Military Law, the Canadian Militia, and The North-West Rebellion of 1885

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Introduction

On 18 March 1885, Louis Riel and a large group of dissatisfied natives took up arms against the Dominion of Canada and declared their own provisional government at Batoche, a small community south of Prince Albert on the South Saskatchewan River. Fearful that the insurrection might encourage similar uprisings among natives and whites in other parts of the North-West territories, the Dominion government immediately sent a large field force from eastern Canada to suppress the rebellion. Major-General Frederick Middleton, the
general officer commanding the Canadian militia, personally directed military operations in the field. After indecisive engagements at Cutknife Hill and Fish Creek, Canadian troops defeated the rebels in battle at Batoche, thereby bringing an end to active resistance. Riel and his acting government surrendered several days later.

The North-West Rebellion was Canada's first truly national military experience since Confederation. In contrast to the predominantly British-run expedition against the Red River Uprising in 1870, the military forces deployed during the rebellion were entirely under Canadian control and administration. Although eventually successful, the campaign in 1885 exposed deficiencies in the existing militia organization. Historians have cited tactical mistakes and cautiousness in Middleton's strategy, the inability of the raw and inexperienced militia to subdue the lightly armed rebels, poor equipment, and the lack of adequate supply and logistics arrangements. Though valid, such criticisms understate the militia's achievements during the rebellion. Given the prevailing climate of fiscal restraint and public indifference surrounding military matters in the country at the time, the militia actually performed better than expected. Limited funds from parliament were barely sufficient to train the amateur militia for less than two weeks every other year and maintain a small instructional cadre. Yet, thousands of troops mustered at short notice, travelled enormous distances under trying conditions, and engaged a determined enemy in military operations. Throughout the conflict, the militia remained a disciplined military force instead of an armed mob.

The behaviour of the militia reflected serious efforts by British and Canadian officers to instill a degree of professionalism within Canada's military forces between Confederation and the North-West Rebellion. Military law was an important part of this professional development. Discipline rested on the knowledge, dissemination, and application of military law. British and Canadian legislation, along with accompanying regulations, provided the basis for a code of service discipline. The content and administration of military law received considerable scrutiny from British royal commissions and service authorities during the nineteenth century. Officers learned about military law through various official and private publications as well as formal courses of instruction at military schools. A good knowledge of the subject became a prerequisite for qualification and promotion. Actual practice at the battalions and company level reflected the theoretical teaching of military law. Under the authority vested by the regulations, officers dealt with offences or breaches of service discipline. Military law promoted predictable behaviour during active operations.

Nineteenth Century Military Law

The military law from which the Canadian militia drew its code of service discipline rested on traditions, customs, and practice as old as the common law in Great Britain. The first recorded British military courts dated from the Crusades and courts of chivalry in the Middle Ages. Although special ordinances issued by the crown governed naval and military forces raised during times of war, a semi-permanent court was established under the High Constable, the English king's military governor. The High Constable's chief of staff, Fearing a usurpation of his royal prerogative, Henry VIII executed the High Constable, Edward Duke of Buckingham, in 1521 and vested all responsibilities for military discipline within British armies under the Earl Marshal. Over time, the court martial derived its name and form from the court of the marshal. During the English Civil War, the crown and parliament issued separate Articles of War to their respective military forces. A standing army stayed in existence on British soil, but English civil courts reassured their rights and authority under common law over soldiers when the regulations lapsed at the end of hostilities.

A formal statutory military code during peace time came into existence after the British parliament passed a Mutiny Act in 1689, in response to a revolt among British units embarked at Ipswich for service on the European continent. The Mutiny Act, renewed almost annually thereafter, and various Articles of War, issued by royal prerogative to govern British military forces sent abroad, regulated the application of military law. While the Articles of War were almost continuously in force during the constant European and colonial warfare of the eighteenth century, the Mutiny Act had no force outside of Great Britain until the British parliament extended its jurisdiction in 1802. The Mutiny Act and Articles of War then applied to British troops stationed on garrison duty in North America and various militia in the territories of Upper and Lower Canada, New Brunswick, Nova Scotia, and Prince Edward Island called out from time to time for training and active service.

