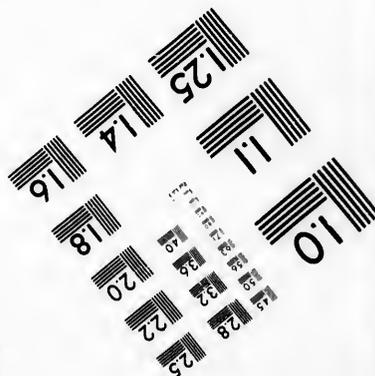
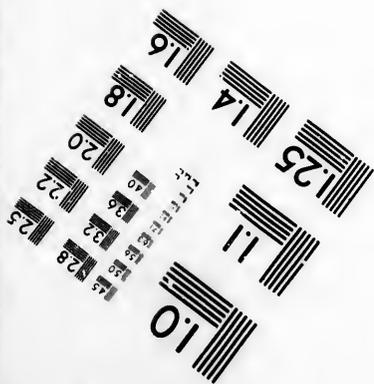
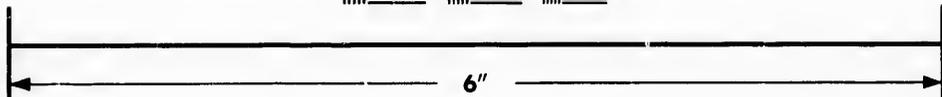
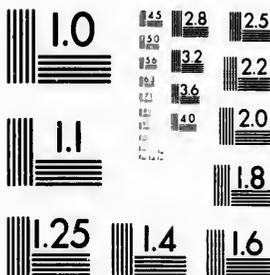
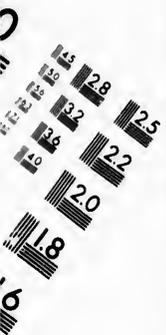


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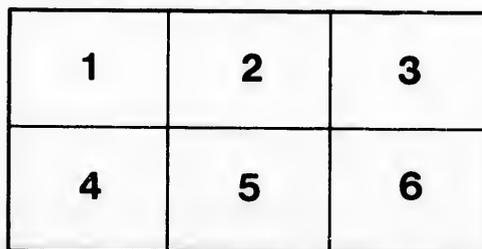
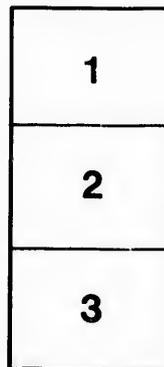
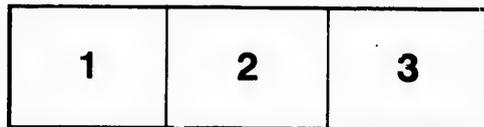
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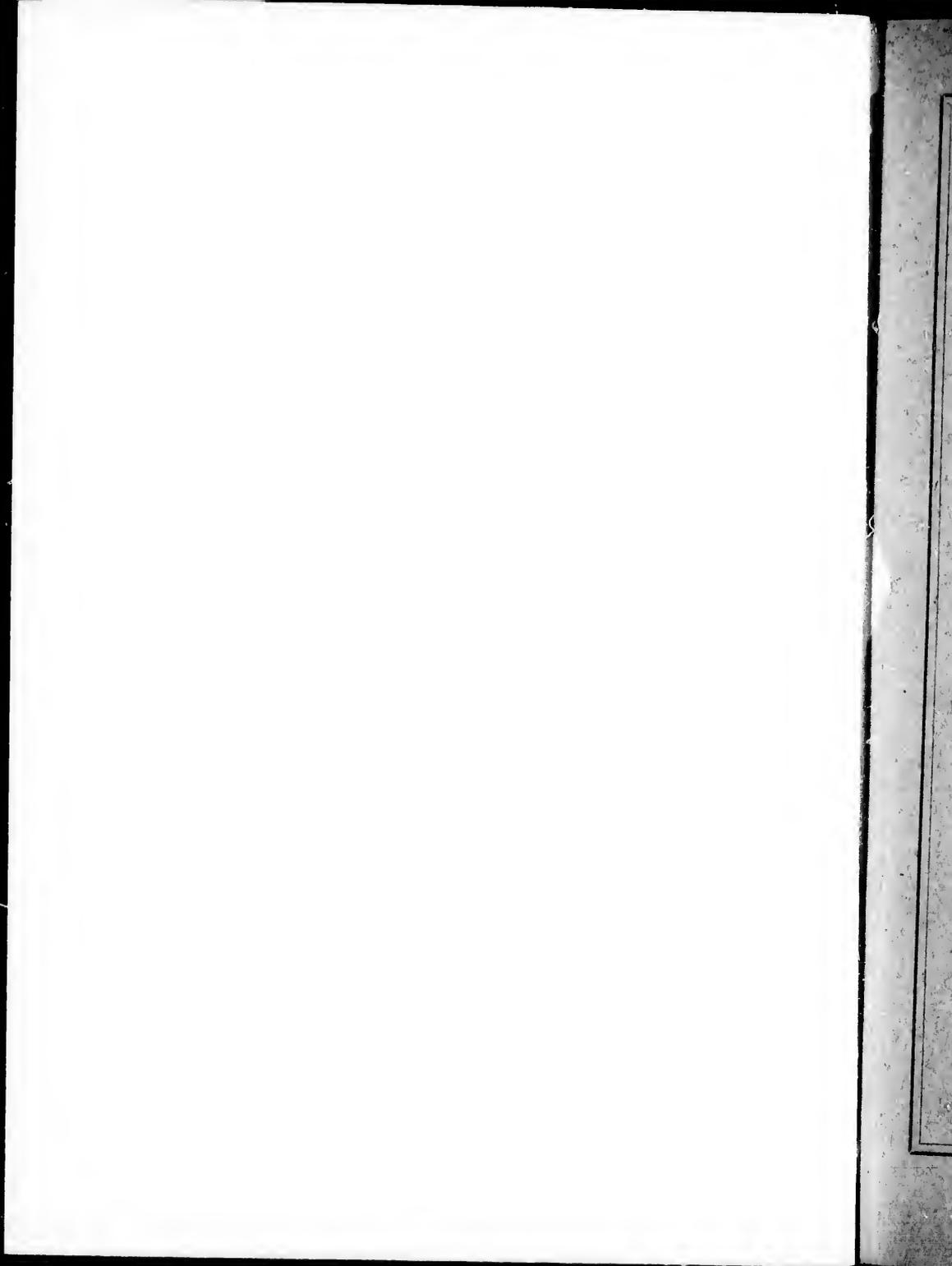
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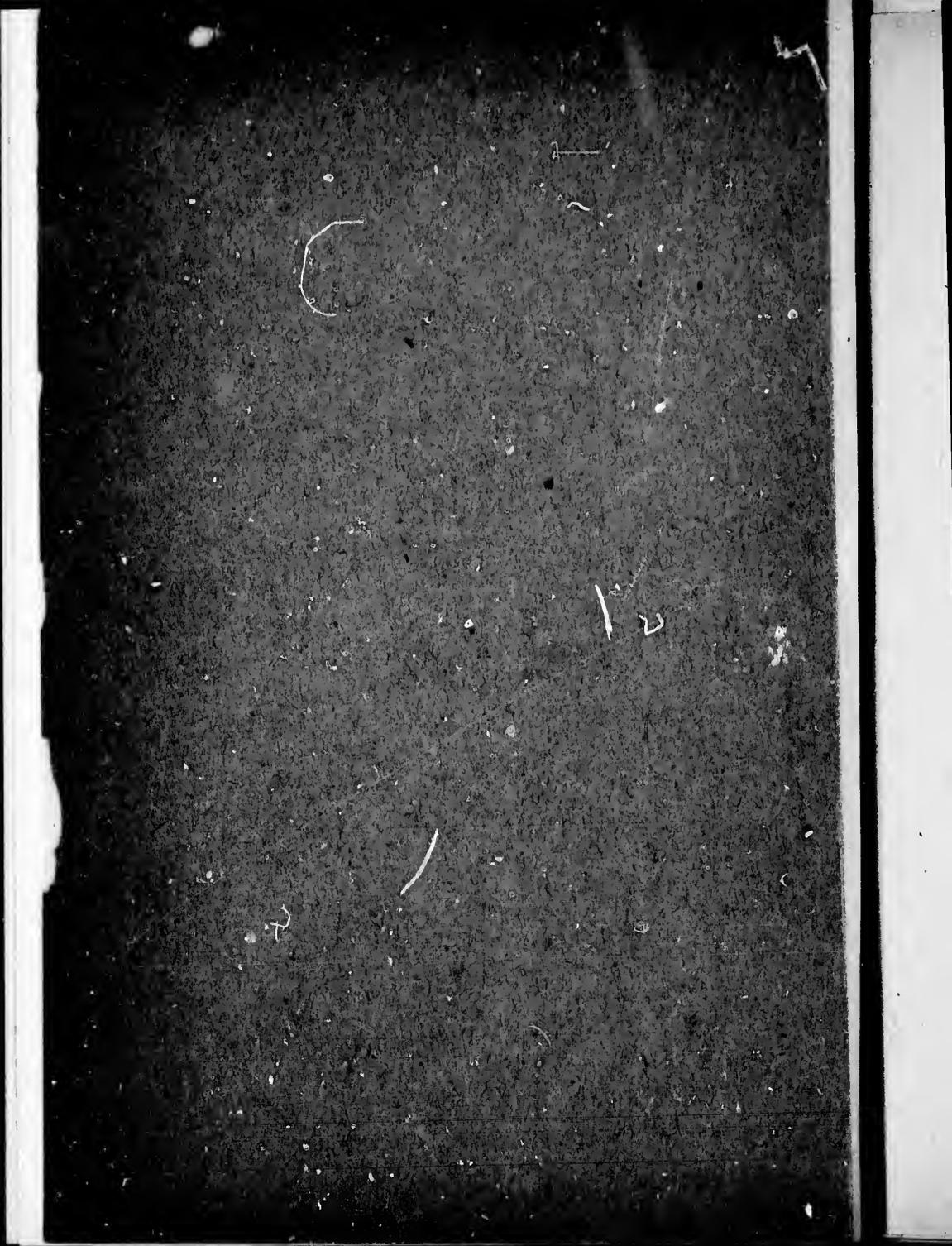
CONSTITUTIONAL THEORY

