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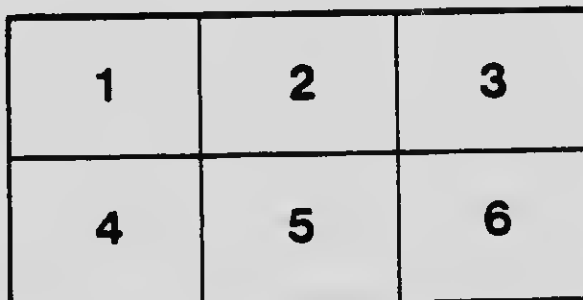
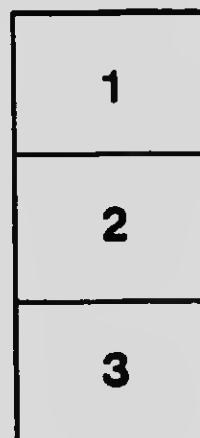
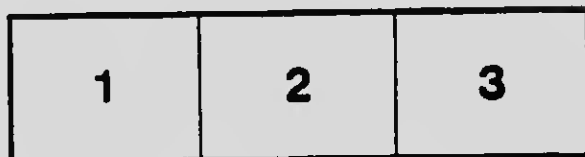
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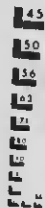
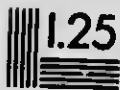
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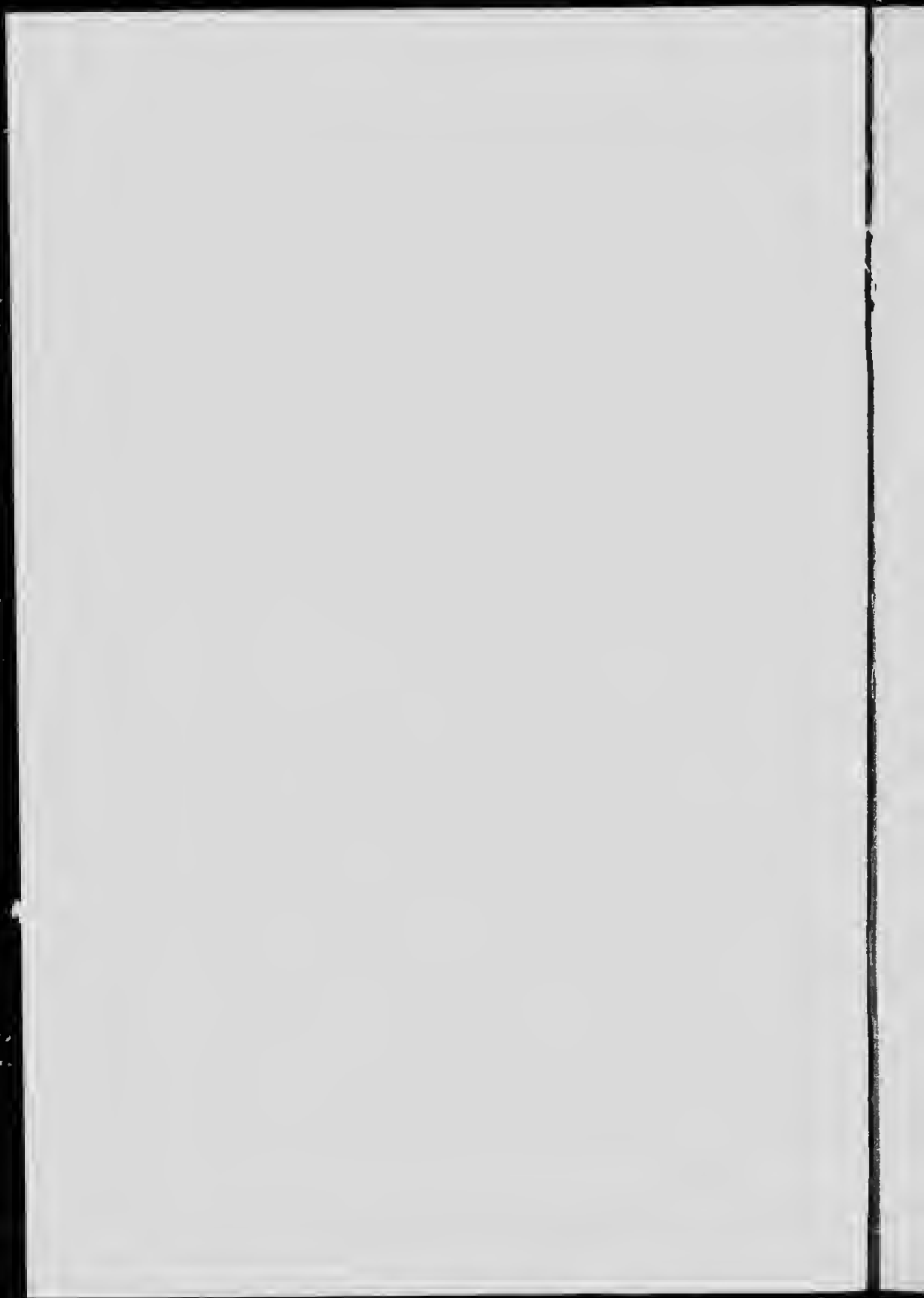
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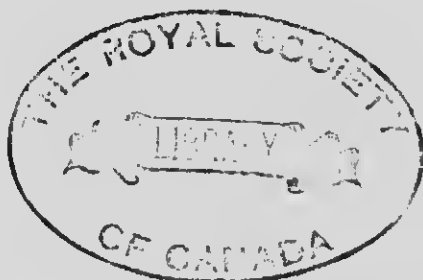


# The Constitutional History of Canada

BY

The Honourable WILLIAM RENWICK RIDDELL

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Address delivered before the Canadian Club, Toronto,  
November 6th, 1911.

