

THE AGE OF EMERGENCY

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ABSTRACT

This article argues that the period from 1914 to 1926 saw a dramatic expansion in the development and dissemination of new forms of repressive public order legality within the British Empire, in a manner that has had enduring negative influence on legal orders around the world up to the present day. The article begins with the wartime years, exploring the innovations and extensions in repressive legality that took place both in Britain and around the empire. It then turns to examine the effect of the war's end, which, far from bringing the new repressive legal orders that had been put in place to an end, saw them extended in order to attempt to address political challenges to the status quo that came in the war's wake. Along the way, the article highlights the close relationship between martial and emergency law on the one hand and more regularized forms of repression on the other. In addition, the article draws attention to the fact that, however much the war may have provided a pretext, the repressive legal orders that were adopted were primarily aimed at suppressing movements fighting for greater rights and representation, be it in the form of a more egalitarian polity at home, or colonial independence across the imperial world. The article concludes with a brief exploration of some of the many ongoing legacies of the repressive approaches to law developed in the period across the former British colonial world.

Keywords: *repressive legality, legal history, freedom of assembly, freedom of association, freedom of expression, human rights, emergency law, comparative law, transnational law, law and empire*

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I. INTRODUCTION

Around the world today, rights advocates face similar forms of repression. To provide a few examples: In Egypt, a law initially passed to suppress resistance to British control during the First World War is still used to augment the sentences levied against protesters.¹ In Nigeria, the press continues to be subject to criminal defamation laws from the colonial era,² and colonial approaches to collective punishment continue to be deployed by the security forces.³ In India, Section 144 of the Criminal Procedure Code, brought into law under British rule, is extensively relied upon to ban assemblies and to impose onerous conditions on those that are allowed to meet.⁴ In Jamaica, a colonial precedent was relied upon in 2018 when the government declared a state of emergency and issued an extensive set of emergency regulations, sharply limiting civil and political rights.⁵

This brief set of examples makes clear that the legacy of the British colonial era lives on in public order legal frameworks throughout the formerly colonized world. It is not immediately clear, however, when these frameworks were initially implemented. From one perspective, such legal orders were continuously under construction over the centuries in which Britain projected its power over far-flung parts of the world. From another, the early nineteenth century can be identified as a period of particular influence. Numerous political and social theorists and historians have highlighted the importance of the early nineteenth century to subsequent public order regimes and approaches to governance, most influentially Foucault.⁶ There is no doubt that the transformations that occurred in the

1 See CAIRO INST. FOR HUM. RTS. STUD., *TOWARDS THE EMANCIPATION OF EGYPT: A STUDY ON ASSEMBLY LAW 10/1914*, at 48–49 (2017) [hereinafter CAIRO INST. FOR HUMAN RTS. STUD.].

2 See *Concerns About Freedom of Expression in Nigeria: Journalists Arrested, Protests Repressed*, CIVICUS (Nov. 19, 2019), <https://monitor.civicus.org/updates/2019/11/19/Concerns-freedom-expression-several-journalists-arrested-protests-repressed/>.

3 See FOURTH REPUBLIC, *The Nigerian Future: Conflict*, MEDIUM, (Nov. 30, 2016), <https://medium.com/@fourthrepublicafrica/the-nigerian-future-conflict-c3fcd36a1be7>.

4 See Revathi Siva Kumar, *What Is Section 144 and Why Is It Being Used Against Protesters Across the Nation?*, CITIZEN MATTERS (Dec. 21, 2019), <http://citizenmatters.in/guide-to-section-144-crpc-and-implications-for-caa-protests-14953>; Soutik Biswas, *Citizenship Act Protests: How a Colonial-Era Law Is Being Used in India*, BBC (Dec. 20, 2019), bbc.com/news/world-asia-india-50849909.

5 See JAM. GAZETTE, Jan. 18, 2018, at 371 (Supp.) [hereinafter Emergency Powers Act] (Vol. 141, Issue No. 9). More than 10,000 persons were subsequently detained. See *11,000 Detained, 400 Charged—Opposition Raises Concerns with Enhanced Security Measures; Gov't Cites Reduction in Crime*, GLEANER (Oct. 19, 2018, 12:00 AM), <http://jamaica-gleaner.com/article/lead-stories/20181020/11000-detained-400-charged-opposition-raises-concerns-enhanced>.

6 See generally MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., 1977); MICHEL FOUCAULT, *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLÈGE DE FRANCE 1977–1978* (Michel Senellart et al. eds., Graham Burchell trans., 2007). On

early nineteenth century had a profound effect on the nature of public order law, both within European metropolises and in the broader imperial context.

As Hussain has observed, however, while “post-colonial critics . . . have embraced and been energized by Foucault’s work,” they “have nonetheless noted the particular omissions of colony and empire from the epistemic shifts he so assiduously sought to document.”⁷ Bringing the formerly colonized world more centrally into focus helps to highlight the importance not only of the early nineteenth century to the evolution of public order law, but of two later periods as well. One is the period of decolonization, the significance of which has been addressed by several valuable studies.⁸ The other is the period during and immediately following the First World War. The extensiveness of the development and spread of emergency law frameworks during the First World War and its aftermath has been inadequately explored to date. As the following account shows, however, the period was one of extensive fertility both in terms of the development of repressive legality and global dissemination. The effects of the legal developments of the period can still be seen when governments of numerous former British colonies around the world engage in the project of ensuring ‘public order’ today.

This article explores the impact of the First World War and the post-war period on the creation and dissemination of emergency law regimes and

developments in the same period in England, see GEORGE RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750*, VOL. 1: THE MOVEMENT FOR REFORM (1948); GEORGE RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750*, VOL. 2: THE CLASS BETWEEN PRIVATE INITIATIVE AND PUBLIC INTEREST IN THE ENFORCEMENT OF LAW (1956); GEORGE RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750*, VOL. 3: CROSS-CURRENTS IN THE MOVEMENT FOR THE REFORM OF THE POLICE (1956); GEORGE RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750*, VOL. 4: GRAPPLING FOR CONTROL (1968); MARTIN J. WIENER, *RECONSTRUCTING THE CRIMINAL: CULTURE, LAW, AND POLICY IN ENGLAND, 1830–1914*, at 25–6 (1990); DAVID GARLAND, *PUNISHMENT AND MODERN SOCIETY: A STUDY IN SOCIAL THEORY* (1990); Michael Lobban, *From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime c1770–1820*, 10 OXFORD J. LEGAL STUD. 307 (1990); V.A.C. Gatrell, *THE HANGING TREE: EXECUTION AND THE ENGLISH PEOPLE 1770–1868* (1994); PETER KING, *CRIME, JUSTICE, AND DISCRETION IN ENGLAND, 1740–1820* (2000); MARK NEOCLEOUS, *THE FABRICATION OF SOCIAL ORDER: A CRITICAL THEORY OF POLICE POWER* (2000). More recently, Benton and Ford have highlighted the importance of the early nineteenth century to the evolution of law in the British Empire in particular. See generally LAUREN BENTON & LISA FORD, *RAGE FOR ORDER: THE BRITISH EMPIRE AND THE ORIGINS OF INTERNATIONAL LAW 1800–1850* (2016).

⁷ Nasser Hussain, *The JURISPRUDENCE OF EMERGENCY: COLONIALISM AND THE RULE OF LAW* 14 (2003).

⁸ See, e.g., CAROLINE ELKINS, *IMPERIAL RECKONING: THE UNTOLD STORY OF BRITAIN’S GULAG IN KENYA* (2005); FABIAN KLOSE, *HUMAN RIGHTS IN THE SHADOW OF COLONIAL VIOLENCE: THE WARS OF INDEPENDENCE IN KENYA AND ALGERIA* (2013); DAVID ANDERSON, *HISTORIES OF THE HANGED: THE DIRTY WAR IN KENYA AND THE END OF EMPIRE* (2013).

related legal orders around the British Empire. The first section explores innovations in repressive legality that took place in Britain over the course of the war. The authorizing legislation employed by the British state was the ‘Defence of the Realm Act’ (‘DORA’).⁹ DORA served both to shift the foundations of state legislative authority away from parliament and over to the executive—mimicking, in the process, the executive-driven approach to law commonly encountered in the colonial context—and to enable passage of a vast array of repressive regulations which foreclosed the space for civil and political rights in Britain during the war.

The following section explores simultaneous developments that took place in the broader imperial context. DORA was replicated in India by the Defence of India Act (‘DOIA’).¹⁰ Elsewhere around the empire the approach taken was more informal, with martial law frequently declared in the face of one local ‘emergency’ or another. Even where local authorities stopped short of declaring martial law, the wartime years saw the passage of numerous restrictive laws reminiscent of the regulations implemented under the DORA’s authority.

The next section considers developments in Britain in the postwar period, up to and including the general strike in 1926. If the system of legality established under DORA had been solely geared towards the wartime emergency, that system would have been brought to an end with the end of the war. In reality, the DORA system—and even the war itself, as a legal fiction—was extended for years after 1918. When the wartime legal regime was finally ended, it was only because a new framework for emergency rule, under the 1920 Emergency Powers Act (‘EPA’),¹¹ had taken its place. As during the war years, the primary purpose of this regime was not to target external, hostile actors, but rather to suppress domestic dissent.

The penultimate section of this article explores developments across the empire over the same period. The wake of the First World War was a period

⁹ The act had three iterations: Defense of the Realm Act 1914, 4 & 5 Geo. 5 c. 29 (Eng.) [hereinafter Defense of the Realm Act 1914] (Aug. 7, 1914); Defense of the Realm (No. 2) Act 1916, 4 & 5 Geo. 5 c. 63 (Eng.) [hereinafter Defense of the Realm (No. 2) Act 1916] (Aug. 28, 1914); Defence of the Realm Consolidation Act 1914, 5 Geo. 5 c. 8 (Eng.) [hereinafter Defence of the Realm Consolidation Act 1914] (Nov. 27, 1914).

¹⁰ An Act to Provide for Special Measures to Secure the Public Safety and the Defence of British India and for the More Speedy Trial of Certain Offences, 1915 (Mar. 12) (India) [hereinafter Defence of India Act].

¹¹ Emergency Powers Act 1920, 10 & 11 Geo. 5 c. 55 (Eng.) (Oct. 29, 1920) [hereinafter Emergency Powers Act 1920].

of extensive conflict. While Ireland gained its independence, elsewhere, mass protests for self-determination, better labor conditions and freedom from restrictive legal regimes were suppressed by force. Around the empire, as in Britain, the post-war years saw the continued deployment of the forms of repressive legality that were put in place during the wartime years, this time targeted at anti-imperialists and freedom fighters. At times, the ongoing utilization of repressive legal regimes took the form of new laws and ordinances replicating wartime approaches, such as the Restoration of Order in Ireland Act ('ROIA')¹² and the Civil Authorities (Special Powers) Act ('CASPA')¹³ in Ireland, the Anarchical and Revolutionary Crimes Act¹⁴ in India, and the Emergency Regulations Ordinance¹⁵ in Hong Kong. At other times, the post-war years were characterized by the deployment of de jure or de facto martial law and the use of lethal force, whether in the well-known case of the Amritsar massacre¹⁶ or the little-known reliance on the Royal Air Force to bomb protestors into submission in places as diverse as Iraq, Egypt, India, Somaliland, Afghanistan and the North West Frontier.¹⁷

The article concludes with a consideration of the legacies of the developments that took place during the First World War and the post-war years. Even a brief examination of approaches to public order legality in the former British Empire makes clear that the development and dissemination of the law during the war and its aftermath continues to inform numerous jurisdictions' modes of responding to mass demonstrations, political dissent, and other challenges to the status quo. Exploring the historical origins of these contemporary legal orders highlights the extent to which the claim that they are justified in order to ensure national security is disingenuous. It is hoped that highlighting the historical roots of such approaches in British authorities' struggles to suppress dissent, be it in the form of labor movements in the metropole or colonial independence movements across the empire, will provide an additional basis upon which advocacy for reform of those laws may be grounded. For now, the age of emergency is still with us.

12 Restoration of Order in Ireland Act, 10 & 11 Geo. 5 c. 31 (Eng.) (Aug. 9, 1920).

13 Civil Authorities (Special Powers) Act (Northern Ireland) 1922, 12 & 13 Geo. 5 c. 5 (Eng.) [hereinafter Civil Authorities (Special Powers) Act] (Apr. 7, 1922).

14 An Act to Cope with Anarchical and Revolutionary Crime, 1919 (Mar. 18, 1919) (India).

15 Emergency Regulations Ordinance, (1922) Cap. 241 (H.K.).

16 See KIM A. WAGNER, *AMRITSAR 1919: AN EMPIRE OF FEAR & THE MAKING OF A MASSACRE* (2019).

17 See Priya Satia, *Drones: A History from the British Middle East*, 5 HUMAN. 1, 23 n.5 (2014) [hereinafter Satia, *Drones*].

II. WORLD WAR I BRITAIN: THE NATIONAL SECURITY STATE

Steps to create a new national security state began before the war.¹⁸ Following what was perceived as a poor showing in the Boer war,¹⁹ a public campaign emphasizing martial prowess swept Britain.²⁰ A new ‘Committee of Imperial Defence’ was created, charged with overseeing imperial military strategy.²¹ The Directorate of Military Operations, formerly the Intelligence Department,²² was internally reorganized to provide for greater focus on intelligence tasks,²³ and a new military intelligence section of the War Office, the Secret Service Bureau, was established.²⁴ The Secret Service Bureau was soon split into two organizations, one (which would eventually become MI5) focused on domestic intelligence, the other (the ultimate MI6) on foreign operations.²⁵ This expansion in the power of the military state was closely connected to the British military’s increasingly assertive role in governing an expanding empire—as Vogler puts it, the growth of the army’s powers in Britain was inspired in part by “recent experience of the exercise of extensive powers under the martial law regulations in Egypt and South Africa . . . [which led] the new military elite—Kitchener, Maccready, Wilson, Haig and others—[to] seek greater influence at home.”²⁶

In 1911 the Official Secrets Act was passed.²⁷ The act penalized those

18 The discussion in this section draws heavily on Christopher Roberts, *Forging the National Security State: Public Order Legality in Britain, 1900-1918*, forthcoming in UNBOUND: HARV. J. LEGAL LEFT (2020).

19 On the war itself, see generally MARTIN BOSSENBROEK, *THE BOER WAR* (Yvette Rosenberg trans., 2012).

20 The campaign was, moreover, closely linked to various eugenicist ideas. See DANE KENNEDY, *BRITAIN AND EMPIRE, 1880-1945*, at 30-1 (2002).

21 See GEORGE MONGER, *THE END OF ISOLATION: BRITISH FOREIGN POLICY, 1900-1907*, at 94 (1963); see also RICHARD VOGLER, *READING THE RIOT ACT: THE MAGISTRACY, THE POLICE, AND THE ARMY IN CIVIL DISORDER* 88 (1991).

22 For more, see THOMAS G. FERGUSSON, *BRITISH MILITARY INTELLIGENCE 1870-1914: THE DEVELOPMENT OF A MODERN INTELLIGENCE ORGANIZATION* 11, 13, 26-27 (1984); PETER GUDGIN, *MILITARY INTELLIGENCE: THE BRITISH STORY* 27 (1989).

23 See FERGUSSON, *supra* note 22, 202-04; JEFFERY RICHELSON, *A CENTURY OF SPIES: INTELLIGENCE IN THE TWENTIETH CENTURY* 8 (1995).

24 The creation of the office was kept secret even to Parliament. See K.D. EWING & C.A. GEARTY, *THE STRUGGLE FOR CIVIL LIBERTIES: POLITICAL FREEDOM AND THE RULE OF LAW IN BRITAIN, 1914-1945*, at 39 (2000).

25 Commander Mansfield George Smith-Cumming, who had previously served in the East Indies and Egypt, was put in charge of the foreign organization, and Captain Vernon Kell of the domestic counter-intelligence organization. See JEFFREY T. RICHELSON, *A CENTURY OF SPIES: INTELLIGENCE IN THE TWENTIETH CENTURY* 10-11 (1995).

26 VOGLER, *supra* note 21, at 88.

27 Official Secrets Act 1911, 1 & 2 Geo. 5 c. 28 (Eng.) (Aug. 22, 1911) [hereinafter Official Secrets Act 1911].

approaching, sketching, obtaining or communicating information on “prohibited place[s]” “for any purpose prejudicial to the safety or interests of the State.”²⁸ The act also punished unauthorized communication, retention, or receipt of information, essentially penalizing all non-authorized disclosures of official information.²⁹ Other sections of the act made it an offense to harbor, allow to assemble, or refuse to disclose information concerning, persons one knew or reasonably suspected had committed or were going to commit an offence under the act, and gave the police broad powers of search, entry and arrest.³⁰

On August 4, 1914, Britain declared war on Germany.³¹ The following day, Parliament approved the Aliens Restriction Act.³² The act granted the Home Secretary power to exclude or expel aliens, with no right of appeal, and no regard to refugee status.³³ The same day the government issued an order to police districts, in which the control of aliens and counter-espionage were emphasized as two priority areas.³⁴ Within a few days the first version of the Defence of the Realm Act was passed as well.³⁵ The act was brief, stipulating that “His Majesty in Council” would have the power, “during the continuance of the present War,” to

issue regulations as to the powers and duties of the Admiralty and Army Council, and of the members of His Majesty’s forces, and other persons acting in His behalf, for securing the public safety and the defence of the realm; and may, by such regulations, authorize the trial

28 *See id.* § 1(1). The section further stipulated that, when bringing a prosecution under the act, it would “not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State,” but rather it should be presumed that the making, obtaining or communicating of any prohibited information was “for a purpose prejudicial to the safety or interests of the State,” unless the defendant was able to prove the contrary—in short, instituting a presumption of guilt relative to purpose in order to facilitate prosecutions. *See id.* § 1(2).

29 *See id.* § 2. The Home Office later estimated that more than 2,000 different charges could be brought under the terms of Section 2 of the act. *See* HOME OFFICE, 1 DEPARTMENTAL COMMITTEE ON SECTION 2 OF THE OFFICIAL SECRETS ACT 1911, 1972, Cm. 5104, at ¶ 16 (UK).

30 *See* Official Secrets Act 1911, *supra* note 27, §§ 6, 7, 9.

31 *See A State of War*, LONDON GAZETTE, Aug. 4–5, 1914, at 6161 (Supp.) (Issue No. 28861).

32 Aliens Restriction Act 1914, 4 & 5 Geo. 5 c. 12 (Eng.) (Aug. 5, 1914).

33 *See id.* § 1.

34 *See* CLIVE EMSLEY, THE ENGLISH POLICE: A POLITICAL AND SOCIAL HISTORY 124 (2d ed. 1991). An Order in Council issued the same day required enemy aliens to register themselves at the local registration office—typically the police station—while other measures prohibited aliens from travelling without permits, or from relocating more than five miles from their registered places of residence. *See* Peter M. McDermott, *Internment During the Great War—A Challenge to the Rule of Law*, 28 U. N.S.W. L.J. 330, 338 (2005); Home Office, Report of the Commissioners Appointed to Review the Permits Under Which Alien Enemies Are Allowed to Reside in Prohibited Areas, 1916 (UK); Stephanie J. Silverman, *Return to the Isle of Man: The Implications of Internment for Understanding Immigration Detention in the UK* 4 (Univ. Oxford, Ctr. on Migration, Pol’y & Soc’y, Working Paper No. 102, 2012).

35 Defense of the Realm Act 1914, *supra* note 9.

by courts-martial and punishment of persons contravening any of the provisions of such regulations designed:

- (a) to prevent persons communicating with the enemy or obtaining information for that purpose or any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces or to assist the enemy; or
- (b) to secure the safety of any means of communication, or of railways, docks or harbours . . .³⁶

In short, the act had two major functions: providing the executive extensive power to govern by regulation, and authorizing court-martial trials, in a delimited set of cases. The first regulations passed under the act gave the military power to requisition private property and control the transportation network, laid out several offences, and granted the security services extensive powers of arrest.³⁷ Not satisfied with the limitations on court-martial trials included in the first version of DORA, on August 28 Parliament passed the Defence of the Realm (No. 2) Act into law.³⁸ DORA (No. 2) enabled court-martial trials to be used relative to "the spread of reports likely to cause disaffection or alarm" as well.³⁹ Expanded regulations were issued in the weeks after passage of the second iteration of the act, allowing for forced relocations, expanding the authorities' powers of search and seizure, and putting the expanded authorization of court-martial trials into effect.⁴⁰

On November 27, 1914 Parliament passed the Defence of the Realm (Consolidation) Act.⁴¹ The consolidated DORA provided that

His Majesty in Council has power during the continuance of the

³⁶ *Id.*

³⁷ See King George V, *Extending the Scope of Certain Existing Proclamations and a Certain Order in Council Connected with the War*, LONDON GAZETTE, Aug. 14, 1914, at 6385 (Issue No. 28870).

³⁸ Defence of the Realm (No. 2) Act 1916, *supra* note 9.

³⁹ See *id.* § 1. Charles Trevelyan criticized the new authorization on the grounds it might allow for the penalization of political criticism; McKenna assured him no such political prosecutions would occur. See Defence of the Realm (No. 2) Bill 1914, HC Bill 66 cls. 87–89 (Eng.).

⁴⁰ See LONDON GAZETTE, Sept. 1, 1914, at 6968 (Issue No. 28887); LONDON GAZETTE, Sept. 4, 1914, at 6991 (Issue No. 28892); LONDON GAZETTE, Sept. 17, 1914 (Issue No. 28904); King George V, *Authorizing the Board of Trade to Take Possession of Articles of Commerce Which Are Being Unreasonably Withheld from the Market*, LONDON GAZETTE, Sept. 18, 1914, at 7391 (Issue No. 28906). Further regulations issued in October limited individuals' ability to possess celluloid film and wireless equipment, and placed additional restrictions on communications. See LONDON GAZETTE, Oct. 13, 1914, at 8233 (Supp. III) (Issue No. 28938); LONDON GAZETTE, Oct. 16, 1914, at 8241 (Issue No. 28940).

⁴¹ Defence of the Realm Consolidation Act 1914, *supra* note 9.

present war to issue regulations for securing the public safety and defence of the realm . . . and may by such regulations authorise the trial by courts-martial, or in the case of minor offences by courts of summary jurisdiction, and punishment of persons committing offences against the regulations and in particular against any of the provisions of such regulations designed:

- (a) to prevent persons communicating with the enemy or obtaining information for that purpose or any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces or the forces of his allies or to assist the enemy; or
- (b) to secure the safety of His Majesty's forces and ships and the safety of any means of communication and of railways, ports, and harbours; or
- (c) to prevent the spread of false reports or reports likely to cause disaffection to His Majesty or to interfere with the success of His Majesty's forces by land or sea or to prejudice His Majesty's relations with foreign powers; or . . .
- (d) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered . . .⁴²

The new act also included provisions expanding the government's powers to acquire and use land, factories and factory products, where needed for the war effort.⁴³ In addition, it allowed for trials *in camera*,⁴⁴ and for court martial trials to impose the death penalty, where it was "proved that the offence [was] committed with the intention of assisting the enemy."⁴⁵

Passage of the consolidated DORA was immediately followed by issuance of an extensive set of regulations.⁴⁶ Among other things, the regulations granted the government power to control the residence and circulation of the population through removals, exclusion orders and curfews,⁴⁷ to control production by taking control of factories and their

42 *Id.* § 1.