The exact relationship between military law and common law remained undefined. Each based its legitimacy on a parallel, but separate historical development. The English civil courts frequently asserted jurisdiction over serious offences of a civil nature, committed by soldiers in Great Britain. Conviction and punishment by a military court was no guarantee against later trial before a civil magistrate for the same offence. It was the equivalent of what military lawyers today call 'double jeopardy.' However, in actual practice, military authorities generally exercised jurisdiction over service-related offences in Great Britain and offences, both service and civil in nature covered by the Mutiny Act and Articles of War, among British and colonial troops abroad. The competent military court to punish serious crimes was the court martial, which existed in several forms: regimental, garrison, district, and general. Despite general misconceptions, military law generally kept pace with changes and reforms to the common law. Use of the death penalty remained within the common law. Use of the death penalty and the death penalty in favour of corporal punishment and even full acquittal. Flogging, administered in a highly theatrical and demonstrative manner for the rest of the troopers, gradually became the preferred form of punishment in the British army. The application of military law and corporal punishment was far from uniform, and often varied from regiment to regiment because knowledge of legal matters was uneven among officers and few books existed to guide them through the Mutiny Act and Articles of War. In contrast to the civil courts, officers exercised considerable discretion in the interpretation and administration of military law. As a result, the infliction of corporal punishment steadily increased in quantity and severity during the Napoleonic Wars.
During the early nineteenth century, demands for reforms to military law and how it was administered coalesced around growing opposition to corporal punishment. Flogging and branding were the most common punishments in a long list of humiliating and painful corrective measures available to military authorities. In an emotional campaign advocating total abolition, influential persons in the parliamentary and popular press depicted the practice of corporal punishment in the armed forces as demeaning and inhuman. Public pressure became so strong that the British government under prime minister Sir Robert Peel appointed a royal commission in 1832 to examine the whole system of military punishments. Over the course of many meetings, the commissioners heard testimony and took evidence from experienced military officers, and the principal opponents of flogging. The royal commission recommended some restrictions on the amount of flogging, but stopped short of its suggested elimination. Military authorities remained convinced that corporal punishment was essential for the proper maintenance of discipline within the armed forces.

Although the issue remained unresolved for several decades afterwards, vocal public outcry against flogging following the Crimean War eventually forced the British government to appoint another royal commission to consider the reform of military law. After a particularly heated debate in the British House of Commons during late 1866, the judge advocate general warned that a motion was imminent, and he hoped to see "any vote which the Authorities at the Horse Guards consider as the act of service by the appointment of a Commission." The opponents of flogging and other objectionable punishments were winning support among large segments of the British public. Over objections from military authorities, the British government imposed restrictions on the infliction of corporal punishment. From 1866 onwards, flogging required proper sentence from a court martial and was restricted to offences on active service involving mutiny or insubordination accompanied by personal violence. While curbing the worst abuses associated with military law, the political decision left military authorities without a familiar means of enforcing military discipline.

The royal commission, chaired by Colonel John Wilson Patten, explored alternative forms of punishment, such as fines, imprisonment, and discharge of convicted soldiers. Between March 1866 and April 1869, commission members heard testimony from distinguished members of the bar, senior military officers, including Field Marshal H.R.H. the Duke of Cambridge, the commander-in-chief of the British army. A final report concluded that the existing court martial system worked sufficiently well, but found the sources of military law too complicated, guidance and instruction for officers insufficient, and certain procedures unfair. There were required to make improvements in how military law was administered. The Duke of Cambridge, who took a sincere interest in the reform of military law, questioned whether the restrictions on flogging were having a negative effect on discipline within the army. The number of incarcerated soldiers at home and abroad had abruptly risen because varying sentences of imprisonment largely replaced corporal punishment. Anxious to decrease the amount of punished crime in the armed forces, military authorities acted upon the royal commision's main recommendations.

The concern about too much complexity began a process towards consolidation of the various legislative and other sources behind British military law into a single service code. Charles Clode, a civilian lawyer employed at the War Office on various legal and administrative matters, advised that the Mutiny Act required revisions in light of the royal commission's findings. Indeed, the proposed alterations were so extensive that he felt that a new act, which incorporated the best features from both the Mutiny Act and Articles of War in a single piece of legislation, was more appropriate. The secretary of state for war asked Sir Henry Thring, the parliamentary counsel, to prepare a suitable bill for presentation to parliament. Revived in 1869 under the Treasury, the Parliamentary Counsel's Office drafted proposed amendments, and provided guidance and legal assistance to departments within the British government, either upon request or as a matter of course for those departments without the benefit of in-house legal advisors. Between 17 May and 28 July 1878, a select committee, chaired by Sir William Harcourt, examined the draft army bill in light of testimony from a number of invited witnesses, including Thring, Clode, the Duke of Cambridge, and the judge advocate general. Despite unreasonably wide terms of reference, Harcourt's committee agreed that the proposed statute was a great improvement over existing legislation. In 1879, the Army Discipline and Regulation Act came into force, replaced two years later by the Army Act. Like the previous Mutiny Act, the Army Act received annual approval from the British parliament after 1881.

