2015

Introduction: War Measures and the Repression of Radicalism, 1914-1939

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Source Publication:

Barry Wright, Eric Tucker and Susan Binnie, eds., Canadian State Trials, Vol. IV: War Measures and the Repression of Radicalism, 1914-1939 (Toronto: Osgoode Society for Canadian Legal History and University of Toronto Press, 2015), 3-41

Introduction: War Measures and the Repression of Radicalism

BARRY WRIGHT, ERIC TUCKER, and SUSAN BINNIE

This fourth volume in the *Canadian State Trials* series, *Security, Dissent, and the Limits of Toleration in War and Peace, 1914–1939*, brings readers to the period of the First World War and the inter-war years. It follows an approach similar to that of others in the series. The central concern remains the legal responses of Canadian governments to real and perceived threats to the security of the state. The aim is to provide a representative and relatively comprehensive examination of Canadian experiences with these matters, placed in broader historical and comparative context.

The previous volumes (Volume I, 1608–1837; Volume II, 1837–1839; Volume III, 1840–1914) examined trials for the classic political offences of treason and sedition, and looked at related security measures such as suspensions of habeas corpus, deportations, resorts to martial law, and the trials of civilians by military courts. This volume examines similar responses to security concerns in a fundamentally changed context, that of the early twentieth century, a period of major and intense upheavals. The First World War saw the assumption of new powers by the Canadian state and prompted new political issues and difficult questions about Canadian identity and legal status at local, national, and international levels. The ensuing inter-war years brought serious economic challenges and unprecedented tensions between labour and capital. Governments struggled to address these challenges, and they responded to emergency, crisis, and perceived security issues by relying on a mixture of traditional and new legal measures.

We begin with a brief sketch of the main political events and related economic and social issues during the 1914–39 period, followed by a brief note about common legal themes shared with previous volumes in the series. A more detailed survey of the main legal responses, and general issues that arise in this volume, sets the stage for the ensuing chapters. These are briefly summarized at the end of this Introduction.

SETTING THE HISTORICAL STAGE AND OVERARCHING THEMES

Canada in 1914 was a self-governing Dominion but with limited autonomy. London controlled foreign policy for the British empire and Canada was committed to war in August 1914. The Dominion's plans for a considerable contribution to the British war effort were initially widely supported in English Canada. Thirty thousand men enlisted voluntarily, going overseas in October 1914 to fight on the Western Front by early 1915, followed by 400,000 more over the course of the war. At home, the government enacted the sweeping War Measures Act, 1914 (WMA) to manage the domestic war effort. Canadian factories began to produce munitions on an enormous scale, Canadian farmers were enlisted to feed the Allied troops, and an income tax was introduced to support the unprecedented state commitments and interventions.

More than sixty thousand Canadians would be killed by 1918. As the war took a brutal toll, consensus slowly diminished. The Canadian victory at Vimy in April 1917, which left over ten thousand dead and wounded, was a turning point. In May 1917, as public opinion became increasingly divided and the number of reinforcements dwindled, Conservative Prime Minister Robert Borden sought to demonstrate Canada's continuing resolve by announcing his government's intention to introduce conscription. He presented the policy as a necessary step to support the volunteer soldiers overseas, whose huge sacrifices and contributions must not be in vain. Politically, the government believed that Canada's unwavering support would help secure British promises of increased autonomy in the future.

Liberal leader Wilfrid Laurier, always looking to the middle ground between English Canadian imperialists and French Canadian nationalists, called for robust war production and volunteerism rather than conscription. Laurier refused to participate in a formal wartime domestic political alliance and Borden turned to English Canadian Liberal MPs, drawing many into a new Unionist party formed to contest the December 1917 election.[1]

In September 1917 the government passed the Wartime Elections Act, amending Dominion elections legislation to extend the franchise to mothers, sisters, wives, and widows of servicemen but removing it from immigrants from enemy nations.[2] About fifty thousand Canadian residents lost the right to vote, compounding the discrimination already experienced by many immigrants. As a result of earlier executive orders issued under the WMA, over eighty thousand residents had been required to register as enemy aliens, carry identity papers, and report regularly to the police. As the war continued, more than eighty-five hundred were denied habeas corpus and interned without trial as enemy aliens; about a third were prisoners of war but the majority were civilian Canadian residents of Ukrainian background.[3]

The bitter 1917 election campaign resulted in a decisive Unionist majority in December but with only three government seats from the province of Quebec. The election deepened divisions between English and French Canada and conscription riots that followed in Quebec in the spring were met by resort to military aid to the civil power, leading to the deaths of four protesters. The final year of the war saw harsher censorship, the banning of political groups, and continued attempts to bring sedition prosecutions against those who criticized government and the war effort.

The 1914–18 war effort had a significant impact on the Canadian economy, which, despite a recovery from the long depression of the late nineteenth century, had experienced a recession in the years immediately prior to the outbreak of war.[4] As production ramped up and men left for the front, the economy began to accelerate and labour shortages combined with wartime inflation created conditions conducive to labour militancy, setting off the largest wave of strikes to that point in Canada's history.[5] The government scrambled to contain this threat to the war effort, initially emphasizing measures that promoted cooperation between employers and "responsible" unions. As the war continued, however, Ottawa increasingly turned to the use of coercion, ultimately prohibiting strikes in war-related industries.[6]

Divisive conflicts and repressive state interventions continued after the peace of 11 November 1918. There were delays in demobilization and former soldiers, once home in Canada, faced unemployment. Many workers demanded that the sacrifices they had made in a war "fought to save democracy against the scourges of Kaiserism" should result in changes to their workplaces and, in particular, that employers should recognize and bargain with trade unions.[7] For the most part, employers preferred a return to the pre-war status quo, and, while some in government wanted

to continue the wartime policy of promoting collective bargaining, in general there was little support for such measures. Indeed, the principal government response to rising labour radicalism in the post-war era was to enshrine in legislation some of the repressive measures put in place towards the end of the war under the WMA and strengthen the state's permanent coercive powers.

Some of the new powers were soon put to use in post-war confrontations between labour and capital, notably during the Winnipeg General Strike of 1919, when the state responded by calling out the militia, arresting and prosecuting the strike leaders, and deporting aliens.[8] The combined effects of repression and the return of economic prosperity in much of Canada during the early 1920s saw a reduction in trade-union activity. But in some regions, such as the Maritimes, labour militancy continued. Cape Breton coal miners and steel workers fought back against the beginning of the long decline of these industries, and the state responded in much the same way as it had a few years earlier in Winnipeg.[9]

Events outside Canada, most significantly the Bolshevik Revolution in October 1917, also fuelled fears of domestic radicalism. The government responded to the Revolution by sending troops, including conscripts, to join an undeclared and unsuccessful war on the new Soviet government waged by thirteen Allied countries.[10] At the same time, Canada also reorganized and strengthened its domestic security forces. The pace and urgency of security operations eased after the immediate post-war turmoil but intensified again with the onset of the Great Depression in 1929. Political and labour radicalism grew stronger as the Communist Party of Canada attracted new members and established a separate union movement, the Workers' Unity League (WUL), which successfully organized workers in many parts of Canada.[11] While these organizations often demanded reforms, their long-term goal was to bring about the end of capitalism, which the Communist International (CI) during its Third Period (1928–35) believed to be in its final phase. The CI encouraged its member parties to adopt a militant line. In response, the Canadian government acted quickly to suppress this perceived threat to the established order, exercising the extraordinary powers that had been made permanent at war's end. Leaders of the Communist Party in Canada who were British subjects were prosecuted while large numbers of foreign-born radicals were deported.[12]

The intensity of repressive actions diminished after 1935, in part as a result of the election of a Liberal government under Mackenzie King – more inclined to rule by compromise and accommodation than with an iron fist. In addition, the CI's adoption of the Popular Front policy in response

to the rise of fascism in Europe resulted in the Canadian party adopting different tactics. It dismantled the WUL and directed its member unions to seek integration into the mainstream Trades and Labour Congress. Party members started working in broad alliances with other progressive groups.[13]

The previous volumes in the series examined how the circumstances of war, invasion, and insurrection prompted prosecutions for political offences. Popular movements of opposition, dissent, and resistance were also sometimes apprehended as insurrectionary, or as potential threats to the existing order, and were met by such prosecutions as well. A shift in legal responses, noted in Volume III, became increasingly evident in the 1914–39 period. Prosecutions for treason and sedition, the traditional response and primary subject of state trials, were increasingly supplanted by reliance on legislation that authorized the administration of national-security measures. Such measures provided governments with more flexibility than prosecutions for the traditional political offences. They enabled a wider, more intensive regulation of security threats, supported by new institutions of surveillance and enforcement. The summary administrative processes introduced were difficult to challenge in the courts, supported by a judicial tendency to defer to legislated, delegated executive authority and discretion, and by the modification or even suspension of procedural protections usually found in regular criminal trials.

There are nonetheless more similarities than differences between traditional and modern legal responses to security threats. These laws were and remain contentious because of their obvious political overtones, impact on civil society, and the manner in which they compromise rights and abrogate civil liberties. They are in conflict or tension with formal constitutional and legal claims and popular expectations of these claims. It is also the case that popular deference to government justifications for special powers, whether cast as matters of public safety or citing other urgent reasons, diminishes when there is obvious abuse of these laws. Yet, despite these common characteristics, the older and newer security responses also defy easy assessment and generalization.

The complexity of these laws and their administration was demonstrated in previous volumes in the series. Legal responses to real or perceived security threats by way of resort to regular processes of justice tended to enhance the legitimacy of government actions and broaden public support to a much greater degree than military responses or other heavy-handed forms of repression. But using ordinary law also entailed risks for governments. The accused contested their prosecutions in

public tribunals. Governments had to attend to popular expectations about justice and the integrity of their formal legal and constitutional claims. Effective defences were possible. Prosecutions could be frustrated and acquittals could discredit governments and enhance public support for the accused and his or her cause.

Governments were acutely aware of all of this. Nevertheless, during the most serious security crises there tended to be wider resort to exceptional measures authorized by temporary emergency legislation or exercise of prerogative powers.[14] As seen in previous volumes, these included procedural expedients that favoured the crown's case in trials and suspensions of habeas corpus that supported indefinite detentions and summary deportations (e.g., War of 1812, Upper Canada for most of 1838, the Fenian crisis of the late 1860s, and the 1885 North-West Rebellion). In extreme situations, governments would claim that the regular administration of justice must be suspended altogether; martial law was imposed and civilians were subjected to military justice (as in Quebec in the late eighteenth century, Lower Canada in 1837–8, and parts of Upper Canada in late 1838).

