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PARTY ATTITUDES TO THE PRINCIPLE
OF PREFERENCE TO UNIONISTS
CONTAINED IN THE COMMONWEALTH
CONCILIATION AND ARBITRATION BILL 1903-4

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LIST OF ABBREVIATIONS

THE FOLLOWING ABBREVIATIONS
HAVE BEEN USED IN THE
FOOTNOTES IN THIS DISSERTATION

C.P.D. Commonwealth Parliamentary
Debates

Caucus Minutes Minutes of the Federal
Parliamentary Labour Party

S.M.H. Sydney Morning Herald

D.T. Daily Telegraph

SYNOPSIS

The object of this thesis is to analyse members' attitudes to the principle of preference contained in the Commonwealth Conciliation and Arbitration Bill (1904).

In light of this object the primary problem is to explain the significance of the Preference Clause.

Part I introduces the main theme, that the significance of the Preference Clause is explained by two circumstances. The first is an explanation of how arbitration became the solution to the pattern of industrial relations which developed, and the place of preference in arbitration. The second circumstance is the place of the Preference Clause in the party machinations of the period while observing that these circumstances both determine and affect members' attitudes.

Part II (1860-1890) describes the pattern of industrial relations up to the point of the industrial crisis of the Maritime Strike.

Part III (1891-1901) relates the crisis of the strike to the industrial and political developments in this decade. The industrial event of arbitration and the political event of the formation of Parliamentary Labour Parties form the immediate background to the crisis over preference. The description of arbitration demonstrates the rationale behind preference while the description of the

of the Labour Party demonstrates the reason why preference should be distasteful to members when advocated by a Labour Party.

Part IV constitutes the main body of the thesis. It describes in broad terms the form of the crisis and specifically the members' attitudes.

Part V concludes in the form of a postscript, commenting briefly on the fortunes of the preference clause and the clause controlling political status of unions over the next decade.

III PART I INTRODUCTION

Industrial relations problems throughout Australia climaxed in the period 1890-1894. It is surprising perhaps that the major theme of the strike was reproduced in the legal sphere when the sharpest debates of the Conciliation and Arbitration Bill were those referring to the Preferential Clause. In 1890 unions had become less concerned with hours, wages or conditions of work for,

"... beyond these individual needs ... stood a deeper problem of status involving a sharper clash of interests." (1)

The 'clash of interests' was caused by the development of a different need which related specifically to organization of the unskilled worker. The unskilled worker gave new form to unionism because of insecurity in employment. The members lacking in skills could be readily replaced and this insecurity was reflected in

(1) N. S. Woods, Industrial Conciliation and Arbitration in New Zealand (Government Printer, Wellington, New Zealand, 1963) p. 30. This statement was made in reference to the character of the New Zealand unionism of this period but may be aptly used to convey the Australian circumstance.

the demand for the 'closed shop'. (1) In the debates on the Commonwealth Arbitration Bill, union security was represented in that clause requiring employers to give preferential status to union members. (2)

The demand for preference created a political reaction to the efficacy of trade unionism from all parties. The attitudes expressed reflect members' personal experience of industrial strife or of legislation concerned with arbitration. The debates centred around abolishment or modification of both the principle of preference and the institution of trade unionism. The debates were in a sense real ones. In the days before rigid party structure debate could literally persuade members to cross the floor in a three-party situation. It was a subtle game in which cleverly worded amendments had major political effects. Behind such a 'game' played about the principle of preference there hung in the

- (1) This term defines a situation where an employer agrees to only employ union members.
- (2) The term 'union security' is taken from J. E. Isaac and G. W. Ford, Australian Labour Relations Readings (Melbourne, 1966), p. 114. I have used the term to mean the existence of economic circumstance or legal status which protects the present existence of unions and allows for their further strengthening.

balance the continued administration of the Labour Party.

In sum, the primary analysis of members' attitudes to preference is anchored in the circumstances of the Preference Clause, appreciating at the same time that these circumstances often determined members' attitudes. The first circumstance lay with the particular pattern of industrial relations problems and the place of the preference principle in the solution of the legal system of arbitration. The second circumstance was the significance of the Preference Clause in the party machinations of the period. In the event of the crisis, members' attitudes were often formed by their circumstance in the industrial scheme, and were occasionally dominated by their party situation.

III PART II THE GROWTH OF UNIONISM
AND COLLECTIVE BARGAINING

The particular pattern of industrial relations which developed between 1860 and 1890 have an immense significance to understanding the various assessments of trade unionism and solutions to the problems of industrial 'warfare' expressed in the Commonwealth Legislature in 1904. The dominating theme in the formation of relationships between employers and employees is that the relationship was expressed through the process of collective bargaining. Sidney and Beatrice Webb provide the most workable definition of this form of the industrial relationship,

"But if a group of workmen concert together and send representatives to conduct the bargaining on behalf of the whole body, the position is at once changed. Instead of the employer making a series of separate contracts with isolated individuals, he meets with a collective will, and settles, in a single agreement, the principles upon which, for the time being, all workmen of a particular group, or class, or grade will be engaged." (1)

(1) Sidney and Beatrice Webb, Industrial Democracy (Longmans, London, 1902 ed.), p. 173.

The 'collective will' is of course based in the organization of the trade union.

The outline of the development in this section will be from the change in the circumstances of the economy in the 1850's, which led to a major expansion of economic activity and a simultaneous development in labour organization, until the Maritime Strike of 1890-4 led to a serious reappraisal of collective bargaining. The discussion will first examine the significance of the economy to the particular pattern of industrial relations which developed. The second area of discussion will be a review of the growth and nature of trade unions. The final area will consist of an examination of the relationship between a specific form of trade unionism and the Maritime Strike, as well as commenting on the form and impact of the strike itself.

In evaluating the forces that conditioned the attitudes of employers and employees towards each other, it is a primary consideration that the nature and strength of labour organization rest on economic circumstances. The roots of the Australian arbitration system extend back to the discovery of gold in the 1850's. This discovery changed drastically the economic circumstances of the colonies. It caused the injection, which continued, of necessary overseas capital,

"By 1860, a considerable inflow of British capital had occurred, particularly into financial, trading and mineral enterprises. After 1860, British investors continued to look to Australia as an outlet for overseas investment ..." (1)

Secondly it led to a trebling of the total population; from 405,000 in 1851 to 1,156,000 in 1861. (2)

The creation of a significant work force was a step basic to the organisation of labour,

"A predominantly pastoral economy with thinly scattered workers consisting of a large proportion of convicts, emancipists and indentured

(1) N. G. Butlin, Investment in Australian Economic Development 1861-1900 (Cambridge, 1964), p. 33.

(2) Ibid, p. 39.

labour, a hostile public outlook and a restrictive legal framework do not in total provide a favourable environment for union growth. Such were the circumstances in Australia before 1850." (1)

Between 1860 and 1890 the characteristics of the economy rested on two circumstances: the acceleration of the growth rate and the specific allocation of economic resources which gave particular patterns of employment. The rate of growth was not entirely even, it was upwards in the period 1872-1890, while there was some stagnation in the 1860's. The first period of rapidly rising investment was followed by recession in 1866, halting recovery and uncertainty and a second run down of investment in 1870. (2) In 1871 the level of capital formation began to rise, interrupted by slight recessions in 1878-9, 1882 and 1885,

"... this was the great investment boom which underlay the general economic growth of the period. Though the pace slackened after 1866, significant decline was delayed until the end of 1888." (3)

- (1) J. E. Isaac & G. W. Ford, ed. Australian Labour Relations Readings, p. 75.
- (2) N. G. Butlin, Investment in Australian Economic Development 1861-1900, p. 42.
- (3) Ibid, p. 43.

Elsewhere N. G. Butlin's figures show an annual average formation of new capital during 1861-71 of £6,992,000 and £20,447,000 during 1872-91. (1) There were three main fields of new capital formation in the period 1860-90: residential building, agriculture and pastoral investment and railways. (2) The significant feature for industrial organization of such allocation of economic resources has been highlighted by P. G. McCarthy. He calls the economy 'labour intensive' for the unskilled. (3) There was simultaneously a chronic scarcity of labour, not generalised before 1870 and in the main confined to the period 1870-1885. N. G. Butlin describes the circumstance, using in part the successes of labour organizations as evidence,

"The growing power of the trade unions, the relative ease in securing wage increases, the steady rise in wage-rates, especially

- (1) N. G. Butlin, Some Aspects of Australian Capital Formation 1861-1900. Paper presented to Australian and New Zealand Association for the Advancement of Science Congress, (Melbourne, 1955). From R. N. Ebbels (L. G. Churchward, ed.) The Australian Labour Movement, 1850-1907 (Melbourne, 1965) p. 3.
- (2) Ibid, p. 3.
- (3) P. G. McCarthy, 'Labour and the Living Wage 1890-1910', The Australian Journal of Politics and History, Vol. XIII, No. 1 (1967), p. 67.

real wages throughout the 'seventies and the retention of a high plateau of wages during the 'eighties, ... are all indirect indications of a sellers' market for labour." (1)

The salient features of the economy for a developing system of industrial relations was, in the long run, the combination of a major bias in the economy towards unskilled workers and a shortage of labour conducive to successful trade union organization.

(1)

N. G. Butlin, Investment in Australian Economic Development 1861-1900, p. 390.

Evaluation of the pattern of trade union development between 1860-1890 is complex. Even the description of the rate of growth of trade unionism is difficult as there is no comprehensive study available relating to the membership of unions. There are however discernable characteristics in the expansion of unionism. (1) The figures for the formation of trade unions are not very detailed. Bede Nairn, using two major sources - the Minutes of the Trades and Labour Council and the Literary Appendix of the Report of the Royal Commission on Strikes - states that between 1850 and 1880, forty-four trade unions were formed in New South Wales, and of the forty-four unions, twenty-nine were formed in the decade 1870-79. (2) Further, he states,

"In the following decade unionism spread into practically every field of employment in the colony: in 1890 there were nominally 100

- (1) See J. T. Sutcliffe, Trade Unionism in Australia, pp. 76-81, for a full list of the legalisation by various colonies of trade unionism. It may be observed here that the legalisation came some time after the establishment of trade unions - the first three acts were: South Australia, 1876; New South Wales, 1881; and Victoria, 1884.
- (2) N. B. Nairn, 'The Role of the Trades and Labour Council in New South Wales 1871-1891', Historical Studies Australia and New Zealand, Vol. 7, No. 28 p. 432.

unions." (1)

Robin Gollan breaks down the figure of one hundred unions and states sixty were formed between 1880-6, and forty to 1900. (2) He states that Victoria saw a similar expansion of trade unionism, with more unions created in the first half of the decade. (3) Thus in these main colonies the first half of the decade of the eighties was the period of the maximum rate of trade union formation. J. T. Sutcliffe gives a representative list of unions formed during this period and concludes that,

"... the spirit of combination on the part of the workers was general throughout the whole of the colonies." (4)

The expansion of unionism however was made significant by the implications of the fact that even in 1901 there were only 100,000 trade unionists in a work force of over a million and a half. (5)

- (1) Ibid, p. 432.
- (2) Robin Gollan, Radical and Working Class Politics, A Study of Eastern Australia, 1850-1910, (Melbourne, 1966) p. 432.
- (3) Ibid, p. 432.
- (4) J. T. Sutcliffe, A History of Trade Unionism in Australia (Melbourne, 1967), p. 50.
- (5) I. Turner, Industrial Labour and Politics, The Labour Movement in Eastern Australia 1900-1921 (Canberra, 1965), p. 7.

