
Narrowing the Gap by Widening the Conflict: Power Politics, Symbols of Sovereignty, and the American Vietnam War Resisters' Migration to Canada

John Hagan

In this article, I consider how a second face or dimension of covert political power was used to deny legal immigration status to Vietnam War military resisters who sought refuge in Canada during the early years of the largest politically motivated migration since the American Revolution. Recently declassified historical records and interviews with former politicians and administrators reveal that the Canadian Immigration Department and its minister misled the public in advancing an official myth about the evolution of this migration. Until successfully exposed by persistent and innovative investigative journalism, the backstage use of political power kept American Vietnam military resisters who were seeking to legally immigrate defensively framed in a symbolic package that defined them as culturally unsuitable. Several thousand American military resisters lived illegally in Canada until conflict about their plight was successfully broadened and transformed into an effective collective grievance and claim under Canadian immigration law. Once the gap between Canadian immigration law and its practice was fully exposed, the conflict about this policy grew rapidly to include a number of cultural elite groups and a master framing of these American servicemen as unexpected symbols of Canadian sovereignty. A fully elaborated explanation of the collective transformation of sociolegal grievances into successful legal claims requires combined attention to the macrolevel interaction of political power and cultural symbolism.

Introduction

The opening of Canada's borders to the immigration of American military resisters was one true source of light at the end of the tunnel for individuals who served during the Vietnam War. Yet this was not the case in the beginning. In spite of the fact that Canadian immigration law did not exclude foreign military personnel and in the past had allowed military personnel from other countries to immigrate, Canadian officials initially used their power to covertly exclude American military resisters.

This research was supported by a fellowship for the author from the John Simon Guggenheim Foundation and by a grant from the Social Sciences and Humanities Research Council of Canada. Please address correspondence to Professor John Hagan, Department of Sociology, Northwestern University, 1810 Chicago Avenue, Evanston, IL 60208; (847) 491-5415; e-mail: Jhagan@abfn.org.

This situation was not successfully challenged until journalists exposed the gap between Canadian immigration law and the exclusionary policy. Resulting conflict about the policy led a succession of groups to support the military resisters by characterizing their exclusion as a violation of the sovereignty of Canadian immigration law. As a result, the border ultimately was opened to the American military resisters. The following is an account of the successful legal transformation of the personal and collective grievances of early American Vietnam War military resisters in Canada. Law and society scholarship has long proven better at highlighting gaps between law and practice than in offering insights into how such gaps can be narrowed (see Abel 1980–81). The success of the American Vietnam War resistance in Canada may therefore be instructive.

Law and society scholarship on dispute transformation begins with the premise that individuals may or may not perceive the injuries they experience personally or as members of collectivities as bases for legal claims (e.g., Best & Andreasen 1977; Galanter 1983). More generally, the availability of and access to legal remedies is guided by government policies, with advocates of the transformation perspective acknowledging from the outset that although “the emergence and transformation of disputes is personal and individualized, it has an important political dimension” (Felstiner et al. 1980–81:653). The point raised but not pursued extensively in the transformation perspective is that personal and social grievances can alternatively be denied legal standing or transformed into legally viable collective claims through macrolevel processes involving political power and symbolism (see Mather & Yngvesson 1980–81).

We know relatively little about how and when the macrolevel transformation of disputes occurs. We especially lack knowledge of the politics and conflicts that lie behind formal transformations in legal policies and that set parameters for the settlement of personal and collective grievances. I explore this point theoretically and empirically through an analysis of the migration of American Vietnam military resisters to Canada. Although this migration was described officially as evolving publicly through an incremental liberalization of Canadian immigration law and policy, this was not initially the case; it only became so through a transformation process that overcame a radical disjuncture between the private and public actions of Canadian officials in response to claims for immigration status by and on behalf of American military resisters. I argue with this example that we must elaborate our theory and methods by giving particular attention to covert as well as overt political conflicts that lie behind the political transformation of legal disputes.

An Invitation

On 22 May 1969 the Canadian Minister of Immigration, Alan MacEachen, rose in the House of Commons to announce that henceforth American Vietnam draft and military resisters, that is, both “dodgers” and “deserters,” would be admitted to Canada without regard to their draft or military status. MacEachen explained that this decision was the extension of a policy of “liberalization” in the treatment of “military applicants” that had been evolving for more than a year and that followed from a policy already in place allowing draft resisters the legal status of “landed immigrants” in Canada. “Our basic position,” Minister MacEachen proclaimed, “is that the question of an individual’s membership or potential membership in the armed services of his own country is a matter to be settled between the individual and his government, and is not a matter in which we should become involved.” The *Toronto Globe and Mail* (23 May 1969, p. 1) cautiously surmised that now “Deserters Will Be Eligible for Status as Immigrants,” while the *New York Times* (23 May 1969, p. A5) more dramatically heralded a headline invitation from, “Canada to Admit any U.S. Deserter.”

This policy had predictable consequences. The monthly number of draft-age males entering Canada as landed immigrants tripled between April and August of 1969, as word of the open immigration policy spread through the mainstream media and the underground Vietnam War resistance movement.¹ Young Americans who were subject to prosecution and penal sanctions under selective service and military law in the United States now could confidently seek and claim legal refuge as immigrants to Canada. This new policy was a turning point that resulted in more than 50,000 draft-age Americans migrating to Canada in the largest northward exodus since the American Revolution (Kasinsky 1976). More than half of these now-middle-aged American expatriates remain in Canada today (Hagan 2001).

Immigration Minister MacEachen’s framing of his announcement as the extension of a policy of liberalization suggests the operation of what sociologists and political scientists often call “policy feedback” (Weir & Skocpol 1985; Skocpol & Amenta 1986; Skocpol 1992), or perhaps more aptly, given the prospective influence and momentum involved, a policy process that “feeds forward” (Pedriana & Stryker 1997). This concept refers to the process by which policies, once enacted, restructure subsequent political processes. Attention to this policy dynamic encourages researchers interested in transformative legal processes

¹ National Archives of Canada, RG 76, vol. 692, file 568-3-23-1902, “United States Citizens Granted Landed Immigrant Status by Specified Ages on Arrival, During 1969.”

to make “policies the starting points as well as the end points of analysis” (Skocpol 1992:58; see also Burstein et al. 1995). Yet public policy pronouncements can also be misleading, especially when they conceal or obscure prior covert actions at cross-purposes with positions that are later embraced publicly by the very politicians who earlier subverted them. This was the case with the Canadian Immigration Department and its minister during the Vietnam War migration. This situation raises the important problem of how law and society studies can provide a more-penetrating understanding of political processes that guide legal changes in the transformation of disputes.

Expanding the Paradigm

Law and society scholarship recently has taken major steps in advancing our understanding of the public side of the politics of legal change in dispute transformation processes. In particular, Pedriana and Stryker (1997) have illustrated through an analysis of the early evolution of affirmative action law how cultural resource strategies involving symbolic framing processes (see for example, Snow et al. 1986; Gamson & Modighani 1989; Swidler 1986; Williams 1995) can combine with central societal values and forward-feeding policies to direct and shape public discourse that leads to legal change. Pedriana and Stryker’s attention to the public role of symbolic and cultural framing processes is especially instructive in understanding how support is built for particular kinds of legal change. My purpose is to theoretically and empirically develop the point that this public phase of the political process is the more visible part of an often multilayered story of legal conflict and change. To borrow a metaphor, focusing solely on the visible politics of dispute transformation can be similar to starting an architectural story about a historically significant building in the intricately decorated mezzanine without first showing us the lobby or foundation (see Kaufman & Jones 1954, cited in Bachrach & Baratz 1962:950).

The other part of the story requires analysis of what Bachrach and Baratz (1962) call the “two faces of power” and Steven Lukes (1974) calls the “second dimension of power.” This other face or dimension of power consists of actions individuals or groups and institutions take to keep issues from public view, and therefore from discussion and debate. In the law and society language of the transformation of disputes, such actions can keep personal or collective injuries from being perceived and transformed into suitable subjects for claims-making. The key point is that this suppression of disputes does not just occur overtly, but through the use of covert power, and that “to the extent that a person or group—consciously or unconsciously—creates or reinforces bar-

riers to the public airing of policy conflicts, that person or group has power” (Bachrach & Baratz 1962:949).

Although law and society scholars have often focused on individual and mostly public processes involved in the transformation of disputes through the “mobilization of law” (Black 1973; 1976), some political scientists and sociologists also have attended to another, second, face of power that can keep disputes untransformed through a “mobilization of bias.” Thus Schattschneider (1960:71), in writing about *The Semi-Sovereign People*, notes that “[a]ll forms of political organization have a bias in favor of the exploitation of some kinds of conflict and the suppression of others because *organization is the mobilization of bias*. Some issues are organized into politics while others are organized out” (emphasis in original).

Schattschneider also introduces the concept of “scope of conflict,” which anticipates the interest of law and society scholars in dispute transformation, and he begins his analysis of conflict by placing the accent on covert rather than overt processes. The importance of the scope-of-conflict concept is reflected in Schattschneider’s observations that “[a] tremendous amount of conflict is controlled by keeping it so private that it is almost completely invisible” (1960:7) and that “the best point at which to manage conflict is before it starts. Once a conflict starts it is not easy to control because it is difficult to be exclusive about a fight” (15). This concept raises the key question of how the scope of conflict may be expanded so that collective transformations of disputes can occur (Mather & Yngvesson 1980–81).

Schattschneider suggests a partial answer to this question in noting that “[v]isibility is a factor in the expanding of the scope of conflict. A democratic government lives by publicity” (1960:16). Law and society scholarship further illustrates how a broadening of the “scope of conflict” can be facilitated through media-generated publicity. For example, Swigert and Farrell (1980–81) provide a detailed content analysis of the news coverage of design defects in the Ford Pinto automobile that helped transform the issue of resulting fatalities from a civil to a criminal dispute. Key factors were a *Washington Post* column by Jack Anderson and Les Whitten and a *Mother Jones* expose, subsequently serialized in the *Post*, that detailed, with Ford documents, a company awareness of dangerous design defects that resulted in fiery crashes and deaths. This publicity initiated a transformation process that led to a criminal indictment of the Ford Motor Company.

The analysis undertaken by Swigert and Farrell anticipates the attention given by Pedriana and Stryker (1997) to cultural resource strategies and framing processes in congressional hearings and other forms of public political discourse involved in the affirmative action debate. Our purpose is to extend this attention

to cultural and symbolic framing by linking it to earlier covert stages in a transformative process that can be crucial in widening into the public domain the scope of conflict about collective grievances. As Schattschneider notes, "the outcome of every conflict is determined by the *extent* to which the audience becomes involved in it. That is, the outcome of all conflict is determined by the *scope* of its contagion" (1960:2). Political power and symbolism are involved in expanding the scope of conflict, which is often necessary for the transformation of collective grievances into successful claims.

The following analysis illustrates how covert and surreptitious uses of political power were exposed and connected to a master framing of Canadian immigration policy that transformed the admission of American Vietnam War military resisters to Canada into an issue of autonomy from the United States. The result recast American Vietnam War resisters as aggrieved *symbols of sovereignty* in a framing contest that alternatively sought to see them as *unsuitable immigrants* to Canada. A multidimensional analysis of the use of political power is necessary to understand the why, when, and how of the transformation and master framing of the American war resister issue as well as the official mythology that was constructed in reinterpreting the legal backdrop to this northward migration. This analysis elaborates the underdeveloped points in the law and society literature that the transformation of social and political grievances into collectivized legal disputes and remedies is a covert as well as an overt and a macro- as well as a microlevel phenomenon. Official mythology often has served to elide this point.

Making the Myth

It is easy to understand the eagerness of governments to engage in myth-making as a means of legitimation and prospective influence. Politicians have a vested and sometimes laudable interest in perpetuating the "feed-forward" image of policymaking. Even the members of the opposition party in the Canadian House of Commons rejoiced in the forward-feeding policy potential of Minister MacEachen's 22 May 1969 opening of the Canadian border to U.S. war resisters. Edward Broadbent spoke for the New Democratic Party and reminded House colleagues that Canada had an important tradition of welcoming political refugees that reached back to the Empire Loyalists who had fled the American Revolution and that fed forward into the middle of this century, to include Hungarians and Czechoslovakians who had escaped repressive regimes by coming to Canada (*Toronto Daily Star*, 23 May 1969, p. 2). This tradition made plausible MacEachen's claim that his ministry was simply extending a policy of liberalization.