Although the Army Act silenced the harshest critics of the military justice system for the time being, military authorities disparaged what they perceived as encroaching civilian influence over military law. A proposed provision in earlier drafts sought to allow the governor general in a British colony to review and confirm sentences from general courts martial under certain circumstances. These powers usually rested with a senior officer authority, i.e., a senior military officer - especially in an army constituted as ours in a colonial basis, the governor general necessarily felt compelled to consult the colonial cabinet and legislature. Difficult legal cases were still referred to the judge advocate general in London for advice on confirmation. Major-General Sir Garnet Wolseley, the British adjutant general, objected to a formal right of appeal to the judge advocate general or some other civil legal authority.

Those who know how difficult it is to maintain discipline in an army - especially in an army constituted as ours is upon purely purely civil principles - are well aware of the conduct of those in military authority - know also how essential it is that the soldier should learn to look to his officer alone for justice.

Unfortunately, some soldiers coming before courts martial did not share Wolseley's faith in the impartiality of the military hierarchy. The Duke of Cambridge remarked that defendants were frequently hiring solicitors or barristers to represent them at trial before military courts. The intervention of legally trained civilians at various levels of the military justice system demanded a higher standard of knowledge and proficiency in the fundamentals of law among military officers.

Among the British royal commission's recommendations was preparation of an official textbook on military law, issued by authority, for the general reference of the armed forces in Great Britain and its colonies. Standard works by Captain Thomas Simmons, Major-General Charles Napier, and Major-General George D'Aguilar were still in use, but they were hopelessly out-dated. Many irregularities in the administration of military law were undoubtedly due to an over-reliance on old books. Petitedly due to an over-reliance on old books, Charles Clode produced his own book through a private publisher in 1872. It was a comprehensive and detailed work. He argued that military law could only be understood in a historical context because its legitimacy rested on a separate development from the common law. Consequently, military officers required a farrmacy with the background and customs of military law. A committee assembled at the Horse Guards under instructions from the secretary of state for war on 2 May 1877 endorsed preparation of an official textbook, designed to enable all ranks to understand more clearly the connection between civil and military law and promote more uniformity in courts martial. Work towards this end was coalesced into a single statute, however, impaired the endeavour. Colonel Robert Carey, a deputy judge advocate, wrote a book explaining the principles behind the Mutiny Act and Articles of War, but it was never published outside the War Office because the Army Discipline and Regulation Act superseded these authorities. The new legislation instead provided an opportunity for a more ambitious and comprehensive manual based upon extensive legal experience.

The first official British manual of military law was prepared and arranged under the direction of the parliamentary counsel. The process began in July 1879 when the secretary of state for war asked Thring to produce rules of procedure for the Army Discipline and Regulation Act and incorporate them in a textbook which would contain the act, the rules of procedure, and explanatory notes on military law. Gerald Fitzgerald, a member of the parliamentary bar, was general editor, while several lawyers from the parliamentary counsel's department worked as chapter editors. At Thring's suggestion, Sir George Osborne Morgan, the judge advocate general, thoroughly revised and added notes to the manuscript, based upon the Army Act of 1881. The finished product then received approval from
the Duke of Cambridge. The War Office officially published the manual of military law in 1884. Its fourteen chapters authoritatively dealt with the history of military law, military crimes and punishments, powers of arrest, courts martial, the law of evidence, English criminal law applicable to soldiers, the relation of civil courts to courts martial, constitution, the soldier's relation to civil life, the laws and customs of war, as well as the law of riot and insurrection. The manual of military law was available for purchase through Her Majesty's Stationery Office and received a wide public circulation. Republished in several editions in subsequent years, the manual became an invaluable source on military law for officers, soldiers, and civilian governors.

Compared to the significant interest with military law in Great Britain, the Canadian variant attracted less attention. The scale of Canadian public inquiry never matched the British royal commissions. Beyond matters of fiscal responsibility and blatant political patronage, the Dominion's parliament rarely took any sustained notice of military matters. Defence remained a low priority among other social and economic concerns in the new Dominion. Segments of the Canadian population distrusted what they perceived as militarism, saw little need for the expansion of the existing militia, and believed even more firmly that they did not want to pay the associated costs. In general, the level of emotional debate was also lower because flogging was less common in Canada. British commanders faced a major problem with desertion among troops in North America, particularly when labour markets in the United States offered more lucrative work and higher wages. Flogging proved a poor deterrent because severe punishments simply gave disgruntled soldiers another reason to run-away. Since the Canadian militia was constituted on a voluntary basis, aggrieved or dissatisfied soldiers could always leave or choose not to re-enlist at the end of their three-year enlistment. Even before the British finally abolished corporal punishment in 1881, the Canadian militia generally relied upon persuasion rather than intimidation in enforcing military discipline among its ranks.