Along with the shift away from the prosecution of political offences there was also a modification of exceptional security responses by the early twentieth century. Military aid to the civil power was regularized and exceptions to the usual processes of criminal justice came to be deployed under the authority of modern security legislation that was permanent rather than temporary. These developments tended to result in exceptions that continued in effect well beyond the crisis or concern that prompted them in the first place, typically justified as necessary to contend with changed twentieth-century realities, whether those changes concerned the nature of threats posed by hostile powers, support for effective and comprehensive public responses to emergencies, or the protection of important state secrets in a technological information age. In short, states of exception have tended to become normalized. Yet it remained the case that the resort to more arbitrary measures and the extent of their use depended not only on the gravity of the security threat but also on what Eric Tucker has aptly described as the "social zone of toleration."[15] Emergency expedients that suspended regular legal and constitutional protections required not only political and legal justification but also popular legitimacy in order to be effective. The First World War and the security concerns relating to the labour movement and to aliens that continued in its wake provide ample demonstration of these general themes.

CANADA'S NATIONAL-SECURITY LAWS IN THE EARLY TWENTIETH CENTURY

As noted in the previous volume of *Canadian State Trials*, the 1892 Criminal Code retained the classic political offences of treason and sedition. The three main forms of high treason, dating to the time of Edward III, were replicated in modern language, accompanied by a lesser new form of treason and the unique Canadian political offence of lawless aggression.[16] No treason prosecutions on the scale of the Riel trial and the other trials from the 1885 North-West Rebellion would be ventured again by Canadian governments, although slight amendments were eventually made to the Code in the early 1950s.[17] Sedition prosecutions had also become unusual by the late nineteenth century, being viewed as controversial and risky because of the possibility of jury acquittals. The continuing need for that offence also seemed obviated by more comprehensive breach-of-the-peace offences and new institutional means to enforce them. But, as Desmond H. Brown and Barry Wright observed in the previous volume, the opportunity to define sedition more narrowly during the drafting of the 1892 Canadian Criminal Code, by specifying the required intent and thereby moving decisively away from the older elastic common law elements of the offence, had been missed. This would have serious implications when the official climate once again favoured sedition prosecutions, namely during the First World War and in response to post-war labour radicalism.[18]

Moreover, a wartime measure (Order-in-Council PC 2384) that outlawed organizations advocating economic or political change by force supplemented the political offence of sedition. It continued in effect after the war, by way of 1919 Criminal Code amendments (the addition of section 97, later renumbered and better known as section 98); and changes to sedition provisions, notably the elimination of the "lawful criticism" saving clause in section 133 and an increase in maximum sentences from two to twenty years. In the 1926 elections, Mackenzie King promised to repeal section 98, and several repeal bills were subsequently passed by the House only to be defeated by the Conservative majority in the Senate. Some of the other retrograde changes to sedition law introduced in 1919 were eventually reversed, and section 98 was eventually repealed in 1936.[19]

The traditional political offences, as restated in the 1892 Criminal Code and extended by amendments, were supplemented by modern national-security laws that reflected the wider reach and institutional capabilities of the twentieth-century state.[20] The period covered by this volume saw

the expansion of civilian surveillance, accompanied by modern secrecy and espionage legislation. Adopted from contemporary British legislation, new laws in these areas had been included in the 1892 Code and were elaborated at London's behest during the 1914–39 period. However, secrecy and espionage did not figure as prominently as security concerns in Canada as they did in the United Kingdom. There were no major cases of Canadians passing secrets to hostile powers in the period. By far the most important new Canadian national-security law, alluded to above, was the War Measures Act, 1914. This emergency executive-enabling legislation plays a central role in the five chapters in this volume relating to the First World War and had a considerable post-war legacy, notably by way of the above-mentioned 1919 amendments to the Criminal Code and related amendments to the Immigration Act.

The main national-security issues in Canada during the First World War revolved around enemy aliens, conscription, and military justice. Afterwards, aliens remained a concern and so the government continued exclusionary measures such as limitations on entry and naturalization, combined with the use of deportation, and suspension of civil rights. In addition, worries about radicalism grew rapidly from 1919 into a major government security preoccupation focused on potential revolutionary challenges to the political, economic, and cultural status quo. Against this background, we now offer a closer look at the laws and security measures deployed during the 1914–39 period and the concerns they were designed to address.

The War Measures Act: War Emergency Powers and Beyond

The War Measures Act, passed at the outset of the First World War, became permanent executive-enabling legislation to deal with the security challenges posed by modern war and similar emergencies. Before the twentieth century, serious security emergencies were, as noted earlier, met by way of emergency legislation of limited duration, wider exercise of prerogative powers, and, in extreme situations, the extension of martial law and military justice to civilians. The WMA introduced a new approach. Parliament was instead called upon to ratify the declaration of emergency and, in so doing, delegate legislative authority to pass emergency regulations to the executive branch of government. This had significant advantages. It avoided the controversial and constitutionally questionable reliance on prerogative powers or the extreme step of subjecting civilians to martial law and military justice. It also avoided the delays and risks

governments potentially faced in seeking to secure passage in Parliament of temporary emergency legislation on a piecemeal basis. As will be discussed, the effect of the WMA was retroactive and the act remained law beyond the parliamentary session during which it was passed. While regulations under its authority would expire, the act itself required no renewal. Nor was it repealed at the end of the war. Any questions about its potential application to emergencies other than war were laid to rest by an amendment in 1927 that clarified the reference to "apprehended insurrection." The government invoked this power again during the Second World War and in 1970 in response to the declared state of "apprehended insurrection" during the October Crisis. In 1988 the WMA was substantially revised and retitled the Emergencies Act.[21]

The WMA authorized cabinet to issue orders-in-council deemed necessary or advisable for the security, defence, peace, and welfare of Canada once Parliament ratified a declaration of a war or similar emergency. Parliament's legislative authority for these matters was in effect delegated to cabinet for the duration of the declared emergency. Cabinet was thus given a free hand to issue orders or regulations for any defence or security purpose, including matters as serious as detention without trial and summary deportation, censorship and communications, transportation, and production and appropriation, along with attendant summary powers and penalties. The unfettered discretion also reduced the need for governments to launch legal actions or risky prosecutions for political offences after the fact.

Murray Greenwood has argued that Parliament in 1914 never explicitly voted for continuation of the WMA beyond the end of the Great War, nor for the general principle of its potential peacetime application. Inadequate scrutiny, lack of vigilance, and complacency on the part of parliamentarians, a tendency shared by the press and supported by the general public's attitudes of deference to authority and early war fervour, facilitated the sweeping legislative delegation of emergency powers to executive authority.[22]

Greenwood notes that, as hostilities commenced, Prime Minister Borden's Conservative government understood that the war effort, on a magnitude and geographic scale not seen since the Napoleonic conflicts, would require unprecedented legislative powers. This would be the case even if Germany and its allies were quickly defeated, as many expected. Temporary emergency legislation, the traditional means relied on to regulate enemy aliens, ban secret societies, suspend habeas corpus, and enact various procedural expedients to facilitate the prosecution of political

offences, would require renewal each legislative session. Such conventional legislation would not suffice, it was suggested, since modern conditions required flexible and detailed regulations to deal with these matters and for the effective and strategic control of information, transportation, and production.[23]

When the Dominion Parliament met for a special war session in mid-August 1914, Westminster had already enacted the Defence of the Realm Act (4&5 Geo. V, c.29), known as "DORA," a relatively modest delegation of emergency legislative powers to the executive expressly enacted to be in effect only during the continuation of the war.[24] Canada's minister of justice, Charles Doherty, did not initially expect Parliament to agree to an open-ended delegation of legislative power to the executive and some opposition MPs expressed a preference for keeping Parliament in continuous session. The process of enactment of the WMA throws light on how major legislation can be adopted by a series of almost inadvertent steps. Draft legislation, produced by the Department of Justice's W.F. O'Connor, proposed a blanket act, one that would delegate a general power of executive regulation for security or defence purposes. Doherty, Borden, Solicitor General Arthur Meighen, and former deputy minister of justice Zebulon Lash were persuaded by O'Connor's argument that enumerated matters of regulation would result in omissions requiring ongoing legislative amendments, as was in fact already experienced in the United Kingdom with DORA. After consulting with Wilfrid Laurier, Liberal MP Edward Macdonald responded that the government should omit no special power needed to support the war effort and, without seeing a legislative draft, assured the government of his party's support. A number of reporters covering the special war session of Parliament assumed that the proposal involved minor amendments to the Criminal Code and Immigration Act.[25] Unsurprisingly, examination of the bill in Parliament was perfunctory,[26] and, in the country at large, its provisions received minimal attention. Greenwood's survey of a dozen newspapers and periodicals reveals scant coverage of the bill, with neither editorial comment nor published criticism.[27] Yet, in addition to the sweeping delegation of legislative powers to the executive, the act also had retroactive effect so that there would be no legal challenges to the arrest and detention of aliens from the beginning of August.[28]

The wide-reaching powers conferred by the WMA, including matters under provincial jurisdiction, were later upheld by the Supreme Court of Canada (SCC) and the Judicial Committee of the Privy Council (JCPC) as falling under the federal jurisdiction to pass laws for the "peace, order and

good government of Canada."[29] In the 1918 SCC case *In re George Edwin Gray*, examined at length in Patricia McMahon's chapter in this volume, some judges did express the view that the delegation of legislative powers to the executive should be limited in substance to specified matters, or to such times as Parliament is not in session. The question of whether the WMA was intended to have peacetime application was not addressed, although it was raised over sixty years later during the October Crisis of 1970.[30] In the 1914 debates Borden and Doherty had said nothing about the issue or post-war implications, and as Greenwood notes, "the judgements rendered in the case [Gray] ranged far and wide on the scope of the WMA but no statement was made indicating a peacetime application."[31]

Greenwood also points out that no proclamation of apprehended insurrection was issued in response to the 1919 Winnipeg General Strike, and no prosecutions were taken under the wartime order-in-council (PC 2384) after 11 November 1918. However, that order was not explicitly repealed until April 1919, when it was replaced by the Criminal Code amendments and new deportation provisions in the Immigration Act referred to earlier. And ambiguities in the statutory language in the original version of the WMA, which might suggest that it could be invoked only during wartime, were dealt with in a 1927 revision. The amended act eliminated exclusive references to "war" in a number of provisions and made it clear that the mention of "war" in its short title was intended as a general reference to emergency.[32] The 1927 amendment removed all doubt that the WMA was more than an ad hoc war measure. It became a generic emergency powers/executive-enabling statute that went well beyond contemporary British equivalents.

