

# Limitations of the Constitution

*With Special Relation to the Canadian Naval Question*

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THE British North America Act, the Charter of the Canadian Constitution, by which the rights of self-government were conferred upon the Dominion and Provinces of Canada, contains certain significant provisions which provoke careful consideration and enquiry at a time when political opinions are divided in regard to the naval issue.

I quote the following, with the verbal change of "King" for "Queen," as provided in Section 3 of the Act:

9. The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the King.

10. The provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the chief executive officer or administrator for the time being carrying on the Government of Canada on behalf and in the name of the King, by whatever title he is designated.

11. There shall be a Council to aid and advise in the government of Canada, to be styled the King's Privy Council for Canada; and the persons who are members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors.

15. The Commander-in-Chief of the land and naval militia, and of all naval and military forces, of and in Canada, is hereby declared to continue and be vested in the King.

91. It shall be lawful for the King, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada in relation to . . .

(7) Militia, military and naval service, and defence.

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries arising under treaties between the Empire and such foreign countries.

The provisions of the British North America Act, above quoted, very clearly express the present political status of Canada. Canada is declared to be a part of the British Empire, that is, a part of the Empire of the United Kingdom of Great Britain and Ireland; and, though tacitly deprived of every constitutional right to participate in the government of the Empire or in incurring or creating obligations towards foreign countries, Canada is empowered to perform the obligations of Canada or of its Provinces arising under treaties made on the advice of the Government of the United Kingdom.

The executive government and authority of Canada is vested in the King. The Governor-General is the chief executive officer, who carries on the government of Canada on behalf and in the name of the King.

The King is the commander-in-chief of all naval and military forces of and in Canada. The King, by and with the advice and consent of the Senate and House of Commons of Canada, makes laws for the peace, order and good government of Canada in relation, amongst other matters, to "militia, military and naval service and defence."

No political dissensions have arisen in regard to Canada's militia and military services, except in isolated instances where the Canadian Government has insisted upon controlling the actions of British officers, temporarily in the Canadian service, who unfortunately did not realize that, in the King's militia and military services of and in Canada, the King, through his representative, the Governor-General, acts under the advice of his Canadian Ministers.

In respect of the proposed Canadian Naval Service, the suggestion is now made that the Canadian Government should abdicate its constitutional functions, and vest the control of this service in the Admiralty, a department of the Government of the United Kingdom, which is in no sense responsible to or under the control of the Government of Canada.

THE chief reasons urged for this abrupt change in constitutional policy is the attainment of greater efficiency by centralizing the control of this service.

In a measure the same suggestion might have applied to Canada's judicial, railway, customs, postal or light-house services. England may train more experienced lawyers—why should not England's appointees administer our judicial system? The

postal service might be improved if its management were centred in London; Mr. Samuel may be a more efficient executive officer than Mr. Pelletier! The Canadian militia and military forces might be more thoroughly trained by officers detached from and directed by the War Office in London! Despotism may under certain conditions prove to be the most efficient form of government, but, fortunately or unfortunately, it would encounter insurmountable difficulties arising out of the traditions, education, and temperament of the Canadian people.

Waste of energy, efficiency and material always result from inexperience; but, in the end, as experience is gained, the workers become more efficient, and the ultimate end is satisfactorily attained.

For example, the Canadian General Electric Company and Canadian Westinghouse Company are now producing in Canada hydro-electric machinery and appliances that England is at present quite incapable of manufacturing in her best equipped plants. There has, no doubt, been waste and loss in the process of development; but the achievement merits unqualified approval.

So workmen and peoples and nations increase in experience and in efficiency, become strong, self-reliant and courageous, and eventually develop to manhood and nationhood!

The purpose of the British North America Act was to vest the administration and control of Canadian services in the elected representatives of the Canadian people. The King is our King; but, in respect of matters within the legislative jurisdiction of the Parliament of Canada, the King, or his representative, must act on the advice of the Canadian Government.

Included in Canada's legislative jurisdiction are "militia, military and naval services and defence"; and the King, under the advice of his Canadian Government, is "the commander-in-chief of the land and naval militia, and of all naval and military forces, of and in Canada."

Surely cogent and convincing reasons must be presented before the Canadian Government will be permitted to abdicate its high functions in favour of one or more departments of a British Government, which is utterly irresponsible so far as Canada is concerned. Some of us have thought that such reasons might be found in a federal organization of the Empire, under a government really imperial in the scope of its duties and responsibilities, in which representatives of the Canadian people would be invited to participate, and which would be sustained by the common contributions of the United Kingdom and of all the Over-seas Dominions of the Crown.