The implications of the possibility of the erosion of unionism by non-unionists was realised with the organization of the unskilled worker. (1)

The 'traditional' discussion of the pattern of trade unions between 1860 and 1890 is misleading. This is because the type of membership is stressed at the expense of the method of trade union activity. In this approach unions are categorized into two major types, i.e. having a membership either of skilled, or semi-skilled and unskilled workers, bearing diametrically opposed characteristics. Historians describe the form of the craft or skilled union with the following series of characteristics,

"The unions were designed to protect the interests of the craft by restricting entry through the apprentice system, by establishing wages and conditions of work appropriate to the craftman's dignity, and by providing financial help in cases of unemployment, sickness or death." (2)

(1) See Page 19.

(2) I. Turner, Industrial Labour and Politics, p. 7. Refer also Churchward (ed.) The Australian Labour Movement 1850-1907, pp. 15-16 and Jean E. O'Connor, 'A Turning Point in Labour History: A Reply to Mrs Phillip', Historical Studies Australia and New Zealand, Vol. 7, No. 16, (1951), p. 357.

While these are the characteristics of the organization of the skilled workers in this period, their engagement in the collective bargaining process is undermined,

"... (with) benefit provisions making them as much benefit societies as trade unions." (1)

or again their motivation,

"They were progenitors of the 8-hour day, inspired more by their fervant belief in self-improvement than by expectation of immediate self-advancement." (2)

The form of the 'new unionism' is differentiated by the membership being unskilled and semi-skilled and not exclusive, and their being less concerned with benefits for members. However the unions are described as having the characteristics of 'collective bargaining' and the 'mass strike' and again it is these characteristics in the methods of this type of union that are misleading. (3) The effect is to deny or undermine the significance of collective bargaining throughout the period and in a sense to miss out on the implications of 'new unionism' in industrial relations.

(1) Jean E. O'Connor, 1890 - A Turning Point in Labour History, Op. cit., p. 357.

(2) I. Turner, Industrial Labour and Politics, p. 7.

(3) Ibid, p. 7.

Concentration on the role of the trade unions in the economic dislocations demonstrates the use of the strike by all unions during the period. While the benefit aspect of the craft unions was important the unions were not primarily friendly societies,

"They were trade societies, trade unions, with their objects industrial." (1)

The first notable industrial struggle, for the eight-hour day, was not achieved without use of the strike-weapon: The Agricultural Implement Makers' Union of Victoria succeeded in securing a reduction of hours from ten to eight (1872) but the wages were lowered, and in 1873 the union entered a strike for higher wages which lasted two months and was successful. (2) By 1871 bricklayers, builders and labourers, and carpenters 'had won' an eight-hour day in New South Wales and in Victoria the stonemasons won an eight-hour day in 1856 and in 1870 it was extended to all government contracts. (3)

- (1) N. B. Nairn, The Role of the Trades and Labour Council in N.S.W., 1871-1891, Op. cit., p. 424.
- (2) J. T. Sutcliffe, Trade Unionism in Australia, p. 54.
- (3) C. M. H. Clark, Select Documents in Australian History 1851-1900 (Sydney, 1968), p. 735.

This initial struggle had widespread ramifications for the developing system of industrial relations. The eight-hour principle had no legal enactment (with the exception of the Victorian legislation covering women and children in factories in 1871 and mineworkers in 1877, and the Western Australian legislation of 1896); it was an industrial agreement between employer and union. There was also an early use of a body representing trade unions on a federated level. In New South Wales the Trades and Labour Council took over leadership of the 1874 Iron Trades strike. The Minutes of the Trades and Labour Council describe how Mr Dixon (Secretary of the Council) met the employers and after the propositions had been submitted,

"... a deputation of the men was introduced; and the employers and (they) discussed the matter over; and after they had all retired, the Chairman and Secretary of both employers and men and Mr Dixon remained and drew up the agreement and signed it." (1)

It was success in negotiating and bargaining that has been seen as an impetus to trade union formation. In this instance of the Iron Trades Strike, Bede Nairn records

(1) N. B. Nairn, 'The Role of the Trades and Labour Council in N.S.W., 1871-1891', Op. cit., p. 426.

that in January 1874 there were twelve unions affiliated to the New South Wales Trades and Labour Council, and twelve months later, in December 1874, there were twenty-five. (1)

The pattern of industrial disputes and settlement between 1875 and 1885 follows the patterns seen in the eight-hour day movement. The motif of this period however was negotiation and co-operation (but within the bounds set by the strike and lock-out limit). The aspect of arbitration in industrial settlements was significant, R. B. Walker states,

"Before the time of the great strike of 1890 arbitration agreements were made voluntarily on an industry-by-industry basis." (2)

Many examples of settlement by arbitration have been recorded. (3) One documented example is the approach by the Victorian Operative Bootmakers' Trade Union to the Bootmanufacturers' Association. It is recorded in the

(1) Ibid, p. 426.

(2) R. B. Walker, 'Australia's Second Arbitration Act', Labour History, No. 19, 1970, p. 18.

(3) See June Phillips, 'The Turning Point of Labour History', Historical Studies Australia and New Zealand, Vol. 7, No. 16, 1951, p. 149 for some examples.

minutes of the Union of 19 February 1883 that on 12 February the committee of the union had submitted the following resolutions to the employers:

- "(1) That the union desire a uniform rate of wages for each class of work throughout the trade and
- (2) That for the purpose of obtaining that end the present representatives shall sit in conference to decide the matter under the Presidency of an independent Chairman, who shall act as Arbitrator in all cases where the votes are equal and whose decision shall be final." (1)

The theme of trades councils acting on behalf of trades unions continued with the use of arbitration. In the strike of the Victorian Wharf Labourer's Union which began on 1 January 1886, a basis was found for arbitration. The arbitrators were selected by the Employers' Union and the Trades Hall Council. (2) The most comprehensive level of trade union organization, the Inter-colonial Trade Union Congresses, reflect the theme of

- (1) Minute Books of the Victorian Operative Bootmakers' Trade Union, 19/2/83; (from R. N. Ebbels (L. G. Churchward ed.) The Australian Labour Movement 1850-1907, p. 83.
- (2) J. T. Sutcliffe, Australian Trade Unionism, p. 60.

voluntary co-operation by means of arbitration. The 4th Intercolonial Trades Union Congress (Adelaide, September 1886) carried a motion by Mr Trenworth (Trades Hall Council, Victoria) urging the colonies to establish boards of conciliation and arbitration. Mr W. A. Robinson (Secretary of the Trades Hall Council of South Australia) seconded him with these words,

"In all trades difficulties the first steps that should be taken were arbitration and conciliation. Strikes were a relic of a barbaric age, and it was time that before they ever entered upon a strike they should think of the other people who would be affected ... Arbitration was growing, and as it grew so would their unions become stronger and more moderate ..." (1)

The maritime strike four years later demonstrated the failure of this optimism for co-operation and of the use of arbitration.

The change from co-operation to the industrial disharmony of the major strikes of 1890-94 was created when a different pattern of unionism, widely termed 'new

(1) Official Report of the 4th Intercolonial Trades Union Congress, Adelaide, September 1886. (From) R. N. Ebbels The Australian Labour Movement 1850-1907, p. 96.

unionism', upset the delicate balance of the domination of the union type, the craft union. The circumstances of the 'new unionism' has an especial significance both for the crisis in industrial relations (1890-4) and for the problems of legislating about arbitration over the next two decades. The primary problem raised during the crisis and worsened by the depression that followed was that of union security.

The centre of the problem of union security was an economic circumstance. The economy was primary and constructive and the 'new unionism' developed in three major areas - the mining, pastoral and transport industries. (1) Hence it was that,

"... without special skills, their members were largely interchangeable and could easily be replaced, so that inter-union co-operation and the ability to exclude non-unionists from employment were more vital to them than to the craft unions." (2)

(1) The major unions formed were the Amalgamated Miners' Association (1874), the Federated Seamen's Union (1876), and the Amalgamated Shearers' Union (1886). The basis of organization was national rather than local or state. Refer to W. G. Spence, Australia's Awakening (Sydney 1909), pp. 18-26, 47-51 for a description of the organizing of the miners and shearers.

(2) L. F. Fitzhardinge, William Morris Hughes, A Political Biography, Vol. I, That Fiery Participle, 1862-1914 (Sydney 1964), p. 20.

The union rules reflect the need to protect the union from encroachment by non-unionists. The Rules of the Amalgamated Miners' Association (1890) stated,

"No member of this Branch shall be allowed to accept any daily or weekly wage below the current rate ruling ... nor shall any member be allowed to work with non-members." (1)

and a similar restriction was included in the General Rules of Amalgamated Shearers' Union of Australasia,

"Any member violating the Union rules by shearing in non-union sheds shall be fined £5 for the first shed (etc) ... Members shearing in more than three non-union sheds to be expelled from the Union." (2)

Thus the characteristic feature of 'new unionism' the ideology can be seen as acting as a cohesive force. The most basic statement, in the context of this ideology, is an appeal to 'mateship',

"Daily, as the various and widespread sections of the human family are being insensibly drawn into closer touch with each other, it

- (1) By-Laws of the UMBERUMBERKA Branch of the Amalgamated Miners' Association, Barner Colonial District No. 3. Revised and adopted, April 15, 1890. Silverton, N.S.W., 1890. (From) R. N. Ebbels, The Australian Labour Movement, p. 105.
- (2) By-Laws of the Amalgamated Shearers' Union of Australasia. (From) Ibid, p. 114.

becomes clearer that men should become co-operators - mates - instead of antagonists. "No man liveth to himself. We are all mutually dependent one upon another." (1)

The 'co-operation' suggested however did not embrace the employer. The co-operation was within the union, and at the expense of the employer,

"Experience has taught us that no great reform can be secured otherwise than by systematic organized effort. Alone we can agitate. Organized we can compel." (2)

(1) Preface to the Rules of the Australian Workers' Union (Sydney, 1894), (from) C. M. H. Clark, Select Documents, p. 743.

(2) Ibid, p. 743.

Between 1890 and 1894 there were a number of serious strikes and lock-outs in the eastern colonies. The key to the situation lies in the Maritime Strike (August to November, 1890) centred mainly in New South Wales but also in Victoria and South Australia. Although there is no need in the context of this discussion to examine fully the wider issues of the strike, clearing up the technicality of the cause of strike is a necessary step to putting it in perspective. (1) N. B. Nairn has concentrated on examining the technicality of the cause of the Maritime Strike in New South Wales. (2) His thesis supports the statement of P. J. Brennan, President of the Trades and Labour Council, to the Royal Commission held to investigate the strike,

"I am under the impression from conversations I have had with pastoralists that the non-union wool question would not have come to a head but for its being connected with the

- (1) See generally Introduction to The Australian Labour Movement 1850-1907 (extracts from contemporary documents selected by R. N. Ebbels); B. Fitzpatrick, Short History of the Australian Labour Movement (Melbourne, 1940); R. A. Gollan, Radical and Working Class Politics in Australia; J. T. Sutcliffe, A History of Trade Unionism in Australia.
- (2) N. B. Nairn, 'The 1890 Maritime Strike in New South Wales', Historical Studies Australia and New Zealand, Vol. 10, No. 37 (1961).

shipping question ... but the officers (marine) came out and precipitated the whole thing." (1)

It appears that he is almost certainly accurate when he states that there was no preconceived aim of 'the annihilation of unionism' on the part of employers and that compared with union organization before the strike, employer organization, on a fully representative scale, was embryonic.

