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VOICES UNITED? THE HOUSE OF COMMONS' ROLE IN THE CREATION OF THE UNITED CHURCH OF CANADA

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ABSTRACT

The United Church of Canada was created by an Act of Canadian Parliament in 1924, uniting the Methodist, Presbyterian, and Congregationalist Churches in Canada. This paper examines the confluence of religion, politics, and law that made it a forum for debate on the relationship between Church and State in Canada. A significant minority of the Presbyterian Church was opposed to the union and members of the House of Commons were concerned that both procedural and substantive fairness be met before assenting to the union. The merger of religious groups, rather than social or economic organizations, infused the process with tension surrounding freedom of conscience in religious matters, and the role of the State in matters of ecclesiastical concern. This paper also looks at the ways in which the debate reflected the changing face of Canada in the 1920s, by examining Parliamentarians' positions on the representation of women, the position of minorities, the need for religious freedom, the struggle for democracy, and the desire for progress.

Tempora mutantur, nos et mutamur in illis
(The times are changed and we are changed in them)

Mr. Lewis, MP Swift Current
Address to the House of Commons
June 26, 1924

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On April 5, 1939 an amendment to the *Act incorporating the United Church of Canada* (hereinafter the *United Church of Canada Act*) was passed, returning the name “The Presbyterian Church in Canada” to a group of anti-Unionists who had maintained the Presbyterian Church after it had officially entered into the United Church of Canada in 1925: this was the culmination of a decades-long battle.¹ The *United Church of Canada Act* was, on its face, a simple piece of legislation submitted as a private member’s bill to the House of Commons to incorporate three religious bodies, the Methodist, Presbyterian, and Congregationalist Churches in Canada; but it became a debate on the nature of religious freedom in Canada. The relationship between church and state is not well defined in Canada, as it is in the United States where there is a clear and vigilant separation, or in England, where the Church of England is an established institution with close state ties.² The introduction of the legislation, further complicated by the internal schism dividing the Presbyterian Church in Canada, forced a serious consideration of the role of government in matters of ecclesiastical concern. While historians of religion, both Presbyterian and Methodist, have written about the church union movement from the context of the respective churches, there has been little comment on the legal and legislative struggle beyond a purely chronological approach.³ This was not the first piece of legislation incorporating a religious body in Canada; what made it such a unique experience in Canadian legal history?

¹ In *The Resistance to Church Union In Canada, 1904-1939* (Vancouver: University of British Columbia Press, 1985), N. Keith Clifford extends the conclusion of the church union conflict from the traditional coming into force of the *United Church Act* in 1925 to the final amendment, which laid to rest one of the most strenuous objections of the dissenters: their loss of the name “The Presbyterian Church in Canada”.

² For a more in depth discussion of the separation of church and state in the United States, see *Religion, Politics and The Law: Commentaries and Controversies* (Belmont, CL: Wadsworth Publishing Co., 1996). For a brief history of the intimate connection of church and state in Europe, see “A Brief Historical Overview of Theories About the Relationship of Church and State” in M.H. Ogilvie, *Religious Institutions and the Law in Canada* (Scarborough: Thomson Canada Ltd., 1996).

³ For a Methodist perspective on church union, see “Methodism and the Formation of the United Church of Canada” in Neil Semple’s *The Lord’s Dominion: The History of Canadian Methodism* (Kingston: McGill-Queen’s University Press, 1996). Keith Clifford’s *The Resistance to Church Union In Canada* provides a detailed examination of the Presbyterian anti-Unionist movement’s response. Gershom Mason’s *The Legislative Struggle for Church Union* (Toronto: The Ryerson Press, 1956) is a first person account of the legislative strategy and chronology.

James Gardiner, Minister of Highways for Saskatchewan in 1924, wrote to the federal Liberal Minister of Agriculture W.R. Motherwell in January, 1924, "I had not thought of comparing the present Bill with other religious Bills that have gone through the House." He provided a list of similar legislation that had been passed in Saskatchewan, including Acts to incorporate *The House of Jacob (Beth Yakov)* (1915), *The Seventh Day Adventists* (1915) and *The Ursuline Sisters* (1922-23).⁴ Nor was church union an innovative concept, following on the union of Presbyterians in 1875 and Methodists in 1874 and 1884.⁵ Legally, the *United Church of Canada Act* was distinct in that it incorporated as Schedule "A" the Basis of Union agreed upon by the three denominations, which set out, among other things, the Doctrine of the Church and its articles of faith.⁶ This union was interdenominational. Further distinguishing it from previous unions of religious organizations in Canada, a significant minority of Presbyterian Church members were against it. This forced Parliament to take a new and different perspective when the *United Church of Canada Act* came before it in May, 1924; one that raised serious questions regarding the role of the state in determining ecclesiastical matters. Through a thematic analysis of the House of Commons debates on the proposed legislation, we see members of Parliament attempting to define more clearly the precise relationship between church and state in Canada. Their primary question: where was the line between assistance and interference, between Parliamentary duty and Parliament exceeding its jurisdiction?

The union of the Presbyterian Church in 1875 and the Methodist Church unions in 1874 and 1884 were the precursors to a broader, ecumenical union. The late nineteenth century saw the development of unified Christian organizations, many of which sprung from the social gospel movement of the era. The temperance movement, YMCA, and various youth organizations were established to "manifest and strengthen Christian unity."⁷ Missionary societies from the various churches also began to collaborate. The Methodist General Conference of 1894

⁴ United Church/Victoria University Archives, Church Union Collection 1925, Law and Legislation, Series II [henceforth UCA] Box 6, File 99, W.R. Motherwell Papers, 1924 (Jan-Mar).

⁵ Neil Semple, *The Lord's Dominion: The History of Canadian Methodism* (Kingston: McGill-Queen's University Press, 1996) at 417.