The WMA serves as a powerful example of a theme emphasized in much of Greenwood's scholarship, and a concern that motivated his founding of the *Canadian State Trials* series: the recurring tendency of Canadian governments, abetted by public deference to authority, to pass more draconian crisis legislation than that found in British precedents and to push shared British constitutional principles to their limit in relation to security matters.[33]

Civilian Surveillance and Espionage

The 1914–18 war marked a qualitative and quantitative change in the state's treatment of civilian populations. The control and internment of residents originating from nations at war with Britain and its allies was extended much further than previously experienced and the array of

wartime measures affected most Canadians. The new regime was national, widespread, and relatively effective. In the name of security and counter-intelligence, new approaches were used to control means of communication whether old or new. The press, the mail, broadcasting, and publishing and printing were subject to voluntary or imposed censorship, and most private radio stations were closed down.[34] Surveillance of persons identified as non-conforming whether by the Dominion and Royal North-West Mounted Police (RNWMP) or local police became the norm, a practice that, as previously mentioned, weighed especially heavily on enemy aliens and on radical labour leaders. Imperial legislation and British coordination of security and intelligence throughout the empire (as seen with the *Komagata Maru* affair in 1914) were also important influences on the status and treatment of aliens and approaches to espionage. The U.K. Alien Restriction Act, 1914 (4&5 Geo. V, c.12) was sent to Dominion and colonial governments, which were urged to adopt registration procedures, and the Official Secrets Act, 1911 had imperial effect.[35]

After the outbreak of war and in a period marked by general uncertainty, public sentiment in favour of control measures was fanned by unfounded and exaggerated rumours. German spies were the focus of many stories while others concerned possible attacks on Canada from enemy nationals resident in the United States, or risks of German sabotage.[36] Adding to popular concern was the proximity of the still-neutral United States with large German and Irish populations potentially hostile to Great Britain. This situation encouraged talk that local agents' communications with Germany were being maintained via the United States.[37] Such rumours and fears seem exaggerated but there were areas of serious threat, such as, for instance, the presence in the United States of four hundred thousand or more immigrants of German or Austro-Hungarian origin; many of the men would have done military service in their countries of origin and would be considered reservists for the German or Austro-Hungarian armies, creating a conflict of loyalties.

The rumours and reports encouraged the general perspective that methods of surveillance were a necessary feature of the new war. There was, however, no formal system of Canadian agents or organizations designed to protect internal state security during the First World War and, in practice, many measures of repression and control were implemented in piecemeal fashion. Responsibilities were divided with the police in charge of certain approaches, whether local, provincial, or national forces, and for other purposes the militia or military. In effect, in the absence of a unified security service until the post-war period, various organizations were

created or drawn in to take responsibility for measures instituted by the government. For example, the Dominion Police were given responsibility for preventing sabotage when several serious attempts or incidents took place in 1914 and 1915,[38] while the military took responsibility for overseeing enemy aliens in August 1914.[39] But, by October 1914, responsibility for aliens had been transferred to a new organization under the Canadian militia[40] and, in 1915, to the Department of Justice.[41]

It might be suggested that some state activity fell close to the scope of what would now be termed "counter-intelligence," where the term is taken to refer to "information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage or assassinations conducted for or on behalf of foreign powers, organizations or persons."[42] This may be an overly generous application of the term. The police conducted direct surveillance routinely against members of organizations and other individuals suspected of being, or known to be, opposed to the war in Europe and used infiltration methods against the Industrial Workers of the World (IWW), the Communist Party of Canada, and some labour unions. These activities provided the police with an insider's view of the target organizations' operations and produced evidence for prosecutions.[43] But it is questionable whether the surveillance was sufficiently intensive and effective or the selected targets threatening enough for the activities to qualify for recognition as forms of "counter-intelligence."[44]

In fact, few residents of Canada appear to have been working on behalf of enemy powers, probably only a small handful. In effect, much of the state-sanctioned surveillance activity was aimed at symbolically supporting the war effort by singling out non-conforming organizations or persons in an effort to control their communications, perhaps primarily to demonstrate that the authorities were vigilant. It was what these organizations and their members said, rather than what they did, that troubled the authorities during the early part of the war.[45] Military intelligence and counter-intelligence operations continued to operate after the war, and after 1920, when the Dominion Police merged with the RNWMP to form the Royal Canadian Mounted Police (RCMP), a dedicated unified civilian security branch emerged with full responsibility for national security; its activities are discussed further below.[46]

Canada's official secrets and espionage laws provide the background to these surveillance activities. Legislation in this area, modelled on 1889 U.K. legislation, had been introduced shortly before the enactment of the Canadian Criminal Code. The passing of state secrets to enemy powers had traditionally been met by treason and sedition prosecutions but

concerns about effective modern spy laws had grown in Britain in the late nineteenth century, particularly in relation to the disclosure of sensitive government and technological information.[47] Provisions in the 1889 legislation relating to secrecy and breach of official trust became sections 76–79 of the Code, remaining part of it until elaborated in a separate Official Secrets Act in 1939.[48]

The U.K. government had soon found the 1889 legislation inadequate. The press helped mobilize opposition to amending bills in 1896 and 1908 but by 1911 a series of spy scandals, Germany's growing militarization, and popular spy literature (by writers such as Erskine Childers and William Le Queux) had created a more receptive political climate for passage of the sweeping Official Secrets Act. Espionage or spying and leakage of secrets continued as the main offences but espionage no longer required proof of intentional damage to the state and military secrets were further protected. Prohibited disclosure ceased to be limited to crown servants and government contractors. It extended to the press and all persons not authorized to receive information and the definition of unauthorized communication broadened to cover information, whether classified or not, disclosed "for the benefit of any foreign power or other manner prejudicial to the safety or interests of the state." In-camera proceedings and reverse-onus procedural expedients were introduced. The 1911 U.K. act was listed in the 1912 Statutes of Canada as an applicable imperial act and so it extended to offences committed in any part of the empire.[49]

However, as noted, secrecy and espionage concerns did not figure prominently within Canada in this period and the older provisions remained in the Canadian Criminal Code (becoming sections 85 and 86 in the 1927 revisions). Ottawa enacted a separate Official Secrets Act only in 1939, adopting the U.K. 1911 act and its 1920 amendment as domestic law.[50] As we shall see in the next volume, concerns generated by the 1945 Gouzenko affair, other spy crises in the late 1940s, and the Korean War led to numerous Official Secrets Act prosecutions and the further development of espionage provisions in the Criminal Code.[51] Together these laws provided an expanding mandate for the RCMP security branch and for the development of intelligence and counter-intelligence operations in other departments that expanded the scope of civilian surveillance and the range of domestic targets. In the longer term, the secrecy laws also supplemented and largely displaced sedition as means of restricting expression and open and accountable government, facilitating compliance within the public service and creating a chilling effect on the press.

Conscription

The conscription issue arguably had as broad a social impact as the wartime treatment of aliens but was even more divisive. It was to become part of the historical perspective of succeeding generations of Québécois. At the time it created a crisis in French-English relations – possibly the deepest since Confederation, even worse than that produced by the Riel affair. And it fanned earlier English-French conflicts such as the Manitoba schools question and the restrictions on French-language education in Ontario. It began in 1916 when the Conservative government recognized that the supply of volunteers for the war effort in Europe was falling rapidly and seemed unlikely to rebound.[52] Over time and as a result of the government's handling of the situation, the conscription issue became a national drama that spun out over two years, with lasting political effects in Quebec.

The timing of the rapid decrease in Canadian enlistment was a serious issue since the British and Allies' need for manpower had never been greater. The losses in the battles of 1916 in Flanders and on the Somme had been very high and the tasks before the Allies accentuated the need for more and more men. Enthusiasm for Canada's war effort had greatly diminished and was lowest in Quebec, where ultramontane French Canadians felt little allegiance to republican, anti-clerical France and even less towards the United Kingdom. Furthermore, enlistment in the predominantly English-speaking battalions of the Canadian Army held little attraction for francophones.[53] Outside Quebec, enrolment in the army had been viewed more favourably but enthusiasm faded over time. Enlistment had offered employment early in the war, after the hard years of 1913–14, but by 1916 the potential costs were seen as too high. Conscription threatened to deprive both agriculture and essential war industries of vital manpower. The generally tight labour market in agriculture had reduced support for the war effort among farmers, while other employers, including those not profiting from wartime conditions, also faced labour shortages. Moreover, the task of enumerating Canadian labour resources and allocating the right proportions to military, agricultural, and industrial requirements was new to the government and beyond its capabilities to administer efficiently. As a result, manpower policy in 1914–18 was impromptu and reactive.

Borden's Conservatives had previously shown great reluctance to impose conscription but their position changed after Borden's stay in the United Kingdom from February to May 1917, when he discussed the military situation with his fellow prime ministers, Canadian generals, and the

soldiers themselves. During this visit, the Russian war effort was thrown into doubt with the tsar's abdication in March 1917. In a world of hard choices, when the outcome of the war was very much in doubt and its duration was anyone's guess, Borden concluded that the country's primary obligation was to the army and its allies. In May 1917 his government introduced the Military Service Act.[54] Under the statute, enlistment for overseas service was first made compulsory for all men between the ages of twenty and twenty-four who were single or widowers without children. The act included an appeal process, which was soon swamped with applications; one estimate is that 94 per cent of more than 400,000 eligible men filed appeals.[55]

Borden's government, faced with the possibility of defeat in the election scheduled for 13 December 1917, had formed a coalition including leading figures from the opposition Liberals. During the election campaign, conscription became the most contentious and divisive issue ever put to the Canadian electorate and Borden responded by enfranchising all soldiers as well as giving votes to their wives, widows, sisters and mothers, and by exempting farmers' sons from conscription. Laurier's Liberals were effectively split on the conscription issue, with the result that the Unionist Party won handily, although Laurier won resoundingly in Quebec, dividing the country further along linguistic lines.[56]

The level of anti-conscription sentiment among many elements in the province of Quebec led to an outbreak of rioting at Easter, 1918. Demonstrations began after the police demanded exemption papers from a young man in Quebec City and, when he failed to produce them, arrested him. The arrest symbolized for Canadiens the regime of surveillance by police and military authorities of all men of military age. Such was the public's resentment that large crowds gathered to protest the arrest and, by Sunday, 30 March, the authorities had summoned military aid to the civil power. The reinforcements came in the form of English Canadian soldiers, a circumstance guaranteed to worsen the situation. There was ensuing violence and exchanges of gunfire that resulted in the deaths of four civilians and the wounding of five soldiers and fifty civilians before crowds dispersed.[57]

The German armies launched a spring offensive in March 1918, which was a severe shock to the British and French armies and once again drove home the crucial importance of maintaining manpower, especially since American soldiers seemed unlikely to join the action in a decisive way in the short term. Three weeks after the riots, in May 1918, Borden's cabinet

moved again, this time to halt all exemptions from military service using the simple expedient of cancelling the appeal process, a decision effected by an order-in-council under the WMA.[58] Previously exempt recruits in the first category to be conscripted, including many sons of farmers, were profoundly alienated by the move, especially in Quebec. In practice, however, only a small percentage of conscripted men were sent overseas; those who were sent, by all accounts, fought well enough and supplied the manpower necessary for the Canadian Expeditionary Force (CEF) to maintain its fighting edge to the end.

