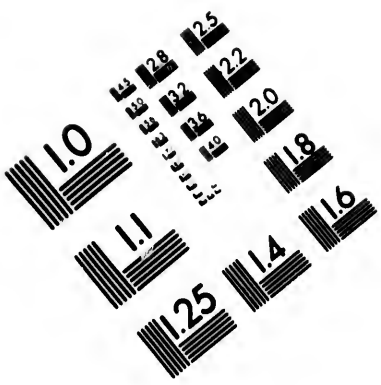

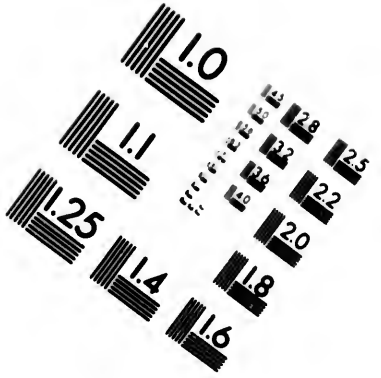

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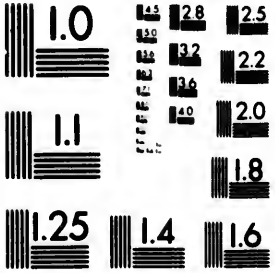

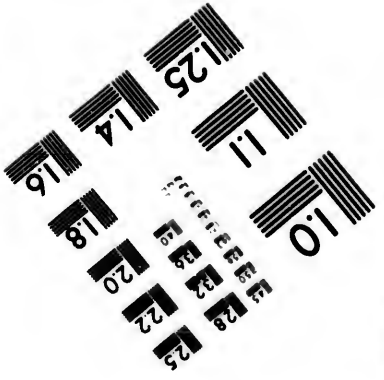

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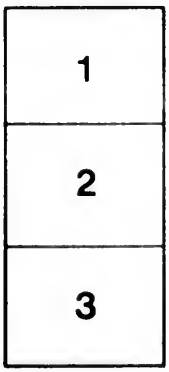

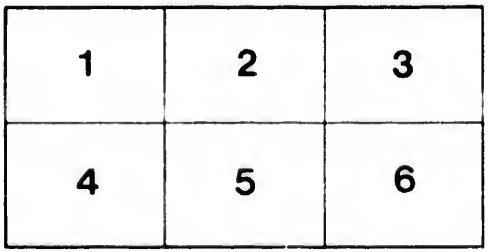

FROM THE TRANSACTIONS OF THE ROYAL SOCIETY OF CANADA

SECOND SERIES—1895-96

VOLUME I. SECTION II.

ENGLISH HISTORY, LITERATURE, ARCHÆOLOGY

The Canadian Dominion

AND PROPOSED

Australian Commonwealth

A STUDY IN COMPARATIVE POLITICS

By J. G. BOURINOT, C.M.G., LL.D., D.C.L., Lit.D.

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1895

I.—*The Canadian Dominion and proposed Australian Commonwealth: A Study in Comparative Politics.* (1)

By J. G. BOURINOT, C.M.G., LL.D., D.C.L., LIT. D.

(Read May 15th, 1895.)

I.

No one can deny that the most important feature of the present reign has been, not the victories won by Great Britain in foreign wars, for these are but insignificant compared with those of other times; not triumphs in diplomacy, for they have not been remarkable, and Canadians will hardly consider even the Bering Sea treaty an equivalent for the Oregon or Maine surrender; not even success in literature, for more lasting fame has been probably won by writers of other periods; not the extraordinary expansion of commerce and wealth, which has resulted from the evolution of sound economic ideas, national enterprise, and scientific discovery. No, assuredly the most significant and enduring achievement of the reign has been the economic, intellectual and political development of those prosperous communities which form the colonial empire of the British Isles. We have had quite recently some evidence of the remarkable growth, and the imperial aspirations of these countries, in the conference that has been held, in the political capital of the Dominion, of delegates from eight free, self-governing colonies in Australasia, South Africa and America, who came together for the express purpose of discussing questions which affect not merely their own peculiar and sectional interests, but touch most nearly the unity and integrity of the empire at large. Such a conference was an evidence not only of colonial expansion and ambition, but an acknowledgment of the importance of Canada in the councils of the wide imperial domain of England, since it was not at London, but under the shadow of the parliament buildings, at Ottawa, that colonists met for purposes of deliberation. The fact that such a conference was possible in the year of grace 1894 is the most expressive testimony that could be borne to the success of the colonial policy of a reign which has given so admirable a system of government, not merely to Canada, but to all those colonies that have attained so favourable a position among the communities of the world.