⁶ *The United Church of Canada Act*, S.C. 1924, c. 100.

⁷ Semple, *supra* note 5 at 417.

formally proposed the idea of federal union between various denominations,⁸ and a decade later, in April 1904, committees from the Presbyterian, Congregational, and Methodist Churches initiated formal discussions on the issue.

The reasons advanced to support church union were varied, and reflected values from the spiritual to the pragmatic. For many, disunity was associated with impiety: organic union thus became an opportunity to “answer Christ’s own prayer ‘that they all may be one’.”⁹ The missionary work undertaken by the Presbyterians and Methodists, both at home and abroad, was suffering from a lack of funds and competing agendas. The 1901 census showed significant growth in the number of Roman Catholics in the population,¹⁰ and gave rise to Protestant concerns that if new immigrants arriving in the Canadian West were not greeted by a united Protestant front, they would forever be lost to the ever-larger Roman Catholic Church. By 1923 twelve hundred pastoral charges had local unions between negotiating churches,¹¹ most of which were in the West or in rural communities. Economic concerns made union a very attractive proposition: amalgamating institutional infrastructure would make it better and more efficient.¹² Union made it possible for small towns to have at least one viable Protestant church. Regardless of what motivated individuals, the three uniting bodies all agreed “the function of the United Church was to be a holy instrument for the construction of the Kingdom of God on earth.”¹³

While a significant minority of the Presbyterian Church was opposed to organic union, as set forth in the Basis of Union first drafted in 1907, there were those who would have entertained a federal or cooperative union.¹⁴ A key concern of the Presbyterian minority was the loss of the name “The Presbyterian Church in Canada” and the concomitant loss of its distinct identity: they wanted to remain members of the church of

⁸ McNeill, John Thomas, *The Presbyterian Church in Canada, 1875-1925* (Toronto: General Board, Presbyterian Church in Canada, 1925) at 250.

⁹ Semple, *supra* note 5 at 423.

¹⁰ Semple, *supra* note 5 at 390.

¹¹ Smith, Neil G. et al. *A Short History of the Presbyterian Church in Canada* (Toronto: Presbyterian Publications, 1966) at 83.

¹² Semple, *supra* note 5 at 425.

¹³ Semple, *supra* note 5 at 422.

¹⁴ Smith, *supra* note 11 at 77.

their ancestors. The focus of their resistance was the preservation of the existing church. They maintained that in 1905 the General Assembly of the Presbyterian Church promised it would not proceed into union without the consent of the entire membership, and the decision for union made in 1925 was far from unanimous.¹⁵ Major votes on the issue of union had been taken in 1911 and again in 1915, and it was on the strength of the 1915 vote that the Presbyterian Church sought to enter union in 1924. The Presbyterian Church Association was formed to lobby against union and believed that the numbers had changed significantly in their favour in the intervening decade. They argued strenuously for one final vote which would provide a better picture of the membership's opinion immediately preceding the tabling of the legislation; the Presbyterian General Assembly refused. In sharp contrast to this campaign to prevent church union in the Presbyterian community, neither the Methodists nor the Congregationalists had any visible or organized opposition to the movement.¹⁶

The introduction of legislation to the provincial legislatures and federal parliament was the culmination of a long and exhausting process.¹⁷ In his book *The Legislative Struggle for Church Union*, Gershom Mason, who together with McGregor Young drafted the *United Church of Canada Act*, details the process and strategy surrounding the legislation's passage into law. When they began drafting in 1922, the goal was to create a piece of legislation that provided adequately for the minority, but on the majority's terms.¹⁸ The new body sought federal incorporation to avoid the massive litigation that occurred in the United Kingdom surrounding the "Wee Frees" union case.¹⁹ Because union also involved

¹⁵ In Smith, *supra* note 11 at 77, the author writes, "In reporting to the general assembly in 1905 the Presbyterian Committee made the following statement: '...a question so important and far-reaching in its results was not one to be unduly hurried: that a union of the churches, to be real and lasting, must carry the consent of the entire membership, and that no final step could be taken until ample opportunity had been given to consider the whole question in the courts of the various Churches, and by the people generally.'"

¹⁶ Clifford, *supra* note 1 at 1.

¹⁷ For a chronology of church union, see Appendix A.

¹⁸ UCA, Finding Aid.

¹⁹ In 1900, the United Presbyterians and the Free Church in Scotland united. The "Wee Frees" were an anti-Unionist minority of the Free Church who were given the entire property of the Free Church in legal action, as they upheld the doctrine of the original trust on the property. This decision was subsequently overturned by legislation that only allotted them a proportional share.

property and civil rights (under provincial jurisdiction in the *Constitution Act, 1867*), legislation was tabled in all nine provincial legislatures and the federal House of Commons.

The Unionists introduced their legislation in Manitoba first, because they were most confident of its chance of success in the West.²⁰ They were correct: Manitoba even advanced the Bill as a piece of government legislation rather than as a private member's bill. The Bill was then introduced in Saskatchewan and Alberta, and subsequently the Maritime Provinces. There was more dissent in the Maritimes, with the Lieutenant-Governor of Prince Edward Island, McKinnon, refusing royal assent and precipitating a minor constitutional crisis. The legislation also suffered grave difficulties in Ontario, where larger congregations were refusing to enter union. The Unionists were forced to withdraw the Bill from the Ontario Private Bills Committee. It was only after it had passed in Ottawa that it was reintroduced in Ontario, and introduced in Quebec and British Columbia.

