

Death or Deliverance
Canadian Courts Martial in the Great War

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Introduction

ON 27 MARCH 1917, a cold wind blew, and showers of sleet rained down on the small village of Mont St. Eloi, located in northern France.¹ On this bleak day, a young Canadian soldier, twenty-one-year-old Arthur Lemay, stood before a field general court martial, the army's highest wartime court. He had been there before. Having volunteered to serve his country less than a year before, Lemay had already been subjected to field punishment number 1, a common yet humiliating form of public punishment, for charges of absence, as well as a previous court martial and a reprieved death sentence for the crime of desertion. A mere four weeks after this last court martial, Lemay once again stood before his accusers on two more charges of desertion.²

The odds were stacked against Lemay. His commanders and his fellow soldiers might well have believed that he would be among those "shot at dawn." Lemay came from the 22nd Battalion, a group of men who later became notorious for their bad behaviour and for their unforgiving commander, Lieutenant Colonel Thomas-Louis Tremblay. A three-time deserter, Lemay was already under a suspended death sentence. He had failed to prove himself in battle. His constant desertions meant that he had seen no action other than a little time spent in quiet sectors. His own commanders failed to find anything positive to present at his trial, and all of his superiors recommended that he be led to the firing post.³

After hearing the evidence and deliberating on their own, the members of the court martial reconvened as Lemay stood before them. To the surprise of no one, a verdict of guilty accompanied by a sentence of death was swiftly passed down. All that remained was for the commander-in-chief, Sir Douglas Haig, to sign off on the sentence and for the execution to be carried out. For a habitual offender such as Lemay, the deed seemed all but done.

The hours that followed revealed otherwise. Haig ignored all recommendations and inexplicably, once again, commuted Lemay's sentence of death. Lemay was sentenced to five years of penal servitude, and within six months he was free to rejoin his unit.⁴ His story runs contrary to popular opinion regarding military discipline in the First World War. The conventional view has been that military discipline during this era was both brutal and unforgiving. Was Arthur Lemay the exception, or was he the rule? What saved him, and what, if

anything, set him apart from those Canadians who were shot at dawn? What can his case, and others like it, tell us about Canadian military justice during the First World War? This book attempts to answer these questions.

My pursuit of this topic has grown out of a long-time interest in the First World War that began with the war poetry and the soldiers' memoirs that were mostly published in the 1930s and in many ways still define the wartime experience.⁵ It was the harrowing experiences of average soldiers that most drew me into these accounts. I was compelled by how ordinary men reacted under the most extraordinary circumstances. I was also interested in the idea of what kept men fighting and in the question of what drove some men to flee. This passion for the literature of the war flowed naturally for me into historical research on ordinary soldiers' experiences of war, notably into issues of morale and shell shock. I was interested in the myriad ways in which history and narrative conjoined, and I was curious about how reflective postwar literature was on the actual trench experience.

The intersection of literature and history also provided me with an introduction to military crimes; in particular, I became interested in desertion and cowardice and the military's response to them. These crimes are frequently cited in the postwar literature, and authors having written about them both sympathetically and non-sympathetically. In *All Quiet on the Western Front*, the popular German anti-war novel by Erich Maria Remarque, the character Detering deserts his unit in the hope of returning home to his farm to see the cherry blossoms in spring. The novel's main character, Paul Baumer, knows of the desertion but remains quiet in the hope that Detering might make it safely home. Detering is ultimately captured by the military police, and Baumer remarks pitifully of the incident that "anyone might have known that his flight was only homesickness and a momentary aberration. But what does a court-martial a hundred miles behind the front-line know about it?"⁶

Conversely, in Frederic Manning's *Her Privates We*, the main character, Bourne, exhibits a more complicated understanding of desertion and perhaps a more accurate representation of the typical soldier's view of the crime. When a soldier named Miller might face a firing squad for his desertion, Bourne notes that men of his unit were swift in their judgment of him. As Manning eloquently writes,

