A VIEW OF HUMAN RIGHTS IN CANADA FROM THE HISTORICAL PERSPECTIVE OF AN INDIVIDUAL CAREER

STEPHANIE BANGARTH

Dr. Stephanie Bangarth is a Professor of History at King's University College at Western University. Her research encompasses the history of human rights advocacy in Canada and the United States, the immigrant experience and immigration policies in North America, and the history of Canadian social movements. She is the author of the book *Voices Raised in Protest: Defending North American Citizens of Japanese Ancestry, 1942–1949*. Dr. Bangarth has served as book review editor with the online Canadian history hub H-Canada and is a member of the executive committee of the Middle Atlantic & New England Council for Canadian Studies.

The development of a rights culture is a hallmark development of the 20th century. Some scholars of human rights place the rights revolution firmly in the 1970s. Such an approach ignores the long historical path that the campaigns by rights activists and architects have undertaken. Moreover, the rights revolution in Canada cannot properly be understood without an examination of how rights were interpreted and challenged by individual Canadians.

This paper will examine how one individual forwarded and complicated the rights revolution in Canada in the areas of labour, entrenched rights legislation, and refugee policy. The life and career of F. Andrew Brewin (1907–1983), a Canadian lawyer, politician and activist, reveals some socio-political events that are important to 20th-century Canadian human rights history. In his capacities as lawyer and politician, Brewin can be viewed both as inside state actor and outside

activist, moving between both venues used most often for social change in democratic nations. Through biography, this study will focus on evidence that complicates the lines between state and non-state actors. Notwithstanding principled objectors, the question of whether to work within or beyond Canadian political institutions is often one of access. Canadian activists between 1930 and 1980 accepted government positions believing that work within the political system was an effective means of reform, and certainly on human rights issues. At a time when Canadian governments engineered and administered new programs addressing many aspects of the citizen's life, activism and government employment were the natural response for those hoping to influence policy debates. Furthermore, in these capacities Brewin had the opportunity to mobilize a variety of resources that are central to the success and the impact of any social movement. According to Eduardo Canel (1992), these resources include money, organization and labour, as well as such non-material resources as "respectability," loyalty, and legitimacy.[1] How this one individual, Andrew Brewin, carried on the rights revolution in the spirit of the UDHR is a story worth telling.

LABOUR RIGHTS

The 1944 Saskatchewan *Trade Union Act* was one of the political Left's earliest legal accomplishments in the realm of broad-based worker rights to self-determination. As Laurel Sefton MacDowell has demonstrated, one of the most dramatic changes to occur over the course of the Second World War was the growth of the organized labour movement. Conflict between labour, industry, and government over wage controls and working conditions, as well as the inadequacy of the existing collective bargaining legislation, resulted in unprecedented levels of industrial conflict. By 1942, the federal Co-operative Commonwealth Federation (forerunner of today's New Democratic Party) had adopted a clear set of priorities for labour. When the CCF under T. C. "Tommy" Douglas won the Saskatchewan provincial election in June 1944, a flurry of new labour legislation was introduced in the assembly that fall, the result of a pre-election promise of a new deal for labour. The CCF introduced the *Trade Union Act*, which made collective bargaining mandatory and the government extended the rights of civil servants to join unions. The act was one of the first to grant the central parts of the modern labour relations system — exclusivity, mandatory recognition, bargaining in good faith, and protections against unfair labour practices. An independent Labour Relations Board consisting of members representing employers and employees and a non-aligned chair administered this new system. While there have been some amendments to the *Trade Union Act*, the basic structure has remained the same. The act itself was described by Walter Reuther, noted American labour leader, as "the most progressive piece of labour legislation on the continent."[2]

To help facilitate his government's labour program, Douglas brought in a number of CCF labour

1 Eduardo Canel, "Democratization and the Decline of Urban Social Movements in Uruguay: A Political-Institutional Account." in Arturo Escobar and Sonia Alvarez (eds.) *New Social Movements in Latin America: Identity, Strategy and Democracy* (Boulder: Westview Press, 1992): 276–290.

2 Library and Archives Canada, F. Andrew Brewin Fonds, MG32 C26, vol. 7, file 27. Letter, Brewin to A. D. Cherniak, March 4, 1949.

specialists, including F. R. Scott, David Lewis (then-CCF National Secretary) and labour lawyer Andrew Brewin who worked with government staff. Brewin, however, is generally acknowledged as being responsible for drafting the new *Trade Union Act*, referred to in one source as the "Magna Carta for Saskatchewan labour."[3] One of the main complications, however, was pre-existing federal legislation Order-in-Council P.C. 1003, the Wartime Labour Relations Regulations, adopted by the Liberal government of William Lyon Mackenzie King on February 17, 1944. In this case, the federal government exercised its wartime emergency powers granted under the *War Measures Act* to legislate in spheres normally under provincial jurisdiction. Thus, the government of Saskatchewan had to negotiate with the federal government. Brewin had a major role to play in this, accompanying Saskatchewan Minister of Labour C. C. Williams to meetings with Humphrey Mitchell, the federal Minister of Labour, in their discussions on the nature of the province's proposed labour legislation. Brewin, along with Scott and Lewis, also met with organized labour, such as the Canadian Congress of Labour, via its president, Aaron Mosher, a long-standing supporter of collective bargaining rights.