While we cannot fully accept W. G. Spence's view,

"Experience has shown that ever since its establishment the Employers' Union has set itself against conferences with the workers' Unions, and has fought for freedom of contract. It seeks to ignore collective bargaining, and tries to force into practice individualism between employer and employee." (2)

the Maritime Strike enforces the reality of the 'closed shop' issue in two major ways. Firstly that the 'closed shop' issue was important to the Unions involved in the strike,

"... he (Spence) believed that he could manipulate the whole movement to gain 'the closed

(1) Ibid, p. 3.

(2) W. G. Spence, Australia's Awakening (Sydney, 1909), p. 66. This statement is not accurate in the sense that Spence saw this as a preconceived intention of employers before the strike, and the form of the strike as a 'lock-out' (p. 75).

shop' objective of the Shearers' Union in 1890, even after he had been promised this objective by the Pastoralists' Union for 1891." (1)

Spence made an agreement on 12 August with representatives of the Maritime Unions, when it was decided that wool shorn by non-union labour would not be handled by the Wharf Labourers' Union members, and every Maritime Union in New South Wales was pledged to support a general boycott of such wool. (2) The struggle for the 'closed shop' was centred in the Pastoral Industry. Although N. B. Nairn states of Spence's reminiscences,

"... this work is so full of errors as to be a most misleading guide to consideration of any of the events with which it deals ..." (3)

Spence's details of the struggle in this work, including warfare between unionists and non-unionists, and the use of the boycott weapon by pastoralists are I feel, reflective of the nature of a genuine struggle over the 'closed shop' principle. (4)

- (1) N. B. Nairn, 'The 1890 Maritime Strike in New South Wales', Op. cit., p. 3.
- (2) J. T. Sutcliffe, A History of Trade Unionism in Australia, p. 103.
- (3) N. B. Nairn, 'The 1890 Maritime Strike in New South Wales', Op. cit., p. 1.
- (4) Refer W. G. Spence, Australia's Awakening, pp. 55-58.

The second way the Maritime Strike enforces the reality of the 'closed shop' issue, is in terms of its effect. This is the sense of the significance of the strike, as an event which had the effect,

"... to dramatize the conflict between them (capital and labour)." (1)

Specifically it gave,

"... new confidence to the employers, at least in the industries involved." (2)

and encouraged them,

"...to pursue subsequently a very bitter policy towards their workers..." (3)

The employers demonstrated their newly-won position in various ways when dealing with the defeated unionists. A single example of the new relationship is reflected, by this question asked by various establishments in Victoria on application for employment,

"Will you please say if you uphold the principle of freedom of contract, or whether you

(1) L. F. Fitzhardinge, William Morris Hughes, Vol. I, That Fiery Particle, p. 28.

(2) Ibid, p. 28.

(3) N. B. Nairn, 'The Maritime Strike in New South Wales', Op. cit., p. 2.

could only work on strictly union lines?" (1)

The position of trade unionism was further assaulted in defeats in a number of bitter and extensive strikes (in Eastern Australia) in 1891-1894. (2)

Finally, the strike crisis was not simply a temporary defeat in the field of industrial action. It was the simultaneous feature of depression which seriously undermined unionism. The new circumstances are described by Coghlan,

"New South Wales was the chief sufferer from the strike, as its immediate result was to depress industry of every kind. Employment was reduced and wages lowered; large numbers of men in various occupations were thrown out of work, unskilled labourers especially finding it difficult to obtain employment." (3)

There is however (as Coghlan indicates elsewhere), no simple causal connection between the strikes and the

- (1) J. T. Sutcliffe, A History of Trade Unionism in Australia, p. 48. For further examples refer Ibid, pp. 99-101.
- (2) See Introduction by L. G. Churchward, The Australian Labour Movement 1850-1907, pp. 18-20.
- (3) T. A. Coghlan, Labour and Industry in Australia, (London, 1918), Vol. III, p. 1606-7.

financial collapse of 1893. (1) N. G. Butlin indicates that the problem was firstly basic to the economy and secondly long term, in that public capital formation declined from 1891 (recovered briefly in 1901-2) and further stagnated until 1909. (2) The Strike therefore which caused

"... the powerfully renewed hope of the employers that they were at last to be rid of the incubus of unionism." (3)

led into a decade in which economic circumstances were unfavourable to labour organization. The pattern of the decade, P. G. McCarthy reminds us, was one in which

"... trade unions were deprived of their relative power in the collective bargaining process." (4)

- (1) T. A. Coghlan, A Statistical Account of Australia and New Zealand, 1902-3, from J. E. Isaac and G. W. Ford (ed.), Australian Labour Relations Readings, p. 99. See generally for a description of the depression Ibid, pp. 99-100; N. G. Butlin, Investment in Australian Economic Development 1861-1900, pp. 407-451; C. M. H. Clark, Select Documents, pp. 295-314.
- (2) N. G. Butlin, Australian Domestic Product, Investment and Foreign Borrowing 1861-1938/9, Table 270B, pp. 464-5 from P. G. McCarthy, Labour and the Living Wage 1890-1904, Op. cit., p. 67.
- (3) N. B. Nairn, 'The 1890 Maritime Strike in New South Wales', Op. cit., p. 2.
- (4) P. G. McCarthy, Labour and the Living Wage 1890-1910, Op. cit., p. 68.

III PART III THE CREATION OF THE
LABOUR PARTY; THE EXTENSION
OF INDUSTRIAL LEGISLATION

The decade 1891-1901 witnessed an evolution of primary significance in political and industrial developments. The major political event was the foundation of the New South Wales Parliamentary Labour Party (the other colonial Labour Parties) and finally the Federal Labour Party. The major industrial development was the creation of legislation concerning arbitration. Both these events were the result of the Maritime Strike. An analysis of these developments is essential for our purposes. They not only separately form the basis of the crisis over the Conciliation and Arbitration Bill in 1904, but the crisis derives its pattern from the fact that they converge at the point of the Preference Clause. The sense in which they are interrelated was not realised in this decade. That sense is, the significance of the Labour Party legislating to order the status of the trade unions while they remained halves of the structure of the same political movement. In the following brief analysis the particular pattern of industrial legislation over arbitration will be examined first.

The pattern of legislation which developed was neither common to all colonies, nor in similar form. (1) There were two main trends in legislation, that of New South Wales and South Australia, and a different pattern in Victoria. The Victorian system was a type by itself. Its distinctive feature was the Wages Board. The peculiar nature of Victorian legislation is explained partly by its origin. The primary object of Wages Boards was not to forbid strikes and lock-outs, but to suppress sweating. Agitation in the press led to a Parliamentary Commission (1893) on the Factory and Shops Act of 1890. It resulted in a new Factory and Shops Act (1893). This Act passed in a period of acute depression established Wages Boards in six specified industries. The Boards were empowered to fix minimum rates which were enforced by the Minister of Labour through the Chief Inspector of Factories. In 1900 a Commission was appointed to inquire into the workings of the Wages Boards and of legislation of similar States. The Commission reported adversely on

- (1) The following account of the legislation is based on: C. M. H. Clark, Select Documents; R. N. Ebbels, The Australian Labour Movement 1850-1907; R. N. Gilchrest, Bulletins of Indian Industries and Labour: No. 23, Conciliation and Arbitration (India, 1922); J. T. Sutcliffe, A History of Trade Unionism; I. Turner, Industrial Labour and Politics; R. B. Walker, 'Australia's Second Arbitration Act', Labour History, No. 19, 1970.

the Wages Board system and made recommendations on the lines of the New Zealand Arbitration Act, but in spite of this recommendation the Wages Board Act was re-enacted in 1902.

The New South Wales Trades Disputes Conciliation and Arbitration Act (1892) was the direct result of the unrest of 1890-2. The lesson of the Strike as accepted by the Royal Commission was the solution of arbitration and conciliation for problems of industrial strife. The Report of the Royal Commission on Strikes, 1891, recorded,

"... we do not pretend that a State organisation for conciliation and arbitration would, under the existing circumstances, be a perfect cure for all industrial conflicts, we are of the opinion that it would render inestimable service in the right direction, and that its establishment should not be delayed." (1)

The Commission secondly made the necessary distinction between the functions of arbitration and conciliation. The conciliatory agency, it stated, is required to get the parties to a dispute to come to an agreement voluntarily

(1) Report of the Royal Commission on Strikes (1891) from R. N. Ebbels, The Australian Labour Movement 1850-1907, p. 157

(with no opinion on the merits of each side). The function of arbitration is to determine the merits and to give a positive decision to be abided by. (1) Thirdly, the Commission recommended: that boards of conciliation be constituted on an industry-by-industry or dispute-by-dispute basis, with a nucleus of a Chairman (a Government nominee), and two colleagues chosen from 'capital' and 'labour' respectively. These three would also form an arbitration board which could carry out an enquiry at the request of one or both parties to the dispute. There would be no legal compulsion to secure the performance of awards. The Act differed from the Report of the Royal Commission in three respects. The most significant difference and the reason why the Act was generally of little use was that the Council of Arbitration could not hold an enquiry unless both sides had previously agreed to arbitration.

The trend towards arbitration and conciliation, but still on a voluntary basis, was continued until 1900. South Australia passed a Conciliation Act (1904) and New South Wales attempted with the Conciliation and Arbitration Act (1899) to provide for the settlement of trade disputes.

(1) Report of the Royal Commission on Strikes (1891), from C. M. H. Clark, Select Documents, p. 625.

The Act had made further steps in Arbitration; it conferred powers of public enquiry upon certain officials, provided for the compulsion of witnesses and the right of entry into premises for investigation purposes, and made provision for the appointment (on the application of both parties) of an arbitrator. The Act however contained the major 'flaw' of Acts in Australia to this date; it was not compulsory. The parties to a dispute were not compelled to submit their cases to it, and in practice only three cases were submitted under its provisions.

