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"Legal Gentlemen Appointed by the Federal Government": the Canadian State, the Citizens' Committee of 1000, and Winnipeg's Seditious Conspiracy Trials of 1919-1920

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See table of contents

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Article abstract

In the fall and winter of 1919-1920, in response to vigorous lobbying by A.J. Andrews and others on behalf of the Citizens' Committee of 1000, the Canadian state, through Orders in Council in 1919 and 1920, became the paymaster for a private prosecution of the Winnipeg strike leadership charged at the end of the strike with seditious conspiracy. The prosecution was initiated under provisions of the Criminal Code that allowed for prosecutions by private citizens or organizations, subject to the consent of the Attorney General of Manitoba. The federal government paid Alfred J. Andrews and his associates in the Citizens' Committee fees for services rendered during the strike, when, as leading figures in the Committee, they led the campaign against Winnipeg's working-class revolt. The Department of Justice also paid $12,332.00 to the Winnipeg based McDonald Detective Agency for work associated with the prosecution. This federal largesse allowed Andrews to secure two juries almost certainly tainted by pre-trial investigations ordered by Andrews. The unity of purpose forged by Winnipeg's business elite and the federal state illuminates the tendency of the liberal state and capital to forge a common front against perceived threats to the status quo in moments of extremis.

ARTICLES

"Legal Gentlemen Appointed by the Federal Government": the Canadian State, the Citizens' Committee of 1000, and Winnipeg's Seditious Conspiracy Trials of 1919-1920[1]

Tom Mitchell

"Occasionally words must serve to veil the facts. But this must happen in such a way that no one become aware of it; or, if it should be noticed, excuses must be at hand, to be produced immediately."

Machiavelli:
Instructions to Raffaello Girolami[2]

IN AN ASSESSMENT OF THE STATE of the country in the summer of 1919, O.D. Skelton concluded that "the strain of the war [had] ... produced a reckless and desperate temper." Five years of Armageddon had destroyed "much of the old stability

[1]The quotation is from a statement made in the House of Commons by J.S. Woodsworth in 1926. *Debates House of Commons* (hereafter *Debates*), Vol. I, (Ottawa 1926), 423-424.
[2]As quoted in Arthur Koestler, *Darkness at Noon* (Hammondsworth 1964), 135.

Tom Mitchell, "Legal Gentlemen Appointed by the Federal Government": the Canadian State, the Citizens' Committee of 1000, and Winnipeg's Seditious Conspiracy Trials of 1919-1920," *Labour/Le Travail*, 53 (Spring 2004), 9-46.

and acquiescence in the established order."[3] At the end of World War I, the prestige of the Canadian business and political élite had faded and its authority was under siege. The malaise took its most convulsive form in the streets of Winnipeg in May and June 1919, climaxing in mass arrests, a bloody riot, and the suppression of the Winnipeg General Strike. Though state violence was employed only after it became clear that the strike would not collapse of its own weight, the dramatic suppression of the strike provides a useful illustration of the organic unity of the Canadian liberal state and a regional business and political élite, *in extremis*.[4] Yet this unity was fleeting. After the suppression of the strike, the Citizens' Committee of 1000 stood alone determined to deploy the repressive machinery of the courts and the criminal law against working-class radicals. Money to finance the Citizens' juridical assault on labour was provided by the federal Department of Justice only after a combative negotiation carried forward by A.J. Andrews and other leading figures in the Citizens' Committee of 1000.[5]

In 1919 and 1920 the federal government provided over $196,000 for the prosecution of the strike leaders for seditious conspiracy, who had been arrested in the very early morning of 17 June 1919: R.B. Russell was tried in the fall of 1919; William Ivens, W.A. Pritchard, R.J. Johns, John Queen, George Armstrong, R.E. Bray, and A.A. Heaps from January through March 1920.[6] The payments were made

[3]O.D. Skelton, "Current Events — The Western Strikes," *Queen's Quarterly*, 26 (July-September 1919), 127. For an international assessment of the post-war crisis see The Right Hon. Arthur Henderson, "The Industrial Unrest: A New Policy Required," *The Contemporary Review*, 115 (April 1919), 361-368.

[4]In one of his formulations of the state, Antonio Gramsci comments: "The historical unity of the ruling classes is realized in the State, and their history is essentially the history of states and of groups of states. But it would be wrong to think that this unity is simply juridical and political (though such forms of unity do have their importance too, and not in a purely formal sense); the fundamental historical unity, concretely, results from the organic relations between State or political society and civil society." Antonio Gramsci, *Selections from the Prison Notebooks*. Quintin Hoare and Geoffrey Nowell Smith, eds. and trans., (New York 1971), 52. For a thorough account of Gramsci and the state see Perry Anderson, "The Antinomies of Antonio Gramsci," *New Left Review*, 100 (November–December 1976), 5-78.

[5]In addition to correspondence from A.J. Andrews cited below, the Department of Justice received correspondence from Edward Anderson, G.W. Allen, A. K. Godfrey, John E. Botterell, and A. L. Crossin. National Archives of Canada, Department of Justice, RG13, Access 87-88/103: A-1688, Pocket # 2 and later, NAC, Justice, RG13, Access, Pocket #2, G.W. Allen to Arthur Meighen, 9 July 1919; A.K. Godfrey to Arthur Meighen, 9 July 1919; John E. Botterell to Arthur Meighen, 10 July 1919; E. Anderson to Arthur Meighen, 15 July 1919; E. Anderson to Arthur Meighen, 16 July 1919; A. L. Crossin to Arthur Meighen, 14 July 1919; and A. L. Crossin to Arthur Meighen, 16 July 1919.

[6]On the decision to proceed against these men under the Criminal Code rather than the Immigration Act see Tom Mitchell and James Naylor, "The Prairies: In the Eye of the Storm," in

through Orders In Council from funds appropriated by Parliament in the spring of 1919 under the War Appropriation Act.[7] This record of financial transactions attracted attention. In April 1921, D.C. Ross, a member of the Parliamentary Public Accounts Committee, asked for a detailed accounting of these expenditures by the Department of Justice.[8] Nothing came of his request before Ross was defeated in the 1921 election. More inquiries followed. In 1922, E.J. McMurray, who had defended some of the strike leaders in 1919, asked Liberal Justice Minister Sir Lomer Gouin for details about federal involvement in the Winnipeg prosecution. Gouin provided a partial accounting: Justice had paid $150,024.20 to lawyers who had prosecuted the strike leaders and $12,332.09 had been paid to the McDonald Detective Agency for special police and detective services.[9] McMurray's request for "a copy of all letters, correspondence, telegrams, orders, instructions, and other documents exchanged between the Solicitor General, Minister of the Interior, Minister of Justice, Minister of Labour or any member of these Departments, and Alfred J.

Craig Heron, ed., *The Workers' Revolt in Canada, 1917-25* (Toronto 1998), 209-11. On the proceedings see Desmond H. Brown, "The Craftsmanship of Bias: Sedition and the Winnipeg General Strike," *Manitoba Law Journal*, 14 (Fall 1984), 1-33; and Tom Mitchell, "Repressive Measures: The Committee of 1000's Campaign Against Radicalism After the Winnipeg General Strike," *Left History*, 3 & 4 (Fall 1995-Spring 1996), 133-67. Other proceedings involved Michael Chartinoff, Samuel Blumenberg, Oscar Schoppelrie, and Moses Alamazoff, who were also arrested 17 June, but their cases were dealt with under provisions of the recently amended Immigration Act. For an account of the immigration proceedings against Chartinoff, Blumenberg, Schoppelrie, and Alamazoff see Donald Avery, "The Radical Alien and the Winnipeg General Strike," in Carl Berger and Ramsay Cook, eds., *The West and the Nation: Essays in Honour of W.L. Morton* (Toronto 1976), 209-31. Fred Dixon and J.S. Woodsworth were arrested at the conclusion of the strike. Both were charged with seditious libel. Prosecuted by the provincial Attorney General, Dixon defended himself and was acquitted. Failing to gain a conviction in the Dixon case, the province dropped the case against Woodsworth. On the Dixon case see *Dixon's Address to the Jury: An Argument for Liberty of Opinion* (Winnipeg 1920); and *Judge Galt's Charge to the Jury in Rex v. Dixon* (Winnipeg 1920).

[7] See Dominion of Canada, *Sessional Papers, 1921* (hereafter Sessional Papers), *Volume 1, Part 3, Sessional Paper No. 1,* (Ottawa 1921), Auditor General's Report, Part ZZ, War Appropriation Act: Expenditures, Justice Department, ZZ 13; and *Sessional Papers, 1922, Volume 1, Part 2, Sessional Paper No. 1,* (Ottawa 1921), Auditor General's Report, Part L, Justice Department, Demobilization: Summary: Expenditures, L 45-46.

[8] For the request see NAC, Justice, Access, RG13, Pocket #1, Clerk, Public Accounts Committee to Mr. Newcombe, Deputy Minister of Justice, 21 April 1921. Duncan Campbell Ross was elected as a Liberal in the 1909 election for Middlesex West, an Ontario seat. He remained a Laurier Liberal from 1917 to 1921. He was defeated in the 1921 election. http://www.parl.gc.ca/information/about/people/House

[9] *Debates, Vol. CLII, 1922*, 1182.

Andrews or General Kitchen (sic) relative to the strike in Winnipeg during 1919" went nowhere.[10] Nothing was produced in response to McMurray's request.[11]

Even in 1926, what had happened in 1919 remained contested. In January 1926, J.S. Woodsworth recalled the futility of asking for records of state activity in Winnipeg: "When we tried to get very definite evidence with regard to certain proceedings we found documents missing from the files." When Woodsworth told the House of Commons that the prosecution had been directed by "legal gentlemen appointed by the federal government, with their services paid for by the Dominion," Arthur Meighen, who originally opposed federal intervention in the sedition trials, challenged his account, disingenuously claiming that Woodsworth was "entirely mistaken." The province had prosecuted "certain of the offenders," Meighen said. In other cases, he explained, the federal government had "appointed our own counsel to carry on these prosecutions."[12] This was news to the men in the dock in 1919. Heaps told the House of Commons in June 1926 that it "was a mystery during the whole of that period as to who constituted the Crown. We could not find out."[13]

Recent accounts of the descending arc of the workers' revolt of 1919 after the suppression of the Winnipeg strike indicate the need for a more thorough exploration of labour's retreat from below and the project of capital and the state from above. Until the publication of Craig Heron's *Workers Revolt in Canada*, existing narratives of the Winnipeg crisis presented the successful prosecution of the strike leadership as an almost inevitable denouement to the spring struggle in Winnipeg, naturalizing the triumph of a state that was allied with opponents of the strike.[14] The

[10]E.J. McMurray was a Winnipeg lawyer. Born in Ontario, he came west to teach public school. After a spell teaching, he studied law and was called to the Manitoba Bar in 1906. In 1912, McMurray was a member of only one club: the International Order of Odd Fellows (IOOF); his principal recreation was bowling. He was a very active member of the federal Liberal Party. Elected in the 1921 election as the member for Winnipeg North, he served until his defeat in the general election of 1925. See Edward James McMurray in C.W. Parker, ed., *Who's Who and Why – A Biographical Dictionary of men and women of Western Canada Vol. 3* (Vancouver 1913), 559. For political details see http://www.parl.gc.ca/information/about/people/House *Sessional Papers, 1922*, Volume 5 (Ottawa 1922), 16.

[11]On 9 January 1923, Thomas Mackay, Under-Secretary of State, wrote to The Deputy Minister of Justice to remind him of the request for documents made in April 1922. Mackay acknowledged that Justice might not be able to provide the documents requested. Still, he wanted a response of some kind from the Department. NAC, Justice, RG13, Access, Pocket #1. Under Secretary of State to Mr. Newcombe, Deputy Minister of Justice, 23 January 1923.

[12]*Debates*, Vol. I, 1926, 423-424. For a detailed account of Meighen's attitude to this legal adventure see Tom Mitchell, "Repressive Measures," 133-167.

[13]*Debates*, Vol. IV, 1926, 4014. Heaps had been charged with seditious conspiracy with the others. Unlike the others, he was found innocent of the charge.

[14]For Heron's account see Craig Heron, "National Contours: Solidarity and Fragmentation," and his "Conclusion," in Craig Heron, ed., *The Workers' Revolt*, 268-304, and 305-313. In

campaign from above against working-class radicalism after the moment of crisis had passed was largely ignored.[15] A different and more ironic narrative is required to provide a full account of the energy, ingenuity, guile, and determination required to sustain such a campaign when nearly all in charge of the state wished for a return to normalcy.[16]

What was the role of the federal state in the seditious conspiracy proceedings in Winnipeg in the wake of the General Strike? Why was an expensive legal prosecution outside the authority of the federal Department of Justice financed with money appropriated by Parliament for expenses associated with World War I? The evidence available indicates that in response to vigorous lobbying by A.J. Andrews and others on behalf of the Citizens' Committee of 1000, the Canadian state, through Orders in Council in 1919 and 1920, became the paymaster for a private prosecution of the Winnipeg strike leadership. The prosecution was undertaken by leading members of the Citizens' Committee of 1000's legal committee, including A.J. Andrews, Isaac Pitblado, Travers Sweatman, and J.B. Coyne, under provisions of the Criminal Code that allowed for prosecutions by private citizens or organizations, subject to the consent of the Attorney General of Manitoba. For their efforts, the federal government paid Andrews, Pitblado, Coyne, and Sweatman handsomely.[17] Beyond work in the law library and courtroom, Andrews and his associates claimed fees for services rendered during the strike, when, as leading figures in

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"Repressive Measures" Mitchell provides a general account of the campaign against labour radicalism mounted by the Citizens' Committee of 1000 after the suppression of the strike.

