

pendence or annexation. Federation, therefore, is put upon the same footing as its alternatives. By confession of its propounders, one would be, like the others, a Revolution. They thus affront, and it appears to me unnecessarily affront, the patriotic instinct of those who feel that the Empire possesses already an inherent and enduring principle of unity; and they affront a patriotism of another kind when they seem to threaten the principle of complete local autonomy so dear to the inhabitants of all the great self-governing Colonies. They adopt an attitude which implies that the Empire as an association of nations has not at the present time any Constitution—that for a free union of its equal nations a legal basis has yet to be found.

The whole position in this respect appears to me to be founded upon a fundamental error, an absolute misapprehension of the present constitutional relation of the Colonies to the Empire. Are not the Federationists still wandering in the darkness of 1774? They do not seem to give any weight to the enormous change that has come over the English Constitution since the period of the American Revolution. Imperial Federation was dreamt of by Washington in America, and by Lord Shelburne and his school in England, upon the same basis as Imperial Federationists are urging now, that is, upon the basis of Colonial representation in the English Parliament. That basis, admittedly impracticable then, is really not less so now. But a new theory has grown up which renders that scheme no longer necessary, and opens an ampler door to a workable constitution and a complete consolidation of the Empire.

"Contemplate the whole Empire together," Professor Seeley tells his students, "and call it all England. Here too is a United States. Here too is a great homogeneous people, one in blood, language, religion and laws, but dispersed over a boundless space." (*Expansion of England* p. 158).

Not as a matter of sentiment or concession, but as fundamental law, we, the freemen of the Empire may, at this moment, claim the qualities and incidents of full citizenship, whether our homes are in Great Britain, in Canada, or in Australia. Even in 1773 Washington wrote of himself and his fellow-colonists: "As *Englishmen*, we could not be deprived of an essential and valuable part of our constitution."\* The vision that arose in the 18th century, as it seemed prematurely, of a citizenship extending throughout the English Empire, promises in the age of steam and electricity to be at length converted into a reality. The same inspiring conviction which had been first expressed by Washington and his contemporaries, the author of *Ecce Homo*, from an Oxford chair, is now impressing upon the future statesmen of England.

Perhaps we must give credit to the great shock of the American Revolution as one factor in bringing home this new conception to the minds of Englishmen. The conspicuous growth of the United States and also of the remaining Colonies has been another contributing cause. A greater agency has been the physical improvements brought about by time. To do justice to matters beyond the seas has always been difficult to the untravelled Englishman. The recent facilities of travel and communication are gradually supplying his want of knowledge and are slowly overcoming his native defect of imagination. But beyond this the great development the English constitution itself has undergone in the intervening century has made it practicable to give effect to what must otherwise have remained a mere sentiment.

When the Province of Upper Canada was formed in 1791 the first Lieutenant-Governor, General Simcoe, in his speech opening the first Parliament, announced that the new Province had been given a Constitution which was "no mutilated constitution, but was in all respects a transcript of that of Great Britain." The statement, obviously untrue as it would be now, was both sincere and literally correct at the time it was uttered. The Crown-appointed Executive Council, destined to disappear within a generation under the energetic protest of 1837, did but reproduce the idea which, in 1791, was universally entertained and acted on in England itself regarding the substantial extent of the royal prerogative. It was the same theory that almost at the same date the Federalists were deliberately inserting into the new Constitution they were drawing up for the United States. This has been clearly and conclusively shown by such recent critics as the late Sir Henry Maine in his *Representative Government in America*, and Prof. Bryce in his still more recent work, *The American Commonwealth*. The President of that nation is an elective Sovereign, endowed by the fathers of the Constitution with the prerogative of George the Third. To that model he owes his absolute discretion in the selection of his Cabinet and his wide independence of the other branches of the Legislature.

While since that time the American Constitution, bound by its paper fetters, has stood still, the British Constitution has been advancing. It has been the work of nearly a century to introduce into the British Constitution the new theory of the hereditary Crown acting only by constitutional advisers possessing the confidence of the representatives of the people. Her Majesty's Government is in fact, though not in name, a popular government. In all acts of State the words, "the people of England," might be substituted for the royal name. This principle is now established in the greater self-governing colonies as much as in Great Britain, thanks to a past generation of Canadian patriotic statesmen. In its full application it is fitted to become the point of union of any number of English nations, however widely spread over the world.

\* Irving's *Life of Washington*, Vol. I., page 391.