JL 31

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(November 6, 1911.)

## The Constitutional History of Canada.

By THE HONOURABLE MR. JUSTICE RIDDELL.\*

**A**DDRESSING the first regular meeting of the Canadian Club for the season of 1911-12, Mr. Justice Riddell said:—

Before the conquest of Canada by the British in 1759-60, the government and constitution of our country were much like those of a Province of France—New France was as nearly as possible a transcript in this regard of the old France across the sea.

The King of France was represented by a Governor appointed by the King—usually a noble, who desired to replenish his coffers from the wealth of the new land; he had in Canada much the same powers as the King in France; but had always with him a watchful guardian of the interests of the King and of France, the Intendant—and the Intendant had also very large powers indeed particularly in respect of finance, police and justice. Then there was a Council, not elected but appointed, who acted as a combination of Judge, lawyer and administrator—the King, however, could disapprove and thereby nullify any act of theirs.

There was no such body as a Parliament in the English sense: but the country was governed on feudal principles.

In the country were the nobility—the noblesse—the seigniors who owned the land; they paid homage to the King, and had under them the peasants (“habitants” as they called themselves) to whom they leased land to be held on much the same terms as the lands were held by the peasantry in France. This seigniorial tenure was introduced substantially by Richelieu in 1627.

Not only did a Seignior when he succeeded to his estate pay homage to the King, his feudal superior, but when he

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\*The Hon. William Renwick Riddell is a Justice of the King's Bench Division of the High Court of Justice for Ontario, and has made many addresses on Constitutional Law and History.



sold or transferred his seigniorie he was obliged to pay a part, usually (at least in theory) a fifth part, of the purchase money to such superior. He also had the glorious privilege of being eligible to be appointed a member of the Superior Council—if the authorities saw fit,—he might also have a commission in the militia—for in time of war all the inhabitants of Canada might be called upon to do service in the army under the Governor or other commander. Very often he did not own his land in the fullest sense—frequently the Crown reserved mines, minerals, oak-timber and masts for ship-building, such lands as might be required for military purposes, and the like.

The Seigniors had in theory the right of dispensing justice, but that right was exercised by very few, and very seldom even by them.

The habitant as "censitaire" (tenant) was under many feudal obligations familiar to readers of Blackstone—for example, he was bound to take his grain to be ground at the Seignior's mill, and to pay for such grinding. If he went to another mill, that did not relieve him from paying his Seignior all the same. If a habitant, being the feudal inferior, desired to dispose of the land which he held, he was obliged to pay a substantial part of the purchase money to the Seignior; and worse, the Seignior might himself take the land within forty days of the sale. He was liable to the *corvée*, or forced labor, for his Seignior, as in France; he must give the Seignior one fish out of every dozen of those caught in Seigniorial waters; wood and stone might be taken from his land by the Seignior to build or repair manor-house, church or mill.

But while the peasants had no part in the government of the country, and were inferiors, their lot was immensely superior to that of their brethren in the old land, as they themselves were essentially superior to the peasants of old France in intelligence and manners.

The Seignior's lot might not be though' a very happy one—removed as he was thousands of miles away from Paris; and not seldom with no one of his rank with whom to associate.

But they all loved Canada—"O! Canada, mon pays, mes amours"—as their descendants do still—and no one can under-

stand the depth of that devotion who has not mingled with "les Canadiens."

They were brave, bold and adventurous, frugal, industrious and moral; and made the very best of soldiers for the kind of country in which they were called upon to fight.

Next to, if not indeed sometimes above the Seigneur, was the Curé—sometimes the only one in a Seigniorship except (or possibly not even excepting) the Seigneur who could read and write. The essentially religious character of the French-Canadian is seen in the high place the Curé held in his regard—a place which is little lower now than it was a century and a half ago. Indeed it has been said that the Canadian Curé exercised in Canada, the power in France of the King, the noble and the priest.

But neither priest nor peasant had any part in making the laws by which they both were governed; their government was arbitrary and military; they were accustomed to obey their superiors—and anything more unlike a constitution in our latter day sense than was the mode of government of that happy and fearless primitive people it would be hard to find.

In 1759 Quebec was taken by Wolfe, and the first period of Canadian Constitutional history came to an end. All Canada in 1760 was under the power of Britain, and the military commanders in the army of the conquerors governed the land as a conquered country. But the religion of the Canadians was not interfered with. Catholics as they were, and their conquerors belonging to a Protestant nation, their law based upon the Civil Law of Rome was administered by a conqueror whose law was based on the Common Law of England. Their French customs were respected and the only strange law imposed on them was the criminal law of England, which was more merciful than their own, which permitted torture, breaking on the wheel and arbitrary imprisonment.

The definitive Treaty between Great Britain and France—the Treaty of Paris signed 10th February, 1763,—placed the allegiance of Canada beyond any doubt, as by that instrument France ceded her to Great Britain. It was not, however, till October of that year that any change was made in the government of the new country. On the 7th of October, 1763, a

Royal proclamation was issued establishing in "the extensive and valuable acquisition in America four distinct and separate Governments. . . . Quebec, East Florida, West Florida and Grenada."

(Those of you who have studied botany may have noticed certain plants described as "Canadensis," "Canadense," which are not found in Canada at all. This is explained by the fact that when the botanical terminology was fixed, Canada included practically all the eastern part of the territory bordering on the Mississippi and down as far as Louisiana.)

Quebec, with which alone we are concerned, is defined in the proclamation in such a way as to make it wholly impossible to follow the description; and, indeed, no good end would be achieved could we at all make sure of the precise meaning of the words used.