Military Justice

Military trials were a notable feature of the First World War and have been written about extensively; they remain controversial, especially the executions of a small percentage of convicted soldiers. In legal-historical terms, the reputation of such trials for relative harshness, arbitrariness, and rapid procedures – at least during a considerable part of the past two centuries – has made them appear an anomaly compared with common law criminal trials in most jurisdictions. As a result, military justice has been viewed by civilian lawyers as a blunt and at times unfair instrument. The prevailing military perspective has been the opposite: namely, that conduct by soldiers failing to carry out orders – categorized, for instance, as offences of desertion or mutiny or cowardice – must necessarily be subject to swift trials and severe and exemplary punishment. Underlying this view is the unquestioned assumption that, for an army to be effective, soldiers at a minimum must obey orders and be ready and willing to fight.

During the First World War, twenty-five Canadian soldiers were executed after conviction by military tribunals,[59] the great majority for the offence of desertion.[60] This compares with a total of 346 executions of officers and soldiers by British authorities.[61] It should be noted, however, that about 90 per cent of capital sentences imposed by tribunals on soldiers from all Allied countries were commuted[62] and that those appearing before military tribunals for serious offences represented a minute proportion of fighting men.[63] According to Chris Madsen, "upwards of 16,000 courts-martial took place within the Canadian Expeditionary Force between 1914 and 1920"; most were for minor offences.[64]

The term "military justice" is perhaps misleading when the goal of military discipline had been and remains the fighting effectiveness of citizen soldiers. In this view, as stated, military justice has necessarily to be

administered promptly and to have a powerful deterrent effect.[65] In practice, this meant, as many commentators have noted, that those executed were not necessarily the most obdurate cases but in some instances soldiers who happened to be in the wrong place at the wrong time.

The Canadian Militia Act had been updated in 1904[66] and the Department of Militia and Defence formed in 1906. Throughout the First World War, Canadian forces fought under the British High Command and came under the same system of military law as all British subjects fighting in the imperial and Dominion forces.[67] Canadian military discipline followed the *King's Regulations and Orders* and, at the outset, those accused of major offences appeared before British military tribunals.[68] In the early period of the war, Canadian officers handled summary offences while serious offences were likely to be brought before courts-martial composed of British officers. The Canadian government did not object to the arrangement and neither did New Zealand's or South Africa's governments – two colonies also deeply committed to the war.[69] In contrast, the Australian government refused on constitutional grounds to allow British military trials of Australian soldiers.[70] From 1916 onwards, tribunals were more likely to be staffed by Canadian officers. The make-up of Canada's fighting men began to change after passage of the Military Service Act, 1917 [71] and, once exemptions from compulsory service were withdrawn in May 1918, the majority of new recruits were conscripts.

It seems that the British judge advocate general, or probably his Canadian counterpart after 1916, reviewed all case files and considered sentences from hearings of allegations of serious offences before penalties were carried out. Of the twenty-five executed Canadian soldiers, five out of twenty-one executed for desertion were from the 22nd (French Canadian) Battalion where discipline was a continuing problem;[72] two soldiers executed for murder had killed an officer; and two executed for cowardice were considered repeat offenders.

A good deal of information has been published recently on the context or setting of court-martial cases of Canadian soldiers.[73] It is less well known that such proceedings continued after the peace of 11 November 1918; for example, as a result of the resistance of French Canadian conscripts to being sent to Siberia in 1919 as part of the Siberian Expeditionary Force, ten soldiers were tried by a Canadian military tribunal in Vladivostok for "mutinous conduct" (see Benjamin Isitt's chapter). Two months after those trials, a major series of courts-martial in the United Kingdom followed the riot of several hundred Canadian troops awaiting long-delayed demobilization and repatriation at Kinmel Park in North Wales.[74]

Political and Labour Radicalism

The levels of political and labour radicalism varied enormously over the period covered by this volume, rising during and immediately following the First World War, receding during the 1920s, and then resurging in the Great Depression. The government's response to both waves of radicalism was to turn towards coercion. During the war the government ruled through the WMA and exercised its powers to intern resident aliens, prohibit enemy-language publications, and outlaw radical organizations. But that was not all.[75] In 1918 it issued PC 815, the infamous "anti-loafing" law that made it an offence, punishable by a fine of $100 or six months in jail in default of payment, for an adult male not to be "regularly engaged in some useful occupation." Although striking workers were exempt from its application, the order was used against union organizers and radical agitators. Other orders tightened up the enforcement of the Industrial Disputes Investigations Act (IDIA), the keystone of federal labour policy, which required that strikes and lockouts be postponed in covered industries until after conciliation was completed, to address union defiance of the law.[76] Fear of police unionism led to PC 2213 prohibiting the Mounties from joining or associating with any union or organization of employees. Finally, just before the end of the war, the government banned all strikes in industries covered by the IDIA, which had been extended to all war production in 1916.[77]

In addition to these orders-in-council, the government (and employers) also had "normal" law at their disposal, the importance of which increased once the government's emergency powers lapsed at the war's end and after the orders-in-council were eventually rescinded (the last ones in 1921). But, as Dennis Molinaro explores in more detail in his chapter, some emergency powers became permanent as the government prepared to confront the labour unrest that intensified after the armistice. In particular, section 97/98 of the Criminal Code, passed in 1919, built on PC 2384, the order that enabled the government to declare an organization unlawful if it advocated economic or political change by force or violence and to punish members, seize and forfeit the organization's property to the crown, and prosecute anyone who knowingly permitted such as organization to meet on premises he or she owned or rented. Section 98 followed along similar lines, except that, unlike PC 2384, it did not enable the government to declare organizations unlawful. Rather, the illegality of the organization would have to be established judicially in the context of trials of individuals who were prosecuted under its provisions.[78]

The government also enhanced its deportation powers with a view to using them to rid the country of the British-born leaders of the Winnipeg General Strike. The 1906 Immigration Act had been amended in 1910, with a new section 41, to allow the Immigration Department to deport anyone other than a Canadian citizen who advocated the overthrow by force or violence of the government or of constituted law or authority, or who by word or deed created or attempted to create riot or public disorder.[79] Yet this did not apply to the British-born, who became citizens by their domicile in Canada. Consequently, in 1919 section 41 was amended so that only those born or naturalized in Canada were exempt from its provisions, and since British-born strike leaders gained citizenship by domicile and not by naturalization,[80] they were now deportable. Additionally, the provision was made retroactive to 1910 so that a person who had fallen within that class since the original enactment of section 41 was deportable. Finally, even being naturalized was not a guarantee of immunity from political deportation, since the Naturalization Act was also amended to allow disaffected or disloyal persons to have their naturalization revoked, making them subject to section 41.[81]

The use of these powers against political and labour radicals is the subject of a number of the chapters in this book, but it will be useful to identify some general issues that run across the period and are not fully captured in those studies. First, it is fair to say that prosecutions for political offences were relatively infrequent during this period, although we lack a count both of the total number of political prosecutions, including charges under sections 98 and 132 (seditious conspiracy and seditious libel, section 133 after 1927) and deportations under section 41. However, relatively infrequent usage of these laws should not lead to the conclusion that they were unimportant. High-profile political prosecutions were a risky endeavour, but when successful they sent a strong message about the seriousness with which the government viewed the actors and actions involved; moreover, in the case of section 98 prosecutions, the result was a judicial finding that an organization was unlawful, which could then justify further actions against other members, including deportation for those subject to section 41 of the Immigration Act. Immigration authorities, however, had their choice of many possible grounds for deporting radical aliens and preferred to use other legal categories, such as becoming a public charge. The reason for this, according to Barbara Roberts, was that "the Department could avoid unfavourable publicity, make legal appeals against deportation more difficult and less effective, and make the administrative management of deportation smoother, more efficient, and

easier."[82] And all of this could be justified bureaucratically as being within the spirit of a law that authorized political deportations, while leaving no traceable record of the true number of people deported for political reasons.

Secondly, a focus on explicitly political prosecutions and deportations can deflect our attention away from the use of criminal law provisions protecting public order. For example, unlawful assemblies were broadly defined to include three or more people with a common intent to carry out a common purpose that causes people in the neighbourhood to fear on reasonable grounds that the persons so assembled will disturb the peace tumultuously or provoke others to do so. A tumultuous disturbance, if it did occur, was defined as a riot. Not only were members of unlawful assemblies and rioters guilty of an indictable offence, but the Riot Act could be read, requiring those assembled to disperse immediately.[83] The failure to do so provided the police, sometimes with the aid of the militia, all the justification they needed to forcibly disperse the crowd, sometime with fatal results, as in the actions taken to break up the On-to-Ottawa trekkers in Regina, an episode discussed in Bill Waiser's chapter in this volume. At a more mundane level, the criminal law also regulated picket-line behaviour through its section on watching and besetting. Peaceful picketing had been expressly excluded from criminal watching and besetting in 1876,[84] but the exclusion was inadvertently omitted from the Criminal Code in 1892. Some judges interpreted the absence of the exclusion as intentional and labour unions demanded that protection of peaceful picketing be reinserted. However, the federal government dragged its heels and it was only in 1939 that the exemption of peaceful picketing from criminal watching and besetting was restored.[85] Of course, violence, threats of violence, and intimidation were covered by the Code and these offences were subject to interpretation and were sometimes applied selectively to limit picketing activity. Finally, the vagrancy provision provided police with an enormous degree of discretion in its application, as the On-to-Ottawa trekkers discovered.[86]

Discussions of legal control of public order cannot be limited to the criminal law. At the federal level, there was legislation other than the Immigration Act that added to the federal government's power. For example, as the Depression hit and the federal government was pressed to provide resources to support the unemployed, it enacted legislation that authorized it to issue "all such orders and regulations as may be deemed necessary or desirable for … maintaining peace, order and good government throughout Canada." In defending the measure against criticism

from Mackenzie King and J.S. Woodsworth that it undermined the rule of law, R.J. Manion, the minister of railways and canals, asserted that the power was necessary for keeping "the bolshevists in order by force."[87]