The Canadian militia used British military law, modified by Canadian legislation and regulations to meet particular Canadian circumstances. In 1867, the British North America Act gave the new Dominion of Canada responsibility for defence and maintenance of its own military forces during peacetime. The older provincial militia organizations were incorporated into a larger national framework. In 1868, a Militia Act established four classes of militia liable for military service, different types of volunteer and paid service, and the annual paid drill of no more than sixteen days (subject to parliamentary vote). The Militia Act supplemented rather than replaced existing British military law. When mobilized, the Canadian militia remained subject to the statutes and regulations in force within the British army. Since certain provisions in British sources were not entirely suited to the Canadian situation, Canadian officials drafted additional regulations. In 1870, the Department of Military and Defence issued regulations under the authority of the Militia Act. The Regulations and Orders for the Canadian militia replaced previous regulations issued on an interim basis by the Canadian adjutant general and promoted greater uniformity among Canadian military organizations. For the Militia Act organization, the Canadians compared themselves favourably to the territorial army in Great Britain. The Militia Act sought to place the Canadian militia on a footing as near as possible to the standard British volunteers in order to meet the Dominion's minimal defence needs. Canadian officers and soldiers in the North-West field force fell under the disciplinary provisions of the Army Act, as applied by the Militia Act and its regulations. The military law which regulated the militia in Canada during the nineteenth century originated from a variety of British and Canadian sources.

**Military Legal Instruction**

Statutes, regulations, and manuals were useless without informed officers and other ranks. The late nineteenth century featured the transition between older traditions of amateurism and a growing sense of professionalism within British and Canadian military forces. Education, intelligence, and experience gradually took precedence over background, financial means, and social standing. The introduction of formal instruction in military law resulted from a general movement to improve the capabilities and professional development of officers. General Sir Henry Murray, in a lecture to military cadets at Sandhurst, stressed the importance of the subject in their professional development:

Formerly a notion used to prevail that Courts Martial in their proceedings and decisions were to be govened rather by honour than law - now this altogether is a mistake; honour, it is true is a noble influence, but it is rather of a capricious nature - each Gentleman seems to exhum the right of having his own code of it. Where law goes doggetly to its point - one counsel may show it in a different one, but still there remains the law founded on experience and reflection as a safe path to the administration of justice. For this reason I think that the study of military law is an important branch of education in any candidate for a Commission in the Army.

Professional qualification required a requisite knowledge of military law. With every increase in rank, the officer was expected to have a better level of understanding. Self-study and formal courses of instruction, measured by qualification and promotion examinations, guaranteed a minimum knowledge of military law.

The Canadian militia originally benefited from the training and educational opportunities afforded by the presence of British regular troops in Canada. In response to tensions over the seizure of Bic, the British steamer Trent during the American Civil War, military schools of instruction, connected with British regiments stationed in Quebec and Ontario, had been established from 1864. The schools provided certificates of qualification after a course of individual and structured study, which included military law and relevant regulations. British instruction inspired some militia officers. A textbook of military law, compiled by Major Thomas Scoble for the guidance of Canadian volunteers on active service, included two chapters on the Militia Act, Queen's Regulations, and Articles of War. Such books were important because geographical distance and time constraints worked against large attendance at British military schools.

Unless fortunate enough to live in close proximity to an urban area and a British garrison, most militia officers relied upon reading books and regulations on hand in their locality. This was due to a series of leading authorities, including Dr. Francis Lieber's code for the Union army during the American Civil War. British books, however, were generally more readily available. Although somewhat dated, written sources were sufficient for Captain Alexander Tulloch, a garrison instructor with the 69th Regiment in Halifax, to prepare and publish a set of lectures on military law. The books were about all that was left behind as the British steamer Trent left Canada. After signing the Treaty of Washington, the British government withdrew its imperial garrisons, with the exception of those at the naval bases of Halifax and Esquimalt. The Canadian militia assumed sole responsibility for its own military training and education.

Although British military schools closed, the Dominion government established two permanent schools of gunnery, attached to artillery batteries at Kingston and Quebec. Lieutenant-Colonel George French and Lieutenant-Colonel Thomas Strange, two Royal Artillery officers on loan from the British Army, were the first commanders. The gunnery schools offered short and long courses of instruction for officers, respectively of twelve and three months duration. Subjects of study focused on the courses of studies at the Royal Military Academy at Woolich, the British army's main educational institution for prospective artillery officers. Strange had been an instructor at Woolich for five years, and French was a member of the Royal Irish Constabulary. The artillery embodied the more intellectual side of the militia. Enrollments at the gunnery schools were small, but the quality of instruction remained high. The curriculum aimed at imparting a thorough grounding in technical, military, and administrative duties. Examination questions in military law at the gunnery schools during November 1874 demanded a good general knowledge of the Militia Regulations, Queen's Regulations and Orders, and Articles of War, as applied to the Canadian militia. Upon gaining certificates, officers were expected to return to their militia units and assume roles as instructors. To further these activities, printing presses at the gunnery schools distributed a pamphlet containing an artillery manual with a section on discipline. As the only efficient military schools of instruction in Canada for many years, the gunnery schools trained officers from other service branches as well. An infantry short course required individuals to pass written examinations on the Militia Act, Queen's Regulations and Orders,
Discipline in the Field