Section 11 of the *United Church of Canada Act* made provision for the appointment of a commission to equitably resolve the financial and property matters arising out of the union, dealing with assets including the pension fund, Home Mission property and funds, Foreign Mission funds, and college property. Supreme Court of Canada Justice Lyman Duff was made chairman of the nine-man commission, which included two neutral Toronto lawyers, Dyce Saunders and T.P. Galt, and three members from each of the Presbyterian and the new United Church.²¹ This commission met from September 14, 1926 to January 22, 1927. In the final report, binding on both parties as stipulated in s. 11(i) of the *Act*, the Presbyterians were left with thirty-one percent (or \$3.26 million) of the assets, including Knox College in Toronto, the Presbyterian College in Montreal, and their respective endowments.²² The provinces also established commissions with varying success; Alberta, Saskatchewan and Ontario's were voluntary, and the United Church did not always comply. Litigation followed, particularly surrounding bequeaths

²⁰ Clifford, *supra* note 1 at 149.

²¹ David Ricardo Williams, *Duff: A Life in the Law* (Vancouver: UBC Press (in association with the Osgoode Society), 1984) at 135.

²² Williams, *supra* note 21 at 136.

in wills, and “the final property settlement took over fourteen years and caused significant hard feelings.”²³

John McNeill wrote in 1925 that “the purpose of the *United Church of Canada Act* is not to effect Union, but to secure a fair adjustment of property and prevent future litigation.”²⁴ The churches sought state approval for their union on a temporal, not spiritual, level. The British (and hence Canadian) common law has no provision to allow non-established churches to hold property, other than in trust. The trust on the property incorporates doctrinal principles, which can only be changed in accordance with institutional practices and procedures.²⁵ This was not a concern for the Methodists and Congregationalists, for they entered into union as corporate bodies. However, the Presbyterian congregations traditionally held their property in individual trusts, and the church now faced losing all of its property to the anti-Union minority. At common law, the minority would inherit the entire wealth of the Presbyterian Church because of the breach of trust by the Unionist majority who were changing their affiliation and attempting to redirect the funds to a purpose other than that for which they were first designated.²⁶ Legislation was crucial to an effective union of the churches, and Parliament was left to determine whether the General Assembly of the Presbyterian Church followed the proper procedures that would allow them to keep the church property upon union.

In Canada, the relationship between church and state has never been clearly defined. John Moir states:

Canadians in fact assume the presence of an unwritten separation of church and state, without denying an essential connection between religious principles and national life or the right of the churches to speak out on matters of public importance. This ill-defined—and difficult to define—relationship is peculiarly Canadian.²⁷

This unique relationship is largely a product of Canada’s evolutionary development. In New France the Roman Catholic Church was clearly

²³ Semple, *supra* note 5 at 439.

²⁴ McNeill, *supra* note 8 at 259.

²⁵ M.H. Ogilvie, *Religious Institutions and the Law in Canada* (Scarborough: Thomson Canada Ltd., 1996) at 209.

²⁶ Ogilvie, *supra* note 25 at 210.

²⁷ Albert J. Mendez, *Church and State in Canada* (Amherst, New York: Prometheus Books, 1996) at 105.

the established church,²⁸ and it has continued to enjoy some level of preferred status since then (including protection under s. 93 of the *Constitution Act, 1867*). In the Maritimes, the Church of England was made the official church by legislative enactment, and in Ontario the Church of England was given priority through the Clergy Reserves until the mid-nineteenth century.

This stands in sharp contrast to the clearly defined relationship that comes out of both the United States and England. The First Amendment of the United States' Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."²⁹ Government and religion are explicitly sovereign within their own spheres. England represents the converse, with the Church of England firmly seated as the established church. Canada's intermediate position created more questions than answers on the topic of church union.

Freedom of conscience in religious matters is, however, an uncontroverted principle of church-state relations in Canada. Although this guarantee was codified by s. 2(a) of the *Canadian Charter of Rights and Freedoms* in 1982, it has always been implicitly recognized in Canada, where the legislatures "permitted religious organizations to enjoy virtually complete self-determination in their affairs, both temporal and spiritual."³⁰ Churches have also had an indirect (and sometimes direct) influence on the state in helping to establish and maintain a moral order based on Christian values. In 1867, and well into the twentieth century, "all were agreed that Canada should be a Christian society whose civil laws and practices should reflect Christian teaching."³¹

It is within this framework that the *United Church of Canada Act* came before the House of Commons in the spring of 1924. The debate

²⁸ In "What is a Church by Law Established?" (1990) 28 Osgoode Hall L.J. 179 at 235, M.H. Ogilvie defines an established church as "a single church within a country accepted and recognized by the state in its doctrine, worship, and discipline as the truest expression of Christianity within that country... [establishment] encumbers that state with the legal duty to protect, preserve and defend that church, if necessary to the exclusion of all others."

²⁹ Peter Schotten & Dennis Stevens, *Religion, Politics and The Law: Commentaries and Controversies* (Belmont, CL: Wadsworth Publishing Co., 1996) at 60.

³⁰ Ogilvie, M.H., "The Legal Status of Ecclesiastical Corporations" (1989) 15 Can. Bus. L.J. 74 at 88.

³¹ Ogilvie, *supra* note 25 at 36.

was lively and, according to Mr. Lewis (MP Swift Current), “reached a high level, worthy of the best traditions of the church and the honour and dignity of this parliament.”³² The tenor of the conversation mirrored the concerns of a post-World War I Canada, with a focus on democracy and modernity. Reflecting the uncertain role of the government in ecclesiastical affairs, the House was deeply concerned with defining its role in the conflict. Members of Parliament were adamant that arrangements be made to accommodate the Presbyterian minority, and were unsure of how to define the “majority” and how to reconcile the notion of “majority rule” with their desire to accommodate the minority. The threat of litigation, which Leader of the Opposition Arthur Meighan believed was being held like a sword over Parliament by the Presbyterian minority,³³ brought with it a discussion of the merits of legislation versus litigation; which institution, the courts or the legislatures, had jurisdiction over the conflict? Was one better equipped than the other to create a solution to the complex problem? Modern themes of nationalism and federalism, the intersection of religion and politics, the equality of women, adequate provision for the minority, and freedom of religion were all put forth. Notions of democracy became entwined with procedural concerns, while modernity was reflected in substantive questions. Above all, there was a sense that union was inevitable, a sign of progress, and that to disagree with it was to be left behind in a different era.

