THE DEFENCE OF THE REALM ACTS (DORA)

AND THE EXPANSION OF THE BRITISH STATE, 1914-1921

A Thesis

by

MARK BRIAN KLOBAS

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

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ABSTRACT

The Defence of the Realm Acts (DORA)
and the Expansion of the British State, 1914-1921.
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The First World War brought about an unprecedented expansion in the power and scope of the British state. While there were a number of laws involved in this expansion, none were as important or as far reaching as the Defense of the Realm Acts (DORA). This was a series of laws passed by Parliament that granted the government the ability to govern through administrative decree (in the form of regulations created by the Cabinet and its departments) instead of through the lawmaking process. The Acts established a form of constitutional dictatorship throughout Britain, with virtually no checks to these new powers. The British populace accepted these powers as necessary to win the War, and tolerated many measures that they would have strenuously opposed in peacetime.

These powers were granted in a number of areas. The cornerstone of DORA's power was in property requisitioning, allowing for permanent seizure of property for a nominal amount of compensation. While challenged in a number of cases that produced landmark decisions for British constitutional history, the overwhelming majority of people accepted the state's initial offer or

the result of the arbitration made by the Defence of the Realm Losses Commission (DRLC). Property requisitioning often served only as a tool for larger policy goals, however, and was applied in both the agricultural and industrial sectors of the economy to facilitate a continual supply of goods to factories and the battlefront. Regulations were also used as social regulation and to restrict civil liberties such as the freedom of the press in order to ensure the successful prosecution of the war with maximum efficiency.

The most important role that the Acts played, however, was in its legacy. People became accustomed to the intrusive role of the state, especially given the government's judicious handling of DORA's powers. After the war the Acts often served as a model for postwar legislation that granted the government extraordinary powers to deal with problems. In this sense, DORA shaped British history, carving out a far greater role for government than had previously existed in Britain.

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CHAPTER I

ANTECENDENTS AND ORIGINS

To most Americans, the historical source of constitutional rights is Great Britain. It is here where such concepts as government by the people, trial by a jury of one's peers, and the freedoms of speech, property, and the press were formulated in their modern context. It was here, wrote the great English legal expert Albert Venn Dicey, that government was conducted with "the absence of arbitrary power on the part of the Crown, of the executive, and of every other authority in England." Nor were these rights the result of benevolent evolution. Throughout British history, monarchs have been overthrown, wars waged, and blood spilled over the struggle for these rights which Dicey and others revered.

Yet the onset of World War I caused a fundamental transformation in the British constitution and in the powers of the state. The rights which had been so fiercely defended over the centuries were casually put aside, as the state was endowed with far-ranging powers, in effect creating what some termed a "constitutional dictatorship." Though these powers were conferred through a number of statutes, the single greatest source was what came universally to be called DORA, the innocuous-sounding acronym for the Defence of the Realm

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This thesis follows the style and format of *Twentieth Century British History*.

Acts.[1] Through DORA, the state extended its control seemingly over every facet of life, and this power was recognized both by contemporaries and subsequent observers of the period. Yet despite DORA's importance, much of the Act and its functions remain little known, acknowledged but unexamined. Questions abound on the subject regarding the motivations behind the undertaking of such a drastic measure that seemed to run contrary to the traditional course of British constitutional history, how this shift affected the British people, how the government handled their newly acquired power, and what the legacy of DORA was. The purpose of this work is to answer these questions by tracing the antecedents of DORA and the transformations it underwent, as well as its application to the nation during the First World War and its impact upon subsequent British history. This will be done in this chapter by tracing such antecedents in three fields--in the use of the military to keep civil order, the censorship of the press in wartime, and in prewar policy discussions over the military's authority to requisition land for military purposes. Such an approach helps to emphasize the broad range of areas that the Act covered as well as the extent of its powers, powers that laid the groundwork for further, even more intrusive intervention by the state into the lives of its citizens.

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[1] Unless specified in the text, reference to the Act will mean the version passed in March 1915, the final version of the general series of Acts to be passed.

Though DORA's existence seems to stand out in sharp relief to the previous course of British history, the act was hardly a radical break with past policy. While it did represent a new departure, its foundations were laid in the nineteenth century as the British government began to look for new ways to maintain security in troubled times. DORA's antecedents can be seen in two fields, the first being labor relations and the response to labor unrest. Until the early nineteenth century, the state relied on the blunt tool of military force to put down civil unrest. Incidents such as Peterloo--a notorious event where British troops fired on an open air meeting gathered to hear the radical orator Henry Hunt speak-- in 1819 caused government officials to rethink these policies. While easily capable of suppressing dissent, soldiers were usually viewed as servants of the state acting on its behalf instead of an impartial group designed to enforce the law, a perception which hindered their ability to keep the peace without resorting to violence. This led the state in 1829 to entrust the maintenance of public order to a newly created civil force--the police. However, the military still played a role in controlling large public disturbances, as there were few police forces with the manpower necessary for handling such problems and the massive show of force helped to support the police and allay the fears of local authorities.[2]

The first major use of the military in its reduced role occurred with the

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[2] Stanley H. Palmer, *Police and Protest in England and Ireland, 1780-1850* (Cambridge: Cambridge University Press, 1988), ch. 5.

rise of the Chartist movement in the late 1830s and early 1840s. The protests came in three waves; the first, in 1839-40, saw a military deployment far out of proportion to the handful of violent incidents which were easily suppressed, allowing for the rapid restoration of order. The Plug Plot disturbances in northwest England during July 1842 saw a far greater use of physical force on both sides. The riots involved a series of strikes by coal miners in north Staffordshire, initially over the redress of work-related grievances, but soon evolving into a general anti-state protest embracing aspects of Chartist protest that spread into Cheshire and Lancanshire. The inadequacy of the Staffordshire police force and their inability to stop the riots resulted in Whitehall's dispatch of over 2,000 soldiers to the area, who were able to reassert state control by the end of August. Over 8,000 troops were also deployed throughout London during the final wave of Chartism in 1848, but both the London march and subsequent Chartist protests that year proved anticlimactic.[3] The demise of Chartism decreased the threat that labor action posed to the state, and almost a half-century would pass before the military would again be called out in force in aid of civil authorities.

The key to its use was the rise of organized labor in the 1880s, a phenomenon which created a sense of panic among government officials not felt

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[3] Palmer, ch. 11; Robert Fyson, "The Crisis of 1842: Chartism, the Colliers' Strike and the Outbreak in the Potteries," in *The Chartist Experience: Studies in Working-Class Radicalism and Culture, 1830-60*, ed. James Epstein and Dorothy Thompson (London: The Macmillan Press, 1982), p. 194-220.

since the Chartist movement. Such protests were viewed as what one leading economist of the time termed "industrial treason."[4] Yet by this time Whitehall was increasingly reluctant to use military force to control civil unrest, because of the political damage such deployments caused. Local authorities had no such qualms, however. Periods of civil unrest necessitated increases in the forces needed to control them. The options available to the local officials were limited; increasing the numbers of police by calling in additional constables from other areas, deputizing people to serve as law enforcement officials, and deploying soldiers. Of these, the use of the military was the most attractive since it cost nothing (other forces having to be paid for out of local funds) while providing "a quick and effective means of bringing a disturbance to an end."[5] This first became apparent with the Featherstone strike of 1893 in Yorkshire, where the local constabulary was overwhelmed and troops were despatched to deal with the miners. As a result, military force began to be used once more in order to quell civil unrest.

But the use of military force came with a price--the loss of local control. This was first evident during the South Wales miners' strike of 1910, which started over an argument about wage differentials and soon spread beyond the ability of the local police to control. As a result, the Chief Constable of

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[4] W. Stanley Jevons, *The State in Relation to Labor* (London: Macmillan and Co., 1882), p. 131.

[5] Barbara Weinberger, *Keeping the Peace?* (New York: Berg, 1991), p. 4

Glamorgan, Captain Lionel Lindsay, requested support from the Home Office in the form of both the Metropolitan police and armed soldiers. After some initial hesitation on the part of the War Office, the Home Secretary, Winston Churchill, sent in troops to assist the 11,000 police already there to maintain order. The military commander, General Nevil Macready was soon equipped with the authority to take control "of all the police and military on the spot" if the local officials requested military intervention. This gave Macready sole authority over the situation. But while Macready's powers were great, Churchill "kept the extent and form of military intervention under exceptionally strict political control,"[6] establishing specific parameters for the use of troops and dispatching a special Home Office representative, J. F. Moylan, to supervise Macready's conduct. In the end, Macready succeeded in keeping the peace through an impartial approach that involved superseding the authority the local police (who were taking their orders from the mine owners) and by implying that he could obtain a commission to act as military governor, something that neither side wanted to see.[7]

The miners' strike of 1910 established two important precedents, each at

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[6] Charles Townshend, *Making the Peace* (Oxford: Oxford University Press, 1993), p. 42-3.

[7] Weinberger, *Keeping the Peace?*, ch. 3; Charles Townshend, "'One Man Whom You Can Hang If Necessary': The Discreet Charm of Nevil Macready," in *The Limitations of Military Power*, ed. John B. Hattendorf and Malcolm H. Murfett (London: Macmillan, 1990), pp. 143-53.

different levels: First, Churchill's policy removed the duties of keeping the peace from the hands of local authorities for the first time since the reintroduction of military force in civil peacekeeping, thus increasing the amount of control Whitehall had over the situation. Second, Macready's stance implied that the state stood above the dispute, favoring neither side--a fact that impressed strikers used to seeing policemen acting on behalf of the mine owners and that undoubtedly played a critical role in maintaining peace. Though the entire episode proved costly to the Treasury, and failed to provide immediate resolution to the strike (which dragged on until September, 1911), Whitehall's new role was established.[8]

While these responses to labor indicated the new role that the state was beginning to play, they were all measures occasioned by the crises at hand. Although traditional boundaries were broken and new precedents established, it was always on a temporary, case-to-case basis. What the military began to seek in the 1880s was the outlining of statutory emergency powers for time of war. Some powers were already detailed in the statutes; the Defence Acts of 1842-1873 gave the armed forces the legal right to requisition land, but as these laws were applicable in peacetime as well as during wars, their powers were restricted by legal procedure.[9] Both sides stated their dissatisfaction with the

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[8] Weinberger, *Keeping the Peace?*, ch. 3.

[9] Leslie Scott and Alfred Hildesley, *The Case of Requisition* (Oxford: Clarendon Press, 1920), pp. 10-3, 35-41. Another option lay in the use of the

laws: the Treasury Solicitor commented that, "the owner has really no voice at all,"[10] while the army thought the powers both limited and restrictive. What the military command wanted was "a statute conferring on them extensive powers to take steps necessary for the defence and security of the realm, both in the critical period pending a major conflict and after the outbreak of war."[11] Accordingly, at the behest of Colonel John Ardagh a bill was drafted in 1888 to place such measures into law, though the government set it aside to be passed when circumstances would later demand it. Dissatisfied with this decision, the War Office attempted to push the measure through in 1891 and in 1895, both times encountering the opposition of Courtney Ilbert, the parliamentary draughtsman. Ilbert thought the measure unnecessary, arguing in a memorandum in 1896 that,

> . . . any attempt to specify in detail and to express in statutory language the powers exercisable by the civil and military authorities under such circumstances might throw doubt on the prerogative powers of the Crown, and would probably involve the imposition of restrictions and limitations which would be inconvenient and misleading, and which in

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Royal Prerogative, as defined in the famous cases *The Case of Saltpetre* (1606) and *R. v, Hampden* (1637), though, while this classic authority was used to condone state actions during court cases, it proved a far more tenuous basis for justifying state requisitions.

[10] TS 27/62, "Note on the Compulsory Procedures for taking land possessed by the Secretary of State for War, dated 1902." Cited in G. R. Rubin, "The War Office and Contingency Legal Planning, 1885-1914," in *The Political Context of Law*, ed. Richard Eales and David Sullivan (London: The Hambledon Press, 1987), p. 147.

[11] Rubin, "The War Office and Contingency Legal Planning," p. 149.

practice it would be necessary to disregard.[12]

The military disagreed, arguing that to exercise powers at the discretion of military officers (as Ilbert suggested) exposed these officers to legal proceedings, as well as the need to have a statutory framework in place for the contingency wartime planning the Committee for Imperial Defence (CID) was then conducting. However, the onset of other problems, namely those identified by the Boer War, caused the military command to set aside the creation of a formal policy for the time being.