The modern Imperial Federationists seem to conceive of no other model than the same centralized federalism that they find embodied in the Constitution of the United States: itself an imitation of the centralized royal prerogative which formed part of the British Constitution, as its principles were understood by statesmen of the last century.

But the new principle favours decentralization: for the necessity for personal presence in the Council of the Sovereign is no longer existent. The mind of the Sovereign may be in many places at once. The Royal will may be directed by Councilors whom the Queen has never seen. The Empire has, in fact, virtually been reconstituted upon a federal basis. Canada, in reference to the legislative powers of her people, is at this moment no dependency of any other power whatever. Her true constitutional position is that of a member of a great Federal Republic, united under a hereditary President in the person of the reigning Sovereign.

In substance and in practice, the new status of the greater Colonies like Canada and Australia is recognized; although the recognition is concealed by the persistence of names and forms framed according to an older theory. The Royal title, for instance, still describes the Queen as Queen of Great Britain and Ireland and Empress of India. Canada and Australia, therefore, apparently pay allegiance to the Queen, not by virtue of any personal relation, but as dependencies of Great Britain of which Her Majesty is the Sovereign. But in fact the allegiance of her Canadian subjects is direct, and not derivative. To them she is not Queen of Great Britain, but Queen of Canada. Likewise to Australians she is Queen of Australia.

Should the day ever arrive again when it shall become necessary to recognize a vacancy in the Royal succession and to fill it by a Parliamentary choice, as was virtually done in 1688, then, for the purposes of that now almost inconceivable emergency it will be necessary to summon an assembly representative of modern Englishmen—that is, of the freemen of the Empire at large—as the Parliament of 1688 was representative of the Englishmen of that day, the inhabitants of the British islands. In the meantime the elastic principles of the British constitution offer every convenience for the development which will enable us to combine an internal system amounting to independence with the unity and power of a great federal state.

The doctrine of an equal, universal English citizenship is not too broad for our time. It may be asked, What about ancient judicial precedents? If it is not only to be recognized in a complimentary form, but to be applied to matters of substance, would it not amount to a revolution? Is it consistent with existing Acts of Parliament? Is it to be found in any constitutional writer of authority?

The answer is clear. Even the law books acknowledge the fundamental principle that when a party of Englishmen land in a new uninhabited country they carry with their flag the English Constitution and the germ of so much of those laws and institutions as are suitable to their new situation. And just as the principle of English law moulds itself to the varying circumstances of place and distance, so history shows it to be responsive to changes brought about by time.

It is the surpassing merit of the British Constitution that it is an unwritten system. It is, therefore, a living system capable of development. Insensibly as the bark expands around a growing tree, our Constitution expands to accommodate the developing life of the people. It accomplishes by evolution what under other systems cannot be effected except by revolution. We cannot read the English Constitution in any book. Theories laid down in authorities of the last century, sometimes in the last generation, may be no longer true or binding upon an English Government of to-day. New applications continually force us to go deeper into fundamental principles, until we seem to have revised what formerly appeared to be the principles themselves. Yet this would not be true: because the variation is always in the direction of enlarging freedom, and freedom is the real foundation of the law of England. Feudalism itself was but a temporary aberration, imposed partly by conquest and partly by the necessities of a warlike and anarchic age. As the day for feudalism passed away the ancient principles began to reclaim their place. The spirit of English freedom came forth again among men proclaiming, Before Feudalism was, I am.

Moreover the constitutional relations between the Crown and the Colonies are matters of State. Binding precedents are not to be sought in *dicta* of Judges, but in the practice of statesmen. It was necessary for Lord Mansfield on one occasion, for the purpose of a private controversy, to lay down his opinion regarding the relative power of the Crown, the Imperial Parliament, and the Local Legislature. But when we wish to read the law that really prevails, we do not rely upon Blackstone's lectures, or upon Lord Mansfield's decisions. We search the statutes of the Parliament of Canada, and the statutes of the Imperial Parliament; we peruse the correspondence between the Colonial Governments and the Colonial Secretary; we observe the recorded course of the Imperial Viceroy, Lord Sydenham and Lord Elgin, of Lord Dufferin and the Marquis of Lorne, in great test cases as they have arisen. By these precedents it has become settled law that in respect of all matters affecting Her Canadian Dominions Her Majesty must act by and with the advice of the Privy Council, having the confidence of her Canadian subjects, to the same extent as in matters affecting her realm of Great Britain she acts by and with the advice of her Privy Council in London.