Though the House may have been unsure of its role in church union, it was generally agreed that it had no place in determining “religious” matters. When the House began discussion of the Bill on June 24, Mr. Brown (MP Lisgar) stated:

We are here now as members of parliament to decide whether this legal sanction shall be given; and I say that in my judgment we should ask two questions, and two only: First, has each one of the contracting parties, in the various steps that have been taken in arriving at the conclusion that organic union with the other two is desirable, followed the course that best harmonizes with its constitution and accepted method of procedure? Second, does this bill make a proper provision for the rights of minorities who may not desire to enter into the union?³⁴

³² Hansard (1924), at 3716.

³³ Hansard (1924), at 3754.

³⁴ Hansard (1924), at 3557.

Taking their cue from the courts, the supporters of the Bill established early in the debate that Parliament was not in any position to evaluate the wisdom of organic union.³⁵ Rather, they acknowledged that their job was to ensure procedural safeguards were met.

For supporters of the *United Church of Canada Act*, this piece of legislation was about the corporate freedom of the churches; it was equivalent to any other private bill seeking the incorporation of an organization, whether religious or economic. Those against the Bill characterized it as one that went straight to the heart of church doctrine, while those making legal arguments to support it characterized the legislation as purely procedural. In support of the legislation, Mr. Woods (MP Dufferin) stated:

Parliament is not asked to decide any questions of church doctrine, or church polity or church government. All the United church asks for is the right to legally transact its own business, and it seems to me we have no right to tell it to go to the courts for a decision.³⁶

In sharp contrast, Mr. McGiverin (MP Ottawa) stated that, “the questions which are involved in this case are questions of doctrine and faith.”³⁷ This struggle to characterize the issue before Parliament was fundamental.

Those who maintained that this was a purely procedural issue drew parallels with other private bills for incorporation of recognized organizations. The standard of review applied was scrutiny without change; Parliament was to ensure the correct procedure was followed and proper provision made for minorities, but extensive amendments to the Bill’s substance were to be avoided. From this perspective, the fact the organizations in question were religious was irrelevant. However, the centrality of religion in the lives of both those affected by and those debating the passage of the legislation inevitably shaped the discussion. The fact that the organizations were churches could not be ignored.

W.R. Motherwell, federal Minister of Agriculture, was responsible for much of the public correspondence regarding the church union leg-

³⁵ The Supreme Court of Canada has stated that its function is not to evaluate the wisdom of legislation but only its constitutional validity.

³⁶ *Hansard* (1924), at 3576.

³⁷ *Hansard* (1924), at 3590.

isolation. In a letter to a constituent he made clear that the government did not want to become embroiled in a religious conflict, and explicitly defined what he perceived its role to be:

... our Parliamentary duties are entirely of a State character and nowise of an ecclesiastical one... if any of us have neglected our opportunities to promote this movement in our private-citizen-capacity, then the fault is ours and we should not be attempting to transfer that struggle to the floor of Parliament, where only the State side of the question should be considered... however, it is amazing how rarely this phase of the question is considered, the average man apparently thinking that the pros and cons of Church Union, as such, a purely ecclesiastical question, should be fought out in Parliament.³⁸

While the line between doctrine and procedure may have at times in the debate become blurred, there was a principled awareness of the need to maintain that distinction and a concerted effort to do so.

The federal/provincial division of powers was another issue around which Parliament needed to draw lines. If the function of the *United Church of Canada Act* was “not to effect Union, but to secure a fair adjustment of property and prevent future litigation,”³⁹ why had the new church come to the federal Parliament when property and civil right were clearly within provincial jurisdiction?⁴⁰ This was a serious concern to Parliament, which did not want to further complicate matters by passing an *ultra vires* statute. Prime Minister Mackenzie King suggested the addition of what became the final section of the *Act*:

s. 29 Inasmuch as questions have arisen and may arise as to the powers of the Parliament of Canada under the *British North America Act* to give legislative effect to the provisions of this Act, it is hereby declared that it is intended by this Act to sanction the provisions therein contained in so far and in so far only as it is competent to the Parliament so to do.⁴¹

³⁸ UCA, Box 6, File 100, W.R. Motherwell Papers, 1924 (Apr-May), dated April 12, 1924.

³⁹ McNeill, *supra* note 8 at 259.

⁴⁰ The *Constitution Act, 1867* 30 & 31 Victoria, c. 3, s.92(13) gives provinces the exclusive ability to make laws in relation to property and civil rights.

⁴¹ *United Church of Canada Act*, incorporated, 1924, c. 100, s. 29.

The Law and Legislation subcommittee of the Church Union Committee was equally aware of the possibility of constitutional challenges, and the sections dealing with property were identical in all of the legislation it drafted, federal or provincial. The federal legislation only dealt with congregational property situated outside the provinces, and the federal property commission dealt with general church property and not that which belonged to individual congregations.⁴²

The definition of Parliament's role as an intervener in ecclesiastical matters and supervisor of a national merger closely tied to provincial property rights was an unresolved undercurrent throughout the debate. However, it was agreed that Parliament was, as Mr. Brown had stated at the outset, to determine whether the uniting churches had followed their respective constitutions and procedures in entering into union. For the Congregationalist and Methodist Churches this was essentially a non-issue: there was no visible resistance movement within either denomination and the concurrence of the majority with the proposed merger was assumed. Conversely, there was a very vocal Presbyterian minority who forced a debate that centred on notions of what constituted a "majority" and questioned the notion of "majority rule."