Yet while the outbreak of war in South Africa forced a postponement in the establishment of a formal policy, the Boer conflict, along with the other conflicts prior to the First World War, raised the issue of press censorship. At the start of the Boer War, Sir Evelyn Wood, Adjutant General at the War Office, proposed that the Service departments control all military information during national emergencies. His suggestion was prompted by what he saw as "the feverish competition of modern journalists to obtain news which will interest the enormous reading public they cater for," and wanted to prevent the enemy from gaining sensitive information as a result of their efforts. Wood's political superiors rejected his proposal as being too difficult of an issue to pass through Parliament, with George Wyndham arguing that field censorship

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[12] WO 32/7112, "Emergency Powers. Memorandum by C. P. Ilbert, 5 August 1896," para. 2. Cited in Rubin, "The War Office and Contingency Legal Planning," p. 151.

regulations were sufficient to prevent such leakage.[13] The CID attempted to pass similar legislation in 1905, prompted by Japanese use of Russian press releases as a source of military intelligence during their war in Asia, but in spite of their efforts to drum up support from the press itself, the bill died once more because of governmental fears of Parliamentary reaction.

It was only in the aftermath of the Agadir crisis in 1911 that questions of press censorship were resolved. *The Morning Post*'s article on fortifications on the East Coast brought about renewed efforts by the War Office to seek some form of press restriction. They dispatched Sir Reginald Brade, Permanent Secretary at the War Office, to meet with members of the Newspaper Proprietors' Association (NPA) in order to negotiate an agreement allowing some form of restriction acceptable to all. Brade's efforts resulted in a conference between representatives of the Services and the NPA which established a Joint Standing Committee comprised of members from the War Office, the Admiralty, and the Press Committee. This standing committee had the power, upon reference by either department, to screen information, with the press voluntarily agreeing to accept the committee's decisions as final. This agreement, along with the passage of the Official Secrets Act the year before,

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[13] WO 32/6.381, Memorandum by Sir Evelyn Wood, 1 March 1899. Quoted in Colin Lovelace, "British press censorship during the First World War," in *Newspaper History from the Seventeenth Century to the Present Day*, eds. George Boyce, James Curran, and Pauline Wingate (London: Constable, 1978), p. 308.

helped address the Services' concerns and the matter was considered resolved.[14]

The settling of the press issue coincided with a renewed effort by the military command to obtain legislation expanding their legal powers in time of war. In 1911 several members of the War Office sought to gain the support of the Secretary of State for War, Richard Haldane, on the matter. Haldane, however, adopted Ilbert's old stance, stating that the measure was not needed. The issue rested there until 1913 when Haldane's successor, Colonel J. E. B. Seely, referred the matter to his staff. Colonel G. M. W. MacDonough wrote a memorandum in July assailing Ilbert's doctrine, but once more the civilian legal advisors to the government, this time Attorney General Rufus Issacs and Solicitor General Sir John Simon adopted Ilbert's defense of the *status quo*. MacDonough pressed on, supported by General Sir Henry Wilson, the Director of Military Operations and Brigadier-General David Henderson, Director of Military Training. He succeeded in having Prime Minister Herbert Henry Asquith refer the matter to a CID subcommittee in November, though the committee did not meet until 30 June 1914. MacDonough drew up a list of the powers that the Army felt were necessary to have by statute, only to encounter Simon's opposition once more. Simon recognized the need to convince officers that they were acting lawfully, but he believed that this could be accomplished through a proclamation, a move which the War Office representative at the

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[14] Ibid, p. 309.

meeting declared satisfactory.[15]

The CID subcommittee meeting occurred two days after the assassination of the Austro-Hungarian Archduke Franz Ferdinand, though the immediate prospect of war was on the minds of few at the time. When war came, instead of drafting a proclamation, the Secretary of the CID, Colonel Maurice Hankey, began to develop regulations. Reginald McKenna, as Home Secretary, presented the regulations in the form of a bill to the House of Commons on August 7, three days after Britain's declaration of war.[16] Despite the exent of the bill's provisions and its lax drafting, there was practically no debate, with only two questions asked by a single member.[17] There was even less notice taken in the House of Lords, where the bill was processed through its three readings without a murmur. The Defence of the Realm Act was passed "in that spirit of decision and confidence which . . . marked the war measures of this Parliament," with no consideration for legal proprieties or libertarian concerns.[18]

Yet the question remains: why did the government seek an act instead of

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[15] Rubin, "The War Office and Contingency Legal Planning," p. 153.

[16] Sir John (later Viscount) Simon's later statement, that the legislation "had been carefully prepared beforehand" is misleading. Viscount Simon, *Retrospect* (London: Hutchinson & Co., 1952), p. 104.

[17] *Parliamentary Debates* (Commons), Fifth Series, (hereafter *H.C. Debs*, 5th ser.) vol. LXXI (1914) cols. 2191-2194.

[18] H. M. Bowman, "Martial Law and the English Constitution," *Michigan Law Review*, XV:2 (December 1916): p. 93.

simply issue a proclamation? This is a line of inquiry which still has not been thoroughly explored in the subsequent literature on DORA; its most recent investigator, G. R. Rubin stated that "(a) full explanation for this complete shift awaits further investigation."[19] Yet it is still possible to discern some potential answers. First, the opinion of one War Office representative is not necessarily that of the whole armed forces, and there may have been some officers who still preferred formal authority to be designated in statute. Second, a proclamation may not have fulfilled what the War Office desired. Simon's argument at the 30 June meeting was that the powers already existed in common law to achieve what the War Office wanted and that the proclamation was more to "reassure a timid General Officer" than to delegate new powers in response to war. In this sense, DORA was an extremely farsighted measure, for as time and the DORA regulations were to show, what the state eventually needed went far beyond Simon's original vision.[20]

The act was revised two weeks later, ostensibly to correct "certain omissions" that resulted from the rapid pace at which the original legislation was drawn up. On 24 August, McKenna introduced a bill in the Commons to amend DORA so as to allow courts-martial for civilians who violated regulations adopted "to prevent the spread of reports likely to cause disaffection

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[19] Rubin, "The War Office and Contingency Legal Planning," p. 155.

[20] Ibid.

or alarm," as well as those which secured military training and deployment areas. For the first time some doubts were voiced about the bill, as one member, the radical Liberal Charles Trevelyan, felt that the language of the amendment was of "somewhat vague import" and might be used to ban any speech or writings contrary to the state. McKenna's promise that the bill would not be used for such a purpose quickly ended the debate, and the amending bill passed out of the Commons on 26 August, with the Lords approving it the day afterwards.[21]

Though the amendment was designed to ensure the legality of the bill, it has been pointed out since that the first two DORA acts were so flawed in their writing that many of the actions carried out under its authority remained illegal. The argument was made by J. H. Morgan, a professor of law at University College, London, in a book he coauthored in 1915 with Thomas Baty. In it, Morgan argued that under the original act and its first amendment "the Defence of the Realm Act could not confer the arbitrary power upon the executive which it assumed." According to Morgan, the language only gave the state the power to regulate areas defined in the original act: communications with the enemy, the obtaining of information that aided the enemy or harmed British forces, the spreading of alarmist reports, the safety of communications, or the suspension of restrictions on land acquisition. As for regulations regarding

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[21] *H.C. Debs*, 5th ser., vol. LXVI (1914), cols. 89-87.

other matters, Morgan announced that "(f)or four months we have been living under decrees from the . . . authorities which were absolutely illegal."[22]

Morgan's argument is founded on the wording "His Majesty in Council has power . . . to issue regulations as to the powers and duties of the Admiralty and Army Council." This, Morgan states, is simply in regards to the *existing* powers of the Army Council in common law rather than the assignment of new powers. He advances two possibilities for the vagueness of the language; first, that it was deliberate because of the political sensitivity of granting such powers, and second, that the intent was to restrict the powers to those specified in the original act and that subsequent interpretations went beyond the initial intentions of the government. The second interpretation would certainly justify the prewar concerns of the lawyers who opposed the military's attempts to expand their statutory powers. However, as no record has been left of the intentions of the authors or of the government in regards to the initial legislation, historians can only speculate as to the true reason.[23]

The next revision came in November. The third Defence of the Realm Act combined the first two bills and changed the wording in order to give the state the formal statutory power to issue any regulations in defense of the realm, thus correcting the oversights of the August acts. In addition, the death

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[22] Thomas Baty and J. H. Morgan, *War: Its Conduct and Legal Results* (New York: E. P. Dutton and Company, 1915), pp. 101, 102.

[23] Ibid, p. 101; Rubin, "The Political Context of Law," pp. 156-7

penalty was added to the punishments which could be meted out by the courts-martial. This proposal encountered strong opposition in the House of Lords as it had been two hundred and fifty years since civilian courts had possessed the power to sentence a person to death without a trial by jury. Three members of the upper house combined to oppose the bill: Lord Halsbury, Lord Loreburn (both former Lord Chancellors), and Viscount Bryce, a former ambassador. Halsbury declared that the act was the "most unconstitutional thing that has ever happened in this country," and argued that the bill should be amended to allow British subjects to be tried in civil courts. Bryce echoed Halsbury's protest, viewing the issue of being one where British subjects should be tried in civil court "when there is a civil court to try him." Yet despite these weighty protests, the bill passed through the Lords untouched, the only concessions made to the concerns of the three lords being the Lord Chancellor's promise that no British subject would be put to death except for a crime of high treason.[24]

Parliament did not address DORA for another three months. In February, 1915, the government introduced a bill that moderated the earlier measures, giving civil offenders the right to a trial in civil courts, with the caveat that should there be an "invasion or special military emergency" the King could

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[24] *Parliamentary Debates* (Lords), Fifth series, (hereafter *H.L. Debs*) vol. XVIII (1914), cols. 201-224; Lindsay Rogers, "The War and the English Constitution." *The Forum*, LIV (July 1915), p. 31.

reinstate the imposition of a military judiciary by proclamation. The significance of the new amendment, however, was in the speech delivered by its sponsor, Attorney-General Sir John Simon. In his address to Parliament, Simon acknowledged that DORA was "an extremely novel proposal," and while there was a clear need for the act, the bill and his comments suggested that perhaps the government had "gone beyond what was necessary." He countered those who felt that DORA "violated constitutional tradition" with the argument that it represented "adequate and representative steps against a great national danger."[25]

The new bill sparked for the first time a full debate of DORA's measures. The Unionist Party strongly supported the bill, with their leader in the Commons, Andrew Bonar Law, declaring that "at a time like this powers of dictatorship must be given to the government," although he hoped that the government would "as far as possible stick to the old custom."[26] Edward Carson, Simon's successor as Attorney-General, agreed with Bonar Law, stating that "(t)he government must have whatever powers they asked for."[27] Yet there were some on the Liberal benches who felt that the government had gone too far. One member, a Sir Ryland Adkins, moved an amendment that would allow for

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[25] *H.C. Debs*, 5th ser, vol. LXX (1915), col. 28.

[26] *The Times*, 16 February 1915, p. 10.

[27] *The Times*, 25 February 1915, p. 12.

courts-martial only when civil courts (with their provisions for trial by jury) were unavailable, which would deny the state the right to try civil offenders in special emergency cases. The government successfully defeated the amendment, but Adkins' measure suggested that not everybody felt secure with the transfer of so much power into the hands of the state.[28]

Though the DOR Act of March 1915 was the last major revision of the Act in Parliament, it was not the last time that its scope was increased. Throughout the war regulations were issued which allowed the state to further its authority, and new ministries were created to administer the additional authority that DORA gave to the state. Yet the Act did more than just expand state power. Often DORA became a vehicle of circumventing parliamentary opposition to a measure, as bills that encountered opposition were withdrawn only "to reappear a few days later in the form of a DORA regulation." Parliamentary control diminished with DORA, as "the focus of lawmaking authority shifted from Parliament to the Cabinet." Even the authority of the courts to check state action was restricted, as Britain became a country governed by administrative decree.[29]

This was by no means a gradual evolution of power. After an initial spate of regulations (primarily in the realm of property rights), the use of

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[28] *H.C. Debs*, 5th ser. vol. LXX, cols. 670-759.

[29] Clinton L. Rossiter, *Constitutional Dictatorship* (Princeton, NJ: Princeton University Press, 1948), pp. 163, 156.