43 *Id.* §§ 2–3.

44 *Id.* § 1(3). As Simpson notes, this was "the first statutory warrant for holding a common law criminal trial which might lead to the death penalty *in camera*." A.W. Brian Simpson, *The Invention of Trials in camera in Security Cases*, in 2 DOMESTIC AND INTERNATIONAL TRIALS, 1700–2000: THE TRIAL IN HISTORY 83 (R.A. Melikan ed., 2003).

45 Defence of the Realm Consolidation Act 1914, *supra* note 9, § 4.

46 See LONDON GAZETTE, Nov. 27, 1914, at 10133 [hereinafter LONDON GAZETTE, Issue No. 28990] (Issue No. 28990); LONDON GAZETTE, Dec. 1, 1914, at 10155 (Issue No. 28992).

47 Particularly significant were Regulation 9, allowing for expulsions from particular areas, Regulation 13, allowing for curfews, and Regulation 14, allowing for persons "suspected of acting, or

products,⁴⁸ to control information through penalties on both collection and dissemination,⁴⁹ and to punish those deemed to be spreading ‘false statements’ or ‘disaffection.’⁵⁰ The regulations also granted the security services essentially unlimited discretionary ability to conduct searches, seizures and arrests.⁵¹

With one exception, these harsh measures passed into law without serious objection. The one exception was relative to the potential for the death penalty to be imposed against civilians by court martial.⁵² In March 1915 Parliament passed an amendment to DORA,⁵³ stipulating that British civilians would retain the right to trial by judge and jury, albeit by an accelerated procedure, and with a suspension clause applicable in cases “of invasion or other special national emergency.”⁵⁴ The 1915 amendment represented a very limited clawback in the name of rights protections, however; at the same time, the government continued to issue new, restrictive regulations under the authority of DORA. The very same day the amendment was passed, in fact, new DORA regulations were issued granting the government enhanced powers over production, by allowing the authorities to take over the operation of factories if needed in order to ensure the production of war materials.⁵⁵ Regulations 8A and 8B, passed in the following weeks, limited workers’ ability to organize at such factories, and

of having acted, or of being about to act in a manner prejudicial to the public safety or the defence of the Realm” to be excluded from particular areas. *See* LONDON GAZETTE, Issue No. 28990, *supra* note 46, at 10134–35.

48 Particularly significant were Regulations 7 and 8, allowing the government to seize factories’ outputs, and/or the factories as such. *See id.* at 10134.

49 Particularly significant were Regulation 18, penalizing the unauthorized collection, communication or publication of information concerning military affairs, and Regulation 24, prohibiting the unauthorized transmission of materials abroad; *such.* *See id.* at 10135–37.

50 Particularly significant were Regulation 27, penalizing the spreading of “false reports or . . . false statements or reports or statements likely to cause disaffection to His Majesty or to interfere with the success of His Majesty’s forces by land or sea or to prejudice his Majesty’s relations with foreign powers,” and Regulation 42, penalizing “attempts to cause mutiny, sedition, or disaffection among any of His Majesty’s forces or among the civilian population.” *See id.* 10137, 10142.

51 Particularly significant were Regulations 51 and 52, granting the authorities wide powers of search and seizure, and Regulation 55, providing for warrantless arrest. *See id.* at 10139–40. Regulation 51 was criticized by the Director of Public Prosecutions at the time, who observed the regulation essentially enacted martial law, despite the fact “the civil law had not been suspended.” Deian Hopkin, *Domestic Censorship in the First World War*, 5 J. CONTEMP. HIST. 151, 158 (1970).

52 *See* HL Deb (27 Nov. 1914) (18) cols. 204–13; HL Deb (11 Mar. 1915) (18) cols. 676–703 [hereinafter Defence of the Realm (Amendment) Bill] (debate on Defence of the Realm (Amendment) Bill).

53 Defence of the Realm (Amendment) Acts, 5 Geo. 5 c. 34 (Eng.) [hereinafter Defence of the Realm (Amendment) Acts] (Mar. 16, 1915).

54 Defence of the Realm (Amendment) Bill, *supra* note 52.

55 Defence of the Realm (Amendment) Acts, *supra* note 53.

allowed for forced labor to be imposed where necessary.⁵⁶ This line of legislation was augmented by passage of the Munitions of War Act⁵⁷ in May 1915.⁵⁸ The act made it an offence to participate in strikes unless twenty-one days' notice was provided to the Board of Trade, and restricted workers' ability to terminate their employment.⁵⁹ Other regulations expanded on other branches of the existing framework: Regulation 14B, passed in June 1915, allowed for persons of "hostile origin or associations" to have their movements restricted, to be relocated, or to be interned,⁶⁰ while Regulation 51A, passed in July, granted the authorities expanded power to seize and destroy publications thought to violate Regulations 18 or 27.⁶¹

The various legislative and regulatory measures implemented by the government were put immediately into effect. First, the government implemented numerous measures aimed at tackling the 'enemy within.' Immediately upon the outbreak of the war two-hundred enemy aliens suspected of being spies were interned.⁶² Additionally, the government began requiring the registration of non-nationals, with 100,000 included in the aliens' registry before long. Late 1914 saw the government deploy *in camera* proceedings in an espionage trial, a serious step insofar as the use of such a procedure seriously diminished the due process rights of the accused. Carl Hans Lody was convicted of the war crime of 'war treason,' under international law, in October, and executed in the Tower of London in November.⁶³ On May 7, 1915, the *Lusitania* was sunk off the coast of

56 See LONDON GAZETTE, Mar. 23–24, 1915, at 2933–34 (Issue No. 29110); LONDON GAZETTE, Mar. 26, 1915, at 2965–66 (Issue No. 29113); LONDON GAZETTE, Apr. 27–30, 1915, at 4165 (Issue No. 29148).

57 Munitions of War Act 1915, 5 & 6 Geo. 5 c. 54 (Eng.) (July 2, 1915). The act was amended the following year by the Munitions of War (Amendment) Act, 5 & 6 Geo. 5 c. 99 (Eng.) (1916).

58 The act's passage followed the 'shell crisis'; for more, see David French, *The Military Background to the 'Shell Crisis' of May 1915*, 2 J. STRATEGIC STUD. 192 (1979); Peter Fraser, *The British 'Shells Scandal' of 1915*, 18 CANADIAN J. HIST. 69, 77 (1983).

59 For more, see Gerry R. Rubin, *Law, War and Economy: The Munitions Acts 1915–17 and Corporatism in Context*, 11 J.L. & SOC'Y 317 (1984). As Rubin notes, "though corporatist principles had not penetrated so deeply during the war economy as to dispense with due process at all times, and in all places, nonetheless, the virtual repeal of *habeas corpus*, permitting the government to detain persons without trial on the ground of their hostile origins or associations . . . reveals how easily the influence of corporatist strategy might lead on to more totalitarian solutions." *Id.* at 326 (emphasis in original).

60 LONDON GAZETTE, June 11–12, 1915, at 5720 (Issue No. 29190).

61 LONDON GAZETTE, July 27–28, 1915, at 7434 (Issue No. 29244).

62 Forty-three hundred were interned within a month, and 20,000 by mid-1915. See BERNARD PORTER, *PLOTS AND PARANOIA: A HISTORY OF POLITICAL ESPIONAGE IN BRITAIN 1790–1988*, at 137 (1989); Panikos Panayi, *The Destruction of the German Communities in Britain During the First World War*, in *GERMANS IN BRITAIN SINCE 1500* (Panikos Panayi ed., 1996); Rachel Vorspan, *Law and War: Individual Rights, Executive Authority, and Judicial Power in England During World War I*, 38 VAND. J. TRANSNAT'L L. 261, 276 (2005).

63 See Simpson, *supra* note 44, at 80–82.

Ireland, leading to anti-German protests, in which German shops were attacked and individuals perceived as German were as the Prime Minister made the Home Office's plan to detain 24,000 adult males of foreign nationality public.⁶⁴ In addition to internments, over the course of the war the government removed or excluded 612 suspect individuals from certain areas.⁶⁵ The government's expanded wartime powers were widely recognized by the courts. In *R. v. Denison*,⁶⁶ for instance, the King's Bench essentially found that exclusion orders were presumptively reasonable, placing the burden on the applicant to show otherwise.⁶⁷

Among the more momentous of the wartime restrictions was the Elections and Registration Act,⁶⁸ which postponed elections. The act was first passed in July 1915, but continuously renewed until 1919. Around the same time, following a speech in which Tory MP Herbert Nield complained about the activities of the Independent Labour Party,⁶⁹ the government raided the offices of the National Labour Press, which handled the Independent Labour Party's publications, under the authority of Regulation 51A.⁷⁰ More DORA regulations aimed at suppressing political dissent followed. Regulation 9A, issued in response to a planned pacifist demonstration, allowed the authorities,

where there is reason to apprehend that the holding of a meeting in a public place will give rise to grave disorder . . . to make an order prohibiting the holding of the meeting, and if a meeting is held, or attempted to be held, in contravention of any such prohibition . . . to take such steps as may be necessary to disperse the meeting.⁷¹

Regulation 27A penalized sharing information pertaining to secret sessions of Parliament.⁷² Regulation 42A penalized inducing members of the armed

64 HC Deb (13 May 1915) (71). The government's powers of detention were enhanced by the *Liebmann* decision, issued the following year. See *R. v. Superintendent of Vine Street Police Station* [1916] 1 KB 268 (Eng.); Vorspan, *supra* note 62, at 300–06.

65 See EWING & GEARTY, *supra* note 24, at 55 n.78.

66 *Rex v. Denison* (1916) 32 TLR 528 (KB).

67 *Id.* at 529. This ruling was criticized at the time. See Vorspan, *supra* note 62, at 297 (citing *Removal by Military Authorities Under Suspicion*, 60 SOLIC.'S J. & WKLY. REP. 505 (1916)).

68 Elections and Registration Act 1915, 5 & 6 Geo. 5 c. 76 (Eng.) (July 29, 1915).

69 See HC Deb (19 July 1915) (73) cols. 1161–62.

70 See EWING & GEARTY, *supra* note 24, at 65–66. This was just one of numerous similar raids and suppressions of publications in the period. See *id.* at 66–67; Hopkin, *supra* note 51, at 160.

71 See LONDON GAZETTE, Apr. 18–19, 1916, at 4117 (Issue No. 29554); LONDON GAZETTE, Apr. 21, 1916, at 4129 (Issue No. 29556). Regulation 9A was subject to legal criticism at the time. See EWING & GEARTY, *supra* note 24, at 53. Hopkin suggests it was little used before 1918, but Ewing and Gearty question this. See *id.* at 54; Hopkin, *supra* note 51, at 165.

72 See LONDON GAZETTE, Apr. 21–22, 1916, at 4189 (Issue No. 29557); LONDON GAZETTE, Apr.

forces “to act in a manner . . . know[n] to be in contravention of” orders or regulations.⁷³ Regulation 51B allowed security officials to attend “meeting[s] or assembl[ies] . . . of such a character that an offence against these regulations may be committed thereat.”⁷⁴

The government’s new repressive powers were targeted against leftist organizers and organizations in particular.⁷⁵ Clydeside, in Scotland, was an important site for munitions production, and an area of significant leftist agitation. On October 27, 1915, the authorities arrested John MacLean, a socialist leader, on charges of having violated Regulation 27. Not long thereafter, following embarrassing if truthful reporting concerning Minister of Munitions Lloyd George by two leftist papers, both papers were seized and banned for a month under the authority of Regulations 27 and 51.⁷⁶ On February 2, 1916, following publication of an article contemplating whether workers should arm themselves—though concluding that they should not—the police raided the press of *The Worker*, destroyed its printing machinery, confiscated copies of the paper and banned its publication.⁷⁷ John MacLean, William Gallagher, the chairman of the Clyde Workers’ Committee, and John Muir and Walter Bell, the editor and printer of *The Worker*, were arrested a few days later.⁷⁸ Not long thereafter, in the face of a strike, the authorities relied on Regulation 14 to deport ten stewards from the region, while launching prosecutions against several individual strikers.⁷⁹ MacLean, Gallagher, Muir and Bell were tried shortly thereafter on charges of having violated Regulations 27 and 42, and sentenced to various terms of imprisonment.⁸⁰

While the workers in Clydeside were the subject of particularly firm disciplinary action, repressive steps were being taken around the country. In June 1916, export of the *Labour Leader*, the *Nation* and other progressive papers was prohibited on the grounds that the content of those papers would enable anti-British propaganda efforts abroad.⁸¹ From around the same time

25, 1916, at 4191 (Issue No. 29558).

73 See LONDON GAZETTE, Sept. 15, 1916, at 9008 (Issue No. 29750).

74 See LONDON GAZETTE, Feb. 6, 1917, at 1262 (Issue No. 29931).

75 See Nicholas Hiley, *Counter-Espionage and Security in Great Britain During the First World War*, 101 ENG. HIST. REV. 635, 650 (1986).

76 See EWING & GEARTY, *supra* note 24, at 73–75.

77 See *id.* at 75.

78 See *id.*

79 These measures quickly brought the strikes to an end. See *id.* at 76–77.

80 See *id.* at 76–79.

81 See Hopkin, *supra* note 51, at 161–63. Export of *The Nation* was banned again in April 1917. See Colin Lovelace, *British Press Censorship During the First World War*, in NEWSPAPER HISTORY FROM THE SEVENTEENTH CENTURY TO THE PRESENT DAY 307, 313 (George Boyce, James Curran & Pauline Wingate eds., 1978).

MI5 stepped up its monitoring of pacifists.⁸² This was justified, in the words of one MI5 official, on the basis that pacifism was “a dangerous weapon whereby the loyalty of the people is being prostituted and the discipline of the army interfered with”; as he put it further,

It may be fearlessly stated that the real aim of the [pacifists] in their fanatical opposition to compulsory military service, is to work up feeling, especially in the workshops, against measures necessary for the successful prosecution of the war . . . If they are not for the success of our country it is not unreasonable if they are classed as pro-German.⁸³

Repressive measures became more severe after George Cave was appointed Home Minister in December 1916.⁸⁴ The Military Service Act,⁸⁵ which came into force on March 2, 1917, made all unmarried men between the ages of 18 and 41 liable for military service, unless they could show they fell under one of a set of specified exceptions.⁸⁶ The government paired this implementation of conscription with a more aggressive campaign of prosecutions of peace activists, who were charged with spreading disaffection among the armed forces and thereby violating Regulation 27. Such claims were used for instance to justify raids on the No-Conscription Fellowship and the National Council Against Conscription, from both of which Special Branch, the British state’s political police service, seized large quantities of documents.⁸⁷ In general, the state’s hostility to pacifists increased in the era of conscription; as Millman puts it,

as opposition to conscription developed, the army came to interpret almost any sign of dissent as an attack on its own interests, and therefore as seditious . . . It was equally well established . . . that to advocate any change in terms of work would inevitably have an

⁸² Hiley, *supra* note 76.

⁸³ *Id.* at 650–51.

⁸⁴ See BROCK MILLMAN, *MANAGING DOMESTIC DISSSENT IN FIRST WORLD WAR BRITAIN* 177 (2000).

⁸⁵ Military Service Act 1916, 5 & 6 Geo. 5 c. 104 (Eng.) (Jan. 27, 1916).

⁸⁶ One exception applied relative to “conscientious objection,” the first instance in which this term was used. See *id.* § 2(d). For more on conscientious objection and conscription in the period, see R.J.Q. ADAMS & PHILIP POIRIER, *THE CONSCRIPTION CONTROVERSY IN GREAT BRITAIN, 1900–18* (1987); Keith Robbins, *The British Experience of Conscientious Objection*, in *FACING ARMAGEDDON: THE FIRST WORLD WAR EXPERIENCED* (Hugh Cecil & Peter Liddle eds., 1996); Matthew Johnson, *The Liberal War Committee and the Liberal Advocacy of Conscription in Britain, 1914–1916*, 51 *HIST. J.* 399 (2008). Later amendments to the Military Service Act allowed for the conscription of married men as well, while the upper age bracket was extended to 51.

⁸⁷ Hiley, *supra* note 76, at 651.

impact upon [the military's] position as a substantial employer of skilled labour . . . and was, therefore, to employ an argument contrary to the nation's interests in war – perhaps not always an offence, but certainly always a provocation. The Ministry of Munitions, meanwhile, never doubted that to advocate industrial action in a controlled establishment was interference with armament production – possibly an offence both under the Munitions of War Act 1915 and DORA.⁸⁸

In April 1917 the government attempted to revoke union exemptions from the draft; in response, 200,000 workers went on strike.⁸⁹ The government responded by utilizing its power of warrantless arrest to bring 25 shop stewards into custody, quickly bringing the strike to an end.⁹⁰ In the summer of 1917 the government set up a 'National War Aims Committee,' motivated by what Captain Guest, the Joint Parliamentary Secretary to the Treasury, referred to as "indications of considerable pacifist propaganda being fermented in certain industrial centers in England," and Sir Edward Carson, an Irish unionist politician described as a "subterranean influence of a pernicious and pestilential character."⁹¹ The War Aims Committee immediately began organizing pro-war meetings, putting out pro-war messages, and informing patriotic citizens' groups of the date and times of pacifist meetings.⁹² At the end of August the authorities arrested the prominent pacifist activist Edmund Morel, who was charged and convicted under Regulation 24, on the basis that he had sent abroad publications which

88 MILLMAN, *supra* note 85, at 79.

89 *See id.* at 170.

90 The government's ability to target the right stewards, as Millman observes, testifies to the extent of their surveillance activities in the period. *See id.*

91 HC Deb (13 Nov. 1917) (99) cols. 286, 311.

92 *See* EWING & GEARTY, *supra* note 24, at 70; MILLMAN, *supra* note 85, at 229–48. These patriotic groups existed throughout the war; for more, see Hopkin, *supra* note 51, at 165. As Millman puts it: [T]he patriots [were] a principal mechanism by which dissent was contained until the end of the war. A 'patriot', in First World War British parlance, was someone who was prepared to use force to silence dissenters, with or without official sanction. So predictable was the patriotic response to dissent that some dissenters, remembering the popular mood during the Boer War, had been maintaining a low profile for fear of the invisible 'jingo mob'. Fear of patriotic violence – even before such violence developed – was a useful method of censorship in itself, due to the self-censorship it produced.

Id. at 52; *see also id.* at 86–88, 138–63. Even prior to the formation of the War Aims Committee, the *Daily Express* was publicizing peace rallies, while calling for "patriots" to attend, "in order to ensure that nothing transpired capable of damaging the war effort." *Id.* These patriotic citizens' committees took on an increasingly proto-fascist demeanor as the war went on. In 1916 Patrick Hannon, an imperialist and later a supporter of British fascism, formed the British Commonwealth Union, with the aim of infiltrating trade unions in order to uncover and combat communist propaganda. *See* THOMAS LINEHAN, BRITISH FASCISM, 1918–39: PARTIES, IDEOLOGY AND CULTURE 43 (2000). The British Commonwealth Union was soon overshadowed by the 'Economic Study Club,' later known as the 'Economic League,' which employed a similar strategy. *See* PORTER, *supra* note 62, at 144–45.

might support enemy propaganda.⁹³ Other pacifists and pacifist printing houses were also harassed. Arnold Lupton, for example, the MP for Sleaford, was imprisoned under the 1869 Newspaper and Printers Act,⁹⁴ on the basis of the pacifist materials and correspondence found at his home.⁹⁵ Further measures were taken in regard to the developing Russian revolution in particular: Maxim Litvinov, the Russian ambassador, was prohibited from publishing in the British papers, for instance, while the *Daily Herald* was issued a stern warning after publishing pieces from Trotsky.⁹⁶ Special Branch, meanwhile, began providing weekly intelligence summaries concerning industrial unrest.⁹⁷

Despite the extensive powers already at his disposal, Cave sought further legal authorization. In November 1917, he attempted to secure passage of two new regulations aimed at limiting pacifist publications.⁹⁸ The first would have punished the spread of reports intended or likely to impede or interfere with the successful prosecution of the war; Cave was unable to secure passage of such a regulation, however, in the face of resistance as to the vagueness of the relevant grounds of penalization.⁹⁹ Cave's second suggestion was approved and issued as Regulation 27C. That regulation required that leaflets and pamphlets obtain prior approval before publication, and that they bear the names and addresses of their authors and printers.¹⁰⁰

In February 1918, the Extension of the Franchise Act was passed, granting the right to vote to all men 21 and over, and a limited franchise to women.¹⁰¹ Alongside this progressive reform, the government, which

93 See *The Persecution of E.D. Morel: The Story of his Trial and Imprisonment*, REFORMERS' SERIES (Ser. No. 26, 1918); EWING & GEARTY, *supra* note 24, at 64.

94 Newspapers, Printers, and Reading Rooms Repeal Act 1869, 32 & 33 Vict. c. 24 (Eng.) (July 12, 1869).

95 See MILLMAN, *supra* note 85, at 186–87. Despite such measures, the peace movement continued to grow, with 650,000 members by the end of 1917, while the *Labour Leader* went from a minor publication to a paper, according to the Home Office, of “considerable” power and with “far-reaching [influence] amongst the laboring classes.” Hopkin, *supra* note 51, at 160.

96 See MILLMAN, *supra* note 85, at 217.

97 See BARBARA WEINBERGER, *KEEPING THE PEACE? POLICING STRIKES IN BRITAIN, 1906–1926*, at 141 (1991). The government urged Special Branch to find “a German connection behind dissident propaganda or strike actions,” in order to provide grounds on which “to clamp down on anti-war agitations.” *Id.* Special Branch continued issuing these reports after the war's end. See KEITH JEFFREY & PETER HENNESSY, *STATES OF EMERGENCY: BRITISH GOVERNMENTS AND STRIKEBREAKING SINCE 1919*, at 1 (1983).

