

Emergency Powers Act

quotation deals with the function of the opposition, and I just mention it in passing:

Attacks upon the government and upon individual ministers are the function of the opposition. The duty of the opposition is to oppose. It adopts Sir Toby's advice, "So soon as ever thou seest him, draw; and, as thou drawest, swear horrible." That duty is the major check which the constitution provides upon corruption and defective administration.

I am not dealing with a matter of corruption, nor am I making an attack upon the minister or upon defective administration. However, as a member of the opposition I feel it is only my duty to oppose measures which I think are unsatisfactory. I have already mentioned my reasons for speaking at this time, but in addition I have been disturbed over the years by the growth in the power of the executive. There is no question but what, over the years, there has been a decline in the power of the House of Commons, while the power of the executive has increased.

This has been a matter for investigation and discussion by many people who are interested in parliamentary government. The distinguished writer Professor Dawson, in his book "The Government of Canada" on page 316, in discussing delegated legislative power, indicates the gradual development of the power of the cabinet. I should like to quote two or three passages, commencing at page 316. Earlier the author has been mentioning that parliament has delegated powers to the cabinet to enact subsidiary legislation within the limits of the statutes, and that these powers may also be given to a government department, board and so on. He says:

Delegations of both kinds are extremely common. At least one-half of the 225 public acts of the dominion in force in 1933 gave power to the executive to legislate by order in council or departmental regulation, and the tendency has been for this proportion to increase rather than diminish. Most of these acts do no more than permit the addition of technical details, although in many cases this is covered by a vague phrase authorizing such regulations "as may be deemed necessary for giving full effect to the provisions of this act". Other statutes, however, go much further than mere amplification. Some give the executive the power to vary the provisions or extend the scope of the act in an important respect; . . .

Further down he says:

The most extreme example of such a delegation of subsidiary legislative power was furnished during the recent war. The War Measures Act gave authority to the governor in council to make such orders and regulations as it "may deem necessary or advisable for the security, defence, peace, order and welfare of Canada" so long as the war emergency should continue—a grant of power so sweeping that it conveyed to the governor in council most of the enormous wartime emergency powers made available to the dominion parliament under the "peace, order, and good government" clause of the British North America Act.

[Mr. Churchill.]

Then, one final quotation from this book on page 318:

The clear justification for so comprehensive a delegation was of course the national safety, but the degree to which this would be warranted in the period following the cessation of hostilities is naturally much more debatable.

That is the reason for this debate at the present time. We feel that the extension of emergency powers to a government in time of peace, although not going as far as the War Measures Act, is unnecessary at the present time.

I have mentioned the growth of the power of the executive, and it may be interesting to consider just how that power can be exercised and what it amounts to. Again I shall quote from Professor Dawson, page 252:

The cabinet, acting as the governor in council, enacts subordinate legislation under the authority (and only under the authority) delegated to it by acts of the Canadian parliament. Its legislative output may be known as minutes or orders in council, the distinction being largely one of form and apparently of little consequence, and it must also give formal approval to the minutes of the treasury board. The subject matter of this legislation may range from questions of purely departmental routine to those of first-rate importance with far-reaching consequences, from the approval of a contract or the amendment of a minor regulation to the establishment of a nation-wide system of price control in time of war.

Then he goes on to deal with the number of orders in council, and I quote again:

The number of these orders and minutes is very large: even in ordinary times they reach five or six thousand a year, while in time of war they naturally increase greatly with the additional cabinet responsibilities and the need for immediate executive decision and action. Thus from August 25, 1939, to September 2, 1945, the governor in council disposed of 92,350 items of business, a tremendous total, although one which is not so impressive as it appears at first glance. A very large part indeed of these orders and minutes were concerned with routine matters, and not more than 4 or 5 per cent of the total represented action which was legislative in any real sense of the term. Even so, the numbers give a very good idea of the cabinet's enormously important function in supplementing the legislative activity of parliament.

I might just note there that in the footnote to this passage he breaks down the total as follows:

Orders in council and minutes of council 56,202
Proceedings of treasury board 36,148

That again gives an indication of the extension of powers in the hands of cabinet and the way in which the cabinet is involved in legislation. Perhaps in the house here sometime we might propose to debate a resolution in the following terms: Resolved that the cabinet's power has increased, is increasing and ought to be diminished. It is to prevent a further increase in the power of the cabinet that we are opposing the present Emergency Powers Act.