It was not long before the basic principles of the *Trade Union Act* were tested in Saskatchewan. At issue was the dismissal of six employees from the John East Iron Works in Saskatoon for their involvement in union activity, which the United Steelworkers of America brought to the attention of the Labour Relations Board in June 1947. The Board ordered the reinstatement of the affected employees with compensation for lost wages, whereupon the employer decided to appeal to the Saskatchewan Court of Appeal for, among other concerns, a judicial review of the Board's orders, arguing the Board breached constitutional boundaries and encroached on the authority of the superior courts in the matter. While the Court of Appeal ultimately ruled that section 5(e) of the act was ultra vires because it conferred upon the Labour Relations Board judicial powers in the realm of employee hiring and termination — powers that are exercised by the superior, district and county courts — it did regard the issues raised by the case to be of such public importance that it granted the Labour Relations Board appeal to the Judicial Committee of the Privy Council.

The *John East Iron Works* case would become an important case in the history of Canadian judicial review, but more broadly it now speaks to the issue of collective bargaining as a human right, an idea which was reviewed by the Supreme Court of Canada a few years ago. At the time, the success of the Saskatchewan CCF government with respect to its labour rights agenda spoke clearly to the broader, national CCF vision of "an active role for government" with "human rights legislation and labor legislation encouraging the expansion of unions" as David Goutor has noted.[4] This is not to say that Brewin had in mind the exclusive issue of human rights when drafting his defence of the Board, for he saw that success in the Supreme Court would only come on jurisdictional matters. Yet despite the restrictive nature of the legal argument, Brewin

3 Thomas H. MacLeod and Ian MacLeod, *Tommy Douglas: The Road to Jerusalem* (Edmonton: Hurtig Publishers, 1987): 157.

4 David Goutor, "A Different Perspective on the 'Labor Rights as Human Rights' Debate: Organized Labor and Human Rights Activism in Canada, 1939–1952," *Labor Studies Journal* 36 (2011):415.

played a facilitative role in the formation of a connection between the protection of human rights and social and economic rights by the state.

THE BILL OF RIGHTS

Frank Scott once remarked that "constitutionally speaking, the 1950s was predominantly the decade of human rights." Scott was referring to a spate of cases that would become famous for their articulation of a constitutional theory known as the "implied bill of rights."[5] Brewin was a strong advocate throughout his legal and his political career for a Bill of Rights that would be entrenched in the constitution and played a central role in the articulation of the "implied bill of rights" principle. The Committee for a Bill of Rights (CBR) used the example of the wartime treatment of Japanese Canadians in connection with the wider issue of the passage of a Canadian bill of rights. In building upon the success of the campaign to end deportations, Canadian advocates began to forward the idea that, considering events at home and abroad, it was necessary to demonstrate clearly to all Canadians the urgency of a "basic law which recognizes human personality and the right to freedom under the law of every Canadian irrespective of race." The enshrining of a bill of rights in the Constitution was a popular idea among advocates in postwar Canada and even received serious attention in Parliament and in the Senate.

Brewin drafted a proposal for an amendment to the BNA Act [1867] that would prohibit the federal and provincial governments from enacting legislation that would infringe upon certain civil rights, including freedom of religion, freedom of speech and religion, and the right to lawful assembly, among others. Three years later, the CBR would again pressure the Liberal government of Louis St. Laurent, with an appeal even more rooted in international concepts of human rights. But despite the clear hypocrisy of having Canada as a signatory to the UDHR, the federal government refused to move on a constitutionally entrenched bill of rights. As Carmela Patrias has noted, the Liberals of the day were hesitant in supporting a national bill of rights for fear that state action on political rights would lead to state action on social rights and the welfare state.[6]

Diefenbaker's arrival to the prime minister's office in 1957 challenged him with the task of obtaining consent from provincial premiers such as Quebec's Maurice Duplessis to achieve a constitutionally entrenched rights guarantee. Without such cooperation he fell back to the defence that a federal parliamentary statute, rather than a constitutional amendment, could provide adequate and effective protection of Canadians' rights. This argument was rejected by constitutional scholars like Frank Scott, Bora Laskin, and Brewin, who correctly anticipated the limited effectiveness of Diefenbaker's Bill of Rights. It represented, as Lambertson has suggested, half a loaf; but it also represented the conclusion of a major struggle for the emerging human rights community in Canada.[7]

5 Frank R. Scott, "Expanding Concepts of Human Rights," *Essays on the Constitution: Aspects of Canadian Law and Politics* (Toronto: UTP, 1977):353.