Every lover of imperial interests will watch with some curiosity the

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(1) This paper is intended as a supplement to a series of papers on Comparative Politics in the previous volumes of the Transactions, VIII. and XI., sec. 2. These papers were on: (1) The English Character of Canadian Institutions. (2) The Political Systems of Canada and the United States. (3) Federal Government in Switzerland. (4) Parliamentary compared with Congressional Government.

later stages of a movement, so clearly in the direction not only of the commercial development of the colonies, but also of imperial strength and unity, as is this important conference. Conferences of this character give us the best possible evidence that colonial statesmanship at the present time has a decided tendency, not towards isolation from the parent state and the establishment of independent nations, but rather towards placing the relations between England and her colonial possessions on a wider basis of community of interest and action.

II.

Whatever may be the immediate commercial results of the intercolonial conference, it is quite likely that so important an assemblage of representatives of the scattered colonies of the empire must more or less stimulate a deeper interest in the affairs of each other. It was for many reasons a happy idea that this second colonial conference—the first having been held in London seven years before—should have met at the political capital of the Canadian Dominion, which occupies a pre-eminent position among the colonial possessions on account of it having been the first to carry out successfully a plan of colonial federation. The fact that the parliament of the federation was sitting at the time of the conference was a fortunate circumstance from which no doubt the Australasian and South African delegates derived not a little practical benefit. A federal parliament, composed of two Houses, in which seven provinces and a vast territory, extending over three million and a quarter square miles, were represented by upwards of three hundred members, was of itself an object lesson for colonies which still remain politically isolated from each other, and in a very little better position than that occupied by the Canadian provinces thirty years ago, when the Canadians recognized the necessity for closer union for commercial and government purposes. It is true the federal idea has made some advance in Australasia. A federal council has been in existence for a few years for the purpose of enabling the Australian colonies to confer together on various questions of general import, but the experience of the eight years that have passed since the first meeting of this body has not been satisfactory in view of the want of co-operation of all the Australian dependencies, and of the very limited scope of its powers. The larger project of a federation, including the whole of the island continent, as well as New Zealand, was fully discussed some years ago, in a convention of delegates from all the colonies of Australasia, and a bill was drafted for the formation of a "Commonwealth of Australasia," but the measure has not yet been discussed and adopted by the legislatures of the countries interested, although there is no doubt that the scheme is gaining ground among the people, and no great length of time will elapse before we see its realization. In

South Africa, which Mr. Lucas has well described, in his introduction to his edition of Sir George Cornewall Lewis's Government of Dependencies, "as a congeries of British provinces in different stages of dependence on the mother country, intermixed with protected territories and independent states," the federal idea has necessarily taken no practical form, and it is not likely to do so for many years to come, though something has been gained by the establishment of a customs union between some of the political divisions of a great country with enormous possibilities before it.

No doubt the Australian and other delegates who visited Canada took away with them some well-formed impressions of the value of federal union that will have effect sooner or later upon the legislation of their respective countries. Travelling, as many of them did, over the Dominion, from the new and flourishing city of Vancouver, on the Pacific coast, to the ancient capital of Quebec, on the St. Lawrence, and even to the old seaport of Halifax, on the Atlantic shores of the maritime provinces, they could not fail to be deeply interested by the great wealth of natural resources and the many evidences of national growth which they saw in the rich mineral districts of British Columbia, in the fertile prairies of the Northwest, in the fairly prosperous cities, towns and agricultural settlements of the premier province of Ontario, in the enterprising and handsome city of Montreal, which illustrates the industrial and commercial enterprise of Canada above all other important centres of population, in the abundant fisheries and mines of the maritime provinces, and in the large facilities that are everywhere given for education, from the common school to the university. But the most instructive fact of Canadian development, in the opinion of statesmen, would be undoubtedly the successful accomplishment of a federal union throughout a vast territory, reaching from ocean to ocean, embracing nearly one-half the continent of America, and divided by nature into divisions where diverse and even antagonistic interests had been created during the century that had elapsed between the formation of their separate provincial governments and the establishment of confederation, which has brought them out of their political isolation and given a community of interest to all of British North America, except Newfoundland. This great island, which has been well described "as a huge bastion thrown out into the north Atlantic which, if duly fortified and armed, could be made the Gibraltar of the surrounding seas,"[1] has stood selfishly aloof, and is now suffering under conditions of financial and commercial adversity and political embarrassment which could never have occurred had it, years ago, formed a part of the Canadian confederation; but there is still reason to hope that, after years of isolation, it, too, must ere long yield, like the old province of Canada, to the

[1] The Rev. Dr. Moses Harvey, F.R.S.C., the well-known historian of the island, in Baedeker's Canada, p. 93.

force of circumstances and show a willingness to give completeness to the confederation of the north. Australasian statesmen who desire to see the federal union of their respective colonies consummated might well reflect that to them the task is much easier of accomplishment than has been the case with Canada, since Australia has not to encounter those national and sectional difficulties which have always, from the outset, perplexed and hampered Canadian public men. The history of the Canadian union for the twenty-seven years since 1867 is one which the Australian communities might well study with profit, since it shows the successful results of statesmanship directed to the attainment of a great public end—the removal of sectional and national jealousies, and the creation of a broad Canadian sentiment from one end of the confederation to the other. Though many difficulties undoubtedly intervene in the way of so desirable a national end, yet no one will deny that on the whole the results have been favourable, and make Canadians sanguine for the future, despite the predictions of political pessimists. If the Australasian and South African delegates learned nothing more than this by their visit to Canada, their respective colonies must be very soon the gainers.