DORA as a governing tool diminished. The perception was that the European conflict would be a quick war, quickly won. Yet as time went on and the demands of the new warfare waged in France grew, the need for still further powers grew. By 1916, a number of commissions were established to explore expanding DORA's authority and its use as a tool to govern the nation. It was only with the fall of Asquith in December 1916 and David Lloyd George's succession to the premiership, however, that the full powers of the Act were completely utilized to confirm the state's control over virtually every aspect of daily life. It is this growth and administration that this narrative will focus on in the next three chapters.

CHAPTER II

PROPERTY REQUISITIONING

Property rights are one of the most integral parts of the British constitution. Long before civil liberties became an issue to the British people, property rights were debated and legislated. From Magna Charta onward, the assertion of the rights of the aristocracy *vis a vis* the monarchy involved a claim for property rights because of the position of property as the cornerstone of that group's power. As the centuries passed property came to be seen by the British people as the cornerstone of the aristocracy's power, providing both value and stability to the owner. By the eighteenth century, few doubted that power followed property, with even such hallowed concepts as liberty deemed to be of lesser significance. Even the effects of the Industrial Revolution served only to reemphasize the importance of property, with its preeminence accepted by the newly-successful groups in Britain and reaffirmed by numerous laws and measures.

Yet in spite of the preeminence of property rights in the English constitution, these rights were sacrificed in the name of the war effort. Property control went from a form of tyrany to the cornerstone of DORA's power. As noted in Chapter One, discussions of the question of property rights and government requisitioning was critical to the creation of the Defence of the Realm Act, and one of the powers assigned through the Act from the outset

was that of requisition. This chapter will examine DORA's role in property issues, detailing the specific property regulations authored and how these regulations were administered during the war. Since there were many who questioned the powers the state exercised regarding property rights, the key court battles over property rights will also be covered, showing the constitutional arguments involved and how the Government's reaction to such challenges reveals its views on the subject, both for the First World War and subsequent British constitutional development.

The issue of property requisitioning was one of the first to be addressed by the Defence of the Realm Act regulations. Regulation 2, which was among the first set of regulations issued, permitted the government to requisition land or "do any other act involving interference with private rights of property which is necessary . . ." for the conduct of the war.[1] Additional regulations were subsequently issued which extended these powers to the commandeering of specific materiel, ranging from natural resources to processed goods and the factories in which they were produced. Yet as the War progressed the need arose for a more specific law that went beyond the temporary measures outlined under the original Acts. The result was the Defence of the Realm (Acquisition of Land) Act of 1916, which established measures allowing for the permanent

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[1] Regulations 1 through 9 were issued on November 28, 1914. Alexander Pulling, ed. *Defence of the Realm Manual*, 5th edition (London: HMSO, 1918), p. 40.

acquisition of government property after the war, with compensation set at the value of the property from the time of seizure. This is significant in that it indicates the importance that property requisitioning assumed for British policy, since passage of the (Acquisition of Land) Act put requisitioning on firmer constitutional footing as well as guaranteed control over the property requisitioned.

This new power was not unleashed without some attempts to mitigate its effects. Indeed, the first regulation issued stressed that "the enjoyment of property will be interfered with as little as may be permitted" under the circumstances of the conflict. The government understood as well the need to recompense the property owners, and during the debates over the March DORA amendment, the Chancellor of the Exchequer, David Lloyd George, promised that compensation would be available for the:

> conduct of naval or military operations; for assisting the food supply; and promoting the continuance of trade, industry, business and communications, whether by means of insurance or indemnity against risk; the financing of the purchase and re-sale of foodstuffs and materials, or otherwise; for relief of distress, and generally for all expenses arising out of a state of war.[2]

Compensation was primarily tendered through an initial offer based on the value of the property involved.[3] However, it was recognized that this amount

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[2] *H. C. Debs*, 5th ser., vol. LXX (1915), col. 1459.

[3] For purposes of discussion, "property" refers to land, buildings, and chattel owned by an individual or a group of individuals.

would not be satisfactory in every circumstance, possibly causing the property owner to seek recourse through an appeal to the courts. To address this problem, which threatened the entire use of property requisitioning, a Defence of the Realm Losses Commission (DRLC) was set up on 31 March 1915, to establish what amount should be paid out to those citizens suffering costs "through the exercise by the Crown of its rights and duties in the defence of the realm."[4] Though an official commission, it was a non-statutory body and thus possessed a legally questionable existence which might not have stood up to court challenges.[5] Furthermore, it used a different basis for calculation of compensation than earlier, more generous measures which dealt with outright and permanent acquisition of land by the state rather than a disruption of business. As result, the DRLC made these payments on an *ex gratia*, or voluntary, basis rather than out of any legal obligation, while most people "cheerfully" accepted them in part because of the perceived lack of alternatives.[6] These payments were an issue which would prove to be the major point of contention for property holders and would result in many administrative

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[4] Quoted in G. R. Rubin, *Private Property, Government Requisition and the Constitution, 1914-1927* (London: The Hambledon Press, 1994) p. 179.

[5] There were two proposals later in the war to put some form of losses commission (either general or relating specifically to land acquisition), though they were both dropped in the belief that such measures might not pass Parliament, thus undermining government requisition efforts. Ibid, p. 64-8.

[6] Samuel J. Hurwitz, *State Intervention in Great Britain* (New York: Columbia University Press, 1949), p. 152.

challenges and legal problems for the government both during and after the war.

The government wasted no time putting its long-sought authority to use, laying claim to property it deemed necessary to wage war against Germany. This authority was granted to officers in a number of departments and ministries, primarily the War Office and the Admiralty, with each branch exercising the powers based on its own needs. No one individual or ministry was granted exclusive authority or placed in overall charge of seizing property; rather, each ministry or department requisitioned territory using its own requirements and guidelines. This lack of a coherent, unified approach towards the whole issue of property requisitioning threatened to become a legal problem of massive portions as a result. It was only the acquiescence of the vast majority of people whose property was being seized that prevented a host of legal challenges from being filed that, if the result of the cases actually pursued is any indication, would have resulted in even higher costs and seriously threatened the state's ability to use requisitioning as a policy.

This is not to say that requisitioning still did not occur without problems. A few prominent officials, particularly employees on the Losses Commission, identified several areas where government management of property requisitioning could have been improved. Much of the property acquired by the Ministry of Munitions and the Office of Works, according to one Lands Branch officer, was secured without regard to cost. The War Office, on the other hand,

adopted a more fiscally conservative approach by seizing the property and leaving compensation to the DRLC, which negotiated the sum paid. Interdepartmental rivalries often played themselves out in requisition issues, thus making practical decisions which would lead to greater efficiency impossible to carry out. Finally, existing resources, such as the Inland Revenue Land Valuation Department, were not used by the War Office and other agencies when assessing claims, something often resulting in higher costs for the state.[7]

These problems, however, paled in comparison with the greater difficulties posed by challenges in court, which threatened to erect insurmountable legal obstacles to the use of property requisitioning. The first major court case involved the Shoreham Aerodrome, which the War Office commandeered on 24 December 1914 for training purposes. Located near Brighton, the airfield had been used by the Royal Flying Corps (RFC) on a limited basis since 1913 through a tenancy agreement. In May 1914 the field's owners, The Brighton-Shoreham Aerodrome Ltd, decided to terminate the lease as of 3 January 1915, because the rent the War Office paid was less than the amount private customers were charged. As with so many other things, the outbreak of the war changed the situation, and based on the recommendation of an inspection team the War Office requisitioned the field under Regulation 2,

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[7] Tilney Barton, *The Life of a Country Lawyer in Peace and War-time* (Oxford: Blackwell, 1937).

with compensation to be determined later. While the company's owners had no intention of denying the use of the aerodrome to the war effort, they felt that the government's subsequent offer to pay £1,500 in rent per year and a depreciation rate totaling £1,500 when the RFC left, was too low, arguing that the RFC's exclusive tenancy would cost the aerodrome its existing tenants and prevent them from seeking new ones for the duration of the war. The company sought compensation under the older Defence Act of 1842, which authorized hearings before a jury to determine amounts owed by the state to property owners in case of non-contracted seizures.[8] The owners asked for a £5,000 premium and an additional £2,000 per year, in essence seeking for compensation for monies lost rather than any *ex gratia* payment.[9]

Despite the government's persistent efforts, the company chose to settle the Shoreham case through the courts rather than the recently established DRLC, making this the first DORA case to be argued before the court. Representing the company, Leslie Frederic Scott argued four points: whether a threat existed to public safety that necessitated takeover, whether payment was a right under statute, whether acquisition under the royal prerogative was legal and-- if so--whether compensation was a legally required part of that power. The company's arguments were rejected by the court, which in its initial

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[8] Quoted in Scott and Hildesley, *The Case of Requisition*, p. 38.

[9] Rubin, *Private Property*, p. 39-42.

judgement of 7 July 1915 affirmed DORA's "absolute and unconditional power" to seize property. Though this ruling was reaffirmed by the Court of Appeal, the government settled the case before appellate hearings were completed in the House of Lords in the following year, with the settlement arranged "on terms which effectively vindicated the company's legal argument."[10] The abrupt decision to withdrawal resulted from indications that the Lords would rule in favor of the aerodrome's owners, and it left the government scrambling for a legal footing which would spare them the enormous sums needed to compensate other dissatisfied property holders.

Though the case involving Shoreham Aerodrome was the first legal challenge to DORA's powers of property seizure, it was by no means the most important. The case which holds that distinction is that of *Attorney-General v De Keyser's Royal Hotel, Ltd.* [1920], which dealt with the requisitioning of a hotel to house the headquarters staff of the RFC. Once again, the case was not over the legal right to take over the property, but the matter of compensation to its legal owner. Located in London, De Keyser's Royal Hotel relied upon business from foreigners and was quite successful until the outbreak of the war ended this source of income. As early as 29 April 1915 the hotel's owners decided to contact the War Office about renting out the hotel as government

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[10] Ibid, p. 52. The Crown's apparent imminent defeat came despite the assistance of the emminent jurist, Albert Venn Dicey, former Vinerian Professor of Law at Oxford, in what was to prove his last appearance before the bar.

accommodations, only to be turned down over the £30,000 per year price. As a result of their failure to secure occupants, the hotel went into receivership on 25 June, 1915, and despite restructuring efforts continued to lose money. In April 1916, however, the War Office decided to consolidate the headquarters' staff of the RFC under one roof and chose De Keyser's as the most opportune location. Initial negotiations with Arthur Whinney, the receiver/manager of the hotel, deadlocked once more over the question of the rent, with the War Office balking at the £19,000 per year offer made by Whinney. The need for the location brought an end to negotiations, and on 1 May the hotel was simply requisitioned under Regulation 2 of DORA, with the terms of settlement to be worked out later.[11]

Though the War Office wanted to refer the matter of compensation to the DRLC, Whinney felt that the commission did not award claims to businesses which were running at a loss at the time of their take over. After further negotiations proved fruitless, the debtholders and company directors intervened, reluctantly deciding at a meeting on 20 September to present a petition of right to be pursued, "if necessary . . . to the House of Lords." The War Office's continuing refusal to negotiate forced the company's hand, and on 17 February 1917, the company presented its petition of right. It sought annual payment of rent, the sum of £13,520 11s. 1d for back rent from 8 May 1916 to

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[11] Ibid, p. 76-9; Scott and Hildesley, *The Case of Requisition*, p. 1-2..