6 Carmela Patrias, "Socialists, Jews, and the 1947 Saskatchewan Bill of Rights," *Canadian Historical Review* 87, no. 2 (June 2006): 269.

7 Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930–1960*, (Toronto: UTP: 2005): 370.

THE RIGHTS OF REFUGEES

In 1973, more than 7,000 Chilean and other Latin American refugees were admitted to Canada after the violent overthrow of Salvador Allende's democratically elected Socialist–Communist government. Supporters of the Allende regime fled the oppression directed against them by Chile's new military ruler, General Augusto Pinochet. When Argentina faced a military *coup d'etat* in March 1976, an event that marked the beginning of Argentina's now famous, 'Dirty Wars' of 1976 to 1983, a second wave of Chilean refugees sought to come to Canada.

In the aftermath of the 1973 *coup d'etat*, members of the Protestant and Catholic Churches of Canada called on the Canadian government to denounce the human rights abuses and grant asylum to Chilean refugees located both inside Chile and in neighbouring Argentina. Robert Andras, the Minister of Immigration and External Affairs, remained reluctant to do so. On the advice of Canadian Ambassador to Chile, Andrew Ross, the Canadian government recognized the Pinochet junta on September 29, 1973, on the ground that it was the only authority in the country. This decision was not well received by refugee advocates, as Andrew Thompson has noted.[8] Many, including the churches, questioned whether the Canadian government was displeased to see the Allende government fall. Andras feared that among the refugees were terrorists, communists and other subversives. Only after a chorus of disapproval from various social justice groups, along with three parliamentarians (Brewin, David MacDonald, Louis Duclos) did the Canadian government re-evaluate its position and begin the process by which Canada would take in more than 4,500 Chilean refugees by the end of 1976.

For their part, the three MPs recommended that standards for the definition and admission of refugees be clearly set out in legislation or in explicit regulations. Along with their proposal that a separate and suitable application form for refugees be prepared, Brewin, MacDonald and Duclos recommended that all UN-accredited refugees be considered as refugees for the purposes of Canadian immigration. While Canada accepted the United Nation's definition of a refugee at the time of the report's publication in November 1976, it did not accept the UN determination or assessment of who is a bona fide refugee. Indeed, Canadian immigration officers were known to reject a high number of refugees registered by the UNHCR. Brewin would use this information in recommending numerous amendments to the proposed refugee policy being formed at this time via the Sub-Committee on Immigration. The year 1978 then, marked the first time an Immigration Act included a humanitarian category for refugees needing protection and resettlement. It also established the *Private Sponsorship of Refugees Program*, which allowed Canadians to be involved in the resettlement of refugees. A noted improvement, reflective of the recommendations from Brewin, MacDonald and Duclos, was that they were not required to be outside the country when making their claim.

At the same time as the refugee crisis was being investigated, Brewin, MacDonald and Duclos also

8 Andrew Thompson, *In Defense of Principles: NGOs and Human Rights in Canada* (Vancouver: UBC Press, 2010): 22.

detailed human rights violations, such as the use of torture and death squads in the search for political adversaries on the left. They even linked the restoration of human rights as a pre-condition for the granting of loans and capital from Canada, or the rest of the investing international community. In the 1970s, the issue was with Noranda Mines in Chile and Canadian bank loans to that country, which the churches via the Taskforce on the Churches and Corporate Responsibility and Amnesty International continued to protest. This led to another outcome of this visit — Brewin's attempt to pass a bill on the issue of fair trade and human rights. In 1977 and then in 1978, Bill C-371 and 272 respectively, a private member's bill titled "An Act to prohibit aid to foreign countries that consistently violate human rights," was Brewin's attempt to have principles of human rights recognized in Canadian trade operations. The context of the bill was almost entirely based on the observations he and his colleagues made during their trip to South America in 1976. His effort failed, as the bill died on the floor of the House of Commons, voted down by the majority Liberals. He did, however, follow through on his promise to withdraw all his personal accounts from the Canadian Imperial Bank of Commerce upon learning of a $210-million loan to the government of Chile.

In delving into the past, this study has demonstrated the importance of individual activism and the manner in which movement politics is vital alongside electoral politics. It sheds light on the way individual agency contributed to the history of Canadian human rights, especially since so many actions live or die by the enthusiasm and involvement of key leaders. While governments, international organizations, and NGOs play essential roles in human rights advocacy, individual activists can shape a movement. F. Andrew Brewin's career dedication and grassroots activism helped to drive positive change and held accountable those responsible for human rights violations.