

Civic Party averaged approximately 30 percent of the eligible vote in these wards.

Overall, approximately 30,000 Montrealers voted for FRAP, which makes FRAP the opposition party. Yet these 30,000 Montrealers have no voice on City Council. On the other hand, 242 voters in Saraguay (a recently annexed mini-municipality) are represented by one municipal councillor.

THE ELECTION AFTERMATH

Perhaps most important is that the election has exacerbated the tensions within FRAP. FRAP was a citizen committee and student initiated movement. The students represent the most militant element within FRAP and are more committed to extra-parliamentary opposition politics both of libertarian and leninist tendencies. The unions, generally, represent the more social democratic electoral politics — of the labour party variety; the citizen committees are divided on this question. There are some, however, which have chosen sides, for example, the St. Jacques Citizens Committee has aligned itself with the most militant camp. The Permanent Council (or executive) is more representative of the militants by virtue of the fact that they organized the neighbourhood political action committees ("C.A.P.'s"). After the election, Paul Cléche made a statement clearly condemning the FLQ violent tactics. The Permanent Council demanded his resignation on the grounds that he had not sought the permission of the Council and had violated the democratic principles of FRAP. The tensions within FRAP rapidly began to surface. FRAP staff — mostly among the extra-parliamentary ranks — were accused of sabotaging the elections from within because they were in fundamental disagreement with FRAP's electoral strategy. For most radicals within FRAP, the election results only confirmed that electoralism is a self-defeating strategy; the parallel to Parti Québécois' 24 percent of the popular vote with only 6 percent of the seats in the National Assembly was quickly drawn.

FRAP had planned, at its August convention, a winter offensive on four fronts: housing, labour, the reform of island school district boundaries, and the caisses populaires (parish-based credit unions). However, it appears that this offensive will not begin until after FRAP's January Convention where a struggle between the factions will be waged.

Hopefully, FRAP will emerge from its convention as an effective municipal extra-parliamentary opposition force. It has four years to build a solid constituency and work out its relationship to electoralism.

The larger significance of the Montréal election within the context of the October events in Québec is the rapid Canadian movement towards authoritarianism. Canadian liberalism, like its American counterpart, is dead. Never have so many delusions been stripped away so swiftly and so brutally.

SOME LEGAL ASPECTS OF THE CURRENT CRISIS

On November 14, 1970 the Editors of *Our Generation* put a number of questions to Professor Herbert Marx of the Faculty of Law, Université de Montréal. Our questions and his answers are given below. Earlier this year Professor Marx's study "The Emergency Power and Civil Liberties in Canada" was published in vol. 16 of the McGill Law Journal, pages 39-91.

Q. What powers does the War Measures Act give the government?

A. The War Measures Act operates a delegation of power from Parliament to the Governor-in-Council, that is to the government or the cabinet. It would be equivalent in private law to someone giving another person a power of attorney or a mandate.

The government can proclaim the War Measures Act in force when there exists in Canada a state of war, invasion or insurrection, real or apprehended. When this Act is brought into force the Governor-in-Council can make such "orders and regulations as he may... deem necessary or advisable for the security, defence, peace, order and welfare of Canada". Included but not restricted by this blanket delegation of power by parliament to the government is censorship, arrests, detention, deportation, and controls over transportation, trading production, and manufacture as well as the appropriation, control, forfeiture and disposition of property. All orders and regulations thus adopted have the force of law.

Consequently, the government's power is really unlimited. One limitation foreseen in the War Measures Act is that the maximum penalty that can be imposed for violations of an order or regulation adopted under the act is five years or \$5,000.

Q. When was the War Measures Act previously proclaimed in force?

A. The War Measures Act was first adopted at the outbreak of World War I and it was in force during that War and for a short period afterwards. It was also proclaimed in force for the duration of the second World War. However, this Act was never in force during peace-time.

At the time of the Korean War Parliament passed the Emergency Powers Act delegating authority to the government to deal with economic matters. The government was specifically prohibited from interfering with civil liberties.

Q. How does promulgation of the War Measures Act affect civil liberties?

A. We have the **Canadian Bill of Rights** which is simply a statute, like any other statute. Parliament can, at least theoretically amend or abridge this **Bill of Rights** at any time. Of course, politically it would be difficult to do so.

However, when the **War Measures Act** is proclaimed in force any order or regulation adopted by the government is "deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the **Canadian Bill of Rights**". Therefore, in times of emergency the government has the absolute power to abridge or infringe any or all of our civil liberties — for example, the right to counsel or the right not to be arbitrarily detained.

It is purely a government decision whether or not civil liberties are to be abridged and to what extent.