*By Stanley Smith*

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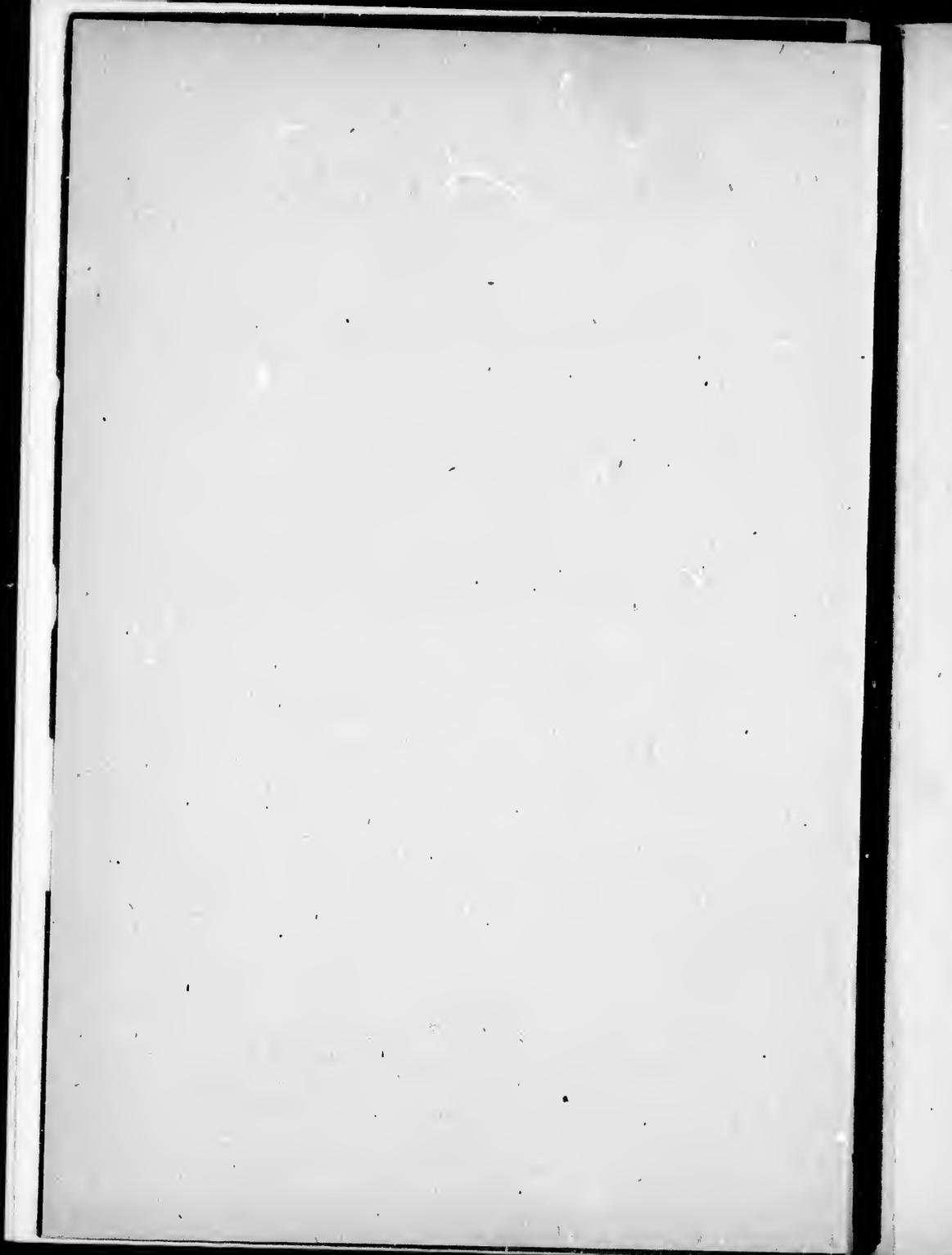
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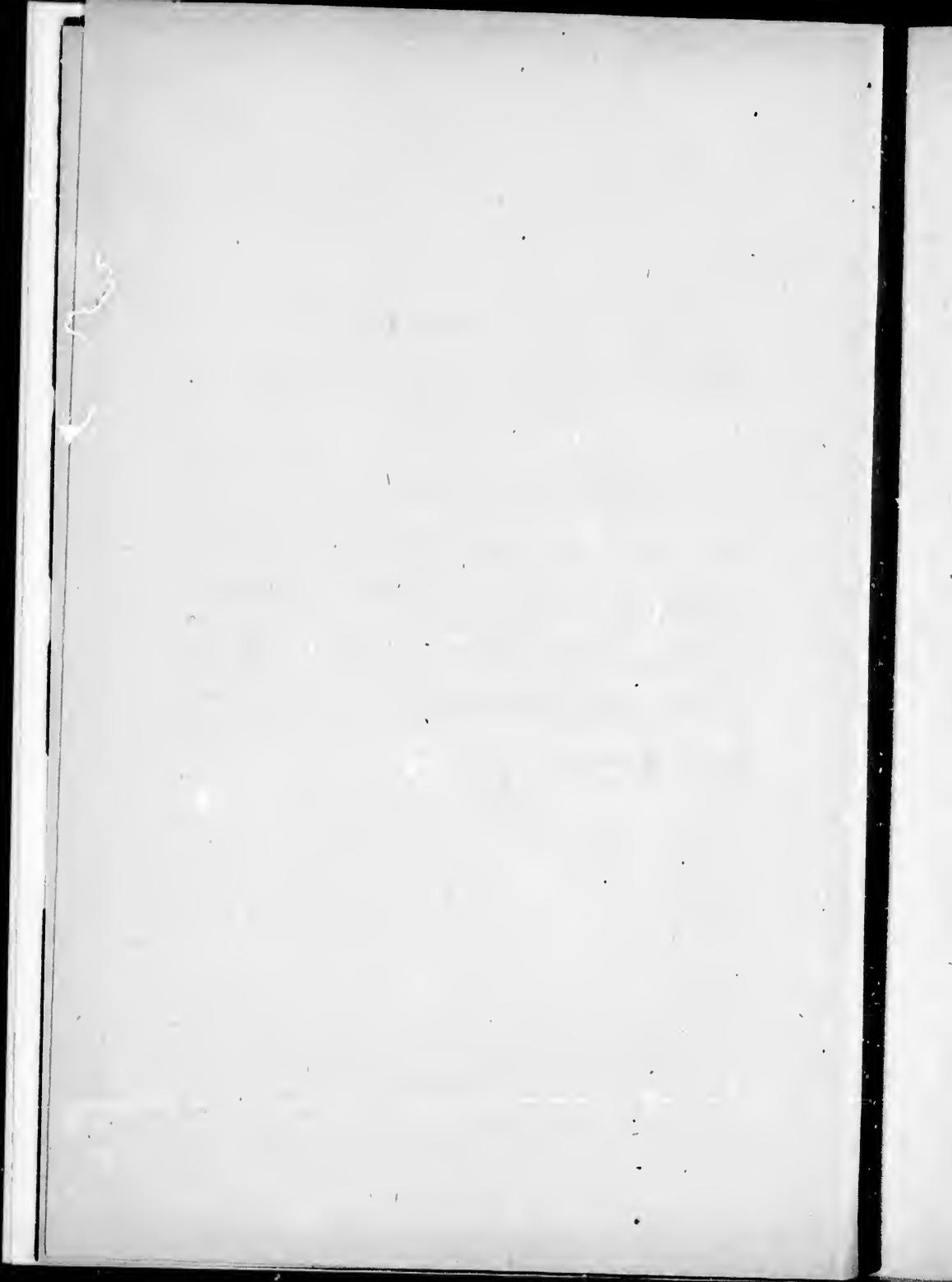
1888.