[15]This body of work includes Norman Penner, ed., *Winnipeg 1919 – The Strikers' Own History of the Winnipeg General Strike* (Toronto 1973); D.C. Masters, *The Winnipeg General Strike* (1950; Toronto 1973); Kenneth McNaught and David J. Bercuson, *The Winnipeg General Strike: 1919* (Don Mills 1974); David Jay Bercuson, *Confrontation in Winnipeg: Labour, Industrial Relations, and the General Strike* (Montréal 1974); and, J.M. Bumsted, *The Winnipeg General Strike of 1919: An Illustrated History* (Winnipeg 1994).

[16]Accounts of the 1919 sedition trials include Kenneth McNaught, "Political Trials and the Canadian Political Tradition," in Martin Friedland, ed., *Courts and Trials: A Multidisciplinary Approach* (Toronto 1975); M. L. Friedland, *National Security: The Legal Dimensions* (Ottawa 1979); P.R. Lederman, "Sedition in Winnipeg: An Examination of the Trials for Seditious Conspiracy Arising from the General Strike of 1919," *Queen's Law Journal*, 3 (Winter 1976-77); Brown, "The Craftsmanship of Bias"; 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 1988); and Tom Mitchell, "Repressive Measures."

[17]The following totals were arrived at by adding the sums reported in the Auditor General's Reports for 1921 and 1922: Alfred J. Andrews received $37,773; Isaac Pitblado was paid $27,290; J.C. Coyne received $28,996, while Travers Sweatman was paid $23, 537.50. For the raw data see War Appropriation Act: Expenditures, Justice Department, ZZ 13; and Sessional Papers, 1922, Volume 1, Part 2, Sessional Paper No. 1, Auditor General's Report, Part L, Justice Department, Demobilization: Summary: Expenditures, L 45-46.

the Committee of 1000, they led the campaign against Winnipeg's working-class revolt. Several others, including S.L. Goldstine, W.W. Richardson, and E.K. Williams, received lesser amounts.

The Department of Justice also paid $12,332.09 to the Winnipeg based McDonald Detective Agency for work associated with the prosecution. This federal largesse allowed Andrews to secure two juries almost certainly tainted by pre-trial investigations ordered by Andrews through the McDonald Detective Agency and the Royal North West Mounted Police (RNWMP). Belatedly, after some lobbying, the federal government provided $500 toward the payment of the Citizens' Committee of 1000's bill from the McDonald Detective agency for work contracted by the Committee during the strike.[18]

In 1919, Andrews, Pitblado, Sweatman, and Coyne were imposing figures in the Winnipeg legal community; each had substantial legal practices. All four were well connected socially and politically within the leading strata of Winnipeg society. Andrews was the most forceful and dynamic of this group of talented and tough Winnipeg attorneys. At the end of the Winnipeg strike, the *Toronto Daily Star* reported that Andrews

> had been here there and everywhere directing the operations of the Citizens' Committee of 1000 as a member of the executive, finding and assembling evidence against the strike leaders, ... drawing up charges, directing raids, supervising arrests and holding innumerable conferences with the authorities, business and labour leaders.[19]

Born at Franklin, Québec in 1865, Andrews, the son of a Methodist minister, came to Winnipeg with his family from Galt, Ontario in 1881. Then sixteen-years-old, he was admitted as a student at law to the firm of D.A. Walker. Andrews served in the Saskatchewan Territory during the Riel Rebellion and was admitted to the Manitoba Bar in 1886. Elected as an alderman in 1893, he was the "Boy-Mayor" of Winnipeg in 1898 at the age of 33. He subsequently sought election unsuccessfully to the Manitoba legislature. In 1914, Fred Dixon defeated him at the polls. Small of stature, Andrews loved horses and as a young man rode his own as a professional jockey. In 1897 he was knocked unconscious for two weeks, a victim of a horse pile-up. Relating this incident he recalled that he had had the "unique experience of reading [his] ... own obituary in the *Minneapolis Journal* when I was killed at Exhibition Park."[20] A contemporary described Andrews as "preeminently a trial lawyer,

[18]The McDonald Detective Agency was established in 1909. The President and General Manager was Colin A. McDonald. The agency remained in existence until the 1950s. The McDonald Detective Agency was one of a number of such agencies that did business in Winnipeg during the years 1900-1950. Others (for varying lengths of time) were the General, Colonial, Thomas, Pinkertons, Ross, Thiel, and Chatterson. Personal e-mail note from Constable John Burchill, Winnipeg Police Department, 6 January 2003.

[19]*Toronto Daily Star*, 27 June 1919.

[20]*Winnipeg Tribune*, 17 July 1948.

a strategist and tactician to be respected and feared but never hated by his opponents."[21]

The others had followed a similar path to 1919. At 52, Pitblado was 2 years younger than Andrews, but a little more than 10 years senior to Sweatman and Coyne (Coyne turned 41 in August 1919). Pitblado came West in 1882 when his father, a Presbyterian minister, was called to the newly organized St. Andrew's Church in Winnipeg. After attending Dalhousie University and the University of Manitoba, Pitblado was called to the Manitoba Bar in 1890. He practised law with Andrews in the 1890s. Like Andrews, Pitblado considered his involvement in the Winnipeg strike trials the high point of his career in law. Sweatman and Coyne both hailed from Ontario, though Sweatman, born in Pembroke, spent his youth in Winnipeg, graduating from the University of Manitoba with an honours degree in Classics and a MA in 1900. Coyne attended Upper Canada College, the University of Toronto, and studied law at Osgoode Hall. They both began legal careers early in the 20th century: Sweatman, with the firm of Tupper, Pitblado, and Hoskin in 1903; Coyne, after practicing law in Ontario for one year, settled in Winnipeg in 1905.

Pitbaldo and Coyne were Liberals — Liberal Unionists — in 1917, while Sweatman and Andrews were Conservatives. In 1919, however, they were all, nominally at least, Unionists. All had exclusive social affiliations in a variety of associations and clubs ranging from the Manitoba Law Society, of which Pitblado was President from 1917-1920, to the Manitoba Club, the Carleton Club, the St. Charles Country Club, the Winnipeg Canadian Club, and the Winnipeg Golf Club.[22] In 1919 they were all, as D.C. Masters reports, "extremely active" in the Citizens' Committee of 1000.[23]

Like other members of Winnipeg's business élite, the response of Andrews and his associates to postwar radicalism was uncomplicated: it grew out of the concerns of an élite convinced of the virtue and utility of existing arrangements whose power and authority were challenged by new circumstances. The Committee of 1000 was a recrudescence of a long and, for some, venerable British tradition of élite sponsored repression of popular movements from below.[24] Typically such campaigns were justified by loyalty to the Crown and the defence of the existing order. Thus the circumstances associated with demands for British Parliamentary reform and the Peterloo Massacre of March 1819 were transformed, *mutatis*

[21]Roy St. George Stubbs, *Prairie Portraits* (Toronto 1954), 54. The biographical detail above was taken from the Provincial Archives of Manitoba (hereafter) PAM, Western Canadian Legal History (hereafter WCLH), Biographical File (hereafter BF), A. J. Andrews.

[22]Archives and Special Collection, University of Manitoba , Gerald Friesen fonds (unprocessed), Biographical Files, Isaac Pitblado, Travers Sweatman, J.B. Coyne.

[23]D.C. Masters, *The Winnipeg General Strike*, 64.

[24]On this theme see Kenneth McNaught, "Political Trials," and the introduction and various chapters of F. Murray Greenwood and Barry Wright,eds., *Canadian State Trials – Law, Politics, and Security Measures, 1608-1837* (Toronto 1996).

mutandis, to the streets of Winnipeg in June 1919 where, the Citizens' asserted, alien doctrines incubated in revolutionary Russia threatened the incomparable heritage of British liberty bequeathed to Canadians.[25] In his address to the Canadian Bar Association (held in Winnipeg in August 1919) Sir James Aikens, KC, Lieutenant Governor of Manitoba, invoked the Jacquerie of 1358, the Jack Cade Rising of 1450, and the Paris Commune of 1871 as appropriate comparisons to the workers' revolt of 1919 to substantiate his claim that the Winnipeg crisis represented the return of an age old disorder: "Bolshevism ... was a recrudescence of an old disease, a frequent consequence of war."[26]

It has been noted that historical subjectivity and commitment to particular historical tasks are acquired on the terrain of ideology.[27] Felicitously, an ideology of reaction perfectly suited to the circumstances confronting Andrews and his comrades among the Citizens' Committee was current in 1919 in the form of American legal conservatism.[28] In the early 20th century, this body of thought "wove corporate interests with patriotism, nativism, Christianity, and Anglo-Saxon racial chauvinism to fashion a resounding call to arms." Legal conservatism served as a bulwark for a social vision that tied "capitalist property to natural rights, and natural rights to constitutional law."[29] When Henry. R. Rathbone, a Chicago lawyer, Republican political activist, and legal conservative, addressed the Ontario Bar Association in 1919, he invited his Canadian audience to embrace an imagined world in which

> we have in common a great bond, and that is the bond of Anglo-Saxon free institutions. We realize now perhaps more than anything else when this world is threatened with the treachery of Bolshevism what those institutions mean. It is for us lawyers to do our duty, to play our part as men; It make no difference whether it is in the United States or Canada, the principle is

[25]For the parallels see Desmond H. Brown, "The Craftsmanship of Bias," 21-23.

[26]*Address of the President,* Proceedings *of the Fourth Annual Meeting of the Canadian Bar Association* (Winnipeg 1920), 85.

[27]See, for example, Gramsci's formulation: "men acquire knowledge of their social position and therefore of their tasks on the terrain of ideologies." *Il materialismo storico e la filosofia di Benedetto Croce,* Vol I, *Quaderni del carcere* (Turin 1948), 250, as quoted in Joseph V. Femia, "Gramsci's Patrimony," *British Journal of Political Science,* 13 (July 1983), 336-337, n39. Though manifest in the ideological fashions of 1919, the contest between Winnipeg's working-class militants and the Citizens' Committee of 1000 was rooted in the material world of production which constitutes the "active and propulsive force" of history. Antonio Gramsci, *Notes From the Prison Notebooks,* 466.

[28]See Wesley Pue, *Lawyers and the Constitution of Political Society: Containing Radicalism and maintaining Order in Prairie Canada, 1900-1930.* Working Paper 93-4, Canadian Legal History Project, University of Manitoba.

[29]W. Wesley Pue, "A Profession in Defence of Capital?" *Canadian Journal of Law & Society/Revue Canadienne Droit Et Société,* 7 (Fall 1992), 269.

the same, this great inheritance of Anglo-Saxon liberty is ours, ours to preserve, ours to protect, ours to transmit unimpaired to future generations.[30]

The growing campaign against radicalism in the United States — one that Andrews viewed close-up through trips to Washington and Chicago in the summer of 1919 — opened with the Chicago trial of "Big Bill" Haywood and 92 other "Wobblies" in the spring of 1918 illuminated the opportunities for juridical assaults on working-class radicalism.[31]

Andrews and his colleagues in the Committee of 1000 embraced Rathbone's view of the world, and their role "as men" in it. Collectively, they read 1919 as an assault on the modern British liberal state and the fundamental liberties of free-born Englishmen. As early as 1918 Coyne had characterized the Winnipeg Trades and Labour Council as a body dominated by "acknowledged Bolsheviki."[32] The idiom of legal conservatism current in Winnipeg in 1919 resounded through the Citizens' demand that the provincial government of Manitoba act against the strike:

Since 1215 an Englishman has, in theory, been free; but by the voice of autocratic dictatorship, which bore the semblance of properly constituted authority, the freedom of the Englishman was more or less of a farce until 200 years ago; since when such freedom has been established upon a solid foundation. That foundation was a constitution which was laid seven centuries ago, and which was not completed until William, Prince of Orange, came to England.

[30]"Address of Henry R. Rathbone," *Canadian Law Journal*, 55 (1919), 168-175, as quoted in Wesley Pue, *Lawyers and the Constitution of Political Society*, 15.