However, MacEachen's claim is also the stuff of which myths are made—an example of the way in which social history can be reconstructed and rewritten—for even though MacEachen's policy had its own feed-forward effects, a deeper probing of the path to his announcement reveals that it was anything but the fulfillment of a linear trajectory of liberalization. To the contrary, MacEachen and the Department of Immigration exercised their political power to divert public attention from covert policies and practices that were regressive rather than progressive with regard to the liberalization of American war resister immigration. These policies and practices illustrate the key theme of Schattschneider, Bachrach and Baratz, and Lukes that “incorporates into the analysis of power relations the question of the control over the agenda of politics and of the ways in which potential issues are kept out of the political process” (Lukes 1974:21). The timing, if not the outcomes, of cultural resource strategies and framing processes are often contingent on the covert mechanisms that powerful political actors and groups use to limit potential issues and conflicts by restricting their exposure to potentially transformative public debate. This second face or dimension of political power was a pervasive force in the framing of the American Vietnam War resister issue in Canada.

To get beyond the public discourse that surrounded the American war resister issue in Canada, I use recently declassified historical records that have become available in the National Archives of Canada, along with retrospective interviews with former ministerial and movement participants in the events from this period. The collection of historical records can be traced to a 26 October 1966 meeting between representatives of the Immigration Department and the Royal Canadian Mounted Police, which led the Department to begin an official file to collect reports, related materials, and communications with its four field units, the Royal Canadian Mounted Police (RCMP) and other departments of government.² This file eventually grew to contain 14 heavily stuffed folders that provide a detailed background to a rancorous public discourse that lasted for more than five years.

The archival material reveals how the Canadian Immigration Department and its Minister took steps to conceal and mislead the public about its policy and practices regarding American military resisters in ways that diverted and distorted public discussion of the issues involved. Only by exposing this deception and thus widening the scope of the conflict could countervailing cultural resources be mounted to support the policy of liberalization. It is important to emphasize that crucial cultural resource strategies and symbolic framing processes that would later be-

² Immigration Department memo, 2 Nov. 1966, National Archives of Canada, RG 76, vol. 983, file 5660-1, pt. 1.

come prominent were first developed through covert processes that first sought to avoid and then narrow the scope of conflict in this immigration debate. I further show, with the immigration files, that this preliminary phase was neither the beginning nor the end of the intricately choreographed, second dimension power politics that shaped this highly symbolic episode in Canadian-American relations.

The Shifting Sands of Policy

Canadian policy on American Vietnam War military resisters had its roots in the work of Tom Kent, an English immigrant who came to Canada as a newspaper editor and became a prominent policy adviser to Prime Minister Lester Pearson, eventually serving as Deputy Minister of Immigration (see Kent 1988). It was Kent, under Minister of Immigration Jean Marchand, who first moved the Department of Immigration from unwritten to written policies regarding draft and military resisters. At this and several further junctures, Kent sought to widen the scope of conflict about the immigration of American military resisters from inside the government by encouraging internal debate within and among ministries and by bringing the issue closer to public view. Kent's actions make the important point that government officials can participate in both widening and narrowing the dimensions of conflict. Kent was also hesitant in following through on his initiatives, however, and his efforts were sometimes subverted by others.

It is important to reemphasize from the outset that Canada's Immigration Act makes no mention of draft or military service, and that by the time of the Vietnam War, Canada already had many previous draft and military resisters as immigrants, for example, from Hungary and Czechoslovakia. The presence of these and earlier groups made it extremely unlikely that Canada would ever include references to draft or military status in its immigration legislation. Nonetheless, on 14 January 1966, the Immigration Department implemented Operational Memorandum (OM) No. 117, which drew a written distinction between draft and military resisters and articulated what had to this point been an unwritten policy that excluded American servicemen. Although this operational policy was now in a written form that circulated in the ministry and among immigration officers, it was not available in a publicly published form. Thus the potential issues it involved remained covert—beyond the scope of conflict and transformative potential of public discussion—in the latency of the second dimension of power.

The Memorandum first laid out an ambivalent position on draft resisters, asserting that “[o]fficers will not refuse an immigrant solely on the grounds that he is known to be, or suspected

of being, a draft evader. Nonetheless, they will take this factor into consideration in determining whether he is a bona fide immigrant and in assessing the likelihood of his successful permanent establishment.” The Memorandum then further committed to print a previously unwritten policy refusing military resisters, saying of the latter that “he will not be issued a visa or granted admission until he has submitted proof of his discharge.”³ The problem that would haunt the Department of Immigration for years following was, again, that the Immigration Act itself did not exclude draft or military resisters, even though it did explicitly exclude other “prohibited groups,” such as convicted criminals.⁴ This point did not attract attention until Kent began to expose some of its implications nearly two years later—largely because few American servicemen were yet seeking entry to Canada.

Initially, it was American draft resisters who attracted attention as they began to migrate to Canada. Leaving the issue of military status temporarily aside, in the early fall of 1966 Tom Kent began to articulate publicly the point that the Immigration Act was silent on the issue of draft status. In a letter to *Ramparts* magazine, Kent observed, “There is not any prohibition in the Immigration Act or Regulations against the admission of persons who may be seeking to avoid induction into the Armed Services and, therefore, provided they meet immigration requirements we have no bases in law for barring them entry” (cited in Kasinsky 1976:63). “I just decided,” Kent recalled 30 years later, “that persons shouldn’t be questioned about their draft status, . . . It was made known that draft status had nothing to do with it.”⁵ This could have been the feed-forward point for the policy of liberalization that Minister MacEachen later claimed, but it was not.

The Powers Without and Within

Although Tom Kent was neither a lawyer nor a legislator, he foresaw the gap that would become apparent between the provisions and prohibitions of the Immigration Act and its interpretation through day-to-day regulations, memorandums, and activities of the Immigration Department. Kent began to address this

³ Document, 26 Nov. 1969, Appendix B. National Archives of Canada, RG 76, vol. 983, file 5660-1.

⁴ The Canadian immigration law in force at the time, the Immigration Act of 1952, identified an explicit listing of “prohibited classes” that included political subversives, drug users, criminal offenders, prostitutes, homosexuals, mentally or physically defective individuals, chronic alcoholics, and persons “who are . . . or are likely to become public charges.” See the *Revised Statutes of Canada*, 1952, vol. III, chap. 145:3147–50. The *Manual for Draft-Age Immigrants to Canada* noted in its 1970 fifth edition that “it seems unlikely that anyone would be both acceptable to the [U.S.] army and fall into a prohibited class” (p. 35).

⁵ Tom Kent, interview by author, tape recording, Queen’s University, Kingston, Ontario, 22 January 1998.

problem by developing an official and publicly implemented point system that went into use by immigration officers on 1 October 1967. As Kent (1988:411) has noted, "Not the least important aspect of the reform was that the details of the immigration process were for the first time set out in law, as regulations under the statute, instead of being mere administrative directions within the department." This formalization was an important step toward widening the scope of potential public conflict about immigration by making its general principles explicit and public.

Under the new system, applicants were evaluated on a 100-point scale, involving nine factors, with a score of 50 required for admission. Eight of the nine factors involved relatively objective considerations of age, education, employment, occupation, knowledge of English and French, financial resources, and relatives in Canada. A ninth factor, worth a maximum of 15 points, involved the officer's "judgment of the personal suitability of the applicant and his family to become successfully established in Canada." In addition, the officer could refuse an applicant who earned more than 50 points "if in his opinion there [were] good reasons why those norms [did] not reflect the particular applicant's chances of establishing himself in Canada and those reasons [were] submitted in writing to, and approved by, an officer of the Department designated by the Minister"⁶ The latter discretionary aspects of the point system later became the basis of internal Department directives and of a symbolic package that framed military resisters as unsuitable for immigration to Canada, even though these provisions were a carefully circumscribed part of Kent's efforts to make selection standards for immigration overt and objective, and even though military resisters were not identified in the Immigration Act as a prohibited class.

Kent reasoned that, in the longer term, U.S. military resisters could only be legally barred from Canada if they were identified as a "prohibited class" in the Immigration Act. Since this was neither then nor in the future likely, Kent was concerned with the public response that exposure of the routine exclusion of this group by immigration officers would bring in the future. Kent signaled his concern in a letter written in late fall 1967 to the Canadian Under-Secretary of State for External Affairs. This letter anticipated both changing public opinion about American war resisters generally, as well as more specifically the significance of the absence of an overt and explicit prohibition of military resisters in the Immigration Act.

"There seems to be little doubt," Kent wrote to his counterpart in External Affairs, "that public opinion is developing in a way that would make any deportation of a deserter highly contro-

⁶ See Kent (1988) and *Manual for Draft-Age Immigrants to Canada*, published by the House of Anansi, rev. & ed. by Byron Wall, Toronto, 1970, p. 11.

versial.” He noted that potential problems involving draft resisters were being sorted out, as immigration officers were now being discouraged from the covert practice of asking questions about draft status. “With deserters, however, we run into a much different problem.” The problem was not that the Act required different treatment of military resisters, for he now pointed out that “[l]egally this is not so. There is nothing in our law that makes the deserter as such a prohibited person.” Instead, the problems were practical and political, more specifically, problems of the mobilization of American power and influence and the mobilization of Canadian Immigration Department bias and recalcitrance.

The United States had not at this stage given any indication of how it might react to Canada admitting its fleeing servicemen. Kent ventured, “It could well be said that the problem is not that we should be concerned to exclude deserters but that the United States, if it is really concerned, should provide means to prevent such persons leaving the country.” Kent’s mission seemed both to inform and to enlist assistance, and thus he noted hopefully that “the time may approach when you might wish to explore the views of the United States government through channels open to your department.” He closed by accurately predicting that, although the number of deserters wanting to come to Canada was now small, it would grow.⁷

Three decades later, when I asked Tom Kent in a personal interview what was in his mind with regard to war resisters during his time as Deputy Minister, he volunteered that his inclination was to initiate, though not complete, a policy of liberalization. His action and inaction combined a decision on draft resisters with a non-decision on the issue of military resisters.

I never thought there was an issue as far as the draft evader was concerned. . . . Nine times out of ten he was going to be a very good Canadian. If he didn’t stay forever, well so what. He was going to contribute to something. There was no moral policy or legal basis for rejecting people on the basis that they were liable to the draft. . . . Desertion is another matter. Many of us would tend to be sympathetic to the deserter too, but it was a very different issue from the draft evader. I mean I’m quite sure that if I had still had responsibility for immigration over that period, . . . I would have wanted to bring it to a head and make sure that the deserter was treated like the draft evader, but that had to evolve.⁸

When I interviewed the former Minister of External Affairs, Mitchell Sharp, he recalled the same initial inclination: “The general feeling in the circles in which I moved in the civil service

⁷ Letter from Tom Kent to M. Cadieux, Undersecretary of State for External Affairs, 17 Nov. 1967, National Archives of Canada, RG 76, vol. 983, file 5660-1, pt. 1.

⁸ Kent interview.

and in the public service was that the Americans had made a mistake. . . . We didn't say these things publicly, but when we thought about deserters: from what? That was the sort of atmosphere. Maybe they should never have gone, that was the sort of underlying thinking."⁹

Minister Sharpe's "not saying these things" reflected a mobilization of bias against widening the scope of conflict and helps to explain why the liberal impulses that lay behind this thinking did not simply feed forward into policy. As Bachrach and Baratz (1962:952, fn. 30) point out, "The fact that the initiator of decisions also refrains—because he anticipates adverse reactions—from initiating other proposals does not obviously lessen the power of the agent who limited his initiative powers." Inaction at the ministerial level about the admission of military resisters left their fate as an inchoate potential issue that instead was dealt with covertly at the administrative level in a manner that challenged overt and explicit provisions of the Immigration Act.