98 See EWING & GEARTY, *supra* note 24, at 68.

99 See *id.*

100 See LONDON GAZETTE, Nov. 20, 1917, at 12011 (Issue No. 30392).

101 Representation of the People Act 1918, 7 & 8 Geo. 5 c. 64 (Eng.) (Feb. 6, 1918).

needed more men for the front, adopted an even more aggressive strategy relative to leftist and labor activists, in an attempt to minimize resistance. Regulation 9A was increasingly relied upon to prohibit and disperse oppositional assemblies.¹⁰² On April 15, 1918 MacLean was again arrested, charged with sedition, and sentenced to five years' penal servitude.¹⁰³ While the prominent academic and pacifist Bertrand Russell had already had his books seized and sold off, his lectureship cancelled, had been denied the opportunity to accept a teaching offer in the United States, had his movements restricted and had been forbidden from giving public lectures, he had not yet been imprisoned. Even this small leniency came to an end in 1918, however.¹⁰⁴ The winding down of the war in the second half of 1918 was accompanied by increasing labor unrest, including jute workers' strikes in Dundee and various railway worker strikes that were only prevented from expanding by military mobilization and deployment of members of the Labour Corps to take up the suspended work.¹⁰⁵ In the same period, the government developed several contingency plans. One plan, Emergency Scheme L, called for potential subversives—meaning pacifists and union organizers—to be detained, and for the communications network to be militarized.¹⁰⁶ While officially Emergency Scheme L was a contingency plan to be deployed in case of German invasion, as Millman has observed, it seemed in reality to be oriented toward laying out a plan to be implemented in the case of “a social revolution or general strike.”¹⁰⁷

In sum, by the end of the war a vast array of regulations gave the authorities unchecked power to control every aspect of personal and economic life and activity in the country. Regulations 7, 8, 8A and 8B, together with the Munitions of War Act, granted control over the means of production, including the power to penalize union organizers and to compel labor. Regulations 9, 13, 14 and 14B allowed for extensive control over the movement and residence of various populations, including through expulsion and the internment of foreigners and those with “hostile associations.” Regulations 51, 52 and 55 granted extended powers of search and arrest. Regulations 9A and 51B allowed the authorities to surveillance meetings and assemblies, and to ban and penalize them as they saw fit.

102 See MILLMAN, *supra* note 85, at 254.

103 See NAN MILTON, JOHN MACLEAN 164–79 (1973).

104 See JO VELLACOTT, BERTRAND RUSSELL AND THE PACIFISTS IN THE FIRST WORLD WAR 210–15 (1980); GEORGE ROBB, BRITISH CULTURE & THE FIRST WORLD WAR 140 (Palgrave Macmillan 2d ed. 2015) (2002).

105 See MILLMAN, *supra* note 85, at 262–63.

106 *Id.* at 291.

107 *Id.*

Regulations 18, 24, 27, 27A, 27C, 42 and 42A imposed sharp limits on freedom of expression and communication, including by penalizing the spreading of “false news.” As we have seen, many of these regulations were immediately put into effect to suppress all serious forms of dissent that were encountered, be it in the form of pacifism, labor organizing or industrial action. Such implementation in turn was enabled by the extensive security apparatus that was inaugurated before the war and dramatically expanded over its course,¹⁰⁸ which considerably enhanced the authorities’ ability to effectively target their new repressive powers.

Taken as a whole, the legal regime inaugurated during First World War Britain represented a significant shift in terms of the construction of public power. The suspension of elections meant both Parliament and the government increasingly lacked democratic legitimacy. More significantly still, DORA served to strip power away from Parliament and hand it to the executive. As we have seen, DORA led to the passage of numerous regulations which, even considered individually, imposed severe limitations on core civil and political rights. Taken together, the DORA regime consisted of a dense web of restrictive laws, many purposefully drafted in broad and vague language, which foreclosed the space of rights not with a limitation of law, but rather with its overabundance. Regardless of the extent to which such measures were justified by the wartime context, insofar as the means of repression were given a clearly outlined legal form, a precedent was formed that could be imitated and followed in the future, whether in Britain or elsewhere.

III. WORLD WAR I AROUND THE EMPIRE

A. Ireland

The dramatic development of repressive legality in Britain over the course of the First World War was mirrored in the wider imperial context. In Ireland, the war led to increasing similarity between the British and Irish legal orders. Throughout the nineteenth century, Ireland was governed by what is perhaps best described as a formalized version of emergency legal rule. However, as emergency law became the order of the day in wartime Britain the separation between the two systems diminished as DORA Regulations were increasingly applied across both polities. Regulations 27

¹⁰⁸ On the manner in which the war provided a pretext on the basis of which measures of internal repression the authorities had sought to develop before the war could be substantially expanded, see Roberts, *supra* note 18.

and 42 were particularly heavily relied upon in Ireland, used to prosecute those who attempted to discourage the Irish from signing up for the British army and to suppress Irish publications deemed to be ‘causing disaffection,’ while Regulation 14 was used to control the movements of suspected radicals.¹⁰⁹

The application of the DORA regime to Ireland did not preclude declaration of martial law, however. On April 24, 1916—Easter Monday—the Easter Rising broke out in Dublin. Against a backdrop of serious clashes, martial law was declared and a curfew imposed.¹¹⁰ The uprising was put down in a matter of days. Despite that, the authorities went on to utilize the powers of DORA to censor the press, while suspected rebels were prosecuted through court martials, authorized under a special proclamation suspending the effect of the 1915 DORA amendment providing for jury trials in Ireland.¹¹¹ Some 3,500 suspected Sinn Féin sympathizers were rounded up in May 1916; around half were interned in Britain, 90 or so sentenced to death, and 15 executed before Prime Minister Asquith ordered the executions brought to a halt.¹¹²

In late March 1918 Lloyd George presented plans to his cabinet for the raising of another 550,000 men, approximately a quarter of whom were expected to be forcibly conscripted in Ireland.¹¹³ Rightfully imagining this would lead to serious resistance, the authorities attempted to head that resistance off by rolling out a range of complementary repressive measures, including setting up ‘Special Military Areas,’¹¹⁴ imposing tight controls on movement and curfews, closing fairs and markets, setting up an extensive

109 See EWING & GEARTY, *supra* note 24, at 335–38.

110 Over 143 British and 66 Irish soldiers, and some 260 civilians, were killed in the course of the fighting. See CHARLES TOWNSHEND, *BRITAIN’S CIVIL WARS: COUNTERINSURGENCY IN THE TWENTIETH CENTURY* 54 (1986) [hereinafter TOWNSHEND, *BRITAIN’S CIVIL WARS*]. Given that Ireland was already governed by DORA, it is not clear that martial law had any practical effect, and in fact the authorities generally relied on DORA rather than their new martial law powers. As the Irish Attorney General would put it, however, “undoubtedly the average civilian has an extraordinary belief in the magic term ‘Martial Law’ and it therefore brings home to the loyal and law-abiding people a great sense of security and safety, and upon the other hand the very indefinite knowledge of its powers spreads terror among the disaffected.” See CHARLES TOWNSHEND, *POLITICAL VIOLENCE IN IRELAND: GOVERNMENT AND RESISTANCE SINCE 1848*, at 307 (1983).

111 See EWING & GEARTY, *supra* note 24, at 340–41.

112 *Id.* at 342.

113 See Alan J. Ward, *Lloyd George and the 1918 Irish Conscription Crisis*, 17 *HIST. J.* 107, 111 (1974); Dave Hennessy, *The Hay Plan & Conscription in Ireland During WW1*, WATERFORD CNTY. MUSEUM (Oct. 5, 2010), http://www.waterfordmuseum.ie/exhibit/web/Display/article/283/1/The_Hay_Plan__Conscription_In_Ireland_During_WW1_Introduction.html.

114 These ‘Special Military Areas’ were authorized under Regulation 28B, which was promulgated in the wake of the Easter Rising. See *id.* at 346.

system of passport controls, declaring nationalist organizations ‘dangerous,’ and providing for accelerated trials in front of special juries.¹¹⁵ On May 17th, 70 or so members of Sinn Féin’s leadership, who, it was alleged, had conspired with the Germans—though evidence to such an effect was scarce—were rounded up under the authority of Regulation 14B and interned in Britain.¹¹⁶

B. India

The fact that India was governed by an entirely different legal regime prevented contemplation of DORA’s direct application. This posed little problem, however, as before long a similar regime was brought into effect. Tensions were already high in British India in the years leading up to the First World War.¹¹⁷ The outbreak of the war saw tensions increase, especially in the Punjab¹¹⁸ and Bengal.¹¹⁹ Following the outbreak of the war the Ghadar party, an Indian revolutionary party headquartered in North America, stepped up its plans to foment a mutiny within the Indian army by sending activists back into the country.¹²⁰ In an attempt to stop this flow the

115 See *id.* at 346–48. As well as relying on DORA, the government also utilized the powers of Balfour’s Crimes Act of 1887. *Id.* at 347–48.

116 The ability of the authorities to take this measure was aided by an amendment to Regulation 14B passed on April 20, 1918, which extended the powers under the regulation to allow not only for the arrest of hostile persons, but also of those “suspected of acting or having acted or being about to act in a manner prejudicial to the public safety or the defence of the Realm,” an amendment that was only applicable relative to those areas where the right to a jury trial otherwise still afforded under DORA had been suspended—in other words, an amendment specifically designed to allow for the detention of nationalists in Ireland. See *id.* at 348–49.

117 For more, see RICHARD J. POPPLEWELL, *INTELLIGENCE AND IMPERIAL DEFENCE: BRITISH INTELLIGENCE AND THE DEFENCE OF THE INDIAN EMPIRE, 1904–1924*, at 57–161 (1995); WAGNER, *supra* note 16, at 11–17.

118 For more on British governance of the Punjab in the broader period, see TAN TAI YONG, *THE GARRISON STATE: THE MILITARY, GOVERNMENT AND SOCIETY IN COLONIAL PUNJAB, 1849–1947* (2005).

119 In 1914, revolutionaries in Bengal captured a large shipment of arms in the 1914 ‘Rodda company arms heist,’ put to use in a series of attacks the following year. The efforts of Bengali revolutionaries were met by increasingly harsh government suppression, however, in significant part overseen by Charles Tegart, Deputy-Commissioner of the Bengal Police from 1913 on. See J.C. CURRY, *TEGART OF THE INDIAN POLICE* (1960); Michael Silvestri, ‘*An Irishman Is Specially Suited to Be a Policeman*’: *Sir Charles Tegart & Revolutionary Terrorism in Bengal*, 8 *HIST. IR.* 40 (2000).

120 For more, see MAIA RAMNATH, *HAI TO UTOPIA: HOW THE GHADAR MOVEMENT CHARTED GLOBAL RADICALISM AND ATTEMPTED TO OVERTHROW THE BRITISH EMPIRE* (2011); SEEMA SOHI, *ECHOES OF MUTINY: RACE, SURVEILLANCE & INDIAN ANTICOLONIALISM IN NORTH AMERICA* (2014); MARK CONDOS, *THE INSECURITY STATE: PUNJAB AND THE MAKING OF COLONIAL POWER IN BRITISH INDIA 198–203* (2017); Gajendra Singh, *Jodh Singh, the Ghadar Movement and the Anti-Colonial Deviant in the Anglo-American Imagination*, 245 *PAST & PRESENT* 187 (2019).

government passed the Ingress into India Ordinance,¹²¹ which allowed the government to detain people attempting to enter the country or to require them to remain in their villages. Over the course of the act's operation, some 331 persons were interned, and 2,576 confined to their villages.¹²²

One of the most dramatic moments of success for the Ghadar movement came not in India but in Singapore, where a mutiny broke out among Indian troops on February 15, 1915.¹²³ In response the Governor-General, Arthur Young, immediately declared martial law and banned newspapers from Singapore leaving the island, in order to prevent news of the mutiny spreading.¹²⁴ French, Japanese and Russian sailors and soldiers from the neighboring Malay state of Johor responded to the governor's call for help, and with their aid the mutiny was suppressed in two days.¹²⁵ Following the uprising, 203 soldiers were tried by court martial, and all but one were found guilty.¹²⁶

Relying in part on the Ghadar threat for justification, Sir Reginald Caddock, the home member in the Indian government, introduced the Defence of India Act¹²⁷ in March 1915.¹²⁸ The act granted the authorities extended powers of preventive detention and detention without trial, lessened evidential standards, removed the right of appeal, rescinded the right to trial by jury, and allowed persons reasonably suspected of

121 Ingress into India Ordinance, 1914 (Sept. 5, 1914) (India).

122 See CONDOS, *supra* note 121, at 204. Caddock justified the bill as "necessary to prevent the spread of the 'contagious disease' of sedition before it turned into an 'epidemic' all across India." *Id.* at 209. Measures against Indian radicals were taken in other parts of the empire as well; for instance, after French police found a British Indian soldier *en route* to Orléans in possession of seditious literature in September 1914, an Indian Mail Censor was established in Rouen, which would later extend its surveillance to cover letters sent by Egyptian soldiers as well. See DANIEL BRÜCKENHAUS, *POLICING TRANSNATIONAL PROTEST: LIBERAL IMPERIALISM AND THE SURVEILLANCE OF ANTICOLONIALISTS IN EUROPE, 1905–1945*, at 42–44 (2017). The Ordinance does not appear to have been particularly effective; the Ghadar revolt did not achieve much success either, however. See CONDOS, *supra* note 121, at 204–09, 211–12.

123 For more on the Singapore mutiny, see R.W.E. HARPER & HARRY MILLER, *SINGAPORE MUTINY* (1984); C.M. TURNBULL, *A HISTORY OF MODERN SINGAPORE 1819–2005* (2009); Leon Comber, *The Singapore Mutiny (1915) and the Genesis of Political Intelligence in Singapore*, 24 *INTEL. & NAT. SEC.* 529 (2009); Heather Streets-Salter, *The Local Was Global: The Singapore Mutiny of 1915*, 24 *J. WORLD HIST.* 539 (2013).

124 *Id.* at 574.

125 *Id.* at 541.

126 Forty-six were executed, sixty-three sentenced to transportation for life, and ninety-three to various terms of imprisonment. See *id.* at 539.

127 Defence of India Act, *supra* note 10.

128 The act was passed into law in a single sitting. Lieutenant-Governor Michael O'Dwyer of the Punjab was key in advancing the law, invoking the threatening specter of the Ghadar movement. Mark Condos, *THE INSECURITY STATE: PUNJAB AND THE MAKING OF IMPERIAL POWER IN BRITISH INDIA* 201, 208, 211 (2017).

prejudicial activity to be tried before special tribunals.¹²⁹ The act also imposed restrictions on freedom of expression and movement. This included imposing penalties for spreading false news, as well as for any activities the government deemed prejudicial to the war effort; a preemptive indemnity clause; and giving the Governor-General power to make further rules intended to protect public safety.¹³⁰ Over the course of its operation special tribunals convened under the act heard nine high-profile conspiracy trials. These trials led to 28 death sentences, and hundreds if not thousands of prison terms, orders of transportation and other restrictive orders.¹³¹ In addition, DOIA was used as authority for a notification issued in March 1917, requiring a passport for entry into or exit from India by sea.¹³² DOIA powers were complimented by other measures, including for instance the 1918 Punjab Habitual Offenders Act, which allowed the authorities to control the movement of those deemed habitual offenders,¹³³ and the 1918 Punjab Villages and Small Towns Act, which allowed for local men to be deputized as informal policemen.¹³⁴

C. Egypt

Elsewhere around the empire martial law was frequently declared. As in India, tension was high in British-occupied Egypt in the years preceding the First World War. An increasingly critical popular press led the British to revive the 1881 Press Law on March 27, 1909, with the aim of addressing “the evils arising from the want of proper control over the Press.”¹³⁵ Rather

¹²⁹ See Defence of India Act, *supra* note 10.

¹³⁰ *Id.*

¹³¹ See CONDOS, *supra* note 121, at 210; A.W.B. Simpson, *Round Up The Usual Suspects: The Legacy of British Colonialism and the European Convention on Human Rights*, 41 LOY. L. REV. 629, 647 (1996). Others were jailed or had their movement restricted during the same period under the Ingress into India Ordinance and the 1901 Murderous Outrages Act. *See id.*

¹³² See Radhika Singha, *The Great War and a ‘Proper’ Passport for the Colony: Border-Crossing in British India, c. 1882–1922*, 50 INDIAN ECON. & SOC. HIST. REV. 289, 292 (2013).

¹³³ The Restriction of Habitual Offenders (Punjab) Act, 1918, (Apr. 26, 1918) (India).

¹³⁴ The Punjab Village and Small Towns Patrol Act, 1918, §3 (India). The act has recently been utilized in the Indian state’s response to the coronavirus. *See* Ameya Pratep Singh & Dhruva Gandhi, *COVID-19 and India’s Addiction to Colonial-Era Laws*, DIPLOMAT (Apr. 17, 2020), <https://thediplomat.com/2020/04/covid-19-and-indias-addiction-to-colonial-era-laws/>.

¹³⁵ HC Deb (30 Mar. 1909) col. 312W. The Consul-General’s report from the time indicates the official thinking that underlay the law’s revival: “In recent years the virulence of a certain section of the vernacular press in Egypt has greatly increased, and false news and misleading comments on the actions and motives of the government are spread broad-cast, adding greatly to the difficulties of administering the country. Many of the articles published in these newspapers are calculated to arouse the passions of the mass of the people, who are, and must remain for years to come, far too ignorant to appreciate the absurdities and the falseness of the diatribes which are read out to them daily in the villages.” *See* ZIAD FAHMY, *ORDINARY EGYPTIANS: CREATING THE MODERN NATION THROUGH POPULAR CULTURE* 103

than reducing dissent, revival of the 1881 law led to immediate, widescale protests. In response to the protests, the government began contemplating the introduction of a more restrictive legal regime governing assemblies.¹³⁶ The outbreak of the war spurred the authorities to decisive action. In September, on Britain's urging, Rushdi Pasha, the Prime Minister and regent in the Khedive's absence, postponed sittings of the Legislative Assembly, a postponement rendered permanent by a decree issued on October 18.¹³⁷ In October, a law criminalizing assemblies of five or more persons deemed liable to disturb the public peace was passed.¹³⁸ On December 18, 1914, Britain declared Egypt a protectorate.¹³⁹ Shortly thereafter, Britain declared martial law would apply in Egypt for the duration of the war.¹⁴⁰ To further the practical means of their control, the British bolstered the police forces of Cairo, Alexandria and the Suez Canal zone. Preexisting press controls and postal censorship were extended, enemy aliens were required to register their presence, and their movements were restricted.¹⁴¹ A General Staff Intelligence Office under the command of Gilbert Clayton was also established in Cairo in the early war years, tasked with keeping an eye on political currents throughout the region.¹⁴²

(2011). For some earlier steps the British took against the press, see GHADA HASHEM TALHAMI, *PALESTINE IN THE EGYPTIAN PRESS: FROM AL-AHRAM TO AL-AHALI* at 41–54 (2007). The 1881 law required papers dealing with political, administrative, or religious issues to acquire a government license in order to operate and to inform the Department of the Interior of any changes in their ownership or editorship, to print the names and addresses of their owners on every paper, and to send five copies of every issue to the Department of the Interior. See FAHMY, *supra*, at 103–04 (2011). The law also allowed the Interior Minister to prevent particular foreign periodicals from entering Egypt. See *id.* at 58.

136 See *id.* at 104–05; CAIRO INST. FOR HUMAN RTS. STUD., *supra* note 1, at 22.

137 See CAIRO INST. FOR HUMAN RTS. STUD., *supra* note 1, at 23–24. The decree was repealed in 1923. See *id.*

138 Law No. 10 of 1914 (Law on Public Assemblies) (Egypt). For more on the law, see CAIRO INST. FOR HUMAN RTS. STUD., *supra* note 1.

139 See MALAK BADRAWI, *POLITICAL VIOLENCE IN EGYPT 1910–1925: SECRET SOCIETIES, PLOTS AND ASSASSINATIONS* 116 (2000). For some contemporaneous reflections on that transfer, which testify more to confusion concerning how to analyze the precise legal nature of the situation than to anything else, see Malcolm McIlwraith, *The Declaration of a Protectorate in Egypt and Its Legal Effects*, 17 J. SOC'Y COMPAR. LEGIS. 238 (1917).

140 A “rather desperate resort [that] was a consequence of Britain’s earlier reluctance to build up a civil administration structure,” as one commentator has put it. TOWNSHEND, *BRITAIN’S CIVIL WARS*, *supra* note 111, at 190.

141 See MARTIN THOMAS, *EMPIRES OF INTELLIGENCE: SECURITY SERVICES AND COLONIAL DISORDER AFTER 1914*, at 111 (2007) [hereinafter THOMAS, *EMPIRES OF INTELLIGENCE*]. As Brown puts it, in relation to this legacy, “Britain can claim far more credit for the founding of Egypt’s modern system of martial law than they can for the National Courts.” Nathan J. Brown, *Law and Imperialism: Egypt in Comparative Perspective*, 29 LAW & SOC’Y REV. 103, 111 (1995) [hereinafter Brown, *Law and Imperialism*].

142 See PRIYA SATIA, *SPIES IN ARABIA: THE GREAT WAR AND THE CULTURAL FOUNDATIONS OF BRITAIN’S COVERT EMPIRE IN THE MIDDLE EAST* 40 (2008)

D. *The Rest of the Empire*

In Hong Kong too, emergency law was the order of the day. Immediately after the war began, the Governor issued a proclamation bringing the Order in Council of 26 October 1896 into effect. The order authorized the Governor to requisition property, to require persons to perform services, to control prices, and to do any other thing necessary for public safety and the defense of the colony.¹⁴³ The government's restrictive powers under the order were complimented by the 1914 Seditious Publications Ordinance¹⁴⁴ and the 1915 Seditious Publications (Possession) Ordinance.¹⁴⁵ Another Order in Council in 1916 expanded the government's powers, explicitly granting the government power to make regulations for the purposes of censorship, the control and suppression of communications and information, arrest, detention, exclusion and deportation, the control of port areas and the harbor, the control of the means of transportation, the control of trade and production, and the seizure and disposition of property.¹⁴⁶ The British took particularly strong measures against the colony's German population over the course of the war: their assets were confiscated under the authority of the 1914 Trading with the Enemy Act,¹⁴⁷ operationalized in Hong Kong through the Trading with the Enemy Ordinance,¹⁴⁸ while they were interned or repatriated.¹⁴⁹ Meanwhile in the Straits Settlements and the Federated Malay States the authorities began to censor certain publications, including through measures such as the 1915 Seditious Publications

143 See Norman Miners, *The Use and Abuse of Emergency Powers by the Hong Kong Government*, 26 H.K.L.J. 47, 50 (1996) (citing H.K. GOV'T GAZETTE, Aug. 5, 1914, at 274–77 (Vol. 60, Issue No. 41)).

144 Seditious Publications Ordinance, (1914) Cap. 200 (H.K.) (No. 6). The ordinance was preceded by a similar measure in 1907, which had targeted the revolutionary Chinese language press. For more, see Michael Ng, *When Silence Speaks: Press Censorship and Rule of Law in British Hong Kong, 1850s–1940s*, 29 L. & LITERATURE 425, 430–32 (2017). As Ng notes, the 1914 version was “[m]uch stronger and more detailed than the earlier ordinance, the new legislation empowered the government not only to punish the publisher of anti-government materials but also to search for, seize and confiscate such materials”; unlike its predecessor, it was much more directly motivated by the desire to suppress anti-imperialist sentiment, especially on the part of the Indian population. *Id.* at 432–33.

