

Differences in time explain different constitutional forms

By W. R. Lederman

Great debt to England by both Canada and United States

The United States celebrates this year the two hundredth anniversary of the Declaration of Independence; in 1967, Canada celebrated the one hundredth anniversary of its federal union as a self-governing country. But the constitutions and legal systems of the two neighbours are much older than these events would indicate, drawing most of their form and substance by inheritance from some centuries of English constitutional and legal development. Accordingly, the first point to emphasize in comparative comments about these matters is that both Canada and the United States owe a great debt to England. There is much in this inheritance that explains many common features of government and law in the two North American countries today, but, nevertheless, in one important respect there is a critical difference, the explanation of which is the theme of this short article.

In the United States, there is a firm separation of powers in the Constitution between the executive and the legislative branches, the President and the Congress; whereas in Canada, at the national level, there is a union of the powers exercised by the federal ministry and the House of Commons under the constitutional principles of the cabinet system. (The same governmental contrast obtains between the American states and the Canadian provinces.) This critical difference gives rise to the following question: if both Canada and the United States inherited British public law and governmental institutions (as they did), why do we have this contrast? The answer requires a careful look at

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English and North American history of the eighteenth and nineteenth centuries.

When considering independence and complete local self-government, both Americans and Canadians looked to the example afforded by the British constitution as *functioned in Britain itself for the government of the home island by the citizens who lived there*. But they looked to the example at different times. For the United States, the critical period was the decade of the 1770s. For the British North American colonies remaining or established after the American Revolution, the critical period was the decades of the 1830s and 1840s. Only about 70 years separate the two periods, but, in 1,000 years of English constitutional history, it is doubtful if another 70-year period saw such important changes in Britain itself for the government of the home island.

What were the main features of the British constitution at home in London in the late eighteenth century? Modern historical scholarship shows that, while the legislative supremacy of Parliament had been established, nevertheless the real operating executive head of the nation was still the King himself — at this time George III. In the main, he personally controlled colonial administration and policy, foreign relations and the armed forces. It was true that he had ministers he selected to advise him, including a Prime Minister. Collectively they became known as the Cabinet.

But this did not mean that the modern cabinet system had arrived. The agenda for each ministerial meeting was set by the King, who was free to accept or reject ministerial advice when it reached him. Parliament did control the purse-strings and could insist on the legislation that it desired. The King, on the other hand, had to bargain with Parliament, in particular with the House of Commons, and to make concessions to obtain the legislation and revenue he wanted from time to time. But the House of Commons was far from democratic, and many seats could be controlled by the King or the ministers or other powerful