Tom Kent made it clear that probably the biggest reason the liberalization policy did not feed forward to the military resisters was, quite simply, the fear of offending Canada's powerful American neighbor. Fear of widening the scope of conflict with the United States led government officials to resist measures that would broaden the conflict inside of Canada. Simple *anticipation* of *potential* American opposition likely stalled the liberalization policy before it could be extended to military resisters.

There is no question there was a strong conviction on the part of the RCMP and also External Affairs that, we're talking about my day, 1966, 1967, and the beginning of 1968, there was a very firm view that the Americans would protest, would be angry, exactly how far it would go, etc., no idea, but we couldn't, openly at least, accept deserters, treat deserters like draft evaders, there was no question that there was a sense of an American presence that was excluding noncooperation, . . . how far it was expressed formally, informally, diplomatically, I have no idea, but I think there was no question there was, as there always is, on the part of many officials, and some politicians, a great reluctance to offend Americans.¹⁰

At this same time, many immigration officers within Kent's own Department were covertly resisting implementation of the liberalization policy, even with regard to draft resisters. As the frontline administrators of immigration policy, these officers possessed covert, discretionary power to subvert legal departmental policy. Their reasons for subverting a liberalization policy were not difficult to understand. At this time, 234 of the 353 immigra-

⁹ Mitchell Sharpe, interview by author, tape recording, Langevin Block, Ottawa, Ontario, 27 Nov. 1997.

¹⁰ Kent interview.

tion officers in Canada were military veterans.¹¹ As such, they often had more in common culturally with the paramilitary RCMP, FBI, and American immigration officers than they did with their own ministerial superiors. The immigration officers were simply less compelled culturally by notions of national sovereignty than by their earlier experiences as veterans and by their current occupational identities as paramilitary officials in frequent contact with their American counterparts with similar experiences and identities.

Kent further explained in the recent interview that immigration officers “tended to be ex-noncommissioned officer type veterans . . . So there was a natural tendency, I think, to regard anybody of military age coming from the United States as probably a bad guy, . . . who was dodging his civic responsibilities.”¹² This culturally embedded notion of “dodging responsibility” would soon emerge as the Immigration Department’s justification for using officer discretion to deny military resisters admission to Canada. In the fall of 1967, the Vancouver Committee to Aid American War Objectors wrote to Ottawa to complain about immigration officer behavior. Kent responded with, “I do not in any way resist the immediate conclusion that some of our officers at least have not been fully following instructions. . . . Our instructions not to inquire into draft status could not be in plainer English (and French). . . . We have more recently emphasized to our senior field staff that any departures from these instructions must be treated as a serious disciplinary matter” (cited in Kasinsky 1976:114).

As 1967 came to a close, Kent found himself hamstrung by Canadian fears of displeasing its powerful American neighbor and the covert recalcitrance of immigration officers in following his instructions at border crossing points. Kent did not feel he could do much more than insist decisively on an open admissions policy for draft resisters, while indecisively leaving military resisters at the mercy of the unsympathetic border officers. Kent was reluctant to widen the scope of the conflict any further.

As Kent earlier anticipated, growing numbers of American servicemen were beginning to arrive at border stations, seeking admission to Canada. The attention of Kent and political appointees in government, however, increasingly was diverted: official Ottawa was gearing up for the federal election, which would soon make Pierre Elliott Trudeau the new Prime Minister of Canada. Widening the scope of the conflict about the immigration of American military resisters did not fit into the election agenda. Kent knew that he would seek a new posting after the election. A career departmental administrator, Director of Immigration, J.

¹¹ See memorandum to the Minister from R. B. Curry, Subject: Briefs on Deserters, 4 Mar. 1969, National Archives of Canada, RG 76, vol. 1112, file 555-38.

¹² Kent interview.

C. Morrison, was left to instruct his immigration staff. This was a definite reversal of fortune for a policy of liberalization.

A Secret Smoking Gun

Director Morrison filled the policy vacuum with a 9 January 1968 “personal and confidential” letter to his regional directors of immigration that quoted the statement in Operations Memorandum No. 117, “permanent admission to Canada is not to be granted to military deserters.” He then added in full candor that “[t]he Department’s view is, as firmly as ever, that we do not want deserters as immigrants. But a recent review has revealed that we may have no legal basis on which to order the deportation of an applicant in Canada for the sole reason that he is a deserter.” Even more to the point, he noted that “there is real reason to doubt that the present Act contains the authority necessary to exclude military deserters by regulation.” Given the approaching federal election, it is perhaps not surprising that Morrison reported that there was no plan to try to change the Act, or even the Regulations, “because anything so dramatic might rouse talk.” This statement was an explicit indication of the fear government officials had about widening the scope of the conflict about the military resisters. Morrison instead took the opportunity presented by Kent’s inattention and imminent departure to confirm a covert exclusion of military resisters; and by simultaneously doing this in an “undramatic” way that would not “rouse talk,” he further used his covert administrative power to silence this issue of potential widespread debate. Morrison simply wrote, “There has been no change of attitude so far as the Department is concerned.” His own legal interpretations notwithstanding, Morrison used the opportunity of Kent’s inaction to extend the Department’s policy of excluding military resisters.

With its real purposes now made clear, Morrison’s January letter also went on to spell out an early version of a symbolic package and cultural strategy that expanded on the circumscribed discretionary references to “suitability” for immigration incorporated in the October 1967 point system. This strategy extended the concept of suitability by calling on cultural norms of moral obligation and social responsibility to further justify the rejection of military applicants as “unsuitable” for admission to Canada. But Morrison’s clear purpose was to exclude military servicemen per se; therefore, he finally indicated that if the examining immigration officer at the border could not find other reasons to exclude deserters, “This type of case, instead of being finally decided locally, is in the future to be referred to headquarters . . .” This instruction was effective immediately and,

over the following months, resulted in denying admission to military resisters.¹³

Allan MacEachen was sworn in on 5 July 1968 as Minister of Immigration in Prime Minister Trudeau's newly elected Liberal Party government. Kent left as Deputy Minister the next day. He was quick to admit of his inaction, when interviewed 30 years later, with regard to the military resister issue: "I just didn't take on that battle at that time."¹⁴ MacEachen was ill-disposed and prepared to widen the scope of the conflict in Kent's place. Like many ministers with new portfolios, he knew little about his new responsibilities. As well, MacEachen could not have failed to see potential American storm clouds on the Canadian political horizon and to have noted the hostility to war resisters within his new Department.

Richard Nixon now was preparing to run for President of the United States on a law and order platform. Within the month of MacEachen becoming Minister, Lewis Hershey, Director of the U.S. Selective Service System, announced that he wanted "to stem the flow of American youths who are fleeing across the border to avoid the draft," adding that he was going to Calgary to address the Army, Navy, and Air Force Veterans of Canada and "to talk with officials" (*Toronto Star*, 1 Aug. 1968, p. 21). Although Hershey canceled his trip the next day, saying his wife was ill, and further noted that the U.S. State Department was the source of policy on such matters (*Toronto Star*, 2 Aug. 1968, p. 8), he also sent his Assistant Director to Calgary in his place, who instructed his Canadian audience a few days later, "Parliament should pass legislation to make it illegal for persons eligible for the U.S. draft to enter Canada." Other than through these newspaper reports, there is no certainty about when, how, to whom, or with what authority these sentiments were communicated to Canadian officials. Yet, as Kent's earlier comments suggest, it is difficult to believe that the effect was insignificant, and it is therefore probably not coincidental that MacEachen followed his administrators' lead in authorizing revisions to the Department's operational regulations on 29 July 1968.

Most importantly, the Immigration Department now added a paragraph [12(g)] to its operations manual, which was never made public, officially rejecting deserters. This paragraph now explicitly cited the example of a "military deserter" as a person to be excluded from the country on the grounds of failing to keep "moral and legal contractual obligations." This was a more explicit elaboration of the symbolic package and cultural strategy

¹³ Letter from J. C. Morrison to I. R. Stirling, 9 Jan. 1968. The instructions in this letter were passed on to District Administrators and Officers, for example, in a memo on military deserters signed by I. R. Stirling, 12 Jan. 1968, National Archives of Canada, RG 76, vol. 1112, file 555-38.

¹⁴ Kent interview.

justifying exclusion on the basis of normative "unsuitability." At the same time, a further confidential memorandum was also sent to all border station officials. This memo instructed the border officials that military resisters could be rejected on the basis of the officer's discretion, however great an applicant's qualifications might otherwise be. This discretion was linked to another section [32(4)] of the regulations, and to the earlier provision of the point system, which authorized rejection of the applicant "if in his opinion there are good reasons why those norms do not reflect the particular applicant's chances of establishing himself successfully in Canada." The memo went on to designate three reasons for such rejection, elaborating the cultural underpinnings of unsuitability by citing as examples of "contractual obligations": excessive debts, marital disruption, and military desertion.¹⁵

Within a month of the 29 July memo, a nationally syndicated Canadian newspaper columnist, Ron Haggart, caught wind of the newly formalized covert policy and began a series of columns, the first titled "Lawbreakers Who Work for the Government," documenting the practices of immigration officers in refusing admission of U.S. military resisters to Canada. The effect of this publicity was to take the potential issue, which to this point had been suppressed through covert departmental policies and practices, into the widened scope of public conflict, where support of the military resisters could begin to coalesce.

Some of Haggart's columns were written with the aid of Bill Spira, a middle-aged businessman who was helping military resisters enter and settle in Canada. Spira at first worked secretly with the military resisters and at arm's length from the Toronto Anti-Draft Program (TADP). The latter group worried initially that openly assisting military resisters in addition to draft resisters might jeopardize its relations with the police and government. A leader in TADP recalled, "[W]e decided the best thing to do was handle the deserters separately," and Spira reported, "[W]e used all kinds of cloak and dagger methods to keep them away from public view" (cited in Kasinsky 1976:109). This illustrates how political activists can themselves become an unintended part of the mobilization of bias that limits conflict about an issue (see also Crenson 1971:25). By 1969, however, TADP had shifted its priorities and made the military resisters a major focus of its work.

Early in 1969, a Haggart column estimated that there were probably 2,000 U.S. deserters in Canada. The problem, Spira noted through Haggart, was how to help these military resisters get immigrant status so that they could get on with their lives in

¹⁵ Revisions to regulations, 29 July 1968, as reported in 26 Nov. 1969 document, National Archives of Canada, RG 76, vol. 983, file 5660-1. See also memorandum from Assistant Deputy Minister to the Deputy Minister, 23 May 1969, National Archives of Canada, RG 76, vol. 1112, file 555-38.

Canada. As prospective applicants for immigration, the military resisters had a legitimate grievance about their treatment, which literally had been forced, as they themselves had been forced, underground. As long as the military resisters remained underground, they were entrapped by the mobilization of bias that kept this issue beyond public debate.

Spira helped to hide military resisters, often in his own home and in the homes of friends and neighbors, but soon the problems and sheer numbers of resisters became impossible to hide. Naomi Wahl, who now headed TADP and worked openly with Spira, described the situation in a 15 February 1998 interview:

There were so many deserters and they had such pressing needs. They didn't come with proper identification or money. Often they had only the clothes on their backs. We had to set up an operation that would allow us to get all that stuff. We had to find housing for them. We had deserters who'd deserted from 'Nam and made their way to places like Amsterdam and places in Europe, and then they'd come here. We had deserters who claimed, and we had no reason not to believe them, that they were running from the CIA, that they were CIA operatives. . . . We had guys who threatened to jump out of windows at Rochdale. . . . Their needs were very pressing, very serious. They didn't often have support from family members at home. . . . The working-class guys, often it wasn't that their families didn't want to support them—they had no way to support them. They weren't able to support them.

Spira, speaking through Haggart's column (*Toronto Telegram*, 30 Jan. 1969, p. 8), worked to widen the scope of conflict by bringing the military resisters' grievance and the immigration department's covert actions to public attention.

In recent weeks there has been a sharp change of attitude among Immigration officials. Deserters are still arriving at the rate of five a day, says Spira, but almost none are being accepted as landed immigrants. The reason is a departmental memo of July 29, 1968, which instructed examining officers to take into account whether prospective immigrants are currently serving in the armed forces. This flies in the face of the Immigration Act.