Municipal officials also sometime played an important role, although the legal basis for their actions was not always obvious. For instance, during the Winnipeg General Strike, in response to large and frequent marches by pro- and anti-strike veterans, and intensified picketing, the mayor issued a proclamation, drafted by A.J. Andrews, leader of the Citizens' Committee of 1000 opposing the strike, banning public gatherings and parades.[88] In Toronto, the Police Commission prohibited public meetings in foreign languages in the fall of 1928 as part of its effort to supress the Communist menace, and threatened hall owners that their licences would be revoked if they permitted such meetings on their premises. Efforts to organize free-speech protests in Queen's Park or make soapbox speeches at other outdoor locations were broken up by police, who forcibly dispersed the crowds and arrested participants on charges ranging from vagrancy to disorderly conduct.[89] And, when the unemployed organized demonstrations in the early 1930s, they were often denied permits and faced bans on public meetings.[90]

Closely related to the laws themselves were the decisions made about their enforcement. Policing officials are always faced with choices about how widely to interpret and how strictly to enforce the law. While it is impossible to generalize, and there was certainly significant variation in official responses to marches and picket lines, it is fair to say that there were a large number of instances in which restrictive laws were expansively interpreted and vigorously applied to limit the space for public protest. The militia was called up three times during wartime strikes, but six times in the post-war confrontations of 1919 and then another four times between 1921 and 1923.[91] As a result of the heavy reliance on the militia, in 1919 the government amended the Militia Act to increase the maximum permanent force from 5,000 to 10,000.[92] However, the federal government's enthusiasm for making the militia available to aid the civil power began to wane after the election of the Liberals in 1921 and in response to the use of troops in the Cape Breton strike in 1922 and then again in 1923 (discussed in David Frank's chapter), in both cases on the signature of a judge. The ease with which extraordinary force could be requisitioned, and its great cost, convinced the federal government to amend the act to require that the provincial attorney general concur with the request from local officials and to make the province, not the municipality, responsible for the cost.[93] This had some deterrent effect and the militia was called out only two

more times to address labour unrest, once in response to the strike of coal miners in Estevan, Saskatchewan, in 1931 after police fired on a motorcade of striking workers and their families, killing three and wounding eight, and for the final time, in Stratford, Ontario, during a strike by furniture and poultry processing workers in 1933.[94]

Despite the concern about the lack of adequate controls on calling out the militia, generally speaking it was an exceptional event. For the most part, policing fell to municipal and provincial forces, under the control of their respective government officials. Here, too, however, while tolerance for public demonstrations and picketing varied, officials tended to tilt toward the repressive, as was demonstrated by the actions of Toronto police in trying to prevent Communist activity in the late 1920s; the provincial police in Nova Scotia, who attacked labour protestors in Cape Breton (discussed in Frank's chapter); the municipal police in Montreal, who established a "Red Squad" and worked closely with provincial police and the RCMP to monitor and disrupt the Communist Party and leftist organizations (discussed in Andrée Lévesque's chapter); and the municipal police and the RCMP in Regina, Saskatchewan, who triggered a riot by using excessive force while trying to arrest leaders of the On-to-Ottawa Trek (discussed in Waiser's chapter).

Behind public policing, there lurked the secretive operations of Canada's political police, who went undercover to keep tabs on and investigate the activities of radicals and dissidents. The First World War and the WMA provided fertile ground for the growth of these operations as the Dominion Police and the RNWMP, often operating with the assistance of private police agencies hired by employers, kept a careful watch on labour organizers and provided intelligence to the government that became the basis for issuing repressive orders-in-council. These efforts intensified during the post-war conflicts as police operatives infiltrated radical organizations and, on occasion, surfaced to testify against officials, such as in the prosecution of R.B. Russell, one of the Winnipeg strike leaders (discussed in Reinhold Kramer and Tom Mitchell's chapter). As noted, the Dominion Police were merged into the RNWMP to form the RCMP in 1920, which was given complete jurisdiction over national security. Between 1920 and 1929, the RCMP opened at least 6,767 subject files on radicalism and 4,806 files on suspected radicals.[95] Political policing intensified during the Depression and played a prominent role in planning raids against Communist Party offices and arresting officials and activists. John Leopold, a police agent who had infiltrated the party, was the star witness at the trial of the Communist leadership in Toronto in 1931 (discussed

in Molinaro's chapter). These convictions required a judicial determination that the party was an illegal organization under section 98 and, once that was made, a broader crackdown followed in which the secret police played a prominent role identifying activists to be arrested and, in some cases, deported.[96]

In the face of these repressive measures, radicals were not passive victims. Indeed, one notable development of this period was the formation of the Canadian Labour Defense League (CLDL) in 1925, perhaps Canada's first organization created to provide legal aid to persons facing political prosecutions and deportations. Initially, the CLDL was formed to defend seventy-five members of the Mine Workers Union of Canada, arrested for picket-line activity during a strike in Drumheller, Alberta. Although not all the individuals who formed the CLDL were Communists, the latter dominated the organization, beginning with its leader for most of its existence, A.E. Smith. The organization had 350 branches, many sponsored by ethnic organizations, and 20,000 members at its high point. The CLDL played a major role in defending individuals arrested during the free-speech struggles in Toronto in the late 1920s, the leaders of the Communist Party who were arrested in 1931 and charged under section 98, and numerous foreign-born activists facing deportation. It defended over six thousand individuals in the inter-war years. Ironically, one of the people to whom it provided legal representation was its leader, A.E. Smith, who was indicted for sedition in 1934 after giving a speech in which he accused Prime Minister R.B. Bennett of giving the order to have Tim Buck, the leader of the Communist Party, assassinated in his jail cell while serving a sentence in the Kingston penitentiary after being convicted under section 98 in 1931. Smith was acquitted. The CLDL not only acted as a legal-defence agency but also played a major role in the campaign for the repeal of section 98. It extracted a promise of repeal from Mackenzie King, then the leader of the Liberal opposition, and King kept his word after becoming prime minister in 1935. However, at the same time, section 133 was also amended to preserve some aspects of the discredited law (discussed in Molinaro's chapter). [97]

OVERVIEW OF CHAPTERS

The volume is broadly divided into two main chronological periods, the First World War and the two decades that followed. There is nonetheless considerable overlap in the legal responses and the war left a legacy of discrimination and ongoing government security concerns. As noted,

some temporary wartime orders issued under the WMA continued in effect after the war through amendments to the Criminal Code and Immigration Act. Immigrant groups continued to be a security concern in the post-war period. And processes of military justice and wartime intelligence operations continued in the post-war period and were extended to growing concerns about labour radicalism.

As was the case with the previous volumes in this series, the span of time covered necessitated difficult editorial decisions about what cases and topics to include. Our definition of terms and legal focus provided the main criteria for our selection. The chapters that follow reflect a range of legal responses to real or perceived security threats and aim to be representative and relatively comprehensive. However, it is inevitable that some topics are omitted or only briefly touched on, such as the resorts to military aid to the civil power during the conscription crisis and the Winnipeg and Cape Breton strikes. The CLDL legal challenges to the Halifax deportations of Communists and the attempts by government to intervene over labour support for the Republicans during the Spanish Civil War are other examples.

The chapter by Bohdan Kordan opens the volume with an examination of the local impact of wartime measures including alien registration and internment without trial and a range of other forms of discrimination. Kordan's chapter outlines the difficult circumstances faced by immigrants from enemy nations and the domestic policy considerations that led to early wartime measures against them. He focuses on the development of the alien-registration process, implemented by Order-in-Council PC 2721 under the WMA, and the consequences of registration. These initial state requirements were crucial in paving the way to the later suspension of habeas corpus and internment. For a significant number of those identified as "enemy aliens," PC 2721 led directly to sweeping arrests and indefinite detention, in most cases on the basis of status rather than evidence of any hostile activity. As noted earlier, about two-thirds of those interned in Canada during the Great War were civilian residents, an experience that is fully examined in Kordan's recent book.[98]

Peter McDermott's chapter surveys the broader imperial context of wartime measures, compares approaches taken in the United Kingdom and Australia, and examines the constitutional and legal issues that arose. As we have seen, executive orders under the U.K. Defence of the Realm Act were relatively limited in scope compared with the WMA. The Aliens Restriction Act, 1914 further regulated the activities of aliens in Britain but internments there were ultimately the result of the prerogative

powers of the crown. In Canada and Australia, internments were the result of sweeping legislation. Both Dominions had comparatively large immigrant populations, many originating from enemy powers, and interned relatively larger numbers than the United Kingdom, including naturalized British subjects of German birth or origin, despite their great distance from hostilities. Wider-ranging discriminatory measures included Canada's 1917 Wartime Elections Act, which was influenced by similar Australian legislation.

Jonathan Swainger's chapter follows the impact of general wartime restrictions on civilians who spoke out against the war or expressed themselves in a manner considered detrimental to the war effort. His examination of prosecutions for seditious utterances focuses on western Canada, where prosecutions occurred with considerable frequency compared with the rest of the country during the early years of the war. Most were directed against individuals from enemy countries and the rate fell off sharply as the war went into its third and fourth years, probably in part the result of diminishing jingoism and weakening pro-war attitudes among the public. Swainger suggests that more rational views of the low level of risk these cases presented prevailed among superior court judges who heard appeals from convictions. He concludes that efforts were made by the courts to temper prevailing wartime anti-alien sentiment and discourage the use of such prosecutions.

The issues of conscription and the sudden withdrawal of most possibilities for exemptions underlie the 1918 appeal to the Supreme Court of Canada, *In re George Edwin Gray*, examined by Patricia McMahon. McMahon's chapter investigates the unexpected background to a hearing on habeas corpus before the SCC. A writ was brought on behalf of Gray, a young Ontario farmer reluctant to leave his farm and enlist when ordered to do so. The government's fear of a profusion of legal challenges to the compulsory draft – based on the claim that the cabinet's reliance on issuing an order-in-council to change provisions under the Military Service Act, 1917 was illegal – led to extraordinary steps. The *Gray* case shows the strength of the federal government's determination to establish that cancellation of exemptions was above any form of legal challenge. Whether the withdrawal of exemptions was constitutional or not, the Supreme Court sided with the government in upholding the indirect use of the War Measures Act and thus closed a potential escape from the draft for Gray and for others whose cases were moving through the courts.