SOME of us have also thought that such prospective constitutional development was in accord with the genius and traditions of the British peoples; and that in the administration of all Imperial and international affairs, in matters of peace and of war, in matters of military and naval defence, the concentration of control in an executive, responsible to all those who contribute to its authority and financial resources, would make for political unity, for civil liberty, for political content, and for economy and efficiency in the administration of Imperial affairs.

But at the last Imperial Conference, Mr. Asquith deliberately declared that this consummation so devoutly wished by the loyalist representatives in the American Colonies prior to the revolution, by the most eminent and sagacious of British American statesmen, by many patriotic and devoted public men, of all times, in other British Dominions beyond the seas, was utterly impossible of accomplishment, because of the deliberate determination of the British Government not to share its imperial authority. More recently, the Colonial Secretary, in an official despatch, which he asserts, "accurately represents the views and intentions of His Majesty's Government," declares that any form of Imperial federation involving representation from Canada in an Imperial Parliament is "a dead issue"; and that Imperial policy "is and must remain the sole prerogative of the (British) Cabinet, subject to the support of the (British) House of Commons."

If these declarations of British Ministers express the deliberate determination of the British people—and they do not appear to be questioned by British publicists of standing and authority—is not Canada

compelled to desist from advocating a policy of federation and centralization in Imperial affairs, and, in the alternative, relying upon the express provisions of its own political constitution, as well as upon the energy and efficiency, the patriotism and generosity of its own people, to develop under the King, as commander-in-chief, its own military and naval services?

THE vital underlying issue seems to me to arise out of the constitutional problem which remains unsolved, and to the solution of which the statesmen of Great Britain appear utterly indifferent. Many have felt that, if the British and Canadian Governments really desired it, a solution might be found which would give to Canada an effective voice in Imperial and international affairs. But the repeated overtures of Mr. Borden have been met with ill-concealed indifference by Mr. Asquith and his colleagues. They seem disposed to facilitate the political development of Canada along the lines indicated by its existing constitution; but, naturally, they cannot refuse to expend moneys which Canada may contribute, to control ships which Canada may give or loan, to retain, so far as concerns Canada, absolute and irresponsible control in Imperial and international affairs, so long as eight millions of Canadians remain so indifferent to the ideals of civil liberty and to the principles of responsible government, as to accept, with complacency, the damnable doctrine that loyalty to King and Empire involve servile submission to Mr. Asquith, or Mr. Churchill, or Mr. Harcourt, or Mr. Bonar Law, or Sir Edward Carson, or whomsoever the exigencies of British parochial politics may raise to office in Great Britain.

Meanwhile there are preparations for Canada's defense, of vital imperial importance, now long delayed, which Canadians are practically unanimous in approving. I refer to the fortification and defense of strategic points on the Atlantic and Pacific Coasts. At present St. John, N.B., a most important outport, and Sydney Harbour, the centre of coal supplies on the Atlantic Coast, are utterly undefended against the possible raids of foreign cruisers. There is not a modern gun defending the St. Lawrence River, the natural highway for the commerce of half a continent. Prince Rupert, the terminus of a great transcontinental railway, is without defenses of any kind. The fortifications at Esquimalt, which commands Vancouver Island, are sadly in need of modern equipment. Canada needs fortified harbours of refuge, dry-docks, improved facilities for repairing and outfitting ships of commerce and of war. These needs, which are absolutely essential for Canada's defense and for the protection of the great trade routes of the Empire, the Canadian Government can supply with the hearty approval of all parties.

But, like all countries in the early stages of their political development, Canada at times seems obsessed with an over-weening desire to make a splurge, to cultivate a spirit of spread-eagleism, to encourage the dramatic and sensational conduct of public affairs, with the result that we leave undone the all-important things, which all admit we could and should do, for conserving and protecting our vital national and imperial interests, while we dissipate our energies in futile efforts to attain pretentious and controversial ends.

## The Bye-Elections

BOTH political parties in Canada can find cause for rejoicing in the results of the three recent bye-elections in Canada. On October 11th an election was held at Chateaugay, an historically Liberal constituency. The Honourable Sydney Fisher represented the Liberals, and Mr. James Morris the Conservatives. The constituency is about two-thirds French, and one-third English. Morris won.

On Tuesday, October 21st, a bye-election took place in East Middlesex, an Ontario constituency historically Conservative. Mr. S. F. Glass, of London, represented the Conservatives, and Mr. R. G. Fisher the Liberals. The Conservatives won by a majority of over three hundred.

On Thursday, October 30th, another bye-election was held in South Bruce, a constituency which is historically Liberal, but which was won by the Conservatives in the elections of 1908 and 1911. Mr. Reuben E. Truax, Liberal, was elected to represent the seat by a majority of 125.