The Unionists and their supporters in Parliament maintained that they were following the rules and forms of procedure as prescribed by the General Assembly of the Presbyterian Church. This included the use of the *Barrier Act*, which provided safeguards for actions which contemplated changing the law of the church:

s. 119(1) No proposed law or rule relative to matters of doctrine, discipline, government or worship, shall become a permanent enactment until the same has been submitted to Presbyteries for consideration...

(3) If the majority of the Presbyteries of the Church express their approval, the Assembly may pass such proposed law or rule into a standing law of the Church. If a majority of the Presbyteries express disapproval, the Assembly shall reject such proposed law or rule, or again remit it to the Presbyteries.⁴³

⁴² UCA, Box 9, File 162, "Is the Bill Constitutional?" See also s. 8 of the *United Church of Canada Act*, which exempts "any real or personal property belonging to or held by... any congregation... solely for its own benefit, and in which the denomination to which such congregation belongs has no right or interest" from the property provisions of the *Act*.

⁴³ *Rules and Forms of Procedure: in the Church Courts of the Presbyterian Church in Canada* (Montreal: The William Drysdale Co'y, 1899).

This process of returning an issue to the presbytery level for confirmation after its approval by the General Assembly supported Unionists who sought a fair process that would allow church members the chance to voice their opinion.

Parliament faced a significant stumbling block with the claim by anti-Unionists that the Presbyterian General Assembly had guaranteed a significantly higher level of procedural fairness than the *Barrier Act* provided for when, in 1912, it declared “that unless a practical unanimity could be obtained on the part of the whole church they would not consider it advisable to go on with the movement.”⁴⁴ A more preliminary question raised by the anti-Unionists was whether, regardless of a majority vote, the *Barrier Act* could be applied to a change in church law that amounted, in their view, to the abolition of the Church body.

The 1871 American case of *Watson v. Jones* set the tone for the legal discussion of “majority rule” in the context of a religious institution. The United States Supreme Court there stated:

All who united themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.⁴⁵

In law, religious organizations are voluntary, and by joining them a member agrees to submit to their established rules. The Presbyterian minority elicited little sympathy with their claims that previous votes were not legitimate; this controversy had dragged on for two decades without their making any internal attempt to change the *Barrier Act*, the method of election of elders, or the General Assembly.⁴⁶

Parliamentarians on both sides of the debate used statistics from the 1911 and 1915 Presbyterian votes in support of their respective positions. Those members opposed to the Bill pointed to the small voter turnout for the previous votes on church union. However, this was a weak argument in familiar territory to members of the House, who had

⁴⁴ Hansard (1924) at 3563.

⁴⁵ 80 U.S. 679 (1871), as found in Robert S. Alley, ed., *The Constitution & Religion: Leading Supreme Court Cases on Church and State* (Amherst, N.Y.: Prometheus Books, 1999) at 541.

⁴⁶ These sentiments are articulated by Mr. T.H. McConica (MP Battleford) at 3737 Hansard (1924).

participated in Dominion elections. Mr. Lewis (MP Swift Current) responded to the claim that only fifty-one percent of the eligible Presbyterian membership had voted in 1915 by stating:

But how can we gage the public opinion on any subject, unless it is by those who have interested themselves sufficiently to make it worth their while to vote? In an election of any kind, whether upon prohibition, the election of a member of parliament, or any other great public question, it is the actual vote that counts, and the governments of our land act accordingly.⁴⁷

The members were confident in their expertise in this matter, and they maintained the requirement of a procedure that resembled the democratic process for Dominion elections as closely as possible.⁴⁸

Section 10 of the *United Church of Canada Act* provided that individual congregations could vote, in the six months before the coming into force of the *Act*, to stay out of the union. The amendment to this section proposed by Mr. Duff (MP Lunenburg) demonstrated Parliament's desire to utilize a democratic process by changing the vote from a congregational meeting to a mail-in ballot. Mr. Stork (MP Skeena) succinctly said:

Surely such an important matter as this should be decided by the democratic and up-to-date method of expression of opinion, namely, by ballot, and I am strongly in favour of this method.⁴⁹

The congregational meeting format was first adopted because it was the traditional method for making important decisions within the church, and Mr. Motherwell (Minister of Agriculture) maintained that in an effort to promote as much church autonomy as possible, Parliament should “render unto the church the things that are the churches and unto the state the things that belong to the state. This is a matter entirely for the church.”⁵⁰

Those in favour of a vote by ballot submitted that it allowed a wider range of members to vote, including the sick or elderly and those who

⁴⁷ *Hansard* (1924) at 3714.

⁴⁸ Ironically, the final vote on the Bill passed the House of Commons with a vote of 90 in favour and 58 opposed, when there were a total of 235 members in the House at that time. (Clifford, *supra* note 1 at 160).

⁴⁹ *Hansard* (1924) at 3768.