The fact that he had deserted his commanding-officer, which would be the phrase used to describe his offence on the charge-sheet, was as nothing compared to the fact that he had deserted them. They were to go through it while he saved his skin ... The interval between the actual cowardice of Miller, and the suppressed fear

which even brave men felt before a battle, seemed rather a short one, at first sight; but after all, the others went into action; if they broke down under the test, at least they had tried, and one might have some sympathy for them.⁷

Postwar literature has done much to pique my curiosity of the history of military crimes and punishments during the First World War, but I am equally interested in the historical evidence that speaks to the reasons that soldiers committed crimes and the military's responses to their offences. From a Canadian perspective, the body of well-researched academic literature dealing with military crimes, courts martial, and executions in the First World War has been relatively small. The works that have been published are generally excellent, but many stones remain unturned. Some archival sources have not yet been consulted, and questions regarding the military's responses to crimes, and the reasons for these responses, remain unanswered.

Chris Madsen's *Another Kind of Justice: Canadian Military Law from Confederation to Somalia*, published in 1999, provides an excellent overview of Canadian military law.⁸ Although Madsen's work is useful for its basic coverage of military law and for defining what distinguishes military law from civilian law, when it comes to military crimes in the First World War, Madsen reasserts the familiar view that the majority of desertions could be blamed on irrational decisions brought on by shell shock. Because of the scope of his work, Madsen, perhaps necessarily, ignores a vast trove of archival material that provides evidence to the contrary.

The first work to deal exclusively with Canadian executions in the First World War was Desmond Morton's 1972 article "The Supreme Penalty: Canadian Deaths by Firing Squad in the First World War."⁹ Morton's article zeroes in on two important issues: what the executions said about Canada's relationship with the British military, and how news of the executions was received by Canadians at home. Morton effectively shows that Canadians were generally accepting of the death penalty in the military.

More than twenty-five years after this article, historian Andrew B. Godefroy picked up on many of the issues where Morton left off. Godefroy's 1998 monograph, *For Freedom and Honour? The Story of 25 Canadian Volunteers Executed in the First World War*, compiles the stories of the twenty-five Canadians executed during the Great War.¹⁰ Within the parameters of these twenty-five cases, Godefroy manages to address some of the major issues involved in the courts martial, including ethnicity, shell shock, and the disciplinary value of execution. A great strength of his research is his ability to look at the files in the context of their own time and to do so on a case-by-case basis, thereby avoiding sweep-

ing generalizations of the executed men. However, his short study does not move beyond the cases of the executed and therefore makes it impossible for him to examine broader issues of military law and discipline that can only be addressed by a greater breadth of evidence.

My interest in military crimes and discipline during the First World War was also fed by the ongoing campaigns in Canada and Great Britain to pardon those soldiers executed for desertion and cowardice during the war. From the early 1990s onward, campaigners for pardons continuously lobbied federal governments, gaining support and eventually succeeding in achieving pardons for all executed British and Commonwealth soldiers in 2006. I have long wondered why this campaign existed at all and what accounted for its success. Why did it matter to a small group of people that an even smaller group of convicted soldiers be pardoned for their military crimes ninety years after they were convicted and executed for them? Why was this issue suddenly relevant and pursued with such vigour when it had not been during the course of the war? How did this small group manage to convince their respective governments to look back in time and to offer expressions of sorrow and pardons for a military policy that, in truth, affected a tiny portion of a large civilian military? Given the timing and the rhetoric of the campaign, I suspected that it had much to do with social memory or, put differently, a narrative of the Great War that had been constructed through sixty years of literature and historical writings. The larger issue for me as a historian was how much of this narrative was based on fact and how much was rooted in fiction. What exactly was the dominant social memory of the First World War, and how was it used to support the campaign for pardons? The roots of the campaign and its reliance on the mythology of the war are explored in Chapter 6 of this book.

