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THE NEW BRAND OF MARTIAL LAW.

The reading of the order-in-council creating a new brand of martial law by the prime minister, immediately before the debate on the Quebec riots, may come to be regarded as one of those turning points in constitutional history which declare whether the spirit of parliaments and peoples is the essential spirit of liberty, or is only a supine acquiescence in whatever is decreed by a junta to which, for the moment, the supreme power has been delegated.

The house of commons, on whose confidence the very existence of the government depends, was about to discuss a phase of the administration of the law, when the prime minister intervened with a decree which, as he said, had already amended the law which the commons were about to review. Nothing like that, surely, has happened to a British parliament since Charles I denied that parliament could control, as well as advise the king.

The mace was on the table, but the prime minister might almost as well have said, "Take away that bauble." His deliverance was an intimation that it didn't matter what the house might choose to say to the government, the government had executed its own will, and there was really nothing to be said. When Sir Wilfrid Laurier protested against the new autocracy by order-in-council, the prime minister challenged him to a vote of the house. Such a vote would of course have been carried. But the implications of the prime minister's challenge must not remain undiscovered or unexposed.

The increasing autocracy of the cabinet was one of the dangers against which far-seeing lovers of freedom in Britain have been on guard since long before the war. Too little apprehension has been felt regarding the development of the like spirit in Canada. Most of us regarded Union government as a recovery of parliamentary control. Next to the mandate of the country, clearly expressed at the polls, the mandate of the house of commons is supreme. A house which is not swift to guard itself is exposed to a double peril. The power of the house to make or destroy ministries remains, even though it be understood to have remained in abeyance.

When the Quebec riots broke the calm of the Easter recess, it was inevitable that the subject should be debated in parliament. With a fear that has become characteristic, the government tried to burk discussion—so far has respect for the cardinal function of parliament descended, and so confident is the assumption that the house of commons cannot be trusted to deal with a difficult national question in a restrained, dignified national way.

What could have been done? On Tuesday, the prime minister had announced that the government would propose, (to parliament, it was assumed), amendments to the Military Service Act, calculated to facilitate the operation of it, which had been unsatisfactory in the province of Quebec. It was then known that there had been bloodshed in the city of Quebec. It seemed that the military were in adequate control of the situation. There was no clamant urgency for orders-in-council to deal with the possibility of rioting elsewhere, to cause the government to exceed the provisions of the existing law. Nor was there greater urgency on Thursday, when the prime minister asked for the Quebec riots debate to be postponed another day. On Friday the situation was still better.

The government, if it desired to be fortified with every possible authority and to show the country the strongest possible hand, might have seen to it that the inevitable debate would take the form of recommendations to the government for action. It would then have been seen that parliament counted for something, especially when it was so fresh from the people. But the government, overnight, accomplished a revolution in military law and in parliamentary practice, with the object, as one newspaper said, of taking the wind out of Colonel Currie's sails. It was not worth while for such a cause to knock the breath out of the Constitution. . . . .

There was the order-in-council—what was the use of discussion? The commons were presented with an accomplished martial law, as soon as they proposed to discuss martial law.

What does the order-in-council do? It gives to the official commanding a military district absolute authority to decide that the circumstances of any "civil disturbance" justify his interference, and to do whatever he pleases to supersede the civil power. After he, on his own initiative, has created a situation which it may be dangerous to sustain and still more dangerous to abandon, the government may suspend the operation of every civil court and process in any area it declares to be affected; the military officer may try whomsoever he pleases by court martial, whose sentences only shall be subject to the review of the government. If the officer does not want to lay a charge, all the machinery of habeas corpus can be suspended, and anybody the military chooses to arrest in any part of Canada, on the allegation that he ought to be arrested, in consequence of any riot, can be held in custody, without bail or trial, as long as the minister of militia chooses. The silence of the tomb may fall upon him, as surely as it did upon many of those who were committed to the Bastille in the worst days of Louisian autocracy.

The case for the firm hand when disorder appears is simple. But, if the necessity for firmness is the result of an aptitude for blundering, the presumption is apt to be against enduring a weakness that only looks like strength. It cannot be denied that the order-in-council means the array of eight provinces against one. It carries the sinister implication that the judiciary of a province of two millions of Canadians cannot be trusted to operate justly the immemorial safeguard of British liberty, which was embedded in Magna Charta, and received its final embodiment in the Habeas Corpus Act, which was aimed at the tyranny of the second Charles.

Psychologically, at least, all Quebec is under martial law. If there is no escape from this consequence of the Military Service Act of last session, if a new parliament is to throw its protection over more drastic measures than were deemed advisable when the Act was passed, parliament should have been asked to face the situation, in full knowledge of all the facts. It should have given proof that it understood what was expected of it.

As it is, parliament is presumed to accept, without a murmur, the most extraordinary discount of its majesty that the war has brought—a discount which detracts from the qualifications for statesmanship of governors who seem not to understand the genius of the institutions for whose salvation forty thousand Canadian lives have already been laid down.

The above is a letter written by Arthur Hawkes and appeared in the Ottawa Citizen of Thursday, April 11th, 1918.