⁵⁰ *Hansard* (1924) at 3815.

worked or traveled extensively. Those against a vote by ballot suggested that it would lead to unfair election practices because those delivering the ballots would influence the voters. Mr. MacDonald (MP Pictou) voiced a common concern that the same respect be accorded the church vote as would be a federal election:

If the minority in the Presbyterian church... are to be told when it comes to a question of giving them an opportunity of expressing an opinion in regard to this matter, that they are not to have the use of the ballot, which every hon. member of this House would insist upon in regard to the most ordinary election that takes place in this country.⁵¹

But here he was cut off by Mr. Caldwell (MP Victoria and Carleton) who pointed to the distinction between the proposals: those in favour of ballots wanted them to be mailed in, while government elections required the voter's presence at the polling station. Democracy was important in determining the will of the majority, but members of parliament struggled to define precisely what democracy entailed.⁵²

In January 1924 anti-Unionists filed a lawsuit in the Supreme Court of Ontario, seeking a decision on the legality of the union movement and the powers of the Presbyterian General Assembly to pursue organic union. When the legislation was subsequently tabled in the House of Commons without the anti-Unionists making an application for an interlocutory injunction, Arthur Meighan, Leader of the Opposition, accused the dissenters of being "content to hold the sword of litigation over this parliament."⁵³ Many members were concerned that by legislating they would remove "the inalienable right of the British subject to appeal for and to obtain justice at the hands of the court."⁵⁴ However, the Bill in no way removed any party's ability to litigate the issue (with the exception of the binding nature of the property commission's final report). Those who sought to pass the legislation maintained that "we cannot prevent anyone from going to law, but we want to make it humanly certain that

⁵¹ Hansard (1924) at 3809.

⁵² While the amendment requiring a vote by ballot was defeated in the House of Commons, the ballot was accepted in the Senate and appears in the provisions of s. 10 of the final *Act*.

⁵³ Hansard (1924) at 3754.

⁵⁴ Hansard (1924) at 3600. (Mr. Raymond, MP Brantford)

nobody can disrupt this union by carrying tedious litigation into our civil courts for pronouncement.”⁵⁵ Thus it was a matter of the order of operations: legislation first, litigation second.

This question of litigation before legislation swirled through the debates and solidified with Prime Minister Mackenzie King’s support for an amendment which would have resolved the dispute with a state supported reference to the Supreme Court of Canada. In his opinion:

If parliament refers this matter to the Supreme Court for decision, it is simply prescribing the method that by and large has to be taken in all great controversies—that of ultimately referring to arbitration disputes that cannot be otherwise settled.⁵⁶

What King saw as an expeditious compromise, others saw as serious state interference with church autonomy. King volunteered to refer a question to the court (to be determined at government expense); doing so would have had significant impact on the bargaining positions of both sides.

Regardless of the outcome in Parliament, Unionists were adamantly opposed to the matter being litigated. They chose legislation in a conscious attempt to avoid the conflict that had occurred in Britain concerning the “Wee Frees,” where extensive and divisive litigation was eventually resolved by legislation years later. When the private bills committee had proposed a similar amendment, the Unionists responded:

If Parliament thinks that the legislation should not be granted it may refuse it, but it is submitted that it should not place the negotiating churches in a position which for twenty years in all the negotiations for Union they have planned to avoid.⁵⁷

When discussion in Parliament shifted to the possibility of a reference, or to allowing litigation before passing the legislation, N.W. Rowell, chairman of the Joint Committee on Church Union, sent a telegram to King:

⁵⁵ *Hansard* (1924) at 3605. (Mr. Putnam, MP Colchester)

⁵⁶ *Hansard* (1924) at 3747.

⁵⁷ UCA, Box 8, File 134, “Objections to Amendments”.

One of the objects of going to Parliament for legislation is to remove all doubt as to legality and to avoid the scandal, turmoil and confusion which resulted from [the Wee Frees]... Now it is seriously proposed to overturn the work of twenty years and repeat the folly in Canada and have litigation over the question.⁵⁸

The unionist factions of the three churches had agreed to legislation over litigation; ultimately that choice was respected, but not without Parliament first attempting to restructure the union process to better accommodate the Presbyterian minority.

Although the foundation of the debate in the House of Commons was the procedural aspect of union, there were numerous other leitmotifs. The members showed genuine concern with the effects the legislation would have on their constituents, and while religion was technically to be left out of the debate their speeches show that it permeated their consciousness and their perceptions of the issues. Religion was central to society, social ordering, and to people's personal identity; this centrality could not help but inform their discussion. The debate was passionate, and reflects the values of the society: an emerging social conscience, a feeling of progress and of modernity.

Concurrent with the concern of how to define the majority was the need to maintain the "fundamental principle of British government that the rights of minorities must be protected."⁵⁹ The provision for minorities *was* one of the two questions Mr. Brown (MP Lisgar) stated was within the purview of the House, and members took it seriously. The Joint Committee on Church Union was also concerned that should the amendments calling for litigation be successful and the case be sent to the courts, "a decision adverse to the minority would mean that the Presbyterian Church in Canada would go into the Union without any provision for the minority, as the minority would then have no rights whatever."⁶⁰

This progressive notion of minority protection gave voice to Parliament's social conscience. While in this instance the minority seeking protection was actually a significant number of members of a mainstream religious organization, Mr. MacDonald (MP Pictou) prophetically stated:

⁵⁸ UCA, Box 5, File 85.

⁵⁹ Hansard (1924) at 3594.

⁶⁰ UCA, Box 8, File 134, "Objections to Amendments".

I ask every fair minded man here to realize that the rights of minorities must be religiously preserved in this country if we are going to maintain Canada as a happy and united country and if it is ever to realize the future we anticipate for it.⁶¹

Mr. Herbert Marler (MP St. Lawrence-St. George) gave voice to a minority through a minority when he stated:

...coming as I do from the province of Quebec, I am urged, perhaps, as much if not a little more than others coming from other provinces are urged, as regards the protection of the rights of minorities... are we [the House of Commons] not here equally for the purpose of protecting the rights of minorities?⁶²

Members of Parliament, both supporters and opponents of the Bill, were united in a common goal of preserving a legacy for the Presbyterian minority. They did not face any Unionist opposition to this in principle: the only question was how large the legacy would be.