The trend of arbitration which developed in New South Wales led through to the scheme of arbitration contained in the Commonwealth Conciliation and Arbitration Bill. In New South Wales, in 1901 a compulsory measure, the Industrial Arbitration Act, was passed. The chief inspiration of this measure was the New Zealand Compulsory Act, with its apparent success. (1) The significance of the compulsory act of arbitration in relation to the role of unions was stressed by N. G. Wise (Attorney-General

(1) This argument was not accepted without some scepticism by the Legislature; "... the instance of New Zealand ... is not enough to justify us in blindly taking anything upon trust in regard to a measure of this sort ... (she) has been experimenting in this direction for some five or six years, during the whole of which time she has been enjoying singularly prosperous seasons." New South Wales Parliamentary Debates, 1900, Vol. 107, pp. 4809-11 from C. M. H. Clark, Select Documents, p. 639.

in the Government which passed the Act). Wise described to the House the rationale contained in the Bill. The basis of his stand was a vision of 'public' desire for industrial stability. He described the present situation as one where trade unions had 'reached the limits of their beneficial influence'. He therefore postulated that the trade union must be converted into a 'weapon of industrial peace', by

"... obtaining from Parliament the power to make a collective bargain with an employer, which shall not only be binding in honour, but will have behind it a legal sanction ..." (1)

Wise included preference in the Bill as the logical step to this reasoning,

"If one admits that the whole foundation of the Bill rests on the admission that unionism is a necessary protection to the workman, and that the method of unionism is by collective bargaining - then it follows that you cannot have any outside minority of non-unionists always cutting away at it and reducing its terms." (2)

(1) New South Wales Parliamentary Debates, 1900, Vol. 103, p. 641 et. seq. from C. M. H. Clark, Select Documents, p. 630.

(2) Ibid, p. 634.

This was the logic of preference to arbitration in circumstances in which trade unionists could not gain a preference by economic compulsion. (1) It was the logic repeated by the New Zealand Court which decided in 1900 that the Act (1894), although it did not contain a specific clause, nevertheless gave power to the Court to give preference to unionists. (2) It was the logic of preference as stated and accepted by a Liberal Party member. (3) The test in the Commonwealth Conciliation and Arbitration Bill came to rest on the question of whether or not the House would accept such a rationale from a Labour Ministry.

- (1) Such as exists with unskilled workers in circumstances where industries are localised.
- (2) Chief Justice Stout stated in the case of Taylor and Oakley v. Mr Justice Edwards and Others, "It (preference) abrogates the right of workmen and employers to make their own contracts. It in effect, abolishes 'contract' and restores 'status'. The only way the Act can be rendered inoperative is by workmen not associating or not joining any union ..."
from C.P.D. VIII, 2503, quoted by Mr Hughes.
- (3) Section 36 (N.S.W. Act), "The Court ... may ... direct that as between members of an industrial union of employees and other persons offering their labour at the same time, such members shall be employed in preference to such other persons, other things being equal, and appoint a tribunal to finally decide in what cases an employer to whom any such direction applies may employ a person who is not a member of any such union or branch."

As from New South Wales developed the form of arbitration of the Commonwealth Bill, so New South Wales produced the germ of the structure of the Parliamentary Labour Parties. A factor common to both developments is of course the Maritime Strike. Certainly the unions considered the alternative of political representation in the lessons of the defeat,

"Another lesson to be learnt from the Strike is that it has demonstrated the need for Labour establishing itself in the Parliaments of the colonies ... once let Labour be adequately represented in Legislature ... and the cause of unionism is assured..." (1)

While it is reasonable to accept this fact as the major impetus to political representation, orthodox historical opinion generally identifies a 'long-term movement of unions placing greater stress on political action'. (2)

(1) From the Report of the General Secretary to the 5th Conference of the Australasian Shearers' Union, 1891 from R. N. Ebbels, The Australian Labour Movement, p. 153.

(2) See generally Churchward Introduction, R. N. Ebbels, The Australian Labour Movement; N. B. Nairn, 'The Role of the Trades and Labour Council in New South Wales, 1871-1891', Op. cit; J. E. O'Connor, '1890 - A Turning Point in Labour History: A Reply to Mrs Philipps', Op. cit.

This is not the occasion to comment on the wider issue of the establishment of each individual Labour Party. (1) For our purposes the primary question remains to comment on the establishment of attitudes and practices of the developing party. The basic reasoning that prompted the particular party structure is reflected in the words of James Jupp,

"Distrust of politicians was a primary motivation in deserting the liberal-radicals and sending 'Labour men' into the colonial parliaments. Disappointment with the legislative process as a whole, which later encouraged syndicalist attitudes within the unions, was bred in Government reaction to the Maritime and Shearers' Strikes of 1890. It was over twenty years until the Labour representation bodies could bind their parliamentarians effectively. Yet they found this as necessary as had been their initial desertion of the Liberals." (2)

The key factor is of course in the binding of politicians; Labour keeping control over its elected representatives. The relation between industrial and political labour lay in

- (1) See generally V. G. Childe, How Labour Governs, (Melbourne, 1964); R. N. Ebbels, The Australian Labour Movement 1850-1907; J. Jupp, Australian Party Politics; P. G. McCarthy, 'Labour and the Living Wage 1890-1910', Op. cit.; J. T. Sutcliffe, A History of Trade Unionism; I. Turner, Industrial Labour and Politics; R. B. Walker, 'Australia's Second Arbitration Act', Op. cit. This list by no means covers the amount of material available.
- (2) J. Jupp, Australian Party Politics, p. 57.

a desire by the unions to have policy carried into the legislative sphere. Although the formalization of the relationship occurred first in New South Wales it was not the result of the Strike. It occurred only after a division in the party over free trade in 1893. The Labour Electoral League decided to bind its parliamentarians in taking major decisions in Caucus. It was some time before the Electoral Leagues fully asserted their right to instruct Caucus; all it did in 1893 was to demand the 'pledge' for matters,

"... affecting the Labour Party, the fate of the Ministry or calculated to establish a monopoly or confer further privileges on the already privileged classes." (1)

Many parliamentarians including the leader of the Party, George Black, opposed it. Those who did not accept it allied themselves with Reid under the leadership of Cook. With the adoption of a similar form of the pledge in the other colonial Labour Parties, Labour became the first Australian party organized effectively along Caucus lines. This organization necessarily carried into the Commonwealth

(1) Quoted from Ibid, p. 57.

Party.

The decade saw varying opinions with the Labour movement to arbitration and conciliation. The Labour movement did not accept the legal enactment of arbitration as a lesson of the Strike. The platform of the New South Wales Labour Electoral League in 1891 and 1892 made no reference to arbitration and conciliation. There is evidence of a feeling that many hoped, with unionism more extensively federated, for victory through direct confrontation. Wall (Labour) told the New South Wales Legislature in 1902,

"We shall never be in that position (i.e. no strikes) until the trade unions of the colonies unite in one great union, and when no strikes or call-outs will be allowed unless sanctioned by the federal council appointed by the federated unions of the colonies ... what we require is an executive body for the industrial classes, appointed by themselves, unfettered by any laws, and entirely outside the legislature." (1)

R. B. Walker suggests that opinion shifted with the worsening of economic depression and unemployment. (2)
The Australian Workers' Union had included arbitration

(1) Quoted from K. F. Walker, Industrial Relations in Australia (Massachusetts, 1966), p. 8.

(2) R. B. Walker, 'Australia's Second Arbitration Act', *Op. cit.*, p. 21. See page 27, Part II.

as an object in 1894,

"To improve the relations between employers and employees, and to settle disputes by means of conciliation and arbitration." (1)

The relationship between the Labour parties and legislation on arbitration is one generally of support by Labour. (2) I. Turner states that arbitration was argued most fiercely in New South Wales when the Labour parties, with substantial parliamentary representation held the balance of power. While in Victoria the unions were at first satisfied with the Wages Board they came later to favour a Federal Arbitration Act. The Queensland unions wanted arbitration but despite the Lib-Lab. coalition in 1893, had little chance of getting it. (3) However Labour as a whole did not press for compulsory awards until 1898. (4) The character of Labour as described by P. G. McCarthy ensured a support from most

- (1) 'Rules of the Australian Workers' Union', from C. M. H. Clark, Select Documents, p. 742.
- (2) See R. B. Walker, 'Australia's Second Arbitration Act', Op. cit., p. 17 for a summary of arguments.
- (3) I. Turner, Industrial Labour and Politics, p. 35.
- (4) R. B. Walker, 'Australia's Second Arbitration Act', Op. cit., p. 17.

Labour members in the legislature,

"Economic and political conditions mostly dictated the pace and direction of change; labour mostly capitalized on opportunities as they occurred." (1)

There were clear benefits for Labour in the concept of arbitration as described by Wise (note, specifically, Wise's concept of arbitration differs from the Wages Board system by being based on explicit recognition of collective bargaining to protect the 'community' interest),

"The Act applies to and operates upon organised Labour only. The units which it recognised are not individuals, but associations, so that no one can invite its aid for himself alone, but must share with others of his class whatever benefits he may receive." (2) (3)

- (1) P. G. McCarthy, The Harvester Judgment: An Historical Assessment, Vols. I and II (Ph.d thesis held by the Australian National University, p. 201.
- (2) R. B. Wise, 'The Industrial Arbitration Act of New South Wales' (from Attorney-General's files), p. 3.
- (3) The thesis does not extend to discussing a correlation between the establishment of industrial tribunals and the expansion of union numbers. The latest work, by P. G. McCarthy, suggests that union strength between 1890 and 1910, depended more on economic circumstances than on the fact of arbitration. See P. G. McCarthy, 'Labour and the Living Wage 1890-1910', Op. cit.

Yet this duty described so simply in the Constitution was translated into a situation described by Henry Gyles Turner of Victoria,

"No legislation, with the exception of the Tariff, has ever produced anything like the mass of heated discussion. It wrecked three ministries; it embittered the relations of parties in Parliament; it evoked the antagonism of the States..." (1)

The major motif of the debates that is suggested is of conflict between parties.

The major conflict of the Bill did not blossom until consideration of Clause 48, although the background to our problem includes the resignation of a Liberal member from his party and then of the Liberal party itself. There were difficulties in the initial readings of the Bill; a fortnight after the leave to introduce the Bill had been granted, Kingston, the Liberal member responsible for drafting the Bill resigned (21 June 1903). He did so because the Government refused to yield to his demand to include a clause relating to

(1) H. G. Turner, The First Decade of the Australian Commonwealth: A Chronicle of Contemporary Politics 1901-1910 (Melbourne, 1911), p. 73.

shipping. (1) The charge of the Bill passed to A. Deakin (Prime Minister), who moved the second reading on 30 July 1903. Deakin's speech stressed the possibility of the Bill in terms of the significance of social legislation,

"No measure ever submitted to any legislature offers greater prospects of the establishment of social justice and of the removal of inequalities than those which are based upon the principle of conciliation and arbitration." (2)

There was little conflict over the general principle of the Bill, as described by Deakin. The exception was Mr Bruce Smith (Conservative) who denounced the Bill in terms of interference and regulation of daily conduct. (3)

There was a degree of fault-finding however. Some speakers were doubtful of the present necessity, some that the Bill aimed at 'poaching' on State rights and some that it did not go far enough.

- (1) Kingston claimed that an award under the Arbitration Court (to be constituted by the Bill) should not only be what is called a 'common rule', i.e. a rule which would bind persons similarly placed, who were not parties to the cause before the Court, but he desired to make it apply to all British and foreign shipping engaged in the coastal trade.
- (2) Commonwealth Parliamentary Debates (hereafter C.P.D.), XV, 2826, 30 July 1903.
- (3) Ibid, 3448.