Deployment of the Canadian militia in the North-West translated the study and teaching of military law during peacetime to actual practice on active service. Middleton divided the army into three columns under three separate commanders: he proceeded against the forces of Riel and Gabriel Dumont, the rebel military leader, in the direction of Batoche; Lieutenant-Colonel Otter relieved Battleford and attempted to engage defiant natives under Chief Poundmaker north of the town; and Major-General Strange, recalled from retirement near Calgary, moved to Edmonton and then to besieged Fort Pitt along the North Saskatchewan River. Since other historians have described the resulting military operations and battles in considerable detail, this section instead focuses on various legal aspects of the campaign and how Canadian soldiers interpreted and administered military law. The conflict represented one of the most important changes in the development of military law in Canada.

The first cadets, who used Wolseley's published pocketbook for learning about special laws relating to soldiers, the history of British military law, military crimes and punishments, the constitution and practice of courts martial, and the practice of courts martial, were carried out. Practical observation reinforced theoretical teaching and lectures. Permanent military schools - three infantry and one cavalry - opened at Toronto, Fredericton, St. John's, and Quebec City in January 1884. Like the Royal gunnery schools, these schools offered long and short courses with a military law component. Together, the permanent military schools of instruction sent back qualified militia officers to rural and city corps.

Prior to the North-West Rebellion, the majority of Canadian militia units performed paid training of sixteen days for artillery and twelve days for all other arms every two years. Upon mustering, officers were required to read the conditions of service to their soldiers and to inform them that they were now subject to military law. Training usually involved exercises in a number of practical and theoretical subjects. For guidance, officers and other ranks consulted the Militia Regulations and Orders, most recently published in 1883, the manual of military law, and various privately published books. The most popular among the last was Lieutenant-Colonel William Otter's guide for the administration of an infantry formation which included sections on discipline, courts martial, offenses, complaints, and defaults. Although instruction in military law covered a wide range of topics and allowed Major Jones "to gain the full attention of the Cadets to my lectures, which I should fail in doing had they to be busily engaged in taking copious notes, and enables me to proceed more rapidly." Although a conscientious teacher, Jones held strong opinions on certain controversial military topics, and he resigned from the Royal Military College of Canada in 1884.

Major Douglas Jones, a Royal Artillery officer who had served in his regiment by the British government, arrived in Kingston during the summer of 1879 to fill the professorship. Drawing upon considerable experience in staff and regimental duties, he broadened the scope of the law courses included in the Royal Military College of Canada's four-year academic program. The first cadets, who used Wolseley's published pocketbook for field service as a textbook, learned about special laws relating to soldiers, the history of British military law, military crimes and punishments, the constitution and practice of courts martial, and the practice of courts martial. Wolseley's book was a forerunner to the British army's later published field regulations. Cadets predominantly learned British military law with a slight Canadian emphasis. The appointment of a professor in military history, military administration, and law greatly improved the standing and teaching of the subject.

Major Edward Nash, another Royal Artillery officer sent from Great Britain, took over the position of professor of military history, military administration, and law at the Royal Military College of Canada. Despite the change in instructors, the subject matter of the law course remained virtually identical. Under the Militia Regulations and Orders, a select number of militia officers attended the Royal Military College of Canada for a special long course of instruction, designed to suit them for staff and instructional duties. Nash lectured on various aspects of administration and military law to this small group in addition to teaching the cadets. The courses at the Royal Military College of Canada provided good quality instruction in military law for militia officers and cadets, some of whom subsequently entered British or Canadian service.

The long-awaited opening of infantry and cavalry schools of military instruction allowed further opportunities for formal courses in military law. Although originally authorized with the gunnery schools, the other military schools were delayed because of fiscal restraints and organizational problems. Lieutenant-General Edward Selby Smyth, the general officer commanding the Canadian militia, Major-General Richard Laud, repeatedly stressed to the Dominion government the importance of these schools for developing discipline among officers and non-commissioned officers. A number of provisional schools across the country had already achieved good results. At one such school in the west, an inquiry found that soldiers "behaved splendidly, keen to obey every order, always willing, and preserving perfect discipline. Not the stolid discipline, the result of years of routine, but the discipline of zeal and enthusiasm, based upon the common desire of us all to do the very best we could for our country, and for the credit of our corps." A sense of cause, patriotism, and a stake in their community provided soldiers with the strongest motivations for behaving themselves. In this regard, the Canadian militia considered itself superior to the older, standing armies of Europe.