While the Bill provided that congregations would be allowed to opt-out of the union and take their property, Labour MP J.S. Woodsworth (MP Centre Winnipeg) went further, suggesting an amendment that would have allowed minorities within individual congregations to have recognition of their general rights in church property.⁶³ This amendment was defeated on the practical argument that to divide church property at such a minute level would be impossible. However, while the Joint Committee on Church Union wanted to leave a fair legacy with the Presbyterian minority, it believed the Bill was already sufficiently generous, as “the Bill as it stands makes much larger protection for a minority than is made by any other similar legislation that we have been able to find.”⁶⁴

Women had been enjoying an increasingly vital role in Protestant churches in the half-century preceding church union, and they were particularly active in ecumenical activities. Church union was an issue of great importance to them, and they voiced their opinion on both sides of the debate. Mr. Duff (MP Lunenburg), an opponent of the Bill, stated:

⁶¹ Hansard (1924) at 3613.

⁶² Hansard (1924) at 3572.

⁶³ Hansard (1924) at 3769.

⁶⁴ UCA, Box 7, File 128, Correspondence Re: Legislation 1924 (April 16-30), Letter to Edwin Proulx, Esq. MPP L'Orignal Ontario.

Not only are the Methodist women opposed to this union, but we must remember that in Canada to-day there are at least 100,000 women in the Presbyterian church who are not only opposed to union... but are determined to carry the fight to the finish.⁶⁵

Female constituents were a consideration, particularly on a “women’s issue” like religion.

The women of the Presbyterian Church were active lobbyists on the matter, exercising their recently acquired federal franchise. The Women’s League of the Presbyterian Church Association petitioned Cabinet Minister W.R. Motherwell to voice their concerns:

As women of the Presbyterian Church, unrepresented in our church courts, we have had no opportunity to express our opinion on this legislation now before the Federal House, and we appeal to your sense of justice and fair play, to your British abhorrence of coercion in every form... to see that this Bill which disregards property rights and coerces the individual in matters of conscience and religion is so amended to permit freedom of conscience to all concerned, with a just and fair division of property which belongs to all alike...⁶⁶

These women were active members of their churches, through Women’s Missionary Societies and Ladies’ Aid Societies, and contributed to the spiritual and financial well-being of their congregations. Though there were no female members of the church courts, the rules and forms of procedure did allow that “all members in full communion, male and female, have the right to vote at all congregational meetings, and to them exclusively belongs the right of choosing ministers, elders...”⁶⁷ Women did exercise the franchise in both the church and federal elections, and Parliament was forced to acknowledge their concerns as members of the electorate and pillars of the petitioning churches.

In attempting to define their role in the creation of a new United Church, parliamentarians often invoked the touchstones of religious liberty and freedom of conscience. Canada’s British heritage meant that, “under the Union Jack we have every right to enjoy and in fact do enjoy civil and religious liberty.”⁶⁸ Both sides advanced their arguments by

⁶⁵ *Hansard* (1924) at 3569.

⁶⁶ UCA, Box 6, File 100, W.R. Motherwell Papers, 1924(Apr-May).

⁶⁷ *Supra* note 43 at s. 15.

⁶⁸ *Hansard* (1924) at 3722.

invoking these freedoms. The Bill's supporters believed the state should not interfere with the petition brought before the House by three private religious bodies desiring union, while the Bill's opponents argued Parliament could not force people into membership with a specific religious organization if they did not want to join.

The Joint Committee on Church Union insisted that fundamental to religious liberty was the right of the churches to interpret their own constitution. Recourse to the civil courts to determine the authority of the Presbyterian General Assembly to join with other churches, as provided for by proposed amendments, "would be an invasion of the liberty of the Church in matters spiritual and might easily enslave the spiritual and intellectual liberty of the church for all time to come."⁶⁹ This concern was clearly articulated by members of the House, who agreed that the separation of church and state in Canada, however ill-defined, did include acknowledgment of the sovereignty of the churches.⁷⁰ King, though supportive of a reference question to the Supreme Court, stated, "I would never support interference by the state with the right of any church to determine its own destiny, to shape its own polity, to do what it wishes with respect to its own doctrine."⁷¹

Those members of Parliament opposed to the Bill were assessing religious liberty from the Presbyterian minority perspective, and they faced losing their official church in a state-sanctioned merger. Mr. MacLaren (MP St. John City) succinctly voiced the concerns of many others that "this parliament is not going to dictate to any body of people as to what church they should belong"⁷² (i.e. Presbyterians becoming United). But it was Mr. Duff (MP Lunenburg), chief opponent of the Bill, whose masterful oratory highlighted the potential effects:

To have such a great church thus blotted out by act of parliament, and its entire membership, however unwilling, made members of another church and compelled to remain there or go out homeless on the street, their church gone for ever, would be religious coercion unknown in the history of free people... would in future, be a menace

⁶⁹ UCA, Box 5, File 85.

⁷⁰ Hansard (1924) at 3715.

⁷¹ Hansard (1924) at 3748.

⁷² Hansard (1924) at 3589.

to the freedom of statesmen and parliaments in their efforts for the well-being of our country.⁷³

To reach a definition of Parliament's role in this merger, the members were faced with reconciling these fundamentally differing approaches to religious freedom in Canada.

When the Bill was tabled in the House of Commons, it inevitably became a political issue. The magnitude of public interest in the outcome, and the concern the churches had in putting their fate into the hands of those who did not necessarily share the same religious convictions, meant that religion became intertwined with politics. However, the debate did not divide along party lines. Members of Cabinet were explicit in speaking on behalf of their constituents and not the government they represented.⁷⁴ The Prime Minister, in response to rumours that he was supporting one position or another and expected the party to follow, stated:

The government itself is very much divided on this question...I have not desired that any member of parliament and particularly any member of this side of the House should in this matter vote other than as his conscience and sense of duty and right impel him to vote.⁷⁵

The government had chosen not to table the Bill as a government measure, and its introduction as a private member's bill allowed them to maintain their distance from it as a political party.