14 February 1917 (or an evaluation to determine a fair amount for the rent), a declaration as to the validity of De Keyser's case under the Defense Act of 1842 and compensation under its provisions, and a statement as to the petitioners' rights to the property. Though it was obvious that De Keyser's sought an out-of-court settlement, the government refused to meet the company's terms and no settlement was forthcoming.[12]

The government's decision to contest the company's petition despite the result of the Shoreham case was a questionable one given that a ruling in favor of De Keyser jeopardized their entire practice of property requisitioning. However, there were factors which argued in favor of a court challenge. The inital rulings supported their side, as justices arguing the case could only have considered the last ruling on the Shoreham case in their deliberations, which was a favorable one for the state. In addition, a settlement might have encouraged additional petitions, undermining the *ex gratia* compensation structure that existed. As a result, the government stood firm and the petition was heard in the Chancery Court on 20-22 March, 1918, a delay of over a year which was not unwelcome by the government. The justice hearing the case followed expectations by adhering to the interpretation of the Court of Appeals in the Shoreham case, upholding the government's argument that the seizure was indeed justified and necessary for the defense of the realm. The case then

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[12] Rubin, *Private Property*, p. 83-5.

went to the Court of Appeal on 20 July, where two successive adjournments were granted for the Crown counsel to review documents on land occupation. The adjournments lasted through the signing of the Armistice of 11 November, 1918, and three weeks after the end of hostilities the government agreed to end the search of documents and proceeded with the case.[13]

The hearing resumed on 9 January, 1919 in a different environment. The pressures of the war were gone, and the constitutional issues regarding property rights played a greater role in the decision. In a 2-1 judgement delivered on 9 April, the Court of Appeal held that "the Supplicants [were] entitled to a fair rent for use and occupation of De Keyser's Royal Hotel . . . by way of compensation under the Defense Act of 1842," a rent due to the hotel as a matter of right and not as one of *ex gratia*. After hearing the Crown's appeal for ten weeks, the House of Lords dismissed the government's case in March 1920, thus enshrining the judgement in British constitutional law.[14] While the ruling damaged the government's position in seizing property, the timing left it in a better position than it would have been had the decision been handed down during the middle of the war.

Though both the Shoreham and De Keyser cases would prove extremely significant to British constitutional history in their rejection of royal prerogative

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[13] Scott and Hildesley, *The Case of Requisition*, p. 3-7.

[14] Ibid, p. 8.

claims over the rights of citizens, they were not the only legal challenges facing DORA's property requisitioning powers during the war. The state faced challenges in several areas, most notably in dealing with the liquor industry. Though requisitioning was only one aspect of a larger approach towards the question of drink during the War (to be addressed in the next chapter), it came under attack in several lawsuits during the war. The Cannon Brewery Company Ltd., which had their property seized on 22 December 1915 as part of the government's attempts to control liquor, challenged the amount of compensation awarded.[15] They sought compensation under the Lands Clauses Act of 1845, which guaranteed an additional ten percent above the value of the property, instead of under the terms of the Defence of the Realm (Acquisition of Land) Act of 1916 which, as noted earlier, set compensation at the value of the property. Despite the government's attempts to delay matters, a hearing was held before Mr. Justice Younger in May and June 1917 which, while affirming the decisions of the Shoreham case up to that point, referred the matter to arbitration and resulted in future claims being settled by direct agreement.[16]

The other major requisitioning case dealing with alcohol concerned a tradition reaching far back into British history: the rum ration of the Royal

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[15] The property seized was the Ordnance Arms, a pub in Enfield Lock.

[16] Rubin, *Private Property*, ch. 7.

Navy. The practice of giving rum to sailors was still followed in the Navy at the start of the war. The conditions of the war posed a dual challenge to the supply of rum by increasing the number of people receiving it while cutting back on its availability through importation. By 1917 the concern over this was such that on 6 October the Admiralty gave notice to Newcastle Breweries Ltd of the decision to seize 239 puncheons (a puncheon being a cask of anywhere from 72 to 120 gallons) from their stocks under Regulation 2B of the Act. The company, however, refused the government's offer of payment (cost plus expenses and 5 percent interest) or th\e option of referring the matter to the DRLC, choosing instead to submit a petition of right in the courts. Though such a petition was filed in May 1918, the matter was of little concern to the government, because Newcastle Breweries had not filed suit on the matter, possibly in expectation of settling the entire matter out of court. Such a settlement was not forthcoming, and when a decision was handed down by the court on 20 February, 1920, the compensation provision in Regulation 2B was declared *ultra vires*, further undermining the settlement structure established during the war and threatening a debt-burdened postwar government with even greater costs.[17]

Such legal challenges threatened the state's ability effectively to prosecute the war, and warranted additional legislation in peacetime, in effect,

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[17] Ibid, ch. 8.

to "clean up" after the chaos created by the Act. This is a matter for a later chapter. However, it is important to keep such litigation in perspective. As threatening as they were to government policies and the powers of the state, legal challenges to DORA's requisitioning powers proved a distinct minority of the cases involving requisition. The majority of people who faced property seizure under the Act accepted the settlements handed down by the state. Between the establishment of the Commission on 31 March 1915 and its expiration on 20 August 1920 the DRLC received 5,979 applications for compensation. These applications were separated into two groups; one-time and annual claims, with 63.1 percent of the annual claims and 57.4 percent of the one-time claims paid in full amount by the government, a sum for both categories totaling £4,855,083. Claims in both groups seeking a total of £3,427,961 were rejected, a figure representing a savings for the government.

Property requisitioning provided the state with a powerful tool with which to enact policies for the conduct of the war. Such a power, though, did not belong in the tradition for property rights that Great Britain possessed. Despite a number of policies adopted that were designed to address the problems that property requisitioning created, cases were filed that challenged the very foundation of the power of the Defence of the Realm Act. It was only the state's ability to postpone consideration of such cases until the end of the War that preserved property requisitioning as a tool of government policy. How this tool, along with the other powers granted under the Act, were used in

attaining specific goals, will be addressed in the next chapter.

CHAPTER III

ECONOMIC AND SOCIAL REGULATION

The First World War meant a new level of warfare to the British people. The wars of the previous century were limited struggles that occured in colonies an ocean away and made for entertaining reading in the back pages of the penny press. Even Napoleon's attempt to bring the island to its knees a century before through the Continental System left a negligible impact on the everyday lives of the average citizenry. As a result, the struggle and sacrifice involved in major wars was an abstract concept for the British nation.

This changed with the onset of war in August 1914. Though the British people did not know it at the time, they had embarked on a new type of conflict--the total war. Technology allowed the nations to replenish their supplies of matériel at a much higher rate than ever before in the history of warfare. Warfare changed from battles between small opposing armies to massive conflicts of attrition that tested the limits of the national will. As the British government slowly came to realize, such a war required the mobilization of every citizen to the goal of victory over the Central Powers.

In a nation whose industrial economy was built on the doctrine of *laissez-faire*, this involved the unprecedented expansion of the power of the state, and the Defence of the Realm Acts were at the forefront of this growth. The government used the authority of DORA to control food production, manage

industrial activities, and regulate labor. Yet the government's ministers soon realized that the level of mobilization this new type of war demanded meant that not just the economy, but society itself needed to be managed in order to achieve the maximum level of economic efficiency. Additional regulations were promulgated that touched the everyday lives of British citizens, and any story of DORA's role in governing the war economy must include these measures as well.

The use of the Act to regulate the economy was a slow process brought about by the exigencies of war. Nowhere is this better seen than in the government's handling of foodstuffs. Prior to the start of the war the British diet relied on imports for most of its needs, with basic staples such as wheat and sugar almost completely supplied by foreign sources. Domestic agriculture was primarily oriented towards the breeding of livestock, and was unsuited to supplying the dietary needs of the nation. When the War began the government maintained a laissez-faire policy, intervening only when necessary, as was the case with the takeover of the sugar trade in August 1914. Such a policy was more the result of practical considerations than adherence to any philosophical doctrine. Bumper crops in the Americas and the ability of the Royal Navy to defend the trade routes made a more interventionist stance unnecessary.[1]

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[1] P. E. Dewey, *British Agriculture in the First World War* (New York: Routledge, 1989), ch. 3.

This situation changed in the latter half of 1916. The increasing threat posed by German submarines to British shipping and the failure of the North American wheat harvest, as well as a number of minor factors, increased the need for greater domestic production. As a result, the formation of the Lloyd George coalition in December 1916 saw a new "plough policy" authored by the new President of the Board of Agriculture, R. E. Prothero. Prothero's policy entailed the use of compulsory powers to increase food production, and DORA supplied many of these powers. Some of the agricultural regulations were an offshoot of the measures dealing with property rights. Regulation 2L, created in response to increased demand for land resulting from a combination of crop failures, high prices, and the occupation of all of the readily procurable allotments, allowed government officials to seize land "with a view to maintaining the food supply of the country." Regulation 2M extended the state's power to land already under cultivation by giving it the ability to inspect land, thus ensuring that agricultural decrees were being obeyed, and to take over the farms if they were not. To these regulations the government added new, more specific measures. Regulation 2NN restricted acreage planted with hops in an attempt to promote the cultivation of grains, while keeping pigs was encouraged by Regulation 2O. Farmers were even prevented from selling any horses "used or capable of being used" for cultivating holdings without a permit

under Regulation 2T.[2]

The regulations enacted under DORA formed the cornerstone of British wartime agricultural measures. The food campaigns of both 1917 and 1918 were conducted under the aegis of DORA while the government's planned legislative basis, the Corn Production Act of 1917, became a lightning rod for conservative criticism. The most contentious aspect of the bill was Part IV, which granted the Board of Agriculture the right to determine how land should be used as well as the power to break leases and evict tenants unwilling to follow its directives. Conservatives in both Houses of Parliament decried this assault on property rights, despite the fact that similar measures were already in place as DOR regulations. Lord Desborough claimed that the act was "the most monstrous proposal I have seen in any Bill that has ever been introduced into Parliament."[3] In the end, the government relented to these demands and gave landowners the right of appeal of dispossession and cropping orders to an independent arbitrator. Lloyd George's ministers, however, got around the measure by suspending Part IV for a year and relying on DORA's Regulation 2M, where no such right existed.[4]

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[2] Pulling, *DORA Manual*, p. 52-64; T. H. Middleton, *Food Production in War* (Oxford: Clarendon Press, 1923), pp. 163, 167.

[3] *H. L. Debs*, 5th ser., vol. XXVI (1917), col. 323.

[4] L. Margaret Barnett, *British Food Policy During the First World War* (Boston: George Allen & Unwin, 1985), p. 197; Middleton, *Food Production in War*, pp. 271-7; Dewey, *British Agriculture in the First World War*, pp. 92, 95.

Despite the protests of many that state control of agricultural production went too far in eroding the rights of the people, it became apparent that in fact the government did not go far enough in regulating this sector of the economy. The distribution and sale of food also became subject to state control under DORA during the first few weeks of the Lloyd George government. With the exception of the aforementioned takeover of the sugar trade and such minor measures as the use of the Act to requisition insulated space aboard cargo ships returning from Australia, New Zealand, and South America (thus ensuring the transport of beef purchased at low rates abroad), overt intervention was nonexistent as the government maintained a policy of "business as usual." Initially the state attempted to stem fluctuations in price through "recommendations" as to the maximum retail prices of foodstuffs, though as the war went on this approach was increasingly futile. In June, 1916, a Food Prices Committee was appointed at the Board of Trade to examine the reasons for rising prices and to recommend possible solutions. The first two of three interim reports, issued in September and November respectively, proposed state control of prices on meat, milk, and grains. On November 15, the same day as the issuance of the second report, the President of the Board of Trade, Walter Runciman, announced the creation of the position of Food Controller (at the head of a new Ministry of Food created on December 20) to administer new

food regulations issued under DORA.[5]

These regulations gave the state widespread control over food supply. Regulation 2B granted the broad powers "to take the possession of any war material, food, forage and stores of any description," while Regulation 2E included the ability to regulate dealings with these products. Other regulations spelled out specific powers of the new Food Controller; Regulation 2F of DORA gave him the broad authority to issue orders "for the purpose of encouraging or maintaining the food supply of the country," while other regulations gave powers to demand returns, seize farms, conduct inquiries, and coordinate food policy with other departments and local authorities. While some of these powers represented a further extension of DORA's authority over property rights, most signalled a new expansion of state control into areas traditionally left unmolested.[6]

The Lloyd George government made full use of the new powers in directing agriculture and food policy. Under Regulation 2L, 19,182 acres were seized for cultivation in 1917, with another 8,500 acres added in 1918.[7] This land helped arrest declining agricultural output; whereas during the first two years of the war agricultural output dropped by 2 percent below prewar levels,

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[5] William Beveridge, *British Food Control* (Oxford: Oxford University Press, 1928), pp. 11, 19-24.

[6] Pulling, *DORA Manual*, pp. 42-6.

[7] Middleton, *Food Production in War*, pp. 195, 230.

the output of cereals and potatoes rose by 57 percent between 1917 and the Armistice.[8] Such growth helped address nutritional needs for the remainder of the war. Caloric consumption suffered only a slight decline, and this in spite of the diversion of foodstuffs to the soldiers. Severe food shortages were avoided through a combination of rationing and food economy, or getting more nutrition out of the same amount of food. This success was achieved in no small part through of the powers granted under the Act.