The amount of punished crime among soldiers during the North-West Rebellion was relatively low. Besides training and background, several factors contributed to this state of affairs: the relative shortness of the
campaign, constant movement and marches, concentration into camps when not employed in combat operations, remoteness from the temptations of towns and settlements, clear instructions and orders, and the willingness of officers and non-commissioned officers to act decisively to prevent crime. Perhaps the most important, however, was a prohibition in the North-West territories on the consumption of alcohol. Like Wolseley during the 1870 expedition, Middleton denied liquor drinking privileges to volunteers in the current campaign. The effect on discipline was noticeable. Lieutenant John Preston, an officer with ‘D’ company of the Midland battalion, attributed an almost complete absence of crime to the strictly enforced ban on alcohol:

Our Battalion had been recruited largely in the towns of the Lake Ontario waterfront, from hard-bitten sailors and dock workers, who, if liquor had been generally available, would sometimes have been in trouble; but without any sort of alcohol to drink they were the finest and best-behaved and most loyal troops possible; and the same was generally true of all our rank and file.

The removal of a mood-altering catalyst promoted better behaviour among the Canadian troops. Their attention remained focused completely on the tasks at hand. The small number of offences were handled in a summary fashion.

Battalion and company commanders dealt with a variety of infractions against service discipline. The most common were insubordination, negligent performance of duties, falling asleep during guard duty, improper upkeep of equipment, misappropriation of supplies, and accidental shooting of fellow soldiers. Officers, sergeants, and Orders, officers awarded summary punishments after confirmation of the alleged offences. Not every soldier readily accepted the prescribed penalty. In his diary, Private Robert Allan described how a soldier under arrest for swearing at a sergeant major ‘was ordered to have every letter of [offender] we have had he would not do anything he was told, so he was brought back to the guard tent & handcuffs put on. I believe he will be given another chance tomorrow.’ In the field, summary punishments were usually preferred to more formal legal proceedings. Facilities for imprisonment were limited, and every company officer was authorized to place an added burden on the rest of the troops in the company. Courts of inquiry investigated misconduct on the part of some soldiers, but available evidence suggests that no general courts martial were held in the field during the rebellion. The dispersal of the field force over a wide geographical area and the limited number of officers with sufficient seniority and experience to sit as presidents or members of courts martial were most likely contributing factors.

There was also a general lack of serious offences, such as murder, rape, and violent assault, requiring trial by a formal military court. Officers handled potentially serious situations in noting to Lieutenant Lyndhurst Wadmore, an officer in Otter’s Battleford column, described a soldier who ‘flew at me on parade; kicked him and threatened to shoot, but did not like to order this.’ Some men inevitably broke down psychologically under the stress of battle and fatiguing marches. Defaulters usually deserved pity rather than punishment. In his annual report to the Dominion government, Major-General Middleton remarked on ‘an almost total absence of such Military crimes as are usual with Regular Troops.’ Both on the line of march and in battle, the Canadian militia displayed a commendable degree of discipline for hastily recruited and at best, partially trained amateur soldiers.

Nonetheless, keeping such troops under proper control posed some significant problems. The special correspondent for the Toronto Mail reported that Canadian soldiers plundered lodgings houses at Clarke’s Crossing, broke furniture and porcelain, and shattered windows on homes with careless gunfire. Incidents of wanton pillaging and looting were more common than the minister of militia and defence, Sir Adolphe Caron, was willing to admit in the House of Commons. Existing law and custom allowed the destruction of private property in wartime, but new public order and the recognition of the right of military forces to requisition necessary supplies from local inhabitants. International jurists, following upon the ideas of Hugo Grotius and Emerich de Vattel, merely argued that these activities should be kept in proportion to the ultimate object of defeating the enemy. Strict orders from Middleton, read out after drill practice, prohibited soldiers from entering houses or farms or family premises ‘lest they authorized to do so & they could take provisions but had to keep a strict account of anything taken, and anything taken to be handed over to the Quarter Master.’ Despite the threat of severe punishment, soldiers still seized goods and livestock for personal gain without apparent distinction between property belonging to supporters of the rebels and the settlers they were sent to protect. Complaints about unauthorized requisitions became so frequent that Lieutenant-Colonel Otter acknowledged that ‘stringent means must be taken to remedy it.’ Parliamentary inquiries into allegations of looting during the rebellion, including the questionable seizure of furs by the Major-General himself, eventually led to Middleton’s resignation and return to Great Britain in 1870.