There were 361 military executions carried out in the armies of Great Britain and the British Empire during the First World War. A further 2,719 death sentences were passed but eventually commuted.¹¹ Within the Canadian Expeditionary Force (CEF) specifically, there were 25 executions and another 197 death sentences that were commuted. This number includes a death sentence for desertion by a member of the Royal Newfoundland Regiment as well as three death sentences passed after 11 November 1918 for the crimes of murder and mutiny.¹² There were no executions or death sentences passed in the Royal Canadian Navy, and the Royal Canadian Air Force had not yet been created and would come into permanent existence only in 1924 and therefore remains outside the parameters of this book.

By far, the greatest number of death sentences was for the crime of desertion. British statistics as a whole indicate that 2,004 death sentences were passed for

the offence, with a total of 272 executions.¹³ Canadian statistics show 203 death sentences for desertion, 22 of which resulted in execution. These statistics indicate that, even if found guilty of desertion, a convicted soldier could live and even return to the front lines in a few months. Aside from these statistics, no other published sources of information can be found concerning the commuted death sentences. These cases have long been neglected in the literature because they lack the immediate dramatic impact and the sense of tragedy inherent in the cases of execution. In the commuted cases, we lack the image of a young soldier being led, blindfolded, to a firing post at dawn. I would argue, however, that the commuted cases are no less important for what they can tell us about military authority and discipline during the First World War.

I thus intend to pick up where the scholarship has left off through a comparative study of executed and commuted death sentences of the First World War. Studies that have focused solely on the executions paint a harsh picture of Canadian and British discipline in the war. These studies include William Moore's *The Thin Yellow Line*.¹⁴ Moore criticizes British disciplinary measures and executions and points an accusing finger at the failure of British politicians to speak out against the policies of the British military during the Great War.

In the same vein followed Julian Putkowski and Julian Sykes's *Shot at Dawn: Executions in World War One by Authority of the British Army Act*, first released in 1989.¹⁵ *Shot at Dawn* was a popular history meant to arouse the sentiments of a wide audience rather than provide an objective and thoroughly researched accounting of the facts. The work was highly polemical and sought not only to tell the stories of the executed men of the British and dominion forces but also to call for their exoneration. This call helped to ignite the modern campaign for pardons. In the authors' statement preceding their work, Putkowski and Sykes call on the Ministry of Defence "to have the courage to admit these injustices, and to initiate procedures for exonerating all 351 men who were executed by the British Army during the First World War."¹⁶ Putkowski and Sykes paint the executed men as "unfortunate helpless victims, least able to help themselves."¹⁷ Throughout their work, they rely on emotional language to further their arguments. Although their book can fairly be criticized as one-sided and lacking in thorough analysis, it should also be credited with bringing the debate on military executions into the public domain.

Death or Deliverance, which lends equal focus to the commuted cases and greatly expands the base of evidence, attempts to provide a fairer representation of military justice than can be achieved by looking only at the cases of execution. The examination of a greater number of court martial cases helps to tease out the nuances of Canadian and British military discipline from 1914 to 1918

and to challenge previously accepted notions that military law was harsh and inflexible during the Great War. Although the stories of executed soldiers have obvious emotive impacts, I believe that the stories of the commuted death sentences are of equal importance in historical analysis. If we are to understand the use of capital punishment specifically, and military justice generally, then it is just as important to know why someone was not executed as it is to know why someone was. Furthermore, this book speaks to issues of desertion and cowardice, the offences on which it focuses.