DORA regulations regarding property rights also played a critical role in industrial regulation. The Act's role in managing the industrial sector was far less prominent than it was in other areas, as the government relied upon separate legislation and other forms of agreements. These laws and the bureaucracies which they created, however, owed their existence in part to the ground-breaking presence of DORA. Moreover, many of the powers that these new ministries had came from DOR regulations, the result of a need for powers that the initial acts did not contain. One area where this can be seen is in the munitions industry. Here the Act was used in conjunction with other legislation; in this case, the Munitions of War Act which established the Ministry of Munitions in 1915. The Defense of the Realm Act granted to the Minister of Munitions the power to, among other things, requisition the output of explosives factories (Regulation 7), vary terms of sub-contracts (Regulation

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[8] Dewey, *British Agriculture in the First World War*, p. 218.

2BB), and even (as will be seen below) monitoring the health and safety conditions of the workplace (Regulations 35A and 35AA).[9]

Another area which came under the control of the Act was shipping. As noted earlier, shipping regulation helped regulate the flow of material within the economy. By controlling shipping, the state had far greater control over the availability of raw materials, as well as the ability to halt the export of vital goods. A number of regulations made such control possible. In addition to the regulations concerning property control, Regulation 39BBB gave power to the Shipping Controller to organize docks and shipyards, while Regulation 39C incrased the Shipping Controller's powers to prevent congestion of traffic. Additional regulations were also enacted to increase safety. Regulations 36, 36A, and 37 enforced compliance with navagation rules, while 37A and 37B mandated radios and other signalling devices be installed on board ships of 500 tons or above. Such coordination and control eased many of Britain's shipping problems, untangling a complex knot created by the conflict.[10]

But nowhere was DORA's power in the industrial sector more apparent than in the assumption of state control. Here the Act allowed the state to take

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[9] Not all of the regulations dealing with the armaments industry granted authority to the Ministry of Munitions--Regulation 6B, for example, gave the power of licensing explosives factories to the Secretary of State for War. Pulling, *DORA Manual*, pp. 43, 67-9, 126-7.

[10] Pulling, *DORA Manual*, pp. 129-41; C. Ernest Fayle, *The War and the Shipping Industry* (Oxford: Oxford University Press, 1927), ch. 13.

over and direct industry in the interests of the war effort, a power that during the initial stages of the War was restricted to assuming control of the railways. As the War progressed the need for direct control grew, and the government again turned to DORA as the means for assuming such control. This is most clearly visible in the coal industry. At the start of the War the coal industry remained largely untouched by state regulation. The initial demands of the war soon put an end to such freedom, however, and the government began to pass Orders-in-Council regulating the distribution of coal, while the Price of Coal (Limitation) Act set limits on margins of profit on coal. Yet by 1916, the government was compelled to extend their influence still further by assuming control of the entire industry.[11]

The immediate antecedents of the takeover of the coal industry lay in a labor dispute in the South Wales coal fields. Under a Conciliation Board Agreement, the wages of miners came under review every three months, with both the mine owners and the workers submitting claims for wage levels. Throughout 1916, the Conciliation Board preferred to keep wages at a fixed level, and the only increase that came about prior to the November review occurred in May and then only after government intervention brought about by a threat by the South Wales Miners' Federation to strike. During the

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[11] R. A. S. Redmayne, *The British Coal-Mining Industry during the War* (Oxford: Clarendon Press, 1923), pp. 12-87; Barry Supple, *The History of the British Coal Industry*, vol. 4, *1913-1946: The Political Economy of Decline* (Oxford: Clarendon Press, 1987), pp. 45-57.

November review, however, the miners coupled their demands for a 15 per cent pay increase with a joint audit of the owners' ledgers. After the board rejected their demands the miners went directly to the government and threatened once more to strike if their demands were not met. Negotiations between the sides went nowhere, and on 24 November the miners renewed their threat to strike by the end of the month.[12]

The impending threat of a strike shutting down an important source of fuel for the Royal Navy and the merchant marine posed a direct challenge to the war effort. After the failure of additional negotiations the government issued Regulation 9G under the provisions of DORA on 29 November establishing direct state control over the South Wales coal fields.[13] Initially, the move encountered opposition from an unexpected quarter--the miners themselves, who thought that the move needed to be on a nationwide scale. Their complaints subsided, however, once the newly-established Lloyd George government promised that the takeover of the South Wales fields was only the first step. On 22 February 1917 a new order was issued placing all coal fields under government jurisdiction, to be run by a Coal Controller at the newly-

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[12] G. D. H. Cole, *Labour in the Coal Mining Industry* (Oxford: Clarendon Press, 1923), pp. 38-47.

[13] Pulling, *DORA Manual*, p. 84.

created Mines Department.[14]

While the state now ostensibly controlled the nation's coal mines, this was not nationalization. Rather, it was the government heading off a potentially disruptive labor dispute that threatened the supply of a material vital to the war effort. This was a justification for state intervention unique during the war, as "labor unrest, rather than the direct problem of supply, was the root cause of intervention."[15] Because of this, state control changed things very little. The government left the operation of the mines in the hands of the mine owners, and in practice, "[s]tate 'control' of the mines was, in reality, but a glorified Excess Profits Duty, with a guaranteed profit."[16] Direct intervention was exceedingly rare for the remainder of the war, and when such intervention did occur, it was done to maintain the coal supply and the status quo within the industry.[17]

Though the state possessed a mighty tool to deal with labor unrest in its ability to assume control of entire industries, it was not the only one the Act supplied in order to ensure production of wartime goods. A number of

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[14] Cole, *Labour in the Coal Mining Industry*, pp. 46-7; Redmayne, *The British Coal-Mining Industry during the War*, pp. 88-92.

[15] Supple, *The History of the British Coal Mining Industry*, p. 76.

[16] Hurwitz, *State Intervention in Great Britain*, p. 179.

[17] Redmayne, *The British Coal-Mining Industry during the War*, pp. 199-200.

regulations dealt with labor issues and the disruptions such actions caused, such as provisions that restricted employees' right to action. Though the unions made an open promise in 1915 not to strike for the duration of the war, as was seen earlier strikes were threatened and carried out throughout the war, most prominently in the coal industry. Such strikes usually lasted for only a few days, and while not formally banned under DORA or other British wartime legislation, their action was restricted and the government utilized DORA and other statutes to limit both the duration and the impact of these strikes.[18]

One example of wartime striking was the strike at the Parkhead Forge works of William Beardmore & Co., Ltd. in March 1916. The strike resulted from the owners' refusal to allow David Kirkwood, convenor of shop stewards and one of the leaders of the Clyde Workers' Committee (CWC), freedom of movement throughout the works. The government soon intervened directly, using the provisions of DORA to deport Kirkwood and other CWC leaders from the region as well as threatening prosecutions under both the Munitions Act and DORA. The local engineering employers, the North-West Engineering Trades Employers' Association, fully supported the action and pressed the government to "put the fullest powers of the Defence of the Realm Act into operation against ringleaders."[19] Such a statement is significant in showing the

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[18] Rossiter, *Constitutional Dictatorship*, pp. 168-9.

[19] North-West Engineering Trades Employers' Association (NWETEA), *Minute Book*, No. 7, 23 March 1916. Quoted in G. R. Rubin, *War, Law, and*

shift in responsibility for dealing with a strike, for it focused on "the steps which the *Government*, rather than the employers themselves, ought to take to meet the threat posed by militants."[20]

There were also measures that imposed health and safety rules upon factories handling explosives. Regulation 35A granted the power to make safety rules for the manufacture and storage of explosives. Regulation 35AA went one step further, granting similar rule-making authority to the government "with a view to securing the health of all or any of the persons" involved in the process of manufacturing or storing explosives. By addressing such issues, the government played a greater role in addressing the concerns of workers while ensuring a reasonably safe working environment. These regulations, by establishing government oversight of working conditions, had an additional long-term impact by helping to set the stage for postwar monitoring of the workplace by the state.[21]

Regulations could only do so much in the workplace, however. While the government sought through DORA to exact every bit of productivity from workers, many officials knew that a myriad number of factors determined output and that many of those factors existed outside the factory gates. To

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Labour (Oxford: Clarendon Press, 1987), p. 97.

[20] G. R. Rubin, *War Law, and Labour*, p. 97.

[21] Pulling, *DORA Manual*, p. 126-7.

address these factors the government turned once more to DORA. One example of this was when the government used the Act to secure suitable lodgings for the tens of thousands of workers employed in the rapidly expanding war industries. Regulation 2(a) gave the state (usually in the form of the Ministry of Munitions) the power "to take possession of any unoccupied premises" for the housing of workers.[22] This power, which was an extension of the property seizure aspect of DORA discussed in the previous chapter, was used in one instance to seize hundreds of houses in Kent. Once they were converted into hostels, they provided lodging for hundreds of employees working for the Vickers armaments plant there.[23]

Such regulations had a direct application to workers. Others were not as obvious, however. Increasingly the government saw a need to control an increasing part of everyday life in Great Britain. This social regulation was by far the most visible impact of DORA upon the populace, as it served to bring home both the new expanded role of government and the sacrifices that needed to be made for the conduct of war by disrupting the everyday patterns of Edwardian living. Virtually no part of life was left unregulated by the Act. Under DORA, races, fairs and even dog shows were banned; public and banking holidays were regulated, railway excursion traffic was restricted. The

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[22] Ibid, p. 41.

[23] Angela Woollacott, *On Her Their Lives Depend* (Berkeley, CA: University of California Press, 1994), pp. 51-2.

distribution of drugs was variously restricted and relaxed; the sale of cocaine and opium was limited, while Local Governing Boards were given powers to authorize the distribution of venereal disease remedies.[24]

But no area of British life was as completely changed by DORA as was the consumption of liquor. Here the Act dealt with an issue prominent in British politics for a number of years prior to the war. While many involved in the temperance and prohibition efforts prior to the war saw the conflict as an opportunity to carry out social experimentation, it was the demands of the conflict which increased the powers of the state in dealing with alcohol. This was addressed in two ways, one of which was through regulations. Initially, this was done through Orders-in-Council, which allowed authorities to close pubs and restrict "treating", or the practice of buying drinks for others. While both of these may seem extreme at first glance, these rules reflected the experiences of the Boer War, "when disgraceful scenes occurred on the embarkation of troops at certain ports where laxity prevailed."[25] Later, these orders were made into formal regulations. Pubs in military areas were covered under Regulation 10, which granted officials the power to close premises licensed to sell alcohol and to "make such provisions . . . for the prevention of the practice of treating." Regulation 40 covered the sale of intoxicants to members of the armed services

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[24] Pulling, *DORA Manual*, pp. 79-83, 142-5.

[25] Arthur Shadwell, *Drink in 1914-1922* (London: Longmans, Green and Co., 1923), pp. 1-3.

who were on duty or to those who were off duty "with the intent of eliciting information [or] to make him drunk." Such regulations allowed the government to restrict servicemen's access to alcohol, thus addressing the problems posed in earlier wars.[26]

Though regulations provided a powerful tool in dealing with soldiers' access to alcohol, a more flexible approach was required in terms of managing alcohol in the civilian sector. As the war lasted longer than the short, limited conflict Britons expected, officials began to concern themselves with questions of industrial efficiency. Alcohol came to be seen as an impediment to achieving such efficiency and government officials sought ways of dealing with it. There were few outside the temperance movement who thought that it would be possible to ban all alcohol for the duration of the war, but without an outright ban flexibility was needed in order to address separate and differing circumstances. Initial plans to regulate through taxation were abandoned in favor of a Defence of the Realm (Amendment) bill which passed into law on 19 May 1915. This concentrated control of the liquor trade in the hands of the central government while giving them greater powers to handle matters.[27]

To handle these newly created powers, an Order-in-Council was issued on 10 June 1915 which established a Central Control Board to regulate the sale

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[26] Pulling, *DORA Manual*, pp. 87-8, 141-2.