145 Seditious Publications Ordinance, *supra* note 145 (incorporating Ordinance 6 of 1915).

146 See Miners, *supra* note 144, at 50–51 (citing H.K. GOV'T GAZETTE, May 12, 1916, at 246–51 (Vol. 62, Issue No. 23)). For the use of the 1914 and 1916 Orders in Council to impose censorship, see Ng, *supra* note 145, at 435–36.

147 Trading with the Enemy Act 1914, 4 & 5 Geo. 5 c. 87 (Eng.) (Sept. 18, 1914).

148 Trading with the Enemy Ordinance, (1914) Cap. 346 (H.K.) (No. 25). This ordinance was in fact far more relied upon than the emergency powers. See Miners, *supra* note 144, at 51.

149 See Chi Man Kwong, *Hong Kong*, INT'L ENCYC. FIRST WORLD WAR (Jan. 16, 2020), https://encyclopedia.1914-1918-online.net/article/hong_kong; STEVE TSANG, A MODERN HISTORY OF HONG KONG: 1841–1997, at 86 (2003).

(Prohibition) Ordinance in the Straits Settlements¹⁵⁰ and the 1915 Printing and Books Enactment in the Federated Malay States.¹⁵¹

Another significant episode of martial law took place in Ceylon. In late May and early June 1915, members of the Buddhist community in Ceylon attacked members of the Muslim community, leading to several deaths.¹⁵² On June 2 the governor, worried about the broader implications of the attacks in relation to British rule,¹⁵³ declared martial law. A sharp crackdown followed, which included increased censorship, reprisals and indiscriminate shootings.¹⁵⁴ On June 8 General Malcolm issued the secret Riots Damage Order, which appointed special commissioners, who were to head out with small strike teams of soldiers with an order to shoot anyone resisting, and provided for the imposition of collective fines.¹⁵⁵ By the end of the crackdown 63 were officially recorded as having been killed by the authorities, 9,000 arrests had taken place and 4,500 were convicted. 83 of those convicted were sentenced to death, and 34 ultimately executed.¹⁵⁶ On August 12 an Indemnity Order was issued, absolving those who had suppressed the ‘riots’ from any potential liability;¹⁵⁷ on August 30, martial law was ended.¹⁵⁸ Following the crackdown, the government convened a

150 See L. Maartensz, C.G. Alabastar, A. de Mello & E. Koenig, *Eastern Colonies*, 17 J. SOC’Y COMPAR. LEGIS. 140, 153 (1917) (Ordinance 11 of 1915 (July 16, 1915)).

151 See *id.* at 156 (Enactment 17 of 1915); see also C.F. Yong & R.B. McKenna, *The Kuomintang Movement in Malaya and Singapore, 1912–1925*, 12 J. SE. ASIAN STUD. 118, 127 (1981); Halim Salleh, *Globalization and the Challenges to Malay Nationalism as the Essence of Malaysian Nationalism*, in NATIONALISM AND GLOBALIZATION: EAST AND WEST 132, 133 (Leo Suryadinata ed., 2000); Mustafa K. Anuar, *Defining Democratic Discourses: The Mainstream Press*, in DEMOCRACY IN MALAYSIA: DISCOURSES AND PRACTICES 143 (Francis Loh Kok Wah & Khoo Boo Teik eds., 2002).

152 For more on the roots of the tensions, see A.P. Kannangara, *The Riots of 1915 in Sri Lanka: A Study in the Roots of Communal Violence*, 102 PAST & PRESENT 130 (1984); George Rowell, *Ceylon’s Kristallnacht: A Reassessment of the Pogrom of 1915*, 43 MOD. ASIAN STUD. 619 (2008).

153 As the governor would put it, if the attacks had been conducted by villagers, known for their “simplicity and ignorance,” there would have been no need for martial law; since they were undertaken by those in Colombo, however, “the sternest measures” were called for because “the criminal classes of Colombo joined in the movement which had become simply predatory and anarchic,” noting also that “among the lower classes [in Colombo] the spirit of turbulence may possibly still cause trouble as the always discontented workmen of the railway workshops have refused to remain at work.” Kumari Jayawardena, *Economic and Political Factors in the 1915 Riots*, 29 J. ASIAN STUD. 223, 231 (1970) (citing a 1915 dispatch from the Governor to the Secretary of State for the Colonies).

154 See P.T.M. Fernando, *The British Raj and the 1915 Communal Riots in Ceylon*, 3 MOD. ASIAN STUD. 245, 247 (1969); Jayawardena, *supra* note 154, at 232; Charles S. Blackton, *The Action Phase of the 1915 Riots*, 29 J. ASIAN STUD. 235, 244 (1970).

155 See Blackton, *supra* note 155, at 245. Another order was issued on August 2, two months after the end of the riots, authorizing special constables to fire without warning on crowds armed with dangerous weapons. See *id.* at 248.

156 *Id.* at 249.

157 *Id.* at 248.

158 See Joseph Minattur, *Emergency Powers in Sri Lanka, 1817–1959: A Historical Perspective*, 24 J. INDIAN L. INST. 57, 60 (1982).

Police Inquiry Commission to look into the unrest and the manner in which it had been handled. The Commission found the authorities' use of force had been excessive, though it also accepted the immunities subsequently granted by the Indemnity Order.¹⁵⁹

Across Africa, the wartime years saw a tightening and expansion of repressive legislation, as well as the frequent utilization of martial law to suppress unrest. In South Africa, an Afrikaner rebellion in 1914 (the 'Maritz rebellion') was met with martial law and the swearing in of a large number of reserves.¹⁶⁰ In 1915 an Indemnity and Special Tribunals Act¹⁶¹ was passed, immunizing the authorities from liability for excessive use of force and allowing for the rebels to be tried before special courts.¹⁶² The 1917 Criminal Procedure Act gave the Attorney-General power to authorize trials by special courts, expanded the jurisdiction of magistrates' courts and allowed for juries to be dispensed with in treason trials.¹⁶³ Over the course of the war 158 persons were convicted of treason, and another 8,027 of other offences.¹⁶⁴

In Sudan, the state of martial law, which had remained in effect from the time of the British conquest in 1898, was used to authorize censorship, the inspection of telegraphic communications, and the supervision and deportation of enemy nationals.¹⁶⁵

In the Protectorate of Nigeria, newly formed as of January 1, 1914, de facto martial law was used to crush numerous revolts over the course of the war. In August 1914, attempts to enforce the government's forced labor policy through detentions, beatings and mistreatment led to protests in Southwest Nigeria. In response, soldiers used a maxim gun to mow down

159 The report on the use of force in the Ceylon riots seems to have been particularly influential relative to subsequent British colonial policing, encouraging the authorities to pursue a minimum force approach predicated on using lethal force at the outset of unrest, on the theory that quick suppression would save lives in the end. See Martin Thomas, *'Paying the Butcher's Bill': Policing British Colonial Protest After 1918*, 15 CRIME, HIST. & SOCIETIES 55 (2011).

160 See Jonathan Hyslop, *Martial Law and Military Power in the Construction of the South African State: Jan Smuts and the "Solid Guarantee of Force" 1899-1924*, 22 J. HIST. SOCIO. 234, 254-57 (2009).

161 Indemnity & Special Tribunals Act 11 of 1915 (S. Afr.).

162 The rebellion was in general dealt with lightly, however, in part due to British desires to prevent a larger uprising in the context of their armed struggle against German South West Africa. For more, see Hyslop, *supra* note 161, at 255-56.

163 See MARTIN CHANOCK, *THE MAKING OF SOUTH AFRICAN LEGAL CULTURE, 1902-1936*, at 120 (2001).

164 See *id.* at 140-41. All were amnestied at the war's end, however. See *id.* at 141.

165 See M.W. DALY, *EMPIRE ON THE NILE: THE ANGLO-EGYPTIAN SUDAN, 1898-1934*, at 160-61 (1986).

an unarmed crowd in Ijemo, killing thirty-six, including several local chiefs.¹⁶⁶ In 1916, the Oke-Ogun rebellion in Southwestern Nigeria was similarly suppressed by force, after which severe penalties were imposed, including court martial trials in which eight alleged leaders of the rebellion were sentenced to death by hanging, sentences which the government made a point of carrying out in public.¹⁶⁷ The 1916 Criminal Code meanwhile upgraded the penalty for publishing false reports—defined as “any statement, rumour or report likely to bring any public officer to disrepute”—from a fine to a prison sentence, while 1917 saw passage of the Newspaper Ordinance¹⁶⁸ and 1918 of the Newspaper Amendment Ordinance.¹⁶⁹

In Nyasaland, John Chilembwe, a Baptist preacher, led an uprising in January and February of 1915, which resulted in the killing of three settlers. The authorities responded with brutal force, killing around 50, imprisoning 300, and imposing a collective fine on all those living in the area in which the rebellion had occurred.¹⁷⁰ Following the suppression of the rebellion, 46 men were hastily sentenced to death, and 36 of those executions carried out. The leaders were hung in public in the area of the uprising, in an attempt to send a clear, brutal message.¹⁷¹

In the East Africa Protectorate outright rebellion was avoided, but nonetheless the legal regime tightened. A series of amendments to local labor law were introduced under the framework of emergency governance, including the authorization of forced labor, a tightening of the constraints on employees under the Master and Servant law, and an enhancement of the punishments applied for breaking contracts.¹⁷² In addition, the 1915 Native Followers Recruitment Ordinance allowed for forced conscription, a power

166 See Nigeria Original Correspondence, June 16–July 31, 1915, CO 583/34 (Paper 32247); Akinjide Osuntokun, *Disaffection and Revolts in Nigeria during the First World War, 1914–1918*, 5 CANADIAN J. AFR. STUD. 171, 174–7 (1971).

167 See Nigeria Original Correspondence, Jan. 1–Feb. 7, 1917, CO 583/55 (Paper 10824); Osuntokun, *supra* note 167, at 184–87.

168 HC Deb (24 Nov. 1920) (135) col. 482W (citing Newspaper Ordinance No. (40) (1917) (Nigeria)).

169 *Id.* (citing Newspaper (Amendment) Ordinance (16) (1918) (Nigeria)).

170 See Stacey Hynd, “*The Extreme Penalty of the Law*”: *Mercy and the Death Penalty as Aspects of State Power in Colonial Nyasaland, c. 1903–47*, 4 J. E. AFR. STUD. 542, 547 (2010).

171 See *id.*

172 See David Anderson, *Kenya, 1895–1939: Registration and Rough Justice* [hereinafter Anderson, *Kenya*], in MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN & THE EMPIRE, 1562–1955, at 498, 505–11 (Douglas Hay & Paul Craven eds., 2004). In relation to the new, more repressive labor regime put in place during the war one Labour MP, Ben Spoor, remarked “we shall shortly need in this Empire of ours a new Wilberforce to combat the tendency towards what might be described by many people, not as ordinary working conditions, but as very real slavery.” M.K. Banton, *The Colonial Office, 1820–1955: Constantly the Subject of Small Struggles*, in MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN & THE EMPIRE, *supra*, at 251, 277.

promptly and continuously put into use as 3,000 persons were forcibly conscripted every month for service in the Carrier Corps, a notoriously brutal assignment from which many never made it back.¹⁷³

E. Conclusion

As this brief examination of the wartime years around the British Empire suggests, the dramatic development of repressive legality over the course of the wartime years was not limited to the metropole, but rather took place across the empire. In Ireland the DORA regulations were directly applicable. In India, the DORA framework was closely emulated by DOIA. In Egypt, Singapore, Hong Kong, Ceylon, South Africa, Nigeria and Nyasaland, martial law, be it *de jure* or *de facto*, was the order of the day, and any hope for accountability was foreclosed by indemnity orders. Internment, detention and border controls were authorized by DORA Regulation 14 in Ireland, by the Ingress into India Ordinance and DOIA in India, and by the 1916 Order in Council in Hong Kong. Whether martial or emergency law frameworks were employed or not, numerous repressive laws were enacted and enforced. Censorship was intensified through measures such as the 1914 Seditious Publications Ordinance in Hong Kong, the 1915 Seditious Publications (Prohibition) Ordinance in the Straits Settlements and the Federated Malay States and the 1917 Newspaper Ordinance in Nigeria, as well as by enhanced enforcement of pre-existing repressive measures, such as Egypt's 1881 Press Law. Assemblies were penalized through measures such as Law 10 of 1914 in Egypt. In Nigeria and the East Africa Protectorate forced labor was extended, including for instance through the Native Followers Recruitment Ordinance. In short, the war provided a fertile context for the trans-imperial expansion of repressive legality.

IV. POST-WAR BRITAIN: THE 'EMERGENCY'

The wartime years provided fertile terrain for the growth of repressive legality. Had wartime legal developments been comprehensively repealed and annulled with the war's end, the significance of those developments might have been limited. Repeal was not in the cards relative to the repressive measures enacted during the war, however. That those measures stuck around is testimony to the staying power of legislation in general, and of repressive legislation in particular. Even more so, it is testimony to the

¹⁷³ See Anderson, *Kenya*, *supra* note 173, at 505.

fact that the measures in question were not primarily intended to address the threat posed by an external enemy, but rather to deal with domestic challenges to the established order.

Still, there would have been no need to extend such powers if domestic unrest had been suppressed by the war's end. The reality at the end of the war, however, was that labor was in a strong position, despite the repressive measures deployed over the previous years. Concerned that the end of wartime powers might weaken their hand to deal with labor action, the government passed the Termination of the Present War (Definition) Act,¹⁷⁴ which came into effect on November 21, 1918. The Termination of the Present War (Definition) Act simply and audaciously declared that the war was not over until the government said it was over, and extended that end date almost three years into the future, to August 31, 1921. Thanks to that simple move, the extensive regime of repressive regulations enacted under the DORA framework could continue to be relied upon in the post-war yet still 'wartime' years.¹⁷⁵ Meanwhile, Special Branch and MI5 continued to surveil labor agitators, and were assisted by the appointment of regional intelligence commissioners, charged with keeping track of potential strikes.¹⁷⁶

The strength of the left in the wake of the war could be seen in a succession of major strikes. One of the first was a police strike, which took place in London and Liverpool. The Liverpool strike was crushed with force, with the Riot Act read and the military deployed.¹⁷⁷ Following the strike the government conducted a major reorganization of the Metropolitan police service, sacking the former police commissioner and appointing a former general, Macready, to the post, who promptly "set about reorganizing the Metropolitan Police along military lines."¹⁷⁸ The government also pushed through the Police Act of 1919,¹⁷⁹ which provided for the establishment of an official Police Federation, prohibited the police

174 Termination of the Present War (Definition) Act 1918, 8 & 9 Geo. 5 c. 59 (Eng.) (Nov. 21, 1918).

175 What's more, new DORA regulations would even be adopted in the post-war years—including for instance Regulation 43C, enacted in 1919, which extended restrictions on industrial action contained in the 1875 Conspiracy and Protection of Property Act to electricity workers.

176 See WEINBERGER, *supra* note 98, at 176.

177 For more, see GERALD WILLIAM REYNOLDS & ANTHONY JUDGE, *THE NIGHT THE POLICE WENT ON STRIKE* 163 (1968). One individual was killed in the course of the strike's suppression—the last individual to be killed by the military in the course of suppressing domestic unrest. See ANTHONY BABINGTON, *MILITARY INTERVENTION IN BRITAIN: FROM THE GORDON RIOTS TO THE GIBRALTAR INCIDENT*, at 144–47 (1990).

178 WEINBERGER, *supra* note 98, at 163.

179 Police Act 1919, 9 & 10 Geo. 5 c. 46 (Eng.).

from joining trade unions, and made it an offence to cause disaffection among the members of the police force.¹⁸⁰

Aware of the growing power of labor, the government turned its wartime planners to the task of designing a response to large-scale strikes.¹⁸¹ The plan they came up with consisted of “six major components, based on the use of military, police and volunteer labour, and of intelligence, propaganda and emergency powers.”¹⁸² Immediately after being developed, these plans were put into use in response to a national railway strike involving more than 500,000 participants. The government immediately formed a ‘Strike Committee,’ which included the Minister of Transport, the Minister of Labour and the Secretary of War, amongst others.¹⁸³ A range of measures were then implemented. A “massive propaganda campaign ... which promoted ... the view that the strike was the work of a small band of revolutionaries dedicated to the overthrow of constitutional government”¹⁸⁴ was rolled out, volunteers were brought in to run the railway and maintain services,¹⁸⁵ the military was mobilized to guard strategic positions, including railways and power stations,¹⁸⁶ police were instructed to break up any pickets they considered likely to cause intimidation, and DORA Regulation 42 was extended.¹⁸⁷

At the beginning of 1920, the government was nervous. Despite their

180 See *id.* §§ 1–3. The reforms were effective. See ROGER GEARY, *POLICING INDUSTRIAL DISPUTES: 1893 TO 1985*, at 124 (1985).

181 As Jeffrey and Hennessy put it, “Co-ordinated government planning in Britain to counter major strikes in vital industries began during the aftermath of the First World War.” Amongst other things, this led, “within a year of the Armistice in November 1918” to the establishment of “an extensive ‘Supply and Transport Organization’,” which had the aim of “secur[ing] the maintenance of essential supplies and services in the face of industrial stoppages.” Keith Jeffrey & Peter Hennessy, *STATES OF EMERGENCY: BRITISH GOVERNMENTS AND STRIKEBREAKING SINCE 1919* 1 (1987).

182 WEINBERGER, *supra* note 98, at 170. This plan was not dissimilar from Emergency Scheme L, discussed above. As Weinberger puts it, “[c]o-ordinated government planning in Britain to counter major strikes in vital industries began during the aftermath of the First World War. Within a year of the Armistice in November 1918 the government had set up the framework of an extensive ‘Supply and Transport Organization’ to secure the maintenance of essential supplies and services in the face of industrial stoppages.”

183 See Joshua Edgcombe, *The 1919 Railway Strike: The Government’s Response*, 43 (2017) (MA dissertation, University of Hertfordshire).

184 WEINBERGER, *supra* note 98, at 170.

185 See Edgcombe, *supra* note 184, at 47–56.

186 See *id.* at 57.

187 The new formulation including the stipulation that any person “who induces or attempts to induce railway workers not to work, is guilty of an offence; and persons so doing, whether by acting as pickets or otherwise, are liable to immediate arrest and prosecution.” WEINBERGER, *supra* note 98, at 174 (citing Protection Sub-Committee, *Disturbances: Railway Strike, 1919*, Ref. HO 144/1679/390500/45 (Sept. 29, 1919) (Eng.)).

efforts, labor organization remained strong; it was increasingly necessary to demobilize soldiers, with the remainder needed overseas; and the day when DORA would expire was coming ever-nearer.¹⁸⁸ The government, therefore, determined to pass legislation that might replace DORA, giving it the emergency powers, it felt it would need in the eventuality of a large strike. In March 1920, a draft Emergency Powers bill was prepared.¹⁸⁹ Wary of the resistance the bill might provoke, the government waited for the right time to present it. The opportunity was provided by a coal miners' strike, during the course of which the government rapidly passed the bill into law.¹⁹⁰ The Emergency Powers Act¹⁹¹ allowed a state of emergency to be declared if events occurred, or seemed likely to occur, "of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial part of the community, of the essentials of life."¹⁹² Should such a state of emergency be declared, the government would have the power to pass regulations to address the emergency.¹⁹³

It was not long before the EPA was put to use. In March 1921, wage reductions for coal miners led to a strike and a national lock-out, which in turn led the 'Triple Alliance' of miners, railway men and other transport workers to call for a national strike. The government responded by declaring a state of emergency and issuing several regulations under that authority. Amongst others, Regulation 16 allowed the Postmaster-General to block

188 *See id.* at 177. The Defence of the Realm Act was also starting to encounter serious legal challenge—albeit not based on its almost complete foreclosure of civil and political rights, but rather due to its limitation of private property rights. Thus, *Chester v. Bateson* [1920] 1 KB 829 (Eng.) found that the use of Regulation 2A to prevent landlords from initiating proceedings to evict munitions workers was too great a power to be bestowed via a regulation alone. For more on the greater protection offered to private property in comparison to civil and political rights by the courts of the period, see Vorspan, *supra* note 62, at 261.

189 Additional legislation aimed at addressing growing communist forces was also considered. In particular, Basil Thomson lamented that no legislation enabled the government to penalize communist advocacy, short of where that advocacy called for violence or armed rebellion. Thomson's recommendation for such legislation was considered at a cabinet meeting later that month; action on the 'Preservation of Public Order Bill,' which would have made sedition a statutory offence and allowed for prosecution by summary proceeding, was only considered in 1921, however, at which point the bill was not brought forward. *See EWING & GEARTY, supra* note 24, at 101–02 (citing *Revolutionaries and the Need for Legislation*, CAB 24/97/46, CP Series 544 (Feb. 2, 1920) (Special Report No. 14)).

190 *See* HC Deb (25 Oct. 1920) (133) cols. 1399–467.

191 Emergency Powers Act 1920, *supra* note 11.

192 *Id.* § 1(1).

193 *Id.* § 2(1). This was limited however by a clause stipulating that no regulation might be passed "mak[ing] it an offence for any person or persons to take part in a strike, or peacefully to persuade any other person or persons to take part in a strike." *Id.* To the extent the regulations imposed criminal penalties, the act authorized trial by courts of summary jurisdiction. *Id.* § 2(3).

certain telegraphic messages; Regulation 18 penalized “injury to property”; Regulation 19 penalized incitement to sedition, mutiny, or to impede the supply and distribution of vital services; Regulation 20 allowed the authorities to ban assemblies, where it was felt they would lead to grave disorder, breach of the peace, or the promotion of disaffection; and Regulation 27 granted expanded powers of search and arrest.¹⁹⁴ The government also called up 80,000 special constables, put in place military installations in strategic locations around the mines, and commenced a large-scale effort to mobilize military volunteers to take over the tasks of the union men should a national strike take place.¹⁹⁵

The unity of the Triple Alliance fell apart in the face of the state’s concerted response, leaving the miners striking alone. While the government thus had no need to engage in large-scale strike-breaking action, it was determined to put its new emergency powers to use. Strikers, strike leaders and Communist Party members were arrested and charged with sedition, and had their homes and offices searched.¹⁹⁶ W.H. Bishop, for example, was charged with having called for the King to be put in the mines “with his shirt off and ma[de to] do the same as the miners, and get corns on his shoulders picking coal,” while James Stewart was charged with having urged the unemployed to call for food and blankets.¹⁹⁷ On May 7, the Communist Party’s offices were raided, and Albert Inkpin, the party’s general secretary, was arrested and charged with having violated DORA Regulation 42 and EPA Regulation 19, on the basis of his possession of various communist materials.¹⁹⁸

Special Branch, together with the intelligence services, had been keeping an eye on communists and union members since before the war; the energy devoted to that surveillance only increased over the course of the 1920s, however. Amongst other techniques, Special Branch sent officers to meetings, paid informants, tapped telephone lines, planted bugs in homes and offices, and intercepted correspondence.¹⁹⁹ Communist Party members were frequently charged with incitement, whether on the basis of

194 See LONDON GAZETTE, Apr. 1, 1921, at 2555 (Issue No. 32275).

195 Despite a 1920 opinion of the Judge Advocate General that the use of the military to carry on vital services in the event of a strike would be unlawful, unless the military itself were affected by the strike. WEINBERGER, *supra* note 98, at 180–02.