Even in regard to diplomatic relations and the treaty making power the practical sense of English Cabinets and Canadian Cabinets has already wrought out a practice, a kind of give and take system which, novel, even puzzling, as it may appear to a foreign Government, is in accordance with the spirit of our institutions.

These are essentially Federal powers and must whenever necessary be exercised in concert. But concert in this century of telegraphs will seldom require the offices of distant delegates, still less of a fixed Imperial Council.

But it will be alleged against this doctrine that it cannot be taken as a constitutional principle because it is not of universal application. Are there to be no Crown Colonies? Is every small Island on which a handful of Englishmen raise the English flag entitled to be treated as an independent constituent of the Empire? The answer is that the logic of politics must not be too logical. It is the same kind of argument that is appealed to by those who will always be dissatisfied with the existing elective franchise, because under every form of franchise there are some discretionary exceptions.

We must not suffer logic to overcome our common sense. There is in States a development equivalent to that which takes place in the constitution of individuals. The rights of manhood must always be subject to the limitations of minority. A nation, like a man, must acquire a certain relative size, strength of limb, development of structure, and experience of self-government before it grows to its full stature and its inhabitants become entitled to claim equal citizenship. There was a time when it was wont to be said of Newfoundland that that Island was to be regarded in law as a British ship anchored in the ocean. In that light some remote settlements and stations must perhaps always be content to regard themselves. The precise date and circumstances at which a higher stage is reached must be determined, not by population alone, still less by the area occupied by it, but by all the circumstances of relative distance, population, homogeneity and political character. A million of inhabitants of whom three fourths are African or of African descent, will always present a very different face politically from the same number of men of all of European descent.

Thus the Empire does not stand in need of any novel machine-made union. A certain organized unity already pervades its structure and its ancient and living constitution.

Because of this elastic and growing quality in our institutions, because our constitution is English and not Chinese, we may look forward with confidence without any violent changes to a perpetuation of the Union of our Empire.

We are under no necessity of staking everything upon far-fetched paper federations to provide for contingencies not yet arisen. We can rely upon time as it unrolls new necessities to also provide sufficient ways of meeting them.

O. A. HOWLAND.

#### OTTAWA LETTER.

I HAVE always accepted it as a self-suggestive evidence of the immortality of the human soul that, in spite of much apparent contradiction, the good, the bright and the joyful in life have a stronger tendency and a truer title to longevity than the evil, the sombre and the doleful. When Shakespeare tried to convince us that "men's evil manners live in brass, their virtues we write in water," he must have written upon the assumption that men seldom or never rise above the instantaneous but quickly spent force of the first brunt of misfortune. Had he never heard the song of King David, "It is that it may be destroyed for ever?" In any case the Swan of Avon could not have known too often the joy of waking up, after many months of "evil manners" in weathers, to find that they had been written, not in brass, but in water, which now refused to be so much as rippled by their memory, and insisted upon preserving itself placid for the reflection of the bluest of skies, the clearest of atmospheres, and the sunniest and most radiant of mornings. Even the buxom emigrant from the land of heather, who blocked my way at the ticket office, appeared to smile hopefully through the unbending sternness of Grand Trunk fares, as, surrounded by big box, little box, bandbox and bundle, and backed by a squad of gaping, expectant youngsters, she industriously and pertinaciously plied the clerk for "something off" her ticket West.

The fine new station at Bonaventure, Montreal, looked its best as the parlour car, filled with the country's legislators en route for Ottawa, glided out of the snow-covered depot. Bran new travelling bags, without spot or wrinkle, protruded themselves among the penalties of the session, and the staid gravity of the member was a poor offset to the fussy expectation of his wife. Human nature is a compound perplexity. We belong to a nation who find the essence of their earthly creed in "God Save the Queen," and its quintessence in "Home, Sweet Home." Nevertheless Madame la Legislatrice, who had left behind her all the sweetness that is implied in the latter, was evidently capable of a reserve force for the patriotic duties of her station, and the consciousness that her *ménage* at home must suffer from her enforced absence was clearly consoled by the determination that her apartments in the Capital should supply abundant absolution.

The journey was made up of recognitions, introductions, and a delusive attempt at feeling at ease in conversation conducted in uncomfortable attitudes and conflicting noises. But one gets accustomed to much, if not to everything. By the time the darkie passed round his table napkins and mutton chops men had passed from politics