Benjamin Isitt writes about courts-martial involving Canadian soldiers who resisted being sent to Siberia in 1919. Reluctance to follow orders to

embark was shown by some Quebec conscripts when, after the end of the war in Europe, two battalions of Canadian soldiers were ordered to board ship for Vladivostok to join a British battalion under Canadian command, known as the Canadian Siberian Expeditionary Force. The broad goals of the endeavour were to assist the White Russians against the Bolsheviks and to support the Allies' economic interests in Russia, although the immediate rationale was to keep large quantities of Russian supplies held at Vladivostok from falling into German hands, Germany and Austria now being allied with post-revolutionary Russia under the 1918 Treaty of Brest-Litovsk. Isitt's analysis of military as opposed to civil trials throws light on their very different purposes and procedures and provides some understanding of the many thousands of military trials that took place during the First World War. The tribunals in Vladivostok are especially informative because records of the Canadian proceedings were retained and furnish considerable detail compared with the limited information in most British records of similar military trials held in Europe.

Reinhold Kramer and Tom Mitchell's chapter focuses on the response to the extraordinary events of the Winnipeg General Strike in 1919, the most significant post-World War I conflict between organized labour, which was seeking to establish collective bargaining, and major employers, who wanted a return to the largely union-free world of the pre-war era. As the strike spread, the union reorganized public services formerly provided by municipal employees, which, in combination with socialist rhetoric from a number of radical union leaders, provided the basis for some prominent citizens and public officials to view these events as a threat to the existing order. Ironically, as Kramer and Mitchell show, it was the Citizens' Committee of 1000, formed to oppose the strike, and in particular its leader, A.J. Andrews, that assumed state powers, arranging for the arrest of strike leaders, searches for seditious materials, and the conduct of the trial of R.B. Russell, one of the principal strike leaders.

David Frank's chapter examines the prosecution of J.B. McLachlan, the leader of the Cape Breton coal miners' union as part of the last great labour conflict of the post-First World War era, the struggle of unionized coal miners to resist wage cuts and of steelworkers to gain union recognition. After mounted provincial police waded into a crowd of protestors, injuring many, McLachlan wrote a circular letter to union locals accusing the Nova Scotia government of being responsible for crimes committed by the police. The letter was published in Halifax and, based on its content, McLachlan was arrested and tried for seditious libel. Frank not only provides the rich context in which these charges arose but, like Kramer and

Mitchell, offers valuable insights into the ways in which the legal system was manipulated to produce a guilty verdict.

As discussed earlier in the Introduction, the federal government enacted section 98 of the Criminal Code in anticipation of post-war confrontations but did not use the measure until the Great Depression of the 1930s. At that time, the government decided to crack down on Canadian Communists, who played a prominent role in organizing the unemployed and leading the radical unions affiliated with the Workers' Unity League. Dennis Molinaro's chapter provides the background to section 98, emphasizing how it made the exceptional conditions of wartime permanent, and then analyses the first prosecution under its terms, the trial of Communist Party leaders in Toronto in 1931. His detailed examination of the trial highlights both the legal complications that had to be overcome to gain a conviction and how the law was used to make ideology, not action, a criminal offence. The theme is further developed in Molinaro's discussion of the trial of Arthur Evans, a leader of the WUL in British Columbia, for the radical content of speeches he delivered in 1932.

Communist and left-wing organizations were also active in Quebec, where they met with a vigorous campaign of repression, as Andrée Lévesque shows in her chapter, which covers police activities and trials from 1919 to 1939. The story in Quebec had its own unique twists where, in addition to the Communist Party, an indigenous left-wing and anti-clerical organization, *L'Université ouvrière*, gained popular support and was also targeted by the police. Additionally, the Catholic Church strongly supported state repression of radicals, whether in Montreal, the centre of these activities, or in the northern town of Rouyn-Noranda, where the WUL organized strikes by miners and forestry workers. Activists were tried on several occasions, often charged with political offences. Finally, Lévesque draws our attention to the persistence of state repression in Quebec after 1935, at a time when it began to relax in the rest of Canada, owing to the Catholic Church's ongoing anti-communism and the sympathetic ear of the premier, Maurice Duplessis, elected in 1936.

Leaders of ethnic communities were also the target of government surveillance and security measures when seen as obstacles to immigrant conformity and integration. John McLaren's chapter focuses on continuing post-war discrimination against the Canadian Doukhobor community and the saga of its leader, Peter Petrovich Verigin, who had been welcomed to Canada in 1925 as a moderate new head of the community and a victim of Russian tyranny. Continuing Doukhobor non-conformism led to local and provincial calls for action and increasing RCMP harassment.

By the early 1930s, Ottawa had come to share local concerns and took steps to arrange Verigin's deportation. Peter Makaroff, Canada's first Doukhobor lawyer and later prominent counsel in the defence of the On-to-Ottawa trekkers in Regina, defended Verigin and successfully applied for habeas corpus, which led to a Supreme Court of Canada reference. The Verigin affair highlights the point that labour radicals were not the only targets of arbitrary repressive measures and that political policing and deportation also took the form of egregious ethnic discrimination.

Section 98 was used for a final time to prosecute prominent radicals in an effort to put an end to the On-to-Ottawa Trek in 1935, the subject of Bill Waiser's chapter. Indeed, it was the attempt to arrest trek leaders on section 98 charges during a rally that triggered the Regina Riot. As Waiser shows through analysis of the trial and a subsequent provincial commission of inquiry, the narrative that the police actions were justified to preserve law and order was embraced by the authorities, leaving no space for a nuanced understanding of the experiences of the trekkers, who had suffered both the economic impact of the Depression and the inadequate response of their governments. Official adherence to this law-and-order perspective precluded a serious inquiry into the wisdom of the decision to arrest the leaders during a rally and the police actions that followed, and left unrecognized the irony of the fact that the section 98 charges were dropped before the trials began.

The volume, like the previous ones in the series, closes with short archival essays and illustrative primary documents referred to in many of the chapters. Reproduction of legislation such as the War Measures Act and section 98 of the Criminal Code, for instance, serves as a useful reference and avoids quotation of lengthy extracts in the chapters themselves. The archival essays, by Judi Cumming on suggested research strategies to deal with relevant records at Library and Archives Canada and by Patricia McMahon on experiences accessing records through the current Access to Information regime and processes, speak to the challenges faced by our contributors in working on the 1914–39 period and serve as guides for further research.

Like any edited collection, this one cannot address all the relevant events and issues during the period, but we trust that the chapters here further illuminate and connect many of the key ones and will inspire additional research in the area. The period 1914–39 was one of both total war and revolutionary challenges. Canadian governments contended with large-scale migration of populations of diverse cultures and production demands on an unprecedented scale. The young Dominion played an increasing role

on the international stage, becoming an active participant in international networks of armed conflict, security, and intelligence. The related legal interventions affected enormous numbers in Canada and the associated narratives, experiences, and issues are recounted in this book. The long-term historical meaning of these events, including in public memory and in their effect on efforts to protect rights during times of crisis, will be explored further in the next volume as the *Canadian State Trials* series moves on to the Second World War, the Cold War, and the October Crisis.

NOTES

1 See e.g., Tim Cook, *Warlords: Borden, Mackenzie King and Canada's World Wars* (London: Allen Lane 2012).
2 Wartime Elections Act, 7–8 Geo. V, c.39. The limited extension of the franchise to women came at the cost of the rights of immigrants – see McDermott's chapter in this volume.
3 See Kordan's chapter in this volume and also his *Enemy Aliens, Prisoners of War: Internment in Canada during the Great War* (Montreal and Kingston: McGill-Queen's University Press 2002). See also James R Carruthers, "The Great War and Canada's Enemy Alien Policy," *Queen's Law Journal*, 4 (1978): 43.
4 Robert Craig Brown and Ramsay Cook, *Canada 1896–1921* (Toronto: McClelland and Stewart 1974), 83–6; Craig Heron, "The Second Industrial Revolution in Canada, 1890–1930," in D.R. Hopkin and G.S. Kealey, eds., *Class, Community and the Labour Movement: Wales and Canada 1850–1930* (St John's: LLAFUR/CCLH 1989), 48.
5 David Cruikshank and Gregory S. Kealey, "Strikes in Canada, 1891–1950," *Labour/Le Travail*, 20 (1987): 85.
6 Judy Fudge and Eric Tucker, *Labour before the Law* (Toronto: Oxford University Press 2001), 89–103.
7 James Naylor, *The New Democracy* (Toronto: University of Toronto Press 1991).
8 Reinhold Kramer and Tom Mitchell, *When the State Trembled* (Toronto: University of Toronto Press 2010); G.S. Kealey, "1919: The Canadian Labour Revolt," *Labour/Le Travail*, 13 (1984): 59; C. Heron, ed., *The Workers Revolt in Canada, 1917–1925* (Toronto: University of Toronto 1998).
9 See David Frank's chapter in this volume. See also Donald McGillvray, "Military Aid to the Civil Power: The Cape Breton Experience in the 1920's," *Acadiensis*, 3, no. 2 (1974): 45.
10 Benjamin Isitt, *From Victoria to Vladivostock* (Vancouver: UBC Press 2010).

11 Stephen Endicott, *Raising the Red Flag: The Workers' Unity League of Canada, 1930–1936* (Toronto: University of Toronto Press 2012).
12 See Dennis Molinaro's chapter in this volume. Barbara Roberts, *Whence They Came: Deportations from Canada, 1900–1935* (Ottawa: University of Ottawa Press 1988), ch. 7, notes that most radicals were not deported under s.41 but rather were found to be undesirable on other grounds.
13 Ivan Avakumovic, *The Communist Party of Canada* (Toronto: McClelland and Stewart 1975), 96–138.
14 Prerogative powers are those powers that reside in the crown or executive and are not derived from legislation.
15 Eric Tucker, "Street Railway Strikes, Collective Violence, and the Canadian State, 1886–1914," *Canadian State Trials, Volume 3* [*CST3*].
16 See the Canadian Criminal Code, 1892, ss.65, 68. The three heads of high treason derive from the 1351–2 Statute of Treasons (25 Edw. III). The treason provisions in the Code also included a lesser treason offence, derived from the 1848 U.K. Treason Felony Act and adopted into Canadian law in 1868. The lesser treason offence was treated as non-capital, absorbing some of the previous judicial and temporary legislative extensions (notably treasonous conspiracies) to definitions of treason set out in the medieval statute. The Code provisions also included the offence of lawless aggression, applicable to those not owing allegiance and therefore not liable for treason, derived from 1838 Upper Canada and 1866 Province of Canada legislation. The lawless-aggression offence was unique to Canada. In English law, liability for treason could be extended to resident non-subjects founds to come under the crown's protection (see e.g, *Joyce v. DPP* [1946] A.C. 347) but such extensions of liability were deemed unsuitable for the problem of non-resident Patriot and Fenian raiders from the United States – see Greenwood's "The Prince Affair: 'Gallant Colonbel' or 'The Windsor Butcher'?" in *CST2.* These laws were consolidated in 1886 (An Act respecting Treason and Other Offences against the Queen's Authority, 1886, 49 Vict. c.146) and adopted into the new Canadian Code with minor changes – see, generally, Desmond Brown and Barry Wright, "Codification, Public Order, and the Security Provisions of the Canadian Criminal Code," *CST3*, at 529–32.
17 On the North-West Rebellion treason trials, see the following chapters in *CST3*: J.M. Bumsted, "Another Look at the Riel Trial for Treason"; Bob Beal and Barry Wright, "Summary and Incompetent Justice: Legal Responses to the 1885 Crisis"; and Bill Waiser, "The White Man Governs: The 1885 Indian Trials." Apart from Riel, the leading figures in the 1885 North-West Rebellion pleaded guilty to the lesser treason felony offence when threatened with charges of high treason. The 1951 and 1953 amendments to what became

ss.46–8 (S.C. 1951, c.47, s.3; S.C. 1953–4, c.51) made a more explicit distinction between high treason and treason, extending the latter to include espionage and assisting hostile armed forces from nations not at war.