[31]On the Industrial Workers of the World see Melvyn Dubofsky, *We Shall Be All: A History of the Industrial Workers of the World* (1969; Urbana 1988) and William Preston Jr., *Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933* (1963; Urbana 1994). The historiography of state repression of labour radicalism in the United States at the end of World War I also includes Robert K. Murray, *Red Scare: A Study in National Hysteria, 1919-1920* (Minneapolis 1955); Murray B. Levin, *Political Hysteria in America: The Democratic Capacity for Repression*, (New York 1971); Robert J. Goldstien, *Political Repression in Modern America from 1870 to the Present* (Boston 1978); Julian F. Jaffe, *Crusade Against Radicalism: New York During the Red Scare, 1914-1924* (Port Washington, NY 1972); Michael J. Heale, *American Anticommunism: Combating the Enemy Within, 1830-1970* (Baltimore 1990); Joel Kovel, *Red Hunting in the Promised Land: Anticommunism and the Making of America* (New York 1994). Murray, Levin, and Jaffe offer accounts framed in the notion of repression as a form of hysteria growing out of the post-war crisis. Goldstein, Heale, and Kovel present state repression as a logical, albeit ideological response to a perceived threat to the social order. This account of the American literature is drawn from Todd J. Pfannestiel, "Rethinking the Red Scare: The Lusk Committee and New York State's Fight Against Radicalism, 1919-1923," PhD Thesis, College of William and Mary, 2001, 8-50.

[32]J.M. Bumsted, *The Winnipeg General Strike of 1919*, 88.

Members of the Citizens' Committee of 1000 at a Banquet After the Strike. C. 1919. Credit to: Western Canada Pictorial Index.

An Action from which it may be apprehended that this Constitution and this form of Government is to be attacked must be an occasion for the performance by this Government of its full and unquestioned duty to protect its laws and its own dignity, and thus to protect the subject, by retaining for him that Constitution which for 200 years has been the wonder of the world and the proudest boast of the Englishman.[33]

In the pages of the Citizens' broadsheet, *The Winnipeg Citizen,* the threat to the British political heritage in Canada — "the proudest boast of the Englishman" — was attributed to a small fanatical group of "plotters" supported by foreign-born militants who stood determined to destroy root and branch the liberty bequeathed to Canadians as subjects of the British Crown. The 22 May 1919 *Citizen* contained the following account of the strike: "The Red element, which planned to bring about anarchy in this country and, on the ruins, build a tyranny, is made up of a small junta of avowed Bolshevists who have succeeded by persistent scheming in taking the place of the sane leaders, with an almost solid foreign-born following." As *The Citizen* explained "Make no mistake about it: this is not a strike at all. It is a conspiracy

[33]Citizens' Committee of One Thousand, *The Activities and Organization of The Citizens' Committee of One Thousand in connection with The Winnipeg Strike* (Winnipeg 1919), 37.

to subvert the ordered government of this country and put in its place a revolutionary dictatorship."[34] Such assertions left little room for conciliation or accommodation during or after the strike.

In late May 1919, Andrews and Sweatman, acting on behalf of the Citizens' Committee, had traveled to Fort William to meet Gideon Robertson (Minister of Labour), and Meighen (acting Minister of Justice) emissaries of the state *en route* to strike-bound Winnipeg to investigate the crisis.[35] During subsequent meetings in Winnipeg, Meighen retained Andrews to advise him on developments in the city. Though inquiries were made after 1919, the exact nature of the arrangement has never been established. It was conjectured in labour circles that he had been appointed a Deputy Minister of Justice. In 1922, when McMurray asked for a copy of the Order in Council appointing Andrews Deputy Minister of Justice, Meighen asserted that the request was based on a factual error: he said Andrews had never been appointed a "Deputy Minister of Justice." The request "asserts as a fact something which is manifestly and palpably untrue."[36]

What is clear is that Andrews gained ascendancy in this relationship during the struggle to suppress the strike.[37] At most turns, Meighen followed Andrews' lead. At the climax of the strike, early in the morning of 17 June 1919 when the strike leadership was taken into custody, Andrews operated without direction or approval from his putative political master Meighen.[38] Andrews' use of the Criminal Code and the recently amended Immigration Act against the strike leaders surprised Meighen, who had assumed that the Immigration Act would be used to take the

[34] *The Winnipeg Citizen*, 22 May 1919.

[35] On the origin and membership of the Citizens' Committee of 1000 see W.L. Morton, *Manitoba: A History* (Toronto 1957), 368. On its membership see D.C. Masters, *The Winnipeg General Strike*, 64-65.

[36] *Debates, Vol. CLII, 1922*, 1069. In a letter dated 26 May 1919, Meighen asked Andrews to monitor the activities of the strike leadership to determine whether they were engaging in sedition or treason. NAC, Justice, RG13, Access, Pocket #1, Arthur Meighen to A.J. Andrews, 26 May 1919.

[37] Arthur Meighen was an Ontario native. After attending the University of Toronto, he went west to Winnipeg to study law. Never a member of the Winnipeg legal elite, he left Winnipeg in 1902 to practice law in Portage la Prairie. He was called to the bar in 1903. Elected to the House of Commons in 1908, Borden appointed him Solicitor general in 1913. Appointed Minister of the Interior in 1917, he became acting Minister of Justice when C.J. Doherty joined Borden at the Paris Peace Conference in the fall of 1918. In 1919, Meighen was forty-five years old. W. Stewart Wallace, ed., *The Macmillan Dictionary of Canadian Biography* (Toronto 1978), 569. The standard account of Meighen's role in the 1919 crisis is contained in Roger Graham, *Arthur Meighen – A Biography*, Volume I, *The Door of Opportunity* (Toronto 1960), 229-244.

[38] For an account of these events see Tom Mitchell and James Naylor, "The Prairies: In the Eye of the Storm," in Craig Heron, ed., *The Workers' Revolt*, 176-231.

strike leadership into custody.[39] In the days that followed, Andrews began the labourious process of examining the mass of material collected by RNWMP during raids in Winnipeg on 17 June, and later across the country. In a letter to Meighen, in charge of Justice while C.J. Doherty was with Robert Borden at the Paris Peace Conference, Andrews disclosed that he was engaging counsel, including fellow members of the Committee of 1000 Pitblado, Sweatman, and Coyne for trials of the arrested men.[40] Given the determination of the Union government to return to peacetime constitutional arrangements, and the well-established principle that criminal prosecutions were the responsibility of provincial Attorneys General, Andrews' initiative must have caught Meighen's notice.

For his part, Manitoba's Attorney General T.H. Johnson played no role in the arrests of the strike leadership or in the decision to seek convictions under the Criminal Code. When asked what he knew about the arrests, Premier T.C. Norris said: "Just leave us out of this."[41] In fact, the province was committed to a policy of conciliation: Norris opposed the participation of public sector workers in sympathetic strikes, but he hoped for a negotiated solution to the crisis. The province, wedded to a policy of fiscal frugality, had no taste for mass arrests and expensive criminal prosecutions. It resisted demands from members of the Citizens' Committee that it prosecute the strike leaders arrested on Andrews' watch.[42] Andrews, reflecting the views of his legal colleagues in the Citizens' Committee, told Meighen at the beginning of July that the country could not "afford on the score of economy to neglect any legitimate means of bringing to light the true situation as it exists in Canada."[43]

By the disturbed spring and summer of 1919, the Canadian state was in transition, uneasy with its late role as *veilleur de nuit,* and reluctant to embrace a novel interventionist role as educator of civic virtue.[44] Government leaders longed for a return to the anti-statist orthodoxy of pre-1914, when the state merely set and enforced the ground rules under which, as Douglas Owram has explained, "man must

[39]Andrews had not conveyed his intentions to Meighen. After the arrests, both their legality and the action to follow seemed uncertain. See the series of telegrams, NAC, Justice, RG13, Access, Pocket #2, J.A. Calder to Senator Robertson, 16 June 1919; NAC, Justice, RG13, Access , Pocket #1, Meighen for Andrews, 17 June 1919; Andrews to Meighen (2 telegrams), 17 June 1919; Meighen to Andrews, 18 June 1919; Meighen to Andrews 18 June 1919.

[40]NAC, Justice, RG13, Access , Pocket #2, A.J. Andrews to Arthur Meighen, 2 July 1919. See as well, NAC, Justice, RG13, Access , Pocket #2, Andrews to Meighen, 18 June 1919.

[41]Norman Penner, ed., *The Strikers' Own History*, 165.

[42]On the Norris government's role in the Strike see W.L. Morton, *Manitoba: A history*, 368.

[43]NAC, Justice, RG13, Access, Pocket #2, A.J. Andrews to Meighen, 2 July 1919.

[44]Gramsci quotes from Mussolini's *The Doctrine of Fascism,* 1932 "The fascist State has its own consciousness, its own will, and for that reason is called an 'ethical' State. In 1929 ... I said 'For fascism the State is not the night-watchman ... it is a spiritual and moral fact ... it educates the citizens' to civil virtue'...." *Antonio Gramsci, Selections from the Prison Notebooks*, 258, n. 40.

be free to seek his own improvement and be responsible for his own destiny."[45] Draconian Orders in Council approved late in the war under the powers conferred by the War Measures Act had for the most part been repealed. The Order in Council approved in July 1918 prohibiting strikes or lockouts for the duration of the war had been nullified on 1 May 1919. Another, dated 25 September 1918, created "unlawful associations," which provided the authority to prosecute individuals for attending meetings, speaking in support of, or distributing literature for any organization deemed unlawful by the state. Those found guilty of membership were subject to a prison term of up to five years. However, PC 2384 had been repealed on 2 April 1919, when Meighen, as Acting Minister of Justice, concluded that existing procedures under the Criminal Code were now adequate.[46]

Still, the War Measures Act remained in force and could be resorted to by the federal cabinet. As the Judicial Committee of the Privy Council noted in a ruling in 1923 in the case of *Fort Francis Pulp and Paper Co. v. Manitoba Free Press Co.*, it was up to the federal government to decide when the war-time emergency had ended. As the Judicial Committee of the Privy Council ruling explained, "very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it had to decide, in over-ruling the decision of the Government that exceptional measures were still requisite." Only in late 1919 did the federal Minister of Justice conclude that the continuance of Orders approved under the War Measures Act was unnecessary. An Order in Council approved on 20 December 1919, stated that though "no proclamation has been issued declaring that the war no longer exists, actual war conditions have in fact long ago ceased to exist, and consequently existence of war can no longer be urged as a reason in fact for maintaining these extraordinary regulations as necessary or advisable for the security of Canada."[47] Through this Order in Council, all orders and regulations of the Governor in Council, which depended for their sanction on Section 6 of the War Measures Act were repealed effective 1 January 1920.

Action on the Winnipeg situation through an Order in Council, however, was improbable for a number of reasons. The explanation provided for the repeal of PC 2384 included the observation that "persons who might be offenders against the regulations, were they permitted to endure, may be adequately dealt with under the existing law."[48] Such an admission undermined any future federal government's

[45]Doug Owram, *The Government Generation: Canadian Intellectuals and the State, 1900-1945* (Toronto 1986), 35.

[46]*Statutes of Canada*, 1919, Vols I-II , P.C. 702, 2 April 1919, p. lxxx.

[47]*Fort Frances Pulp and Paper Co. v. Manitoba Free Press Co.*, (1923), [1923] A.C. 695 (P.C.), 6. http://www.dessus.com/TaxInfo/Cases/fortfrancis.html

[48]*Fort Frances Pulp and Paper Co. v. Manitoba Free Press Co.*, (1923), [1923] A.C. 695 (P.C.), 6. http://www.dessus.com/TaxInfo/Cases/fortfrancis.html

Strike Leaders at Stony Mountain Penitentiary. L-R, Back Row: R.E. Bray, George Armstrong, John Queen, R.B. Russell, R.J. Jones, W.A. Pritchard. L-R, Front Row: W.A. Ivens, A.A. Heaps. Credit to: Western Canada Pictorial Index.

claim that it required the use of emergency powers to bring the strike leaders to justice.

Such a course was also contrary to Borden's stated framework for the postwar order set out in a statement to the Unionist caucus on 26 June 1919. Borden's framework included a proscription against those who advanced "revolutionary or bolshevist propaganda." The government had already acted to give this practical form through measures to counter forces inimical to the postwar stability of the liberal state. These included amendments to the Immigration Act and the Criminal Code as well as the creation of a permanent state security apparatus in a reconfigured Royal Canadian Mounted Police.[49] Equally important, however, Borden was committed

[49]On this theme see Gregory S. Kealey, "State Repression of Labour and the Left in Canada, 1914-1920: The Impact of the First World War," *Canadian Historical Review*, 73 (September 1992), 281-314; Gregory S. Kealey, "The Surveillance State: The Origins of Domestic Intelligence and Counter-Subversion in Canada, 1914-1921," *Intelligence and National Security*, 7 (1992), 184-91; Gregory S. Kealey and Andrew Parnaby, "War on two fronts: in the Great War, the Canadian state found itself fighting on two fronts ...," *Beaver*, 81 (August-September 2001), 8-15, and Judy Fudge and Eric Tucker, "Pluralism or Fragmentation? The Twentieth-Century Employment Law Regime in Canada," *Labour/Le Travail*, 46

to a policy of reconstruction that required respect for constitutional authority at the federal, provincial, and municipal level; the abandonment of repressive and restrictive measures necessitated by the war; and the recognition of the "legitimate and reasonable" aspirations of organized labour.[50] There was no place in Borden's reconstruction policy for federally initiated criminal prosecutions — an area of exclusive provincial jurisdiction — under the authority of the War Measures Act.