## PREFACE.

The writer of this essay wishes to state at the outset that he has no wish to advocate Annexation, Commercial Union or Independence. His object is merely to draw attention to certain facts and tendencies which are worthy of consideration at the present juncture.

*September, 1888.*



## THE BRITISH-AMERICAN CONSTITUTION OF CANADA.

At a time when Commercial Union (which, in the opinion of many, is tantamount to annexation) is being openly discussed by leading men in Canada, it may not prove unprofitable to examine some of the principal points wherein the American system of government differs from our own; and this inquiry is all the more interesting inasmuch as the form of government in the mother country is gradually approximating more and more closely to the Canadian model, and the change in this direction is looked upon with considerable alarm by some of the best authorities who have recently given their attention to the subject. Dr. Gneist, for instance, in the final chapter of his exhaustive history of the British constitution, does not hesitate to assert that a time may recur when the King in Council may have to take the actual leadership; in other words, that England may have to revert to the times of George the Third. Sir H. Maine is of the opinion that "we in England are drifting towards a type of government associated with terrible events—a single assembly, armed with full powers over the constitution, which it may exercise at pleasure. It will be a theoretically all-powerful convention, governed by a practically all-powerful secret Committee of Public Safety." Dr. Alpheus Todd, whose knowledge of the working of the British constitution in the Colonies is far more comprehensive than that of any English or Continental writer, confirms

Sir H. Maine's view in almost the same words. "We in Canada," says Dr. Todd, "are fast drifting into that hateful thing, a ministerial oligarchy, which will turn parliamentary government into a republic of the worst description;" and in so far as Canada is concerned it is hardly too much to say that she has ceased to drift and has come to an anchor where Dr. Todd predicted that she would. Such opinions as these coming from such eminent, and, at the same time, unprejudiced authorities, are not only unsatisfactory, but even alarming, and, if justified by facts, it must be admitted that the form which the British constitution has recently taken, both in England and in Canada, is fraught with danger to the community. While the British constitution is being thus attacked on all sides, the American constitution not only holds its own, but has been made the subject of constant eulogy by distinguished critics. Mr. Woodrow Wilson in his recent work, "Congressional Legislation," has, it is true, pointed out many weak spots in its practical working; but nothing that he has to say can compare for a moment with the crushing indictment brought by the English, German and Canadian authorities previously quoted against the modern development of the British system. That the separation of the executive from the legislative function, which is so characteristic a feature of the American system, should lead occasionally to considerable friction is what might be expected, but it surely by no means follows that matters would be improved by concentrating all political power in a single chamber. This danger was at any rate foreseen and avoided by the able men who framed the American constitution. That it does not always work harmoniously may be true enough, but it has stood the test of time, although frequently strained to the utmost, and even Mr. Gladstone has described it as the most wonderful work ever struck off at a given time by the brain and purpose of man. Mr. Gladstone was scarcely accurate, as it was not "struck off" in any sense of the words, and was merely a development of the State

constitution; its analogy to the State constitutions being one of the chief arguments urged in its favour by its supporters.\* This, however, is only by the way and it can hardly be denied that it has proved a practical success. The reason, perhaps, is not far to seek. The American constitution was carefully and deliberately worked out by able men for the benefit of a democratic republic, whereas the British Constitution is essentially aristocratic, to a large extent unwritten and traditional, and, when pushed to extremes (as it must be in a pure democracy for which it was never intended), it develops into the government of Sir H. Maine's secret Committee of Public Safety or Dr. Todd's ministerial oligarchy.