The major source of conflict was not centred on the third clause even though it led to the resignation of Deakin and the Liberal Party on 22 April 1904. The third clause was introduced on the 8 September 1903 and it provided that the Bill should not include the Public Servants of the Commonwealth or a State. Mr A. Fisher (Labour) moved the deletion of the word 'not'; he was rejected by a majority of seven. Mr McDonald (Labour) moved that the following words be added to the clause,

"Except that it shall apply to the railway servants of any state." (1)

The Liberals were adamant that no Public Servants be included. The crisis was not resolved. The remainder of the second session of the first parliament was concerned with administrative work. By the Second Parliament, Labour reaffirmed its decision to insist at least on the inclusion of railway servants. (2) On 21 March 1904 Fisher moved an amendment to include the Public Service of the States and Commonwealth in the Bill.

(1) Labour was preoccupied with this particular question because of the bitter feeling aroused in Victoria by a recent unsuccessful strike of railway servants.

(2) Argus, 9 March 1904.

Deakin was adamant,

"Nothing can be gained, commensurate with the inquiry that would be done if we allowed the operations of one of these Governments to infringe upon those of another ..." (1)

and on the acceptance of Fisher's amendment resigned on 27 April 1904. He insisted that Mr Watson take office. (2)

The problem of the implications of including preference to unionists rests on a clear understanding of the implications of preference to unionists. The problem was at the broadest level that of defining the status and role of trade unions in relation to the workings of the Act. The decision to rest 'the whole foundation of the Bill' on the trade unions was not universally desired. A Memorandum as to Industrial Conciliation and Arbitration to be laid before the Federal Government on behalf of Employers in Victoria on the 24th June, 1901, stated,

"The Wages Board System of Victoria is entirely separated from trades unionism ... Employers are satisfied that in this particular the Wages Board System in Victoria is infinitely to be preferred to the unionist principles of

(1) C.P.D. XVIII, 787, 21 March 1904.

(2) The crisis was resolved under Labour by the amendment that Railway Servants be included under the Act, being accepted by the House.

the New Zealand Arbitration Law. They cannot accept an Arbitration Court Bill at any price unless it is entirely separated from unionism." (1)

Clause 48 completed the synthesis of the status of trade unions and the workings of arbitration,

"The Court by its award, or by order made on the application of any party to the proceedings before it, at any time in the period during which the award is binding may -

- (a) ... (refers to the minimum wage)
- (b) direct that as between members of organizations of employers or employees and other persons offering or desiring service or employment at the same time, preference will be given to such members, other things being equal; and
- (c) appoint a tribunal to finally decide in what cases an employer or employee to whom any such direction applies may employ or be employed by a person who is not a member of any such organization." (2)

The principle of possible preference for some unions evoked a complex range of attitudes about the nature and status of unions both in debate and in the daily press. The debates in a sense evolved. They began with an initial questioning by some members of the justi-

- (1) A Memorandum as to Industrial Conciliation and Arbitration to be laid before the Federal Government on behalf of Employers in Victoria on the 24th June, 1901, p. 6.
(The Memorandum is to be found in the Attorney General's file on the Conciliation and Arbitration Bill, 1904.)
- (2) C.P.D. VIII, 2493, 21 June 1904.

fication for preference,

"I believe in the principle of equal liberty and justice; and non-unionists, who constitute the vast majority of workers in Australia, have, at least, as much right to be considered as have members of unions." (1)

The problem of giving existing organizations a protected status had however implications beyond the workings of the Act. The discussion of Clause 48 although technically on the problem of the preference principle did also see an evolution whereby members saw the unions as an inherent part of the Labour Party,

"This is a matter of a creating of constituencies." (2)(3)

They attempted therefore (in Clause 62) to confine the role of the trade unions to the operation of the Act demanding that they become economic institutions with no political status. (4) The Daily Telegraph viewed this evolution as one of a gradual finding out of the implic-

- (1) C.P.D. VIII, 2499, 21 June.
- (2) Ibid, 2451.
- (3) Clause 48 is specifically discussed in Sections (ii), (iii), (iv) of Part IV.
- (4) Clause 62 is discussed in Section (v) of Part IV.

ations of the Bill,

"Under the specious guise of a measure for preserving the industrial peace where large public interests were affected, it first presented itself to them as a laudable attempt at practical humanitarian legislation ... But as the purposes of the bill became more clearly understood it is found to be not nearly so innocent as represented, and to carry under the cloak of industrial peace a concealed weapon of political war." (1)

The debates on the preference clause ultimately evolved into the pure form of a political struggle, whereby Labour attempted to recommit Clause 48 in circumstances in which the merits of preference could not be discussed. (2)

(ii) "We are attempting by using the machinery of unions and by taking advantage of the efforts of unionists to do something that will benefit not only unionists but every person engaged in an industry."

Carpenter (Labour), C.P.D. VIII, 2508.

Labour members saw the trade unions as the natural bodies to function within the terms of the Act.

(1) Daily Telegraph (hereafter D.T.), 1 July 1904.

(2) See Section (vi) of Part IV.

They attempted throughout the debates to show (in Hughes' phrase) how,

"... preference to unionists, is of the very essence and nature of such a piece of legislation." (1)

William Morris Hughes (Minister for External Affairs) began the defence of Labour support for preference. On 21 June 1904, following the introduction of Clause 48, the circumstances of the debates were determined by W. Johnson's (Conservative) motion,

"That paragraph b and c be left out." (2)

Such paragraphs, he stated, infringed the 'right of free choice' and denied the 'right of individual liberty'. (3) Hughes drew the attention of the Legislature to the position of the unions in relation to arbitration, specifically their loss of earlier privileges and the necessity of preference to compensate. The particular loss of privileges Hughes refers to is the power of striking and refusing to work with non-unionists; both are removed by the Bill. The failure to provide for preference would not only mean that the Bill 'will be the worst (thing)

(1) C.P.D. VIII, 2502, 21 June.

(2) Ibid, 2497. See page 56.

(3) Ibid, 2497.

in the world for unions', because if they defeat an employer in a case he could thereafter refuse to employ unionists, but for this reason the Act will fail to operate. The unions caught in this situation would not have the incentive to bring a case before the Court. Hughes reminded members of the terrors of the 1890 industrial conflict and he stated, (they)

"... propose to take away the solitary motive (preference) for putting this measure when it becomes law into force." (1)

A similar approach in debate was made by W. G. Spence (President of the Australian Workers' Union). His aim,

"I wish to put the position fairly, and to justify the action of the Government in retaining this clause." (2)

was an attempt to relate preference to the difficulty of existing conditions. The problem that he highlighted was the 'black-list' system which he stated was carried on by the Pastoralists' Union. Spence postulated that

(1) Ibid, 2615, 23 June 1904.

(2) Ibid, 2615.

by numbering references for future employers with a number that appeared on a master list of known unionists, the next employer would, solely on this basis, refuse the shearer work. The outline of this particular problem was Spence's contribution in an attempt to have members appreciate the union difficulty,

"I am speaking from a full knowledge of the way in which the boycott is worked against unionists. This is our justification for asking for the enactment of this clause." (1)

There were two major alternatives suggested by opposition members. They were firstly by-passing the trade unions and secondly changing the existing form. A scheme of by-passing the trade unions was made by D. Thompson. He stated that while Watson (Prime Minister) thinks it is impractical to use all employers and that trade unions were a necessary substitute,

"I am pointing out that ... it is possible to accomplish what is desired more readily and easily by recognising all the employees in an industry as an organization on the one side and all the employers on the other." (2)

Labour members stressed the importance of the trade unions in this sort of legislation because of their

(1) Ibid, 2619.

(2) Ibid, 2545, 22 June.

cohesion. Watson stated,

"... that such legislation ... could not have been as successful as it has been, except for the fact that it is not founded on a skeleton organisation or a chance working together of a number of disunited individuals, but that unions exist which are made responsible under the law - unions of men combined in one body, by ties of sentiment and loyalty one to another." (1)

Samual Mauger affirmed that it was his experience of the Factory Acts in Victoria that they are most effective when backed by "strong, active, vigilant trade unions." (2) This proposal to by-pass unions, which Spence called 'compulsory unionism' never became a serious issue in the debates. (3) It remained secondary to the major problem of all debates, dispute with the existing form of unions. E. Lonsdale introduced the problem; he would not, he stated, object to preference,

"... if the organizations were to be kept entirely free from all political matters." (4)

Labour's response was that men cannot be compelled to

(1) Ibid, 2570.

(2) Ibid, 2577.

(3) Ibid, 2620, 23 June 1904.

(4) Ibid, 2518, 21 June 1904.

vote in any particular direction (1), while opposition members pointed to instances where union rules were political and where money was given by unions to a political organization. (2) The major discussion on this question, the separating of unions organized for industrial purposes and unions organized for political purposes, which grew of the discussion on Clause 48, was not fully examined until discussion on Clause 62, beginning 28 June 1904.

The primary question of a general as compared to a modified preference was the first major defeat for the Labour Party. On the third (consecutive) day of debate on the Preferential Clause, 23 June, J. W. McCay moved that the following proviso be added to paragraph b,

"With the consent of such organizations and persons as in the opinion of the court represent a majority of those to be affected by the award and who have interests in common with the party or parties applying for the direction..." (3)

This amendment was accepted on the following day by a majority of 27 to 22. Watson felt that this amendment

(1) Ibid, 2519.

(2) Ibid, 2518; 2629, 23 June 1904.

(3) Ibid, 2635.

jeopardised preference; he asked the Chairman to report progress and told the House,

"I feel that this (the amendment) cuts right into the heart of this provision." (1)

Opinion within the whole labour movement endorsed the importance of preference to the movement. The Bendigo branch of the Political Labour League was recorded in the Age as stating 'that such injustice', the deprivation or refusal of employment to unionists,

"can only be prevented or minimised by preference being given to unionists." (2)

The resolution of one union accorded to Watson's decision over modification of preference. The New South Wales Typographical Association stated,

"... that the Federal Arbitration Bill as at present amended, - especially by the restrictions placed on the preference of employment for unionists, - is destructive to industrial and political progress, and that it is desirable to lose the Bill rather than accept it in its present form." (3)

(1) Ibid, 2690.

(2) Age, 28 June 1904.

(3) New South Wales Typographical Association (est. 1880), 3 December 1904.

Watson decided to leave the amendment and attempt to ask the Committee to reconsider the position at the recommitment stage.

(iii) "It appears to me that, instead of discussing the paragraph before the Committee with a view to improving the Bill, many honourable members have used it for party political purposes."

Chanter, C.P.D. VIII, 2638.

This statement by Chanter is naive in view of the complete schism within the Legislature in attitudes to arbitration and conciliation. Few of the Conservative Party admitted to having no sympathy with the aim of the Bill although Johnson stated,

"I confess that I have no particular faith in the efficacy of legislation of this kind as a means of securing any permanent improvement in industrial conditions ..." (1)

However no Conservative member was a 'believer in trades unionism'; they did not believe in the efficacy of unions and therefore lacked any common ground on the question of preference with the Labour Party. (2)

(1) C.P.D. VIII, 2498, 21 June.

(2) Ibid, 2515 (Wilks).