I rely heavily on the files of those who received commuted death sentences during the First World War. The individual personnel files as well as the court martial records not only provide statistical evidence of military discipline and specific trends in discipline during the war but also serve to humanize the individual stories of the soldiers in this book. I use the term “discipline” throughout to describe both how soldiers behaved individually or as a group and the punishments received in cases of poor behaviour. Case files are an important tool in this type of historical inquiry; in the words of noted Canadian social historians Franca Iacovetta and Wendy Mitchinson, case file research has the power to “expose the words and actions of authorities and experts, and to recover the lives of the less powerful.”¹⁸ This book is no exception. The court martial files speak to the actions and motivations of the accused, but they also lend important insight into the power structure of the CEF during the First World War and the motivations behind the decisions of commanding officers. However, problems in the evidence must be acknowledged. The documents contained in court martial records are not uniform in each case. In the cases of executed men, many of the transcripts of courts martial and most of the letters of recommendation do not exist. These records were destroyed by the Directorate of History before they could be transferred to Library and Archives Canada.¹⁹ Without further information, it is impossible to know exactly why these records were destroyed; it might have been an oversight, or it might have been because of the records’ contentious nature. This would not have been unprecedented; for example, records from the conscription tribunals of the First World War were destroyed because they were seen as a threat to national unity. In addition, because courts martial were held in the field in a hurried manner, there was likely little documentation to begin with since record keeping was not a main priority in light of the circumstances. In this case, the lack of evidence can be just as telling when it comes to the quick and at times improvised nature of the court martial process. Information that I gathered came from various documents, including field service records, letters from officers to divisional headquarters, and in some cases personal letters from relatives of the deceased.

Among the commuted cases, court martial files are more complete, containing crucial documents such as schedules listing both charges and pleas, summaries of evidence (including witness testimony), and, most telling of all, court martial transcripts and statements of superior officers regarding the character of the accused, the state of discipline in the battalion, and the recommendations for punishment. Again, the files are not standardized; some contain more information, some less, but on the whole these records are much fuller than the records of the executed.

In addition to personnel and court martial records, I use other archival documentation, including war diaries and memoranda on the practice of execution written in the aftermath of the First World War. These records were created by various government departments, including the Department of Militia and Defence and the Department of Justice. Finally, in order to address the perspectives of ordinary soldiers and civilians, at times I use personal accounts of executions and military discipline derived from newspapers, letters, diaries, and memoirs of ordinary soldiers and other persons of interest.

I have also consulted a breadth of secondary sources, such as existing monographs and articles on martial executions and military discipline during the First World War and numerous studies related to issues of morale and shell shock. Among the most important for this book were the works of Gerard Oram. Oram stands out in the literature on the British experience of First World War discipline in that he moves his scholarship beyond the cases of execution to look at courts martial more generally. Furthermore, in *Military Executions during World War I*, he questions how colonial ideas of race and ethnicity might have impacted court martial decisions. He moves his analysis beyond the military in order to place his questions and his findings in the context of British society at large and its popular attitudes at the time. Oram was also the first researcher to collect, synthesize, and use the large amount of untapped information found in the commuted cases – that material has been invaluable to this book. Oram's *Death Sentences Passed by Military Courts of the British Army, 1914-1924* provides a definitive list of those soldiers of the British Empire who received a commuted death sentence or were executed by military authorities during the Great War. This list allowed me to easily identify the cases of Canadian soldiers that I would study and to more quickly locate their court martial files at Library and Archives Canada.

To form a better understanding of issues of morale and shell shock, I turned to some of the classic books on the issue, including the often cited *The Anatomy of Courage* by Lord Moran as well as more recent works by Canadian historians who have sought to understand Canadian soldiers' trench experiences.²⁰ Among the historians whom my work in this area is indebted to are Desmond Morton

and Tim Cook. Although Morton's *When Your Number's Up: The Canadian Soldier in the First World War* is a general study of war, Morton writes extensively on issues of morale and ultimately echoes Moran's finding that courage in men is a finite resource. Morton goes on to argue that a soldier's courage or morale is drained faster when the soldier is faced with immobility or is unable to defend himself, and for this reason the stalemated trench warfare of the First World War was particularly damaging to morale.²¹ Cook's recent double volume on the Canadian experience in the Great War contributes exponentially to Morton's work, and his second volume, *Shock Troops: Canadians Fighting in the Great War, 1917-1918*, offers several excellent chapters dealing with issues of combat motivation and military discipline.²²

In order to provide a comparative perspective between military and civilian justice in the early twentieth century, I consulted several articles and texts on legal history, including the recently published *The Practice of Execution in Canada* by Ken Leyton-Brown.²³ Brown's study was useful in providing a historical account of the practice of execution in Canada. His study clearly lays out the process of executions and the roles played by the various actors, including the convicted, the judge, and the federal cabinet. This information was helpful in drawing comparisons between the civilian and military worlds of 1914-18, and it proved useful when thinking about the process that preceded a military execution.

