

Columbia River Treaty

power resides is the crown, that is, Her Majesty, acting upon the advice of her ministers. It is the crown which in virtue of the royal prerogative issues full powers for the negotiation and signature of treaties and ultimately ratifies them when ratification is necessary, or grants the necessary authority for the negotiation and conclusion of the less formal types of international agreements. As we have already seen, the monarch, being a constitutional monarch, for more than two centuries has possessed no power, except upon the advice of his ministers, to bind his country by treaty.

Then on page 115 of the same treatise he says:

Generally speaking, the law and custom of treaty making which have prevailed in the United Kingdom for many years—

I might interject that this law and custom have been accepted and appropriated by Canada.

—have now been adopted by the other commonwealth countries; their constitutions for the most part mention treaties either barely or not at all; and upon such questions as when the approval of parliament or new legislation is required, or when a treaty should be ratified, for the most part they share the views of the United Kingdom.

In other words, Mr. Speaker, in citing United Kingdom precedents I submit I am on good ground. I should like to refer to a Canadian book, the fourth edition of R. MacGregor Dawson's, "The Government of Canada". At page 102 the late MacGregor Dawson has this to say:

There has been no uncertainty regarding the powers of the dominion and the provinces so far as the negotiation of treaties with foreign countries is concerned. This was originally the function of the crown acting through the British government, and with the growth of dominion self-government it has gradually come under the control of the government of Canada.

At pages 221 and 222 Dawson had the following to say:

Finally, the cabinet performs collectively a wide variety of explicit executive acts, usually in the name of the governor in council and on the immediate initiative of the prime minister. A number of the more important of these acts are listed below:

The fourth on the list is the following:

The participation in international affairs by the appointment of plenipotentiaries, the issuing of instructions to those plenipotentiaries, the ratification of international agreements and treaties, etc. Parliament may be consulted and even asked to approve international agreements and treaties, but this is largely a matter of convenience and political strategy; the actual ratification is purely an executive act.

Some agreements and treaties (such as a commercial treaty to alter the tariff) will, of course, need later legislative action to carry their terms into effect.

My first argument, in summary, is that by suggesting an amendment to the resolution, by making ratification subject to the negotiation of a further protocol or a further exchange of letters clarifying what the hon. member for Greenwood (Mr. Brewin) considers to be the lack of clarification about the right of diversion, which we on this side do not accept, the hon. member is in effect moving an amendment which is, in my view, an invasion of the traditional parliamentary prerogatives of the government under our British parliamentary system. It is, therefore, out of order.

Mr. Knowles: Will the hon. member permit a question? If such a move is an invasion of the prerogatives of the executive, is it not an invasion of the prerogatives of the executive to discuss it at all even on a motion in the name of the government? Why is it before us?

Mr. Martin (Essex East): Because that was the commitment of the government.

Mr. Turner: May I say that the fact the treaty and protocol are before parliament has been a waiver, to that particular extent, of the prerogative to which the government, in terms of practice and convenience, is entitled. The waiver of that prerogative for the purpose of submitting the protocol in this form does not, in any way, waive the prerogative of the government in negotiating treaties.

In addition, as the minister has suggested, there was a commitment of the government so to do. In answer to the hon. member's specific question, although the prerogative was waived so as to present the treaty to the scrutiny of parliament and a standing committee, that waiver does not go beyond the submission of that treaty or protocol.

Mr. Douglas: It is just window dressing.

Mr. Turner: This is my argument on the first of the two branches of my argument, Mr. Speaker, that is the constitutional position.

The second branch of my argument relates to parliamentary practice. If I may, I should like to refer Your Honour to Beauchesne, citation 202. It is clear, looking at the 12th paragraph of that citation which appears on page 170, that an amendment proposing a direct negative, though it may be covered up by verbiage, is out of order. I suggest that since this resolution calls for approval or rejection, any contamination of the resolution is, in effect, the negating of the resolution.