By this Royal Proclamation, which was the beginning of the third period, the Governor was given power, with the advice and consent of the Council, to summon and call General Assemblies, and the Governor with the consent of the Council and Representatives was to make laws for the welfare and good government of the Colony "as near as may be agreeable to the laws of England." He was also, with the advice of the Council, to erect Courts of Justice to hear and determine all causes "as near as may be agreeable to the laws of England" with right of appeal to the Privy Council at Westminster.

It will be at once apparent what a tremendous change was intended to be brought about under this Proclamation. The Canadian had lived under a feudal system, looking up to and relying upon his Seigneur or feudal lord; there was now to be an Assembly of Representatives, though few of the Canadians could have any part in selecting the members; the former civil law under which they were born and had lived was to be wholly abolished and the English law introduced (think of the change if the people of Ontario were to be suddenly placed under the law of France or Germany) old customs were to become naught, and all was to be in confusion.

Courts of King's Bench and Common Pleas were in fact established, being Courts of Law and of Equity respectively;

and Justices of the Peace were appointed with inferior jurisdiction.

Many if not most of the English-speaking inhabitants of Canada came from the English colonies to the south, some too came from England; and these, Anglo-Saxon in origin, practically monopolized the control of the country—and they appear to have "run" the Courts as well. The many French-Canadians and the few British-Canadians found it impossible to agree: complaint and counter-complaint were made to the King. An Executive Council was formed, consisting of a group of officials appointed by the Governor. This was not unlike the old régime; and in it, many well-known men of the Canadian noblesse found a place.

The French-Canadians ignored the provisions for an Assembly, and it seemed impossible to get them to take any interest in a movement for such a body: it was not thought practicable to institute a representative chamber under such circumstances. Petitions were presented to the Governor signed by the British residents only, asking for a Legislative Assembly, but the Governor reported to the Home Government that the Canadians had refused to join in the petition. The main if not the only difficulty lay in religion. While the French had been by the Treaty of Paris assured of the free exercise of their religion, it was apparent that no Roman Catholic could be admitted to a British Parliamentary body consistently with the principles then professed in reference to the Parliament in the United Kingdoms—while it would be absurd to expect that the numerous French-Canadian Catholics would submit to be governed by a handful of Protestants, not one-hundredth of their number. The English did not want an Assembly with Roman Catholics in it: the French would not have one without. The English-speaking part of the community, of whom the early Governors speak in no very flattering terms, objected even to the French Catholics sitting on their own juries in their own Courts, and acted in everything in a most arbitrary and intolerant manner. The land was in a state of chaos, and the whole legal machinery paralyzed. The Canadians did not like juries, expressing their wonder that the English should think their property safer in the determination of tailors and shoemakers than in that of

their Judges. Besides, jury trials cost too much. The English had then the same firm belief in the jury system which characterizes some of their descendants to this day.

Finally, in June, 1774, the Quebec Act passed the Houses of Parliament at Westminster and the fourth period began. Notwithstanding the vigorous protest of the Corporation of London, influenced probably by the English in Quebec, and certainly affecting to act in their interest, "that the Roman Catholic religion, which is known to be idolatrous and bloody" was "established by this bill"; and notwithstanding that the King was reminded by them that his family had been called to the throne in consequence of the exclusion of the Roman Catholic ancient branch of the Stewart line (and he was solemnly told that the failure to provide in civil cases for jury trials, "that wonderful effort of human reason," was a breach of the promises made to British immigrants, and violated His Majesty's promises in His Proclamation of 1763), George III signed the Bill, and it became law, 14 Geo. III., c. 83.

This Act defined the Province of Quebec as containing all the territory now the Provinces of Quebec and Ontario and the "hinterland" of the English Colonies to the south, down the Mississippi to Louisiana. The Proclamation of 1763 was annulled, Roman Catholics were permitted to enjoy the free exercise of their religion and their clergy to receive their accustomed dues—all matters of property and civil rights were to be decided according to the laws of Canada, but the criminal law of England was to continue. A council appointed by the King was provided for which should legislate for the Colony, and there was to be an Executive Council of five as a Privy Council—the scheme for a representative and elective Assembly contained in the Proclamation of 1763 was not continued in the Statute,—the Statute, notwithstanding Fox's protest, declaring it "inexpedient to call an Assembly." The fact is that it was not thought safe to trust power to a Roman Catholic Legislature. Some American writers, who are suspicious of everything done by the British King and his Administration at or near the times we are now considering, think, or affect to think, that the Quebec Act, passed, as it certainly was, to pacify the French-Canadians, had in view a possible defection of

Canada from Great Britain to her discontented Colonies. I know of nothing to justify that suspicion;—"a jaundiced eye always sees yellow"—there is nowhere any sentiment expressed by the Canadians of anything other than fervent devotion to the Crown—the like sentiment characterizes them to-day—and it is hard to see how a French-Canadian Catholic could imagine his lot would be bettered by joining with the people of New England, the hated Bastonnais, his hereditary foes. We know that both pulpit and Congress expressed the greatest alarm at the tolerance of popery, that "blood-thirsty, idolatrous and hypocritical creed," and loudly denounced this betrayal of Protestant principle.

It is a fact not noticed by many people that the nation which boasts, and rightly boasts, that it has no established church, but that all creeds are equally recognized in the United States, began its career by protesting against allowing the French-Canadians to use their own religion in Quebec, that "blood-thirsty, idolatrous and hypocritical creed."

Notwithstanding the address of the Continental Congress of 1774, filled with philosophy and appeals to Beccaria and Montesquieu, which was signed by Henry Middleton, President, translated into French and printed in that language in Philadelphia, and then generally distributed among the Canadians, they remained loyal to the British Crown—Sir Guy Carleton "pursuing the exact reverse in every particular of the infatuated policy which alienated and lost to the Empire the thirteen Colonies." There can be little, if any doubt, that it was the Quebec Act which reconciled the Canadians to British rule and so played no small part in assuring the loyalty of Canada to the Empire.