There were members of the government who expressed concern that there would necessarily be political ramifications for the Liberal party from this religious decision once it was brought before the House. W.R. Motherwell, Minister of Agriculture, clearly articulated these concerns when he wrote to the Liberal members of the House:

I fear the Liberal Party, even though the Bill is a private one, will be held largely responsible for the preamble of the Bill (which contains the principle) not going through as introduced... I think we

⁷³ Hansard (1924) at 3570. Mr. Duff also proposed an amendment in the final sitting on the Bill to change the name of the new to church to the United Church in Canada ("in" rather than the proposed "of") because he feared the use of "of" would lead people to believe that this was a new national church. This amendment was defeated.

⁷⁴ Hansard (1924) at 3607.

⁷⁵ Hansard (1924) at 3744.

should all carefully ponder over those matters before precipitating a possible maelstrom of litigation and religious strife, equally bad for both Church and State and certainly boding no good to the Liberal cause.⁷⁶

This “confidential” letter was leaked to the newspapers and the content incensed members of the House who believed that this Bill had no place in party politics. They were generally successful, at least on the floor of the Commons, in maintaining the distinction.

The national dimension of the union made it more controversial than it may have otherwise been: it deeply affected tens of thousands of people across Canada. The centrality of religion to societal structure meant that any proposal for significant change was bound to raise interest across the country. There were ramifications for all religious denominations, not just the ones directly involved; the merger realigned religious communities and Parliament’s approach to this issue set a precedent for any future legal questions about the church-state relationship in Canada. But the religious union promised more than just a religious effect: there was to be a corresponding union of Canadians.⁷⁷ Parliamentarians often turned to their British roots during the debate to support their claims of religious freedom and concern for minorities, but they were also interested in establishing a nationalist sentiment within Canada:

We are laying the foundations of one of the greatest countries on earth, that is Canada, and this church union movement is something that will promote the unity of our people.⁷⁸

Church union became a way in which Parliament could promote Canadian union and exercise its developing sense of nationalism. Canadians were dealing with this issue independently; though the principles were British, their application was distinctly Canadian.

There were those members of Parliament who voiced the sentiments of the Presbyterians who sought not to forget the church of their parents, its traditions and achievements. Their fears, of a world in which “mate-

⁷⁶ UCA, Box 6, File 100, W.R. Motherwell.

⁷⁷ National unity was an explicit goal of the new church, which stated in its Basis of Union: “It shall be the policy of The United Church to foster the spirit of unity in the hope that this sentiment of unity may in due time, so far as Canada is concerned, take shape in a Church which may fittingly be described as national”.

⁷⁸ Hansard (1924) at 3734.

rialism should run rampant and . . . all that has stood for the solidity of institutions and for advancement in Canada shall have disappeared,” were grounded in a desire to maintain stability in rapidly changing times.⁷⁹ The majority of the members, however, seemed heartily in favour of modernity and progress, of changing to meet the changing times, and of being a part of “possibly one of the most momentous movements which have ever taken place in the Dominion of Canada.”⁸⁰ Those who supported the *status quo* were accused of holding back the inevitable tide of progress. The Churches themselves believed that continued growth and development, both spiritual and temporal, depended on their amalgamation into a new unitary organization; many parliamentarians were unwilling to force them to remain forever tied to the past.⁸¹

The United Church of Canada came into being on June 10, 1925, following twenty-one years of negotiation, and three years of serious legal and political wrangling. It would take another fourteen years before the conflict would finally be resolved, when an amendment to the *United Church of Canada Act* allowed the Presbyterian minority who had stayed out of union to reclaim their formal title of “The Presbyterian Church in Canada.” Both sides achieved their goals, though it required time and compromise to do so. By 1992 the United Church of Canada claimed 2,020,000 members, making it the second largest denomination in Canada (after the Roman Catholic Church); the Presbyterian Church in Canada claimed 245,000 members (placing it sixth overall).⁸² The Presbyterian Church feared being legislated out of existence, but they continue to exist into the twenty-first century. The United Church wanted to challenge the Roman Catholic Church and unite Protestants across Canada, and they remain an active voice for social change. The struggle for church union forced all members of the Presbyterian, Methodist, and Congregationalist Churches to examine their faith and how they believed it could best be exercised. The extended process may have created a more secure and stable United Church and Presbyterian Church,

⁷⁹ Hansard (1924) at 3611.

⁸⁰ Hansard (1924) at 3571.

⁸¹ Arthur Meighan, Leader of the Opposition, best summarized this position when he said, “If we say such thing [that the church cannot modify its doctrine] we merely condemn that church to drift lifelessly on the reefs of time while its children abandon its alter and its creed” (Hansard (1924) at 3753).

⁸² Mendez, *supra* note 27 at 75-77.

with members who joined out of conviction, not apathy. One of the Methodist goals in union was the creation of another wave of revivalism, and in a circuitous way that may have been the result.

The legislative debate that surrounded the *United Church of Canada Act* acts as a window to the Canada of the 1920s, torn between its traditional place in the world and a desire to move forward. The Hansards showcase a superior level of debate among the members of Parliament, who were not afraid to attack a broad range of issues, both procedural and substantive. On the surface the debate was about the creation of the United Church, but underneath it was about a parliamentary institution attempting to define itself and its boundaries. The relationship between church and state is not clear in Canada, and while the debate did not give definitive conclusions as to what level of interference will be tolerated, it probed all of the corners of the argument, clarified that there is unquestionably a separation between the two, and provided guidelines with respect to the parameters of each institution's sovereignty. Members of Parliament also went on to address issues that continue to resonate today: the treatment of minorities, the representation of women, the need for religious freedom, and the desire for a united and progressive Canada. The United Church of Canada's hymnbook is "Voices United"; through a cacophony, the House of Commons facilitated its creation.