The Conservatives attempted to undermine the principle of preference to unionists. They followed the concept that preference was contrary to personal liberty (Johnson's speech moving his amendment to Clause 48) with the specific reason that preference is geared against the non-unionist in getting and keeping employment,

"... a principle which strikes at the individual liberty of the subject, gives a wicked and unjust preference to one class, makes it more difficult for another class to earn its living, and is not founded on justice or equity." (1)

Members postulated that in the practical circumstance the principle of preference was unjust. Willis stated that preference meant,

"... unless men join unions, the bread will be taken out of the mouths of their children, and under such tyranny, they must inevitably yield." (2)

Johnson further accused unions of having a tendency to be exclusive. He referred to a circular of the Federated Sawmill and Timberyards Employees' Association to its members,

"(2) That all members owing more than two quarters be struck off the books, and henceforth treated as non-unionists." (3)

(1) Ibid, 2564, 22 June.

(2) Ibid, 2628, 23 June.

(3) Ibid, 2500, 2501, 21 June.

and also the case before the New South Wales Arbitration Court in which the Sydney Wharf Labourers' Union refused to admit three waterside workers to membership. (1)

Conservative members denounced the circumstances of this kind of legislation. They accused Labour Party members and others of the 'Ministerial side' as, "class representatives, who advocate class legislation." (2) They viewed the basis and the beginning of the threat of the 'class element' in politics in the circumstances of new unionism. W. H. Kelly stated he did not object to 'genuine' trade unionism which attempted to abolish sweating and gain fair terms for employees but,

"... there is another form of unionism of much later growth than genuine trade unionism, which makes for industrial warfare, not for industrial peace ..." (3)

This point of view reflects the impact on political thinking of the special circumstances of the new 'unionism', particularly the effect of the cohesive ideology and

(1) Ibid, 2501. Labour admitted the validity of this second criticism and Hughes told the House that Watson proposed to insert a clause providing that the rules of unions be submitted to the Registrar, and be of such a character as would permit the entrance of any qualified person.

(2) Ibid, 2627.

(3) Ibid, 2517.

response to the Maritime Strike which gave the unions a political aura. It was in these terms that the Conservative members viewed the whole structure of the Labour movement, and specifically the intentions of the Labour Party.

Dugald Thompson asked the Labour Party if in the circumstances,

"... would the Government support the proposal to force workmen to join a declared active political body to whose principles they were absolutely opposed?" (1)

In the circumstances the Conservative Party supported every amendment to limit the operation of preference or to change the nature of unionism. They never however managed to gain the support of the Liberals for an extreme amendment; such as that by Johnson directing that paragraphs b and c be omitted, which rephrased was defeated by 11 votes. (2)

There was also a similar Conservative assault on the House by means of petitions. The four petitions received were each from employers' associations. They

(1) Ibid, 2541.

(2) Ibid, 2541. Johnson amended his amendment, and although it had the same effect it was confined to the omission of the words "direct that" at the beginning of paragraph b. The object he stated was 'to allow a test vote to be taken upon the question of omitting the whole of paragraphs b and c.'

generally exhibited the same theme as that from,

"... that in the interest of employees and employers in the producing, trading, industrial, and commercial world, the House will not pass the C. and A. Bill." (1)

The other three petitions asked respectively: for a Royal Commission on the effects of arbitration and conciliation, that the House did not pass the Bill, and denounced the Bill from the point of view of those who did not want to become unionists. (2) The petitions have been included as part of the Conservative assessment of unionism and conciliation and arbitration. While the data used in this dissertation does not extend to establishing a correlation between the Conservative Party and the employers of Australia, it seems reasonable to assume however that the party (at least in this type of legislation) reflected the views of the business community.

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- (1) Commonwealth Parliamentary Papers (Journals of the Senate: Votes and Proceedings of the House of Representatives; Reports, Accounts and Papers), Vol. I, Melbourne, p. 41.
(Petition from Brisbane Chamber of Manufacturers).
- (2) Ibid, p. 253 (from Conference of Master Bakers of Australia), p. 26 (from the Central Council of Employers of Australia), p. 39 (from the Pastoralists Federal Council).

- (iv) "... but when it splits upon this point must you not take sides with one wing or the other, your vote will almost certainly determine the result ..."

Wise to Deakin, 24 May 1904,
Deakin Correspondence.

The Liberal Party lacked the essential homogeneity of the Labour Party, and probably of the Conservatives as well. With phrases such as the following by Watson,

"I am inclined to doubt that statement. I have had a very long experience ... of trade unions."

and W. H. Carpenter,

"... speaking as a practical unionist..."

Labour members were explicit about the basis of their understanding of the problem of preference. (1) The Liberals however were deeply divided, and they formed the key to the political situation. In the months following Deakin's resignation, both Conservatives and Labour vied for an alliance with the Liberals. G. H. Reid attempted a coalition with Deakin which was not accepted. Reid's attitude and actions during this period were closely followed by the four major newspapers. They recorded both his efforts at coalition and failing this

(1) Ibid, 2570, 2508.

his frequently expected 'no-confidence' motion. (1) The Federal Labour Party Caucus Minutes of May 1904 record a motion (from Carpenter) that,

"he (the Chairman) be empowered to negotiate towards an alliance." (2)

The Caucus Meeting of 26 May records that the motion was carried 24-8. (3) Although Watson wrote to Deakin offering alliance and setting out the conditions, the offer was not accepted,

"At a meeting of the Liberal Party today it was resolved that present circumstances do not render advisable either of the proposed alliances or conditions.

(Signed) A. Deakin" (4)

The Morning Post Letters record the hesitation of Deakin in this matter,

"... since in either case it must see old colleagues and supporters driven into direct

- (1) See Age, 19 April, 25 May, 2 June, 4 June; Argus, 20 May, 24 May, 4 June, 8 June; D.T., 10 May, 20 May, 23 May, 25 May; Sydney Morning Herald (hereafter S.M.H.), 10 May, 11 May, 23 May, 6 June.
- (2) Minutes of the Federal Parliamentary Labour Party (hereafter Caucus Minutes), 17 May 1904.
- (3) Caucus Minutes, 26 May 1904.
- (4) Ibid, 26 May 1904.

opposition." (1)

The Liberal attitude towards the Bill was also significant because it remained essentially the product of the Liberal administration,

"The bill is not that of this Ministry at all, but of the late one. It does not represent the ideas of the Labour Party on the subject of arbitration." (2)

However the Labour Party omitted nine clauses, inserted three new ones and altered others; Clause 48 was not affected.

The Liberals in debate exhibited a characteristic predicted by the Sydney Morning Herald, at the end of May,

"... the two wings of the Deakin party will gradually drift away from each other until they definitely range themselves upon the side of the Opposition or the Government." (3)

A core of Liberals demanded a modification of the Labour position. They were responsible for the amendments

- (1) Morning Post (London) [24 May], 23 July 1904, from J. A. La Nauze, Alfred Deakin a Biography Vol. 2 (Melbourne, 1965), p. 371.
- (2) S.M.H., 30 May 1904.
- (3) Ibid, 30 May.

which thrice defeated Labour. These Liberals were of the opinion of Ewing,

"... I feel that the general opinion of arbitration is a good one. That the principle is a sound one is incontrovertible; but many of us feel that the Government has gone altogether too far in this proposal." (1)

They subsequently assaulted Labour's position from two directions. P. Glynn stated on the first day of debate on the question (i.e. 21 June) that he intended to submit an amendment limiting the power of preference. He postulated that 'the Clause ... is not essential to the Bill', because with the minimum wage provision non-unionists could not undermine the union position by working for less than the minimum wage or more than the maximum hours. (2) Other Liberals did not however accept such an extreme point of view but rather followed up the question, which Glynn had earlier thrown out,

"But why allow the question to be imported into every dispute of which that is not the subject?" (3)

Hence McCay forwarded his amendment limiting preference

(1) C.P.D. VIII, 2547, 22 June.

(2) Ibid, 2573.

(3) Ibid, 2513, 21 June.

to a situation where a majority wanted it. (1)

The second modification concerned the implications of giving political institutions a favoured economic circumstance;

"I should certainly not have so much objection to it if the organizations were to be kept entirely free from all political matters." (2)

On this point many Liberals were completely sympathetic to the Conservatives although they denied hostility to unionism per se,

"I deny absolutely,"

stated McCay,

"... the statement that any man who criticises this clause adversely is therefore hostile to trades unionism." (3)

They similarly attacked preference from the viewpoint of: unfairness to the majority of workers (non-unionists), and personal liberty. (4)

(1) See page 53.

(2) C.P.D. VIII, 2518. (Lonsdale).

(3) Ibid, 2631, 23 June.

(4) Ibid, 2631, 2573.

They did not avoid mentioning what was in fact the major issue underlying all debate; not the adjustment of relations among workers but the wider implication,

"Mr Hutchinson - Unionists would not do all
the work.
Mr Ewing - No, they can only do all the
legislating." (1)

Not all Liberals, in the words of one Liberal,
were,

"... prepared to seize upon this directory
provision (preference) to destroy the measure,"

but some like Chanter continued,

"... to support the Bill to which I have
previously given my support." (2)

Two members who supported the Labour position, Isaac Isaacs and Sir John Quick did so for reasons that were not political and hence not related to party manoeuvring. They accorded to a description included in a letter from Wise to Deakin; in one wing of the party he recognised

(1) Ibid, 2547, 22 June.

(2) Ibid, 2684, 24 June.

the 'legal Liberal'. (1) They professed to consider primarily the rationale of the whole Bill, that for the

"... interest of the community at large ... industrial strife should be ended." (2)

They were asserting the goal of "the greatest good for the greatest number". (3) Their attitude to unionism was determined by its being secondary to the primary end of the Bill itself, which said Isaac Isaacs,

"... is built upon the structure of organization." (4)

In dealing with the problem of personal freedom they maintained a legalistic approach, seeing that the trusting to the Arbitration Court, was in accord with the trusting of 'our lives' to the Court generally,

"... if we trust the Court with our lives and our liberties and this is part of the life and liberty of the industrial community." (5)

- (1) Wise to A. Deakin, 2 June 1904, Deakin Correspondence. The term 'legal Liberal' I am using in the sense of being concerned with issues as they affect legislation not in being members of the legal profession which included Glynn, McCay and Deakin.
- (2) C.P.D. VIII, 2641.
- (3) Ibid, 2663.
- (4) Ibid, 2642.
- (5) Ibid, 2641.

The question of 'political unionism' was perceived by the 'legal Liberal' in an interesting way. Sir John Quick's grasp of the implications of the 'new unionism' was expressed in terms of historical inevitability in line with the development of unions up to 1904,

"I do not see how unions could be prevented from becoming political organizations. We must recognise the irresistible pressure and tendency of the times in the direction of trade union organizations. That tendency is an irresistible force, and the only course is to regulate that force in proper and safe channels." (1)

This statement constitutes a reminder of the possible gap between actual circumstance and legislation. The political manoeuvring about the principle of the Bill and the facts of that principle was a phenomena separate from the fact of the actual organization of industrial power. (2)

Deakin in speaking about the problems related to Clause 48 attempted also to maintain a legal approach. In coping with the implications of unionism, he differentiated between organisations (the term used in the Bill) and trade unions. He admitted however that the Clause would almost certainly apply to trade unions. (3)

- (1) Ibid, 2666.
- (2) See Conclusion Part V.
- (3) C.P.D. VIII, 2511.