196 See EWING & GEARTY, *supra* note 24, at 107–08.

197 *Id.* at 107.

198 See *id.* at 108–09.

199 See *id.* at 112–18.

publications or statements made in meetings.²⁰⁰ The authorities also attempted to limit leftist assemblies, including by imposing financial penalties on the owners of large public spaces who rented those spaces to members of the Communist Party or other leftist agitators, and by refusing to grant permission for communists to hold meetings in public, and prosecuting their organizers when they were held, for instance on charges of obstruction.²⁰¹

After a few years of relative calm, things began to heat up again in 1924. Following publication of an article in *Workers' Weekly* calling on soldiers to side with their class over their national interests, J.R. Campbell, the paper's editor, was arrested and charged under the 1797 Incitement to Mutiny Act.²⁰² In 1925, the new conservative government decided it was time to crack down on the communists. *Pravda* and *Inprecorr*, two Soviet publications, were banned by the government, together with several Russian films.²⁰³ The government then arrested twelve leaders of the Communist Party and charged them with conspiracy to utter and publish seditious libel, conspiracy to seduce soldiers from their duty and to incite them to mutiny, and conspiracy to incite mutiny under the 1797 Mutiny Act, while the Communist Party itself was declared illegal.²⁰⁴

Targeting Britain's small Communist Party, however, did little to stop increasing tensions between labor and the capitalist class. In late 1925, mine owners announced coal miners' wages would be cut. The Miners' Federation opposed the cuts and obtained the support of rail and ship workers for a potential joint strike action.²⁰⁵ The government appointed a Royal Commission to facilitate a compromise and subsidized wages in the meantime. At the same time, they did all they could to make sure they were ready should a general strike break out. The EPA Regulations were amended to better ensure the ability of police constables to be deployed across county lines,²⁰⁶ while the Home Office took measures to enhance the

200 *See id.* at 127–35.

201 *See id.*; *Aldred v. Miller* (1924) SLT 613 (Scot.); *Aldred v. Miller* (1925) JC 21 (Scot.).

202 In full, An Act for the Better Prevention and Punishments of Attempts to Seduce Persons Serving in His Majesty's Forces by Sea or Land from Their Duty and Allegiance to His Majesty, Or to Incite Them to Mutiny or Disobedience, 37 Geo. 3 c. 70 (Eng.) (1797). The charges were ultimately dropped; for more on that affair and its consequences, see EWING & GEARTY, *supra* note 24, at 118–27.

203 *See id.* at 105 n.61.

204 *See id.* at 138–40, 148–49. In the course of the arrests, the police ransacked the offices of the communist party, taking everything they found, material which the government eventually chose to selectively publish in the press in order to advance its case that it had been correct to prosecute the communist party leaders. *See id.*

205 *See id.* at 156.

206 *See* WEINBERGER, *supra* note 98, at 194–45; Anthony Mason, *The Government and the General*

power of the authorities through its powers of interpretation, by issuing a memo outlining all of the different legal authorities under which assemblies might be broken up, and a circular stipulating that pickets might be broken up even in the absence of evidence of intimidation—despite the still applicable 1906 Trade Disputes Act²⁰⁷ suggesting the opposite.²⁰⁸

Ultimately, the Royal Commission declared that wages should indeed be cut, as of May 1, 1926. On April 30, the government once again declared a state of emergency. In a meeting of the Trade Union Congress the following day, attended by close to 1,000 delegates of 137 unions representing 3,600,000 persons, a joint strike was agreed. Following the breakdown of last-minute negotiations between the Trade Union Congress and the government on May 3, the general strike began.²⁰⁹

The government responded to the general strike with a slew of new EPA regulations. In addition to regulations allowing for expanded powers to seize property, to control the food supply, transport, coal production, and public utility output, Regulation 18 allowed the Postmaster-General to prevent the transmission of telegrams; Regulation 22 allowed for the prohibition of meetings that might “conduce to a breach of the peace” or “promote disaffection”; Regulations 26 and 27 gave the Home Secretary greater power to deploy police across county lines; and Regulation 33 allowed for wide powers of search, seizure and arrest.²¹⁰ Regulation 21, meanwhile, emulated DORA Regulation 42 by making it an offence triable by magistrate for any person to attempt or commit

any act calculated or likely to cause mutiny, sedition or disaffection among any of His Majesty’s forces, or among the members of any police force, or any fire brigade, or to cause sedition or disaffection among the civilian population, or to impede, delay or restrict the supply or distribution of food, water, fuel, light or other necessities, or the means of transit or locomotion, or any other service essential to the public safety or the life of the community.

In addition to the new regulations, the government initiated a campaign of attacks on the press. Newspaper premises were frequently raided, and charges brought against editors, publishers and distributors, including for

Strike, 1926, 14 INT’L REV. SOC. HIST. 1 (1969).

²⁰⁷ Trade Disputes Ac 1906, 6 Edw. 7 c. 47 (Dec. 21, 1906).

²⁰⁸ See WEINBERGER, *supra* note 98, at 195–96.

²⁰⁹ See EWING & GEARTY, *supra* note 24, at 157.

²¹⁰ For more, see *id.* at 161–67.

instance against Edward Wilson, a miner, for circulating an edition of the *Northern Light* which alleged police violence during a baton charge.²¹¹ The government also took an active propaganda measure in the form of the issuance of a new newspaper, the *British Gazette*, founded and first distributed on May 5, under the editorship of Winston Churchill.²¹² The Gazette pushed the government line, presenting the strike as a fundamental threat to the British state and British constitutional order, over and against the strike organizers' insistence that the confrontation concerned a trade dispute, and running stories alleging attacks by mobs of strikers on everyday citizens.²¹³

In addition, the government deployed military forces around the country. For the most part this constituted a threat, with the soldiers kept in readiness but not actually put into action. On occasion however the soldiers were called out, as for instance when a prominent display of force was made in the course of reopening the Victoria and Albert Docks. In addition, the government recruited and deployed a new force, the 'Civil Constabulary Reserve,' made up of ex-military men as well as a huge number of special constables—142,000 or so by the strike's end. Some of these new special constables appear to have been fascist sympathizers, and there were allegations of excessive use of force in numerous locations. In Poplar, the police allegedly drove a lorry through a crowd of people and beat those protestors they caught. In GlenCraig, Adwick-le-Street, Wigan and Abercwmboi, baton charges left several seriously injured and led to calls for inquiries.²¹⁴

The Trade Union Congress backed down on May 12th. While the miners continued to strike for much of the rest of the year, they too ultimately acknowledged defeat at the end of November. Even after the general strike ended, the government maintained the state of emergency, and continued to take action under the regulations, banning more than 100 assemblies and charging 8,000 people, with violations of EPA Regulation 21 and other common law violations, between May and November 1926.²¹⁵ The trials

211 For more, see *id.* at 168–70, 186–87, 201–04; EMSLEY, *supra* note 34, at 143. The editor and proprietor of the *Workers' Weekly* were found guilty of libel the following year, due to their accusation that the Durham police had engaged in "police brutality" in the course of cracking down on the strikers. See *id.*

212 The same day, police visited the printers issuing the strikers' paper, the *British Worker*, and held up its printing, before ultimately deciding to allow it to go forward. For more, see EWING & GEARTY, *supra* note 24, at 158–59.

213 For more, see *id.* at 158–59.

214 See *id.* at 173, 189–92. More extensive loss of life seems only to have been avoided because "in each confrontation labour leaders consistently backed down." VOGLER, *supra* note 21, at 151.

215 WEINBERGER, *supra* note 98, at 205; EWING & GEARTY, *supra* note 24, at 174, 187–89, 197–

were generally conducted in front of magistrates—themselves typically conservative party supporters closely connected to the coal-owners—utilizing summary procedures authorized by the EPA regulations, with scant respect for the rights of the accused to know the laws under which they were charged, or to have time to prepare their defenses.²¹⁶ Penalties imposed included large fines, imprisonment with hard labor and, in some cases, expulsion from the country.²¹⁷ The Trade Disputes and Trade Unions Act²¹⁸ was passed in 1927 in an attempt to more firmly disempower labor. The act provided a much broader and vaguer definition of intimidation, and prohibited mass picketing and picketing at workers' homes.²¹⁹

What was the net effect of the post-war period? The mere fact that wartime regulations were maintained into the post-war period was troubling, all the more so given the false premise—the continuation of the war—on which DORA's extension was justified. The almost wholesale reproduction of the DORA framework via the EPA was potentially even more concerning, however, making explicit the possibility for wartime regulations to be applied even where the nature of the 'emergency' was entirely different. As a practical matter, the military was being given an increasingly central role in domestic governance, from the restructuring of the police force to the deployment of troops throughout the country in response to the general strike. From the panoply of legal tools available to the authorities, DORA Regulation 42, 1920 EPA Regulation 19 and 1926 EPA Regulation 21 were particularly noteworthy and heavily relied upon; taken together, they penalized inciting or attempting to cause mutiny, sedition, or disaffection, attempting to induce railway workers not to work, and attempting to impede the supply and distribution of vital services. Together with persisting powers of surveillance, authorization to shut down assemblies and a variety of measures through which to control and influence the press, these measures provided the authorities with powerful tools through which to face down popular organization in support of labor rights on an unprecedented scale.

98. Regulation 20, penalizing damage to property, seems also to have been relied on in part. *See id.* at 174.

216 *See id.* at 192–200.

217 *See id.* at 198, 208–09. The expulsions were conducted under the authority of the 1920 Aliens Order, an amendment to the 1919 Aliens Restriction (Amendment) Act, 9 & 10 Geo. 5 c. 92 (Eng.) (Dec. 23, 1919), which made any act by an alien causing sedition or disaffection amongst the armed forces or the civilian population an offence.

218 Trade Disputes and Trade Unions Act 1927, 17 & 18 Geo. 5 c. 22 (Eng.) (July 29, 1920).

219 *See id.*

V. THE POST-WAR EMPIRE

The First World War years saw an expansion in repressive legality around the British Empire. While Britain was victorious when armistice came on November 11, 1918, victory over the Germans did not mean Britain felt secure in its control over its empire. That very same day Walter Long, Britain's Secretary of State for the Colonies, sent a letter to colonial governors, instructing them on how they should deal with unrest. As Thomas has observed, "The Minister's principal concern was not that colonial administrations would respond with too much violence but, rather, that they would dither, and apply too little, too late"—or, as the Minister put it,

It is, I am sure, unnecessary that I should urge caution in having recourse to the use of military force for the maintenance of civil order or urge forbearance in dealing with riotous crowds by those in command of the forces so employed. The natural reluctance of responsible persons to employ weapons of precision against civilians may be relied upon to delay the adoption of military methods of repression until the need is urgent. I believe it is rather in the opposite direction that a Governor may be inclined on occasion to err. I therefore think it desirable to remind you that hesitation in invoking military aid when the need for it is apparent, or in making due use of it when obtained, may in the end lead to greater loss of life than would otherwise have occurred.²²⁰

The letter was accompanied by suggested guidance on the use of force.²²¹ In accordance with Long's statement, the guidelines called for the prompt use of lethal force on the grounds that this would minimize suffering—the argument of the authorities being that “delaying the order to fire or shooting ineffectually either over protesters' heads or at their legs” would “antagoniz[e] demonstrators without terrorizing them . . . risk[ing] greater loss of life at a later stage.”²²² Around the imperial world, the following years would see this advice given brutal effect.

220 MARTIN THOMAS, *VIOLENCE AND COLONIAL ORDER: POLICE, WORKERS AND PROTEST IN THE EUROPEAN COLONIAL EMPIRES, 1918–1940*, at 64 (2012) (citing a Nov. 11, 1918, letter from Walter Long, the Secretary of State for the Colonies, to the Colonial Governors).

221 These suggestions were themselves heavily influenced by the inquiry conducted into 1915 unrest and clashes in Ceylon. See THOMAS, *supra* note 221, at 72, 76

222 *Id.* at 76.

A. Ireland

In December 1918 Sinn Féin swept the elections, and on January 21, 1919, when they stepped into office, they issued a unilateral declaration of independence.²²³ The same day, the Irish Republican Army ('IRA') carried out a lethal attack on Royal Irish Constabulary ('RIC') forces in Tipperary.²²⁴ Forty-seven more attacks on the authorities came in the following months, leading to seven deaths. By the summer, close to 60,000 security force personnel were deployed across the country.²²⁵ Under the authority of the 1887 Balfour Crimes Act,²²⁶ a regional ban on Sinn Féin, together with four other 'dangerous' organizations, was issued in late June, and gradually expanded to other areas over the following months, with a total ban implemented on November 25.²²⁷ Given that the general population remained unwilling to serve as witnesses or, should they be placed on juries, to convict, the government chose to pursue detention without trial, interning hundreds on charges of membership of proscribed organizations.²²⁸ In addition, numerous newspapers were censored and assemblies banned.²²⁹

In December 1919, an assassination attempt on the Lord Lieutenant was almost successful. In response, the military utilized its DORA Regulation 14B powers of search, arrest and internment to conduct 2,000 detentions in January 1920 alone.²³⁰ The government attempted to project the sense it was in control by refusing to declare martial law, with Lloyd George emphatically declaring "you do not declare war on rebels."²³¹ This was purely a symbolic refusal, however—martial law formally in effect or not, Ireland was subject to multiple overlapping emergency law regimes, while

223 See *The Declaration of Irish Independence: Official English Translation*, UNIV. KAN., <https://exhibits.lib.ku.edu/items/show/6918> (last visited Feb. 10, 2021).

224 See Charles Townshend, *Policing Insurgency in Ireland, 1914–23*, in *POLICING AND DECOLONISATION: POLITICS, NATIONALISM AND THE POLICE, 1917–65*, at 22, 31 (David M. Anderson & David Killingray eds., 1992) [hereinafter Townshend, *Policing Insurgency in Ireland*].

225 See *id.*

226 Criminal Law and Procedure (Ireland) Act 1887, 50 & 51 Vict. c. 20 (Eng.).

227 See EWING & GEARTY, *supra* note 24, at 352.

228 See *id.* at 352–53.

229 See *id.* at 353.

230 See *id.* at 354. These detentions were challenged in court, on the basis that DORA should have expired with the end of the war. The King's Bench rejected that claim outright, however, stipulating that in their eyes it was up to the executive to determine when the war was officially over. *R v. Governor of Wormwood Scrubs Prison* [1920] 2 KB 305 (Eng.). For more, see EWING & GEARTY, *supra* note 24, at 353–57.

231 See TOWNSHEND, *BRITAIN'S CIVIL WARS*, *supra* note 111, at 57.

public order was being imposed by a force closer to a military than a civilian police.²³² The military nature of Ireland's police was only enhanced by the creation of the RIC Auxiliary Division, a new, specialist counterinsurgency force, shortly thereafter.²³³ Unable to identify their armed opposition, the RIC Auxiliaries soon resorted to reprisal attacks against the civilian population.²³⁴

In late August, the government rushed through the Restoration of Order in Ireland Act,²³⁵ an act closely modelled on DORA.²³⁶ The law further empowered resident magistrates, gave the government expanded powers of search, arrest and detention without trial, and directed more serious criminal cases to military courts.²³⁷ In the months that followed, retaliation following IRA operations became de facto policy.²³⁸ On September 20th, after a head constable was killed in Balbriggan, policemen broke into, looted and burned four public houses, damaged dozens of others, and killed two alleged Sinn Féin members.²³⁹ The next day, following allegations of the mutilation of police corpses, twenty-six buildings were destroyed and four people killed.²⁴⁰ On November 21, 1920, fourteen British officers, including several undercover intelligence officers, were killed in a coordinated series of nationalist attacks. In response, the security forces shot indiscriminately into the crowd at Dublin's Croke Park, killing fourteen civilians on Ireland's first 'Bloody Sunday.'²⁴¹ Shortly thereafter, sixteen auxiliaries were killed in an ambush, on November 28; in response, hundreds of suspected nationalist sympathizers were arrested, and large portions of Cork set on fire

232 See Townshend, *Policing Insurgency in Ireland*, *supra* note 225, at 31–32. The military nature of the force was enhanced by the appointment of Major-General Hugh Tudor, an ex-military officer, as its Lieutenant General in May 1920. With him, Tudor brought new commanders who were almost to a man “disbanded military officers who carried the life and death attitude of the fighting man of the 1914–19 war into the day-to-day relations of the police with the civil population.” *Id.* at 33 (citing G.C. Duggan, *The Royal Irish Constabulary: Forgotten Force in a Troubled Land*, in 1916: THE EASTER RISING 93 (Owen Dudley Edwards & Fergus Pyle eds., 1968)).

233 Despite being specially designed for the counterinsurgency task, the auxiliaries received little training and were far from an effective or disciplined force—as Townshend notes, in response to being “plunged into the boredom of rainswept rural Ireland, and frustrated by the harassing operations of a near-invisible opponent . . . many of them took refuge in drink.” TOWNSHEND, *BRITAIN'S CIVIL WARS*, *supra* note 111, at 58; *see also* Townshend, *Policing Insurgency in Ireland*, *supra* note 225, at 34.

234 See TOWNSHEND, *BRITAIN'S CIVIL WARS*, *supra* note 111, at 58.

235 Restoration of Order in Ireland Act 1920, 10 & 11 Geo. 5 c. 31 (Eng.).

236 See Townshend, *Policing Insurgency in Ireland*, *supra* note 225, at 34.

237 See EWING & GEARTY, *supra* note 24, at 358.

238 For more, see Townshend, *Policing Insurgency in Ireland*, *supra* note 225, at 35.

239 See EWING & GEARTY, *supra* note 24, at 359.

240 The following day, the government ceased providing public information concerning such incidents. Several similar incidents occurred in the following months, however. *See id.*

241 For more on the events of that day, see generally MICHAEL FOLEY, *THE BLOODIED FIELD: THE CROKE PARK KILLINGS ON BLOODY SUNDAY* (2015).

by auxiliary officers.²⁴² The authorities also took action against the press, prosecuting and imprisoning owners and editors of *Freeman's Journal*, one of Ireland's leading nationalist papers, on charges of publishing 'false reports.'²⁴³

Martial law was declared on December 1, at first in four, then in eight counties.²⁴⁴ On December 12, Sir Nevil Macready, Commander-in-Chief of Britain's armed forces, issued a proclamation making the unauthorized possession of arms, as well as harboring or assisting rebels, capital offenses.²⁴⁵ On December 23, the Government of Ireland Act was passed,²⁴⁶ partitioning Ireland between the north and the south, both of which were intended to have a degree of self-governing powers, under the greater authority of the United Kingdom. In May 1921 Sinn Féin swept the elections held in Southern Ireland. Sinn Féin declared an independent parliament; in response, the new legislature was suspended. On July 11, a truce between the British forces and the IRA was agreed.²⁴⁷ On December 6, the Anglo-Irish Treaty was agreed,²⁴⁸ officially recognizing Ireland, with the exception of the North, as a self-governing dominion.

While the Republic of Ireland thereafter embarked on its own path, British emergency governance in Ireland was not yet at an end, as Northern Ireland remained part of the United Kingdom. In 1922 Northern Ireland was the site in which another exemplary instance of emergency legality was brought into effect, moreover, in the form of the Civil Authorities (Special Powers) Act.²⁴⁹ The act began with a general grant of plenary authority to the Home Minister "in respect of persons, matters and things within the jurisdiction of the Government of Northern Ireland, to take all such steps

242 See EWING & GEARTY, *supra* note 24, at 360.

243 See HC Deb (7 Dec. 1920) (135) cols. 2016–23.

244 The declaration of martial law was challenged in *Egan v. Macready* [1921] 1 IR 265 (Ir.), where Judge O'Connor ruled that the ability of the authorities to declare martial law had been abridged by passage of the Restoration of Order in Ireland Act, and that hence subsequent martial law declarations were illegitimate. See EWING & GEARTY, *supra* note 24, at 363–67. Given that the Restoration of Order in Ireland Act was itself unchallenged, however, this was largely a symbolic victory.

245 "Irishmen!" the proclamation began, "understand this: Great Britain has no quarrel with Irishmen; her sole quarrel is with crime, outrage and disorder; her sole object in declaring Martial Law is to restore peace to a distracted and unhappy country." *Id.* at 361.

246 Government of Ireland Act 1920, 10 & 11 Geo. 5 c. 67 (Eng.) (Dec. 23, 1920).

247 For more on the Irish war of independence, see generally MICHAEL HOPKINSON, *THE IRISH WAR OF INDEPENDENCE* (2002), PETER COTTRELL, *THE ANGLO-IRISH WAR: THE TROUBLES OF 1913–1922* (2006), and JOHN GIBNEY, *THE IRISH WAR OF INDEPENDENCE AND CIVIL WAR* (2020).

248 Articles of Agreement for a Treaty Between Great Britain and Ireland as Signed in London, Gr. Brit.-Ir., Dec. 6, 1921, DOCUMENTS ON IRISH FOREIGN POLICY VOL. I: 1919–1922 (1988).

249 Civil Authorities (Special Powers) Act, *supra* note 13.

and issue all such orders as may be necessary for preserving the peace and maintaining order, according to and in the execution of this Act and [its] regulations.”²⁵⁰ Thirty-five regulations were attached in a schedule to the act. Among other things, the regulations granted the government power to control assemblies and the circulation of the population,²⁵¹ to punish those deemed to be spreading ‘false statements’ or ‘disaffection,’²⁵² and to both demand and censor information.²⁵³ The regulations also granted the security widespread power to conduct searches, seizures and arrests.²⁵⁴ In the following months, additional restrictive regulations were introduced. These included Regulation 23A, allowing the authorities to restrict individuals’ movements and to require them to report to the police; Regulation 23B, allowing for internment; and Regulation 24A, making membership in the Irish Republic Brotherhood, the IRA, the Irish Volunteers, the Cumann na mBan and Fianna na h’Éireann an offence.²⁵⁵ In short, British governance over Northern Ireland provided another site in which the repressive DORA model was replicated.

250 *Id.* § 1(1). In addition, the Home Minister was endowed with the power to make or amend regulations under the act. *See id.* § 1(3). Other provisions allowed for summary trials, for an additional punishment of whipping to be imposed relative to a particular set of crimes, and allowed the death penalty to be imposed for certain violations of the 1883 Explosive Substances Act. *See id.* §§ 3, 5, 6.

