

War Measures Act repeal?

An anniversary syndrome runs strongly in the people who work in news and public affairs. Thus we're into recurring re-hashes of the October, 1970 crisis, which are unlikely to peter out until November. Robin Spry's documentary film shown Monday night on CBC-TV is an example. And last week we learned the CBC has a huge project under way to illuminate the crisis five years later. One of the contributors to this blockbuster will be Ron Haggart, co-author with Toronto lawyer Aubrey Golden of one of the post-crisis books most critical of the handling of the crisis by the federal and the Quebec governments.

There are a number of loose ends still hanging out from the web of talk and actions taken in those difficult weeks of 1970.

On March 13 this year in London I pulled at one of the ends with a question to Prime Minister Trudeau during his press conference at Canada House.

Question: "Mr. Trudeau, in Bonn your visit coincided with the Berlin kidnapping and you told us that the senior German leaders had remarked to you their approval and complimentary views of the way you had handled the Cross and Laporte kidnapping in 1970. Then, in the Chalfont interview (BBC) the other night, you gave a long account of the democratic principles implicit in your government's actions. Do I take it from the things you didn't say in connection with this that you now believe that the Canadian government must retain the range of powers in the War Measures Act and you've given up all intention of legislating a less thorough act for emergency powers?"

Answer: "No, not at all. I think our policy would still be to have an act which would be of considerably less scope than the War Measures Act, which could be invoked in certain cases of emergency well short of war, and which would perhaps be incorporated in special provisions of the Criminal Code, to be brought into effect by declaration, debatable in Parliament and so on — the kind of idea we were putting to Parliament after the revocation or the end of the special measure (i.e., the Public Order Temporary Measures Act) which then followed the War Measures Act back at the end of '70 and beginning of '71. This is still a preferable step that I personally believe in."

Question: "When?"

Answer: "When we have parliamentary time; when we find there is a general agreement amongst the opposition that this is a better way of proceeding; when we have general support amongst the pundits of the press to urge us to go in this direction; when the rationality of our approach has been accepted by those who have sometimes voiced excessive opinions on the subject in the past."

A Quebec election returning Bourassa to power, two federal elections returning Trudeau to power, one Montreal election returning Drapeau to power, have occurred since the crisis trickled away in early 1971. And as the PM told a questioner in Bonn, since 1970 "Terrorism has certainly diminished in Canada. We have not had any other similar incidents." Clearly, parts of those answers given in London are

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mere casuistry. Alleged "pundits" have nothing to do with the determination of urgency in legislation. To my knowledge there is neither evidence of confusion about a replacement for the War Measures Act among opposition parties nor is it any of their responsibility to indicate such readiness. They haven't the initiative. It rests with the government.

As for those "who have sometimes voiced excessive opinions" about the rationality of the government approach, who would such people be? Is it those who still skeptically await the fulfillment expressed as a hope by John Turner, the then minister of justice, that "... Some day the full details of the intelligence upon which the government acted can be made public, because until that day comes the people of Canada will not be able fully to appraise the course of action which has been taken by the government"?

Is it those like Tommy Douglas who argued at the time that first the War Measures Act, then the Public Order Temporary Measures Act, were too formidable as abrogations of individual rights in relation to the threat that was being faced? Is it those who condemned and still condemn the jailing of over 400 people with negligible consequences in prosecutions?"

The failure of the Trudeau government to follow through with its promised alternatives to the War Measures Act, even with a task force study or a house committee inquiry, seems only explainable as either an unwillingness to reveal the paucity of the so-called intelligence (which Turner referred to) in the government's hands, or a bad conscience on the part of the prime minister himself about his over-reaction to what unfolding events were to reveal as a pretty puny and ill-organized challenge to authority.

Remember that concern about the excessive scale of the War Measures Act pre-dated 1970. One consequence of the Diefenbaker Bill of Rights was the recognition in Parliament that some alternative to the War Measures Act must be found, otherwise the Bill of Rights was a sham, capable of being wiped out at the drop of an order-in-council.

Remember that a House committee in 1963 actually got to the stage of hearing a presentation on a possible replacement for the War Measures Act from Robert Bryce, then a most senior civil servant (recently appointed to the Royal Commission on the concentration of economic power).

Surely the question in this fifth anniversary year of 1970 must be: When can we get rid of the War Measures Act for something more apt and less draconian?