Aside from the legal and political barriers standing in the way of federal involvement in the Winnipeg proceedings, a prosecution rooted in the powers conferred on Ottawa under the War Measures Act could ignite an explosion of popular opposition. World War I, the first total war waged under democratic conditions, triggered a widespread crisis of citizenship. The war drove the Canadian state to impose unprecedented demands for discipline and sacrifice on Canadians. Canadian progressives employed a narrative of solidarity and sacrifice to construct what one historian has termed a citizenship rooted in an "ideology of service."[51] The war had also contributed to the development of what Chad Reimer has described as "an historically distinct, working-class definition of nationhood and citizenship."[52] In 1919, after a war waged for democratic values, few were prepared to accept a continuation of government by Order in Council. Demands for British justice were already resounding across the country in response to the arrests of the strike leadership. In a speech to an open-air rally in Winnipeg's Market Square on 9 July 1919, F.J. Dixon captured the growing spirit of resistance to arbitrary rule when he claimed that the Canadian people were in the process of having "their rights and liberties stolen from them by the shabbiest pack of political jackals that ever harassed a civilized country."[53]

Resistance to the prosecution of the strike leaders also existed in the Manitoba Attorney General's office. On 12 July, Andrews complained to Meighen that provincial authorities had no intention of proceeding with prosecutions in any of the sedition cases.[54] He pressed for permission to intervene. Andrews was told by Meighen "not to do so."[55] Manitoba's decision not to proceed, combined with

(Fall 2000), 251-306. Gramsci refers to the "interventionist" state that will take "the offensive ... against the oppositionists and organize permanently the 'impossibility' of internal disintegration...." Antonio Gramsci, *Selections from the Prison Notebooks*, 238-239.

[50]Robert Laird Borden, *Robert Laird Borden: His Memoirs*, Vol. II (Toronto 1969), 220. On the theme of labour and the state after the war see James Naylor, "Workers and the State: Experiments in Corporatism After World War One," *Studies in Political Economy*, 42 (Autumn 1993), 95-96.

[51]Douglas Owram, *The Government Generation*, 80.

[52]Chad Reimer, "War, Nationhood and Working-Class Entitlement: The Counter-hegemonic Challenge of the 1919 Winnipeg General Strike," *Prairie Forum*, 18 (Fall 1993), 219.

[53]*Winnipeg Free Press*, 10 July 1919, 5.

[54]NAC, Justice, RG13, Access, Pocket # 2, A.J. Andrews to Arthur Meighen, 12 July 1919.

[55]NAC, Justice, RG13, Access, Pocket #2, Arthur Meighen to A.J. Andrews, 14 July 1919 and 17 July 1919.

Meighen's rejection of Andrews' demand for federal sponsorship made any prosecution seem improbable.[56] But Andrews and his associates judged labour radicalism to be an affront to democratic values and liberal institutions: Andrews and company were determined to impose their meaning on the postwar crisis and to employ the courts as centres for instruction in civic virtue. A passage almost certainly composed by Andrews gave expression to their determination: "Feeling as we do that nothing less than Bolshevism has raised its ugly head, it is the duty of loyal citizens to band themselves together and see to it that the principles for which our Government stands are not trampled under foot, and wherever this vile serpent appears hit it and hit it hard."[57] The Citizens' idiom of citizenship was drawn from the British common law tradition in which "it was not only the privilege but the duty of the private citizen to preserve the King's Peace and bring offenders to justice."[58] On 18 July, having had the cases of the strike leaders remanded twice as a way of keeping them alive, Andrews told Meighen that if the federal government refused to act "the Citizens' Committee would instruct private counsel to carry on the prosecution of these cases."[59] On 21 July, after twice having the cases against the strike leaders remanded, Andrews and Pitblado launched the preliminary hearing in a bid to keep the cases alive.

While private prosecutions, even in 1919, had become increasingly unusual, in the past such procedures were a basic feature of the British common law. Douglas Hay makes the point that "private prosecution was carefully protected until the recent past, and that it was thought an important constitutional guarantee of civil liberty." He quotes Sir James Stephen, writing in 1883, that private prosecutions "both in our days and earlier times, have given a legal vent to feelings every way entitled to respect, and have decided peaceably and in an authentic manner many questions of great constitutional importance."[60] When the state refused to deploy its machinery of repression against what the Citizens considered to be a threat to the constitutional forms and personal liberties at the heart of the British constitution, the Citizens took matters into their own hands. Their project could not be contemplated, however, without consideration of the legal costs involved in a series of trials that would almost certainly stretch on for months and require the attention of experienced and expensive lawyers.

Circumstances appeared to place the members of the Committee of 1000 in circumstances that required the Committee to assemble a war chest to fund the prose-

[56]NAC, Justice, RG13, Access, Pocket #2, A.J. Andrews to Arthur Meighen, 12 July 1919.
[57]The Citizens' Committee of 1000, *The Activities and Organization of the Citizens' Committee of One Thousand in Connection with The Winnipeg General Strike*, 19.
[58]Peter Burns, "Private Prosecutions in Canada: The Law and a Proposal for Change," *McGill Law Journal*, 21 (Winter 1975), 271.
[59]NAC, Justice, RG13, Access, Pocket #2, A.J. Andrews to Arthur Meighen, 18 July 1919.
[60]For both quotes, see Douglas Hay, "Controlling the English Prosecutor," *Osgoode Hall Law Journal*, 21 (June 1983), 166-167.

cution of working-class radicalism. In May 1919, Meighen believed that the goals of the strike leadership were "of a most sinister character and far different from those that the ordinary sympathetic striker has in view." He saw no principle of industrial relations at issue, rather the "great purpose [of the Strike was] ... Soviet control."[61] In July, the crisis seemed to have passed and Meighen, acting in concert with his cabinet colleagues, rejected Andrews' grim warnings of impending social disorder, believing that the special circumstances that had warranted an extraordinary intervention of the federal state into the lives of Canadians no longer existed. In a wire to Andrews on 17 July 1919, Meighen explained that the federal cabinet took the view that "prosecutions have everywhere until now been entered and conducted by Provincial authority in [the] usual way" and the Union government was not interested in taking on what Meighen termed a new "class of work."[62] But this position was soon to change as Doherty was back from Paris and, in mid-July 1919, had begun to reassert control over the Department of Justice.[63]

Appointed Minister of Justice at the outset of Borden's tenure as prime minister, Doherty, who was 64 in 1919, had had a distinguished career in law and had taught civil and international law at McGill University. He was close to the Montréal financial community, director of a variety of financial institutions, and President of the Canadian Securities Corporation.[64] Like Andrews, Doherty had served with the Canadian military forces that suppressed the Northwest Rebellion in 1885. Appointed Minister of Justice in 1911, he supervised the passage of the War Measures Act through the Commons in August 1914. In 1918, Doherty worked closely with C.H. Cahan, a Montréal lawyer retained by Borden to advise the Union government on how to deal with the danger of radicalism. When Cahan produced a report in September 1918 calling for a campaign of repression against radicalism, Doherty saw to its implementation, including the creation of the Public Safety Branch (PBS), with Cahan as Director. While historians have portrayed Meighen as the leading exponent of repression in Borden's government — in one account he is described as "an extremist" — Doherty was a more determined apostle of reaction.[65] When Doherty returned from Europe in the summer of 1919, reaction was given new life.

Doherty was able to manoeuvre in a cabinet weakened by Borden's chronic absence. Borden had returned from Europe a tired, sick man without the energy or will to breath life into the fading Unionist government. Absent during most of the sum-

[61]NAC, Justice, RG13, Access, Pocket #2, Arthur Meighen to N.W. Rowell, 27 May 1919.
[62]NAC, Justice, RG13, Access, Pocket #2, Arthur Meighen to A.J. Andrews, 17 July 1919.
[63]NAC, Justice, RG13, Access, Pocket #2, Arthur Meighen to A.L. Crossin, 21 July 1919.
[64]"Hon. Charles Joseph Doherty," in Henry James Morgan, ed., *The Canadian Men and Women of The Time: A Hand-book of Canadian Biography* 1st edition (Toronto 1898), 275-276. Robert Craig Brown and Ramsay Cook, *A Nation Transformed: Canada 1896-1921* (Toronto 1974), 191.
[65]Kenneth McNaught and David J. Bercuson, *The Winnipeg General Strike*, 81.

mer, and unable to attend to his responsibilities throughout the autumn of 1919, he left Ottawa in January for a warmer climate. During Borden's absence, acting Prime Minister George Foster, with Doherty as his second, navigated the ship of state, in Foster's words, "on a troubled sea without chart, compass or captain." Later, Borden concluded that Doherty and Foster had done a poor job: they "did not co-operate wholeheartedly and did not command the confidence of colleagues."[66] Evidently, decisions were taken for which cabinet unanimity was not obtained.

Unlike Meighen, Doherty was disposed to act on Andrews' counsel concerning the menace of radicalism. On 12 August 1919, after a lengthy preliminary hearing, the strike leaders were committed for trial. During meetings with Andrews in Ottawa in August, Doherty agreed to finance the prosecution of Russell, Ivens, Prichard, Johns, Queen, Heaps, Armstrong, and Bray. The only direct reference to this arrangement is contained in correspondence between Andrews and Doherty in the spring of 1920. In a letter to Doherty 21 May 1920, concerning payment of fees for the spring trials of Ivens *et al.*, Andrews stated that Doherty would "recollect the arrangement I made before we went into this case for $150.00 a day each for Mr. Pitblado, Mr. Coyne and myself, when in court, and $100.00 out of Court, and for Mr. Sweatman, $100.00 a day throughout." Evidently, Doherty persuaded Meighen and Robertson to embrace a *volte-face* on the Winnipeg question, as Andrews told Doherty in his 21 May letter that he had also written to Meighen and Robertson because "of their familiarity with the conditions" entered into between Andrews and the Department of Justice.[67] Had Doherty not agreed to this extraordinary financial intervention to sponsor the Winnipeg proceedings, the trials of the Winnipeg strike leaders charged with seditious conspiracy would never have been held.

The only course available to Doherty to support the juridical assault on labour in Winnipeg was through collusion with the agents of the Citizens' Committee. Without the authority of the War Measures Act, the federal Minister of Justice had no authority to enter the prosecution directly. Under the Criminal Code of 1892, authority to prosecute was vested in the "attorney general" defined under Section 2(b) of the Act as " the Attorney-General or Solicitor General of any province in Canada in which any proceedings are taken under this Act, and, with respect to the North-West Territories and the District of Keewatin, the Attorney-General of Canada."[68] Only in 1969, was this section amended to open the possibility of prosecutions under the Criminal Code by the federal Minister of Justice.[69] In 1875, the

[66]Robert Craig Brown, *Robert Laird Borden – A Biography*, Volume II (Toronto 1980), 179.

[67]NAC, Justice, RG13, Access, Pocket # 1, A.J. Andrews to Honourable C.J. Doherty, Esq., 21 May 1920.

[68]*Revised Statutes of Canada, 1906* Vol. III, (Ottawa 1906), Chapter 146, An Act respecting the Criminal Law, Sec 2(2), 2419.

[69]*Canada (Attorney General) v. Canadian National Transportation Ltd.* [1983] 2 S.C.R. 206, File No: 16998, p. 13.

province of Manitoba had cemented its hold on criminal prosecutions through the terms of two provincial statutes: the Attorney General's Act and the Crown Attorney's Act. The latter Manitoba statute set out the procedure for a prosecution under the Criminal Code in Manitoba: it expressly required that a Crown Attorney "settle and sign all indictments and criminal informations, except those filed *ex-officio* by Her Majesty's Coroner and Attorney ... [and to] lay the same before the Grand juries sworn of the Assize or Quarter Session."[70]

From the perspective of Winnipeg, Doherty's financial intervention in the Winnipeg proceedings was a triumph for the Committee of 1000. With the financial resources of the federal government available to support their work, Andrews as lead *Crown* prosecutor supported by his legal associates in the Committee of 1000 could proceed with the trials as private prosecutions. Respecting common law precedent, criminal procedure set out in both the Crown Attorney's Act and the Criminal Code allowed for a prosecution to be launched by a private citizen or organization. Section 5(c) of Manitoba's Crown Attorney's Act noted the obligation of the Crown to "watch over" the conduct of such cases "without unnecessarily interfering with private individuals who wish in some cases to prosecute...."[71] The Criminal Code, Section 873(6) — in effect in 1919 — provided that, in Manitoba, an indictment "may be preferred by the Attorney General or an agent of the Attorney General, or by any person with the written consent of a judge of the court or of the Attorney General or, by order of the court."[72]

A private prosecution did not remove the Attorney General from the machinery of the prosecution. In his capacity as Attorney General, Johnson had decisions to make. Though he had chosen not to initiate prosecutions and assign crown counsel to the cases, a private prosecution by the Committee of 1000 could proceed only with his permission. Even after allowing the prosecution to begin, Section 962 of the Criminal Code gave Johnson the authority "at any time after the indictment has been found and before judgement " to make an order to stay proceedings through the issuance of a *nolle prosequi.*[73]

The formal position of the Attorney General of Manitoba on the sedition cases of 1919 and 1920 was disclosed on 16 February 1920 when Dixon, himself just that day acquitted on the charge of seditious libel, asked the Attorney General: "[Are]

[70]See *The Revised Statutes of Manitoba* Vol. 1, (Winnipeg 1892), Chapter 9, An Act Respecting the Department of the Attorney General. For the quotation from the Crown Attorney's Act see *The Revised Statutes of Manitoba*, Vol. I, (Winnipeg 1892), Sec. 5 (g), Chapter 38, An Act Respecting Crown Attorney's, 460 .