18 See the chapters by Swainger and Frank in this volume. On developments in sedition law in the nineteenth century, see Brown and Wright, "Codification," in *CST3*, 546, 528–9, and 542–3. The Criminal Code sedition provisions were influenced by Fitzjames Stephen's conservative approach in the 1880 Draft English Code, which ran counter to the liberalizing trend in English common law, apparent in cases from the mid-nineteeth century, that narrowed the scope of the offence (culminating in the 1886 case *R v. Burns*, 16 Cox CC, 355, which specified the need for a distinct intent to produce public disturbances, and the 1909 case *R v. Aldred*, 22 Cox CC, 1, which required incitement to violence). The modern English common law developments were not absorbed into the Criminal Code sedition provisions until the Supreme Court of Canada's decision in *Boucher v. R* [1951] 2 DLR 369.

19 Advocacy of political change by lawful means and drawing attention to matters that produce ill-will between classes were once again excluded from the definition and the maximum sentence of two years was restored in 1931– see S.C. 1931, c.11, ss.2, 3; S.C. 1936, c.29, s.1.

20 Ancillary offences against the state in the Canadian Criminal Code included: assisting those who commit treason after the fact (formerly misprision of treason and later dropped in the 1953 amendments); acts intended to alarm Her Majesty; intimidating Parliament or a provincial legislature; assisting an alien enemy to leave Canada; omitting to prevent treason; assisting deserters; sabotage; inciting mutiny; offences in relation to the Canadian Forces and the RCMP; sabotage; and military drilling. On the addition of sabotage and espionage offences, see n.51 below.

21 S.C. 1914, c.2; R.S.C. 1988, c.22

22 F. Murray Greenwood, "The Drafting and Passage of the War Measures Act in 1914 and 1927: Object Lessons in the Need for Vigilance," in W. Wesley Pue and Barry Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press 1988), 291. This important study warrants extensive reference, which is provided here with the kind permission of McGill-Queen's University Press (the current publisher of the Carleton Library Series) and Beverley Boissery. See also the chapters by Kordan, McDermott, and McMahon in this volume; Kordan, *Enemy Aliens, Prisoners of War*; Carruthers, "The Great War and Canada's Enemy Alien Policy"; and David E. Smith, "Emergency Government in Canada," *Canadian Historical Review*, 50 (1969): 430.

23 Greenwood, "Drafting and Passage," 291–2.

24 The comparative reach of U.K., Canadian, and Australian war measures, and their implications, is further explored in McDermott's chapter in this volume. On the United Kingdom, see, e.g., A.W. Brian Simpson, *In the Highest Degree Odious: Detention without Trial in Wartime Britain* (Oxford: Oxford University Press 1994); C.K. Allen, *Laws and Orders* (London: Stevens 1956). As Greenwood pointed out in "Drafting and Passage," 292, DORA was initially concerned with the delegation of powers related to matters of espionage and transportation infrastructure, and while emergency powers were expanded to more general war purposes by amendment, they never achieved the general global delegation of regulatory powers to the executive found in the WMA. In both cases there were similar arbitrary uses of this power around internment and suspensions of habeas corpus (upheld by the House of Lords in *R v. Halliday* [1917] AC 260 and by the Supreme Court of Canada in *In re George Edwin Gray* [1918] 57 SCR 150), as well as more trivial interventions (e.g., outlawing dog shows in the United Kingdom and summarily punishing loafers in Canada).

25 Greenwood, "Drafting and Passage," 292–3.

26 Liberal MP William Pugsley expressed the deepest reservations in the House about the delegated powers, and attempted to draw attention to the implications of registering aliens and suspected aliens and the need to carefully justify the suspension of habeas corpus. Justice Minister Doherty emphasized the urgent need to ratify measures already taken and to provide for a general delegation of authority rather than attempting to anticipate every kind of regulation, an approach that would only burden parliamentarians with continuing calls for amendments. The bill was referred to a special committee, no changes were made, and the final reading elicited no debate. It passed quickly through the Senate despite a large Liberal majority – see Greenwood, "Drafting and Passage," 293–4; also, Canada, House of Commons, *Journals*, 1–18 (18–22 Aug. 1914), and *Debates*, vol. 188, 1–99 (18–22 Aug. 1914).

27 Greenwood, "Drafting and Passage," 294–5. Greenwood's survey included *Le Devoir*, Halifax *Morning Chronicle*, Toronto *Telegram*, *Globe and Mail*, Winnipeg *Free Press*, Vancouver *Daily Province*, *Financial Post*, *Monetary Times*, *Industrial Canada*, *Canadian Annual Review*, *Canadian Magazine*, *Canadian Law Times*, *and Canadian Law Journal*.

28 See McDermott's chapter in this volume.

29 *In re George Edwin Gray* (1918) 57 SCR 150; *Fort Frances Pulp and Power Co. v. Manitoba Free Press Co.* [1923] A.C. 695. See editors' note, appendix C, doc. 2.

30 See Greenwood, "Drafting and Passage," 297–8: Greenwood notes that MPs expressed difference of opinion during the October 1970 parliamentary debates on whether the act was originally intended as a temporary measure for

the duration of the war (Stanley Knowles argued that it was), and that Herbert Marx did not address this issue in his 1970 and 1972 studies of the War Measures Act. The view that the 1914 act was intended for the duration of the war only is suggested in R. Craig Brown, *Robert Laird Borden: A Biography*, vol. 2 (Toronto: Macmillan 1980), 7–8; Ron Haggart and Aubrey E. Golden, *Rumours of War*, 2nd ed. (Toronto: Lorimer 1979), 92, 143; and Edgar Z. Friedenberg, *Deference to Authority: The Case of Canada* (New York: Sharpe 1980), 92. The contrary view of potential peacetime application is suggested in Smith, "Emergency Government in Canada," 430–1; David Ricardo Williams, *Duff: A Life in the Law* (Vancouver: UBC Press 1984), 93; and Thomas R. Berger, *Fragile Freedoms* (Toronto: Clarke Irwin 1981), 216.

31 Greenwood, "Drafting and Passage," 303.

32 R.S.C. 1927, c.206.

33 Greenwood, "Drafting and Passage," 305–6. Greenwood noted that the 1927 revisions prompted no outside commentary, not even in issues of the *Canadian Bar Review*. The amended War Measures Act also went further than its contemporary British equivalent, the Emergency Powers Act, 1920 (10&11 Geo. V, c.55). The U.K. Emergency Powers (Defence) Act, 1939 (2&3 Geo. VI, c.62) was more sweeping but ensured that Parliament retained control over the types of powers delegated to the executive.

34 See S.R. Elliot, *Scarlet to Green: A History of Intelligence in the Canadian Army 1903–1963* (Ottawa: Canadian Intelligence and Security Association 1981), 46–7. A total of ninety-two private radio stations was closed by the government.

35 4&5 Geo. V, c.12; 1&2 Geo. V, c.28. On the Komagata Maru affair, see Andrew Parnaby, Gregory S. Kealey, and Kirk Niergarth, "'High-handed, Impolite and Empire-breaking Actions': Radicalism. Anti-Imperialism and Political Policing in Canada, 1860–1914," *CST3*, 483, 497–501. See McDermott's chapter in this volume for further examination of the imperial context.

36 Elliot, *Scarlet to Green*, 50.

37 There is evidence that German agents continued to operate with impunity in New York and elsewhere until 1917.

38 Elliot, *Scarlet to Green*, 50–1.

39 See chapter by Bohdan Kordan in this volume.

40 Directed by Sir William Otter of the militia, formerly Colonel Otter, a significant figure in the 1885 Rebellion and known for his role in the Battle of Cut-Knife Hill.

41 Elliot, *Scarlet to Green*, 49.

42 This definition is cited extensively – the first usage identified is Executive Order 12333 (4 Dec. 1981). United States Intelligence Activities, s.3.4(a). EO provisions found in 46 FR 59941, 3 CFR, 1981 Comp., p.1.

43 See Molinaro's chapter in this volume.

44 The British, for instance, kept close watch on known German agents operating in the United Kingdom prior to the war and arrested several immediately on the war's outbreak, but identified few enemy agents after late 1914.

45 Prosecutions for seditious utterances were relied on regularly in the Prairies to suppress anti-war expression, often by enemy nationals, as described in Jonathan Swainger's chapter in this volume.

46 See Elliot, *Scarlet to Green*, 54–5; and Reginald Whitaker, Gregory S. Kealey, and Andrew Parnaby, *Secret Service: Political Policing in Canada from the Fenians to Fortress America* (Toronto: University of Toronto Press 2012), 86–9. As Whitaker, Kealey, and Parnaby put it: "Thus by 1922, with the creation of the Criminal Investigation Branch, the Central Registry, and the office of liaison and intellegence [within the RCMP], the security state had arrived in Canada" (87).

47 See Brown and Wright, "Codification," *CST3*, 532–4. The statute 53 Vic. c.10 (1889 U.K.) emerged out of rising British government concerns about new forms and technologies of espionage and about the security of government information, sparked by a series of successive leaks to the press in 1887 that embarrassed the government and compromised its intelligence operations. The Admiralty began work on new secrecy laws on the premise that treason prosecutions for some acts of espionage would be strained and attract adverse publicity and controversy, while actions against disclosure of state secrets through administrative measures, civil actions, and criminal prosecutions for larceny or even sedition were inadequate. The Treasury took over the project in 1888 and the bill on breach of official trust introduced new espionage and leakage offences, the latter designed to deter the unauthorized disclosure of sensitive official information by public servants. See Franks Committee, *Report of the Departmental Committee on Section 2 of the Official Secrets Act 1911*, no. 5104 (London: HMSO 1972), ch. 4 and app. III. See also David Williams, *Not in the Public Interest* (London: Hutchinson 1965); Jonathan Aitken, *Officially Secret* (London: Weidenfeld and Nicolson 1971); David Hooper, *Official Secrets: The Use and Abuse of the Act* (London: Secker and Warburg 1987); Rosamund M. Thomas, *Espionage and Secrecy: The Official Secrets Acts 1911–1989 of the United Kingdom* (London: Routledge 1991).