The first Legislative Council under the new system met in August, 1775, the Act coming into force May 1st of the same year.

The inhabitants of what is now called Quebec remained in great part French; and as to those in that part of Canada there was little trouble arising from the provisions of the Quebec Act. The English remained discontented for a time with the change in the law in civil matters, but experience showed that Canadian law, based as it was on the Civil law, did not much

inconvenience the English merchant. The English criminal law was not objected to by the Frenchman,—bloody as it was, it was less barbarous than his own. But the Revolutionary War caused the immigration into the western part of that territory, afterwards Canada West, of a very large number of Loyalists who had left home and property to follow their flag and retain their allegiance. These were accustomed to English law and customs, and fretted under the foreign law to which they were subjected in Canada.

The French law and customs seemed to these vigorous and sturdy Anglo-Saxons absurd and intolerable: and the Protestantism of the newcomers was repulsive to the devout Catholic French-Canadians. The United Empire Loyalists had come from the New England States and elsewhere, and had been accustomed to freedom and self-government; they could not tolerate the irresponsible control of an appointed council, and petition after petition made its way to the King claiming relief.

The numbers rapidly increased in this western land, now Ontario, the Queen Province of the Dominion, until about 1790 there were there over 30,000 inhabitants. In Lower Canada, the disputes between the old and the new Canadians, the recent and the ancient subjects of the Crown, had continued. Of the twenty-two members who formed the first Legislative Council, eight indeed were French and Catholic, the oath of Supremacy having been graciously waived in their favor; but the English persisted in their attempt to shew “the difference between the conquerors and the conquered”—they feared or pretended to fear their loyalty, charged them semi-officially with being “rank rebels”; and in general acted as “patriots” (self-styled) are wont to act.

The Home authorities at length acceded to the request of the new colonists in the West; and the well-known Constitutional Act (31 George III, c. 31) was passed by the British Parliament. The Act was promoted by Pitt, and naturally met with strong opposition. Before the bar of the House of Commons there was heard a representative of the English colonists in Quebec: he vigorously protested against any division of the province, and demanded instead the repeal of the Quebec Act. In the House were heard the usual arguments against

Roman Catholics being admitted to a share of the government and against the imposition upon free-born Britons of foreign law which determined rights by the agency of Judges instead of juries, whose rules were those derived from the Roman law and not from the semi-divine common law of England. The merchants in London having trade relations with Canada also petitioned against it. Fox attacked the Bill as not liberal enough—he thought that Canada should have a constitution consistent with the principles of freedom. He also criticized the provision for the setting aside of lands for the support of the Protestant clergy, and objected to the division of the Colony into two parts of which one would necessarily be almost wholly French, the other English.

All opposition, however, was overborne by Pitt. By this Act, which brought in the fifth period Canada was divided into two parts, Canada East or Lower Canada, and Canada West or Upper Canada (now Quebec and Ontario). To each were given a Legislative Assembly to be elected by the people and an upper house called the Legislative Council, whose members were nominated for life by the Crown. The Crown also appointed all the public officers, including the members of the Executive Council for each Province. The free exercise of the Roman Catholic religion was once more guaranteed; and the Crown agreed to set aside one-eighth part of all unallotted Crown lands for the support of a Protestant Clergy. Some seem to think it was one-seventh, not one-eighth. But such is not the case: the agreement was to set aside one section for every seven sections granted to others. The Home authorities, also, reserved the right to levy duties for the regulation of navigation and commerce.

The object of this Act is described by Lord Granville to be to "assimilate the Constitution of Canada to that of Great Britain as nearly as the difference arising from the manners of the people and from the present situation of the Province will admit."

In Upper Canada the first Provincial Parliament met in a rough frame house at Newark (now Niagara) in 1792: and from that time onward the flood of legislation has never failed. Courts were established, the laws of England introduced,



new laws made. The Colony rapidly increased in population and wealth—in twenty years the population of Upper Canada was estimated to have risen to 77,000—and there was reasonable harmony and good-will.

In Lower Canada, the English and French Canadians continued to quarrel till the war of 1812 brought about at least an external peace. And everybody knows how the French Canadians fought during the war of 1812—not so many perhaps know how the Upper Canadians fought.

But in both Canadas, the curse of an appointed and irresponsible executive became more apparent as time went on, riches increased and affairs became more complex—benevolent despotism does not answer for any but the simplest communities.

In the Upper Province, the Executive Council became an oligarchy, nominated by the Governor from among public officers, judges, bishops, members of the Legislative Council, etc. These were a privileged class, monopolized the offices, obtained large grants of land and generally acted as irresponsible favorites of royalty are wont to act.

The Legislative Assembly began to fight against this tyranny to which freemen could not and would not submit; but the placemen long bid defiance to the popular body.

The nominated Legislative Council, too, formed on the model of the House of Lords (but not hereditary) claimed and exercised the right to reject and even to amend money bills—and as the Crown had a permanent civil list, the Legislative, representative, Assembly was helpless.

Fierce conflicts arose, the representative body claiming that the Ministers of the Crown should be responsible to them—but the body of office-holders, who were connected by social ties, common interest, and sometimes family relationship—and who were accordingly called the "Family Compact"—resisted all attacks.

A rebellion, largely due to the obstinate folly—or worse—of the Governor, broke out at length in 1837, but it was quickly quelled. Canadians were too loyal to permit of the success of a rebellion against the Crown.

