special issue on 'Law and Ideology').
6. For similar uses of the term 'ideology' see: Ansart (1977) and, in the Canadian context, Roy (1988), especially at 45ff.
7. In some ways, this is an attempt to rescue the concept of ideology as 'Weltanschauung' from the host of studies which use a broader definition, often as the principal vehicle for bringing post-structuralist perspectives to bear on the study of law. This broader definition is adopted in an influential article by Alan Hunt (1985). Because my approach shares many elements in common with Hunt's (using ideology to explore the 'connection between ideas, attitudes, and beliefs, on the one hand, and economic and political interests, on the other'; characterising the connection as one of mutual interdependence; insisting that descriptions of this interdependence be grounded in empirical work; and rejecting the notion of 'ideology' as false consciousness), it may be useful to suggest where we differ.

   Hunt expressly rejects comprehensiveness and coherence as necessary features of ideology and is skeptical of the kind of relationship between ideology and interest implied in my use of the term justification. These differences result, I believe, from Hunt's use of ideology to describe a broad range of phenomena excluded from the definition presented here, and his desire to avoid strong a priori assumptions about the relationship between those phenomena and economic and political interest. I think this difference goes more to definitional choice than to analytical substance. If one applies 'ideology' to the full array of ideas, attitudes, and beliefs that inform our relationship with the world (as I believe Hunt does), then one certainly does want to avoid seeing these as forming a rationally-consistent whole whose purpose is the justification of class interest. As will appear, however, I use 'ideology' to refer only to a subset of these phenomena, a subset defined precisely by the characteristics developed in the text. The adoption of this restricted definition does not imply that the broader range of phenomena is unimportant; indeed, quite apart from the interest of the latter in their own right, ideologies draw much of their sustenance from these other phenomena. It is just that a tight justificatory link between certain kinds of ideas and class interests is of sufficient explanatory power to support the use of ideology in the manner proposed here. We already have terms for the vast array of phenomena included within Hunt's definition (bodies of knowledge; specialist culture; common-sense assumptions; legal discourse). Why not confine 'ideology' to the phenomenon defined here, one for which there is not an easy substitute, and which remains close to our conventional use of the term?

   One additional word on comprehensiveness and coherence: I wish to make clear that this refers to aspiration, not execution. Ideologies aspire to these qualities because their persuasiveness depends in part upon their consistency (which is precisely why internal critiques have some cogency), but they do not necessarily achieve this goal. And indeed, the patronage of powerful interests can compensate for considerable rational inconsistency in an ideology.
8. When I speak of the mediation of ideology, then, I am arguing that the very content of a dominant ideology represents a social compromise (however unequal), and not merely that ideologies are constrained by the means used to express them.

9. Marx (1967), at 171: '. . .the number and extent of [the worker's] so-called necessary wants, as also the modes of satisfying them, are themselves the product of historical development, and depend therefore to a great extent on the degree of civilisation of a country, more particularly on the conditions under which, and consequently on the habits and degree of comfort in which, the class of free labourers has been formed. In contradistinction therefore to the case of other commodities, there enters into the determination of the value of labour-power a historical and moral element'.
10. Compare Godelier (1982), at 26–30, where he suggests that certain forms of social activity (e.g. kinship; religion) become dominant within a society when they become the basis for defining the relations of production within that society.
11. For expressions of Catholic doctrine influential at the time, see Hulliger (1958) and 'Rerum Novarum' (1963). For discussions of Protestant approaches, see Cook (1985) and Allen (1971).
12. For a description of the study see supra, note 3.
13. The demonstration would require extensive review of the arguments in board decisions, a task undertaken in Webber (1988b) and (1988c). The citations to board reports in the pages that follow are for illustration only, with full references omitted. There is no established method for citing board reports. As the title of the reports, I use the name of the employer (or in the case of numerous employers a convenient description), followed by the date of the report. I cite reports to the first page of the article in the annual report of the Department of Labour (abbreviated AR, followed by the fiscal year) or in the Labour Gazette (abbreviated LG, followed by the volume number), in which the majority report appears. In the case of the annual reports, I also give the number of the appropriate Canadian sessional paper, omitting the sessional paper's year (which in every case is the year following the last year in the annual report's title).
14. British Columbia Electric Railway Co (13/8/13), AR 13–14, Sess. paper 36a, 133 at 136.
15. Various mining companies in eastern B.C. (27/1/13), AR 12–13, Sess. paper 36a, 136 at 142.
16. I acknowledge the use of pronouns that are not gender-neutral, but the use of gender-neutral language would severely distort the justificatory discourse of boards. For the boards, employers were male.
17. A. Davis and Sons (12/6/18), LG 18, 516 at 518.
18. I do not mean to suggest that board recommendations were without significance. Boards did render awards that employers vigorously opposed (e.g. recommending wage increases in industries in which the selling price of the employer's services were fixed by regulation, or suggesting that wages fall more slowly than the cost of living during the post-World War I deflation), and these awards, although non-binding, were often implemented by employers under protest. One must also be careful not to draw too strict a distinction between substantive and structural change. On occasion the former could prepare the way for the latter. Thus, although meetings between employers and employee committees did not themselves amount to full collective bargaining, they gave collective action some measure of legitimacy within the workforce and helped employees overcome the first hurdle to bargaining: at least they could speak to the employer without incurring the cost of a strike. Employees' collective energy could therefore be saved for larger struggles.
19. Market forces did occasionally appear in other guises. See Webber (1988b).
20. The decision to justify one's demands within the accepted framework therefore raised many of the dilemmas present in the reformist/revolutionary socialist debate. For evidence of this debate in labour's initial reaction to the I.D.I.A., see Craven (1980) at 286–7.