It is a fact worth noting, however, that the Americans would seem to have very narrowly escaped from the government of a single chamber, armed with unlimited powers over the constitution. The Anti-Federalists, led by Thomas Jefferson, George Clinton and other distinguished men, were strongly in favor of a French republic, with all political power concentrated in the National Assembly. They scoffed at the president as a bad edition of a Polish king, and far from advocating that solid union, which more than any thing else has conduced to the material success of the United States, they were anxious to make the bond which held them together as weak as possible, with a view to the preservation of their liberties. So powerful was their opposition that the federalist constitution had to struggle into existence in the face of innumerable difficulties, and the change of 2 out of 60 votes in New York, of 5 out of 168 votes in Virginia, and of 10 out of 355 votes in Massachusetts, would have proved fatal to its success. Well may Mr. Story remark that the history of these times is fraught with melancholy instruction, and had the Anti-Federalists carried

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\* This point is well worked out by Alex. Johnston, Princeton Review, Vol. IV, No. 2.

the day the great republic might have proved a warning instead of an example to mankind. Such a calamity was, however, averted, and no sooner had the constitution got into working order than the minority discovered it was not the work of a party but a Bill of Rights for the nation, and that the rights of the minority were as much respected and safe-guarded as those of the majority. Its success was then assured, and before many years elapsed we find Federalists and Anti-Federalists alike kneeling down before this wonderful bit of parchment and joining in a common worship.

If we wish to get at the ideas of the men who framed the American constitution we must take up the "Federalist," and of this series of letters it may be asserted that they, at any rate, are the most remarkable series of political essays ever struck off in a given time by the brain and purpose of man. They exercised a wide-spread influence at the time, and in view of the small majority by which the Federalists won the day it seems evident that had these letters not been written, the constitution would never have been carried. They are replete with sound common sense, and the writers were singularly free from those sentimental political "fads" so fashionable among advanced Radicals of the present day. They were no believers in the ultimate perfectibility of man, or if they were, they looked upon that desirable consummation as too far off to need notice from the practical politician. Their first idea was to secure a solid union. "In all our deliberations," said Washington,\* "we kept steadily in view that

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\* At a time when men like Mr. Parnell and Mr. Gladstone (who profess the most profound admiration for American institutions) are straining every nerve to weaken the bonds which hold the British Empire together, these words are surely full of import, and it seems not a little strange in turning over the pages of the Federalist to come across such arguments as the following:—"The history of Great Britain," says Jay, "is the one with which we are in general best acquainted, and it gives us many useful lessons. We may profit by their experience without paying the price that it cost them. Although it seems obvious to common sense that the people of such an island should be but one nation, yet we find that they were for ages divided into three, and that those three were almost constantly embroiled in quarrels and wars with one another." "If foreign nations," he adds, "find us destitute of an efficient government, or split into three or four independent and probably discordant republics, what a poor pitiful figure will America make in

which appears the greatest interest of every true American—the consolidation of our union, in which is involved our prosperity, felicity, safety—perhaps our national existence.” Next to securing a solid union the Federalists were quite determined that their government should be a government of *limited* powers, and that nothing should induce them to entrust their liberties to the tender mercies of a single chamber armed with *unlimited* power. “Why,” asks Hamilton, “was government instituted at all? Because the passions of men will not conform to reason and justice without restraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind.” Acting upon this view they were careful that the powers of every governing body and every officer from the president downwards should be strictly defined and limited; and that (following Montesquieu’s idea, as developed in the State constitutions) the executive, legislative and judicial functions should be separated and kept distinct one from the other in so far as was practicable. The result is that, as Mr. Nordhoff puts it, “Congress enacts the laws but cannot execute or enforce them; the President enforces the laws, but he does not make them; the Courts of the United States

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their eyes! How liable would she become, not only to their contempt, but to their outrage, and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves.” “If novelties are to be shunned,” says Madison, “believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces in order to preserve our liberties, and promote our happiness.” And Mr. Jay concludes his second letter by expressing his earnest wish “that it may be clearly foreseen by every good citizen, that whenever the dissolution of the Union arrives, America may have reason to exclaim: Farewell, a long farewell to all my greatness! British Separatists who are so fond of turning their eyes westward in search of political novelties might surely lay these words to heart and take a lesson from the founders of the great republic. Constitutions, however excellent, will not make a nation great, but this attachment to the Union, which, with the modern American has become a part of himself, has proved one of the most important factors in the marvellous practical success of the republic; and the decline of this feeling in Great Britain is one of the surest signs of decay.

construe the laws and apply them." This sharp line of demarcation is perhaps the strongest point in the constitution. The tendency of the Legislative and Executive to encroach upon each other's territory was well known to the Federalist leaders, and they did all that was possible to make each department self-protective as against the other. "All the checks," says Mr. Story, referring to this clause, "which, with reference to our habits, our institutions, and our diversities of local interests seem practicable to give perfect operation to the machinery to adjust its movements, to prevent its eccentricities and to balance its forces—all these have been introduced with singular skill, ingenuity and wisdom into the arrangements." That many of these checks have failed, as Mr. Wilson points out, to realize the hopes of their projectors can hardly be denied, but they have at any rate had the effect of saving the States from that complete domination of a single Chamber which ruined France, which is doing incalculable mischief in England, and which is working much evil in Canada; and of all of these checks that which has proved most effective is,—not the division of the Legislative Branch into the Senate and House of Representatives, but the sharp line which divides both Houses from the Executive.

The consolidation of the Union and the establishment of government with strictly limited powers were then the first objects of the Federalists; but, having got their constitution, the next thing was to preserve it. They knew that the besetting sin of republics is a restlessness of temperament and a spirit of discontent at slight evils, and that this restlessness will constantly drive the people to seek for relief in hasty and ill-advised constitutional changes. That this has proved a weak spot in the British constitution can hardly be denied, a constitutional amendment having been the bait dangled before the eyes of the electors at nearly every election during the past half century. This power of the

legislature to alter the constitution at will did not escape the attention of the cautious men who framed the American constitution. "Even in Great Britain," says Madison, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable, as well with regard to the constitution as the ordinary objects of legislative provision. They have accordingly in several instances actually changed by legislative acts some of the most fundamental articles of the government." In order to provide therefore against sudden changes in the constitution by the ill-considered vote of a mere majority of the Legislature, Article V provides that no amendment to the constitution can become valid unless carried by a majority of two-thirds in both houses of Congress, or by a convention called by two-thirds of the States, and in either case it must be ratified by three-fourths of the States. That this proviso was in no way too strict is proved by the fact that although sudden changes have been checked, many excellent amendments have been carried, notably, the clause which provides that private property cannot be taken for public use without compensation. "One of the fundamental objects of every good government," says Story, referring to this clause, "must be the due administration of justice; and how vain it would be, to speak of such an administration where all property is subject to the will or caprice of the legislature and the rulers." Under this clause much of Mr. Gladstone's extraordinary Irish legislation would have been impossible and his ingenious system of securing political support by confiscating the property of his political adversaries would have been impracticable. Such legislation in America would certainly have been tested before the Supreme Court; and the right of all courts, state as well as national, to declare unconstitutional laws void has been settled beyond the reach of controversy.