48 Section 76 of the Code defined government locations and forms of communications and expression. Section 77 created a dual offence, a minor one punishable by a year's imprisonment, of "unlawful disclosure," which involved obtaining or possession, by all persons, of official information that, in the interests of the state, ought not to be communicated; and a more serious one, punishable by life, of communicating or intending to communicate such information to a foreign state or agent of that state. Section 78 set out another

dual offence, "breach of official trust," applicable to those holding office or contract with Her Majesty or the governments of the United Kingdom or Canada who lawfully or unlawfully obtain or communicate information contrary to their duty. Communication or attempted communication to a foreign state was punishable by life imprisonment; other cases were punishable by a year.

49 See McDermott's chapter in this volume.

50 See Official Secrets Act, 1911, 1&2 Geo. V, c.28; 1920, 10&11 Geo. V, c.75 (U.K.); S.C. 1939, c.49.

51 The maximum was increased from seven to fourteen years for Official Secrets Act offences, a new offence of sabotage was added to the Criminal Code, and, as noted above, espionage was included as a form of treason (see Official Secrets Act amendment: S.C. 1950, c.46, s.3; Criminal Code sabotage offence: S.C. 1951, c.47, s.18 [amended as s.52 in 1953]; espionage as a form of treason: S.C. 1954–4, c.51). The latter treason offence was punishable by death or life imprisonment if committed during war, and, in duplication of the Official Secrets Act, by a maximum of fourteen years if the espionage was committed during peacetime. Overlaps and inconsistencies in these provisions in the Canadian Criminal Code and the Official Secrets Act were identified by the Mackenzie Committee, *Report of the Royal Commission on Security* (Ottawa: Queen's Printer 1969); examined at length in Martin L. Friedland, *National Security: The Legal Dimensions* (a study prepared for the McDonald Commission of Inquiry concerning Certain Activities of the Royal Canadian Mounted Police (Ottawa: Queen's Printer 1979); and revisited in the Law Reform Commission of Canada's Working Paper 49 (1986): 26–30. The U.K. Official Secrets Act was amended in 1986. In Canada the Official Secrets Act has been recently revised and renamed the Security of Information Act – or Anti-Terrorism Act: R.S.C. 2001, c.41, pt.2, ss.24–32).

52 Brown and Cook, *Canada 1896–1921*, 220. Enlistment fell from a peak of 35,000 a month in early 1916 to about 5,000 a month by early 1917.

53 Ibid., 263–4.

54 Military Service Act, 1917, 7–8 Geo.V, c.19.

55 Morton, Desmond, *A Short History of Canada* (Toronto: McClelland and Stewart 2001), 187. Elizabeth Armstrong, *The Crisis of Quebec, 1914–1918* (New York: AMS Press 1967), says that 98 per cent of Quebecers eligible for conscription filed appeals. Elsewhere across the country, the figure was about 93 per cent.

56 Jack Granatstein et al., *Nation: Canada since Confederation* (Toronto: McGraw-Hill, Ryerson 1990), 206–14.

57 Brown and Cook, *Canada 1896–1921*, 309.

58 These measures are described in detail in Patricia McMahon's chapter in this volume.
59 Gordon Corrigan, *Mud, Blood and Poppycock* (London: Cassell 2003), 229.
60 Twenty-one executed for desertion, two for murder, and two for cowardice. Tim Cook, *Shock Troops* (Toronto: Penguin 2009), 252–4.
61 Some or most of the Canadians listed under the first figure may have been included in the second if sentenced by a British court-martial.
62 As Corrigan points out in *Mud, Blood and Poppycock*, 215–48, consideration was given to soldiers considered to be suffering from "shell shock" or "neurasthenia" throughout the First World War. None were executed if military doctors confirmed such a diagnosis. Eleven per cent of Allied soldiers given capital sentences were executed, a total of 346 men. Seventy-five per cent of these executions (266) were for the offence of desertion. Only three were for mutiny.
63 Set against about five million men under Allied control in 1918, the figure remains relatively low.
64 Chris Madsen, *Another Kind of Justice: Canadian Military Law from Confederation to Somalia* (Vancouver: UBC Press 1999), concludes (at 40–6) that Canada lacked adequate training in military law for Canadian officers until the middle period of the war. The figure does not provide breakdowns of the composition of the courts in terms of the nationality of court officers.
65 Clemenceau, for example, has been widely reported to have said, "Military music is to music as military justice is to justice," although his comment was reported slightly differently in French.
66 S.C. 1904, 4 Edw. VII, c.23.
67 It was not until 1922 that the Canadian Parliament enacted the first Department of National Defence Act and, under that statute, the federal government developed a full version of what are now the Queen's Regulations and Orders (QR&O) and the Canadian Forces Administrative Orders (CFAO), which, among other essential matters, provided for discipline within the army. There were continuing issues around which countries' officers should sit on courts-martial of non-British soldiers; this was a small part of many complex organizational issues not resolved until the middle of the war or later. See Madsen, *Another Kind of Justice*, 43–8.
68 Regulations for the volunteer Canadian militia after Confederation (under the authority of s.92(7) of the Constitution Act of 1867), which acted at first in conjunction with British regiments stationed in Canada, were published by the Department of Militia and Defence in 1870 (after passage of the Militia Act, 1868). The British, increasingly eager to withdraw from Canada after 1867, were able to do so to a considerable degree when British garrisons were

replaced by small professional Canadian artillery batteries and forces largely made up of militia. The Boer War of 1899–1902 saw Canadian volunteers form a Canadian contingent under British command governed in accordance with the provisions of the British Army Act. A Canadian navy established in 1910 was nominally independent but subject to imperial control in time of war, with parliamentary consent.

69 Two South African soldiers and five New Zealanders were executed. The editors are grateful for the assistance of Eric McGeer on these matters concerning military justice.

70 This policy was a direct result of a court-martial of Australian troops in South Africa in 1902 when soldiers attached to a British mounted unit were charged with shooting Boer prisoners. Two Australians were executed and the incident became well known after its depiction in the movie *Breaker Morant*. See also Madsen, *Another Kind of Justice*, 32–5.

71 S.C. 7–8 Geo. V, c.19.

72 As reported in Jean-Pierre Gagnon, *L'Histoire du Royal 22e Régiment* (Quebec: Les Presses de l'université Laval 1986).

73 Research has been difficult because few records are available in Canadian archival holdings. The imperial records, i.e., the records created by the British tribunals, contain limited material. Records for all courts-martial conducted for troops under the British High Command in Europe were passed to the British judge advocate general. Amy Shaw, in *Crisis of Conscience* (Vancouver: UBC Press 2009), looks at the files of conscientious objectors and states that these records were declassified only relatively recently because the government of the time did not want to publicize cases of dissent or desertion. Theresa Iacobelli has recently analysed records of court-martials of Canadians in her thesis and published interesting information in her *Death or Deliverance: Canadian Courts Marital in the Great War* (Vancouver: UBC Press 2013).

74 Kinmel Park held thousands of U.K. and Allied soldiers. Riots had occurred elsewhere during the war among Canadian and Allied troops and there had been prior demobilization unrest at Kinmel Park, but this was the most serious incident, resulting in five deaths. Fifty-one Canadian soldiers were court-martialled and twenty-seven convicted – see Madsen, *Another Kind of Justice*, 51–2. See also Desmond Morton, "'Kicking and Complaining': Demobilization Riots in the Canadian Expeditionary Force, 1918–19," *Canadian Historical Review*, 61 (1980): 334; and www.canadiangreatwarproject.com/writing/kinmelpark.asp.

75 Fudge and Tucker, *Labour before the Law*, 91–103.

76 PC 1832 and PC 2299.

77 PC 2525 (banning strikes) and PC 680 (extending the IDIA).

78 S.C. 1919, c.46 (originally passed as ss.97[a] and 97[b]).
79 S.C. 1910, c.27, s. 41; Roberts, *Whence They Came*, 13–18.
80 The acquisition of citizenship by domicile simply required the individual to become a permanent resident of Canada. No formal application for citizenship was required. This was available to British subjects. By contrast, the acquisition of citizenship by naturalization required an application and the issuance of a certificate by the government.
81 S.C. 1919, c.25, s.15; S.C. 1919, c.26, s.1; S.C. 1919, c.38, s.7. Roberts, *Whence They Came*, 21–2. In 1928 the act was amended to restore the 1910 version exempting all Canadian citizens from political deportation. S.C. 1928, c.29.
82 Roberts, *Whence They Came*, 125.
83 Criminal Code, R.S.C. 1927, c.36, ss.87–91.
84 S.C. 1876, c.37.
85 S.C. 1939, c.30, s.11.
86 R.S.C. 1927, c.36, s.238 (vagrancy), and s.290.
87 Unemployment and Farm Relief Act, S.C. 1931, 58; House of Commons, *Debates* (1 Aug. 1931), 4454.
88 Kramer and Mitchell, *When the State Trembled*, 133.
89 Lita-Rose Betcherman, *The Little Band* (Ottawa: Deneau 1982).
90 Fudge and Tucker, *Labour before the Law*, 156–7.
91 J.H. Alan, "Military Aid of the Civilian Power in Canadian Industrial Disputes 1876–1925," Occasional Papers on Canadian Defence Policy and Civil-Military Affairs, 2, no. 5 (1972), Royal Military College.
92 S.C. 1919, c.60; McGillvray, "Military Aid to the Civil Power."
93 S.C. 1924, c.57.
94 Stephen L. Endicott, *Bienfait: The Saskatchewan Miners' Struggle of '31* (Toronto: University of Toronto Press 2002); Desmond Morton, "Aid to the Civilian Power: The Stratford Strike of 1933," in I. Abella, ed., *On Strike* (Toronto: James Lorimer 1975), 79–91.
95 Whitaker et al., *Secret Service*, 105.
96 See, generally, ibid., 60–144.
97 J. Petryshyn, '"Class Conflict and Civil Liberties': The Origins and Activities of the Canadian Labour Defense League, 1925–1940," *Labour/Le Travail*, 10 (1982): 59; S.C. 1936, c.29, ss.1, 4.
98 See Kordan, *Enemy Aliens, Prisoners of War*.