In Lower Canada matters had taken even a worse course—the minority who were English in blood and spirit had grown

not only in numbers but in influence—most of the Legislative and Executive Councillors were selected by the Governors from their ranks. The French Canadians, loyal as they were, were looked upon still as a conquered people and were “kept in their place” with true British arrogance. The Assembly was naturally almost wholly French and Catholic—while the Councils were English and Protestant. The Anglo-Saxon never forgot his dearly prized superiority—his race and language continued to be the very best. When a Governor replied to an address from the Assembly in French before speaking in English, he was roundly denounced by the English press. His right to speak publicly any language but his own was denied, and the precedence given to the French language was “a base betrayal of British sovereignty” and “would lead to the degradation of the mother country.” One of the ablest of their advocates went so far as to say, “Lower Canada must be English at the expense, if necessary, of not being British”—language as significant as intelligible.

Most of the troubles, however, were financial. The Assembly made the same claims as its sister Assembly in Upper Canada and with the like success—or want of success.

Petitions were sent to the Home Government by the outraged majority, but in vain. The English openly expressed their purpose to make Quebec an English colony—and in Lower Canada also a rebellion broke out—and this also was quickly quelled. The two movements were largely independent of each other, although the “Patriots,” alias “Rebels,” in each Province were in communication with those in the other.

At this stage, the Government at Westminster induced John George Lambton, Lord Durham, to go to Canada and make a thorough investigation into the causes of the troubles and to suggest a remedy. Lord Durham’s Report is still an inexhaustible well of fact from which all future historians, constitutional and otherwise, must draw. His profound sympathy with all efforts toward freedom, his knowledge of the Constitution of the Motherland and his broad human outlook all fitted him for his task. It is not too much to say, that all Canadians and all lovers of Constitutional and representative

government throughout the British world owe John George Lambton, an eternal debt of gratitude.

As the result of his efforts, the Queen's Message in 1839 recommended the Union of Upper and Lower Canada; but the Government got into trouble, and moreover there was much difference of opinion in Parliament. Finally, however, the broad Imperial views of Lord Durham—because Lord Durham was an Imperialist in the sense in which we now use the term—made their impression upon Lord John Russell, the Prime Minister, and in 1840 the Union Bill drafted by Sir James Stuart was introduced into the House of Commons by Lord John. It was passed without much change or opposition, receiving the Royal assent July 23rd, 1840, and came into force in February, 1841 (3 & 4 Vict., c. 35): and thus began the sixth period.

The main characteristic of the constitution given by this Act is that responsible government was now at length granted—Her Majesty's government in Canada were responsible to the people of Canada and not to the Home authorities. Before this, while legislative powers were given to the Provinces, responsible government was withheld—and the only remedy the people had when their grievances grew acute, was to refuse supply.

By the Union Act, however, much was to be changed. The two Provinces became the Province of Canada, for which a Legislative Assembly was to be elected with forty-two members from each section. A Legislative Council was to be nominated by the Governor, not less in number than twenty, increased from time to time as should be thought fit, the Councillors to hold office for life. The Council was to be presided over by a Speaker appointed by the Government, the Assembly elected their own Speaker. All written and printed documents referring to the election of members, summoning and proroguing of the Legislature, and proceedings of either House, were to be in English alone. The laws in force in either section of Canada were to continue in force until repealed or amended; and courts continued, etc., etc. The territorial and other hereditary revenues of the Crown were surrendered for a fixed sum—and it may be said in general that the new Constitution was as exact

a copy of that of the United Kingdom as circumstances would allow. Lord Durham wrote that it was not "possible to secure harmony in any other way than by administering the government on those principles which have been found perfectly efficacious in Great Britain," and while he would not "impair a single prerogative of the Crown," and he believed "that the interests of the people of these provinces require the protection of prerogatives which have not hitherto been exercised," still "the Crown must submit to the necessary consequences of representative institutions."

The population of Lower Canada was at this time about 630,000, while that of Upper Canada was about 470,000—the Lower Canadians felt that it was an injustice that they should have no more members than the Upper Province—those in the Upper Province thought that three English-speaking Canadians were worth at least four French Canadians,—this grievance, as we shall see, changed face before many years. The French Canadians also felt aggrieved by the proscription of their language. Their complaints were not unnatural—the provisions complained of arose from Lord Durham's view that it was necessary to unite the two races on such terms as that the English would be given the domination. (That sounds very modern, does it not?) He said, "without effecting the change so rapidly or so roughly as to shock the feelings or to trample on the welfare of the existing generation, it must henceforth be the first and steady purpose of the British Government to establish an English population, with English law and language in this Province, and to trust its government to none but a decidedly English legislature."

This object wholly failed of fulfilment,—and I venture to think it will continue to fail of fulfilment, so long as the French Canadian mother continues to do her part as she has been,—the French remained French and their influence in Parliament steadily increased. They had been ostracised politically by the first Governor, and the acceptance of a government with a French Canadian at its head by his successor struck the High Tory Duke of Wellington with horror and dismay. The first Legislative Council of twenty-four members contained eight French Canadians.

At first the government was conducted on the principle that the French were inferior; but this idea speedily vanished, and before long, prominent French Canadians became not only members, but in large measure masters of the Administration.

The Home administration had retained the power of veto upon all acts of the Legislature by means of the Governor, an Imperial Officer; and it seemed as time went by almost impossible for those in the Colonial Office (or indeed in any of the offices of the Imperial Government) to learn that parliamentary government meant the same thing in Canada as in England, and that Canadians, French or English, were much more capable of understanding and deciding what was proper for their country than any Islander in London could be. The intense conservatism—I am not using “conservatism” in the political sense at all—of the average Home Minister or official may not be considered strange when we see even Gibbon, the learned historian, using such language as this:

“If you begin to improve the constitution you may be driven step by step from the disfranchisement of Old Sarum to the King in Newgate, the Lords voted useless, the Bishops abolished and a House of Commons *sans culottes*.” Old Sarum was, you remember, a field, which had sent members to the House of Commons in early times when it was a city, and continued to do so when there were no persons living there at all. The House of Lords has, indeed, been in our own day at length, next thing to voted useless, and as for the House of Commons, there is no member there now in knee breeches, they are all found with long trousers, and so are “*sans culottes*” in very fact.