Haggart went on to say in his column that these were "new bureaucratic policies which are, all at the same time, secret, illegal and stupid" (p. 8). Haggart successfully raised suspicions about the second dimension politics of the administration of the Immigration Department, and by this means, he took the first crucial steps in widening the scope of conflict about the immigration of American military resisters to Canada.

A Timely Test

Notwithstanding the existence of the policy and protests, immigration officials steadfastly denied in public the claim that military resisters were covertly being refused admission to Canada. For example, early in 1969 a ministry official said that although the absolute number of deserters recently denied entry may have increased, this was only because the total number applying for entry had grown, while the proportion admitted presumably was stable (*Toronto Telegram*, 30 Jan. 1969, p. 8). This assertion was necessary to sustain the fiction that military resisters per se were not being excluded in the absence of any prohibition by the Immigration Act. The goal was to limit the scope of the conflict and silence the matter as an issue of public debate. To test the departmental claim, five York University undergraduates associated with the *Pro Tem* student newspaper conducted a field test of border practices.

The results of this field experiment were broadcast on the evening of 9 February 1969, as the following lead story on television's CBC National News:

On Canada's border this weekend, five York University students put this country's immigration laws to the test. They did it by posing as American deserters, using a real deserter's name [John Heintzelman] and carrying photocopies of his identity papers. Then, from the American side they tried to enter this country as Landed Immigrants at five different border posts in southern Ontario. Four were turned back—the fifth was asked to fill in an application form but didn't go through with it. One of the Canadians who posed as a deserter was Graham Muir, Editor of a student newspaper at York University in Toronto.

Muir was then asked what had happened: "In my case I went back to the Canadian border and I was told, even before making out an application for landed immigrant status, that it wasn't much good because I was a deserter and the people at the border are under instructions not to let deserters in. That is what the immigration official told me." The report of this student and the others involved indicated that the covert policies of Canada's Immigration Department were excluding military resisters.

Minister MacEachen's initial response was to condemn the "impersonation tactics" employed by the students and to deny the existence of a covert policy, saying that "at no time since he had become minister had border officials been instructed to weed out deserters. . . ." (*Toronto Telegram*, 10 Feb. 1969, p. 9). However, within two days of the border revelations, MacEachen received a memo from his departmental administrators reminding him that during the ministerial transition the preceding July he had authorized changes in internal departmental regulations:

You will recall from our discussions last week and earlier advice to you that guidelines were issued last July to all of our officers abroad and at ports of entry suggesting that they should take into account such obligations in their assessment of an individual's application. In addition to membership in the armed forces, other examples of such obligations were, as you will recall, pending disposition of criminal charges, suspected desertion of families[,] or debtors who would be leaving behind them large debts for which no settlements had been made.¹⁶

We will see further evidence next that Minister MacEachen probably did not fully understand, either earlier in July 1968 or now early in the new year, the import of this and other aspects of his Department's covert regulations, or indeed the Immigration Act from which they presumably gained their authority. He probably did, however, understand the benefits of limiting the scope of the conflict by denying that military resisters at large were being denied immigration; nonetheless, as Schattschneider would anticipate, the publicity generated initially by the columnist and then by the students was forcing the conflict into the open, and it was taking on a contagious life of its own.

A New Power Within

When MacEachen appeared in the House following the student field experiment, and again when he met with reporters afterward, he reframed his arguments in defense of his Department around the symbolic package of suitability and responsibility, which now became his primary cultural resource in recasting the use of internal departmental regulations, or "guidelines," as he preferred to call them, in interpreting the purposes of the Immigration Act. The news reports noted that he now "refused to be pinned down on whether military desertion alone is a grounds for denial of landed immigrant status to persons applying at the border" (*Globe and Mail*, 18 Feb. 1969, p. 9). Instead, he emphasized that officers had wide discretionary power at the border. In doing so, MacEachen was elaborating on the circumscribed discretion allowed by the point system that had been endorsed by Parliament. MacEachen elaborated on this discretion by borrowing language from the unpublicized internal departmental regulations and cultural norms of responsibility that likened military desertion to "heavy financial obligations and desertion of a man from his wife," which he emphasized were "substantial moral or contractual obligations" (*Toronto Star*, 18 Feb. 1969, p. 1). MacEachen was now fully joined with his Department in defending and applying an elabo-

¹⁶ Memorandum to the Minister, Subject: Canadian Citizens Posing as American Military Deserters, 11 Feb. 1969, National Archives of Canada, RG 76, vol. 1112, file 555-38.

rated cultural strategy framed around notions of suitability, responsibility, and obligation to justify the covert exclusion of military resisters. This was a view that in normative cultural terms essentially sought to portray military resisters as “castoffs,” “misfits,” and “irresponsible troublemakers.”

The scope of the conflict surrounding the claims and grievances of military resisters unsuccessfully seeking admission to Canada had now progressed from being a potential to an actual issue of public discussion, with MacEachen and the Department framing the issue in terms of suitability and responsibility, but still refusing to clearly admit the specific covert policy of excluding military resisters *per se*. MacEachen likely felt that he was on the right track with this strategy when he accepted an invitation to speak and answer questions about immigration before the Board of Evangelism and Social Service of the United Church in Toronto. Schattschneider (1960:4–5), however, would not have been so sanguine, because “by definition . . . intervening bystanders are not neutral” and because “in political conflict every change in scope changes the equation.”

This Board of the largest and most powerful Protestant denomination in Canada, in issuing its invitation to the Minister, was fulfilling its evolving commitment to a position that “the Church is to be the conscience of the state” (Mutchmor 1965). Such a relationship between church and state obviously distinguishes Canada from strict notions of separation held in the United States (Simpson & MacLeod, 1985), and in this instance, unknown to MacEachen, the United Church was actually positioning itself to be the conscience of Canada in prodding the government to reassert its sovereign power in relation the United States with regard to the immigration of American military resisters. The church leadership was a cultural elite preparing to exercise strongly felt moral and political responsibilities (cf., McAdam 1997).

Before MacEachen had arrived at the Toronto meeting, the Church Board had already met to pass a detailed and highly critical resolution about the York students' findings that border officials were rejecting military resisters “on the grounds of desertion alone” and about the Board's further concern regarding “the apparent change in the policy earlier set forth by Tom Kent, as the former Deputy Minister, in which he stated that there is no specific reference in assessment for immigration purposes ‘to someone's military status in his home country.’” The Board had also reviewed other problematic aspects of the situation “involving unpublicized bureaucratic processes, unwarranted allocation of discretion to officers, influences from outside Canada, and mis-

leading renderings of Canadian laws.”¹⁷ This motion stridently advanced the argument that MacEachen’s Department was covertly flouting an explicit law, the Immigration Act, by illegally excluding a group that was not prohibited entry by law. At the same time, the passed motion also introduced an alternative symbolic package built around concerns for the sovereignty of Canada that would become a competing framing of the issue in opposition to the focus on suitability. The opposing strategies and elements of the suitability and sovereignty packages are summarized in Table 1.

Table 1. The Recasting of American Military Resisters as Symbols of Sovereignty in the Canadian Immigration Debate, January 1968–May 1969

Symbolic Package	Frame	Signature Elements	Cultural Strategies
Personal Unsuitability	Contractual responsibilities and obligations	Castoffs/misfits/irresponsible	Emphasize officer discretion in enforcement regulations of Immigration Act intended to select suitable New Canadians who are free of unfulfilled obligations—marital, financial, or military
Canadian Sovereignty	Independence from United States	Refugees/rational persons of conscience	Emphasize similarities to United Empire Loyalists, Hungarians, Czechs who received refugee status in Canada—unprohibited by the Immigration Act

It is an understatement to say that the Minister confronted a hostile audience in his meeting with the United Church Board, and the situation went downhill from there. The *Globe and Mail* (24 Feb. 1969) summarized the event in an editorial scathingly titled “Who’s in Charge Here?” The editorial was from the outset incredulous of MacEachen’s strategy of assessing suitability for immigration on the basis of contractual obligations, including military service. A questioner at the meeting asked, “How can you say that a minor of 18 or a man of 21 who is a conscientious objector but has been drafted against his will has a contract, which is a meeting of minds?” The *Globe* suggested that although MacEachen seemed beyond his depth on this preliminary issue, “he was only entering the shallows.” The editorial went on to detail MacEachen’s display of his limited knowledge of the Immigration Act. It said, “If the Government wants to exclude deserters it can do so legally only by changing the Immigration Act or by altering its extradition treaties so that desertion becomes an extraditable offense.” The *Globe* noted this would mean turning

¹⁷ Resolution re: “Immigration Policy in Relation to Deserters from the American Armed Forces,” United Church Board Evangelism Meeting, 20 Feb. 1969, Toronto, 85 St. Clair Avenue East; National Archives of Canada, RG 66, vol. 725, file 5660-2, part 1.

away not only American servicemen but also servicemen from other countries, and then asked, "Are we going to rewrite our laws or treaties for the benefit of one country?" Admission of the military resisters was now framed as an issue of sovereignty that many Canadians could support.

The United Church leadership was extending its full moral power to the sovereignty strategy. Reverend Ernest E. Long brought the meeting to its climax by insisting that "one of the fundamental rights in a human society is the right of political refuge. Our problem is that we can't imagine political refugees coming from the U.S. But the U.S. is a sufficiently troubled society that in the next decade we shall see an increased flow of refugees. Unless we clarify this matter now we are liable to be a very unjust society." Reverend Long was insisting that if the Canadian state was to act in good conscience it must exercise its sovereignty and act independently of American law and foreign policy. The effect of Long's leadership was to use the moral authority of the United Church to transform the American military resisters, from being symbols of unsuitability into symbols of Canadian sovereignty. There was a moral power to this action that the leadership of the United Church as a cultural elite could uniquely provide.¹⁸

To Be Sovereign or Servile?

There is evidence that the United Church was more in touch with the quickly changing opinions of the Canadian public than was MacEachen's Department of Immigration. In fall 1968, just under a third of sampled Canadians reported that they sympathized with "young Americans who dodge the draft" (*Gallup Report* news release, 23 Nov. 1969). By spring 1969, however, more than half of Canadians reported feeling sympathetic, while those reporting some qualified support increased from 2% to 19% (Surrey 1982:116). Additional public opinion data indicate that between 1966 and 1970 the proportion of Canadians who felt Canada and the United States were growing further apart increased from 8% to 28% (*Gallup Report*, 21 Feb. 1976). A content analysis of mail received from citizens by Minister MacEachen between 1968 and 1969 similarly reveals a shift in favor of opening the Canadian border to American military resisters as an expression of Canadian sovereignty, and this view gained increasing support in Parliament and from groups around the country (Hagan 2001: Chap. 2).

It is important to emphasize, therefore, that the United Church was not acting alone or apart from many and perhaps

¹⁸ On the unique influence of the United Church of Canada, see especially Simpson & MacLeod (1985).

most Canadians in seeing issues such as this in national terms. In 1969 Canadians were still basking in the afterglow of a nationwide 1967 centennial celebration of the country's confederation. Canada's most popular historian, Pierre Berton, was so taken with the "turning point" qualities of this year-long celebration that he wrote a book titled *1967: The Last Good Year*. He contrasted the new national mood that had emerged in this year with an earlier stereotype of Canadians. "We tended to see ourselves (as, indeed, others saw us) as stick-in-the-muds, while the Americans looked like gamblers and risk-takers. No more. Nineteen-sixty-seven was a watershed year in more ways than one, a revolutionary year in which old concepts were turned upside down. But the greatest revolution was the revelation that we had created a world-class, forward-looking nation" (Breton 1997:367). It was in this context that the United Church leadership saw the application of Canada's immigration law, free from the dictates of any other nation, as an issue of sovereignty.

The greatest threat to Canadian sovereignty, of course, had long been the United States. This made the issue of the admission of American draft and military resisters all the more important as a symbol of a newfound sense of national sovereignty. The United Church had identified a popular symbol to give assertive expression to a new national mood of self-confidence.