Q. How does the War Measures Act differ from martial law?

A. Firstly perhaps, it should be mentioned that calling in the troops to Québec is neither martial law nor was it accomplished under the authority of the **War Measures Act**. The **National Defence Act** provides that in cases of disorder in a province or part of a province the Attorney-General of that province can request military assistance to deal with the situation. This is legally a purely provincial decision. It is also foreseen in this **Act** that the province is responsible for all expenses incurred by the federal authorities.

Martial law means essentially that the ordinary law as applied by the ordinary courts is suspended and that civilians are tried before military courts. A state of martial law has not existed in Canada since at least long before Confederation. It is not uncommon elsewhere: for example, Greece is under martial law to-day and Hawaii was under martial law during World War II.

During the Québec City anti-conscription riots of 1918 the government under the powers granted to it by the **War Measures Act** did provide that future rioters could be tried by military tribunals. The government wanted to avoid the possibility of further anti-conscription rioting, and the military was to be the instrument for coercion and for repressing civil disturbances that could arise during the remainder of the War. Happily the War soon ended and it was unnecessary to employ these drastic remedies.

That "justice" can be obtained by civilians tried by court-martial is highly questionable. For example, the Attorney-General of Hawaii pointed out that during World War II on that island — "Heavy fines and long prison terms are meted out [to civilians] in many cases for comparatively trivial violations of military orders".

Q. In what way does the Public Order Temporary Measures Act 1970, now being debated in Parliament, differ from the Regulations adopted by the government under the War Measures Act?

A. The new **Act** reduces the duration during which a person can be detained without being charged from seven to three days, and from twenty-one to seven days under an order issued by the Attorney General of the province. As well this **Act** can be applied retrospectively. For example, if the prosecution produces evidence that a person was a member of an "unlawful association" (the F.L.Q.) even before the adoption of the law, this would be conclusive proof of such membership in the absence of any evidence to the contrary. One can interpret this presumption so that its retrospective application only applies retroactively to October 16, 1970, the day when the Regulations under the **War Measures Act** first came into force.

Otherwise, both the old Regulations and the new **Act** are much the same. Primarily, both measures provide for detention without charges being laid, and for search without a warrant. These provisions are of course extraordinary, giving the police powers that they would normally not have.

Perhaps of more importance is the effect of the Regulations and of this new law. Generally, these exceptional laws have a "chilling effect" on permissible free speech. Most persons are not too certain what is now permissible. Even the Editors of this Journal seriously questioned the legality of publishing certain material that was recently published in a mass circulation Montréal daily. There are hundreds and thousands of persons in a similar predicament — people against whom these exceptional measures are not **prima facie** meant to apply.

The motto of many seems to be — "Silence is golden". This is, of course, a very dangerous attitude when it is accepted by responsible adults.

Q. What is the difference between what is presently being done in Canada and what can be done in the United States?

A. The fundamental difference is that, given a similar situation to that existing in Canada to-day, the President or Congress could not abridge or infringe any rights or freedoms guaranteed by the American **Bill of Rights**. Consequently, the American government could not detain persons for prolonged periods without charging them with an offence, nor could it legalize search without a warrant. The **War Measures Act** gives the Canadian government far greater powers than an American government would have in a similar situation. However, these remarks should not be interpreted to mean that the United States is a paragon of liberty while Canada is one of totalitarianism.

When the Trudeau government proposed that we should adopt an entrenched or constitutional **Bill of Rights**, as is the case in the United States, it was suggested that Parliament should be given the power to abrogate this **Bill of Rights** in whole or in part, when in cases of emergency it deemed it necessary. Consequently, Parliament was to be supreme as regards the **Bill of Rights** and not subservient to it, as is the case in the United States.

'OTTAWA WON'T ALLOW SPLIT'

PROFESSOR TELLS MCGILL TEACH-IN

By MARC RABOY

The use of the War Measures Act and declaration of a state of "apprehended insurrection" indicates that the federal government and English Canada would never permit Québec to separate, a university professor specializing in Québec affairs told an audience of English students yesterday.

Prof. Daniel Latouche of McGill's French Canada Studies Program described current police and military activity in Québec as a purge which "has very little to do with the FLO terrorists and the murder of Pierre Laporte." He was addressing a McGill teach-in on the War Measures Act.

"The federal government, Ontario and English Canada will never let Québec separate, even by legal means, even if the Parti Québécois wins the next election," the young political science professor told some 300 students.

"A lot of us thought they would, before, but recent events have

shown that we can not expect that," he said.

Presenting a detailed analysis of the implications of invoking war measures, Prof. Latouche said themes of crisis tend to reveal the true nature of political systems, and in the present crisis Québec appears to be "an administrative region of the Canadian federation." The situation has also highlighted the importance of municipal politics, he said, citing federal cabinet minister Jean Marchand's statement linking the FLO with the civic opposition party FRAP.