251 Particularly significant were Regulation 1, allowing for curfews, Regulations 3 and 4, allowing for assemblies to be banned and for banned assemblies to be dispersed by “such steps as may be necessary,” and Regulation 19, allowing the police to attend any meeting where it was deemed “an offense against these regulations may be committed.” *See id.*

252 Particularly significant were Regulation 16, penalizing “attempt[ing] or do[ing] any act calculated or likely to cause mutiny, sedition, or disaffection in any police force or among the civilian population, or to impede delay or restrict any work necessary for the preservation of the peace or maintenance of order” and Regulation 25, penalizing the spreading of false reports and false statements. *See id.*

253 Particularly significant were Regulations 17 and 22, allowing the authorities to demand information, and penalizing withholding it, Regulation 26, allowing for censorship, and Regulation 27, penalizing the disclosure of confidential information. *See id.*

254 Particularly significant were Regulations 18 and 21, allowing for expanded search powers, and Regulation 23, allowing for warrantless arrest and prolonged detention. *See id.*

255 *See* EWING & GEARTY, *supra* note 24, at 375–85. The regulations were frequently put into use. On May 25, Regulation 1 was relied upon to impose a night-time curfew over all of Northern Ireland, excepting Belfast. Regulation 23A was also extensively used, including to restrict several MPs from entering their own constituencies, while 728 men had been interned under the authority of Regulation 23B by December 24, 1924. Regulation 26, meanwhile, was used to ban the IRA newspaper, *An Phoblacht*, as well as the *Nation*. Mail, meanwhile, was subjected to surveillance and screening under Section 56(2) of the 1908 Post Office Act. *See id.*

B. India

The post-war period saw increasing unrest in India as well. In 1918 police fired repeatedly into crowds in Calcutta, killing more than 40. While the government justified the force used as necessary, Bangiya Jana Sabha, a Bengali nationalist organization, held its own investigation. The Indian report observed “that the government report made no attempt ‘to elucidate publicly the circumstances in which the Police and the Military opened fire,’” that the firing was “unnecessary and unjustifiable” and involved “‘wild and reckless’ assaults on innocent bystanders” and that “the number of casualties was ‘appalling large,’ much larger than the government’s figures.”²⁵⁶

The Defence of India Act was set to expire six months after the end of the war. Just as the British government was nervous when DORA was about to expire, so too was the Indian government in the face of the expiry of their own emergency legislation. As Lord Ronaldshay put it upon assuming the governorship of Bengal in 1917, “sedition in Bengal began long before the war and . . . it will not end with the return of peace. It has to some extent been checked by the special measures adopted during the war, but if the Government is no longer able to rely on such special measures . . . there can be little doubt that outrages again become frequent.”²⁵⁷ At the end of the war there was an even more immediate problem, as the end of DOIA would require the government to release all those detained under its authority.²⁵⁸ The government therefore decided to established a committee, known as the ‘Sedition Committee,’ chaired by Sidney Rowlatt, which was given a mandate to assess “criminal conspiracies connected with the revolutionary movement in India” and to “advise as to the legislation, if any, necessary to enable Government to deal effectively with them.”²⁵⁹ As the committee’s mandate suggests, its findings were essentially preordained.²⁶⁰ The report

²⁵⁶ Mark Doyle, *Massacre by the Book: Amritsar and the Rules of Public-Order Policing in Britain and India*, 4 *BRITAIN & WORLD* 247, 264 (2011).

²⁵⁷ Joseph McQuade, *Terrorism, Law, and Sovereignty in India and the League of Nations, 1897–1945*, at 86–87 (May 9, 2017) (Ph.D. dissertation, University of Cambridge) (citing a Dec. 12, 1917, speech from Lord Ronaldshay to the Legislative Council).

²⁵⁸ See *id.* at 87–88.

²⁵⁹ WAGNER, *supra* note 16, at 11–17, 43 (citing SEDITION COMMITTEE, 1918: REPORT iii (1918)); see also PETER G. ROBB, *THE GOVERNMENT OF INDIA AND REFORM: POLICIES TOWARDS POLITICS AND THE CONSTITUTION, 1916–1921*, at 101, 149–53 (1976).

²⁶⁰ The purpose of the committee, in fact, was largely simply to attempt to sell the need to maintain a repressive legal system to the Indian population, for which purpose the committee’s report was even translated into the vernacular in order to render it more accessible. See McQuade, *supra* note 258, at 88–91.

did indeed find an insurrection was growing, which it alternately referred to as a ‘poison’ or a ‘virus,’ spreading through contagion,²⁶¹ and duly recommended the adoption of a new law extending many of the DOIA powers in response.²⁶² The committee’s recommendation was promptly followed through passage of the Rowlatt Act, also known as the Anarchical and Revolutionary Crimes Act,²⁶³ which was brought into effect on March 18, 1919. The Act allowed the Governor-General in Council to issue a declaration bringing the act’s other terms into effect when he found “that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to provide for the speedy trial of such offences.”²⁶⁴ Where such a declaration was issued, the act provided for the establishment of special courts in which accelerated procedures might be used, in which a lessened standard of evidence would apply, and which might operate without a jury and *in camera*;²⁶⁵ in addition, the act provided for search and arrest without warrant, detention without trial, and strict controls over the movements and activities of suspect persons.²⁶⁶

The Rowlatt Act sparked extensive protests, including Gandhi’s ‘Rowlatt Satyagraha,’ a pledge to resist the Rowlatt Act with all means short of violence.²⁶⁷ Amongst what would prove the most momentous oppositional marches were those that took place in Amritsar, initially in January, in awareness of the act’s preparation, and with growing strength in February and March.²⁶⁸ Despite the peaceful nature of the Amritsar protests, the authorities began to convince themselves a nefarious plot was afoot, perhaps involving German, Bolshevik, or even Egyptian influences.²⁶⁹ On the morning of April 10, the authorities arrested and deported local leaders Kitchlew and Satyapal, on the theory this would end the unrest. The effect

261 See WAGNER, *supra* note 16, at 43.

262 As Townshend puts it: “Starting from the dramatic assertion that before the war ‘the forces of law and order working through the ordinary channels were beaten,’ [the committee] concluded that the powers furnished by the Defence of India Act must be kept in perpetuity.” TOWNSHEND, *BRITAIN’S CIVIL WARS*, *supra* note 111, at 132.

263 Anarchical and Revolutionary Crimes Act (1919) (India) [hereinafter Rowlatt Act] (Act No. 11). Echoing an older British tradition, the act was also known as the ‘Black Act.’ See H.N. MITTRA, *PUNJAB UNREST: BEFORE & AFTER 50* (1921).

264 Rowlatt Act, *supra* note 264, §§ 3, 21, 33.

265 See *id.* §§ 3–20.

266 See *id.* §§ 22, 34–38.

267 See WAGNER, *supra* note 16, at 54–56.

268 See *id.* at 50. As Wagner points out, resistance was only partly to the act itself, which came to serve as a symbol of a broader set of frustrations. See *id.* at 50–53.

269 See *id.* at 68–71, 210.

was the opposite: tens of thousands took to the streets, leading to numerous clashes in which the crowd killed several Europeans, and British soldiers used lethal force on several occasions, leaving more than a dozen dead.²⁷⁰ The next day, General Dyer arrived with reinforcements.²⁷¹ Dyer, seemingly operating on the theory that martial law was applicable—though it had yet to be officially declared—led out the troops to make arrests on the twelfth.²⁷² On the morning of the thirteenth, Dyer issued two proclamations, forbidding movement in or out of the city without written passes, imposing a curfew, stipulating that “any . . . processions or gatherings of four men will be looked upon and treated as an unlawful assembly and dispersed by force of arms, if necessary,” and warning the inhabitants of the town they would be punished, under military law, for any damage to property or acts of violence.²⁷³ On the afternoon of April 13 a large crowd gathered in the Jallianwala Bagh, in defiance or ignorance of Dyer’s prohibition. Hearing of the gathering, Dyer marched soldiers to the square and, without warning, ordered his men to fire.²⁷⁴ Hundreds were killed,²⁷⁵ and an unknown number wounded.²⁷⁶ On April 15 martial law was officially declared, granting the authorities enhanced powers of search and arrest, and 553 individuals were taken into custody in the following days.²⁷⁷ Shortly thereafter, the government began bringing those they accused of crimes before martial law

²⁷⁰ See *id.* at 74–119.

²⁷¹ Dyer was a British officer with a record of serving in Burma, the North-West Frontier, and Baluchistan, in all of which he and the soldiers he accompanied and commanded had deployed the time-honored tactic of exacting exemplary and collective punishment in the form of summary executions, public floggings, and the burning of villages. See *id.* at 33–43, 130; Kim A. Wagner, *Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency*, 1 HIST. WORKSHOP J. 85 (2018). In the North-West Frontier Province in particular, the authorities frequently imposed collective fines, enforced through blockades aimed at starvation when the fines were not paid; employed a strategy known as ‘butcher and bolt,’ i.e., committing lightning strike massacres before retreating from the area; and utilized local hostages as human shields by forcing them to walk in front of raiding parties to flush out land mines. See LALEH KHALILI, *TIME IN THE SHADOWS: CONFINEMENT IN COUNTERINSURGENCIES* 20 (2013).

²⁷² See WAGNER, *supra* note 16, at 132–33, 136. As Townshend puts it, while martial law was not officially declared, “the Deputy Commissioner had handed over authority to Dyer on his arrival by a document stating that ‘the troops have orders to restore order in Amritsar and to use all force necessary.’” TOWNSHEND, *BRITAIN’S CIVIL WARS*, *supra* note 111, at 137 (citing IAN COLVIN, *THE LIFE OF GENERAL DYER* 165 (1929)).

²⁷³ See *id.*; WAGNER, *supra* note 16, at 144–45.

²⁷⁴ See *id.* at 153–70.

²⁷⁵ For an assessment of the numbers, see *id.* at 219–20.

²⁷⁶ Those wounded were largely unable to get treatment, moreover, both because of the curfew brought into effect that evening, and because Dyer’s men had been arresting those found wounded at the hospitals. See *id.* at 180–81.

²⁷⁷ While in custody, many of the detainees were beaten and sexually abused, while others were publicly or semi-privately flogged. See *id.* at 197–98.

tribunals.²⁷⁸

Amritsar was not the only site of massacre in the period: on April 14 an aircraft was used to bomb a crowd in Gujranwala, and a similar approach was deployed in Kasur.²⁷⁹ Press censorship and restrictions on travel were applied more broadly to ensure, to the extent possible, that news would not get in or out of the Punjab. When news of events was reported in the *Bombay Chronicle* in late April, the government immediately deported its editor from India.²⁸⁰

In the aftermath of the violence Montagu ordered that an inquiry be established.²⁸¹ Indian nationalists, skeptical of what the government would conclude, undertook their own inquiry, which quickly uncovered evidence pointing to the extent of the death toll, and of the excessive and unwarranted nature of the force deployed.²⁸² For good measure, before the government inquiry got off the ground, the government pushed through an Indemnity Bill for all measures taken in the course of the martial law period.²⁸³ When Dyer was called before the official committee, he was unapologetic, emphasizing the deliberateness of his attack.²⁸⁴ The Committee released its official findings in March, which were sharply critical of Dyer, though no official sanction was suggested.²⁸⁵

In the medium term, the Amritsar massacre led the authorities to reverse

278 *See id.* at 199, 203–05.

279 *See* TOWNSHEND, *BRITAIN'S CIVIL WARS*, *supra* note 111, at 139; WAGNER, *supra* note 16, at 182.

280 *See id.* at 212–13.

281 *See* ROBB, *supra* note 260, at 193–96.

282 *See* WAGNER, *supra* note 16, at 199, 214–18. This nationalist investigation was monitored all the while by the CID. *See id.*

283 *See id.* at 218.

284 *See id.* at 225–58. As Townshend puts it, before the committee of inquiry convened to look into the incident, Dyer “declar[ed] bluntly that he had deliberately decided to produce an unforgettable moral effect. He had not warned the crowd to disperse because his proclamations had already given ample warning. ‘If I had fired a little,’ he said, ‘I should have been wrong in firing at all,’ and he added that if he had been able to get the armoured cars through the narrow entrance to the Bagh he would have used their machine guns too.” TOWNSHEND, *BRITAIN'S CIVIL WARS*, *supra* note 111, at 138. On another occasion, he observed that the firing was not “a question of merely dispersing the crowd, but one of producing a sufficient moral effect, from a military point of view, not only on those who were present but more specially throughout the Punjab. There could be no question of undue severity.” THOMAS R. METCALF, *IDEOLOGIES OF THE RAJ* 228 (1995).

285 *See* WAGNER, *supra* note 16, at 233–35. Dyer was shortly thereafter forced to resign and leave India, however. *See id.* at 235–36. At the 1920 Labour Party conference in Scarborough, meanwhile, Dyer was condemned, on top of which party members observed “General Dyer’s more thorough supporters by no means intend to stop at India. . . . After India, Ireland. After Ireland, British workmen on strike.” ANDREW THOMPSON, *THE EMPIRE STRIKES BACK? THE IMPACT OF IMPERIALISM ON BRITAIN FROM THE MID-NINETEENTH CENTURY* 137 (2005) (citing *Unionist Revolt*, *MANCHESTER GUARDIAN*, July 9, 1920).

the postwar emphasis on maximal use of force, in favor of a more measured approach.²⁸⁶ The government also took a reformist turn more broadly, through passage of the Government of India Act,²⁸⁷ which devolved some powers to the provinces, in which new legislative bodies were established, made up of representatives of the slim portion of the Indian male population allowed to vote.²⁸⁸ In 1922, moreover, the ‘Repressive Laws Committee’ was formed, the recommendations of which would ultimately lead to repeal of the Rowlatt Act, the Press Act, and other problematic laws.²⁸⁹

The wartime Indian passport regime was rendered permanent by the 1920 Indian Passport Act.²⁹⁰ For the Indian government, the aim was both to prevent ‘undesirable’ Indians leaving, and to prevent ‘undesirable’ persons entering. The government was particularly keen to prevent “persons convicted of grave offences, of a nature that would make them undesirable citizens, pimps, prostitutes, etc. and persons likely to cause disorder or foment sedition by reason of their revolutionary political views, e.g.—Bolshevists, Sinn Feiners, members of I.W.W. or the revolutionary party in Egypt”—from entering the country.²⁹¹

Despite these reformist measures, the government was still prepared to take firm action in response to unrest. Large-scale resistance broke out among the Mappillas in Malabar in 1921, overwhelming the capacities of the local authorities. The governor of Madras wrote to Delhi for authorization to apply martial law.²⁹² While Delhi acceded to the request, they insisted on a limited approach, one in which the military might make

286 Gyanesh Kudaisya, ‘*In Aid of Civil Power*’: *The Colonial Army in Northern India, c.1919–42*, 32 J. IMPERIAL & COMMONWEALTH HIST. 41, 61 (2004); David Arnold, *The Armed Police and Colonial Rule in South India, 1914–1947*, 11 MOD. ASIAN STUD. 101, 105 (1977).

287 Government of India Act 1919, 9 & 10 Geo. 5 c. 101 (Eng.). Amongst other things, the act authorized the issuing of ordinances “in cases of emergency . . . for the peace and good government of British India.” *Id.* §§ 4, 10–11, 25.

288 See ROBB, *supra* note 260, at 80–81.

289 In 1926 the Workman’s Breach of Contract Act, with its criminal labor penalties, was also repealed. Demonstrating the space between law on the books and law in practice, however, employers continued to threaten workers with criminal penalties and continued to bring complaints against workers to magistrates, who in turn continued to issue penal sanctions. See Michael Anderson, *India, 1858–1930: The Illusion of Free Labor*, in MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN & THE EMPIRE, *supra* note 173, at 422, 448.

290 The Passport (Entry Into India) Act (Sept. 9, 1920) (India) (Act No. 34 of 1920).

291 See Singha, *supra* note 133, at 309. As Singha notes, there were worries at the same time that passports were no longer merely a privilege for loyal citizens, but rather something that might be issued to all persons; the concerns here were balanced by requiring passports for entry into India, but not for exit. See *id.*

292 Moplah Riots, CAB 24/127/67, CP Series 3265 (Aug. 26, 1921) (including an Aug. 24, 1921, telegram from the Viceroy regarding the Moplah riots).

regulations, and conduct arrests where those regulations were breached, but in which those offences should not be considered by martial law tribunals but rather by special courts established to address such issues.²⁹³ The governor of Madras was not pleased by this restricted grant of emergency powers, however, and by October he had his way. A new ordinance was issued authorizing “‘systematic military measures with adequate forces’ and the use of military courts.”²⁹⁴ By the end of February 1922, the uprising was largely suppressed, thanks in part to the creation of a new paramilitary unit, the Malabar Special Police Force;²⁹⁵ elsewhere around the country too, the police were gradually strengthened.²⁹⁶ The authorities also remained vigilant relative to those they perceived to be employing illegitimate tactics of resistance, who they diligently prosecuted where possible. Thus for example in 1924 leading Indian communists were tried and sentenced to imprisonment, foreshadowing a similar trial in Britain the following year.²⁹⁷

C. Egypt

Shortly after the end of the war, Sa’ad Zaghloul and the Wafd Party made a request to Wingate that they be allowed to attend the Versailles negotiations, and that the protectorate status of Egypt be ended. The British refused. Despite Wingate’s attempts to suppress the nationalists, popular support for Zaghloul and the Wafd grew.²⁹⁸ On March 8, 1919, the British arrested Zaghloul and exiled him to Malta. The arrest led to mass protests, in the course of which rail lines and telegraph wires were targeted around the country.²⁹⁹ In response, Britain utilized the state of martial law still in effect to deploy troops throughout the country, with the Foreign Office explicitly accepting the necessity of an approach involving “considerable bloodshed” and “great sacrifice of human life.”³⁰⁰ The army deployed a

293 See TOWNSHEND, *BRITAIN’S CIVIL WARS*, *supra* note 111, at 144.

294 *Id.*

295 The force was not dissimilar from the Auxiliary Division previously created within the RIC. *See id.*

296 See David Killingray & David M. Anderson, *An Orderly Retreat? Policing the End of Empire*, in *POLICING AND DECOLONISATION*, *supra* note 225, at 1, 10.

297 See BRÜCKENHAUS, *supra* note 123, at 137. For more on British suppression of communism in post-war India, see POPPLEWELL, *supra* note 118, at 306–17.

298 See P.J. VATIKIOTIS, *THE HISTORY OF MODERN EGYPT: FROM MUHAMMAD ALI TO MUBARAK* (4th ed. 1991).

299 See BADRAWI, *supra* note 144, at 137–38; THOMAS, *EMPIRES OF INTELLIGENCE*, *supra* note 142, at 109–10; James E. Kitchen, *Violence in Defence of Empire: The British Army and the 1919 Egyptian Revolution*, 13 *J. MOD. EUR. HIST.* 249, 252–53 (2015).

300 See Kitchen, *supra* note 300, at 256 (citing Egyptian Nationalist Movement Immediately After the 1918 Armistice, FO 141/773/10 (1918/1919)).

strategy of collective punishment, retaliating against entire villages;³⁰¹ hundreds were killed and over a thousand wounded over the following month and a half.³⁰²

The protests were effective in pressuring the British to allow Zaghoul to lead a delegation to the peace conference in France.³⁰³ The British subjected the Egyptian delegation to intensive surveillance while they were in France, however, and made sure to respond to every publication the delegation issued, which typically highlighted the brutality of British rule, with their own counter-propaganda.³⁰⁴ Meanwhile, back in Egypt, following a string of attacks on British subjects, the Department of Public Security “establish[ed] a comprehensive intelligence organization to collect information on the political situation, to investigate cases of political crime, and to discover the individuals, or societies, responsible for these crimes, or for the disturbance of public order in the country.”³⁰⁵

The intensity of the resistance led the British to establish a commission of inquiry, headed by Alfred Milner, in 1920. Zaghoul was invited to England to meet with the Commission in June 1920. While there the British offered Zaghoul Egyptian independence, but insisted that British troops remain stationed in Egypt; Zaghoul refused, pushing for more concessions, and the talks broke down.³⁰⁶ When Zaghoul refused to participate in the next round of talks, the British had him expelled once again, sending him first to Aden, then to the Seychelles, and finally to Gibraltar.³⁰⁷ The following years were marked by ongoing protests and instability in Egypt.³⁰⁸ The Commission ultimately concluded that the protectorate status of Egypt

301 There was in fact an explicit general warning laying out the fact that collective punishment would be deployed. *See id.* (citing Miscellaneous Documents, Booklets and Memoranda on Various Subjects Submitted to Mission While in Egypt, FO 848/10 (1919/1920) (including EEF Historical Summary at 39, 50, 65, and 68)); *see also id.* at 261–62; Nathan Brown, *Brigands and State Building: The Invention of Banditry in Modern Egypt*, 32 COMPAR. STUD. SOC’Y & HIST. 258, 279 (1990).

302 *See* Simeon Shoul, *Soldiers, Riots and Aid to the Civil Power in India, Egypt and Palestine, 1919–1939*, at 71 (2006) (Doctoral Thesis, King’s College London).

303 *See* BADRAWI, *supra* note 144, at 137–39.

304 *See* BRÜCKENHAUS, *supra* note 123, at 109–13.

305 BADRAWI, *supra* note 144, at 140–44 (citing a Feb. 17, 1920, confidential memorandum by G. Clayton, Adviser for the Interior, on the establishment in Egypt of a comprehensive intelligence organization).

306 Back in Egypt, meanwhile, a questionable mass martial law trial was prosecuted against twenty-nine persons, including ‘Abd al-Rahman Fahmi, Secretary of the Wafd’s Central Committee, on allegations that they were members of an organization known as the ‘Vengeance Society,’ which aimed to “overthrow the government and the Sultan, disseminate sedition, incite to murder, distribute arms, and assassinate the Sultan, his ministers and others.” BADRAWI, *supra* note 144, at 151–60.

307 *See id.* at 178–79, 184.

308 *See id.* at 173–90.

was unsustainable and on February 22, 1922, the British government declared Egypt independent—albeit a limited independence, as the British insisted on maintaining control over the defense of Egypt, the security of British imperial communications, Egypt’s foreign policy interests, and Sudan.³⁰⁹ On April 19, 1923, a new constitution was promulgated. The state of martial law, that had been in existence since 1914, was finally brought to an end in July 1923, though its potential return was enabled by the new constitution’s inclusion of a clause allowing for the declaration of martial law during emergencies.³¹⁰ Zaghloul was allowed to return in September and in January 1924 he became Egypt’s first popularly elected Prime Minister.