Although under no legal obligation, the Dominion government intended to settle accounts after the conflict. The time of year and sparse settlement on the prairies restricted the amount of foraging which could be profitably done. The field force purchased supplies from the Hudson Bay Company’s existing network and other private companies. The Dominion government paid dearly for the privilege, but the system proved workable and dependable. Without question, the Canadian militia was in a far better position than its opponents.

Faced with few other alternative, the rebels and turbulent natives seized or requisitioned whatever supplies they required. The insurrectionists had captured badly-needed arms and ammunition during initial encounters with the North-West Mounted Police, but not as much as they perhaps could have. An utter lack of preparation for a prolonged conflict against organized military forces characterized the rebel side. Riel’s faith in Provo to serve as a substitute for a good supply base. As fighting troops and soldiers on the field, the rebels increasingly lived off the surrounding countryside. Settlers who were unsympathetic to the rebel cause or resisted forced appeals for supplies faced threats and intimidation. Riel absolutely refused to allow Dumont to adopt guerrilla tactics against Middleton’s forces. Many opportunities to seize convoys along the field force’s extended, vulnerable supply line were lost. Captured wagon trains allowed native warriors under Poundmaker and Big Bear to prolong resistance for a short time after Riel’s surrender. For the most part, the rebels fought against the Canadian militia in every traditional ways.

General observance of the laws and customs of war on both sides precluded an escalation of the conflict to a more ruthless and unpleasant level. Middleton’s instructions from the Dominion government were simply ‘to vindicate the law and to put down armed resistance to it.’ To achieve this object, the Major-General was given considerable latitude to do what he thought appropriate for the situation. Middleton was a veteran of the Maori uprisings in New Zealand, the Hindu Santhal Rebellion, and the Indian Mutiny. He was fully prepared to adopt extreme measures of reprisal if the rebels adopted guerrilla warfare or flaunted recognized customs. Once breaches of property and summary execution of francs-tireurs and irregular combatants. The most immediate precedents were the Franco-Prussian War and the American Civil War. Nineteenth century Military Realists, such as the Prussian officers Carl von Clausewitz and Helmuth von Moltke, declared that legal restraints were useless under military conditions. Military necessity, as determined by the circumstances. Military necessity, as determined by the circumstances, was the only guiding principle. General William Sherman had put into practice during the Union army’s march across the southern United States his belief that the mere act of rebellion against the duly constituted legal authority deserved severe punishment. Middleton, however, was prepared to undertake a deliberate campaign of terror and retribution without some sort of provocation. The rebels respected flags of truce, treated most prisoners reasonably well, and ultimately surrendered according to the prescribed fashion. In return, Middleton and the Canadian militia handled the defeated rebels and natives with fairness and respect. Riel, Poundmaker, Big Bear, and their principal followers were handed over to civil authorities for detention and trial.
At the end of hostilities, each side blamed the other for atrocities allegedly committed during the rebellion. Physical evidence and eyewitness testimony strongly incriminated some of the insurgents. At Frog Lake, Cree warriors had seized and killed nine civilians, including the local native agent and two Roman Catholic priests. Their mutilated and charred bodies were still lying on the open ground when Canadian soldiers arrived several weeks later. The press in eastern Canada gave full accounts of the improprieties in grisly detail. Fortunately, the main fighting was already finished before most of the Canadian militia became fully aware of these crimes. The sight made at least one soldier’s ‘blood run cold and then heat up quickly.’ Deliberate massacres inflamed passions and encouraged a desire for revenge. Claims, often several years after the fact, that Canadian troops had killed helpless defenders during the storming of Batoche were more difficult to substantiate. Such acts were committed in the heat of battle and often under very confused circumstances.

Earlier in the century, troops forced to besiege and assault defiant towns and cities were given considerable licence to massacre and slaughter the enemy inhabitants. It was the penalty for continued resistance and refusal to surrender upon reasonable demand. Military law and the laws of war generally did not hold soldiers responsible for killings in connection with active operations, unless accompanied by some particularly brutal or malicious conduct. Refusing quarter to other combatants was deplorable, but it was not technically a crime under the laws and customs of war prior to codification with the Hague and Geneva Conventions in the twentieth century. Although troops destroyed arms and gunpowder before marching away from Batoche, they left many women and their belongings un molested. Unlike the rebels, the Canadian militia respected the status of non-combatants and never killed prisoners.