"The central fact in a free society," Schattschneider (1960:2) observes, "is the tremendous contagiousness of conflict." The United Church was now leading a contagious conflict that could attract a national audience. Schattschneider adds that "the outcome of all conflict is determined by the *scope* of its contagion." His point is that once a conflict becomes public in scope, the party that initially controlled the issue through silence can now typically be outmaneuvered by systematically expanding the audience to include a winning coalition of opposing forces. A winning coalition was forming.

The opposition New Democratic Party in the House of Commons now also railed against the newly apparent policies and practices of the Department of Immigration. David Lewis led the opposition in demanding that the "secret" and "illegal" directives dating from the previous July that banned U.S. military resisters be tabled in the House. The Immigration Department responded by citing an obscure 1946 precedent for treating intradepartmental communications as confidential. The Department insisted that "[t]hey are extracts from our *Manual of Instructions for the Guidance of Immigration and Visa Officers*. All such instructions are issued under a 'restricted' classification."¹⁹ The Department was still struggling to contain the spread of the issue.

¹⁹ Memorandum from the Assistant Deputy Minister to the Minister, re: Request for the Production of Instructions Regarding Draft Evaders and Military Deserters, 25 Feb. 1969, National Archives of Canada, RG 76, vol. 1112, file 555-38.

However, the fight was now fully joined, and Lewis went on to furiously flag the sovereignty issue, charging, "I see no reason whatsoever, except a servile attitude on the part of Canada, for treating American young men who object to fighting an immoral war in Viet Nam differently from the way we treated literally tens of thousands of immigrants all through the years who refused to accept military service in their countries for similar reasons."²⁰ Lewis concluded that "Canada was acting in a servile way if it turned down U.S. deserters." In doing so, Lewis challenged the cultural framing of servicemen who had left the American military as unsuitable castoffs, misfits, and troublemakers, and portrayed them instead in laudatory normative terms as refugees and rational persons of conscience, and therefore as appropriate symbols of Canadian sovereignty.

Nonetheless, an apparently unswayed Minister MacEachen began in early March to prepare for Cabinet a confidential memorandum whose purpose was to produce parliamentary approval for a new overt and specific regulation to exclude American military resisters from Canada. These efforts suggest that MacEachen was still responding to perceived concerns of his departmental administrators and anxiety about the United States. From MacEachen's perspective, the memorandum itself was a compromise extracted from those in the Department who wanted to reopen the draft resister issue while also excluding military resisters. The memorandum declared that "[t]here is a need for a re-affirmation of Canada's policy of disregarding draft status in determining a person's admissibility to Canada, and for the passage of a regulation to exclude military deserters." The key argument at this stage was now more candidly stated as involving Canada's relationship to and potential conflict with its powerful neighbor.

To grant asylum to deserters as refugees would constitute a blanket condemnation of the United States and its political and judicial system. Those who wish, for various purposes, to discredit the United States and give comfort to its enemies urge Canada to judge the United States as arbitrary and unhumanitarian by labeling all deserters as asylum seekers. Many critics of the present policy are less interested in the welfare of the deserters than in using them as a focal point for a continuing campaign against the United States.²¹

To be sure, there were members of MacEachen's own party in Parliament who advocated instead for a policy of liberalization. For example, one fellow-minister reminded MacEachen that "[m]any immigrants to Canada in the past have been desert-

²⁰ Commons Debates, 3 Mar. 1969, "Immigration—Timing of Distinction Deserters and Draft Dodgers," p. 6166–67.

²¹ Confidential memorandum to Cabinet, "Admission to Canada of Draft Dodgers and Military Resisters," 12 Mar. 1969, National Archives of Canada, RG 76, vol. 983, file 5660-1, pt. 5.

ers, and we have seen no reason not to admit them. I submit that we should maintain our traditional policy, and that is the only course for a liberal Government to follow.”²² Evidence presented next suggests that MacEachen resisted growing support for this view not only because of the position adopted by his administrators but also because, as the Cabinet memo was being prepared, newly elected Prime Minister Trudeau was planning to meet newly elected President Nixon later in the month in Washington. The immigration of military resisters threatened to be a source of conflict between these new leaders.

Trudeau’s views on war resisters at this stage are uncertain. In the memo MacEachen wrote to his Deputy after returning from the difficult meeting with the United Church Board in Toronto, he described a telephone conversation with the Prime Minister. MacEachen reported that Trudeau had “made reference to the contractual business and stated as follows: ‘surely a person who deserts from the armed forces of the U.S. is guilty of a criminal offense and accordingly would be inadmissible to Canada on that ground alone.’” This position was perhaps unexpected for Trudeau, since he had begun his life in politics as a student in Montreal campaigning during World War II for a candidate who opposed conscription. In any case, Trudeau was assuming that desertion was an extraditable offense. The U.S. State Department had discarded this position in May 1968 Senate Hearings, where its representative had testified, “The exception from extradition for military crimes is one of long standing and [is a] great tradition.”²³ This is why MacEachen’s Deputy soon wrote back to the Minister, saying, “Our legal advisers in the department find themselves unable to agree that a person by the act of desertion commits a crime in the ordinary sense. True he commits an offence against U.S. military law but there is a real question whether that is in itself a criminal offence.”²⁴ It was becoming increasingly clear that neither the Canadian Immigration Act nor the extradition treaty with the United States provided legal authority for excluding American servicemen from immigration to Canada.

²² Letter from Mark MacGuigan to Allan MacEachen, 13 Mar. 1969, National Archives of Canada, RG 76, vol. 725, file 5660-2, pt. 3.

²³ Report by the Committee on Armed Services, United States Senate, “Treatment of Deserters from Military Service,” 21 and 22 May 1968, p. 44.

²⁴ Memorandum from the Assistant Deputy Minister to the Minister, re: United Church Board of Evangelism, Toronto, 20 Feb. 1969, National Archives of Canada, RG 76, vol. 1112, file 555-38.

The Elephant Didn't Twitch

In the days leading up to Trudeau's departure for Washington, MacEachen struggled both with a follow-up letter to the leadership of the United Church about the ill-fated meeting in Toronto and with a final draft of the memo to Cabinet about American war resisters. A draft of the letter to the United Church initially rearticulated the symbolic package and cultural strategy of suitability as justification for circumventing the explicit provisions of the Immigration Act. This letter is a striking example of the process Pedriana and Stryker (1997) describe, in which a central symbolic value is mobilized in a cultural strategy designed to recast the interpretation of an explicit legal rule.

It has been drawn to my attention on a number of occasions that these sections do not refer specifically to an applicant's military status. Notwithstanding this, it is my considered opinion that obligations such as exist between a serving member of the armed services of the United States and his government are such that we must seriously question whether an individual who seeks to come to Canada to escape such obligations would not also forsake equally serious obligations in Canada. In my opinion an individual's attitude on such matters has a definite bearing on his ability to establish himself successfully in Canada.

MacEachen's own handwriting reveals that he tried redrafting this paragraph several times before striking it completely from his letter, explaining in a dated (22 Mar. 1969) note alongside that "[w]e should not anticipate outcome of Cabinet review."²⁵ In its place, MacEachen sent an innocuous note that the Church, as we will see later, found insulting in its lack of substance. Though not revealed in the letter, MacEachen was showing signs of second thoughts and a growing realization that cultural norms of responsibility and obligation would not provide sufficient leverage to widen the window of suitability circumscribed in the immigration point system. MacEachen needed to widen this window of discretion to overcome the absence of a prohibition against military resisters in the Immigration Act. The grievances of the military resisters were increasingly being perceived as legitimate as the goal of excluding U.S. military resisters per se became more obvious. The scope of the conflict surrounding this issue was growing and it was proving increasingly resistant to governmental control.

As Pedriana and Stryker (1997) convincingly show in their analysis of affirmative action, it is often a challenging task to recast an explicit legal rule that cuts directly against your position, and the cultural strategy that MacEachen had applied for this purpose was proving inadequate to the task. In effect,

²⁵ Draft letter from Allan MacEachen to the Reverend Gordon K. Stewart, 19 Mar. 1969, National Archives of Canada, RG 76, vol. 725, file 5660-2, pt. 3.

MacEachen's opponents, the true advocates of liberalization, were mobilizing the legal realists' classic critique of the gap between the "law in the books" and the "law in action" for their assault on the "lawless discretion" covertly being exercised by the Department and its immigration officers. A lay version of legal realist theory was translated into political action by highlighting the excessive use of discretion, misleadingly framed in terms of assessments of suitability, as an unlawful abuse of power. In practical as well as theoretical terms, the issue was how far the relative autonomy of law could be stretched. Where Pedriana and Stryker (1997) show how the language of an existing law imposed constraints on the creation of new law, the treatment of the military resisters in Canada shows how alternative interpretations of the constraints imposed by an existing law can shape and reshape the way operational policy is made and interpreted. Minister MacEachen and his administrator, Director of Immigration Morrison, both came to realize that they were vulnerable in their elaboration of the discretion the existing law provided. This realization did not keep them from covertly using their second dimension political power to suppress for nearly a year the grievance and potential issue posed by the exclusion of military resisters from Canada; but when this abuse of power was revealed, and as the scope of this contagious conflict spread, it became increasingly difficult to frame this immigration issue as one of suitability.

Still, several days after MacEachen penned his second thoughts in the margin of the United Church letter, and as Trudeau left for Washington, MacEachen signed off on his confidential "Statement on Draft Dodgers and Military Deserters" for the Cabinet Committee on Social Policy. This revised statement acknowledged that "instructions were issued to immigration officers in July 1968 setting out as guidelines examples of obligations, including the obligations assumed by members of the armed forces of foreign countries, which officers should take into account in exercising their discretionary power. They were advised to consider using their discretionary power to refuse such persons." This last sentence at last acknowledged, but in the secrecy of Cabinet, that the purpose of the July directive was to have officers covertly refuse servicemen at the border. The statement then built to this conclusion:

The Government believes it is not, on balance, in Canada's interest to accept military deserters from foreign countries. It has therefore been decided to provide a regulation under the authority of section 61 of the Immigration Act which would limit admission to Canada of military personnel of foreign countries to those who are on authorized leave or official duty. This will

have the effect of prohibiting military deserters from coming to Canada wherever they may apply.²⁶

The effect of this change in the Immigration Act would have been to make public and legal what the Department was already doing by covert instruction of its border officers; that is, it would have brought the explicit rule of law embodied in the Immigration Act into conformity with existing covert practice and the cultural strategy based on suitability. The content and timing of this statement to Cabinet was tied to the Prime Minister's visit to Washington.

The tie between the Cabinet document and Trudeau's Washington trip is revealed in a section of the confidential briefing papers prepared for the Prime Minister's state visit. A part of this document, titled "Draft Dodgers and Deserters," summarized the statement prepared for Cabinet and offered an assessment for the Prime Minister of attitudes he was likely to encounter on this issue in the United States, noting that although Canada's acceptance of resisters was a source of irritation to the United States, "it has not so far resulted in any formal U.S.A. representations." The document concluded that

[i]t is not expected that President Nixon will raise the question. Should he do so, however, it would probably be sufficient to indicate that Cabinet is now awaiting the conclusions and recommendations of the departmental review which is just about completed. If it were desirable to be more forthcoming it could be said that preliminary indications are that the review will lead to all deserters, but not draft dodgers, being refused admission to Canada.²⁷

This advice was presumably in Trudeau's mind when he met with Nixon, and it seems clearly to have been in his thinking during remarks delivered at the National Press Club toward the end of his visit.

As predicted in the briefing materials, Nixon did not raise the resister issue during their talks. It is easy to find reasons why he did not. Nixon was more immediately preoccupied with domestic protests and resistance activities, and the resisters in Canada probably would have seemed attractively far removed. There were also other military issues that loomed more immediately for Nixon, including Trudeau's public speculation about reducing or eliminating Canadian participation in NATO and Canadian opposition to Nixon's plans to develop an antiballistic missile system, with sites near the Canadian border. Trudeau was accommodating in his discussions with Nixon on both of these

²⁶ Memorandum from Senior Planning Officer to Director General of Operations, "Statement on Draft Dodgers and Military Deserters," 24 Mar. 1969, National Archives of Canada, RG 76, vol. 983, file 5660-1, pt. 5.