Even greater men (perhaps) were subject to the same horrifying fears, for we may notice the predictions of Robert Southey. He was a poet and a man of great capacity. They were collected long ago by Mr. Phillips of “*The Times*.” In 1803 Southey proclaimed that “the Protestant Dissenters will die away. Destroy the test and you kill them.” But it was the overthrow of Monarchy which was always in his view. “The more I see, the more I read, and the more I reflect,” he writes in 1813, “the more reason there appears to me to fear that our turn of revolution is hastening on.” In 1815 he writes: “The

foundations of Government are undermined. The props may last during your lifetime and mine, but I cannot conceal from myself a conviction that at no very distant day the whole fabric must fall." In 1816 he writes: "The only remedy (if even that be not too late) is to check the press." In 1820: "There is an infernal spirit abroad, and crushed it must be. The question is whether it will be cut short in its course or suffered to spend itself like a fever. In the latter case we shall go on, through a bloodier revolution than that of France to an iron military Government." In 1823: "The repeal of the Test Act will be demanded, and must be granted. The Dissenters will get into the corporations. (That was at the time it was suggested that a man who did not happen to belong to the Church of England might possibly not be a bad member of Parliament. The idea that a Baptist, a Unitarian, or an Anything-arian, should be allowed to buy stock in a joint stock company, was, thought to be a terrible thing in those days). Church property will be attacked in Parliament. Reform in Parliament will be carried; and then—FAREWELL, A LONG FAREWELL, TO ALL OUR GREATNESS." When the Catholic Relief Bill passed he prophesied the results: "The Protestant flag will be struck, the enemy will march in with flying colours, the Irish Church will be despoiled, the Irish Protestants will lose heart, and great numbers will emigrate, flying while they can from the wrath to come." In 1832, it was proposed, to pass the Reform Bill—"The direct consequence of Parliamentary reform must be a new disposal of Church property, and an equitable adjustment with the fund-holders—terms which in both cases mean spoliation." He was disposed to pray that "The cholera morbus may be sent us as a lighter plague than that which we have chosen for ourselves." The King threatens to make Peers! This also was suggested but the other day. "Nothing then remains for us but to await the course of revolution. I shall not live to see what sort of edifice will be constructed out of the ruins, but I shall go to rest in the sure confidence that God will provide as is best for His Church and people." Later on, in 1838, he writes: "I am not without strong apprehensions that before this year passes away London will have its Three Days." And so forth, and so forth. Robert Southey had not a keen sense of humor.

The Governors in Canada came in conflict from time to time with the Legislatures who claimed all the rights of the British Parliament; but on the whole, the new Constitution worked well—and at length the responsibility of the administration to the people's representatives was fully admitted.

The two parts of the Province were of such different laws, manners, etc., that much of the legislation was for one only of the Canadas—and gradually the theory arose that a ministry must command a majority of the members from each part. This produced endless difficulties; and it was the cause of much intrigue and "log-rolling."

The Upper Province rapidly increased in wealth and population, overtaking and passing the Lower Province by 1850; and many of its public men complained of the provision, formerly favorable to their section, that each part should have the same number of representatives. Representation by Population—"Rep. by Pop.," as it was generally called—became a watchword of a whole political party in Upper Canada.

When the Ashburton-Webster Treaty was made in 1842—the "Ashburton Capitulation," as Lord Palmerston called it—and Maine was thrust like a wedge between Canada and the British Colony to the east without consulting either colony, the attention of all British Americans was called to the necessity of a highway between the divided Colonies; this plan gave way to a scheme for a Railway, an Intercolonial Railway; and in 1852 the Governments of Canada and New Brunswick agreed to build a line down the valley of the St. John. But this plan passed from an active stage, the Colonial Minister refused to guarantee the cost. From that time on, however, Canada, New Brunswick and Nova Scotia never wholly lost sight of the project; and various attempts were made to revive it.

These and other matters influenced statesmen of all parties and Provinces to seek a remedy; and the plan of Lord Durham outlined in his Report, for the Confederation of all the British American Colonies was from time to time made the subject of discussion. He was the first man in a responsible position to recommend the Union of all the British American Colonies. As early as 1858 a responsible Minister of the

Crown in Canada. Mr. (afterwards Sir) A. T. Galt, openly advocated it and moved for the appointment of a committee to ascertain the views of the people of the Lower Provinces and of the Imperial Government. In 1861 Mr. (afterwards Sir) John A. Macdonald (first Prime Minister of Canada), while opposing the principle of Rep. by Pop. in Canada, said the only feasible scheme as a remedy for the evils complained of was a Confederation of all the Provinces. And at length in 1864 he effected an agreement with his strongest political foe, Mr. George Brown, to secure this object.

Before this time the Colonial Secretary had assured the Governor-General that any Union, partial or complete, suggested with the concurrence of the Colonies themselves would be most favourably considered.