It does seem strange that a free people like the English should have granted to a single Chamber such unlimited—it might almost be said despotic—power, not only over their constitution, but over the private rights and property of the citizen, and the only explanation possible is that the true position has not yet been recognized. The power of the Crown and of the House of Lords has faded away so gradually that the change has been hardly noticeable. As time rolls on, however, and the bitterness of faction increases, there can be little doubt that a thoroughly democratic House of Commons will not hesitate to use its full powers without scruple when the political exigencies of the minister require it and all the evils attendant upon the domination of a single Chamber will become apparent. The British people may then wake up to the fact that their jealousy of the power of the Crown has led them too far, and that a despotic minister, supported by a docile majority in a Single Chamber, possessing full powers over the constitution, is even more dangerous than a constitutional monarch; and that as Dr. Gneist suggests it may become necessary to revert to the government of the King-in-Council.

The form which the British constitution has taken in Canada, where an aristocracy is unknown, and where an attempt has been made to reduce it to writing, as in the British North America Act, is very interesting, more especially as it has here developed, beyond all doubt, into the government of a single Chamber, pure and simple. The Senate, nominated by the Lower House upon which it is supposed to act as a check, has ceased to exercise any real influence, and the representative of the Crown has been so completely shorn of the nominal powers conferred upon him that he no longer possesses any executive power, and his influence, excellent as it undoubtedly is, is purely moral. All real power, executive and legislative, is exercised by the Chamber which directly represents the people, and the minister

who can command a majority in this Chamber is complete master of the situation. It should be remembered, however, that the constitution which has rendered this result possible, was in no way the work of the Canadian people; and the way in which this measure was carried through is in itself a remarkable instance of the power of the Legislature (under British forms) to alter the constitution without appeal to the people, and which would have been impossible under the forms of the American constitution. The scheme of confederation was never submitted to a national convention as would have been the case in the United States. It originated with ministers, the details were worked out by ministers, (assisted later on by British crown lawyers) and it was finally carried by what might almost be described as a ministerial *coup d'état*. "Leading statesmen on both sides," said Sir J. Macdonald, "had come to the common conclusion that some step must be taken to relieve the country from the deadlock and impending anarchy that hangs over it;" and there was certainly a general consensus of opinion among politicians of all shades of opinion that after so many drawn battles it had become necessary to select fresh ground. With a view therefore to deciding what had to be done leading statesmen from the various provinces met together, and after "a full discussion of sixteen days," the new constitution sprang into existence. The question of confederation had never been brought seriously before the people at any previous election, and that the people at large took very little interest in the matter is proved by the fact that the measure was hurried through by ministers on the ground that if not carried at once it never would be carried. Even the representatives of the people were ignorant of all details till the resolutions were put before them, and they were told that they must pass them promptly and without amendment, on the ground that they amounted to a treaty between the Provinces, and that to alter a detail was to destroy the value of the whole. Members

of the Legislative Council (which was then elective) who ventured to criticize the scheme, did so with the sword suspended over their heads, as the new Senate was to be nominated by the Ministry of the new Dominion, and opposition probably meant exclusion. As leaders of opposite parties in the Lower House had combined, a majority was certain, and in this way one of the most important constitutional changes of modern times was carried through by ministers in a few months without any appeal to the constituencies. As an instance of the power of the Legislature to alter the constitution at will it is perhaps without parallel, and recent events would certainly seem to indicate that had the people of the various Provinces been more thoroughly made to feel their responsibility for confederation, much subsequent trouble might have been avoided.

That a system of government thus brought into existence should show traces of its ministerial origin is only what might be expected, but the extent to which this is the case is remarkable. So great indeed are the powers reserved to the minister, that the Crown in Canada has ceased to have any real existence, and it has been proved on more than one occasion that the sovereign is quite powerless in any controversy that may arise between her representative and a strong minister who commands a majority in the popular Chamber. Dr. Todd's protests against this weakening of the power of the Crown are almost pathetic. "To assume that the sovereign has become a cipher in the State," says Dr. Todd—"a dumb and senseless idol"—without any measure of political power, is entirely inconsistent with the continuance in England of a monarchical government. Such an assumption would transform the Queen's cabinet ministers into an oligarchy exercising an uncontrolled power over the prerogatives of the Crown and the administration of public affairs, upon the sole condition that they are able to secure and retain a majority in the popular branch of the Legislature."

This, however, is precisely what has happened in Canada, and the Crown has in truth become no more than "a dumb and senseless idol," behind which the ministerial high-priest conceals his identity, and issues his edicts to a believing people. And yet a glance at the British North America Act would lead the reader to believe that the powers reserved to the Crown were very large, and one of the principal authors of confederation did not hesitate to assert that "our whole action shows that the conference, in every step they took, were actuated by a desire to guard jealously the prerogative of the Crown!" The British North America Act, however, is not easy to understand. Its authors assert in the preamble that they wish to "follow the model of the British constitution in so far as circumstances will permit;" but, on the other hand, Sir J. A. Macdonald, in recommending its adoption, says that, "in this system, which we propose for the people of Canada, we have in a great measure avoided the defects which time and events have shown to exist in the American constitution." The Canadian constitution is, indeed, a strange *mdlange* of British and American precedent, and it would not be easy to say which of the two predominates. In one point, however, it differs materially from its American half-sister; for, whereas the American written constitution always means precisely what it says, neither more nor less, the British North America Act rarely carries its true meaning, and any one trying to understand it will find himself wandering amid a labyrinth of myths. The old forms and verbiage of British tradition are so used as to obscure the real facts, and the true meaning is only arrived at when we come to see that the prerogative of the Crown, so jealously guarded by leading statesmen, is in reality the prerogative of the minister. Wherever such words as "the Sovereign of Great Britain," "the representative of the sovereign," "the Crown," "the Governor-General in Council," occur, they should be erased, and the word "Premier" substituted. To do this is merely to

put fact in place of fiction, and yet, had the Act been so printed, it must be confessed that the Canadian constitution would read strangely. The absence of all checks such as we find in the American constitution, the want of some proper line of demarcation between the executive and the legislative functions, and the uncontrolled power of a Cabinet which commands a majority in the ruling Chamber, then becomes apparent. Ministers must retain their majority intact, it is true; but, the entire patronage of the Crown having been absorbed by the minister, this task is more easy than might be supposed. He controls all appointments to the Senate (which is supposed to act as a check on the Lower House), to the Supreme Court, the Bench throughout the Dominion, the Civil Service and the Militia, and he can appoint or remove at pleasure the Lieutenant-Governors of the Provinces. These powers, however (which, perhaps, have not been seriously abused, although fitness counts for little unless accompanied by political services rendered), form but an insignificant item in the patronage at the disposal of the minister. Mr. Howland jokingly remarked, during the debates on confederation, that it was the first time he had ever known Railways made part of a constitution, and although not strictly accurate, the remark was apposite. Under the head of public works, the government (supported, of course, by the votes of its majority in the House) can build or subsidize railways, canals, harbour-works, river and lake improvements, military roads and many other minor undertakings; and the almost unlimited control over the public purse thus conferred upon the minister of the day has enormously increased the range of his patronage, and has led to an expenditure which (considering the small population of the Dominion) is truly alarming. It may indeed be asserted that, it is only in the distribution of this extensive patronage that the Canadian minister shows any sense of economy, and not one drop is wasted with a view to attaining the one object—that of keeping together a solid

majority in the single Chamber, which has become the sole depositary of political power.\*