²⁷ Confidential memorandum on "Draft Dodgers and Deserters" included in briefing documents for Prime Minister's visit to Washington, 18 Mar. 1969, National Archives of Canada, RG 76, vol. 983, file 5660-1, pt. 5.

issues (*Time*, 28 Mar. 1969; 4 Apr. 1969; *Washington Post*, 25 Mar. 1969, p. A10).

The topic of the resisters finally came up on the second day of the visit, during Trudeau's appearance at the National Press Club. Trudeau began by offering his classic description, which is still famous in Canada, of the view from the north of the Canadian-U.S. relationship. Trudeau likened this relationship to "sleeping with an elephant . . . no matter how friendly and even-tempered the beast, . . . one is affected by every twitch and grunt." This likely was Trudeau's watchful attitude while looking for U.S. decisions or reactions to the war resister issue.

It was in this context that Trudeau went beyond a reporter's question about Canada's admission of U.S. "draft dodgers" as immigrants to speak about "deserters." Drawing on his briefing materials' references to the issue of suitability, Trudeau said Canada banned some servicemen because they had moral and legal obligations "at home." Then he opened the door to a more liberal policy by noting that, nonetheless, some deserters had been accepted. A following *Globe and Mail* editorial implied that Trudeau was testing for American reactions to this topic, which Nixon had not broached.²⁸ The *Globe* was already part of the audience that supported the admission of military resisters and would have preferred Trudeau to have taken a stronger stand or to have instead ignored the issue. Nonetheless, the *Globe* implicitly conceded the wisdom of Trudeau's approach to Canada's powerful neighbor when it acknowledged, "[W]e do have to live with the elephant" (26 Mar. 1969, p. 6).

Cabinet Considers and the Church Responds

When MacEachen met with Cabinet members about the war resister issue in the beginning of April, the political equation was far different than it had been ten months earlier. Then, the head of the U.S. Selective Service had signaled the apparent wish of the United States that Canada slow the exodus of war resisters, and Canadians had then been unsympathetic to American Vietnam War resisters and had felt closer to the United States. In the interim, these conditions had made the cultural strategy of suitability seem a plausible justification for first covertly and then more overtly excluding American servicemen as inappropriate immigrants, even though the Immigration Act did not prohibit them. In this context, MacEachen had been rushed into approving changes in the internal departmental regulations that excluded military resisters. This step, in turn, had made it seem prudent to plan for a change in the Immigration Act that would

²⁸ Library of Congress, Pierre Elliott Trudeau's remarks at the National Press Club, Washington, DC, 25 Mar. 1969, LWO 8217 449, National Press Club Luncheon: Address by Pierre Elliot Trudeau, 1-7 reel.

legalize the overt exclusion of American servicemen. But now, the scope of the conflict had widened and the Canadian public had developed a sympathy for the American war resisters and their grievances, against both the United States and the Canadian immigration officials. Although these grievances earlier had been forced underground by Immigration Department covert tactics that excluded the military resisters' admission on the basis of unsuitability, the military resisters were now gaining a public voice and speaking with the contagious support of an expanding Canadian audience.

As well, Canadians more generally had started to see their country as more separate from the United States; and the newly elected President Nixon, through his inaction during and after Trudeau's visit, had sidestepped the issue of the admission of military resisters. The U.S. President had chosen to focus his power and influence on the issues of NATO and his planned new missile system. It was in these new circumstances that an emboldened symbolism of sovereignty emerged as the transformative master frame for interpreting the emigration to Canada of American military resisters. Nixon may have reasoned that if he had widened the scope of conflict further it would have increased support for the military resisters in response to the perceived threat this conflict would pose to Canadian sovereignty.

Nonetheless, MacEachen took his departmental proposal to change the Immigration Act to members of Cabinet in the beginning of April. Thirty years later he explained, "Here was my department. . . . It was a difficult situation. I decided to bring forward the Cabinet document, so the departmental view would be fully expressed. It had cogency . . . Well not to abandon these people, you know . . . in the political process, I certainly was content with that policy."²⁹ Yet he did not seem convinced about the policy, and his earlier handwritten remarks on the draft of the letter to the United Church reflected these doubts. Cabinet proved even more doubtful. Notes from two aides who attended the meeting confirm that the former Minister of Immigration, Jean Marchand spoke strongly, along with others, against what was seen as a clear break with a more liberal policy and the Immigration Act itself:

Mr. Marchand pointed out that desertion is not mentioned in the immigration law. As a result, he really questions whether we should have restrictions against deserters entering Canada. He expressed his view fairly forcefully that he didn't feel we should. In this regard, he was of the view that the law should

²⁹ Allan MacEachen, interview by author, tape recording, Victoria Block, Ottawa, 7 Jan. 1998.

not authorize the government to make any prohibited classes by regulation.³⁰

MacEachen and Marchand were clearly at odds in this meeting. At a minimum, this discord reveals that MacEachen's later characterization of the background of his 22 May 1969 opening of the border to military resisters as a simple extension of a policy of "liberalization" was not shared by Marchand and others who were previously involved. Marchand and Kent had sought to place the immigration policy concerning resisters on a path that was systematically subverted by MacEachen's departmental administrators. The Cabinet was divided in this meeting and decided to postpone taking any definite action.

Meanwhile, the United Church of Canada leadership had received MacEachen's revised, vacuous response to the Toronto Board Meeting and had decided to go over the Minister's head by sending a public telegram to the Prime Minister. The telegram emphasized the illegality of the government's covert exclusion of American servicemen under the Immigration Act and brought forward the symbolic package of sovereignty as a fully formed master framing of the issue.

"The basic problem," the General Council of the Church now charged in its telegram, "is . . . the existence of two sets of criteria for Immigration purposes. . . . The bending of the law through secret 'guidelines' is not the manner in which any issue should be faced." The telegram then went to the symbolic heart of the issue by raising the matter of sovereignty, charging that Canada was acting as a "military policeman" for the United States. The Church Council insisted, "The exclusion of deserters from foreign armed forces from Canada, simply by reason of that fact, we would challenge on its own grounds. Canada is not bound by law or obligation to be military policemen for any foreign power and has a long tradition of receiving persons from many lands who have sought escape from forced service in foreign wars."³¹ MacEachen responded angrily to the Church by return telegram, and the Church shot another telegram back over his head to the Prime Minister. The newspapers had a field day as the scope of the conflict now took on frontpage proportions and even more visibly involved the most powerful church in Canada.

The significance of the leadership of the United Church taking this strong position on an important social issue was not acci-

³⁰ Memorandum from Assistant Deputy Minister Dymond to Deputy Minister Couillard (no title), 15 Apr. 1969. See also memorandum from Assistant Deputy Minister to the Deputy Minister, Subject: Submission on Deserters, 5 Apr. 1969, and memorandum from Deputy Minister Couillard to Minister MacEachen, Subject: Submission on Deserters, 23 Apr. 1969, National Archives of Canada, RG 76, vol. 983, file 5660-1, pt. 5.

³¹ Telegram from R. B. McClure and Ernest E. Long of the United Church of Canada General Council to Prime Minister Pierre Elliott Trudeau, National Archives of Canada, RG 76, vol. 725, file 5660-2, pt. 5.

dental or unnoticed. The *Globe and Mail* ran an editorial applauding "The New Church" and noting that until recently the social policy of the United Church consisted of little more than a call for more evangelistic campaigns and stricter laws against liquor and gambling. In this context, the cultural package based on suitability would have seemed a more persuasive framing of the issue to the Church than the new concern with sovereignty. MacEachen had assumed that the former cultural strategy would prevail, but Canada was changing and the Church was too. The *Globe* noted that the three main resolutions passed by the Board at its recent annual meeting had dealt not with bingo or lotteries or the regulation of beer parlors, but with major social and political issues—medicare, housing, and the admission of U.S. deserters to Canada as immigrants. Now the Church had stepped in to fill a power vacuum left by the nondecision of the United States on the war resister issue. "This is a far cry," the *Globe* emphasized, "from the narrow self-centered puritanism which used to be characteristic of the United Church." (*Globe and Mail*, 3 May 1969, p. 6). The American war resisters both provoked and benefitted from some of this change.

The Newly Suitable Symbols of Sovereignty

The *Toronto Telegram* struck once more on behalf of the cultural strategy of suitability, even chastising Minister MacEachen for "pussy footing" around the issue that "deserters from the United States aren't welcome in Canada as immigrants." The *Telegram* editorial reasoned that *draft* resisters were suitable because they had made no commitment to their government to serve in the military forces. But "deserters are entirely different. They have made a commitment to the government of their country. This isn't the kind of citizen Canada wants" (6 May 1969, p. 6).

Nonetheless, the tide had turned. "Political conflicts," Schattschneider (1960:69) notes, "are waged by coalitions of inferior interests held together by a dominant interest." The Church had seized on the power of sovereignty as a unifying theme in a contagious conflict. The day after the *Telegram* editorial, the *Toronto Star* became the last major Toronto paper to give its opinion by siding with sovereignty. "A man's status, or lack of it, in the military of another country has little bearing on his value to this one." The *Star* reasoned, "[I]t is in principle and in practice, irrelevant, and should be treated that way—whether the military in question is American, Czechoslovakian, Cuban, Hungarian or British. To act otherwise is to relinquish a part of the selection of our population to another sovereignty." The *Star* then warned that "clusters of pressure groups are forming . . . for the express purpose of forcing the government into a reasonable stand on this issue. Mr MacEachen need have no illusions; the

public is not going to shut up, and the question is not going to go away" (7 May 1969, p. 6).

The *Star's* editorial was accompanied by an op-ed piece written by Professor Stephen Clarkson (1969) of the University of Toronto. Clarkson's piece cut to the American linguistic core of the Canadian sovereignty issue and the characterization of American military resisters as unsuitable immigrants.

By talking of "draft dodgers" and "deserters" we are accepting the official American view of these applicants for Canadian residence. In 1956 we called the Hungarian immigrants "freedom fighters," not disloyal, contract-breaking citizens (which of course they were from Budapest's point of view). If we would call these young Americans what they are—political refugees—we would be part way toward removing the mote from our own eye. (Clarkson 1969:6)

Clarkson then traced Canadian resistance to the American military resisters to fears of the neighboring power of the United States, saying, "What seems to be Ottawa's major hang-up is the Pavlovian apprehension that, should Canada take a clear stance, there would be some immediate American government retaliation" (1969:6).

It was now several weeks since Trudeau's visit to Washington, and there was still no indication that the U.S. government would challenge the admission of its draft or military resisters to Canada. Clarkson (1969:6) acknowledged, "We should, of course, measure the implications of our actions . . . but it is hard to imagine how this would be a major concern for the Nixon administration." At the same time, Clarkson argued that Canada had an important opportunity to make a difference in American public thought. "We should be interested in influencing U.S. opinion," Clarkson (6) insisted, "and if this simple act would bolster public resistance to the continued U.S. fighting in Viet Nam, this is a further argument in its favor." Clarkson concluded, "[T]his is a concrete challenge for the Trudeau government's American policy: Is it going to adopt a coherently liberal policy or is it, like the well-trained concubine, going to pander to its master without even being asked?"

The pressure continued to mount over the following weeks as the groups involved continued to gather. In what Schattsneider (1960:2) insists is the basic pattern of all politics, "the excitement of the conflict communicates itself to the crowd," and "the audience determines the outcome of the fight." A Committee for Fair Immigration Policy formed in Toronto, with a membership that was a Who's Who of Canadian writers, scholars, and civil libertarians.³² This Committee was then cloned in Ottawa, Vancouver,

³² Among the members were Dalton Camp, Jack Ludwig, Farley Mowat, Robert Fulford, Barbara Frum, June Callwood, Doris Anderson, H. Adelman, W. Kilbourn, Vince Kelly, Stephen Clarkson, Mel Watkins, Charles Templeton, Patrick Watson, Peter Russell,

and Montreal. Yet another eloquent plea addressed the competing narratives of suitability and sovereignty, this time by Jack Ludwig (1969) in the *Globe*, under the title "Why We Should Not Desert Our Sovereignty."