[71]*The Revised Statutes of Manitoba*, Vol. I, (Winnipeg 1892), Sec. 5 (g), Chapter 38, An Act Respecting Crown Attorney's, 460.

[72]*Revised Statutes of Canada, 1927*, (Ottawa 1927), Sec. 873 (5-6) Part XIX, Chapter 146, An Act respecting the Criminal Law, Sec 2(2), 948.

[73]*Revised Statutes of Canada, 1927*, (Ottawa 1927)Sec. 962 Part XIX, Chapter 146, An Act respecting the Criminal Law, Sec 2(2), 970.

... Messrs. Alfred J. Andrews, KC, Isaac Pitblado, KC, J.B. Coyne, KC, and W.A.T. Sweatman, purporting to be Crown Counsel in the case of The King vs. William Ivens, *et al.*, representing His majesty by virtue of being retained or instructed by the Attorney General of Manitoba?" The answer given was "No." Dixon then asked under what authority they were acting. He was advised "Mr. Alfred J. Andrews, KC, and such counsel as might be associated with him, were authorized by the Attorney-General of Manitoba to appear and conduct this case for the Crown, but he and counsel associated with him were retained and instructed by the Minister of Justice of Canada."[74]

Andrews and his associates appeared before 49-year-old Judge Thomas Llewellyn Metcalfe. Metcalfe, of Presbyterian Ontario stock, grew up on a farm in the Portage la Prairie area. He was fond of horses and equestrian polo, a member of the St. Charles Country Club and the Winnipeg Canoe Club. Single throughout his life, he evidently had an intimate relationship with the wife of Andrews.[75] It is no exaggeration to say that the stress of the sedition trials killed him. Though he spent six months on the Pacific coast and in California in the summer and autumn of 1920, the trials had destroyed his health. Appointed to the Court of Appeal in 1921, he was mostly absent from his duties. He died 2 April 1922. Andrews helped carry him to his grave.[76]

Even before Dixon's questions were put to the provincial Attorney General in February 1920, defence counsel questioned the legality of the proceedings against the strike leaders. At the outset of the Russell trial, defence counsel unsuccessfully attempted to have Metcalfe quash the indictment because they asserted that the prosecution was neither sanctioned by the Crown nor carried out within the legal requirements for the administration of the criminal law. The prosecution, it was

[74]Dixon also asked, "Is Hugh Phillipps, K.C., representing His majesty in the case of The King vs. F.J. Dixon, by virtue of being retained or instructed by the Attorney-General of Manitoba?" He was told "Yes." In response to his inquiry concerning the method by which Phillipps had been appointed, he was told, "The same as in all cases where the Department retains counsel, namely, by the Attorney-General without any Order-in-Council." For the exchange see *Journals of the Legislative Assembly of Manitoba*, (Winnipeg 1920), 69-70. The provincial Attorney General prosecuted Dixon for seditious libel. His trial ran from late January to 16 February 1920 when he was acquitted. On the Dixon case see Harry Gutkin & Mildred Gutkin, *Profiles in Dissent* (Edmonton 1997), 36-43. *Dixon's Address to the Jury and Judge Galt's Charge to the Jury in Rex v. Dixon* (Winnipeg 1920). In May 1920 similar questions were put to Justice Minister Doherty in the House of Commons. He confirmed that "the Dominion Government [was] represented by counsel" at the sedition trials and that the Dominion government had "retained" counsel for the trial. For the full exchange with Ernest Lapointe see *Debates*, Vol. CXLIII, 2181.

[75]PAM, WCLH, BF, A.J. Andrews. A note in Andrews' file states "Found his wife in bed with Judge Metcalfe – who knocked Andrews down stairs."

[76]See *Winnipeg Free Press*, 4 April 1922; *Winnipeg Tribune*, 5 April 1922; PAM, WCLH, BF, T. L. Metcalfe.

claimed, did not originate with the Province of Manitoba.[77] Knowing that a prosecution could proceed without the provincial Attorney General or his agent preferring the indictment, Judge Metcalfe dismissed the objections. If need be, under provisions of the Criminal Code, Metcalfe himself could have authorized the prosecution. There is little doubt, given his conduct throughout the trial and his closing submission to the juries in both trials, that he believed the strike leaders guilty of seditious conspiracy.[78]

Confusion about who had initiated the prosecution almost certainly resulted as well from the fact that, though initiated by a party outside the state, the prosecution undertaken by the Citizens' was undertaken in the name of the Crown. All prosecutions under the Criminal Code, private or public, were undertaken in this manner. Citing *Tremeear's Annotated Criminal Code of Canada,* Fred Kaufman has observed: "It is the essence of a crime that it is a wrong of so serious a nature that it is regarded as an offence, not merely against an individual, but against the State itself. Since the state is embodied in the person of the Sovereign, it follows that all prosecutions for crimes must always be carried on in the name of the Crown."[79]

While all criminal prosecutions must be taken in the name of the sovereign, agents other than law officers of the Crown might prosecute.[80] On this point, Patrick Devlin, an authority on criminal procedure in common law courts, has concluded that the existence of private prosecutorial right "must be the theoretical justification for the Attorney General's power to enter a *nolle prosequi*, which is an answer to an indictment and prevents the prosecution of it."[81] Johnson's reference to Andrews and his associates representing the Crown obscured the fact that the 1919 seditious conspiracy proceedings in Winnipeg were private prosecutions undertaken by the Citizens' Committee of 1000, authorized by the Attorney General of Manitoba, and paid for by the federal Department of Justice.

Hay has noted that the mechanism of private prosecution has been judged a mixed blessing: viewed by some as "one of the crucial safeguards of the citizenry against an executive contemptuous of liberty," he also affirms that "much of the emphasis in Canadian commentary on private prosecutions is preoccupied with the malignant dangers lurking in private use of the law." He cites two cases: in 1946, the British Columbia Supreme Court observed: "For individuals who are thinking

[77]PAM, GR 950, Attorney General's Records, Central Registry, King vs Russell (1919).
[78]Desmond H. Brown, "The Craftsmanship of Bias," 1-33.
[79]Fred Kaufman, "The Role of the Private Prosecutor: A Critical Analysis of the Complainant's Position in Criminal Cases," *McGill Law Journal*, 7 (June 1960), 102. Kaufman based his comments on *Tremeear's Annotated Criminal Code of Canada,* 4th ed. (1944), p. 1.
[80]Peter Burns notes that in a private prosecution "The actual prosecutor, of course, will be the individual member of such group who lays the information." The individual in this case was A.J. Andrews. For the quote see Peter Burns, "Private Prosecutions in Canada," n3, 269.
[81]Baron Patrick Devlin, *The Criminal Prosecution in England* (New Haven 1958), 20-21, as quoted in Fred Kaufmann, "The Role of the Private Prosecutor," 110.

only of themselves and not of society as a whole to have the right to institute and carry on criminal proceedings would destroy the whole fabric of the recognized fairness of our criminal prosecutions."

In 1964, a Manitoba court concluded that greater rights to private prosecutors would "unnecessarily widen the field of prosecution of Her Majesty's subjects to any obsessed, vindictive, unscrupulous, self-styled savior. Her Majesty's subjects are entitled to freedom from unwarranted prosecution."[82]

On the 50th anniversary of the Winnipeg General Strike, Clare Pentland observed that the Winnipeg crisis was "among the great class-confrontations of capitalist history."[83] The meaning of the strike, contested in 1919, remains a subject of historical controversy. In 1919, the Citizens' determination to prosecute the strike leadership — buttressed by the authority of the state and financed by public monies — was mounted to give legal weight to partisan claims that the Winnipeg General Strike was a revolution in disguise.

Given his responsibility to protect the citizens of Manitoba from unwarranted prosecution, Attorney General T.H. Johnson must have found the findings of the Robson Commission troubling. An inquiry under Mr. Justice R. A. Robson, former Chief Justice of the Court of King's Bench, formally titled the *Royal Commission to Enquire into and Report Upon the Causes and Effects of the General Strike Which Recently Existed in the City of Winnipeg for a Period of Six Weeks, Including the Methods of Calling and Carrying on Such Strike* was launched by the provincial government in July 1919. In his findings, Robson rejected claims that the strike was a deliberate attempt at revolution. He concluded that "it is too much for me to say that the vast number of intelligent residents who went on strike were seditious or that they were either dull enough or weak enough to allow themselves to be led by seditionaries."[84] In Robson's considered view, Winnipeg's general strike was about frustrated claims for collective bargaining not Bolshevism.

Chief Justice Robson completed his report before the opening of the November Assizes and submitted it to the Manitoba Government on 6 November 1919. Yet, it was not released to the public until 29 March 1920, two days after the conviction of Ivens and the other strike leaders and long after the conviction of Russell. Premier Norris explained that the findings of the Royal Commission report had not been released earlier because they might have prejudiced the outcome of the trials.[85] In privileging court proceedings rooted in a private prosecution over the find-

[82]As quoted in Douglas Hay, "Controlling the English Prosecutor," 166.

[83]Clare Pentland, "Fifty Years After," *Canadian Dimension*, 6 (July 1969), 14.

[84]*Royal Commission to Enquire into and Report Upon the Causes and Effects of the General Strike Which Recently Existed in the City of Winnipeg for a Period of Six Weeks, Including the Methods of Calling and Carrying on Such Strike* (hereafter *Robson Commission*), H.A. Robson, K.C. Commissioner (Winnipeg 1919), 13.

[85]Judge Robson did not agree. In his report he noted that "Whether or not, the facts in question will be elements in the prosecution seems to the undersigned not to affect or necessitate

ings of a Royal Commission by a leading jurist, Norris avoided the thorny issue of why Robson's conclusions did not require his Attorney General to restrain the free hand granted the Citizens' Committee with a *nolle prosequi* for the men arraigned on charges of seditious conspiracy.

The suppression of the Winnipeg General Strike did not end the campaign of the Committee of 1000 against Winnipeg's working class. Andrews and his associates pushed the Citizens' campaign against labour forward on several fronts: they kept the prosecutions alive when the state turned away; they secured an order for trial through an exhaustive preliminary hearing; and, finally, they gained the financial resources for the Citizens' juridical assault on labour through the largesse of the federal Minister of Justice.[86] In late August 1919, during a trip to Ottawa to discuss the sedition prosecutions with Doherty, Andrews delivered his and other statements of account for legal services.[87] Notwithstanding the fact that Andrews had told Meighen in early June 1919 that Pitblado, Coyne, and Sweatman were "voluntarily aiding me," the summary of legal fees submitted to Doherty included requests for payments to these men for consulting with and advising Andrews beginning, in Pitblado's case, as early as 26 May 1919, only a week after the creation of the Citizens' Committee of 1000.[88]

Pitblado's charges totaled $4,500; the account detailed his services to the state from 26 May to 13 June 1919. These included "daily consultation with Mr. Andrews with respect to strike and strike leaders and the course being pursued by the Dominion Government." When Andrews decided to move against the leadership of the strike, Pitblado was engaged "continuously in preparation of warrants and search warrants and advising in regard to arrests...." From 19 to 27 June, he was occupied with the "preparation of additional search warrants to be executed in different places throughout Canada and in connection with [the] preparation of evidence for the preliminary trials of the strikers and in connection with advising in regard to the arrest of other parties and closing of Labor [sic] News."[89]

any further delay in this report, as the undersigned finds that the general widespread Strike was the result of the determination to support by mass action the demand for the type of collective bargaining in question." *Robson Commission*, 13.

[86]For an account of other activities of the Citizens' Committee see, Tom Mitchell, "Repressive Measures."

[87]At the end of August, F.M. Burdidge submitted additional accounts associated with the sedition cases for expenses associated with bringing witnesses to Winnipeg, presenting warrants, and opening safes. Burbidge explained to W.S. Edwards, Assistant Deputy Minister of Justice, that Colonel Starnes of the RNWMP "has no money available." Burbidge wondered whether, "without interfering with the payment of our account, ... it be possible to let us have an advance of $500.00 to $1000.00." NAC, Justice, RG13, Access, Pocket #1, F.M. Burbidge to W. Stuart Edwards, 28 August 1919.

[88]NAC, Justice, RG13, Access, Pocket #2, A.J. Andrews to Arthur Meighen, 17 June 1919.

[89]NAC, Justice, RG13, Access, Pocket #1, The Government of the Dominion of Canada in Account with I. Pitblado, Winnipeg, 13 August 1919.