The Lower Provinces had tired of the fruitless negotiations looking toward Union with Canada, and had in the Session of their respective Parliaments in 1864 authorized the appointment of delegates to discuss and if possible to bring about a Union of the Maritime Provinces, New Brunswick, Nova Scotia and Prince Edward Island. Newfoundland always stood aloof. A meeting of these delegates had been set for the 1st of September, 1864. The Canadians felt that it would be advisable to take advantage of this opportunity; and accordingly eight members of the Coalition Government, of both sides of politics, went to Charlottetown, met the Conference and were asked to and did express their views. The Maritime delegates are understood to have come to the conclusion that a Maritime Union was impracticable, but that a union on the larger basis might be effected. In order that the feasibility of such a Confederation might be discussed and considered from every point of view, the Charlottetown Conference was adjourned; and it was agreed to hold another Conference at Quebec, to be attended by delegates from all the Provinces interested. This Conference met in the Parliament Buildings, Quebec, 10th October, 1864, and was attended by delegates from Canada, New Brunswick, Nova Scotia and Prince Edward Island; resolutions were adopted which formed the basis of the British North America Act subsequently passed, which established the Dominion of Canada—the seventh period being the result.



Beyond any question, the American Civil War and the Trent affair of 1861 had much to do with the movement for Union. So also had the anticipated "revocation" of the Reciprocity Treaty, and when this Treaty was in fact abrogated in 1866, its abrogation has no little effect in hastening matters to a conclusion—but into that I cannot enter at the present stage, it is too complicated and extensive a question.

The Imperial Government expressed their approval of the proposed Union as soon as it was brought to their notice (with two exceptions of no moment for our present discussion). The United States also expressed approval in general.

Both Houses of Parliament in Canada approved of the scheme in 1865 by large majorities; the New Brunswick Government, however, met with defeat at the polls when they ventured on an appeal to the electorate without bringing the question before the Legislature. The Nova Scotia House of Assembly in 1866 gave their adherence to the project by a majority vote of 31 to 19; and in the same year the former Government in New Brunswick were returned by a large majority at a new election; this new election had been ordered by the Governor by what many would consider a piece of sharp practice. The whole story certainly makes amusing reading. The House in that Colony also approved the plan by a large majority.

In 1865, and again in 1866, Prince Edward Island by her Legislature had in emphatic terms refused to enter into the proposed Union. Canada, New Brunswick and Nova Scotia sent delegates to England for the necessary legislation by the Imperial Parliament. Prince Edward Island was again invited to join and its representative, the Premier, then in London, was favorably impressed with the terms offered; but on his return home, his government was defeated.

Accordingly the British North America Act (30-31 Vic., c. 3) was passed by the Parliament at Westminster in 1867, creating the Dominion of Canada, composed of four Provinces, Ontario (formerly Upper Canada), Quebec (formerly Lower Canada), Nova Scotia and New Brunswick. On the 1st of July, 1867, was the first "Dominion Day" celebrated.

It was the common belief then and since that the delegates desired that Canada should be called the "Kingdom of Canada,"

so as to show our equality with the other "Kingdoms" across the sea. And it was believed at that time by many and is still by some that the United States objected to this title. I do not know of any reason for that belief. At all events, while "Kingdom" had been suggested, we were for some reason or other called the "Dominion" of Canada.

In 1869, another offer was made to Prince Edward Island, but this was also refused. Negotiations, however, renewed in 1872, were more successful,—they had got into financial difficulties in that little Province,—and the Island joined the Dominion as a Province. 1st July, 1873, the formal Order-in-Council being dated at Windsor, 26th June, 1873.

In the meantime the Dominion had bought out the Hudson's Bay Company in 1870; and out of part of the territory so acquired was formed the province of Manitoba by Act of the Dominion Parliament, 33 Vic., c. 3, 12th May, 1870.

In the far West was the island of Vancouver, made a Crown Colony in 1859, but reunited with the mainland in the Colony of British Columbia in 1866. In 1870 an arrangement was entered into that this Colony should also join the Dominion upon condition of the construction by Canada of the Canadian Pacific Railway. The Union was effected 30th July, 1871, by an Order-in-Council at Windsor, 16th May, 1871.

More recently two more Provinces have been formed out of part of the enormous territory of our Great West, viz., Alberta and Saskatchewan, constituted by the Acts of the Dominion Parliament, 1905, 4 & 5 Edward VII, c. 3, and c. 42, coming into force 1st September, 1905.

The remainder of the Continental British territory is divided into the Yukon and North West Territories, the districts of Keewatin and Ungava, and Labrador, this last under the care of Newfoundland. Newfoundland had not been officially represented at the Charlottetown and Quebec Conferences, but the resolutions of the delegates to the Quebec Conference contained a provision that she might enter the proposed Union, and set out the terms upon which she might do so. The British North America Act made provision for such a proceeding; and there were negotiations of a more or less informal kind looking to her coming into the Dominion. In 1868, terms of Union were

arranged with the Government of the Island, but that Government suffered defeat at the polls and the arrangement was not carried out. At least once since that time, representatives from the "Ancient Colony" have come to Ottawa with a view to their country uniting her fortunes with those of the Dominion; but the negotiations proved abortive; and Newfoundland still stands alone.

The Dominion of Canada has thus her nine provinces, all of which have (speaking generally) the same legislative rights and powers.

The Dominion has a Parliament of two Houses, the House of Commons elected by the people in each Province in proportion to the population, an adjustment being made after each decennial census, and a Senate in which each Province has its representatives to a number fixed by statute,—these are appointed for life by the Crown, i. e., the Government of the day. The Dominion Parliament legislates for the whole Dominion, has full jurisdiction over criminal law, customs tariff, and generally everything which would affect the whole Dominion.

The Governor-General, appointed by His Majesty, i. e., by the Administration at Westminster, represents the King; but he is guided, as the King is, by the advice of his constitutional advisers.

The Provinces have (except Quebec and Nova Scotia) only one Chamber in their Legislature—Quebec and Nova Scotia have also Legislative Councils appointed for life by the King, i. e., the local Ministry for the time being.