Like Clarkson, Ludwig was conscious of the power of the national origins of words, such as "deserter," in this case used to define the resistance issue. He based his argument on the covert directives that MacEachen refused to make public and that undermined Canadian sovereignty on the presumed ground of suitability for immigration.

What seems fairly clear is that in practice the officers have somehow interpreted the directive to mean they must consider a man's military status; more, that his failure to honor U.S. obligations establishes him as someone clearly incapable of establishing himself successfully in Canada. Thus, in what seems a tiny way, Canadian determination of fitness or unfitness yields to U.S. definitions. Hardly the way for the smaller country to guard its precious sovereignty. (Ludwig 1969:7)

This observation led to Ludwig's (1969:7) final concern about the threat to Canadian independence posed by its direct or indirect submission to American influence:

I think what I worry about most is the possibility that we will lose the habit of behaving independently. Pressures from the United States, real or imagined, must be resisted with cool. The United States, in that way, develops the habit of consultation, consideration and respect for sovereignty and even neutrality. The metaphor we search for is so simple: a man must be master even in his own small house.

The cultural strategy of suitability was now clearly overwhelmed by the more central value associated with the master framing of Canadian sovereignty as a symbolic package that was rapidly gaining strength. Few would have argued, and indeed the most articulate advocates, such as Clarkson and Ludwig, conceded as part of their advocacy that the contingency of American inaction was helpful, but probably not essential, to this groundswell of national sentiment.

In the end, both the Liberal Caucus and the Cabinet came to the conclusion that U.S. military as well as draft resisters should be treated like other applicants for immigration to Canada. The then Minister of External Affairs, Mitchell Sharp, 30 years later reported, "I think in Cabinet that the feeling was very strong, even stronger as the thing went on, that somehow these were not deserters in the sense of deserters from people who were defending the United States, you know, they were just deserters for a cause, and it wasn't that they were opposed to military action, it

M. Moore, Rev. Gordon Stewart, Jane Jacobs, William Spira, and Allen Linden. See Committee for Fair Immigration Policy, Press Release, Friday, 9 Mar. 1969, 11:00 A.M., National Archives of Canada, RG 76, vol. 725, file 5660-2, pt. 6.

was just that they thought they were involved in an unjust war, a useless war.”³³

I noted at the outset that on 22 May 1969 MacEachen stood in the House and reversed his near year-long stand on the admission of military resisters to Canada, now claiming that doing so was the extension of an ongoing liberalization policy. The day after this speech the Assistant Deputy Minister was back at his desk at the Ministry revising the immigration manual to remove provisions of the never-disclosed, covert directives that contradicted the liberalization claim. The Deputy covered the changes with a memo that confirmed what was widely suspected.

While 24.03 12(g) was designed to exclude deserters, the public posture has been that its purpose was to give examples of various “substantial legal, contractual or moral obligations,” to our officers which they should take into account in the exercise of their discretion. To repeal the entire section at this time would indicate the true purpose of the July 29 1968 amendment should it become known. For that reason I suggest we delete the example of membership in the armed forces and rewrite the final paragraph to make clear that such membership is not to be taken into account.³⁴

The Minister and his Deputy took this advice, and so the explicit reference to military desertion was excised from the department’s manual as quietly as it was covertly inserted nearly a year before. This second dimension use of administrative power was papered over in the same covert way that it had begun.

The cultural framing of the military resisters as unsuitable immigrants had sustained the covert policy and practice of excluding U.S. military resisters for nearly a year. The grievances of military resisters and the interest of Canadians in this issue were subdued for much of this period and only began to take hold as the covert handling of this matter was exposed. As the public scope of the conflict grew, the admission of the military resisters emerged as an issue of national sovereignty, around which groups of Canadians coalesced. But this was not the end of the issue.

Liberalization Finally Carries Forward

American draft and military resisters continued to migrate to Canada in a relatively unrestricted fashion until the final months of 1972. Then, a growing economic recession in Canada led to increasing public pressure to reduce immigration from all parts of the world. Although the pressures of the Vietnam draft now were markedly diminished, a large number of “unlanded” draft

³³ Sharpe interview (see note 9).

³⁴ Memorandum from the Assistant Deputy Minister to the Deputy Minister, 23 May 23 1969, National Archives of Canada, RG 76, vol. 1112, file 555-38.

and especially military resisters remained in Canada. Many military resisters, who often were less educated and under- or unemployed, lacked the school and work credentials that were minimum requirements for obtaining landed immigrant status under the immigration point system. In early November 1972, the Canadian Immigration Minister suddenly announced a suspension of the right of "visitors" to apply from within Canada for landed immigrant status. Now "unlanded" resisters would have to return to a Canadian consulate in a U.S. city to apply for landed status, which they were in doubt of receiving. In any event, given patterns of communication between Canadian and U.S. authorities, the war resistance groups argued this procedure was tantamount to the resisters registering with the Federal Bureau of Investigation. Soon Canadian authorities realized that this situation could produce problems for the Canadian government as well.

This realization emerged in the winter of 1973, when Patrick Buchanan (1973:29), then "special consultant and speech writer" for President Nixon, published an op-ed piece in the *New York Times* attacking the sympathetic attention the media was giving to draft and military resisters in Canada and Sweden. Buchanan was outraged that "[e]specially as one watches the genuine heroes of our age and time debark at Clark Field, to hear the boys who ran away to Toronto and Montreal and Stockholm lionized as 'moral heroes' is—obscene." The Canadian embassy in Washington took immediate notice by cabling the Buchanan piece to Ottawa with an attached note reminding the restricted group of government officials addressed that Buchanan was the "theoretician and chief draftsman behind the Administration's so called anti-media statements."³⁵ The concern was with the escalating rhetoric administration officials used to depict resisters. "I have been considering with a good deal of apprehension the likely course of public discussion, agitation, and advocacy," the ambassador cabled two days later, "as well as White House and Congressional interest in the position of the draft evaders and deserters in Canada."³⁶

Buchanan's 1973 assault on the American exiles in Canada and Sweden bore an interesting resemblance to General Hershey's 1968 attack on Canada's acceptance of war resisters, and it seemed to provoke a similar anxiety among Canadian officials. However, there was also a crucial difference: the liberalization policy now had taken hold, and Canada had admitted more than 50,000 American war resisters. It was too late to turn back on this transformed policy; doing so would only have reignited what the government had learned was a topic of contagious conflict. In

³⁵ Restricted cable, "Draft Dodgers—New York Times Article," 21 Feb. 1973, National Archives of Canada, RG 76, vol. 6, file 5660-1, interim box 983.

³⁶ Confidential cable from Washington to Ottawa, 21 Feb. 1973, p. 2. National Archives of Canada, RG 76, vol. 6, file 5660-1, interim box 983.

contrast with the previous policy of covert exclusion, the new policy of admission was public and for the most part popular. The ambassador was plainly anxious that Canada not call unnecessary attention to this fact and thereby become involved in conflict with the Americans over the war resisters. Ironically, the recent Canadian closing of the border threatened to do just that.

For example, a specific fear was “that some of the young Americans in question might have to leave Canada under the new regulations in order to apply for regular immigrant entry from outside,” and that, “this is likely to stimulate the controversy even more, with their sympathizers on both sides of the border agitating against Canadian policy and the USA government and the critics of the draft evaders watching us for signs of our making exceptions.”³⁷ Even if this scenario was not widespread, the ambassador worried that “[i]t would take only a few well dramatized cases to create a politically sensitive situation.”³⁸ Schattschneider’s (1960:15) admonition, “The best point to manage conflict is before it starts,” now became the operative concern.

Ottawa answered the ambassador a few days later, noting that “your concern over possible effects of new Canadian immigration regulations on this very sensitive issue is well understood.”³⁹ Discussions were promised with the Immigration Department, with special sensitivity to the “particular need for cases involving draft dodgers and deserters to be disposed of as inconspicuously as possible.”⁴⁰ This second dimension covertness was now invoked to avoid further stirring the potential conflict stemming from American grievances like that being expressed by Patrick Buchanan. The new feed-forward effects of the liberalization policy now required Canada to reduce the prospects of feared conflict with its powerful neighbor by getting the unprocessed resisters legally landed, irony notwithstanding, regardless of whether by earlier objective standards of the point system they would have been deemed “suitable.” An undersecretary soon echoed to the Immigration Department the ambassador’s warning:

Legal cases in Canada dealing with the right of Americans in these categories to remain in Canada may stir up public controversy and have quite a serious effect on Canada/USA relations. . . . I suggest, therefore, that it would be useful if officials of our two departments could meet in order to discuss various

³⁷ *Ibid.*, p. 3.

³⁸ *Ibid.*, p. 4.

³⁹ Confidential cable from Ottawa to Washington, 26 Feb. 1973, p. 2, National Archives of Canada, RG 76, vol. 6, file 5660-1, interim box 983.

⁴⁰ *Ibid.*, p. 3.

aspects of this issue, including the disposal of cases involving draft dodgers and deserters as inconspicuously as possible.⁴¹

Although it would still take some months to work out, a feed-forward policy of further liberalization was now on its way, which would resolve the cases of remaining war resisters who had not yet become legally landed in Canada.

In June 1973 the Immigration Minister announced a "once-and-for-all" opportunity for people in Canada prior to the past November's elimination of border applications to apply for landed immigrant status in Canada. "If they have any prospects at all of becoming successfully established in our country," the Minister promised, "they will be granted landed immigrant status."⁴² The Moderator of the United Church of Canada was quick to acknowledge the meaning of this immigration amnesty, observing that "while the new provisions apply to persons from many countries who are staying in Canada illegally, we are delighted that they apply to American war resisters who, in most cases, have made a fine contribution to Canadian life."⁴³

The Canadian immigration amnesty was essentially universal and unconditional, a goal that was never fully achieved in the United States by President Jimmy Carter's Vietnam War presidential pardon (see Colhoun 1977). The Canadian government not only passed the immigration amnesty into law but also allocated substantial funds for its implementation, and it interpreted the law liberally to assure that almost all applications for landed status were approved. At its peak, as many as 400 applications a day were received, and 99% were approved, including applications by several thousand American draft and military resisters.⁴⁴ This extension of earlier decisions to honor Canadian immigration law without consideration of the recriminations of U.S. draft and military laws symbolically reaffirmed the sovereign status of Canada.

The successful implementation of an immigration amnesty that extended additional coverage and support to American draft and military resisters who had not previously received legal landed status now further affirmed the transformed, humanitarian nature of Canada's immigration policies. That is, the feed-forward effects of the liberalization policy that MacEachen had misleadingly claimed earlier now actually prevailed in a benign

⁴¹ Confidential letter from Undersecretary of State for External Affairs to Deputy Minister of Department of Manpower and Immigration, 28 Feb. 1973, National Archives of Canada, RG 76, vol. 6, file 5660-1, interim box 983.

⁴² Minister's opening remarks for committee stage of Bill C-197 to amend the Immigration Appeal Board Act, Archives of the Toronto Anti-Draft Program, Thomas Fisher Rare Book Library, Robarts Library, University of Toronto.

⁴³ "United Church Supports Government Olive Branch to Illegal Immigrants," United Church of Canada, 1 August 1973, Archives of the Toronto Anti-Draft Program, Thomas Fisher Rare Book Library, Robarts Library, University of Toronto.

⁴⁴ Kasinsky (1976:295) estimates that 3,000 resisters were granted landed immigrant status under the immigration amnesty.

and humanitarian fashion. The earlier framing of the issue in terms of sovereignty helped shore up sentiment in support of this policy, which also was based on the openness of the Immigration Act to draft and military resisters. At each stage this policy and its supporting symbolism developed in interaction with the multidimensional power politics at play in Canada and the United States.

Closing the Gap with Conflict and Symbols

Canada was increasingly opposed to the war in Vietnam, and it was happy over time to have its immigration policy reflect this by allowing American war resisters to immigrate. Yet this position did not evolve in a consistently liberal way; it developed in regressive as well as progressive ways. And the successful recognition and transformation of Canadian immigration policies and practices required a journalistic intervention that widened the scope of conflict by informing the Canadian public of the gap between the substance and sovereignty of its immigration law and its early application to American military resisters.