If we wish to examine the arguments by which the authors of confederation recommended this composite constitution for adoption by the Canadian people, we must turn to the debates on confederation, but we may search through these debates in vain for that calm reasoning and straightforward discussion which characterize the letters of the "Federalist." When British precedent is referred to, the old forms of British tradition are constantly used in such a way as to befog the reader, and "the Crown" is constantly spoken of as if it were something still existing and exercising executive power. In discussing the constitution of the Senate, for instance, Sir J. A. Macdonald argued throughout as if the nominations by the Crown were a reality instead of being a most transparent myth. Mr. Brown, however, who did not possess the *finesse* of his leader, put the case plainly enough: "What we propose, says Mr. Brown, is that the Upper House be appointed from the best men of the country by those holding the confidence of the representatives of the people in this chamber. It is proposed that the government of the day, which only lives by the approval of this Chamber, shall make the appointments and be responsible to the people for the selections they shall make." This is straightforward, at any rate, and perhaps it may be admitted that it made very little difference whether the Senate was elected or nominated. The United States Senate works admirably as a check upon the Lower House, for the reason that both Houses possess legislative power only, and are

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\*An amusing example of the practical effects of this system of government by patronage came under the notice of the writer at a recent election. Some Government works were being carried on in the neighborhood, and the electors were alarmed lest the work might be put a stop to if they did not vote the right way, and at the time it was very doubtful as to whether the ministry then in power would carry the day. Their representative, however, was quite equal to the occasion. "Gentlemen," he said, "as you know, I have always voted with the government, and if you support me with your suffrages, I shall continue to vote for the government, *whichever side wins.*" He was elected.

distinct from the Executive.\* To suppose that any Upper House, whether hereditary, elective, or really nominated by the Crown, and possessing at most only a revisionary power, can act seriously as a check upon the House which directly represents the people, and which wields not only the legislative but the executive power also, seems out of the question; but that this single Chamber, which has already gathered to itself all legislative and executive power, should then proceed to nominate its own Upper House, does seem to be the very *reductio ad absurdum* of constitution-making. The result in Canada, at any rate, has been that the Senate has almost drifted out of sight and become a mere debating club for retired politicians, whose discussions, for all practical purposes, might as well be held in London as at Ottawa. It is true that when Sir J. A. Macdonald was defeated and Mr. Blake and his friends came into power, they were alarmed at having to face a Senate, every member of which had been appointed by their adversaries, and they at once endeavored to get the constitution amended with a view to securing a majority of their own in the Upper Chamber. They soon discovered, however, that their fears were groundless, and that the Senate understood its position far too well to interfere in any matter of importance.

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\*It is often asserted that the Senate possesses executive power, inasmuch as it acts as a check on the appointing and treaty-making power of the Executive; but it must be remembered that the Senate acts as a *check* only, and could not issue a single executive order. That the Senate has almost invariably abused its privilege of revising treaties is unfortunately too true, and notably in the case of the Fisheries Treaty; but this may surely be attributed almost as much to the nature of the case as to any inherent defect in the constitution. The position of Canada, practically independent of the mother country, granting no privileges to the mother country, which are not enjoyed by foreign nations, and yet dependent upon the mother country in case of war, is so utterly anomalous, that no precedent can be based upon it. Nor should we forget, as the Abbé Mably puts it, that "neighbouring States are naturally enemies of each other unless their common weakness leads them to league in a confederate republic, and their constitution prevents the differences that neighbourhood occasions, extinguishing that secret jealousy which disposes all states to aggrandize themselves at the expense of their neighbours." Mr. Story in his "American Constitution," makes use of this quotation from the Abbé Mably, and it may be said to cover the whole Fishery dispute.

In the constitution of the Senate, then, the authors of confederation followed neither British nor American precedent, but struck out a line of their own, which led to a complete *fiasco*; and, indeed, it would not be easy to discover wherein they had improved upon the work of such men as Hamilton and Madison did they not themselves enlighten us. "The great want under the American form," says Sir Geo. Cartier, "the point which they all admitted was the great defect—was the absence of some respectable executive element. How was the head of the United States government chosen? Candidates came forward, and, of course, each one was abused and vilified as corrupt, ignorant, incapable and unworthy by the opposite party. Such a system could not produce an executive head who would command respect. Under the British system, ministers might be abused and assailed, but that abuse never reached the sovereign." Sir John A. Macdonald is still more explicit: "By adhering to the monarchical principle we avoid one defect inherent in the constitution of the United States. By the election of a president by a majority and for a short period, he is never the sovereign and chief of the nation. He is at best but the successful leader of a party. We avoid this by adhering to the monarchical principle—the sovereign, whom we respect and love. I believe that it is of the utmost importance to have that principle recognized, so that we shall have a sovereign who is placed above the region of party—to whom all parties look up—who is not elevated by the action of one party, or depressed by the action of another, who is the common head and sovereign of all. In this constitution we propose to continue the system of responsible government which has long obtained in the mother country. This is a feature of our constitution as we have it now, and as we shall have it in the federation, in which, I think, we avoid one of the great defects in the constitution of the United States. There, the president, during his term of office, is in a great measure a despot, a one-man power, with the command of

the naval and military forces—with an immense amount of patronage as head of the executive, and with the veto power as a branch of the legislature, perfectly uncontrolled by responsible advisers, his cabinet being departmental officers merely, whom he is not obliged by the constitution to advise with, unless he chooses to do so. With us, the sovereign can act only on the advice of his ministers, those ministers being responsible to the people through Parliament.”

Now it must be admitted that all this reads remarkably well, and it is impossible not to admire the loyalty of the speakers; but a mere glance at the facts is sufficient to show that the entire edifice is as mythical as one of Grimm's fairy tales. The blessings promised to Canadians, which are not enjoyed by their less fortunate brethren in the States, are the monarchical principle, the avoidance of a presidential despotism, a respectable executive and responsible government; but of these, the monarchical principle exists to-day only as a tradition, and it was the distinguished minister who made this loyal speech who himself obliterated the last trace of the Royal prerogative in Canada by insisting on the dismissal of a Lieutenant-Governor (whose political usefulness was gone) although the Governor-General opposed his action to the last as unconstitutional. “I have a majority” was the only argument used, but it was enough. And where is the respectable Executive? It seems difficult to believe that the speakers can have been referring to themselves, and yet (unless it was “the dumb and senseless idol”) such was actually the case, as they themselves subsequently became the true executive. It is, however, when we find the president referred to as a despot that the contrast becomes most glaring, as the prerogative of the premier is in reality far more extensive than that of the president. The president can only act as head of the executive, and apart from the veto power (which can be over-ruled by a two-thirds vote), he possesses no power over the Legislature and could not

pass a single law. The Canadian premier is not only head of the Executive, but as leader of the House of Commons he controls the Legislature and can put through his own measures. The president cannot make appointments without the advice and consent of the Senate, but there is no such check on the minister, whose patronage (with public works as part of the constitution) is far larger and more extensive. The president is not necessarily the successful leader of a party; the Canadian premier must be. The president can only hold power for a limited period, but the successful leader of a party may hold it as prime minister for a life-time. Where, then, does the president have the advantage? Under responsible government, the minister, it is true, must retire before a hostile vote in the House of Commons; but "responsible government," again, is one of those old English traditional forms, which, like "the Crown," may mean a great deal or very little. In its original signification it certainly referred to the responsibility of ministers to Parliament for the acts of the Crown; but in Canada, where the Crown is the mere shadow of a shadow, it might, with almost equal truth, be taken as referring to the responsibility of the Queen's representative for the acts of his ministers, whose mouth-piece (on state occasions) he is bound to be, although the sentiments expressed cannot always harmonize with his own convictions. To speak of the responsibility of ministers to the people (as is constantly done) is, at any rate, inaccurate. The premier is not really responsible either to the Crown or to the people directly, but to the representatives of the people in the House of Commons; and so long as he can stand up and say, "I have a majority," his power is far more despotic than that of the strongest man that ever occupied the presidential chair.