Conclusion

Throughout the North-West Rebellion in 1885, the Canadian militia acted as a disciplined military force. Soldiers obediently followed the orders given them, committed relatively few crimes, and respected the accepted rules governing warfare at the time. Good behaviour was not the result of chance, but instead arose from concerted efforts to impart a sound knowledge of military law among militia officers and other ranks in the years preceding the rebellion. Although a Militia Act and accompanying regulations came into existence, the Canadian militia still relied mostly upon Imperial legislation. Significant developments took place during this time in the reform and application of military law in Great Britain and by extension the self-governing colonies. Militia officers learned about military law through formal courses of instruction at military schools and individual study in official manuals and privately published books. Military law was considered an important subject for better unit administration and the successful conduct of active operations. A significant proportion of Canadian troops, at least among the officers, knew their rights, duties, and responsibilities under the law. An investment in the teaching of military law during peacetime paid dividends in the field.


8. Public Record Office, Kew [hereafter PRO], WO 93/15, Letter from J.R. Mowbray to Sir J.P. Pakington, 17 Jan 1868. During the nineteenth century, the British judge advocate general was a political appointee, who provided the government and military authorities with advice on points of law. He was a member of the House of Commons and the Privy Council. PRO, WO 123/182, ‘Memorandum on the Duties of the Judge Advocate General,’ 13 May 1873.


11. PRO, WO 32/6248, Minute from D. Robinson to W. Galton, 1 June 1869.

12. PRO, WO 123/182, ‘Memorandum upon the Military Code under which Her Majesty’s Forces are to be Governed,’ 11 December 1869.


15. PRO, WO 32/8735, Memorandum from Garnet Wolseley to under secretary of state for war, 2 Nov 1883.


[1]. NAC, RG 9 II K7, Vol. 3, Memorandum by the deputy adjutant general, 'Suggestions Respecting Examination for Certificates of Qualification at the New Infantry Schools of Instruction,' 18 July 1883.


[7]. Glenbow, Robert Kellock Allan Papers, M12, File 2, Diary, 22 April 1885.

[8]. James M. Austin, 'Some Experiences of the Expedition of the North West Field Force as Copied from a Diary Kept in my Possession,' Saskatchewan History, 38(Winter 1885); 31. NAC, Charles Arkel Boulton Papers, MG 29 E3, File 1, Plate 209, Orders of the Day, 6 July 1885.

[9]. David Ross, 'The 1885 North-West Diary of Lieutenant R. Lyndhurst Wadmore, Infantry School Corps,' Saskatchewan History, 42(Winter 1989); 69.


[11]. Canadian House of Commons, Debates, 2(28 May 1885); 2169.

[12]. Glenbow, Allan Papers, M12, File 2, Diary, 29 April 1885.

[13]. British Columbia Archives and Records Service, Lieutenant-Colonel William Dillon Otter, O/B/Ot8, Brigade Order, 3 June 1885.


[15]. Glenbow, Frederick Augustus Bagley Papers, M2111, Box 1, File 1, Letter from Colonel A.G. Irvine to Sergeant Frederick Bagley, 27 March 1885.

[16]. Walter Hildebrandt, 'Ending the Resistance: The Northwest Campaign of 1885 and the Fall of Batoche,' Journal of the West, 32(1993); 41.

[17]. NAC, George B. Murphy Papers, MG 29 E71, Diary, 14 May 1885.

[18]. Canadian House of Commons, Debates, 2(23 April 1885); 1306.


[24]. Glenbow, Mrs. Susan Gower, M6480, North-West Rebellion 1885 Scrapbook, 'Indian Atrocities: Revolting Discoveries at Frog Lake and Fort Pitt.'

[25]. Austin, 32. NAC, Murray Matheson Papers, MG 29 E45, Letter from Matheson to his Brother, 24 June 1885.

[26]. G.F.G. Stanley, 'Gabriel Dumont's Account of the North West Rebellion, 1885,' Canadian Historical Review, 30(1949); 266. Private Charles Capp, a militia soldier who participated in the final assault, gave a very different version of events. R.H. Roy, 'With the Midland Battalion to Batoche,' Saskatchewan History, 32(Spring 1979); 59.


Refbacks

There are currently no refbacks.

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The North-West Mounted Police (NWMP) was a Canadian police force, established in 1873 by the Prime Minister, Sir John Macdonald, to maintain order in the North-West Territories. The mounted police combined military, police, and judicial functions along similar lines to the Royal Irish Constabulary, and deployed the following year to the Alberta border in response to the Cypress Hills Massacre and subsequent fears of a United States military intervention. Over the next few years, the police extended Canadian law across the region, establishing good working relationships with the First Nations. The force formed part of the military response to the North-West Rebellion in 1885, but faced criticism for their performance during the conflict.