D. The Rest of the Empire

Elsewhere around the empire, the postwar years were similarly marked by the extension of repressive legality. Emergency law was deployed on several occasions. Between 1920 and 1922 around 42 strikes took place in Hong Kong; the largest was a massive seamen’s strike in 1922.³¹¹ When the strike was at its height, the government responded with an Emergency Regulations Ordinance.³¹² The ordinance allowed for the powers of the 1916 Order in Council, discussed above, to be instituted, together with whatever other power the Governor might deem “in the public interest” in the face of “an occasion of emergency or public danger.”³¹³ An even larger strike took

309 *See id.* at 180.

310 *See id.* at 184; Brown, *Law and Imperialism*, *supra* note 142, at 111. The manner in which martial law was deployed in Egypt was praised in law journals at the time. *See* M.S. Amos, *Martial Law in Egypt, 1914–1923*, 41 L.Q. REV. 263, 267 (1925).

311 *See* TSANG, *supra* note 150, at 88–89.

312 H.K. GOV’T GAZETTE, Feb. 28, 1922, at 82–83 (Vol. 68, Issue No. 11) [hereinafter *Emergency Regulations Ordinance, 1922*]. The operation of the 1896 Order in Council was only suspended on July 20, 1922, after the *Emergency Regulations Ordinance* was brought into effect. *See* Miners, *supra* note 144, at 51. The 1922 ordinance was not the Hong Kong government’s first attempt at such a law; already in 1844, the Legislative Council passed an ordinance (Ordinance No. 20) which allowed the Governor, with the advice of the Executive Council, to issue a proclamation placing Hong Kong under martial law in case of emergency. The Colonial Office objected, however, considering that while the executive always had power to declare martial law in an emergency, the issuance of a law to such an effect was a step too far. *See id.* at 47. In 1856 the Legislative Council passed a ‘Peace Preservation Ordinance’ (Ordinance No. 2 of 1857), which allowed for extended powers of entry, search, arrest and deportation, authorized lethal force against Chinese nationals suspecting of pursuing unlawful purposes abroad at night, and immunized actions under the ordinance from court challenge. Once again, however, the Colonial Office objected. A milder Peace Preservation Ordinance in 1884 that expired six months after its passage provoked no such objections, and Governor Bowen was able to convince the Colonial Office that a more permanent measure should be put in place, which subsequently took the form of the Peace Preservation Ordinance of 1886 (Ordinance No. 15 of 1886). The ordinance gave the authorities enhanced power to disperse assemblies, and penalized boycotts. *See id.* at 47–50.

313 *Emergency Regulations Ordinance, supra* note 313, § 2(1). Regulations putting the ordinance

place in 1925, involving at its height 250,000 workers (or approximately 34% of the city's population). The strikers demanded political freedom, equality before the law, popular elections, labor legislation, a reduction of rent and freedom of residence.³¹⁴ In response, the government brought the 1886 Peace Preservation Ordinance into effect, and issued emergency regulations under the 1922 Ordinance, allowing for extensive censorship and expanded powers of search, seizure, arrest and imprisonment upon summary conviction.³¹⁵ Even after the general strike ended the regulations remained in force, joined on January 28, 1927 by a regulation banning "any organization whatever which in the opinion of the Governor in Council is used to promote a general strike or disorder of any kind or the spread of sedition" and making it an offence to "say anything which if reduced to writing would be seditious,"³¹⁶ as well as by regulations authorizing the police to disperse processions, prohibit meetings, proscribe labor unions and to seize and confiscate printing machinery.³¹⁷ In addition, the government sponsored a new, anti-strike newspaper, the *Gongshang Ribao*, and employed a network of informal counter-strikers.³¹⁸

A strike was also behind South African authorities' decision to impose martial law. In 1922 the 'Rand rebellion,' a white miners' strike fueled by antipathy to the employment of black labor, quickly turned violent, with white workers attacking and killing 30 or more black workers.³¹⁹ In response, the government declared martial law and attacked the miners' dwellings with aerial bombings and artillery, leaving more than 200 dead.³²⁰ Afterwards, large numbers were tried for offences under martial law regulations.³²¹ At least eighteen were convicted of murder, and sixty-seven of treason and sedition.³²² Smuts was quite clear that the rapidity and

into effect were issued the day it was passed, giving the government expanded powers of censorship, to compel labor, to enter and seize premises, and to conduct arrests. See Miners, *supra* note 144, at 51; Michael Ng, Shengyue Zhang & Max Wong, "Who But the Governor in Executive Council is the Judge"—*Historical Use of the Emergency Regulations Ordinance*, 50 H.K.L.J. 425, 426 (2020).

314 See TSANG, *supra* note 150, at 94.

315 See Miners, *supra* note 144, at 53–54; Ng et al., *supra* note 314, at 427–31. For more on the newspaper regulations passed under the act, see Ng, *supra* note 145, at 438.

316 TSANG, *supra* note 150, at 97.

317 See Ng et al., *supra* note 314, at 430–31.

318 See TSANG, *supra* note 150, at 97.

319 On the Rand rebellion, see Jeremy Krikler, *The Inner Mechanics of a South African Racial Massacre*, 42 HIST. J. 1051 (1999); JEREMY KRIKLER, WHITE RISING: THE 1922 INSURRECTION AND RACIAL KILLING IN SOUTH AFRICA (2005); Hyslop, *supra* note 161, at 262.

320 See *id.* at 262–63.

321 See CHANOCK, *supra* note 164, at 141.

322 See *id.* In its 1923 decisions in *Rex v. Erasmus* 1923 AD (SC) at 73 (S. Afr.) and *Rex v. Jolly* 1923 AD (SC) at 176 (S. Afr.), the Appellate Division facilitated the ability of the government to bring

brutality of his response was motivated by fears of a revolutionary, communist threat: “As in Russia,” he wrote, “so elsewhere, the danger is that in a very short time the slow results of progress may be undone.”³²³

On other occasions the authorities resorted to the deployment of extreme force without feeling any need for a declaration of martial law or the like. Collective punishments continued to be deployed, for instance, as they long had been, in Sudan.³²⁴ In response to their discovery of a small African religious community residing on public land in the Bulhoek area of Queenstown, the authorities sent in a large, well-armed police eviction force. In the course of the eviction nearly 200 civilians were killed, while a further 150 were tried for sedition and public violence in the aftermath of the violence.³²⁵ In 1919, air power was used to put down unrest not only in Egypt, but also in the Punjab, Somaliland, Afghanistan and the North West Frontier.³²⁶ In 1920, the “largest British-led military campaign of the entire interwar period” took place in Iraq, when the British stamped out a nationwide revolt, in large part through deploying the RAF to bomb rebellious villages into submission.³²⁷

Long’s postwar call for the more assertive deployment of force found echo on several occasions in the post-war years. For example, when the committee established to report on the 1915 suppression of unrest in Nyasaland finally issued its report in 1919, it called for a more direct

treason charges successfully by emphasizing that there was no need to show special intent to overthrow the state in order to convict on such charges, while in *Rex v. Viljoen* 1923 AD (SC) at 90 (S. Afr.), it made it easier to convict on sedition charges, by allowing sedition charges to be brought against any violent gathering acting “in defiance of the authorities and for an unlawful purpose.” See CHANOCK, *supra* note 164, at 242.

323 Hyslop, *supra* note 161, at 263 (citing *Smuts, Cape Town, to A. Clark* (Mar. 24, 1922), in Jean Van der Poel ed., 5 SELECTIONS FROM THE SMUTS PAPERS: SEPTEMBER 1919–NOVEMBER 1934, at 115 (Jean van der Poel ed., 1973)).

324 Following a rebellion in Nyala, in southern Darfur, in September 1921, in which two British officers and four civilian clerks were killed, along with twenty Sudanese policemen, the British responded by “harr[ying] rebel forces across south Darfur until no organized resistance remained,” killing an uncounted number of Sudanese, confiscating livestock, and burning villages. THOMAS, EMPIRES OF INTELLIGENCE, *supra* note 142, at 135. For more on the extreme punitive measures and collective punishment employed in South Sudan, see ROBERT O. COLLINS, SHADOWS IN THE GRASS: BRITAIN IN THE SOUTHERN SUDAN, 1918–1956 ch. 6 (1983).

325 For more, see ROBERT EDGAR, BECAUSE THEY CHOSE THE PLAN OF GOD: THE STORY OF THE BULHOEK MASSACRE (1988); Hyslop, *supra* note 161, at 261.

326 See Satia, *Drones*, *supra* note 17, at 23 n.5. While airpower was inaccurate, the theory was that that shortcoming would be compensated by its ability to generate an aura of “terror.” See *id.* at 5 (citing R.A.F. Control in Mesopotamia, 1921, AIR 5/476, ID/45/438 (A.T. Wilson, Note on the Use of Air Force in Mesopotamia (Feb. 26, 1921))).

327 Mark Jacobsen, ‘Only by the Sword’: British Counter-Insurgency in Iraq, 1920, 2 SMALL WARS & INSURG. 323, 323 (1991). In the first seven months of 1925, the RAF bombed villages on twenty-five occasions. See *id.* at 335.

approach to the use of force, combining the absence of warnings with a shoot to kill policy.³²⁸ This emphasis on the assertive deployment of force was accompanied by the creation of new, more militarized police services. In Nyasaland such a new service, modelled on Rhodesia's paramilitary model, was established in 1919. In the same year, a Public Service Commission of Enquiry set up to inquire into the functioning of the South African police observed they were particularly "liable to be called upon at any time to suppress or control civil disturbances," and that therefore they should have a "certain military training."³²⁹ In the Sudan as well, the British created a new unit, the Sudanese Defence Force, in response to a wave of demonstrations following the arrest of Muhammad al-Mahdi, a supporter of the White Flag League, a nationalist resistance movement, in the summer of 1924.³³⁰ In South Africa, the Commissioner of Police was adamant on the need for new measures in the wake of the Rand rebellion, recommending the creation of a political intelligence service, a recommendation that was implemented by the end of the decade.³³¹

In addition to such more extreme deployments of force, the postwar years also saw the ongoing flourishing of more mundane components of repressive legality. The years 1919 and 1920 were particularly fertile for the passage of laws and ordinances aimed at the suppression of seditious publications. A raft of such measures were passed in the Caribbean, for instance,³³² in response to unrest connected to returning soldiers as well as demands for higher wages and better working conditions.³³³ In the Straits

328 See John McCracken, *Authority and legitimacy in Malawi: policing and politics in a colonial state*, in *POLICING AND DECOLONISATION*, *supra* note 225, at 158, 167 (citing Scheme for Dealing with Civil Disturbances (Gov. 39315), CO 537/845 (1919) (committee report on dealing with riots and civil disturbances)).

329 See CHANOCK, *supra* note 164, at 55.

330 See BADRAWI, *supra* note 144, at 202. For more on the White Flag League, see Daly, *supra* note 66, at 292–98. For more on intelligence efforts in Sudan in the post-war years, see William Berridge, "Guarding the Guards": *The Failure of the Colonial State to Govern Police Violence in Sudan, ca. 1922–1956*, 12 NE. AFR. STUD. 1, 13 (2012).

331 The unit's work focused on communists, trade unionists, and "other agitators." ALBIE SACHS, *JUSTICE IN SOUTH AFRICA* 241 (1973).

332 These acts included the Seditious Publications Prohibition Act in the Bahamas (Act 28 of 1919); Seditious Publications Ordinances in Granada (Ordinance 6 of 1920), Saint Lucia (Ordinance 12 of 1920), and Saint Vincent (Ordinance 19 of 1920); the Seditious Publications (Prohibition) Act in the Leeward Island (Act 9 of 1920); and the Seditious Acts and Publications Ordinance in Jamaica (Ordinance 10 of 1920). See HC Deb (24 Nov. 1920) (135) cols. 478–86W.

333 In Trinidad and Tobago, returning soldiers from the West Indian Regiment—which had mutinied in Italy—helped to stoke unrest, and a general strike occurred in November and December 1919; the same year, strikes also took place calling for higher wages in Guiana. See Juanita De Barros, *Urban British Guiana, 1838–1924: Wharf Rats, Centipedes, and Pork Knockers*, in *MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN & THE EMPIRE*, *supra* note 173, at 323, 329.

Settlements and the Federated States of Malaya, growing Chinese nationalism and leftist organizing were targeted by the Seditious Publications (Prohibition) Ordinance, which granted the authorities power to censor Chinese vernacular textbooks, journals, pamphlets, and newspapers, whether imported or locally produced.³³⁴ The act was complimented by the Printing Presses Ordinance³³⁵ in 1920, which imposed criminal penalties on those illegally printing material of a political nature.³³⁶

Forced labor, tight labor controls and controls on freedom of movement, practices which pre-dated the war but had flourished and expanded in the wartime context, continued to develop. In the East African Protectorate, for instance, despite the war's end, compulsory labor continued to be employed to complete public works projects.³³⁷ Meanwhile, the 1915 Registration of Natives Ordinance was implemented in 1920, imposing a system of identity certificates known as *kipande* which were used to control the labor and movement of African workers.³³⁸ A similar system was implemented in 1920 in Tanganyika.³³⁹ South Africa's pass laws were strengthened by the 1923 Urban Areas Act, which reaffirmed the requirement that African males obtain passes to stay and seek work in urban areas, allowed for their forced removal from such areas when their numbers were deemed too high, and granted the Governor-General further discretionary power to implement or amend the pass laws as he saw fit.³⁴⁰

Associations, too, were targeted in the postwar years. In 1922 Harry Thuku, a key organizer with the East African Association, was arrested on

334 See Yong & McKenna, *supra* note 152, at 127.

335 Straits Settlements, Ordinance No. 5 of 1920, in ORDINANCES ENACTED BY THE GOVERNOR OF THE STRAITS SETTLEMENTS WITH THE ADVICE AND CONSENT OF THE LEGISLATIVE COUNCIL THEREOF IN THE YEAR, 1920 (1920).

336 See Yong & McKenna, *supra* note 152, at 127.

337 As others have put it, "a process of increasing state intervention . . . culminated . . . in a massive application of official coercion to ensure the recruitment of labour and sustain the necessary relations of production in estate agriculture under the paternal authority of the provincial administration." B.J. Berman & J.M. Lonsdale, *Crises of Accumulation, Coercion and the Colonial State: The Development of the Labor Control System in Kenya, 1919–1929*, 14 CANADIAN J. AFR. STUD. 55, 81 (1980). The protectorate's forced labor regime was augmented by the 1920 Native Authority Amendment Ordinance, which gave chiefs and headmen the power to order an additional sixty days of compulsory labor, over and above twenty-four days a year of unpaid "communal labor" already required. *Id.* at 68.

338 See David M. Anderson, *Master and Servant in Colonial Kenya, 1895–1939*, 41 J. AF. HIST. 459, 464 (2000) [hereinafter Anderson, *Master and Servant in Colonial Kenya*]. By 1931, over a million passes had been issued. See Anderson, *Kenya*, *supra* note 173, at 505–06.

339 See Banton, *supra* note 173, at 277–80. Tanganyika's *kipande* system was complimented in 1923 by the Master and Native Servants Ordinance and the Destitute Persons Ordinance. In 1930 a new penal code was introduced, which banned associations and assemblies. See *id.*

340 See Martin Chanock, *South Africa, 1841–1924: Race, Contract, and Coercion*, in MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN & THE EMPIRE, *supra* note 173, at 338, 344–45.

the basis of his opposition to the *kipande* system. His arrest was followed by a large demonstration, which the police dispersed with live fire, killing twenty persons. Thuku was exiled, and the East African Association banned.³⁴¹ Similarly, following huge demonstrations in Shanghai and Hong Kong in May and June 1925, the Colonial Office gave authorities in the Straits Settlements and the Federated States of Malaya the go ahead to ban the Kuomintang, after which all local branches were ordered shut by October.³⁴²

E. Conclusion

What, in sum, were the components of repressive legality that developed within the British Empire over the course of the post-war years? In the first place, emergency law governance continued to play a central role, via the ongoing effects of DORA in Ireland as well as its successors, ROIA and CASPA, via the transition from DOIA to the Rowlatt Act in India, and through the Emergency Regulations Ordinance in Hong Kong. In other instances, the authorities resorted directly to the older, less formalized (and perhaps thereby less justifiable) martial law tradition. In fact, despite the presence of enabling legal frameworks, martial law was invoked in both Ireland and India, helping to justify reprisals in the former and the Amritsar massacre in the latter. Martial law was similarly invoked to justify the deployment of lethal force in Egypt and South Africa. At its extremes, martial law gave way to outright reliance on military force. At times this took the form of punitive expeditions and deployments of soldiers, as in Sudan in general and South Sudan and Darfur in particular; on other occasions, Britain's First World War-trained air-force was used to bomb rebellious towns, as occurred in Afghanistan, Egypt, India, Iraq, the North West Frontier and Somaliland. The authorities' ability to govern by force was further enabled by developments in quasi-military police forces, including through the creation of the RIC Auxiliaries, which would come to

341 See HARRY THUKU, *HARRY THUKU: AN AUTOBIOGRAPHY* (1970); K.J. King, *The Nationalism of Harry Thuku: A Study in the Beginnings of African Politics in Kenya*, 1 *TRANSFR. J. HIST.* 39 (1971); Anderson, *Master and Servant in Colonial Kenya*, *supra* note 339, at 464.

342 See Yong & McKenna, *supra* note 152, at 129. In doing so, the Colonial Office was influenced by intelligence reports suggesting that Sun Yat-sen, the Russians, and other anti-colonial forces were working in league to undermine the British Empire; as Laurence Guillelard, Governor of the Straits Settlements and High Commissioner for the Federated Malay States, put it, "I cannot deny the force of the argument which tends to show that behind all this concentrated attack on the British position in Asia lies a vast Soviet organisation with a distributing centre in Berlin; that this organisation is in the closest touch with 'M.N. Roy', with Javanese Communists, Sneevliet, with Chinese in Java, with Shanghai and Sun Yat-sen (that is, with Kuo Min Tang)." *See id.*

be emulated elsewhere, as for instance in the Malabar Special Police Force.³⁴³ In addition, numerous more closely targeted instances of repressive law and practice developed. 1919 and 1920 saw the passage of multiple laws and ordinances aimed at the suppression of seditious publications. Associations as diverse as the IRA, the East African Association and the Kuomintang were banned, under various forms of authority. Forced labor, which already had a place in the colonial world but had become further entrenched during the war, continued to be relied upon, while pass laws designed to control native worker populations expanded in Kenya, Tanganyika and South Africa. In sum, while the First World War provided fertile terrain for the dramatic expansion of repressive laws in Britain and around the British Empire, it was the continued reliance upon, multiplication and entrenchment of such legal orders in the post-war years that helped to ensure their legacy would be long-lasting.

VI. CONCLUSION: LEGACIES AND LESSONS

As the above exploration has endeavored to show, the period running from the beginning of the First World War to the end of 1926 was remarkably fertile for the development of repressive legality, both within Britain and around the British Empire. Even if the developments of the period were merely a historical curiosity, they would still repay our attention, in terms of the lessons they suggest relative to the manner in which repressive law develops, disseminates, and is justified. However, the repressive legal developments of the period have not yet been relegated to history. Rather, they remain present and operative in jurisdictions across the former British colonial world.

Some polities have been able to overcome a portion of that influence. While Ireland has repealed many of the repressive laws formerly on its books, it did not overcome its repressive legacy immediately—rather, much of the emergency regime put in place in the years following the First World

343 As one pair of observers have put it, while the professionalization of colonial policing really took shape in the 1950s ... its origins can be traced back to the Irish disturbances between 1917 and 1921. Here were the beginnings of serious British reflection on the style and functioning of colonial policing, but of more immediate significance, here also were the beginnings of the learning process for the police themselves. When Ireland became independent as a Dominion in 1921, a steady stream of former officers of the Royal Irish Constabulary (RIC) moved into the Indian and Colonial Police forces.

Killingray & Anderson, *supra* note 297, at 7–8.

War persisted for decades.³⁴⁴ The very first case decided by the European Court of Human Rights, *Lawless v. Ireland*,³⁴⁵ concerned the legacy of emergency law in Ireland. Britain itself has also, over time, transitioned away from many of the more overtly repressive aspects of law put in place during the period. Despite the fact Britain is no longer governed by emergency law, however, several elements of its contemporary system still bear the clear mark of the First World War, including the persistence of the World War I intelligence agencies and the state's ongoing reliance on a state secrets regime directly descended from the Official Secrets Act.³⁴⁶ In South Africa and Namibia too, the state secrecy legacy is clear, carried on by the Protection of Information Act,³⁴⁷ which is still relied upon to suppress progressive investigative reporting.³⁴⁸

Elsewhere around the formerly colonized world the emergency law legacy remains more painfully present. In Egypt, emergency law³⁴⁹ was the norm and not the exception from 1967 until May 31, 2012. States of emergency have continued to be invoked off and on since then, to say nothing of an extensive set of laws tightly restricting civil and political rights.³⁵⁰ Other components of the World War I-era legacy are even more directly present. For instance, a 1914 law penalizing participants in assemblies deemed liable to disturb the public peace is still relied upon to punish protestors—despite the fact the law was never officially incorporated

344 As Townshend has put it, “in 1922 Britain withdrew its administration and army from the twenty-six counties and handed over authority to the Provisional Government of the Irish Free State. . . . [and] the RIC ceased to exist. . . . Yet it was strikingly reincarnated, Phoenix-like, in the Civil Guard (Garda Síochána) created by the Free State.” Townshend, *Policing Insurgency in Ireland*, *supra* note 225, at 37. While the Civil Guard was disarmed in 1923, other measures continued to reflect the repressive legal legacy; thus, for instance, the Irish Free State Public Safety Act, passed in 1927, allowed for special courts to be established to try individuals accused of planning attacks on members of the Irish government. See Michael Silvestri, “*The Sinn Féin of India*”: *Irish Nationalism and the Policing of Revolutionary Terrorism in Bengal*, 39 J. BRIT. STUD. 454, 478–79 (2000).

345 *Lawless v. Ireland* (No. 3), App. No. 332/57 (July 1, 1961), <http://hudoc.echr.coe.int/eng?i=001-57518>.

346 See DAVID HOOPER, OFFICIAL SECRETS: THE USE AND ABUSE OF THE ACT (1987).

347 GOV'T GAZETTE, June 16, 1982, at 4 (S. Afr.) (Act No. 84, Issue No. 8248).

348 See Jonathan Rozen, *Colonial and Apartheid-era laws still govern press freedom in South Africa*, QUARTZ AFR. (Dec. 7, 2018), <https://qz.com/africa/1487311/colonial-apartheid-era-laws-hur-southern-africas-press-freedom/>.