[27] Shadwell, *Drink in 1914-1922*, ch. 2.

and use of alcohol. Though given great authority, the Board could not act of its own volition. To act it required a formal request from the local authorities. In military areas, the request was usually made by the relevant service, either the Admiralty or the army. But the Board was also called in to control the liquor trade in industrial areas as well, and such requests came from the Ministry of Munitions. Having received such a request, the Board conducted local inquiries in order to ascertain the particular circumstances of the region. Once the situation was determined the regulations were issued. The Board passed decrees which dictated the hours in which pubs could operate; henceforth, the sale of liquor was permitted only for two and a half hours in the afternoon and only another three hours in the evening. In addition, home drinking was discouraged through limitations on alcohol sales and such practices as treating, buying liquor on credit, and other minor restrictions were made to crack down on evaders. By the end of 1915 over half of the population of Great Britain came under the Board's regulations, and by the Armistice only a few agricultural areas were left unmanaged. For a brief period of time the government even flirted with state ownership of the liquor trade, but despite controlling the drink trade in the Carlisle region from 1916 until well after the end of the war, little else came about as a result of the proposal.[28]

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[28] Shadwell, *Drink in 1914-1922*, chs. 3, 5, & 6; Michael E. Rose, "The Success of Social Reform? The Central Control Board (Liquor Traffic) 1915-21," in *War and Society*, ed. M. R. D. Foot (London: Paul Elek, 1973), pp. 71-84; John Turner, "State Purchase of the Liquor Trade in the First World War,"

Needless to say, such actions hardly endeared the cause of war to the populace. Some workers felt that some aspects of liquor regulation went too far, as can be seen in the memoirs of one laborer, who was particularly irritated by the prohibition of treating:

> Yes, no treating. You couldn't go into a public house, two on you and say, 'give us two pints o' beer and I'll pay for them.' That was against the law. The pubs got restricted, and it got so they didn't have the beer. Sometimes they weren't open above two days a week because they never had the beer. It was more or less rationed to them . . . Some of them boys came home here [to Bungay] on leave and would go into a pub. There was a notice up: *Regular Customers Only*, and only one pint! Yes, here were terrible rows down there. Chaps smashed windows because the landlord wouldn't serve them . . . Before the war some of the pubs would be open all night nearly. Open again at six in the morning. I've been down there [The Crown in Carlton] at 6.30 in the morning and seven or eight of 'em have been drunk as lords. There was more beer spilled on the floor than is drunk now.[29]

Despite such grumbling, however, most people supported the need to regulate drink in order to win the war, and measures such as Regulation 10 did decrease the incidence of drunkenness in the nation. Police reports showed a drop in the incidence of drunkenness, and workplaces noted that the regulations "effected a decided improvement" in worker efficiency. Employees were more punctual and "turn[ed] up more fit for work" than they did before the imposition of control. Some publicans even stated that "the curtailment of hours was a great boon to them;" for some, the prewar hours were far too long, while most thought their

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The Historical Journal 23:3 (1980), pp. 589-615.

[29] George Ewart Evans, *The Days That We Have Seen* (London: Faber and Faber, 1975), pp. 140-1,

customers more manageable and well-behaved.[30]

Throughout the First World War, the British government turned to the Defense of the Realm Acts to carry out many of their agricultural and industrial policies. As with other areas, the eventual powers granted by the Act to the state were far greater than were planned during the initial stages of the war. This expansion was propelled by the needs created by the war; the needs to feed a nation, to arm its armies and the armies and its allies, and power its industries. The government even found it necessary to use the Act as a tool of social regulation, to ensure healthy and alert workers and soldiers for the effort against Germany. What is most remarkable about this is not so much that DORA was used so extensively, but that it occurred with hardly a murmur of protest. Even traditional opponents to the expansion of the power of the state grudgingly accepted it without so much as a question raised in Parliament. Such was not the case with other applications of the Act, particularly when it was used to suppress civil liberties. It is to this application that we will now turn to.

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[30] Shadwell, *Drink in 1914-1922*, ch. 8.

CHAPTER IV

DORA AND THE RESTRICTION OF LIBERTIES

To this point, most of the examination of the Defence of the Realm Acts has focused largely on the use of the Acts to broaden powers of the state in facilitating the conduct of the War. This has meant focusing on the regulations and powers in the economic and social spheres, which allowed the state sweeping control over the country. DORA served other purposes that required powers that might be better seen as those of the scalpel rather than those of the scythe. This chapter examines those powers which focus on the control of individuals and their effect on the War. These powers covered a number of areas dealing with what are known as civil liberties--freedom of the press, of assembly, even of movement within the country. Though these liberties may be less paramount in the British constitutional tradition, they were still important to British citizens, and the powers granted under the Act were no less restrictive to these freedoms as a result.

No freedom received greater restrictions than that of the press. As noted above, censorship of the press was a subject that concerned British authorities before 1914, and because of this previous concern, DORA was not the only statutory tool the government had to enforce censorship. The Official Secrets Act of 1911 covered defense information deemed sensitive, allowing for restriction of critical facts which might otherwise jeopardize government activity

if they were known. In addition, upon taking office as Secretary of State for War Lord Kitchener declared martial law at the front lines and banned correspondents from the combat zone, thus further cutting off the flow of information to the media. When five correspondents were permitted in May 1915 to report on the British armies in France, the headquarters staff of the British Expeditionary Force (BEF) censored all outgoing copy to ensure that military secrets were not divulged. These measures, however, only controlled classified information and operational details, leaving domestic coverage and commentary on the war to be dealt with in other ways.

Domestic censorship was for the most part an informal matter. On 27 July 1914, the Joint Committee established under the agreement between the Services and the press of 1912[1] requested a ban on reporting the movements of the BEF, one which lasted until the army was fully deployed in France. While the ban was observed, the lack of "hard news" produced "a spate of wild rumors and exaggerated reports"[2] that was almost as detrimental to the country as full disclosure might have been. As a result, at the instigation of Winston Churchill, the Cabinet established a Press Bureau on 7 August. Headed by F. E. Smith, the purpose of the board was to "provide a steady stream of trustworthy

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[1] See ch. I.

[2] Lovelace, "British Press Censorship," p. 310.

information supplied by both the War Office and the Admiralty."[3] The Bureau also screened outgoing and incoming cables and telegrams for every newspaper in the country. Any additional material was to be submitted on a voluntary basis, and the Bureau issued "D" notices to advise the media on how the news should be treated.

Though this voluntary system proved effective for the most part, there were a number of instances during the war when the press overstepped their bounds, forcing the government to resort to more formal methods of censorship. To this end they turned to the powers granted under the various DORA, and ultimately three regulations were drawn up to deal with censorship. Of the three regulations, Number 18 was the most important as it prohibited the gathering and sending of information on Service matters. Two sub-regulations (18A and 18B) extended this power further by outlawing communications with spies and restricting the publishing of information on patents and other inventions.[4] Taken as a whole, Regulation 18 "covered most aspects of the work done by the official Press Bureau and gave such 'voluntary' censorship the support of statutory compulsion."[5]

The other two regulations focused upon domestic matters and

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[3] *H.C. Debs*, 5th ser., vol. LXXI (1914), cols. 2153-6.

[4] Pulling, *DORA Manual*, pp. 101-3.

[5] Deian Hopkin, "Domestic Censorship in the First World War," *Journal of Contemporary History*, vol. 5 (1970), p. 157.

enforcement. Regulation 27 dealt with non-military information, banning the spread of "false or prejudicial reports" by in speech or in print. The prohibition of the spread of reports of secret meetings of Parliament or the Cabinet was covered under Regulation 27A, while 27AA extended this restriction to coverage of the Irish Convention assembled to establish a new constitutional framework for Ireland. The last two subsets of Regulation 27, 27B and 27C, extended censorship of Regulation 27 to imported publications and published leaflets respectively. These regulations were of more use in dealing with opinions which might cause "disaffection," giving the government a tool to use against people protesting the war. Finally, Regulation 51 gave the authorities the power to search premises and seize anything found that was "being kept or used in contravention of [DORA] regulations," with the seizure of documents authorized under Regulation 51A.[6]

Yet despite the availability to the authorities of these wide ranging powers, the general consensus of both contemporaries and historians is that the government used them sparingly. While the regulations ensured for the most part that confidential information was not published, this was more the result self-censorship by the media and the efforts of the Press Bureau, with the Act only providing the coercive muscle in the rare instances when cooperation was not forthcoming. In this sense, the threat of the use of the regulations was

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[6] Ibid, pp. 113-5, 164-7.

effective enough to encourage sufficient compliance with the government's goals. Suppressing dissenting opinions, on the other hand, was a different matter for a number of reasons. First, such censorship was usually retroactive, as the Press Bureau had its hands full monitoring straight news stories, thus giving journalists greater independence. These people faced a dilemma as issues of free expression of ideas in a democratic society (and the corrections that such expressions could effect) clashed with the amorphous goal of keeping up morale during wartime There were issues of image as well; a rigorous censorship policy would generate damaging propaganda abroad, especially in the United States, a country Britain needed as an ally. Finally, there were domestic political factors to consider, as each side had its share of detractors and supporters. This is best illustrated by the relaxation for political reasons of restrictions on the left-wing "pacifist" publications by Lloyd George upon his accession to the premiership in 1916.[7]

Perhaps the best example of all these issues can be seen with the conduct of the weekly magazine *New Statesman* during the war. The publication, founded by Sidney and Beatrice Webb along with George Bernard Shaw as "A Weekly Review of Politics and Literature," was a newcomer on the British publishing scene, with the first number issued on 12 April 1913. Though cooperative for most of the war, the magazine did challenge the government on

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[7] Lovelace, "British Press Censorship," p. 313.

a number of points, including the control of information and the censorship of pacifist publications. This defense of pacifist publications is particularly revealing in terms of how the press viewed the Act; the editor of the *New Statesman*, Clifford Sharp wrote of his fears that DORA would most seriously effect those publications "with no special Cabinet friends."[8]

Such a challenge involved treading a very fine line, and the *New Statesman* periodically found it teetering over the wrong side from time to time. During the leadership crisis in December 1916, Sharp wrote an article which described Lloyd George as a man with disputable capabilities as a leader whose moral bankruptcy deprived him of any standing as a leader.[9] In the end, however, the magazine's publisher R. B. Byles insisted on removing the paragraphs, and an explanation was added stating "we consider itundesirable in the national interest that the matters dealt with in the latter part of this article be publicly discussed."[10] The omission probably saved the magazine from closure under DORA, as well as rescued Sharp from a libel suit and almost certain loss of the exemption that was preserving him from service in the front lines. The Act also limited the magazine's ability to defend pacifist newspapers, as a German radio broadcast's mention (inaccurate, as it turned out) of one

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[8] "The new press law." *New Statesman*, 29 April 1916.

[9] Quoted in Adrian Smith, *The New Statesman: Portrait of a Political Weekly, 1913-1931* (London: Frank Cass, 1996), p. 102-3.

[10] "Had Zimri Peace?" *New Statesman*, 9 December, 1916.

paper's call for civil disobedience to conscription prompted a government order in January 1917 banning any mention of pacifist newspapers under penalty of DORA prosecution.[11]

Though such instances illustrate the primary role of the Act as a deterrence, this is not to say that its powers of censorship were never used. One of the most prominent cases of its application was the prosecution of the *Globe* in November 1915. The incident was triggered by the paper's report on 5 November of the imminent resignation of Lord Kitchener from his position in the Cabinet as Secretary of State for War. The *Globe*'s previous attacks, particularly its assault on Prince Louis of Battenburg during his tenure as First Sea Lord of the Admiralty at the start of the War, threatened the delicate stability of the government. The article on Kitchener provided Asquith's government with the opportunity to discipline the paper. On Saturday, 6 November, the police raided the offices of the *Globe*, confiscating both the Friday and Saturday editions (the evening edition about to be published) for violations of Regulation 27. The police also acted under Regulation 51 and seized the presses themselves, removing the printing plates and other vital parts of the mechanism.[12]

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[11] Adrian Smith, "Censorship and the Great War: The First Test of New Statesmanship." In *Writing and Censorship in Britain*, Paul Hyland and Neil Sammells, eds. (London: Routledge, 1992), p. 185-99.

[12] *The Times*, 8 November 1915, p. 10b.