"For people in power, what happens at the municipal level is more important than we ever expected," he added.

The students present were almost unanimously opposed to the war measures, which most feared as a possibly permanent threat to civil liberties.

However several speakers, including Prof. Latouche, cautioned against isolating the civil liberties issue, and thus obscuring "the real problems."

Sociology professor Marlene Dixon said there should be no need to "reincubate democracy" if it was working properly.

"Québec's grievances stem from socio-economic causes, and they can not be solved militarily," Prof. Dixon said.

Many students said they felt no safer now that police powers have been expanded.

"Many more executions have been performed in this city in the name of organized crime than in that of the FLO," said one speaker.

"The government could do something about that if it was really interested in the terrorization of the populace."

"I stopped sleeping soundly in my bed early last Friday morning," she said, referring to the hour at which the war measures act was proclaimed.

Another student said Québec is "surrounded by a conspiracy of silence and a conspiracy of lies."

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Q. If a Québec government decides to separate by peaceful means, can the Federal government proclaim the War Measures Act in force to halt such a separation?

A. Yes. And the Federal government would have unlimited power to crush such a movement.

Q. Can the new proposed law be used against community action groups such as FRAP in Montreal and counter culture groups in Vancouver?

A. Theoretically no, practically yes. That is, the new law is surely not aimed at suppressing such groups. However, the new Act will give an immense amount of power to the police throughout Canada and abusive use of this power is always possible. As well the "chilling effect" that already jelled in Canada will work to the disadvantage of many community action groups.

DRAGNET SPREADS TERROR OF ITS OWN

By RICHARD CLEROUX

QUÉBEC — An 18-year-old Québec City student (call him Jean for now) hasn't been home for three nights. He's afraid police are waiting outside his parents' home to arrest him. He called his parents yesterday and told them he'll be staying with a friend until the current wave of police arrests have subsided. Jean says his only involvement with the outlawed Front de Libération du Québec is that he wanted to organize a teach-in on the F.L.Q. at school Friday.

"And I don't think I even sympathize with them", he said. His story is similar to that of several hundred other Québécois who are being hunted by police for what

they may know, not necessarily for what they've done. Hundreds more have gone into hiding.

Many of those arrested by police were alone at the time, and friends have no way of knowing if they've been arrested, just gone away, or what. These times — with the suspension of human liberties in Québec — have created a new category of Québécois: "Missing and presumed arrested by the police". Jean's story is similar to that of hundreds of other Québécois from every walk of life — doctors, lawyers, teachers, students, unemployed workers, trade union leaders, reporters, cameramen, artists and singers.

— reprinted from
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Diary of a Prisoner of War

by Gerald Godin

Friday, October 16, 5 A.M.:

I awake with a start. Men's voices can be overheard through my bedroom door. "Are there others? Did you search the house?" I slip into my pants, open the door: 3 policemen are on the landing. The first notion that comes to mind: firemen have come to put out a fire in the house. Then, unarmed, they tell me not to move. "Do you have a warrant?" "We don't need warrants anymore, he replies, "we can search any premises we want without warrants, we can arrest anyone we want without warrants. Listen to the radio and you'll see." All this was said with a kind of triumphant smile. Images arise in my mind: this Polish friend who had thrown himself out of the window when the police had broken into his home, in and around '65; and the memory of a publication distributed to primary school students in the 40's, which was called "A quand notre tour" (When will it be our turn). A publication aimed at instilling the fear of communism in our young minds. I was eight or nine at the time. A kind of film strip projected through terror, where the secret police would break into homes, to arrest people in the middle of the night. At our place the search lasts about two hours. They seize two typewriters, a cheque book, a bank book, and a mass of documents labelled "Québec sait faire l'indépendance" (Independence, Québec knows how), which belonged to an issue of *La Claque*, a small Montréal leftist paper.

Gradually the mood slackens. The most hostile policeman becomes almost pleasant. There are four of them in all, one in plainclothes. Then after the search, we depart.

We all take off in an old, dark-blue, unmarked Chevy, for a destination unknown to me. The policemen wonder which way to take to Parthenais, also known as "the Montréal Prison". We take St. Catherine Street. While passing "Le Parisien" movie house, the policeman who had previously been hostile, asks me if I have seen the latest film of Denis Héroux: *L'amour humain*. "I saw his first two films, that's enough," I said. "I don't like Canadian films," he said, "My wife saw *Deux femmes en or*. She told me it wasn't any good. I was glad to have missed it." "I thought there were some funny parts," I replied. We enter through the basement garage.