My analysis has focused on a second face or dimension of political power that conceals covert and often illegal practices by public officials. The point made by political theorists such as Schattschneider, Bachrach and Baratz, and Lukes is that at each level of remove from the first dimension of overt interest group behavior observed in pluralist or realist accounts, the exercise of political power is no less important but is more difficult to discern. This is often the case because there is little or no political discourse to signal the kind of conflict that is occurring outside of public view. The policy of liberalization with regard to Vietnam War resisters was very publically proclaimed by the Canadian Immigration Minister Allan MacEachen in the spring of 1969. Yet Canada's immigration policy actually had been conducted outside of public view and in ways that were purposefully obscured by MacEachen's own ministry for much of the preceding year. First with unwritten rules, and then with written but unpublicized internal departmental rules and directives, Canadian immigration administrators covertly blocked the admission of U.S. servicemen to Canada, even though Canadian immigration law did not exclude, and had previously allowed, entrance to persons in the military service of foreign countries.

The Immigration Department's exclusion of American Vietnam military resisters visibly entered the first dimension of pluralist conflict and emerged as a legitimate source of collective grievance when a nationally published newspaper columnist began writing about the covert policies and practices, and when a group of enterprising journalism students demonstrated the exclusionary consequences of these practices by impersonating im-

migrating military resisters. These efforts were essential in widening the scope of conflict to include a broad public audience that included increasingly powerful interest groups who supported the military resisters.

The Immigration Department and its Minister persistently denied allegations of the existence of exclusionary policies and practices, and, even after changing them, never publically admitted their operation. For more than half a year the Department and its Minister instead defended a position, built on what were intended to be circumscribed discretionary provisions in the immigration point system, that opposed admission of American servicemen by emphasizing cultural norms that defined them as unsuitable for immigration because they had irresponsibly failed to keep moral and legal obligations to complete their military service. Until the student journalists conducted the field experiment that more definitively established that immigration officers were summarily excluding military resisters on the basis of their military status *per se*, the debate surrounding this issue was defensively framed as an issue of personal suitability for immigration.

An alternative to the symbolic package of suitability only emerged when the covert policy of exclusion was fully revealed and the scope of this conflict was widened sufficiently for Canadians to understand that their Immigration Act did not prohibit admission of military resisters. To this point, the covert tactics of exclusion had suppressed this issue of potential national interest. However, as Schattschneider emphasizes, once the scope of a conflict is widened, it soon proves contagious. A collective national interest in the resister issue became increasingly apparent as the cultural elite of Canada, through the leadership of the United Church of Canada, supported by the New Democratic Party and an array of civil libertarian groups, advanced the argument that the Immigration Act was being subverted by observing distinctions of American military and selective service law that were irrelevant in Canada. Building on a wave of national feeling that was already growing in Canada, the grievances of American military resisters now increasingly were recognized as legitimate and symbolic of Canadian sovereignty. This assertion of sovereignty became a cultural resource that could be used to take the offensive in the battle to admit U.S. military resisters to Canada.

Although he probably had little choice in the face of the widening scope and nature of the conflict in Canada, the failure of President Nixon in 1969 to oppose the admission of American draft or military resisters to Canada seemed to further encourage a call by the large and powerful United Church for Canadian sovereignty in the application of its Immigration Act. The contagious symbolic appeal of sovereignty, and its advocacy in this growing conflict by the United Church and other cultural elite

groups, was a powerful resource that helped Canadians to reconceive and reject the dualism with which the U.S. Selective Service and military law distinguished between draft and military resisters, attaching particular stigma to the latter. This dualism and the framing of resisters as unsuitable for immigration probably could not have been overcome without the cultural resource that the symbolism of sovereignty provided.

The liberalization policy was finally and ironically extended in summer 1973 by renewed fears of American opposition to the presence of war resisters in Canada. These fears followed from new hostility voiced by Nixon administration officials toward war resisters in Canada. At this stage there was no turning back on the liberalization policy, because the draft and military resisters were already in Canada in large numbers. The deescalation of the Vietnam conflict now meant that there was no longer great pressure for immigration by war resisters from the United States, but many war resisters living in Canada had not yet obtained legal immigration status. Rather than reopen the conflict by sending these "unlanded" immigrants back to the United States, and thus increasing U.S. awareness of the resister migration, Canada temporarily suspended its official rules surrounding the determination of suitability for immigration and as inconspicuously as possible sought to regularize the status of these newly eligible immigrants. The liberalization policy now was encapsulated within an immigration amnesty that was used to justify these relaxed standards. It helped that this approach was consistent with the Immigration Act's openness to war resisters from other countries and that the war resisters had in earlier years served as symbols of sovereignty.

This analysis suggests that the rise and fall of cultural and symbolic frameworks surrounding social issues and their transformation into collectivized legal disputes and remedies may often be contingent on exposure of the macrolevel exercise of political power in ways that are not readily apparent or easily observed. This analysis is significant for practical as well as theoretical reasons. As Schattschneider (1960:17) concludes, "A powerful and resourceful government is able to respond to conflict situations by providing an arena for them, publicizing them, protecting the contestants against retaliation and taking steps to rectify the situations complained of; it may create new agencies to hear new categories of complaints and take special action about them." Felstinger, Abel, and Sarat (1980–81:653) similarly conclude in their classic conceptualization of the disputing process that "a healthy social order is one that minimizes barriers inhibiting the emergence of grievances and disputes and preventing their transformation into claims for redress." The point is to recognize and overcome the macrolevel second dimension of political power and its capacity to surreptitiously and covertly create barriers to

the transformation of personal and social grievances into collectivized legal disputes and remedies. The lesson of this analysis is that a key to such situations is often the exposure and widening of the scope of conflict between the law as written and as enacted, combined with a compelling symbolic framing of the issues involved in ways consistent with central societal values.

Until its tactics were exposed during the Vietnam War, a second dimension use of political power kept military resisters defensively framed in a symbolic package that defined them as culturally unsuitable for immigration to Canada. A master framing of these American servicemen as symbols of sovereignty finally took hold after professional and student journalists intervened to expose the covert actions of the Canadian Immigration Department and widened the scope of conflict to include an informed citizenry. The master framing of military resisters as symbols of sovereignty subsequently further undermined the suitability schema and the perceived relevance in Canada of U.S. military and Selective Service law on this issue. Political power and cultural symbolism were intertwined in mutually influential and interactive ways. Neither of these forces can be well understood without consideration of the other, and a fully elaborated explanation as well as a remedy for gaps between law and action requires consideration of covert as well as overt dimensions of political power and the cultural symbols mobilized on their behalf.

References

- Abel, Richard (1980) "Redirecting Social Studies of Law." *Law & Society Rev.* 14:805.
- Bachrach, Peter, & Morton Baratz (1962) "The Two Faces of Power," 56 *American Political Science Rev.* 947-52.
- (1963) "Decisions and Nondecisions: An Analytical Framework," 57 *American Political Science Rev.* 641-51.
- Berton, Pierre (1997) *1967: The Last Good Year*. Toronto: Doubleday Canada.
- Best, Arthur, & Alan Andreasen (1977) "Consumer Response to Unsatisfying Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress," 11 *Law & Society Rev.* 701-42.
- Black, Donald (1973) "The Mobilization of Law," 2 *J. of Legal Studies* 125-49.
- (1976) *The Behavior of Law*. New York: Academic Press.
- Buchanan, Patrick (1973) "The 'Facts' on Exiles," *New York Times*, 20 Feb., p. 29.
- Burstein, Paul, Marie Bricher, & Rachel Einwohner (1995) "Policy Alternatives and Political Change: Work, Family, and Gender on the Congressional Agenda, 1945-1990," 60 *American Sociological Rev.* 67-83.
- Clarkson, Steven (1969) "Remove the Barriers to U.S. 'Refugees,'" *Toronto Star*, 7 May, p. 6.
- Colhoun, Jack (1977) "War Resisters in Exile: The Memoirs of Amex-Canada," *Amex* Nov.-Dec., 1-76.
- Crenson, Matthew (1971) *The Un-Politics of Air Pollution: A Study of Non-Decision-making in the Cities*. Baltimore: Johns Hopkins Univ. Press.
- Dashefsky, Arnold, Jan DeAmicis, Bernad Lazerwitz, & Ephraim Tabory (1992) *Americans Abroad: A Comparative Study of Emigrants from the United States*. New York: Plenum Press.

- Felstiner, William, Richard Abel, & Austin Sarat (1980–81) "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," 15 *Law & Society Rev.* 631–54.
- Galanter, Marc (1983) "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) about Our Already Contentious and Litigious Society," 31 *UCLA Law Rev.* 4–71.
- Gamson, William, & Andre Modighani (1989) "Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach," 95 *American J. of Sociology* 1–37.
- Hagan, John (2001) *Northern Passage: The Lives of American Vietnam War Resisters in Canada*. Cambridge: Harvard Univ. Press.
- Kasinsky, Renée (1976) *Refugees from Militarism: Draft-Age Americans in Canada*. New Brunswick, NJ: Transaction Books.
- Kent, Tom (1988) *From a Public Purpose: An Experience of Liberal Opposition and Canadian Government*. Montreal: McGill-Queen's Univ. Press.
- Ludwig, Jack (1969) "Why We Should Not Desert Sovereignty," *Globe & Mail*, 9 May, p. 7.
- Lukes, Steven (1974) *Power: A Radical View*. London: Macmillan.
- Manual for Draft-Age Immigrants to Canada. 1968–1970, first through fifth editions. Published by House of Anansi and Toronto Anti-Draft Programme.
- Mather, Lynn & Barbara Yngvesson (1980–81) "Language, Audience and the Transformation of Disputes." *Law & Society Rev.* 15: 775–822.
- McAdam, Douglas (1997) "Culture and Social Movements," in S. Buechler & F. Kurt Cylke, Jr., eds., *Social Movements: Perspectives and Issues*. Mountain View, CA: Mayfield.
- Mutchmor, James Ralph (1965) *Mutchmor*. Toronto: Ryerson Press.
- Pedriana, Nicholas, & Robin Stryker (1997) "Political Culture Wars 1960s Style: Equal Employment Opportunity–Affirmative Action Law and the Philadelphia Plan," 103 (3) *American J. of Sociology* 633–91.
- Schattschneider, E. E. (1960) *The Semi-Sovereign People: A Realists' View of Democracy in America*. New York: Holt, Rinehart & Winston.
- Simpson, John, & Henry MacLeod (1985) "The Politics of Morality in Canada," in R. Stark, ed., *Religious Movements: Genesis, Exodus, and Numbers*. New York: Paragon House.
- Skocpol, Theda (1992) *Protecting Soliders and Mothers: The Political Origins of Social Policy in the United States*. Cambridge, Mass.: Belknap.
- Skocpol, Theda, & Edwin Amenta (1986) "States and Social Policies," 12 *Annual Rev. of Sociology* 131–57.
- Snow, David, E. Burke Rochford, Jr., Steven K. Worden & Robert Benford (1986) "Frame Alignment Processes, Micromobilization, and Movement Participation." 51 *American Sociological Rev.* 464–81.
- Surrey, David (1982) *Choice of Conscience: Vietnam Era Military and Draft Resisters in Canada*. New York: Praeger.
- Swidler, Ann (1986) "Culture in Action," 51 *American Sociological Rev.* 273–86.
- Swigert, Victoria, & Ronald Farrell (1980–1981) "Corporate Homicide: Definitional Processes in the Creation of Deviance," 15 *Law & Society Rev.* 161–82.
- U.S. Bureau of the Census (1990) *Migration Between the United States and Canada*. Current Population Reports, Series P-23, No. 161. Washington, DC: GPO.
- Weir, Margaret, & Theda Skocpol (1985) "State Structure and Possibilities for 'Keynesian' Responses to the Great Depression in Sweden, Britain, and the United States," in P. B. Evans, D. Rueschmeyer, & T. Skocpol, eds., *Bringing the State Back In*. New York: Cambridge Univ. Press.
- Williams, Rhys H. (1995) "Constructing the Public Good: Social Movements and Cultural Resources," 42 *Social Problems* 42 124–44.

Statute Cited

Immigration Act of 1952, R.S.C., vol. III, chap. 145, pp. 3147–50.