    Only the following reports suggest that employees argued the illegitimacy of private capital (or at least demonstrated severe disaffection from their employers): Canadian Collieries (Dunsmuir); Wellington Railway Co (10/5/18), LG 18, 400; Dominion Coal Co; Nova Scotia Steel and Coal Co; Acadia Coal Co (undated, 1925), LG 25, 122. Compare British Columbia Copper Co (21/5/09) AR 09–10, Sess. paper 36, 22 at 25, where the socialist Western Federation of Miners (W.F.M.) blasted the I.D.I.A. and the employer alike, claiming that the act was 'the most hostile piece of legislation on the statute-books of Canada at the present time against the labouring class'. The union

representatives' chief complaint against the act, however, was that a previous request for a board had been turned down on jurisdictional grounds. The union's statement continued in less-than-revolutionary tone: 'But as the charges have often been made that the Western Federation of Miners is a lawless organization, we invite you to make a thorough investigation into our methods of doing business, as we have nothing to conceal, and in making application for a Conciliation and Investigation Board one of our objects is to let the public know the true condition in Greenwood camp'. For a self-conscious attempt to adopt the accepted discourse, see Wettlaufer Lorrain Silver Mining Co (24/2/11) AR 10–11, Sess. paper 36a, 290, in which the employees' nominee (local secretary of the W.F.M. in Silver Centre, Ont.) annexed a letter explaining how the secretary of the Cobalt local had coached him on how to act as nominee, including the kinds of considerations to emphasise in discussions within the board.

On balance, the extent to which unions espousing a revolutionary ideology participated in board proceedings (although often with some ambivalence) is remarkable. In 1909, Gerald H. Brown reported to then Minister of Labour W.L. Mackenzie King that although trade unions were 'on the whole extremely well disposed toward the Act', the W.F.M., particularly in the Cobalt mining region, was 'most bitterly hostile' (Letter, Brown to King, 15 September 1909, Public Archives of Canada (hereafter:PAC), King Papers, Correspondence, MG26 J1,vol.11, 10119–10120). Yet the W.F.M. applied for boards on 15 occasions (including six from northern Ontario metal mines after the date of Brown's report). Even that most revolutionary of unions, the Industrial Workers of the World (I.W.W.) applied for a conciliation board in connection with a railway construction labourers' dispute: (1912) 13 Labour Gazette 129.

21. King (later Prime Minister of Canada) played a major role in the development of Canada's conciliation policy, serving as Deputy Minister of Labour from 1900–1908 and Minister from 1908–1911. As Deputy Minister, he personally mediated many disputes, and following one of these interventions drafted the I.D.I.A. For assessments of King's role, see Craven (1980) and Webber (1988a).
22. For accounts of King's intervention in the Lethbridge dispute, see: 'Confidential Memorandum re Lethbridge Strike', PAC, King Papers, Notes and Memoranda, MG26 J4, vol. 13, C9065–9108, especially at C9075–9083; Craven (1980) at 264–7; Baker (1983).
23. Nova Scotia Steel and Coal Co (10/8/08), AR 08–09, Sess. paper 36, 256.
24. See J.D. McArthur and Co (?/3/15), AR 15–16, Sess. paper 36a, 91, and J.D. McArthur and Co (14/4/15), AR 15–16, Sess. paper 36a, 94, where there were two successive investigations regarding two classes of employees of the same railway construction contractor. The employer wished, for identical reasons, to reduce the wages of both classes by the same amount. In the first investigation, the board approved the reduction. In the second, the board rejected the reduction, basing its decision on a fair wage clause in the agreement. (There was no mention of such a clause in the first report.) Although the only apparent difference between the two cases was the reasoning based on the fair wage clause, the employer accepted the board's award in each case.
25. All of these figures, including that for job action after the award, undoubtedly understate the true number. The Department's monitoring of unsuccessful investigations was haphazard, especially during the war years.
26. The above discussion of the effect of boards on the employment relationship concentrates on those disputes in which a board conducted an investigation. But at least until the latter years of World War I, the government refused to prosecute breaches of the I.D.I.A.'s strike ban (private prosecutions could be initiated, but these were rare). Consequently, many strikes occurred in violation of the act. On the basis of general figures on strikes by industry, Selekman calculated that prior to 31 March 1925, 472 strikes had occurred in violation of the act (including 47 where applications were made for boards) compared to 640 applications in all (Selekman, 1927: 66–68). On some of those occasions, rejection of conciliation no doubt implied rejection of the conciliatory norms on which board recommendations were based, but this was by no means always the case. Strikes frequently occurred for purely tactical reasons (to avoid the delay that conciliation would cause), because workers' resentment and frustration towards their employer had become so acute that they simply would not wait for the appointment of a board, because the

refusal of employers to implement previous awards had undermined confidence in the procedure, or, especially in the early years of the act, because of simple ignorance of the act's provisions. Nor did such a strike necessarily imply a refusal to participate in conciliation; occasionally boards investigated disputes while a strike was in progress, and often an individual mediator was dispatched to settle the matter.

27. A similar argument is made in Russell (1987), based on a quantitative analysis of the outcomes of conciliation.
28. Compare the concept of 'strategic mediation', developed by Kerr (1954–55).