In each Province is a Lieutenant-Governor appointed by the Ottawa Administration for a term of years: he represents the King; and the office of Lieutenant-Governor is the only part of the Provincial Constitution which the Province (speaking generally) cannot amend or alter. The Lieutenant-Governor is the head of Society; but like his superior, the Governor-General, he takes no part in politics or legislation.

The legislation of the Provinces is confined to local matters, although these are of enormous importance: all matters of property and civil rights come within the ambit of the jurisdiction of the Provinces.

When the Fathers of the American Revolution came to frame a Constitution for the new nation, they extracted from the British Constitution and from other sources what they conceived to be the true principles of government, and reduced these principles to a written form. The result is a hard and fast limitation of the powers of Executive and Legislature. It is plain, I venture to think, that those who framed the Constitution of the United States had not that perfect trust in the wisdom of their people and their descendants of which we so often hear. It seems to me that the document, magnificent as it is, displays not trust in but distrust of the people—doubt as to their use of their freedom. However that may be, it is certain that there are many constitutional limitations which neither government nor people can transgress. Using the word “constitution” in the sense in which it is used in the United States, the Constitution of Canada may be described by a parody on the famous chapter on the snakes of Ireland—“There are no snakes in Ireland.” Our Constitution is not only in theory but also in fact similar in principle to that of the United Kingdom—and there Parliament can do anything that is not naturally impossible,—“It is a fundamental principle with English lawyers that Parliament can do everything but make a woman a man and a man a woman”: and within the limits of subject and area, our Parliament and Legislatures are supreme and have the same authority as the Imperial Parliament itself. The only function of the Courts in this regard is to decide whether the subject legislated upon is within the list of subjects given to the legislating body, and to determine the meaning and application of the enactment.

I have in an article in the *Canadian Monthly*, June, 1910, drawn a comparison between the Constitutions of the two countries, and I do not here pursue the enquiry.

Canada is mistress in her own house: Canadians are subjects not of the people of England but of the King of Great Britain and Ireland and of the British Dominions beyond the Seas, who is equally the King of the people of England. How often you hear it said that we are subjects of England! we are nothing of the kind: we are subjects of him who is King of Canada, in the same way that he is King of England, and he is equally

King of the English as of the Canadians. We pay no tribute to that King but the tribute of love and well deserved loyalty. We, free, happy and prosperous under that King, do not desire to change our allegiance or our condition for any other on earth. The King unites all the British folk together, and is the bond of union of all the English-speaking peoples except those of the Union to the south of us. We British live in amity and harmony together, and we rejoice to think that for more than a hundred years, spite of troubles neither few nor small, misunderstandings and competition, we have lived without war with our separated brethren of the United States. And we rejoice to know that the nations are growing closer together, each country to live out its own life and work out its own destiny, but each confident at all times of the warmest sympathy and most cordial co-operation of the other.

I conclude by pointing out that throughout our whole history, at least from 1792 two facts stand out prominently, two principles have ever been kept in view.

First, our insistence on British Connection. Ontario, Upper Canada, was settled to a great extent by United Empire Loyalists—with them loyalty was a passion, and it has not been bred out in their descendants. And practically all who came to this Province participated in the same feeling. We have steadily resisted the suggestion either to go off by ourselves or to join any other nation in allegiance. What Upper Canada did, so did Lower Canada—the heart of the French Canadian is loyal and always has been. True, there have been temporary ebullitions, froth has now and again covered the mighty deep and masked its real condition. But then and now the great mass of French Canadians are true to British Connection as the needle to the pole.

But while we have insisted that the British flag shall be ours, there is another principle we have never lost sight of—we have kept steadfast to this principle in fair weather and in foul—sometimes amidst trouble and misunderstanding, and sometimes even what almost looked like revolt—we have determined to govern ourselves. The Englishman, Scotsman, Irishman, Frenchman, who came out to Canada, could not be made to believe that he had left his brains behind him or that he had

forgotten how public affairs should be conducted. He did not believe that those who had not come out but had remained behind, knew more than he. And his descendants do not admit and never have admitted that the descendants of those who remained behind are better than the descendants of those who came to Canada. And Canadians of all kinds have confidence that they are able to govern their own land without interference by any people, British or otherwise. And so we shall remain British, and as British we shall govern ourselves—and we are content.

## NOTE.

Perhaps the following chronology may be of value—or at least interesting:—

- 1758 First Legislative Assembly in Nova Scotia;
- 1759-60 Conquest of Canada;
- 1760 Military Rule in Canada;
- 1763 Formal Cession of Canada and Royal Proclamation;
- 1769 Prince Edward Island formed into a separate Province, being divided from Nova Scotia;
- 1774 The Quebec Act;
- 1784 First Legislative Assembly in New Brunswick;
- 1791 Constitutional Act;
- 1792 First Legislative Assembly in Upper Canada and in Lower Canada;
- 1832 Legislative Council formed in New Brunswick;
- 1837-38 Rebellion in Upper and Lower Canada;
- 1838 Legislative Council formed in Nova Scotia separate from Executive;
- 1840 Union Act;
- 1841 First Canadian Parliament for United Canada;
- 1848 Responsible Government fully recognized in New Brunswick;
- 1848 And in Nova Scotia, having been partially recognized in 1840;
- 1850 Prince Edward Island obtains full responsible government;
- 1858 British Columbia a Crown Colony;

- 1866 British Columbia and Vancouver Island united as one Colony;
- 1867 British North America Act;
- 1870 Province of Manitoba formed;
- 1870 N. W. Territories organized with a Lieut.-Governor and small nominated Council;
- 1871 British Columbia admitted into Dominion;
- 1873 Prince Edward Island admitted;
- 1876 Manitoba abolished Legislative Council;
- 1888 N. W. Territories receive a Legislative Assembly;
- 1904 Provinces of Alberta and Saskatchewan formed.
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