349 Authorized by Law No. 162 of 1958 (Emergency Law), 5 June 1958 (Egypt).

350 See *The Road Ahead: A Human Rights Agenda for Egypt's New Parliament*, HUM. RTS. WATCH (Jan. 16, 2012), <https://www.hrw.org/report/2012/01/16/road-ahead/human-rights-agenda-egypts-new-parliament>; Yussef Auf, *The State of Emergency in Egypt: An Exception or Rule?*, ATL. COUNCIL (Feb. 2, 2018), <https://www.atlanticcouncil.org/blogs/menasource/the-state-of-emergency-in-egypt-an-exception-or-rule/>; Said Benarbia, *Egypt: Repeal or Amend Emergency Measures*, INT'L COMM'N JURISTS (June 11, 2018), <https://www.icj.org/egypt-repeal-or-amend-emergency-measures/>.

into Egypt's post-war legal order.³⁵¹ Similarly in Sudan, prior to 2020,³⁵² emergency law of one sort or another was the norm.³⁵³ In addition to the broad authorization granted to various authorities to declare states of emergency under the 1997 Emergency and Public Safety Act, laws such as the 1999 National Securities Forces Act and the 2010 National Security Act provided emergency law powers of arrest and detention to Sudan's National Intelligence and Security Service on an ongoing basis.³⁵⁴ In practice, Sudan's emergency governance witnessed repeated censorship of papers³⁵⁵ as well as the frequent and prolonged detention of protest participants and human rights defenders.³⁵⁶ In Sri Lanka, emergency law was the norm there between 1958 and 2001. As one set of authors has put it, emergency law in Sri Lanka

enhanced the cycle of violence, leading to the destruction of the social and political fabric of a democratic society . . . subverted constitutional rights [and] perpetuat[ed] a climate of terror and a lack of respect for the rule of law . . . [and] helped develop a culture of repression and impunity among members of the security establishment.³⁵⁷

Emergency law regulations issued in Sri Lanka in 2000 followed more or less directly in the footsteps of the emergency regulations issued during the First World War, moreover, providing for extended powers of arrest and detention, censorship and the prohibition of public meetings and processions.³⁵⁸

Elsewhere too, emergency legislation has been relied upon to justify the passage of restrictive regulations. In Hong Kong, the 1922 emergency

351 See CAIRO INST. FOR HUMAN RTS. STUD., *supra* note 1.

352 See *Sudan Council Rejects Request to Extend State of Emergency*, MIDDLE E. MONITOR (Jan. 24, 2020, 10:21 AM), <https://www.middleeastmonitor.com/20200124-sudan-council-rejects-request-to-extend-state-of-emergency/>.

353 See Public Statement, Amnesty Int'l, Sudan: Political Detainees in Limbo (July 1, 2005).

354 See Amnesty International, *Sudan: Dire Human Rights Situation Continues*, Amnesty International Submission to the UN Universal Periodic Review (May 2016).

355 See, e.g., Osman Hummada & Faisal Albagir, *Closure of Newspapers in Khartoum Hinders the Freedom of Expression*, AFR. CTR. JUST. & PEACE STUD. (Sept. 9, 2011), <https://www.acjps.org/closure-of-newspapers-khartoum-hinders-freedom-of-expression/>.

356 See, e.g., Front Line Defenders, *Sudan: Continuing Crackdown and Detention of Human Rights Defenders*, FRONTLINE DEFS. (Feb. 16, 2018), <https://www.frontlinedefenders.org/en/statement-report/sudan-continuing-crackdown-and-detention-human-rights-defenders>.

357 Radhika Coomaraswamy & Charmaine de los Reyes, *Rule by Emergency: Sri Lanka's Postcolonial Constitutional Experience*, 2 INT'L J. CONST. L. 272, 272 (2004).

358 See *id.* at 273; *Sri Lanka: New Emergency Regulations—Erosion of Human Rights Protection*, AMNESTY INT'L (June 30, 2000), <https://www.amnesty.org/download/Documents/136000/asa370192000en.pdf>.

ordinance continued to be relied upon in subsequent decades;³⁵⁹ most recently, the ordinance was relied upon to respond to mass protests in 2019, in order to justify issuance of an anti-mask regulation.³⁶⁰ In Jamaica, a state of emergency was declared in early 2018, after which the government issued an extensive set of regulations falling along remarkably familiar lines. Among others, Regulation 15 prohibited intimidation, Regulation 16 prohibited incitement to disaffection, Regulation 18 gave the authorities the power to prohibit assemblies, Regulation 21 gave them the power to impose curfews, and Regulations 27, 28, 30, 31 and 33 granted extended powers of search, arrest and detention.³⁶¹

More mundane, everyday instances of repressive legality, of the sort dramatically strengthened in the World War One period and its aftermath, continue to be relied upon around the former British colonial world as well. In Nigeria, the press continues to be suppressed under criminal defamation laws that persist from the colonial era.³⁶² In India, Section 144 of the Indian Code of Criminal Procedure, which allows magistrates to issue orders with the aim of preventing “obstructions” or “annoyances,” allows the authorities to render all assemblies in a certain area unlawful.³⁶³ This section has become a favorite tool of the authorities, having been relied upon on several

359 Amongst other occasions, the ordinance was relied upon to issue regulations in response to a 1928–29 drought; 1932 and 1837–38 cholera outbreaks; a 1935 rabies outbreak; to requisition land in the face of a possible invasion in 1949–51; to address the problem of a shortage of small change coins in 1950; to deal with harmful agricultural chemical products in 1955; to respond to 1956 and 1967 protests; to address a 1965 banking crisis; and to respond to the 1973 oil crisis. See *Miners*, *supra* note 144, at 54–57.

360 See *Prohibition on Face Covering Regulation*, (2019) Cap. 241 (H.K.) (Oct. 5, 2019). On November 18, the High Court considered the compliance of both the regulation and the Emergency Regulations Ordinance with Hong Kong’s Basic Law, in the case of *Kwok Wing Haung v. Chief Exec. Council & Sec’y Just.*, [2019] H.K.C.F.I. 2820 (C.F.I.). While the court found the manner in which the Ordinance was relied upon to issue the anti-mask regulation violated the Basis Law, it “[e]ft open” the question of the Basic Law compatibility of the Ordinance in the case of actual emergency situations. *Id.* ¶ 193(1).

361 See *Emergency Powers Act*, *supra* note 5. More than 10,000 persons were subsequently detained. See *Livern Barrett, 11,000 Detained, 400 Charged—Opposition Raises Concerns with Enhanced Security Measures; Gov’t Cites Reduction in Crime*, GLEANER (Oct. 19, 2018, 12:00 AM), <http://jamaica-gleaner.com/article/lead-stories/20181020/11000-detained-400-charged-opposition-raises-concerns-enhanced>.

362 See *Concerns About Freedom of Expression in Nigeria: Journalists Arrested, Protests Repressed*, *supra* note 2.

363 Code of Criminal Procedure, 1973, § 1 (Jan. 25, 1974) (India) (Act No. 2 of 1974). While the section has been challenged, the Supreme Court has found the restrictions it imposes reasonable. See *Parate v. State of Maharashtra*, AIR 1961 SC 884 (India); *Limaye v. Monghyr* (1969) 1 SCC 292 (India). A 2018 decision has recognized that the provision may be misused, however, and has required the authorities to formulate more detailed guidelines as to when and how the section may be employed. See *Sangathan v. Union of India*, W.P. (Civil) 1153 of 2017 (July 23, 2018) (India).

occasions in recent years: to suppress unrest on the anniversary of the death of Immanuel Sekaran, an Indian National Congress member and freedom fighter;³⁶⁴ to enforce public order in Noida, following the government's decision to revoke the special status of Jammu and Kashmir;³⁶⁵ to limit the use of drones during large assemblies in Nashik;³⁶⁶ to prevent protests in Ayodhya in the context of the Ram Jahmbhoomi-Babri Masjid land dispute;³⁶⁷ and to prohibit protests against India's 2019 Citizenship Amendment Act.³⁶⁸ In Singapore and Malaysia, the authorities maintain the ability to detain individuals without trial under 'executive detention orders.'³⁶⁹

Clearly, the legacies of the First World War and the post-war period are still present, forming a major part of contemporary repressive orders. This endurance provides a lesson, underscoring the difficulty of overcoming repressive approaches to law, once those approaches have become entrenched. Even where some of the more overtly repressive components of law have been removed from the statute books, secrecy laws and surveillance powers have tended to remain central state capacities, while emergency law remains an option should the status quo distribution of power be seriously challenged.

Investigating the formation of such legal orders in the context of the war and its aftermath is also helpful in terms of clarifying the purposes of such laws. To the casual observer, the fact that key developments came during the war suggests that those measures were necessitated by, and were primarily a response to, the war itself—or, to put it another way, that as

364 See Akshaya Nath, *Section 144 in Ramanathapuram Between September 11 to September 15*, INDIA TODAY (Sept. 9, 2018, 12:39 AM), <https://perma.cc/8JZQ-RCP2>.

365 See *Independence Day, Festivals, Exams: Section 144 in Noida for 2 Months*, TIMES INDIA (Aug. 6, 2019, 10:51 AM), <https://timesofindia.indiatimes.com/city/noida/independence-day-festivals-exams-section-144-in-noida-for-2-months/articleshow/70544634.cms>.

366 See Santosh Sonawane, *Nashik: Police Impose Section 144 till September 20, Ban Use of Drones*, TIMES INDIA (Sept. 16, 2019, 3:06 PM), <https://timesofindia.indiatimes.com/city/nashik/police-impose-section-144-till-sept-20-ban-use-of-drones/articleshow/71141664.cms>.

367 See *Section 144 in Ayodhya as Case Enters Final Stage in Supreme Court*, ECON. TIMES (Oct. 14, 2019, 1:46 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/section-144-in-ayodhya-as-case-enters-final-stage-in-supreme-court/articleshow/71574441.cms>.

368 See Revathi Siva Kumar, *What Is Section 144 and Why Is It Being Used Against Protesters Across the Nation?*, CITIZEN MATTERS (Dec. 21, 2019), <http://citizenmatters.in/guide-to-section-144-crpc-and-implications-for-caa-protests-14953>; Soutik Biswas, *Citizenship Act Protests: How a Colonial-Era Law Is Being Used in India*, BBC (Dec. 20, 2019), bbc.com/news/world-asia-india-50849909.

369 See Tan Yock Lin, *Some Aspects of Executive Detention in Malaysia and Singapore*, 29 MALAYA L. REV. 237 (1987); Teo Soh Lung, *Executive Detention Orders and the ASEAN Human Rights Declaration*, ONLINE CITIZEN (Jan. 18, 2019), <https://www.theonlinecitizen.com/2019/01/18/the-internal-security-act-and-the-asean-human-right-declaration/>.

onerous and restrictive as such measures might have been, they were justified by the need to ensure 'national security' and to defeat a foreign foe. In reality, however, a hostile foreign power was not the primary target of any of the measures in question. The measures adopted in Britain were designed to ensure a maximally productive labor force and to silence dissenters, be they leftist agitators or pacifists. Around the empire, repressive laws and regulations adopted during the First World War years were similarly aimed at attempting to compel and control labor and at suppressing dissent and resistance towards British rule.

This orientation is further underscored by the fact that, in the years following the war, rather than fading away, the repressive developments of the wartime years were entrenched. In Britain, this took place first through the extension of DORA, and later in its replication and replacement by the EPA. Around the Empire repressive wartime frameworks were similarly extended and embedded, congealing into suppressive laws and ordinances such as the Seditious Publications measures passed in numerous jurisdictions in 1919 and 1920 and the 1922 Emergency Regulations Ordinance in Hong Kong.

Recognizing the origins and functions of these repressive measures should shift the manner in which we think about their ongoing application. Foregrounding the colonial basis of such approaches helps to provide clarity not only relative to their origins, but also relative to the function such legal measures play around the world today. Appreciating the connection between the suppression of labor and the suppression of nationalist movements, meanwhile, helps to underscore the close relationship between the two—and the need, if a future free of such repressive legal impulses is to be forged, to recapture and unite the spirits of both movements. Finally, recognizing the manner in which such legal orders represent the continuation of the colonial period is important in its own right. While decolonization may have brought about the disappearance of one of empire's most visible injustices, much of the legal ordering accomplished during the colonial period remains in place. This legacy persists not only in the context of international and transnational legal regimes that enforce structural imbalances in the global system, but also in the modes of repressive legality that continue to predominate, in different ways, in both former colonizing and colonized states around the world. As long as colonial approaches to legality continue to play a key role in maintaining regimes and suppressing dissent around the world, the age of emergency is still with us.

ANNEX 1: KEY PUBLIC ORDER LAWS,
REGULATIONS AND ORDERS, 1914-1926

The following table summarizes key legislative, regulatory and executive acts discussed in the previous text. The summaries provided are brief, schematic, and only address certain aspects of the laws, regulations and executive acts in question; please rely on the text above, and of course the laws, regulations and executive acts themselves, for further details. The laws, regulations and executive acts considered are presented in chronological order by place of passage.

Act	Summary
Britain	
Official Secrets Act 1911	Penalized the obtaining of information concerning prohibited places and the unauthorized communication / retention / receipt of information
Aliens Restriction Act 1914	Gave the Home Secretary the power to exclude or expel aliens
Defence of the Realm Act (1) 1914	Gave the government the power to pass regulations in order to secure 'the public safety and the defence of the realm,' and to authorize trial by court martial in certain cases
Defence of the Realm Act (2) 1914	Expanded the instances in which court martials might be authorized
Defence of the Realm (Consolidation) Act 1914	Expanded the instances in which court martials might be authorized, allowed for trials <i>in camera</i> , allowed court martials to impose the death penalty
DORA Regulation 7 (1914)	Allowed for taking the output of factories
DORA Regulation 8 (1914)	Allowed for the taking of factories
DORA Regulation 9 (1914)	Allowed the government to clear areas of their inhabitants

DORA Regulation 13 (1914)	Allowed for the imposition of curfews
DORA Regulation 14 (1914)	Allowed for persons to be removed from particular parts of the country
DORA Regulation 18 (1914)	Penalized the unauthorized collection / communication / publication of information pertaining to military affairs
DORA Regulation 24 (1914)	Prohibited the unauthorized transmission of materials abroad
DORA Regulation 27 (1914)	Penalized the spreading of 'false reports' / 'false statements' / 'reports or statements likely to cause disaffection'
DORA Regulation 42 (1914)	Penalized "attempts to cause mutiny, sedition, or disaffection"
DORA Regulation 51 (1914)	Granted the authorities wide powers to search premises
DORA Regulation 52 (1914)	Granted the authorities wide powers to search vehicles
DORA Regulation 55 (1914)	Provided for warrantless arrest
Trading with the Enemy Act 1914	Allowed for the internment and deportation of enemy nationals and the confiscation of their assets
Defence of the Realm Act Amendment (1) 1915	Stipulated the British civilians would have the right to trial by jury, except in cases of special national emergency
Defence of the Realm Act Amendment (2) 1915	Allowed the government to take over factories as necessary for the war effort
DORA Regulation 8A (1915)	Allowed the government to require that work at particular factories be

	carried on
DORA Regulation 8B (1915)	Prohibited “the occupier of a factory or workshop” engaged in a war-related business from taking steps “with a view to inducing . . . any person employed in any other factory or workshop . . . to leave his employment”
Munitions of War Act 1915	Made it an offence to participate in strikes unless twenty-one days’ notice was provided
DORA Regulation 14B (1915)	Allowed the government to restrict the movements of / relocate /intern persons of “hostile origin or associations”
DORA Regulation 51A (1915)	Granted the authorities expanded powers to seize and destroy publications
DORA Regulation 9A (1916)	Allowed the authorities to prohibit and disperse assemblies
DORA Regulation 27A (1916)	Penalized the sharing information pertaining to secret sessions of Parliament
DORA Regulation 42A (1916)	Penalized inducing members of the armed forces to act contravention of orders or regulations
DORA Regulation 51B (1917)	Allowed security officials to attend suspect assemblies
DORA Regulation 27C (1917)	Requiring that leaflets bear the names and addresses of their authors and printers, and that prior approval be obtained for publication

Termination of the Present War (Definition) Act 1918	Extended the war until August 31, 1921
Police Act 1919	Provided for the establishment of an official police union, prevented the police from joining trade unions, made causing disaffection among members of the police force an offence
Emergency Powers Act 1920	Allowed for a state of emergency to be declared if events occurred which interfered in a substantial way with the supply or distribution of food, water, fuel, light, locomotion, or the essentials of life
EPA Regulation 16 (1921)	Allowed the Postmaster-General to block telegraphic messages
EPA Regulation 18 (1921)	Penalized 'injury to property'
EPA Regulation 19 (1921)	Penalized incitement to sedition or mutiny, or impeding the supply and distribution of vital services
EPA Regulation 20 (1921)	Allowed the authorities to ban assemblies deemed likely to promote disaffection
EPA Regulation 27 (1921)	Granted extended powers of search and arrest
EPA Regulation 21 (1926)	Penalized acts aimed at spreading disaffection, or impeding the supply or distribution of food, water, fuel, light, transit, or any other essential service
EPA Regulation 22 (1926)	Allowed the authorities to ban assemblies deemed likely to promote disaffection
EPA Regulation 26 (1926)	Granted the Home Secretary power to deploy police across county lines

EPA Regulation 27 (1926)	Granted the Home Secretary power to deploy police across county lines
EPA Regulation 33 (1926)	Granted extended powers of search and arrest
Trade Disputes and Trade Unions Act 1927	Provided a broad definition and penalization of intimidation, prohibited mass picketing and picketing at workers' homes
Ireland/Northern Ireland	
1887 Balfour Crimes Act	Allowed for organizations to be banned from operating, in certain areas or generally
Restoration of Order in Ireland Act 1920	Gave the authorities extensive power to rule by regulation, granted extended powers of search, arrest and detention without trial, empowered resident magistrates allowed for serious crimes to be tried in military courts
Civil Authorities (Special Powers) Act 1922	Gave the Home Minister extensive power to rule by regulation
CASPA Regulation 1 (1922)	Allowed for the imposition of curfews
CASPA Regulation 3 (1922)	Allowed for assemblies to be banned
CASPA Regulation 4 (1922)	Allowed banned assemblies to be dispersed by 'such steps as necessary'
CASPA Regulation 16 (1922)	Penalized the encouragement of mutiny, sedition, disaffection, or any act delaying or restricting works necessary for peace/order
CASPA Regulation 17 (1922)	Allowed the authorities to demand information/penalized withholding information

CASPA Regulation 18 (1922)	Granted expanded search powers
CASPA Regulation 19 (1922)	Allowed the police to attend meetings
CASPA Regulation 21 (1922)	Granted expanded search powers
CASPA Regulation 22 (1922)	Allowed the authorities to demand information/penalized withholding information
CASPA Regulation 23 (1922)	Allowed warrantless arrests and prolonged detention
CASPA Regulation 25 (1922)	Penalized the spread of false reports and false statements
CASPA Regulation 26 (1922)	Allowed for censorship
CASPA Regulation 27 (1922)	Penalized the disclosure of confidential information
CASPA Regulation 23A (1922)	Allowed for restrictions on movement, and for requiring individuals to report to the police
CASPA Regulation 23B (1922)	Allowed for internment
CASPA Regulation 24A (1922)	Made membership in several organizations an offense
India	
Ingress into India Ordinance 1914	Allowed the government to detain people attempting to enter the country, or to confine persons to their villages
Defence of India Act 1915	Granted extended powers of preventive detention and detention without trial, removed due process rights and allowed for trial by special tribunal, limited freedom of expression (including by penalizing false news) and movement, instituted an indemnity clause, gave the Governor power to take further measures

Punjab Habitual Offenders Act 1918	Allowed for control of the movement of habitual offenders
Punjab Villages and Small Towns Act 1918	Allowed for local men to be deputized as informal policemen
Anarchical and Revolutionary Crimes Act 1919	Allowed the Governor-General in Council to issue a declaration allowing for the establishment of special courts with reduced procedural guarantees, for controls over movement, and for enhanced powers of search, arrest and detention
Indian Passport Act 1920	Prevented entry to India without a passport
Egypt	
Press Law 1881 – brought back in 1909	Required papers dealing with important issues to acquire a license, to print identifying information on the paper, and to submit papers for Interior Ministry monitoring, and allowed the Interior Minister to ban the entry of foreign periodicals
Law 10 of 1914	Criminalized assemblies of five or more persons liable to disturb the public peace
Hong Kong	
Peace Preservation Ordinance 1886	Allowed for the issuance of emergency regulations where an emergency was declared
Order in Council of 26 October 1896 – brought into effect in August 1914	Authorized the governor to requisition property, to require persons to perform services, to control prices, and to do any other thing necessary for public safety and the defense of the colony

Seditious Publications Ordinance 1914	Allowed for the penalization of publications deemed seditious
Trading with the Enemy Ordinance 1914	Operationalized the act in Hong Kong
Seditious Publications (Possession) Ordinance 1915	Allowed for the penalization of the possession of publications deemed seditious
Order in Council 1916	Granted the government expanded powers of censorship, control over communications, arrest, detention, exclusion and deportation, and the ability to control land, production, transportation and trade
Emergency Regulations Ordinance 1922	Gave the government extensive powers to take measures deemed necessary in the face of emergency
PPO Regulations (1925)	Allowed for censorship and extended powers of search and arrest
PPO Regulation (1927)	Allowed the Governor in Council to ban organizations promoting a general strike, or disorder, or sedition, penalized spoken sedition
Federated Malay States and Straits Settlements	
Seditious Publications (Prohibition) Ordinance 1915	Allowed for the penalization of publications deemed seditious
Printing and Books Enactment 1915	Imposed controls over publications
Printing Presses Ordinance 1920	Imposed criminal penalties on those illegally printing political materials
Ceylon	
Riots Damage Order 1915	Appointed special commissioners to lead strike teams, authorized the use of lethal force, allowed for collective fines

Indemnity Order 1915	Absolved those who suppressed unrest of liability
South Africa	
Indemnity and Special Tribunals Act 1915	Immunized the authorities from liability for the use of force, allowed for trials before special courts
Criminal Procedure Act 1917	Allowed the Attorney-General to authorize trial by special court, reduced due process rights
Urban Areas Act 1923	Required African males to obtain passes to stay and work in urban areas, granted the Governor-General further discretionary powers in such an area
Nigeria	
Criminal Code 1916	Enhanced the penalty for publishing false reports
Newspaper Ordinance 1917	Enhanced controls over newspapers
Newspaper Amendment Ordinance 1918	Enhanced controls over newspapers
East Africa Protectorate	
Native Followers Recruitment Ordinance 1915	Allowed for forced conscription
Registration of Natives Ordinance 1915	Required that natives carry identity documents in order to move to certain areas/work
Caribbean	
Bahamas – Seditious Publications Prohibition Act 1919	Penalized seditious publications
Granada – Seditious Publications Ordinance 1920	Penalized seditious publications

Saint Lucia – Seditious Publications Ordinance 1920	Penalized seditious publications
Saint Vincent – Seditious Publications Ordinance 1919	Penalized seditious publications
Leeward Islands – Seditious Publications (Prohibition) Act 1920	Penalized seditious publications
Jamaica – Seditious Acts and Publications Ordinance 1920	Penalized seditious publications