The suspension of the *Globe* elicited a storm of controversy in Parliament. Though receiving broad support in the House of Commons when it convened on 9 November, the government faced stiff questioning from a number of Liberal MPs. One member challenged Prime Minister Asquith as to why proceedings weren't taken "in the ordinary way," while another charged that the government went after the *Globe* while letting another London newspaper publish a similar article without comment. Asquith and the Home Secretary, Sir John Simon, were both forced to issue statements two days later addressing these complaints and justifying their actions to the public, facing another round of questions afterward.[13]

The suspension of the *Globe* was perhaps the most public and controversial act of censorship taken under DORA, but it was by no means the most important one. Perhaps the most revealing case of censorship under the Act was that of Fenner Brockway. Brockway must have been a tempting target to those in government who used the Acts to deal with dissent. Born in India to a family of English missionaries in 1888, he was raised in Britain from the age of 4. He initially supported the Liberal Party but soon became a committed socialist member of the Independent Labour Party (ILP) and worked first as a journalist, then as editor of a weekly newspaper called the *Labour Leader*. The *Labour Leader* had served as the official organ of the ILP ever since the

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[13] *H.C. Debs*, 5th ser., vol. LXXV, cols. 1023-5.

organization purchased it from Keir Hardie in 1903. Despite its status, the paper ran at an annual loss of £1,000 and "was saved from probable extinction by the first world war."[14] Under Brockway's leadership, the *Labour Leader* came out in opposition to the conflict and quickly established itself as a center of protest against the War, with intellectuals such as Lowes Dickinson, Vernon Lee, and Gilbert Cannan contributing articles and stories.

Such writings also brought the paper and its editor to the attention of the government. Although Brockway later wrote that, "[w]e had surprisingly little interference from the government,"[15] much of this was the result of careful self-censorship. Writings against the war were published in the pages of the *Labour Leader* only when there was a sound legal defense of the work. When the police raided the paper's offices because of an article by Isabel Sloan about dying soldiers, the *Labour Leader* successfully defended itself against the Public Prosecutor's action and had the seized copies of the paper returned. Only once was the paper successfully censored by the state, with the editorial staff submitting to police demands as a plan to increase circulation rather than out of an unintentional inclusion of objectionable material.[16]

Far more problematical, however, was the play *The Devil's Business*. The

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[14] Fenner Brockway, *Towards Tomorrow* (London: Hart-Davis, MacGibbon, 1977), chs. 1-4.

[15] Ibid, p. 39

[16] Ibid, p. 38-9.

work was originally written by Brockway in February 1914 for publication in the *Labour Leader*. The "crowded state of its columns," though, delayed publication until after the outbreak of the war, when the reduced size of the *Labour Leader* and the domestic climate made its publication there unlikely. Brockway felt it was more relevant than ever, however, and decided to publish it in booklet form. The original references to war between Britain and Germany were removed, and Brockway made additional changes in the hope of avoiding censorship. The play was published at the end of 1914, with a "Justification" published as an introduction which outlined the "armaments ring" that Brockway saw as setting the conditions for the war.[17]

The play is set in a meeting of a "War Committee" consisting of the Prime Minister, the War Minister, and the First Lord of the Admiralty, all thinly-veiledcaricatures of the actual occupants of the office. The nation is at war with another "civilised and Christian Power" and the three are debating war strategy when word comes that the fleet was destroyed by "new type fire-cloud bombs" dropped from enemy planes. Horror strikes the trio as they realize that the weapons used to destroy the fleet are the same as those which were offered to the government by "the Armaments Trust" some time earlier, only to be turned down and offered to the enemy instead. At that moment a representative of the Armaments Trust arrives, shocking the Prime Minister and

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[17] Fenner Brockway, *The Devil's Business* (London: I.L.P. Publication Department, 1926; Reprint of 1914 edition), p. 5.

the War Minister by being a woman, her words and mannerisms taunting the two and amusing the younger and more free-thinking First Lord. Not only does she freely acknowledges that her Trust sold the weapons to the enemy (pointing out that the War Minister is one of its biggest shareholders) but she is there to offer "aero-bombs" to destroy the enemy's approaching air fleet. Her asking price of one hundred million pounds outrages the three ministers, yet they have no other choice but to agree to her terms. As she is about to leave, she mentions that she also has plans for a long range gun capable of bombarding the city from the front lines, and that she is also willing to sell these plans to the government for an additional one hundred million pounds. Despite the pleas of the Prime Minister of the already dramatically high costs of the war, she refuses to lower her price.

Just then a mob arrives outside the building, having heard of the naval defeat. The Prime Minister is forced to accept her offer under the threat of having the gun sold to the enemy and goes outside to calm the crowd. His words prove fruitless, and he is struck down by a stone thrown at his head. The First Lord delivers a stirring speech appealing to their patriotism and promising that the defeat "will be forgotten in the triumph we shall achieve." As the crowd begins to disperse, the War Minister orders his hastily assembled men to fire a volley over the crowd as a warning, an act which angers the Prime Minister. As the deal is signed, the representative from the Armaments Trust, now rather hesitant, begins to present another invention to the committee. This causes the

Prime Minister to explode with anger, ordering her to take the weapons back "to the devil in whose business you are engaged," and announcing that he would rather surrender to the enemy "than to the soulless traders in death that you represent." The outburst draws the Trust representative to the Prime Minister but he is drained by his tirade and collapses. Dying, he apologizes for his outburst, blaming himself for the conflict and asking the First Lord to order the Foreign Secretary to negotiate a peace. He dies, surrounded by a sorrowful First Lord and the Trust Representative, with the War Minister further off saying, "Thank God! Now we can get on with the war."[18]

Though Brockway had hoped to avoid difficulties with the work (while still retaining his basic message that the armaments industries were the true villains of the War), copies of the play were seized under Regulation 27 of DORA in police raids of Independent Labour Party (ILP) bookshops in both London and Manchester. The Manchester police subsequently returned their copies, finding nothing officially objectionable in the work. The London authorities, however, took the case before a magistrate, and Brockway was convicted at Mansion House Police Court on 3 April. Against the advice of some (such as George Bernard Shaw, who thought it useless "to fight the government on its own ground in the Law Courts"), Brockway decided to appeal. The appeal, which was heard on 28 June in the City of London Quarter

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[18] Ibid, p. 19-36.

Sessions, failed. In addition to the destruction of the copies of the play seized by the London police, Brockway was assessed a fine of £100 or, in default of payment, imprisonment for 61 days--a typical punishment under normal procedure of law.[19]

Brockway's case highlighted a number of issues involved with censorship; the subjective nature of the actions, the responsibilities of the writers themselves in writing the work, and the delicate issues involved in restricting civil liberties. Censorship was not the only means of restricting civil liberties under the Act, however, as other regulations were passed covering a variety of freedoms. The series of powers granted under Regulation 9 dealt with the right of assembly; 9A gave authorities the power to prohibit meetings and processions, while eight additional amendments extended this power to a variety of functions. Regulation 13 gave authorities permission to require people to remain indoors as they saw fit, while 13A was used to prohibit prostitutes from living in or frequenting areas around military camps. The goal of the regulations issued under Regulation 14 also gave the state the power to control civilian movement; Regulation 14 granted the power to remove suspects from specified areas, while Regulations 14A, C, D, E, F, and G limited entry and exit both within and without the United Kingdom.[20]

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[19] *H.C. Debs*, 5th ser., vol. LXXXIII (1915), col. 1182; Fenner Brockway, *Towards Tomorrow*, p. 39.

[20] Pulling, *DORA Manual*, pp. 79-83, 92-6.

Of all the measures introduced under Regulation 14, 14B was by far the most significant in its impact on Britain. It gave the power administratively to restrict or detain people suspected "of hostile origin or associations." Hostile origin in this context referred to enemy aliens, and the Regulation complemented other laws available to the government, the most notable of which was the Aliens Restriction Act passed on 5 August 1914 which allowed the government to round up and detain aliens at the start of the war. But the association aspect of Regulation 14B allowed for the extension of the power to British subjects as well, something not previously available to the government. Furthermore, the entire process circumvented the courts, thus removing the safeguards in the traditional system. This is not to say that the process was completely arbitrary, however; there was a body of appeal in the form of an advisory committee established to deal with the cases of enemy aliens and dealt with 14B detainees as well.[21]

Such authority to detain people was sought by the domestic security services primarily as a means of controlling the movement of suspected enemy sympathizers in the country. Many concerned with domestic security, primarily the recently established Secret Service Bureau, feared that the German government sought to create a network of agents from German nationals who

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[21] Ibid, p. 93-4; J. C. Bird, *Control of Enemy Civilians in Great Britain 1914-1918* (New York: Garland Pub., 1986), pp. 14, 95-7.

had taken up residence in Britain.[22] The creation of the regulation itself was made possible by the public anger felt towards Germans, anger fueled by the recent sinking of the liner *Lusitania* on 7 May. Sir John Simon defended the regulation in the House of Commons by making such an expansion of power seem like nothing more than a logical extension of alien control policy. He stated, ". . . it is reasonable that we should consider and deal with a certain number of cases where the individual is of hostile origin or hostile associations but it is technically not an alien." He added, "I do not myself think that you ought to draw a strict line of legal division between persons who are naturalized and persons who are natural born citizens of this country," as both were liable for their "hostile origin or associations."[23]

Despite the perceived urgency of the measure, by 2 March 1916 there were only sixty-nine people detained under Regulation 14B, fifteen of whom were British subjects. The numbers increased over the next eighteen months; seventy-four people taken into detention by February 1917 of whom fifteen were British, increasing to 125 by June 1917, with seventy five of them British. After that, however, the numbers began to fall to sixty-seven detainees by June

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[22] S. T. Felstead, *German Spies at Bay* (New York: Bretano's, 1920), 100ff.

[23] *H.C. Debs*, 5th ser., vol. LXXI (1915), col. 1842.

1918, eighteen of them British.[24] These were people suspected of espionage or sabotage, and most were held at St. Mary's Institute, in Cornwallis Road, Islington--an old Poor Law institution converted to a holding center--under police guard.

Though the actual numbers of people detained under Regulation 14B were small, the measure was still controversial enough to generate protest. Much of the opposition to the regulation was catalyzed by specific cases, involving questionable decisions to detain. One example was the detention of Hilda Howsin, a sympathizer of the cause of Indian nationalism, who was rounded up for allegedly aiding a friend who was a German agent, while another involved the Hungarian portrait painter Philip de László for sending money to his family via a Dutch diplomatic pouch. The most important case both publicly and legally, however, was the legal challenge *R.* v. *Halliday ex parte Zadig*. The argument advanced in the challenge of the detainee was "that the regulation was *ultra vivres*, that is to say outside the power of legislation delegated to the Privy Council by DORA." The question underlying the argument was whether or not such basic changes in the British constitution could be altered by administrative decree or whether it took a more established approach of Parliamentary act. Though the House of Lords ultimately decided in the favor of the Crown in March 1917, the matter was sufficiently doubtful to

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[24] Ibid, vol. LXXX (1916), cols. 1236-72; vol. XC (1917), col. 1845; vol. XCIV(1917), col. 1947; vol. CVI (1918), col. 1731.

warrant a suggestion for legislation retrospectively legalizing previous DORA regulation.[25]

Though the Zadig case and other legal challenges to Regulation 14B failed, they served to spark critics in Parliament. One Liberal, W. W. Ashley, sought to register his protest in a vote on the Home Office on 2 March 1916.[26] He was joined later in the month by C. P. Trevelyan and F. W. Jowett, who moved "that the administration of the Defence of the Realm Acts has often been more rigorous than the nature or seriousness of the cases justifed and that . . . the imprisonment without trial of any class of British citizens at the discretion of the executive is dangerous to the liberty of the subject."[27] Such protests, however, were in the minority as the rest of Parliament continued to quietly acquiesce in the government's use of detention without trial.

Parliament's general silence on the government's detention policies was not surprising given their overall acquiescence in efforts to curtail civil liberties in the name of waging war. As this chapter has shown, such efforts struck at some of the most fundamental freedoms available to British citizens; freedom of the press, of movement, and of the right to a trial. Much of this silence was due to two basic beliefs that underlined attitudes taken towards the Act; that

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[25] A. W. Brian Simpson, *In the Highest Degree Odious* (Oxford: Clarendon Press, 1992), p. 24.

[26] *H.C. Debs*, vol. LXXX (1916), col. 1236.

[27] Ibid, vol. LXXXI (1916), col. 414.

such steps were both necessary to win the war and that they were temporary and would be reversed at the end of the conflict. Temporary policy based on immediate necessity, however, left its mark upon the nation, and it is this impact that we will now turn to.

CHAPTER V

CONCLUSION--DORA'S LEGACY

The Armistice of November 11, 1918, brought an outpouring of relief and joy throughout Great Britain. For the millions who celebrated, the War was over; Britain and her allies had humbled the Central Powers. Yet in another sense, the War was not over. The Armistice was just that--a cease-fire, not an actual peace between the beligerents. The British state still operated under wartime conditions, a part of which was the continued use of the powers granted under the Defence of the Realm Act. For the next three years the state used the Act and its regulations as a tool of governance to deal with the immediate postwar world. This chapter will examine how DORA was utilized in post-war Britain, as well as examine its long term impact on the nation.

