The World's Most Rigid Constitution

Written Out of Respect to the Holiday Known as Dominion Day

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FOR forty-six years Canada has worked out her political destinies under the constitution which the Fathers fashioned. And a good instrument of government it has been, a splendid monument to the vision and the judgment and the power to rise above parochial limitations shown by its Canadian framers. But it was not perfect when it was made, and, if it had been, all the wisdom of the world could not devise a framework of government that would remain adequate through all the changing years, with all the social and industrial and political changes that come in a half century of our momentous time. It should be made possible to amend our constitution, in definite, deliberate fashion. At least, we should waken up to two facts, first, that there is no certain agreement as to how it may be amended, and, second, that, if we accept what seems to be the Colonial Office interpretation, it may be ranked as the most difficult constitution in the world to amend.

Every other country of the western world has some well understood provision for such amendment. In the United Kingdom, whenever formal amendment becomes necessary to supplement or ratify the changes in the unwritten customs and conventions, an ordinary Act of Parliament suffices for the most momentous change, though it is widely held that a popular mandate should first be secured in a general election. In France, the two Houses, sitting in joint session at Versailles—beyond the shouts of turbulent Paris—may make what change they will. Italy has followed British precedent. In federal Germany the procedure is the same, save for the important difference that in the Bundesrat, or Upper House, any fourteen votes, out of a total, for this purpose, of fifty-eight, may veto the proposal; thus Prussia alone, or Saxony, Bavaria and Baden together, may call a halt. In spite of this veto power the constitution has undergone several amendments. In federal Switzerland, the constitution may be amended, in whole or in part, in a variety of modes, in all of which the assent of a majority of the electors in a majority of the cantons is the essential feature.

Take the United States.

OR take our southern neighbour. For years it has been a fashion among Canadians dealing with such matters to express pity for the United States, bound in a hopelessly rigid constitution, and to contrast this situation with the British ideal of flexible and living change. And it is true that to change the Federal constitution has been no easy matter. In the forty years after 1870 not one of the scores of amendments proposed was adopted. To secure the assent of a two-thirds majority in each house of Congress, and the assent of a majority in both houses of the legislature in three-fourths of the states, practical unanimity of opinion throughout the nation is essential. Judges have been driven to interpreting the constitution, stretching its inter-state commerce clause, for example, to cover federal acts of which Thomas Jefferson never dreamed. Politicians have built up customs which take rank side by side with the formal constitution, as in the custom which has made the members of the presidential electoral college mere rubber stamps, mere automatic registers of the popular choice, not the calm, free, superior agents the makers of the constitution so proudly planned. But recent events have shown that even direct amendment is not impossible. Within the past four years the United States has adopted two most important formal amendments, one empowering the federal government to levy an income tax which need not be, as before, proportioned among the states according to population, and the other, to which the last state legislature necessary gave consent only the other day, providing for the election of United States senators by direct vote of the people of each state. The constitution is amendment-proof no longer.

Our great sister Dominions do not share our anomalous position. In the new Union of South Africa, parliament may repeal or amend any provision of the constitution by ordinary law, except in the case of the representation of the provinces in the lower house, which cannot be altered for ten years, and the provisions as to the use of the Dutch language and the Cape native vote, which can be changed only by a two-thirds majority of both houses, in joint session. In Australia, a simple majority in both houses, or even in one house, if the other twice rejects the proposal, may submit any amendment to the electorate; a majority of the total vote, and a majority in a majority of the states, are required for its adoption. The representation of a state cannot be diminished without the consent of a majority of the electors voting in that state. On the last day of May, six important amendments, rejected two years ago, all succeeded in passing.

Canada alone retains the old colonial status. The Parliament of the Dominion could not make the Senate elective. It could not change the quorum of the House of Commons. It could not give Prince Edward Island the guarantee provided in the Australian constitution that its representation in the Commons will not be decreased. It cannot change one jot or tittle of the British North America Act, since that Act of the British Parliament did not include in the grant of powers any formal provision for amendment by the Dominion such as are found in the Australian and South African Acts.

But, it will be said, this is only a formal disability. The Parliament of the United Kingdom will pass any amendment that the people of Canada desire. Possibly, but who is to speak for the people of Canada? The Dominion Parliament alone? Certainly not. The provincial parliaments alone? Certainly not. A popular plebiscite? Not at all. The Dominion Government, together with the governments of the provinces? Probably, but how many of the provinces? Five of the nine, or nine of the nine? Who can answer?

The Historical Record.

IN 1907 the Parliament of the United Kingdom passed an amendment to the British North America Act altering the subsidies granted the provinces. The amendment embodied the substance of an address which had been passed unanimously by both houses of parliament, and had been agreed upon by representatives of all the provinces, except British Columbia, in conference at Ottawa the year before. The premier of British Columbia, unwilling to accept the extra hundred thousand a year which the other members of the Conference suggested to meet the special claims of the Pacific province, journeyed to London to appeal against this settlement, particularly if made a "final and unalterable" one. The reply from Downing Street is notable:

> Lord Elgin fully appreciates the force of the opinion expressed that the British North America Act was the result of terms of union agreed upon by the contracting provinces, and that its terms cannot be altered merely at the wish of the Dominion Government... But in this case, His Lordship feels that in view of the unanimity of the Dominion Government and of all the Provincial Governments, save that of British Columbia, he would not in the interests of Canada be justified in any effort to override the decision of the Dominion Parliament or to compel the reference of the question to arbitration. I am to add that no mention will be made in the Imperial Act of the settlement being final and unalterable, such terms being obviously inappropriate in a legislative enactment.