However in the practical situation he maintained,

"... we have nothing to do with unions; no man can be forced into a union under this Bill." (1)

He trusted also to the Court's exercise of power,

"... when equity and good conscience demand ..." (2)

Deakin's position in relation to the problem of the two wings of his party was extremely difficult. His personal correspondence reflects an assault from two directions. Wise wrote to Deakin concerned primarily with the problem of legislation,

"I am sorry to see how very loosely the ideas which underlie the principle of industrial arbitration are held, even by friends of the measure." (3)

McCay's limitation, he stated, will,

"make the power to grant preference quite illusionary." (4)

There was a confusion of issues however whereby attitudes towards parties other than the Liberal Party did not

(1) Ibid, 2513.

(2) Ibid, 2513.

(3) Wise to A. Deakin, 29 June 1904, Deakin Correspondence.

(4) Ibid, undated.

necessarily correlate with attitudes about the problem of arbitration. (1) T. R. Bavin (judge in Victoria) wrote to Deakin stating that,

"... under the circumstances (he would) rather see Watson stay where he is ..." (2)

Yet on 15 August, he admitted,

"I dislike very strongly their proposal of preference to unionists..,"

but he remained concerned with the party situation afraid that Reid, "could come out on top." (3) J. T. Carruthers (Premier of New South Wales) wrote to Deakin unequivocally "opposed to Caucus in politics". (4)

- (1) This statement has reference to the division in the House on the fiscal question. There is no space in this dissertation to include assessment of the free trade/protectionist division. See generally A. Deakin, Federated Australia (Melbourne 1968); R. Gollan, Radical and Working Class Politics; La Nauze, Alfred Deakin, Vols I and II; I. Turner, Industrial Labour and Politics.
- (2) T. R. Bavin to A. Deakin, 9 June 1904, Deakin Correspondence.
- (3) Ibid, 15 August 1904.
- (4) J. T. Carruthers to A. Deakin, 1 May 1904, Deakin Correspondence.

He was prepared to sacrifice Reid for this aim,

"... if you fall into line, not with Reid, but with the fight for a Liberal versus a Labour-Socialist Policy, then our State party will go with the Federal Party too." (1)

The test case for Deakin and the Liberals came a few days later.

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- (v) "Some years ago the trade unions were told that their members had no right to strike; that a strike was practically an act of civil war, which brought disaster upon the whole community. Our proper cause it was said, was to endeavour to redress our grievances by constitution of methods, by sending men into Parliament to represent our views. But directly the trades unions became political organizations, they encountered the enmity of the capitalists and their satellites..."

Mr McDonald, C.P.D. XIII, 2805.

The debates on Clause 48 had led (in a phrase used by the Age) to the examination of preference as a "two edges sword". (2) The first 'edge' as it were, the problem of 'civil disabilities upon men outside' had, for the time being, been shelved. (3) The second 'edge',

(1) Ibid, 28 June 1904.

(2) Age, 27 June 1904.

(3) D.T., 24 June 1904; see page 55 for suspension of Clause 48 by recommittal.

the political rights of unions, was isolated on 28 June. Glynn moved an amendment to Clause 62 which was concerned with defining the conditions under which organizations could be registered with the Arbitration and Conciliation Court. His amendment drastically modified the form of the organizations,

"Provided that no association shall be registered

1. Unless it has been formed, and exists solely for the purposes of this Act; or
2. Whose funds may be applied to purposes other than the purposes of this Act; or
3. Except in respect of the district within which the place of employment is situate." (1)

Glynn a few minutes later asked the Committee to deal with the amendment, paragraph by paragraph, so that only paragraph one stood before the House. The amendment combined the question of the political status of unions and their role in relation to the Act.

Glynn's amendment was of enormous significance in this the second stage, as it were, of debate about preference, because it was the mould in which debate was formed. While the Argus called the amendment,

"... a valuable test of motives,"

(1) C.P.D. VIII, 2723, 28 June.

it led away from legislative problems of providing for conciliation and arbitration and instead substituted a confrontation about the nature of the Labour Party. (1) The problem of preference had formally become the problem of the wider significance, the Argus stated,

"The purpose of the political leaders of the Labour Party undoubtedly is to use legislation as a means of compulsarily increasing the membership of the unions, but for political purposes mainly." (2)

Thus while the amendment appeared simply to raise and make a test case over the question of the political rights of unions in relation to the Act, in reality it raised the question of Government by Caucus. In the terms of the phrasing of the amendment there was no compromise possible.

Outside the House, two major sources of opinion reflected the lack of possible compromise on this question; they were the daily press and the trade unions themselves. The trade unions generally reflected an abhorrence of such a principle. The Labourers' Protective Society (Sydney)

(1) Argus, 30 June 1904.

(2) Ibid, 22 June 1904.

conveyed to Caucus the resolution,

"That it is desirable rather to lose the Federal Arbitration Bill than to accept an Act which refused preference to Unionists in cases where unions have political objects." (1)

The Operative Stone Masons' Society (Woolachia, N.S.W.) endorsed this opinion to Caucus, that it was better to lose the Bill than accept one which refused preference where unions have political objects. (2) The Hairdressers' and Wigmakers' Employees' Union (Sydney) was perhaps understating the importance of political status to unions when it resolved,

"That any Arbitration Act containing a clause not giving preference to unions whose rules or decisions deal with politics is detrimental to the best interests of trade unionism." (3)

The press on the other hand appears to have welcomed the isolation of the crisis for in some cases it was used to climax a campaign of hostility about Labour rule. The campaign over the Labour administration

- (1) Caucus Minutes, 30 November 1904.
- (2) Ibid, 30 November 1904. Although these resolutions apply to a later amendment which more specifically connected political status of unions and preference I think they reflected the general pressure from unions to preserve their political status at all costs (even to the loss of the Bill).
- (3) Ibid, 30 November 1904.

and all that this implied, had come mainly from the Argus, but the Sydney Morning Herald and the Daily Telegraph had occasionally taken a similar stand. On the broadest level the Argus denounced the structure of the Labour movement,

"These office-bearers have become a class by themselves, and by co-operating together they have converted unionism into a political machine, which among other things returns union office-bearers to Parliament." (1)

It denounced also the application of this 'party structure' to legislation. Such a structure it postulated would not care about the broad facts or the general bearing of law on the community but provide solely,

"... that it harmonises with 'Caucus' doctrines and favours the single class for which he (Watson) acts and to which he owes his political being?" (2)

The Argus thus endorsed specifically Glynn's amendment on the basis of hostility to Labour Party,

"The Committee seems, fortunately, to be fully alive to this effort to make use of the

(1) Argus, 25 June.

(2) Ibid, 22 June.

Parliamentary machinery for class ends." (1)

The Sydney Morning Herald attacked the 'class spirit' in the Administration. (2) It denounced generally the present Labour rule as one which began 'with profuse promises of moderation' but on the basis of the Arbitration Bill it claimed,

"... that Labour in politics knows neither moderation nor compromise." (3)

The Daily Telegraph also used the demand for preference to attack Labour by accusations which debased Labour's motives,

"It has been explained scores of times by the labor leagues as that of subordinating all national concerns to the interests of a class, and using politics and principles merely as a means of aggrandising at everybody's expense, the limited section of electors comprised in the ranks of trade unionism." (4)

(The Age it may be noted never became embroiled in this kind of denunciation of Labour rule, attempting to report

- (1) Ibid, 29 June 1904. See also Argus, 30 June, 6 July 1904.
- (2) S.M.H., 20 June 1904.
- (3) Ibid, 6 July.
- (4) Ibid, 19 May.

debates and members' opinions in a neutral fashion.) (1)

The major feature of the debates in the House itself was similarly the isolation of two major points of view. The Conservative members attempted on the strength of Glynn's amendment to again remove the basis of the act from the trade unions. Kelly described a situation in which,

"... the court is to supersede the unions in all their functions, with the exception of the voluntary function usually connected with a benefit society." (2)

The Conservatives were of course not simply taking an opportunity to again undermine unionism, not simply balking at giving the trades unions "... a legal status and special privileges..." (3) They saw in the preference principle of "... a trades union Government", not an innocent act but,

"... the Government fully realize that within a very short time the Bill would create a

- (1) See generally Age, 25 May, 26 May, 27 June, 6 July 1904.
- (2) C.P.D. VIII, 2801, 29 June.
- (3) Ibid, 2725, 28 June.

great political machine ..." (1)

They therefore talked of,

"... the secret motive behind the Bill ..." (2)

Labour members reiterated their earlier position that in order that the Bill might work it was necessary to give preference to the trade unions in the form in which they were already existing. It was Spence who defended the correlation between giving preference to existing organizations and the successful workings of arbitration. (3) He stated that the amendment would bring about a "revolution" which "would destroy the trade union movement" as it is generally known. (4) The destruction of the unions would be through the loss of their independence,

"If it be carried we shall probably find an organization which is only a shadow of the employers' union behind it forestalling the legitimate trades union." (5)

Thus the effect would be to create 'bogus organizations',

(1) Ibid, 2807, 29 June.

(2) Ibid, 2805.

(3) Ibid, 2743, 28 June.

(4) Ibid, 2742.

(5) Ibid, 2825, 29 June.

who would take the place of the trade unions and shut them out of the courts. Labour, it must be noted, attempted to meet the objections of the House within the limits of retaining present organizations,

"The existing unions can do all that is necessary to carry into effect the provisions of the Bill ... and therefore I ask why should fresh organizations be required?" (1)

They repeatedly condemned the amendment. Hughes called it 'impractical' and involving 'a departure from the whole spirit of the measure'. (2) Spence stated if carried, the original basis of the Bill would be so destroyed '... the whole measure would have to be recast'. (3) He could see no basis for the separation of industrial and political matters. He pointed out to the House that the unions had led active campaigns for the eight-hour day and mining safety regulations; both industrial matters but when remedied it was by measures put through the State Parliaments. Thomas told the House,

"I would rather have no Arbitration Bill at all than not see effect given to that principle." (4)

- (1) Ibid, 2833.
- (2) Ibid, 2836.
- (3) Ibid, 2743, 28 June.
- (4) Ibid, 2833, 29 June.

Poynton asked,

"... is not the real reason underlying the Bill to be found in the fact that a Labour Ministry is in power?" (1)

and expressed the Labour mistrust of the Conservative's motives. The 'test of motives' led to a deadlock in which each party distrusted the other and in which positive steps needed to be taken to solve the specific legislative problem.

In the circumstances it was left to the Liberals to, if possible, suggest a compromise. The amendment by the Liberal Party member, Glynn, had been followed by another from a Liberal member. On 29 June McCay attempted to modify the amendment by pointing out that under Glynn's amendment, all organizations required to be formed only for the act. This, he stated, in preventing an organization (employer or employee) in existence from registering under the act, was a little extreme. (2) It was a modification that was not a political compromise,

(1) Ibid, 2911.