It may be admitted, however, that if confederation was a political necessity, then a strong central government was also a political necessity. The history of confederations is

not re-assuring. When we consider that even the little United Provinces, although surrounded by enemies, found time to imperil their very existence by squabbling over state rights, and when we have before us the bitter experience of our neighbours across the border to the same effect, we must admit that there was every reason for anticipating similar trouble in the Dominion and for providing against it. Both the United Provinces and the United States were homogeneous masses as compared with the Dominion. It was a serious task to undertake to weld together a string of provinces, stretching from the Atlantic to the Pacific—separated from each other by wide stretches of barren waste—differing from each other in language, religion and race—without even a community of business interests, and touching at every point upon the borders of a kindred but vastly more powerful nation.\* It is not surprising, under the circumstances, that so able and far-seeing a politician as Sir John A. Macdonald should have done all that was possible to strengthen and fortify the central power so as to render it impregnable against all assault. Nor can it be said that the experiment has proved unsuccessful. Carefully nursed and stimulated by a paternal government possessing such extensive powers that it might almost be described as a beneficent despotism, the Dominion has progressed rapidly. Trade has been fostered, railways have been built, stretching from one coast

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\* It is this wide extent of the Canadian territory which renders any comparison between Great Britain and Canada illusive, and Englishmen who look to Canada as a precedent for federation can only be misled. It may be remarked, however, that confederation has certainly not had the effect of increasing kindly feeling between British and French Canadians but rather the reverse. Twenty years ago the *entente cordiale* between the two races was far more marked than it is to-day. The French province has undoubtedly become more national, more sectional and *plus bigot* day by day, and there is no reason why federation in Great Britain should not produce the same result. England and Scotland, Wales and Ireland, each hugging its own nationality, would gradually become more and more estranged, and as Mr. Jay expressed it, dear bought experience would soon proclaim that when a nation or family so divides it never fails to be against themselves. The fact is that, as Sir H. Maine has pointed out, democracies are paralysed by the plea of nationality, and there is no help for it.

to the other, large public works have been everywhere commenced and carried through, and the people have displayed a capacity for bearing taxation which, at one time, would have been deemed incredible. This side of the picture is sufficiently satisfactory, but is there no reverse? Is it not possible that this rapid rate of progress has been dearly purchased, and that material success has been secured by sacrificing those first principles, without which no nation can in the long run attain to strength and vigour? That our system of government has led the people to rely upon the government for assistance in all their undertakings, to an almost incredible extent, is beyond doubt, and this spirit of dependence was fostered from the start by the way in which confederation was brought about. Confederation was a *tour de force* from the outset. The various provinces were neither argued into it, nor persuaded into it—they were simply bought into it. This was done by a skilful manipulation of the debt and by granting a subvention of eighty cents a head of the population to each of the provinces, which resulted in each province being convinced that it had made an excellent bargain with the central government. The evils of this system and its probable ill-consequences were pointed out at the time, and notably by Mr. Dunkin, whose prophetic words have proved only too true.

“Whether the provincial Executive savors at all of responsible government or not,” says Mr. Dunkin, “be sure it will not be anxious to bring itself more under the control of the Legislature, or to make itself more odious than it can help, and the easiest way for it to get money will be from the general government. I am not sure either, but that most members of the provincial Legislature will like that way the best. It will not be at all unpopular the getting of money so. Quite the contrary. Gentlemen will go to their constituents with an easy conscience telling them,

'True, we had not much to do in the provincial Legislature, and you need not ask very closely what we did ; but I tell you what we did : we got the federal government to increase the subvention to our province by five cents a head, and see what this gives you—\$500 to that road—\$1,000 to that charity. So much here, so much there. That we have done, and have we not done well?' I am afraid, in many constituencies, the answer would be, 'Yes, you have done well ; go and do it again.' *I am afraid the provincial constituencies, Legislatures and Executives will all show a most calf-like appetite for the milking of this one most magnificent government cow.*" Here Mr. Dunkin hit off what has proved the greatest blot on the Canadian system of government ; and the truth of his remarks is proved by the fact that not long ago, the ministers of the various provinces met together and passed a series of resolutions, the gist of which was that the time had arrived when the central government must be called upon to increase its subvention to the Provinces. That the provincial governments, having once been subsidized, should desire to be subsidized again is, perhaps, not surprising ; but the system, unfortunately, does not end here. It extends throughout the length and breadth of the Dominion, and the people have become so accustomed to look to the central government for assistance in one shape or other, that no undertaking of any magnitude can be commenced without it. The strong hand of the central government doling out subsidies here and grants there (in return, of course, for political support at the polls) is felt everywhere, and to such an extent has this been carried that the political history of Canada since confederation might almost be written under the heading of "The milking of the government cow." The government cow, indeed, very much resembles that golden calf before which the people fell down and worshipped. That the revival of this ancient *culte* is demoralizing to the last degree must be self-evident to all who have followed the recent course of events in Canada, but

it is the one bond of union between the scattered provinces of the Dominion, and to throw it down would be a perilous experiment. It is the price paid for Canadian nationality, and it would be useless to haggle over it.

That annexation would improve matters seems very doubtful. There are two theories of government. One is that the Government should do *as little as possible*, leaving the people to manage their own affairs; the other is that the Government should do *as much as possible*—interfering, regulating and oiling every joint of the machinery day by day. This latter is the system which has always been in vogue in Canada from the time of the French *régime* downwards; whereas the former system was adopted in the States, where the New England settlers managed their own affairs from the first. It is, indeed, remarkable to find that immigrants from Vermont, who settled in Canada and who wished to bring with them their own local institutions, finally gave way and fell in with the paternal system.\* Tradition counts for much in these matters, and Canadians would not willingly depart from their traditions; nor should it be forgotten that our provincial governments are merely weak copies of the central government,† and no one who has watched their

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\*On this point Bourinot's "Local Government in Canada" is most instructive.