Sweatman's claims for professional services totaled $3,412.50, and dated from 14 June 1919. His time was devoted to "conferences with Colonel Starnes, examination of witnesses, examination of documents, preparing search warrants, and consultations with Andrews, Pitblado, and Coyne" between 14 June and 12 July 1919. On 13 July he appeared in court to oppose the bail application by the strike leaders.[90] Like Sweatman, Coyne's account dated from 14 June 1919. From 14 to 28 June "including 2 Sundays," he considered the "advisability of arrests and charges" arising from the strike. From 2 to 12 July, "including 1 Sunday," Coyne "met with Colonel Starnes, Mr. Anderson, Mr. Luke, Ministers and officials of local government." On 1 August, from 5 to 9 August, and 11 and 12 August, he had conferences with and advised "A.J. Andrews, KC, I. Pitblado, KC and W.A.T. Sweatman." Coyne devoted seventeen days to the preliminary hearing into charges against the strike leadership. He had worked, he claimed, "usually all day and all evening."[91]

Andrews' claim for services to mid-August amounted to $7,600. He noted only the "prosecutions of Ivens *et al.* and deportation proceedings Almazoff *et al.*" Andrews had charged the Department of Justice for 76 days work dating back to 21 May 1919, the date he had been retained by Meighen to advise on the Winnipeg strike. The bill also included charges for the work of Andrews' legal partners Goldstine, Andrews, and Burbidge amounting to $1,196.[92]

An extended debate within the state about where the money was going to come from had already begun. On 8 August 1919, Angus A. McLean, Comptroller of the RNWMP since 1917, wrote (secretly and confidentially) to E.L. Newcombe, the Deputy Minister of Justice, concerning the payment of legal fees and related costs incurred by Andrews and his legal associates. McLean's correspondence to Newcombe was prompted by a telegram he had received from the Commissioner of the RNWMP, Aylesworth Bowen Perry. Perry, a veteran of the force who was appointed Commissioner in 1900, had advised McLean that the force had been "called upon to pay accounts for services rendered by different parties acting under instructions from Mr. Andrews in cases against Winnipeg Strike leaders...." The Commissioner wanted the Comptroller's advice: was the force to pay accounts on behalf of the Department of Justice? In his letter to Newcombe, McLean — clearly having concluded that the force bore no responsibility for such obligations — asked Newcombe "whether Mr. Andrews was authorized by your Department to incur

[90]NAC, Justice, RG13, Access, Pocket #1 , The Government of the Dominion of Canada in Account with Travers Sweatman, Winnipeg, 14 August 1919.

[91]NAC, Justice, RG13, Access, Pocket #1, The Government of the Dominion of Canada in Account with J.B. Coyne, K.C., Winnipeg, 14 August 1919.

[92]NAC, Justice, RG13, Access, Pocket #1, The Department of Justice in Account with Andrews, Andrews & Company, Winnipeg, 16 August 1919.

this expenditure, and if [it was] ... [Newcombe's] ... desire that we shall defray them on your behalf."[93]

Notwithstanding this exchange, in early September, Assistant Deputy Minister of Justice W. Stuart Edwards sent the bill for the accumulated costs of legal fees associated with the prosecution of the strike leaders — including the claims delivered by Andrews in late August — to the Comptroller of the RNWMP. In addition to the fees charged by Andrews, Pitblado, and Coyne in mid-August, new accounts for two additional Winnipeg lawyers, Williams and Richardson, totaling $5,500 were included, creating a grand total of $27,458.50.[94] Edwards had

> the honour to state that Mr. A.J. Andrews, K.C. of Winnipeg has been given charge of the legal services in connection with this matter, and any disbursements which may reasonably be incurred under his direction in connection with the apprehension and prosecution of the several offenders may properly be paid out of your appropriation subject, of course, to certification and audit in the usual way.[95]

Just as he had in August, McLean refused on behalf of the RNWMP to assume financial responsibility for the legal assault on the strike leadership. McLean advised Edwards that he was consulting with the President of the Privy Council on the matter. Further, he told Edwards that RNWMP Commissioner Perry had advised him that Andrews had been appointed by Acting Minister of Justice to represent him during the strike. The RNWMP had been requested to co-operate with Andrews in the matter of prosecutions. However, the force "did not engage him or accept pecuniary responsibility for his services or actions." Nor did Andrews consult members of the RNWMP in incurring expenditures in Winnipeg. In short, McLean was "unable to agree that liability for these charges falls upon this Department, which had no discretion in incurring them."[96]

The same message was conveyed to Andrews when he returned to Winnipeg after a trip to the US to consult with Department of Justice officials in Washington and Chicago. Disappointed with this state of affairs, Andrews wrote to Edwards in Ottawa to explain that there were a large number of accounts for services that should be paid at once. In a postscript to the letter Andrews noted that no cheque

[93]NAC, Justice, RG13, Access, Pocket #1, Angus A. McLean, Comptroller, Royal North West Mounted Police, to The Deputy Minister, Department of Justice, 8 August 1919.
[94]NAC, Justice, RG13, Access, Pocket #1, W. Stuart Edwards to The Comptroller, Royal North West Mounted Police, 3 September 1919.
[95]NAC, Justice, RG13, Access, Pocket #1, W. Stuart Edwards to The Comptroller, Royal North West Mounted Police, 8 September 1919.
[96]NAC, Justice, RG13, Access, Pocket #1, Angus L. McLean, Comptroller, Royal North West Mounted Police, to W. Stuart Edwards, Assistant Deputy Minister of Justice, 9 September 1919.

had been sent to cover the legal accounts that Andrews had provided when he was in Ottawa in mid-August.[97]

On 19 September 1919, Edwards told Andrews that the delay in responding to his financial claims was a result of the RNWMP "having taken the position that they are not responsible for this expenditure." Moreover, advised Edwards, "as we have no appropriation out of which the expenses can be paid it is necessary that some action be taken by the Government to meet the situation." Edwards was bringing the matter to the attention of the Minister of Justice.[98] In a *Memorandum for the Minister of Justice,* dated 19 September 1919, Edwards advised Doherty that the RNWMP had refused to finance the prosecution of the Winnipeg strike leadership. Because the Department of Justice had "no appropriation out of which they could be paid," the government would have to take some action to pay the mounting legal costs being generated by Andrews and his legal colleagues in Winnipeg. Edwards suggested that Doherty "mention the matter in Council as soon as possible and have some decision reached." Early in October an exasperated Andrews telegraphed Doherty about unpaid accounts with witnesses, reporters, and service providers. He protested that "This is very embarrassing and ... prejudicial to [the] prosecution." He asked Doherty to rush funds and "cheques for lawyers engaged as well."[99]

Doherty solved the problem, ironically, by taking money appropriated by Parliament to deal with wartime expenses. On 10 October 1919 cabinet approved an Order in Council whereby the sum of $35,000 was set aside from funds earmarked for demobilization of Canadian armed forces to pay for legal expenses incurred in legal proceedings against strike leaders in Winnipeg.[100] "An Act for Granting His Majesty Aid for Demobilization and Other Purposes" had been given Royal Assent on 6 June 1919 coinciding with the hurried revisions to the just-amended Immigration Act. The Demobilization Act was established ostensibly "to provide for the demobilization of Canadian forces" active in World War I. The preamble to the Act also made more general reference to "measures" required for "common defence and security."[101] During discussion of the bill at second reading in early May 1919, the Minister of Militia, Major-General Mewburn, advised the Commons that: "every dollar of this expenditure is simply to pay the allowances of soldiers on active service today, including war service gratuity, deferred pay, which amounted to some $36,000,000, and separation allowances to dependents of troops."[102]

[97]NAC, Justice, RG13, Access, Pocket #1 , Alfred J. Andrews to W. Stuart Edwards, 15 September 1919.
[98]NAC, Justice, RG13, Access, Pocket #1 , W. Stuart Edwards to Alfred J. Andrews, 19 September 1919.
[99]NAC, Justice, RG13, Access, Pocket #1 , W. Stuart Edwards to the Minister of Justice Re. Winnipeg Strike, 19 September 1919.
[100]NAC, RG2, Volume 1233, PC 2106, 10 October 1919.
[101]Statutes of Canada, 1919 (Ottawa 1919), 121.
[102]*Debates*, Vol. CXXXVI, III, 1919 (Ottawa 1919), 2173.

Members of the House of Commons were concerned with a provision in the Act that referred to "carrying out of any measures deemed necessary or advisable by the Governor in Council in consequence of the war." Rodolphe Lemieux, a veteran cabinet minister from the Laurier era, and in 1919 a Laurier Liberal sitting in opposition, asserted that he was "afraid of that Purpose." He wondered: "What are those measures that are deemed necessary? What are those vague measures that are deemed advisable?" The practice of governing by Order in Council had, in his view, been abused.[103] At third reading, another Québec member of Parliament, Lucien Cannon, also a Laurier Liberal elected for the first time in the 1917 election, raised a similar concern, but in a more pointed way. Was the provision in the act that provided for "carrying out of any measures deemed necessary or advisable by the Governor in Council in consequence of the war" simply a revival or extension of the War Measures Act? Sir Thomas White, the Minister of Finance and Acting Prime Minister, responded by denying that the Demobilization Act was so designed. The Bill simply gave the government "funds to carry out measures which it [was] ... lawfully authorized to carry out."[104]

For the Union government in 1919, paying Andrews and his associates with funds already approved under the Demobilization Act had the advantage of masking the involvement of the federal government in an extraordinary legal maneuver. But the federal government's *sub rosa* involvement in the Winnipeg prosecutions raised questions about whether such expenditures were lawful. Certainly, the federal Auditor General, E.D. Sutherland, found the procedure objectionable. On 3 February 1920 Sutherland told the Department of Justice that he could not "see that the legal, or in fact any other expenditure connected with the strike, has any relation to the purposes for which that appropriation was provided." He noted that Section 2(a) of the Demobilization Act had as one purpose "the defence and security of Canada." Sutherland did not believe that the "suppression of strikes was contemplated under this heading, and certainly not the legal expenses arising out of such occurrences." The Auditor General suggested that Parliament be asked for a special vote to approve the expenditures through an appropriation separate and distinct from the Demobilization Act. Such a step was politically unpalatable. By February 1920, the country had returned to a state of constitutional orthodoxy, and the federal government had no constitutional basis upon which to ask Parliament for an appropriation to fund the legal adventures of the Committee of 1000.[105]

Sutherland's argument was dismissed by the Department of Justice. Deputy Minister Newcombe argued that the purposes set out in the Demobilization Act were "broadly expressed and entitled to an interpretation which might include many expenditures not foreseen which in one way or another find their origin in the

[103]*Debates*, Vol. CXXXVI, III, 1919 (Ottawa 1919), 2172.
[104]*Debates*, Vol. CXXXVI, III, 1919 (Ottawa 1919), 2244.
[105]NAC, Justice, RG13, Access, Pocket #1, E.D. Sutherland, Auditor General to E.L. Newcombe, Deputy Minister of Justice, 3 February 1920.

war." He argued further that the Act gave the state wide discretion to address problems arising from the war. Newcombe asserted that the "revolutionary activities in Winnipeg and elsewhere" were due "in their conception or manifestation to war conditions."[106] Accordingly, it was his view that the Governor in Council had authority to provide for the payment of these expenses under items (a), (c), or (d) of Section 2 of the act. Article (a) of the Act referred to "the defence and security of Canada," Article (c) to expenditures for the promotion "of trade and industry, and transportation facilities therefore," and Article (d) to expenditures "in consequence of the war."[107]

Sutherland was not in a position to reject Newcombe's advice. In 1878, the position of Auditor General was created independent of the Department of Finance. The Auditor General's bulky annual reports listed in detail every single government transaction. In 1920, however, the role of the Auditor General was limited to examining the operations of departments and approving or refusing the issuance of government cheques.[108] On questions of legality the Minister of Justice had, at least within the state, an authoritative voice: after all, the federal Attorney General was responsible for providing the state with advice about the law. [109]

On 10 October 1919, Edwards wired Andrews that authority had been obtained to meet the costs of the legal proceedings in Winnipeg.[110] On 16 October 1919, cheques were sent to Andrews to cover the charges for the services of Andrews and his legal colleagues and sundry expenses paid for by his firm.[111] An additional cheque in the amount of $4,000, as an advance for disbursements and fees required in the prosecution of the strike leadership, was sent to Andrews on 20 October.[112]

[106]See NAC, Justice, RG13, Access, Pocket #1, E.L. Newcombe to E.D. Sutherland, Auditor General, 6 February 1920.

[107]*Statutes of Canada 1919* (Ottawa 1919), 121.

[108]After 1977, the Auditor General's role was expanded to include the broader mandate of how the government administered its business. The authority of the Auditor General did not extend to these matters in 1919. See archival description of the Office of the Auditor General Fonds, R711-36-9-E (Series), NAC.

[109]Jonathan Swainger, *The Canadian Department of Justice and the Completion of Confederation, 1867-1878* (Vancouver 2000).