Though the War was still technically in progress, the terms changed with the end of fighting. The public accepted the Armistice as if it were a formal peace, which limited their acceptance of broadened government authority. More important, though, was that the end of hostilities removed the sense of urgency and importance surrounding the war effort. Dealing with the outstanding conflicts in the Act and its accompanying resolutions became possible without the protective shield of the national emergency. Court cases regarding property requisitioning, unimpeded by the stalling of government counsel, began to move through the courts. The rulings on the De Keyser's

case in April 1919 overturned the use of the Royal Prerogative as justification for requisitioning,[1] while the ruling of the *Newcastle Breweries* case in February 1920 "threatened to undermine the compensation policy hitherto adopted,"[2] and may have resulted in having the disbursement of almost £700 million in compensation.[3]

An interdepartmental committee formed to address the impending collapse of the government's requisitioning policy offered two alternatives. The first was to pass an Indemnity Bill that would establish a legal (rather than *ex gratia*) basis for compensation and preclude further legal action. The second proposal the establishment of compensation as a legal right on the terms established by the Board of Arbitration for shipping; that is, based on revenues that the property would have earned had it not been requisitioned, with such amounts to be determined by the money earned by similar property that was not requisitioned. The government chose to draft an Indemnity Bill based on the second proposal, with an additional provision that claims for breach of contract (though not for compensation or damages) could be made by petition of right.

Debate on the Indemnity Bill, which was introduced to Parliament in

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[1] See ch. II above.

[2] Rubin, *Private Property*, pp. 151, 192.

[3] *H.C. Debs*, 5th ser., vol. CXXVIII (1920), col. 1765.

May 1920, proved fierce. Opponents of the bill, such as Leslie Scott and Sir Edward Carson, argued that it would limit the amount that the most disadvantaged citizens could receive from the state. Proponents, on the other hand, saw it as a measure to restrict the amount owed by the state and to put caps on the sums wealthy businessmen and would-be war profiteers would earn. The bill underwent modification in Parliament to address some of the concerns of its opponents. The informal Defense of the Realm Losses Commission was transformed into the War Compensation Court, a body with the statutory authority to assess compensation. Another amendment reaffirmed the *De Keyser* decision by ensuring the right to compensation even if no loss was suffered, as was the case with De Keyser's Hotel. The Indemnity Bill's passage into law thus saved the British state hundreds of millions of pounds while defining the rights of the people in relation to the state.[4]

By this time, however, the days of the Act were numbered, as its formal end came with the Termination of War Act of 1918. This established the terms of DORA's demise with the declaration of the legal end of the war by the Crown-in-Council, which came on 31 August, 1921. But while the Defense of the Realm Act thus passed from existence, it lived on in other forms. Britain found the need for some of the powers granted by DORA in dealing with other problems. This was first seen in the need to maintain DORA's powers of

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[4] Rubin, *Private Property*, pp. 213-20.

industrial action. The end of fighting brought a wave of industrial unrest, and to handle this the authorities sought to use the tools of state power to which they were by then accustomed. The government sought a more suitable mechanism than the wartime statutes to deal with this problem, and created the Industrial Unrest Committee in February 1919 to find solutions to emergencies created by industrial action. Their solution was to draft the Strike (Exceptional Measures) Bill the next month. This legislation, which would have banned strikes by the Triple Alliance (of the National Mineworkers' Union, the National Union of Railwaymen, and the Transport and General Workers Union) and legalized the confiscation of union funds, drew upon the Defence of the Realm Acts for their inspiration. The government thought the bill too extreme to pass through Parliament, and they shelved it for the next seven years.[5]

Britain faced far greater problems in Ireland, problems which required far greater powers than were available to combat the nascent civil war that threatened to tear the United Kingdom apart. The immediate roots of the conflict lay in the Easter Rebellion of 1916, when a group of Irish Volunteers rose up in Dublin in a feeble attempt to gain independence. The uprising lacked popular support and was put down by British officials before the week was out. Martial law was axiomatically declared on the Tuesday of the revolt,

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[5] Townshend, *Making the Peace*, p. 84.

though such a move was symbolic; the powers necessary to deal with the rebellion were contained in the Defense of the Realm Act. "[I]n fact, all the arrests, trials, internments, and executions carried out in 1916 were carried out under DORA, not martial law."[6] The government kept to a minimum DORA's subsequent use in the simmering civil conflict that followed in Ireland, preferring to use the older Criminal Law and Procedure Act of 1887 to deal with the growing unrest.

When the Irish Republican Army began conducting ambushes and attacking police stations in the winter of 1919-20, however, it became apparent that something more was needed to deal with the unrest in Ireland. By this time, however, DORA's days were numbered. The Treaty of Versailles signalled the approaching end of the war, and with it the use of the Act. Something else was needed that was specifically tailored to the Irish "troubles." The solution was the optimistically-named Restoration of Order in Ireland Act (ROIA). Passed in 1920, it was closely modelled after DORA in its grant of powers to the authorities to deal with unrest. The ROIA foreshadowed the use of the Defence of the Realm Act as a template for subsequent legislation, an approach that the government would use again in drafting postwar legislation.

This approach was applied again in enshrining the Defence of the Realm Act's emergency powers to handle civil disturbances in Britain itself with

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[6] Ibid, p. 70.

permanent legislation. This effort culminated in the Emergency Powers Act (EPA), which passed through Parliament in October 1920. The first drafts "bore an uncanny resemblance to DORA,"[7] and the final draft was thought to be so politically dangerous that the Lloyd George government waited until the industrial conflicts of that fall to introduce it. Such as strategy increased the likelihood of passage, for as two authors put it, the bill appeared "when Parliamentary and public opinion was least able dispassionately to weigh up either its short-term merits or long-term consequences."[8] In the debate that followed, both Prime Minister David Lloyd George and the Conservative leader Andrew Bonar Law attempted to gain support by stressing the similarity of the EPA with the Defence of the Realm Act in an effort to assuage their opponents' fears.[9] Despite the outcry about the bill in both Parliament and the press, the EPA passed though the Commons on a vote of 238-58 after only a week of limited debate.

Among its many provisions, the most important allowed for a one-month declaration of emergency when essential materials and services were threatened, empowered the state to provide such services when they were deprived, governance through regulations made outside the parliamentary process, and

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[7] Ibid, p. 86.

[8] Keith Jeffrey and Peter Hennessy, *States of Emergency: British Government and Strikebreaking since 1919* (London: Routledge, 1983), p. 53.

[9] *H.C. Debs*, 5th ser., vol. CXXXIII (1920), col. 1451, 1399.

summary arrest and trials. In many respects this represents an evolution of the Defence of the Realm Acts into a lasting peacetime form, and as such testifies to how DORA permanently transformed both the powers of the state and the mindset under which state officials operated. The EPA granted far less power than DORA did; the one month time limit and restriction to use in only the most dire of industrial emergencies acted as a check on the power of the state. Still, the powers proved more than adequate when it was used to deal with strikes in 1921 and 1924, and the General Strike of 1926.[10]

But no piece of legislation owed more to the Defence of the Realm Acts than the spawn of the next world war that started in 1939. By the end of 1938 Britain was preparing for war, and as German actions throughout August increasingly made such a development inevitable, the government of Neville Chamberlain took the steps it saw as necessary for the conflict. Parliament enacted over forty statutes preparing the legal groundwork for war, but none were as important as the Emergency Powers (Defence) Act that was passed on 24 August 1939 over only six dissenting votes. Seen as "a rejuvenated and expanded DORA,"[11] it gave the state virtually the exact same powers as its predecessor, with modifications improving some of the defects of the original, more hastily prepared legislation. In this sense, more than any of the other

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[10] Rossiter, *Constitutional Dictatorship*, p. 172-5.

[11] Ibid, p. 185.

pieces of legislation, the Emergency Powers (Defence) Act was the true progeny of the Defence of the Realm Act introduced in August, 1914: a clear link in a chain that stretched between two wars and beyond.

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The demise in 1921 of the Defense of the Realm Acts occurred in a different nation than the one which had seen their creation. When the first Act was passed in the heady early days of the War, it was a hurriedly created temporary expedient that would be repealed as soon as the soldiers returned home for Christmas. Though part of a general trend towards increasing the powers of the state, nobody, Liberal or Conservative, would have been prepared to accept the extent that DORA expanded these powers under anything less than emergency conditions. Only the onrush of war permitted its rapid passage without so much as a murmur of protest. In this sense it was a creature of its times, and stands out as an aberration.

Yet when the final Act was repealed, it took place in a nation grown accustomed to the extreme conditions of wartime. As with so many other things, what had been unthinkable before the War was accepted as commonplace in its aftermath. The state's increased powers and its enlarged role in Britain were tolerated and even expected, as people increasingly turned to the state for solutions to their problems. The state, in turn, found that it could not meet the tasks it now sought to fill without the powers granted under

the Defence of the Realm Acts, and sought to bring it back in one form or another for decades afterward.

This was the greatest legacy left to the nation by the Defense of the Realm Acts. Though not the only legislation that broadened the state's powers during the war, it was the most important in terms of the broad scope of powers it granted with such economy of words. This importance gave it a public prominence as well, one that even had an image in political cartoons. Both during and after the war, the cartoonists in *Punch* drew "Dora," a spinsterish woman always telling people what they could and could not do in the context of government regulation. Not only is the image indicative of the Acts' prominence, but it suggests the acceptance, albeit grudgingly, in the public mind of the new role the state assumed in regulating British life.

The Acts themselves played only one part of this. Their acceptability lay in two conditions, the first being the sacrifices the public assumed in going to war. The use of the original bill in August 1914 showed that the public willingly accepted such powers as necessary for a limited war. As the Great War continued, the public's willingness to make sacrifices grew. During the War, the British people were asked to make such sacrifices as rationing and conscription, sacrifices that would have been unthinkable, even abhorrent, in the prewar world. In this context, what more was it to temporarily give up abstract principles and rights if it meant defeating the Hun and bringing the men back home safely?

The second part to the acceptability of the state's broadened role lay in the judiciousness of the various governments of the period in using their powers. The Defense of the Realm Acts granted vast powers, powers that the government used selectively. The Asquith government was restrained in its use of DORA's powers, at times too restrained for the needs of the War. By 1916 there was a growing feeling, as evidenced by the increased calls from such groups as government members dealing with agriculture and coal miners in Wales, that the state needed to play a more active role in order to see its goals accomplished. When David Lloyd George took office as Prime Minister in December, 1916, such groups had a leader more attuned to their suggestions.

Yet even then, government intervention was carried out on a case-by-case basis. There was no wholesale, unilateral takeover of industry during the war, nor did the government assume any role that was not already being filled adequately by the private sector. Private property seizure was based on immediate need and involved adequate compensation to the owner. The most prominent cases of state expansion during the War--in regulating agricultural production and nationalizing the coal mines--were based on the impending crises of insufficient food supplies and the danger of industrial unrest specifically. Furthermore, state intervention took place with many internal checks and balances, and great latitude was given to private interests within the sector in question. Even in dealing with civil liberties, state action was restrained in many instances by political considerations. Such actions were

hardly signs of a state corrupted by the powers available to it.

The end result of this was the subsequent growth of the power of the British state and the development of British constitutional history in this direction. The Defence of the Realm Acts became the model of some of the most important legislation of the interwar period that expanded the power of the state, as well as the act that became the basis of the state's wartime authority. More importantly, it advanced the British people's *acceptance* of the new powers far beyond what it would have been. Without the war, such expansion would have resulted in numerous Parliamentary and legal challenges that might have delayed or even turned back this growth. The First World War allowed it to be done by fiat, with practically no protest or opposition.

It must be noted as a caveat that the Defence of the Realm Acts did not start this trend. As was noted in Chapter One, the power of the state had been growing steadily since the nineteenth century. The war accelerated this trend out of all proportion to its peacetime development. The Defence of the Realm Acts--their introduction, continued existence, and legacy--were one part of this, both representative of and advancing the trend. Without the Defence of the Realm Acts, the increase in state power would have taken place; without the growth of the state prior to the war, the Defense of the Realm Acts might not have existed at all.

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