(2) Ibid, 2848. That the amendment be amended by the insertion after the words 'Provided that', line 1, of the following words, 'no such organization shall be entitled to submit any industrial dispute to the court when, and so long as, its rules or other binding decisions permit the application of its funds to political purposes, or require its members to do anything of a political nature'.

however, it still separated entirely the industrial function and political nature of trade unions. Crouch and McLean supported this move and reiterated that,

"This proposal (of preference) is the most serious attempt at class domination that has ever come under my observation ..." (1)

clearly supporting the Conservatives.

The problem of a compromise was complex. Watson stated the Labour compromise,

"I am prepared to consent to an amendment which will have the effect of preventing preference being given to unions, if they have in their rules anything in relation to politics which is likely to detrimentally affect any persons who may desire to join them." (2)

Groom, a Liberal sympathetic to the Labour aim in arbitration, attempted to make a compromise,

"... we must look not merely at the objects of the Bill, but at its plan." (3)

- (1) Ibid, 2929.
- (2) C.P.D., 3028, 6 July.
- (3) Ibid, 2920

Groom's amendment attempted to use the objection to the political status of unions as a qualification relating solely to the preferential principle. The effect of his amendment he said would be not to prohibit any organization with political objects from submitting a dispute to the Court but to prevent such an organization from obtaining a preference. (1) This amendment was further amended by McCay which caused the amendment to now read,

"No such organization shall be entitled to any declaration of preference by, or to submit any industrial dispute to the Court, when and so long as its rules or other binding decisions permit the application of its funds to political purposes, or require its members to do anything of a political character." (2)

Labour accepted Groom's amendment but not McCay's. (3)

The Liberal Party throughout the process of

- (1) Ibid, 2922. Groom's amendment read, "That the amendment of the amendment be amended by the insertion after the word 'entitled', line 4, of the words 'any declaration of preference by', with the proviso that later he would move the omission of the words 'submit any industrial dispute to'."
- (2) Ibid, 3072. The amendment was, "That Mr Groom's amendment be amended by the insertion after the word 'by', line 4, of the words 'or to'."
- (3) Watson's statement, S.M.H., 25 July 1904.

the crisis on preference was being torn apart. (1) Some Liberals in the situation appear to have 'crossed the floor'. The key figures are Sir John Quick and Deakin himself. Sir John Quick is recorded as stating,

"... what I do object to is a trades union which may be a trades union merely in name, and in reality a huge political machine..." (2)

Deakin stated that the bodies created by the Bill and part of the machinery of the Court ought similarly, "to be put far above party politics and their influence." (3) He denied however that he had altered his convictions. He referred to his Introductory Speech in which he saw the evolution of trade unions from orientation to selfish interests (i.e. beneficial solely to their members) to a situation "as aids to the Court ..." and "... also in the public interest ..." (4) His silence, he stated, was the "... silence of innocence;" he had never contemplated unions as "party political bodies". (5) Yet it

(1) See J. A. La Nauze, Alfred Deakin A Biography Vol. 2, p. 368. "In effect four groups in Parliament - Labour, Reid's free traders, and the two wings of the Liberal protectionists."

(2) C.P.D., 2913, 5 July.

(3) Ibid, 2979.

(4) Ibid, 2979.

(5) Ibid, 2979.

appears at this time Deakin made a clear move that demonstrated his sympathies were not with a Labour Government. (1) A meeting of a new Liberal organization was held at Ballarat; its programme was of that nature which embraced opposition to 'government by Caucus'. Deakin did not join it but agreed to move the resolution approving its formation. While doing this he made an extensive criticism of the Labour party; control by 'extra-Parliamentary groups', use of the pledge, and he asked the organization to fight 'the machine'. (2)

Poynton (Labour) denounced this pattern of Liberal attitudes,

"I do not think that in Australian politics another instance can be found of ex-minister after ex-minister voting against their own Bill." (3)

However in this amendment Labour escaped serious risk of defeat by one vote. By the vote of the following Liberals: Groom, Sir Langdon Bonython, Cook, Sir William Lyne, Isaacs,

- (1) See J. A. La Nauze, Alfred Deakin A Biography, Vol. 2, p. 373 for La Nauze's opinion that if Deakin remained in politics he must sooner or later find himself in opposition to Labour.
- (2) Ibid, 374. (Note this stand by Deakin led to a complete break with David Syme and the Age because Syme's primary interest was fiscal and he objected to the protectionist Liberals moving towards Reid's 'free trade' party.)
- (3) C.P.D., 2911, 5 July.

Mauger and Storer, the Government secured the passage of an amendment which modified McCay's proposal to deprive unions registered under the Arbitration Bill of their political complexion.

(vi) "If that one vote be secured the Government will weather the crisis."

Age, 28 July 1904.

Examination of Clause 62 is necessary to an understanding of the form of the Preference Crisis. The topic of Clause 62 was in reality however only a subsidiary of the main problem of the preference principle. If preference was given to unionists it was unlikely that their form could be drastically modified beyond qualifications relating to restriction of members and unacceptable political goals. These Labour had already agreed to. (1) Thus it was that the recommittal of Clause 48 was the vital issue to Labour,

"The Government takes its stand definitely on

(1) C.P.D., 2723, 28 June. Labour was aware that the Court would, as in the case of the New South Wales Arbitration Court, refuse preference under these conditions.

the principle of minority rule and differential rights." (1)

The debates on the resumed on 10 August. Mr Watson moved,

"That the Bill be now recommitted to a Committee of the whole House for the reconsideration of clauses 4, 37, 38, 39, 46, 48, 52, 67, 68 and (etc.)."

McCay quickly made preference the major issue; he moved,

"That clause 48 be omitted from the clauses proposed to be recommitted." (2)

Again it was the form of the amendment that was so significant. Groom called it "a want of confidence motion in disguise". (3) It created a situation in which Labour was trapped, unable to discuss the problem of preference. They were tied to a machinery clause and prevented from discussing anything but the principle of the recommitment of Clause 48.

Labour and some Liberals denounced the amendment. Sir William Lyne (Liberal) stated, "... I repeat

(1) D.T., 25 July 1904.

(2) C.P.D. VIII, 4155, 10 August. (It led to three consecutive days of debate).

(3) Ibid, 4194.

that the Amendment now before the House has been trickily submitted." (1) The Labour Government however expressed a certain pride in, as it were, being martyred for Clause 48. "Who?" asked Maloney, is responsible for delay in passing the Bill,

"The columns of Hansard will show that the fault does not rest with the Ministerial supporters." (2)

Higgins also was clear on the validity of the stand being made by Labour,

"When the people are asking for an Arbitration Bill which will work, we shall not give them a Bill which will not work." (3)

Isaac's plea that the Government,

"... should have a full and fair opportunity to place their proposals before honourable members." (4)

was never realized. On 12 August the Watson Government was defeated by 2 votes (36-34) and, having been refused a dissolution by the Governor General, resigned. While attitudes to preference and the significance of prefer-

(1) Ibid, 4175, 11 August.

(2) Ibid, 4187.

(3) Ibid, 4185.

(4) Lonsdale, Deakin, Sir John Quick and W. H. Willis all supported the motion.

ence to the Labour movement had been clearly thrashed out over the eight days of debate on Clause 48 and Clause 62, it had all too clearly become a weapon with which to defeat Labour. Some, like Reid, had used the Arbitration Bill purely with a view to office. Reid supported Deakin's opposition to include the public service of the Commonwealth and State in the Bill, but afterwards, on Watson taking office, supported every attempt to cut down the effect of the vital clauses, while Sydney Smith (Reid's whip) both voted to put Watson in and then on every division to put him out. (1) The Liberal Party however held the responsibility of the crisis in two senses. The first was the importance of the radical Liberals to the Labour position,

"The government might have survived longer if a few more members of his (Deakin's) own divided party had joined with radicals who were already supporting it ..." (2)

The second reason was an identifiable move by one wing of the Liberals towards Reid's party. This was the

- (1) See Age, 22 June 1904 for a denunciation of Reid's tactics.
- (2) J. A. La Nauze, Alfred Deakin A Biography, p. 372.

accusation made by Labour over the problem of recommitment,

"... the action of honourable members of the opposition is prompted by a desire to place certain of their members upon the Treasury benches." (1)

(1) C.P.D., 2158. There seems to be some validity in this statement. The next ministry was the Reid-McLean Ministry which included J. W. McCay as Minister for Defence while McLean was Minister for Trade and Customs.

III PART V CONCLUSION

It seems unnecessary to review the themes dealt with in the main body of the dissertation. Instead, the Conclusion will take the form of a postscript on the two problems thrown up by the political crisis. The first is McCay's amendment of Clause 48 of the removal of a natural preference in the hands of the Court. The second is the idea inherent in Glynn's amendment of Clause 62, that the institutions themselves could be reformed in the 'image' of legislators.

The fortunes of preference were vastly different when removed from the furore of political debate and placed in the cold light of Court awards. The clause of Preference by majority demand stayed in the Act for six years. The clause was amended by providing that,

"... whenever in the opinion of the Court it is necessary for the prevention or settlement of the industrial dispute, or for the maintenance of industrial peace, or for the welfare of society to direct that preference shall be given to members of organizations ... the Court shall so direct." (1)

(1) Quoted from J. T. Sutcliffe, A History of Trade Unionism, p. 236.

This amendment did not lead to wholesale granting of preference. Henry Bournes Higgins, President of the Court of Conciliation and Arbitration from 1907-1921, only granted preference once, in 1912. This was in the case of the Queensland Tramway Company. Higgins generally was aware of the difficulties non-preference presented for unions,

"It is, indeed, very trying for men who pay full dues to a legitimate union to work side by side with men who do not ..." (1)

His general outlook however, specifically his belief in the efficacy of the minimum wage, determined his attitude to preference,

"The absolute power of choice (between applicants for employment) is one of the recommendations of the minimum wage system, from the employer's point of view - he can select the best men available when he has to pay a certain rate." (2)

The principle of preference as tested by this case was subsequently squashed by the High Court.

(1) H. B. Higgins, A New Province for Law and Order (Sydney, 1922), p. 17.

(2) Ibid, p. 16.

If Labour had lost its preference by 1910, so had the Conservative force lost its proviso controlling the political status of unions. The principal Act contained the proviso that no organization whose rules permitted of an application of its funds to political purposes or required its members to do anything of a political character could apply for or oppose an award giving preference. In the *Australian Workers' Union v. the Pastoralists' Federal Council of Australia*, Mr Justice O'Connor refused to award preference because the rules of the applicant union allowed the application of its funds to political purposes. In 1910 the Act was amended by striking out the proviso.

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IV SELECT BIBLIOGRAPHY

Note: The unpublished sources have been used in Part IV of the thesis. For Parts II and II published editions of contemporary documents have proved adequate.

1. Manuscript Sources

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The FISHER PAPERS, the private papers of Andrew Fisher, are held by the National Library of Australia. The political articles, debates and speeches of 1904 contain a useful commentary of events.

The DIARY of PATRICK McMAHON GLYNN is a recent acquisition of the National Library of Australia. Although not referred to directly, it provides invaluable comment, in Glynn's opinion, of individual members and events.

The HIGGINS PAPERS are the personal papers of Henry Bournes Higgins. The material referred to was the correspondence of 1903-4. The papers are held by the National Library of Australia.

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