[110]NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to Hon. C.J. Doherty K.C., 6 October 1919; and W. Stuart Edwards to A.J. Andrews K.C., 10 October 1919.

[111]To recapitulate, the amounts for specific individuals were as follows: Andrews ($10,146), Isaac Pitblado ($4,500), J. B. Coyne ($3,900), Travis Sweatman ($3,337.50), E.K. Williams ($2,325) and W.W. Richardson ($2,500) see NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to Hon. C.J. Doherty K.C., 6 October 1919; and W. Stuart Edwards to Andrews, Andrews, Burbidge & Bastedo, 16 October 1919.

[112]NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to Hon. C.J. Doherty K.C., 6 October 1919; and W. Stuart Edwards to A.J. Andrews K.C., 20 October 1919.

More money, a good deal more, would be required before the strike leaders were behind bars.In the absence of a budget approved through Parliament, funds had to be provided repeatedly through Orders in Council from monies approved by Parliament under the Demobilization Act. Further Orders in Council on 6 November 1919,[113] and 31 January 1920,[114] were approved for the amounts of $30,000 and $50,000 respectively. Two additional Orders in Council, one in April and one in June 1920, furnished an additional $80,000 for the Winnipeg prosecution.

Some of the costs met by the $50,000 set aside at the end of January were used to pay a bill from the McDonald Detective Agency. In January, the agency requested payment of $3,189.77 for various services. One aspect of the McDonald Agency bill concerned its role in assisting the RNWMP in the investigation of the jury panel from which the jury for the Russell trial was drawn. Two McDonald Agency operatives had spent eighteen days investigating the jury panel.[115]

When the assizes opened on 4 November 1919, and the jury panel had been made available to the defence and prosecution, Andrews turned the jury list over to the RNWMP and the McDonald Detective Agency with copies of a list of 25 questions he had developed. In early January 1920, well before the beginning of the second trial, Andrews secured the jury list through an order issued by Judge Galt — known for his judicial waywardness — of the Court of King's Bench and undertook a similar investigation through the McDonald Detective Agency.[116] The questions on Andrews' lists concerned the views of potential jurors with regard to the Union Government war policy, Bolshevism, the Winnipeg General Strike, the Committee of 1000, trade unions, and socialism.[117]

Access to the jury list by anyone other than the officers of the court responsible for summoning a jury panel was strictly prohibited. Under Article 180 of the Criminal Code, anyone who influenced or attempted "to influence, by threats or bribes or other corrupt means, any juryman in his conduct, whether such person has been sworn as a juryman or not" was subject to a sentence of two years' imprisonment. The Act also prohibited wilful "attempts in any other way to obstruct, pervert or de-

[113]NAC, RG2, Volume 1235, PC 2244, 6 November 1919.

[114]NAC, RG2, Volume 1235, PC 239, 31 January 1920.

[115]NAC, Justice, RG13, Access, Pocket #1, Invoice, McDonald Detective Agency, Limited, to A.J. Andrews, Esq., K.C., 5 January 1920.

[116]Dale Brawn, "Alexander Casimir Galt," unpublished typescript.

[117]NAC, RG18, Vol. 3314, File #HV-1, Supt. C. Starnes to the Commissioner of the Royal North West Mounted Police, 5 November 1919. A bill from the McDonald Detective Agency submitted to the Justice Department by A. J. Andrews on 5 January 1920 indicates that the Agency was also employed in the jury investigation. See NAC, Justice, RG13, Access, Pocket #1, Invoice, McDonald Detective Agency, 5 January 1920.

NAC, RG18, Vol. 3314, File #HV-1, Supt. C. Starnes to the Commissioner of the Royal North West Mounted Police, 5 November 1919. If the use of the RNWMP was a routine pro-

EXAMPLE

NAME .....

ADDRESS.....

1. Give approximate age from appearance. A.....
2. Is he married ? A.....
3. Is he a returned man: if so was he a volunteer or a conscript? A.....
4. How many children, if any ? A.....
5. If sons, did they go to war ? A.....
6. If they went to the war, did they go as volunteers or conscripts ? A.....

7. Do they personally know any of the men being tried for Sedition or are they friends or friendly ? A.....

8. What are his views as to the Union Government War Policy.

.....

9. Is he a Laurier Liberal, Conservative or Unionist ?A.....

10. Is he a Socialist ? A.....
11. Is he an O.B.U. ? A.....
12. What is his present occupation ? A.....
13. Has he a trade ? A.....
14. Was he ever a member of a Union ? A.....

15. What are his views on Bolshevism ? A.....

.....

16. Is he now a member of a Union ? A.....
17. What does he think of Trades Unionist Leaders and their methods during the last twelve months ?

.....

18. What does he think of the Winnipeg Strike ? Does he think it was justified ?

.....

19. Waht does he think of the Citizen's Committee of One Thousand and their work ? A.....

20. Does he blame the Government for taking methods to put down the strike ? Does he blame the Government for the shooting which took place during the riot ?

.....

21. Does he own his own home ? A.....
22. Has he got an automobile ? A.....
23. Is he well off ? A.....
24. Is he in your opinion liable to be sentimental in his judgement ? A.....
25. Do you recommend him for the position ? A.....

Remarks.....

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cedure in such investigations, it is unlikely that Starnes would have reported it to the Commissioner complete with a copy of the questionnaire above.

feat the course of justice."[118] The provincial Jury Act stipulated: "Neither the jury panel nor the name of any person on such panel, shall be communicated, either verbally or otherwise, to any person whomsoever, until such panel is returned into court by the sheriff...." This provision could be set aside only "upon an order of the court or of a judge."[119] Federal and provincial laws against interference with the jury were designed to defend the basic principle of natural justice summed up in the phrase *audi alteram partem* (hear the other side). Trial by a jury of one's peers was the hallmark of British justice; justice required an unbiased jury capable of providing the defendant a fair opportunity to have his case judged impartially.[120] The subversion of the jury system was a criminal offence that carried a punishment of imprisonment.

Prior to the Russell trial, defence counsel had no inkling that Andrews had taken steps to investigate the jury panel. This was not the case for the second trial. On 20 January 1920, at the outset of the trial of William Ivens and the remaining strike leaders, the defence alleged that the sheriff or his officers had been guilty of wilful misconduct in the selection of the jury panel and that the sheriff had improperly allowed counsel for the Crown to examine the jury list before it had been returned to the Court. Finally, defence counsel alleged that the Crown had interfered with the jury. Judge Metcalfe agreed to investigate these claims.

In the course of the *voire dire*, Deputy Sheriff Pyniger testified that on Friday, 26 December, one of the Andrew's associates had produced an order signed by Judge Galt instructing the sheriff to provide a copy of the jury list. Pyniger disclosed that he had provided a copy of the jury list to the prosecution and, at the same time, a copy to defence counsel. Though McMurray denied at trial that he had received such a list, it seemed clear that Pyniger had acted within the law. When McMurray attempted to broaden the inquiry to interference with the jury he was prevented from doing so by Andrews and Metcalfe. When McMurray called J. W. Hansen, a juror, whose name had appeared on the original jury list and asked Hansen whether he was approached by anyone after he was summoned to appear on the jury panel, Metcalfe upheld Andrews' objection to the question. Metcalfe ruled that the question had nothing to do with misconduct on the part of the sheriff who had released the jury list to the Crown.[121]

Arguably Metcalfe might have allowed the question to be answered as the answer bore directly on provisions of the Criminal Code against interference with the jury. McMurray also called Sergeant Reames of the RNWMP and asked whether he

[118]*The Revised Statutes of Canada*, 1927, Vol. I (Ottawa 1927), Sec. 180 (b) (d), 720.

[119]*Statutes of Manitoba, Consolidated Amendments* (Winnipeg 1924) Sec. 48, Chapter 108, 798.

[120]See the definition of "natural justice" in *Dictionary of Law*, Oxford University Press. http: /w2. xrefer.com/entry/466375

[121]NAC, Justice, RG13, Access, Pocket #1, Royal North West Mounted Police Report, Re. Wm. Ivens *et al.* – Seditious Conspiracy, 27 January 1920.

or anyone under him had interrogated any of the jurymen. Again Andrews objected to the question and Judge Metcalfe upheld the objection, saying that no questions could be asked that were not related to the charges against the sheriff and his deputy. McMurray protested that he was not being allowed to question the witness as to whether there was a tampering with the jury.

Yet Metcalfe understood the import of the questions put by McMurray: in 1919, any direct contact with a juror was strictly outside the law. In the course of refusing McMurray leeway, Metcalfe warned that he would " deal pretty strongly with any person you can show me who has been tampering with the jury no matter who they are."[122] However, McMurray's attempt to show Metcalfe that the jury panel may have been criminally interfered with was in vain. Andrews dismissed McMurray's accusations of Crown impropriety with the charge that the defence was simply "trying to bring the courts of Canada into contempt."[123]

It is possible that the RNWMP and the McDonald Detective Agency used Andrews' list of questions only to interview neighbours and associates of individuals on the jury list to determine the views potential jurors held. Such a course would have been within the law.[124] One must set against this possibility the report of an interview with the President of the Exchequer Court of Canada, Mr. Justice Joseph T. Thorson, some 50 years after the strike. In 1920, Thorson was a Crown Attorney for the Province of Manitoba. In the interview, Thorson stated that, as a young relatively inexperienced lawyer, the trials of the strike leaders left him with "an abiding sense of shock," that it was possible to pack a jury in such a way that there was no possibility of acquittal.[125] Any doubt about what Andrews had done with the lists might have been resolved had Metcalfe been willing to allow defence counsel to question witnesses under oath. After a deliberation of five minutes, the Grand Jury, consisting of two "triers" appointed to try the case against the sheriff, exonerated the sheriff and concluded that they had "failed to find any reason for which the ac-

[122]J. S. Walker Q.C., "The Winnipeg General Strike Trials," Unpublished Manuscript, 284. In 1997, the Supreme Court of Canada dealt with the appeal of Robert Latimer for a new trial. His appeal was based in part on the conduct of the Crown and the RCMP during his original trial in 1993. At that time, trial counsel for the Crown and an RCMP officer prepared a list of questions concerning the views of prospective jurors on issues related to religion, abortion, and euthanasia. The questions were used by RCMP officers to interview 30 of 198 prospective jurors. In a judgment written by the Chief Justice, the Supreme Court found the actions of Crown counsel in interfering with prospective jurors to be "nothing short of a flagrant abuse of process and interference with the administration of justice." Because of the interference with the jury, a new trial was ordered. S. C. R. R. vs. Latimer 1997, http://www. Lexum. umontreal.ca/csc-scc/en/pub/1997/vol1/html/1997scr1_0217.html

[123]J. S. Walker Q.C., " The Winnipeg General Strike Trials," 285.

[124]Christopher Granger, Judge Louise Charron, Paul Chumak, *Canadian Criminal Jury Trials* (Toronto 1989), 157, n16.

[125]J. S. Walker Q.C., "The Winnipeg General Strike Trials," viii.

cused could claim that their interests were prejudiced and that they would receive a fair and impartial trial by a Jury selected from the present panel."[126]

The investigations of the jury panels initiated by Andrews, and nearly exposed in open court by the defence, nevertheless gave him the opportunity to select jurors who were biased towards his view of 1919. The selection of juries in this way undermined a fair trial for the strike leaders and compromised the principle of natural justice upon which the jury trial is based. With the answers to his questions in hand, Andrews was able to select juries sympathetic to the Citizens' view of the case. Andrews later acknowledged how instrumental the jury selection process had been in the struggle to gain guilty verdicts. In April 1920, following the trials, Andrews told Doherty that it was "questionable if we could secure the conviction of these people by other juries."[127]

On 27 March 1920 Ivens, Pritchard, Johns, Queen, and Armstrong were found guilty on all counts and sentenced to one year each on the first six counts of seditious conspiracy and six months each on the seventh. The sentences were to run concurrently. Bray was found guilty of being a Common Nuisance and was sentenced to six months at hard labour. A.A. Heaps was acquitted of all charges. Russell, convicted of seditious conspiracy in December, had received a two-year sentence.[128] On 31 March 1920 the Department of Justice received the accounts of Andrews, Pitblado, Sweatman, Coyne, and Goldstine for legal services associated with the prosecution.

[126]NAC, RG18, Vol. 3314, File #HX-1, Wm. Ivens *et al.* — Seditious Conspiracy, Royal North West Mounted Police Report, 27 January 1920.

[127]Andrews and his colleagues also undertook the opposition to Russell's appeal before the Manitoba Appeal Court and the Judicial Committee of the Privy Council. The arrangement made for Andrews and his associates to appear for the crown at the Russell appeal suggest how the province handled the federal involvement in Manitoba's legal business. Andrews coached Doherty with a telegram. Doherty was invited to wire the Attorney General of Manitoba that the federal Department of Justice wished to oppose Russell's application for leave to appeal and to oppose the appeal if Russell was allowed to bring his case before the Manitoba Court of Appeal. Doherty was directed to ask the Attorney General to authorize Andrews and "such counsel as [Andrews] ... may appoint to appear on his behalf without expense to the provincial attorney general." The Attorney General stipulated that the request come "directly from you rather than from me." NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to C.J. Doherty, 29 March 1920. Evidently, Doherty undertook to so advise as Andrews, Pitblado, Coyne, and Sweatman appeared when Russell's case came before the Court of Appeals on 8 January 1920. The Crown's arguments were sustained on 19 January 1920 when the Court dismissed each of Russell's appeals. Given the unanimous rejection of the appeal, Russell could not appeal his conviction to the Supreme Court. However, he could and did seek a hearing before the Judicial Committee of the Privy Council. See NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to Hon. C.J. Doherty [nd].