†The following report (taken from the *Star* of August 24th, 1888,) of a speech made by Mr. Mercier, wherein he describes the use to be made of the surplus arising from the forced conversion of the provincial debt is instructive as an illustration of the system pursued by the provincial government of the Province of Quebec:—"Mr. Mercier, on Wednesday evening, took as his subjects the principal political topics now agitating the people of this province, including the debt conversion scheme, which he declared his intention of carrying through, and dividing the saving in interest to the province each year (some \$250,000), one-third in education and two-thirds amongst the farmers in colonization, making roads, etc.; in grants to agricultural associations, in educating the farmers in better methods of farming, and in making improved butter!" It may seem incredible that a provincial premier should deliberately wreck the credit of his province in the money markets of the world, in order that farmers might learn to make butter; but it is in reality no more than a *reductio ad absurdum* of the Ottawa system, and it is interesting as showing the monstrous lengths to which that system may be carried when the powers conferred by our constitution fall into the hands of incompetent and not over-scrupulous men.

working (in Quebec, at any rate,) would care to see their powers increased. On one point only would the present writer venture to express an opinion: *It is a dangerous experiment for a democracy to concentrate all power in a single Chamber*, and it is far safer to follow the American system, which carefully separates the executive and legislative functions. If both our central and provincial governments could be remodelled on this basis it might be productive of much good, even at the cost of those jars in the machinery and occasional dead-locks, which are so much deplored by Mr. Woodrow Wilson. Mere smoothness of working may be dearly purchased at the cost of entrusting all political power to what Sir H. Maine has so aptly described as a Secret Committee of Public Safety.



## CONGRESSIONAL LEGISLATION.

Mr. Wilson, in his valuable work, "Congressional Legislation," frequently refers to the working of the British constitution in the mother country for precedents; but the fact is that the British constitution to-day is almost as much in a transition state as it was in 1787. When Mr. Bagehot published a second edition of his well-known work, in 1872, he had to add a long chapter, pointing out the changes which had occurred since the first edition was issued, and another chapter might now be added. Under the constitution of Solon, the Athenians were divided into classes, and although all had votes, none but the higher classes were eligible for the offices. In England a similar system has long prevailed (custom supplying the place of law), and the wire-pullers have been content to return to Parliament as their representatives members of the upper classes selected from the aristocracy, the landed gentry and wealthy merchants. It is only in Ireland, so far, that the people have availed themselves of their voting powers to return representatives from their own class, who have to look to politics as a means of subsistence. All this is gradually changing, and the new Local Government Bill will doubtless hasten the change, but much of this aristocratic tradition still lingers in the mother country, and not until it has been finally wiped out can any comparison be instituted between the working of political institutions in the two countries. It is in Canada, where the British constitution has been adapted to the use of a thoroughly democratic community, that the practical working of the system recommended by Mr. Wilson can best be studied, and in Canada it has certainly developed an alarming resemblance to that system of government by patronage, which the Marquis of Bute recommended to George the Third, and which that astute nobleman certainly had in his mind's eye when he made the sinister suggestion that "the forms of a free and the ends of an arbitrary government are things not altogether incompatible." And the materials

for the establishment of a similar system are all ready to hand in the United States. "A very different and much larger side of federal predominance," says Mr. Wilson, "is to be seen in the history of the policy of internal improvements. Its practice is plain and its persistence unquestionable. Its chief results have been that expansion of national functions which was necessarily involved in the application of national funds by national employers to the clearing of inland water-courses and the improvement of harbours, and the establishment of the very questionable precedent of expending in favoured localities moneys raised by taxation, which bears with equal incidence upon the people of all sections of the country; but these chief results by no means constitute the sum of its influence. Hardly less significant and real, for instance, are its moral effects in rendering State administration less self-reliant and efficient, less prudent and thrifty, by accustoming them to accepting subsidies for internal improvements from the State coffers; to depending upon the national revenues, rather than upon their own energy and enterprise for means of developing those resources which it should be the special province of State administration to make available and profitable. Expecting to be helped, they will not help themselves. If the federal government were more careful to keep apart from every scheme of local improvement *this culpable and demoralizing* state policy could hardly live. States would cease to wish, because they would cease to hope to be stipendiaries of the government of the Union, and would address themselves with diligence to their proper duties, with much benefit both to themselves and to the federal system." Everybody in Canada knows how true this is, and if Mr. Wilson is of opinion that by adopting our form of government he would improve matters he is sadly deceived. In the States "this culpable and demoralizing state policy" is still a mere feature of the system—with us it is the head-corner-stone of the edifice. No portion of Mr. Wilson's book is more instructive than that which deals with this policy of internal improvements, and it is indeed almost startling to find that the Committee on Commerce, which at one time controlled the patronage connected with this policy, became so powerful that it had to be split up into two Committees and the patronage divided. The presidents also kept a sharp eye on the jobs perpetrated in these

committees, and came down on them unmercifully, and "schemes of internal improvement came altogether to a stand-still when faced by President Jackson's imperious disfavour." Nothing will give us a clearer idea of the difference between the American and Canadian systems than the simple fact that, in Canada, all this dangerous patronage is controlled by the one secret Committee, which also possesses executive and legislative power, and which has no veto to fear! If Americans, instead of splitting up their Committee of Commerce into two committees, had handed over to it the entire government of the country, they would have hit off a very close approximation to the Canadian system!

Many readers of Mr. Wilson's able work, who start with a conviction that the American constitution requires remodelling, will be very apt to lay it down with a sensation very similar to that of the gentleman who was a good Christian until he had the misfortune to read "Paley's Evidences." They will see that, in its practical working, it has not, after all, wandered so far away from the "literary theory"—that it is still the tap-root, although subject to modification. And this because it was from the first a good, honest, solid piece of work, founded upon first principles, whereas the British constitution is largely "literary theory," founded upon precedents through which the powerful demagogue can run his pen. The whole question is really one of first principles, and if it is possible to lay down axioms in politics, it must surely be true that the power which makes the laws should not also be entrusted with their execution. That American politicians should find the shackles placed upon them by the constitution somewhat irksome, and that they should be anxious to shake them off, is what might be expected; but it by no means follows that the public would be benefited by the change.

Mr. Wilson's views may be epitomized as follows:—The constitution in its actual working is at variance with the "literary theory." The Legislature has encroached on the Executive, and Congress is really supreme. The government has become a government by 48 "little legislatures"—the Standing Committees. The President delegates his power to the Secretaries, who constitute the true Executive, but who are practically the servants of the Standing Committees. And yet not altogether so. "The

committees may command, but they cannot superintend the execution of their commands. There are ways and ways of obeying; and if Congress be not pleased, why need they (the Secretaries) care? Congress did not give them their places, and cannot easily take them away. Still it remains true that all the big affairs of the departments are conducted in obedience to the direction of the Standing Committees." These committees debate in secret. There is no open discussion, as Congress in open session merely registers the decrees of the Committees. The President possesses a certain amount of power, but the Speaker of the House of Representatives (who appoints the Committees) is even a greater man. The Secretaries are also great men, and so are the Chairmen of Committees. This division of power leads to divided responsibility, and it is impossible to fix the blame for bad government on the guilty parties. "Power and strict accountability for its use are the essential constituents of good government," and in order to secure the accountability, it is advisable to adopt the British system of responsible government.

These views are supported by such able and lucid arguments that they will carry conviction to many minds, although Mr. Wilson certainly appears to exaggerate somewhat the powers of the Standing Committees over the Executive. If, however, it be true that the American constitution has developed into government by several Standing Committees, it is at least equally true that the British constitution has given us, in Canada, the government of one secret committee, whose deliberations it is almost criminal to divulge, and whose powers are exorbitant. If Americans adopt this system, they will surely find that they have substituted King Stork for King Log.



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