Writing in 1912, Mr. Keith, of the Colonial Office, summarizes the official attitude as follows:

> The Act is a formal instrument of constitution which can be amended by the Imperial Parliament, and will be so amended, but only in accordance with the wishes of the people of the Dominion as a whole, not at either federal or provincial bidding.

If the Colonial Office and the Parliament of the United Kingdom are to act only when there is virtual unanimity—as in this case, where the Dominion Parliament was unanimous in the formal vote and eight of the nine provinces were in agreement—our constitution may be considered the most rigid in the world. On the other hand, if the Colonial Office is to use its discretion, what is to be taken as a sufficient expression of Canadian opinion? Suppose a proposal to alter the personnel or powers of the Senate passes both houses by a narrow majority. What next? The wishes of the Dominion Government alone, we are told, will not suffice. Is a conference of representatives of the provinces to be called, or the bill submitted to the provincial legislatures? And if four provinces agree and five oppose, will the Colonial Office feel "justified in any effort to over-ride the decision of the Dominion?" Or, with a small majority in the Dominion Parliament, and all the provinces but the three prairie provinces willing to grant Prince Edward Island its present representation as an assured minimum, will that be considered "the wishes of the people of the Dominion as a whole?" Will the Empire stand the strain of any attempt of the Colonial Office to decide between opposing and nearly-balanced parties? Is there any reason why the men who work the Constitution of Canada, the sons of the men who framed that constitution, should not be empowered to amend it? Is there any reason why the Canadian should not exercise the liberty enjoyed by the Australian or the Africander? The only reason is the historical one that our constitution was drawn up a generation or more before the Commonwealth and the Union were formed, in the days before the conception of the Empire as a partnership between nations "equal in status if not in stature," to use Lord Milner's phrase, had seized men's minds. Inertia, and the lack of specific difficulties have prevented hitherto any demand for the reform of the anomaly.

Why Not Face the Facts?

WHY not go on as we have been? It is not the way of our race, it may be said, to tackle academic questions; let us wait till a concrete difficulty arises. But the question has ceased to be academic. The whole question of the composition and powers of the Senate will have to be decided in a few years. The unsatisfactory haziness as to the respective powers of the Dominion and the provinces in many spheres, notably as to the incorporation of companies, may require new delimitations. The Interprovincial Conference to be summoned this summer has on its agenda a dozen questions, any one of which may give rise to a demand for revision of the constitution. Why not face the facts, and make definite provision now, before opinion is warped by specific interests, and before the Colonial Office has been forced to take sides in a domestic dispute?

Opinion would differ widely as to the method of amendment to be adopted. Should a two-thirds majority in the Dominion Parliament be required, or a simple majority? Should the provinces meet in conference, or vote separately? Would five out of nine provinces be considered sufficient, or would two-thirds be essential? Or would a popular referendum on the Australian model better fit our needs? And how is the amendment providing how future amendments are to be made to come about? If there is division on this point, must the Colonial Office use its discretion once for all, in order that it may not hereafter have to face the same difficulty on more partisan questions? These are all matters for discussion, but the first need is to recognize a present dangerous uncertainty.

This summer, it is announced, the governments of the provinces are to meet in order to confer upon the many important questions at issue between the federal and provincial authorities, and upon other matters where joint action is desired. Might we hope that the leaders of the Conference will find opportunity to consider this question as well?

Music in Alberta

A WELL-KNOWN organist and choirmaster of a town in Alberta writes an appreciative criticism of a recent article in this paper headed "Music in Alberta." He remarks that the article so far as it went was very satisfactory to Western music-lovers, but that it did not contain all the facts.

Extracts from the western papers' reports of the Festival contain very warm appreciation of the work done by Lloydminster, whose St. John's Church choir, conducted by Mr. Francis Stevenson, scored 90 points out of a possible 100 and won the shield. In commenting on the event the Edmonton *Bulletin* said:

"Mr. Stevenson's choir showed perfect form in many ways. The enunciation was remarkably distinct, the attack was perfect, the tone superb and the balance exceptionally good. Taken altogether, the Lloydminster Choir is one of the best that has yet sung in the Festival. How far this organization outshone its nearest competitor may be imagined from the fact that the Judges, in their award, gave the second position to the Metropolitan Church Choir, with only 76 points. Holy Trinity Choir was only one point behind, 75."

Other choirs and competitors from outside places carried off honours which at the time it was impossible to record in the columns of a weekly two thousand miles from the scene. The COURIER has no desire to boom the musical work of one town at the expense of another. The correspondent's criticism is well-founded.