[128]On the trials see *Russell Trial and Labor's Rights: Opinion by W.H. Truman, K.C.* (Winnipeg 1920) and *W.A. Pritchard's Address to the Jury* (Winnipeg 1920).

Andrews billed for $26,375 for 102 days in court, 35 days preparation out of court, and several days attending meetings in Ottawa, Montréal, Toronto, Chicago, and Washington. Pitblado claimed $24,365 for 98 days in court at $150 a day. Coyne claimed $24,800 for 97 days in court and 65 days out of court preparing for court appearances. Sweatman's claim for 98 days in court and 72 days out of court amounted to $19,500. Goldstine billed for 86 days in court and 112 days in preparation. All had claimed extra days by reason of the length of time in daily court sittings.[129]

On 15 April 1920 Edwards forwarded cheques to Andrews, Pitblado, and Sweatman for $7,000 and $7,500 for Coyne and Goldstine. In addition, the McDonald Detective Agency received $7,842.32. The agency was paid for services rendered for "jury investigation," "surveillance on and information from the jury," "special surveillance on jury," "protection of the judge," and "special surveillance on Crown Counsel."[130] To cover the additional costs of the Winnipeg prosecution an Order in Council was approved setting aside an additional $50,000; it was approved on 21 April 1920.[131]

On 18 May 1920 Edwards forwarded cheques to cover the balance on the accounts submitted by Andrews and his colleagues.[132] Edwards had made a number of significant deductions on the total amounts of the legal accounts submitted by Andrews and the others for extra time spent in court over and above a normal day's trial. All such claims were rejected. In his letter to Andrews, Edwards pointed out that " the intention of the department was to authorize rates for leading counsel of $150 per day while engaged in court and $100 per day while exclusively engaged out of court...." Andrews, who had claimed $26,375 was paid only $10,201.50 under Edward's disciplinary regime.

Andrews appealed against Edwards' reductions. In his view "all of the bills rendered to you are in my judgement exceptionally reasonable bills when you consider the arduous task we had undertaken." Andrews and his associates had devoted five months to the sedition cases. Andrews referred Edwards to the trial of members of the former Conservative government of Manitoba in 1916: the chief prosecutor, R.A. Bonnar, KC, in those trials "for very much less work and less important work" had been paid $30,000 and slightly less amounts to his associates. Andrews be-

[129]NAC, Justice, RG13, Access, Pocket #1, The Department of Justice in account with J.B. Coyne, K.C., Travis Sweatman, A.J. Andrews, Isaac Pitblado, S.L. Goldstine, 31 March 1920.

[130]NAC, Justice, RG13, Access, Pocket #1, Invoice, McDonald Detective Agency, Limited, to A.J. Andrews, Esq., K.C., 3 April 1920.

[131]See NAC, RG2, Volume 1244, PC 831, 21 April 1920.

[132]The cheques included S.L. Goldstein ($8,376), T. Sweatman ($4,162.50), Herbert Andrews ($1,255.50), J.B. Coyne, K.C.($7,150), I. Pitblado, K.C. ($6,615), and A.J. Andrews, K.C. ($3,201.05). See NAC, Justice, RG13, Access, Pocket #1, W.S. Edwards to Messrs. Andrews, Andrews, Burbidge & Bastedo, 18 May 1920.

lieved that the extra charges should be paid based on the length of the days he and his associates had worked.[133]

Andrews wrote Doherty on the same matter. He pointed out that prosecuting counsel had worked from 9:00 a.m. to midnight most days and often on Sundays. Andrews contended that, had the court not gone into extended sessions, the trial might have lasted about twice as long "and the cost to the country would have been infinitely more, with the danger of something happening to some of the jurors or the judge, which might have necessitated new trials." Since the trial, Andrews pointed out, Metcalfe had been confined to his house under a doctor's care, while the prosecutors had all felt the need of a vacation to "regain their strength." Rather than deny him payment for services rendered, Andrews told Doherty " in view of the arduous labour performed, the results achieved, and the importance of the cases, ... [the state might have] allowed me some special fee, in view of the fact that the burden of the responsibility fell largely upon myself." Andrews wanted the bill paid "as rendered." He pointed to the results of the trial: "The position here is exceptionally tranquil, and I think it will be many years before there will be trouble of this kind again in Winnipeg."[134]

Though Andrews and his associates in the Citizen's Committee had claimed that the state was in peril, evidently substantial financial remuneration stood ahead of common-law claims of citizenship as both obligation and rights. When their claims for legal services were met at the rates established in August 1919, they cried foul and Andrews more or less got his way. In response to Andrews' objections to the deductions imposed by Edwards, it was decided to allow one-half of the amounts claimed by Andrews and the others for the length of court sittings. On 30 June 1920, Andrews was sent a check for $9,475. He had billed for $26,375; he received $19,676.[135]

But that was not the end of the campaign to settle the score on the amounts claimed for the spring trial of the strike leaders. The Department of Justice retained Andrews alone for a set fee of $2,500 to prepare documents for a British legal firm retained by Ottawa to oppose Russell's appeal to the Judicial Committee of the Privy Council. However, his charges submitted 7 October 1920 for this work included fees for himself as well as Pitblado, Coyne, and Sweatman totaling nearly

[133]NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to W. Stuart Edwards, 21 May 1920.

[134]NAC, Justice, RG13, Access, Pocket #1, A.J. Andrews to Honourable C.J. Doherty, Esq., 21 May 1920.

[135]In June, Pitblado received an additional $6,375 for a total of $19,990 for the spring trial, Sweatman received an additional $4,587.50 for a total of $15,750 for the spring trial; Coyne received an additional $5,775 for a total of $20,475. See handwritten summary of payments to Andrews *et al.* contained in Justice Department files, item 638 (3 pages). NAC, Justice, RG13, Access, Pocket #2.

$9,500.[136] Edwards advised Newcombe that Andrews had been retained to attend the sittings of the Privy Council for a "lump sum" of $2,500. No arrangement had been made to retain other legal counsel. No mention had been made of Pitblado, Coyne, or Sweatman, but they had submitted claims for the work Andrews was to have done on his own, preparing a brief for the use of English counsel in the Russell appeal. Edwards noted that if the bills were paid in total "the Government will pay $300 for every 6 pages of instructions issued to English counsel...."[137] On Newcombe's direction, Edwards wrote to Andrews to inquire "how it was that it was necessary to employ three leading counsel exclusively upon this work for the period mentioned."[138] Andrews' written response is not available. The accounts were paid in full on 4 November 1920.[139]

Finally there was a bill submitted to the federal Department of Justice by the Citizens' Committee. Ed Anderson and W.H. McWilliams, the latter the Chairman of the Compensation Board of the Citizens' Committee of 1000, had undertaken to retain the McDonald Detective Agency on behalf of the Citizens to investigate the strike leaders.[140] The bill for these services was a little over $1,000. The information gathered by the detectives was turned over to Andrews for use in the prosecution. As Justice had paid for the prosecution — its contribution to the civic alliance with the Citizens' to ensure the prosecution of the strike leaders and the defense of the state — Justice should pay for the services of the McDonald Detective Agency. In such ways the state could commend the Citizens for their civic virtue and gesture approvingly toward the common law tradition in which "it was not only the privilege but the duty of the private citizen to preserve the King's Peace and bring offenders to justice."[141]

Edwards was not commendatory: he told Newcombe that "this government has already borne a disproportionate share of the legal expenses resulting from the strike and I do not see any reason why the Government should assume these charges. However, as it is a matter of policy I am submitting the correspondence in order that you may if you think fit speak to the Minister about it."[142] He did, and Justice paid, but only half of the bill. Five hundred dollars: through such small gestures

[136]The amounts were: Andrews ($5,150), Pitblado ($300), Coyne ($2,100), and Sweatman ($1,950). NAC, Justice, RG13, Access, Pocket #1, Alfred J. Andrews to W.Stuart Edwards, Esq., 7 October 1920.

[137]NAC, Justice, RG13, Access, Pocket # 2, W. Stuart Edwards to Deputy Minister of Justice, 20 October 1920.

[138]NAC, Justice, RG13, Access, Pocket #2, W. Stuart Edwards to A.J. Andrews, 26 October 1920.

[139]See handwritten summary of payments to Andrews *et al.* contained in Justice Department files, item 638. NAC, Justice, RG13, Access, Pocket #2.

[140]On W.H. McWilliams see Norman Penner, ed., *The Strikers' Own History*, 124.

[141]Peter Burns, "Private Prosecutions in Canada: The Law and a Proposal for Change," 271.

[142]For the correspondence on this see NAC, Justice, RG13, Access, Pocket #2, W.S.E., 18 May 1920. Memorandum for the Deputy Minister of Justice: Re. Winnipeg Strike.

the organic unity of the state and the business élite was disclosed, but only for private eyes or the inquisitive. The liberal state must, perforce, take every precaution to avoid being mistaken for its historical enemy — class rule.

Winnipeg's postwar labour revolt was not a product of inflation, unemployment, or questions of collective bargaining. The workers' revolt occupied a higher plane than the immediate world of the economy. Economic circumstances simply created a terrain favourable to the dissemination of certain modes of thought concerning the meaning of World War I and the question of postwar reconstruction. Simply put, Winnipeg's labour revolt was based on a popular rejection of pre-war relations of power and authority in the city. At issue was the character of postwar citizenship in general and postwar industrial citizenship in particular.[143]

Though it was always possible that the strike may have developed in unintended ways, the ostensible goals of the strike were limited: a living wage, an eight-hour day, the right to organize, and signed agreements.[144] And the general strike did not throw Winnipeg's business class into disarray: this challenge to its power galvanized the resolve of the city's business élite: confident in its ability to prevail, the Citizens quickly grasped the initiative and waged an uncompromising war of position against labour, attacking the strike as a project inimical to the vitality of the liberal state and the capitalist order. Following in the tradition of British and Canadian élites that dealt with threats to the established order by condemning oppositionists as proponents of subversive ideologies alien to the British tradition, the Citizens claimed that a pernicious radicalism inspired by the Bolshevik Revolution was at the heart of the Winnipeg General Strike and that the collapse of the strike had not eliminated this contagion. In the wake of the strike, Winnipeg's business élite — the true subjects of history in 1919 — mounted a determined and relentless attack on Winnipeg's working class.

Ralph Miliband has noted how the state "may appear to be the 'historical subject,' but is in fact the object of processes and forces at work in society."[145] This dynamic was evident in the agency of the Citizens' Committee and its success in drawing both the Norris and Borden regimes into an alliance against Winnipeg's working class. Though the Norris government rejected the demands from the Citizens' that it prosecute the strike leadership, Attorney General Johnson collaborated with the Citizens by allowing Andrews and his associates to proceed in the name of the Crown with a private prosecution of the strike leadership even though the a

[143]Chad Reimer, "War, Nationhood and Working-Class Entitlement," 219.

[144]These goals were expressed in the following manner to the Mayor of Winnipeg: " 1. Recognition of the right of Collective bargaining, 2. Recognition of the metal Trades Council, and the Building Trades Council, 3 Reinstatement of all strikers without prejudice." For both iterations see "Why the General Strike Weapon," *Western labor News, Special Strike Edition* No. 10, 28 May 1919.

[145]Ralph Miliband, "State Power and Class Interests," *New Left Review*, 138 (March-April 1983), 59.

Royal Commission inquiry had concluded that there was no basis for the Citizens' claims that the strike was a revolution in disguise.

At the behest of the Citizens Committee, the federal state — ostensibly committed to a return to pre-War-Measures-Act constitutional orthodoxy — was persuaded to enter the field against Winnipeg's working class, surreptitiously providing the most powerful forces in Winnipeg's civil society with the resources to wage a continuing juridical assault *on* labour. This assault was designed to decapitate the city's working-class movement and intimidate the rank and file. The unity of purpose forged by Winnipeg's business élite and the federal state, acting under the nomenclature of the Citizens' Committee of 1000, illuminates the tendency of the liberal state and capital to forge a common front against perceived threats to the status quo in moments *of extremis*. In 1919, the response from above was shaped by the actions of human beings; it was not the product of some mechanical determinism. The fierce and uncompromising juridical assault on post-war labour radicalism carried forward by Winnipeg's Citizens' Committee of 1000 and the state in the autumn and winter of 1919-1920 invites consideration of Gramsci's formulation that "the State is the entire complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules..."[146] Of course, a ruling class must grasp its place in history, its historical tasks, and show up when the chips are down and duty calls.

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[146]Antonio Gramsci, *Selections From the Prison Notebooks*, 244.