Finally, in order to discuss aspects of social memory related to the First World War, I reviewed cultural histories of the war that address its legacy in Europe as well as Canada. The most important work in this genre for my book has been *Death So Noble: Memory, Meaning, and the First World War* by Jonathan F. Vance.²⁴ Published in 1997, *Death So Noble* remains the best source for exploring how Canadians set about remembering the war and how these acts of memorialization contributed to a still-emerging national identity.

A number of popular films and websites also added significantly to my understanding of social memory, and these sources perhaps more than any others reveal popular attitudes regarding the war. A number of films address the subject of martial executions in the First World War, including *Paths of Glory*, *A Very Long Engagement*, and, in the Canadian context, *Passchendaele*.²⁵ Popular attitudes regarding the war are also revealed in a number of British productions, including *Oh! What a Lovely War* and the satirical television series *Blackadder Goes Forth*.²⁶ Finally, while there are numerous websites devoted to various topics of the Great War, including tactics or general histories, the most important for my book was *Shot at Dawn*, a website maintained by advocates of pardons in the United Kingdom, Ireland, and Canada. Combining essays, statistics, biographies, and arguments in favour of pardons, this site contributed much to

my understanding of the goals of campaigners for pardons and their understanding of the Great War.²⁷

I address a number of themes throughout this book in order to provide the most complete picture possible of the First World War courts martial. I begin with a description of military law as it existed from 1914 to 1918. Although focused on military law, I also make ample reference to civilian law during this time in order to provide both context and a comparative perspective. I avoid making obvious comparisons between today's military judicial system and that of 1914. A more useful comparison is that of the civilian legal system with the military legal system during the same era. By understanding the application of the death penalty in civilian society, we can begin to understand why the military attributed such value to it as well.

The central question of this book is why some Canadian soldiers faced the firing squad during the First World War while others with similar crimes and disciplinary records had their sentences commuted. I attempt to answer this question by looking at both the motivating factors behind the crimes of desertion and cowardice and by asking which factors were crucial in leading to confirmation of the ultimate punishment. Commanding officers had a number of disciplinary options at their disposal, and they regularly took advantage of them. I argue that military discipline during the First World War, rather than being meted out by unyielding and callous generals who feature so prominently in movies and popular media, was surprisingly flexible and capable of showing great concern and even sympathy for the individual soldier.

The final major theme that I address in this book is the campaign for pardons and its link to the social memory of the First World War. The campaign emerged in the 1980s in Great Britain, Canada, and New Zealand and reached its conclusion in 2006. I contend that the campaign emerged because of an existing social memory of the First World War as a war of tragic futility. This memory has been encouraged in the media, through novels, films, and television documentaries, and was readily incorporated into the campaign for pardons and accounted for its groundswell of support.

Finally, a word on terminology. Throughout this book, I apply the term "justice" to the discussion of courts martial and military law. However, I use the word with some reservation. It is clear that courts martial were not conducted for the purpose of delivering justice as much as they were for group discipline. As stated in the *Manual of Military Law*, the definitive legal guidebook for the British and dominion forces from 1914 to 1918, "the object of military law is to maintain discipline among the troops and other persons forming part of or following an army."²⁸ However, even while keeping this in mind, I am forced to adopt the term "justice" because so many modern critics of the military legal

system have done so. It would be impossible for me to critique their assumptions, or to provide my own revisionism, without using the term. Therefore, there are instances when I use the term while analyzing how the individual soldier fared against the military legal system; I cannot avoid the term, but I admit that it is a misnomer in the context of this book. However, while accepting the use of this term, I also hope to move my analysis away from modern notions of justice and shift it back to military law as it existed in 1914. I seek to assess military law as it was in the context of the times and not in the context of what we wish it was. This, I believe, is the only way to do justice to “military justice.”

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