existed, Lord Byng could properly have refused. If Mr. Meighen's government, after its defeat in the House and while it was awaiting the verdict of the electorate, had tried to fill the three vacancies which then existed, again Lord Byng could properly have refused. Lord Aberdeen easily found an alternative government to take responsibility for his refusal, and it is altogether probable that Lord Byng would have also. Actually, both Mr. King and Mr. Meighen behaved with perfect propriety: Mr. King filled no vacancies till June 25, and Mr. Meighen none at all. In all three cases, an attempt to appoint extra Senators under Section 26 would, of course, have been even more improper than an attempt to fill vacancies, and there can be little doubt that the Governor would have refused. If in any one of the three cases the state of parties in the Senate had been such that the appointment of the full number of extra Senators would have converted a minority into a majority, the Governor would have been almost bound to refuse, as compliance with the request would have seriously embarrassed an incoming government. But both Sir Charles Tupper and Mr. Meighen already had majorities in the Senate, and the majority against Mr. King was so large that even if he had filled both vacancies and added the full eight extra members, he would still have been in a minority. In none of the three cases, therefore, was the government under any temptation to make improper use of Section 26. But situations in which it might be are easily conceivable.

There is also the possibility that a new government might find itself with some supporters in a full Senate of ninety-six members, but none of an age or capacity to bear even the relatively slight burdens of a minister without portfolio and leader of the Senate; it would seem to have a clear right to four appointments, though not to eight unless it had already shown that it possessed the confidence of the Commons.

It is not hard to imagine various permutations and combinations of these circumstances. But three principles are clear: (1) any government is entitled to meet Parliament with some supporters in the Senate; (2) no government without the confidence of the House of Commons is entitled to make it impossible for its successor to do so; (3) no government without the confidence of the House of Commons is entitled to make use of Section 26 to give itself a Senate majority which could not be overcome by an immediate further use of the Section by its successor.

These are some of the principles which, it is submitted, ought to guide governments and governors-general in the use of Section 26. But the conventions governing such use have still to be worked out, and they will have to be worked out without much help either from our own or British history. British precedent in regard to the creation of peers will be almost totally useless. For one thing, it is concerned almost entirely with the question of "swamping" the Upper House, something for which Section 26, as we have seen, is never likely to be of any use. For another, Britain has a Parliament Act; Canada has not. For a third, the House of Lords is not limited in number; the Senate is. The power of the Senate is much greater than that of the Lords, and the power of the Canadian government and House of Commons to overcome obstruction by the Upper

House is much less, indeed almost nil. Moreover, if a British government created a thousand extra peers, this would not prevent its successor from creating another thousand; if a Canadian government secured the appointment of eight extra Senators under Section 26, it might prevent its successor from making any appointments at all for several years. Because of the provisions of Section 27, it could make no ordinary appointments till at least two Senators from some *one* senatorial division of Canada had died, resigned, or become disqualified, and could make no further use of Section 26 till at least one Senator from *each* division had died, resigned, or become disqualified.

The need for a reserve power in the Governor-General to prevent abuse of Section 26 is therefore much greater than the need for a reserve power in the King to prevent abuse of the power to create peers. That the King has such a reserve power is abundantly clear from the events of November, 1910. On that occasion, he was willing to create enough peers to carry the Parliament Bill, but only after all other means had been exhausted. The first step was to try to get the Lords to pass the bill in the existing Parliament. If that failed, the next step was to dissolve Parliament, to see whether the electorate really favoured the bill. If the electorate said yes, the next step was to see whether the Lords would give way, as they had after the election on the Lloyd George budget. Only if all these steps had been taken without result was the King prepared to create enough peers to swamp the opposition. It is arguable that the Parliament Act, by providing an alternative method of overcoming obstruction by the Lords, has strengthened the King's reserve power in the creation of peers; certainly it can hardly be argued that it has taken it away. If the King has a reserve power in the creation of peers, *a fortiori* the Canadian Governor-General ought to have a reserve power in the use of Section 26 of the British North America Act. It should hardly be necessary to add that "reserve power" means what it says: a power held in reserve, to be used only on extraordinary occasions to prevent a flagrant breach of constitutional right. As long as Cabinets observe ordinary constitutional decency, restraint and decorum in the advice they tender, reserve powers remain in reserve; it is only on the occasions, fortunately rare, when Cabinets forget themselves, that the reserve powers come into play.

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