III.

But it is not my intention to dwell any longer on this interesting and influential assemblage of colonial representative statesmen. My object in this paper is to show some of the sources of the strength of the Canadian federal constitution, as well as those elements of weakness which are inherent in every system of federation, however carefully devised. In the course of this series I shall make comparisons between the federal system of the Dominion and that proposed by the convention of 1891 for the Commonwealth of Australia. Such a review should have some interest for Australians who are halting in the way of federation, but also for all Englishmen who are anxious to study the evidences of colonial development throughout the empire.

But before I proceed to show some of the experiences of Canada for more than a quarter of a century in the working out of the federal union under conditions of much difficulty, I shall first contrast in parallel columns the leading features of the Canadian system of government with those in the draft of the constitution proposed for the Australian federation. In this way my readers will be able to form an intelligible idea of the principles which lie at the basis of the Canadian system, as well as of those political ideas which have most influence among the statesmen of the Australasian dependencies at this very important period of their history, when they are hesitating between colonial isolation and national strength. I do not propose, however, to take up and review *seriatim* all those features of federation which are summarized below, but simply to

dwell on those experiences of Canada and those details of the Australian bill which will be most useful to the students of federal institutions.

CANADA.	AUSTRALIA.
NAME.	NAME.
The Dominion of Canada.	The Commonwealth of Australia.
HOW CONSTITUTED.	HOW CONSTITUTED.
Of provinces.	Of states.
SEAT OF GOVERNMENT.	SEAT OF GOVERNMENT.
At Ottawa until the queen otherwise directs.	To be determined by the parliament of the commonwealth.
EXECUTIVE POWER.	EXECUTIVE POWER.
Vested in the queen.	Vested in the queen.
Queen's representative, a governor-general, appointed by the queen-in-council.	Queen's representative, a governor-general, appointed by the queen-in-council.
Salary of governor-general, £10.000 sterling, paid by dominion government, alterable by the parliament of Canada.	Not less than £10.000, paid by commonwealth, fixed by parliament from time to time, not diminished during tenure of a governor-general.
Ministers called by governor-general to form a cabinet, first sworn in as privy councillors, hold office while they have the confidence of the popular house of parliament, in accordance with the conventions, understandings and maxims of responsible or parliamentary government.	Same—only for "privy councillors" read "executive councillors."
Privy councillors hold, as the crown may designate, certain departments of state, not limited in name or number, but left to the discretionary action of parliament. Such heads of departments must seek a new election on accepting these offices of emolument.	Executive councillors administer such departments as governor-general from time to time establishes, need not be re-elected on accepting office. Until other provision is made by parliament, number of such officers who may sit in parliament shall not exceed seven.

COMMAND OF MILITARY AND NAVAL FORCES.	COMMAND OF MILITARY AND NAVAL FORCES.
Vested in the queen.	In the queen's representative.
PARLIAMENT.	PARLIAMENT.
The queen.	The queen.
Senate.	Senate.
House of commons.	House of representatives.
Session once at least every year.	The same.
Privileges, immunities and powers held by senate and house of commons, such as defined by act of the parliament of Canada, but not to exceed those enjoyed at the passing of such act by the commons house of parliament of Great Britain.	Such as declared by the parliament of the commonwealth, and until declared such as are held by the commons house of parliament of Great Britain at the date of the establishment of the commonwealth.
Senate composed of twenty-four members for each of the three following divisions: (1) Ontario. (2) Quebec, and (3) Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island. Other provinces to be represented under the constitution, but the total number of senators shall not at any time exceed seventy-eight. Senators appointed by the crown for life, but removable for certain disabilities.	Senate composed of eight members from each state, chosen by the houses of parliament of the several states for six years, one-half of the number retiring every third year.
Speaker of the senate appointed by the governor-general (in council).	President of the senate elected by that body.
Fifteen senators form a quorum until parliament of Canada otherwise provides.	One-third of whole number of senators form a quorum until parliament of commonwealth otherwise provides.
Non-attendance for two whole sessions vacates a senator's seat.	Non-attendance for one whole session vacates a senator's seat.
Members of house of commons, elected every five years, or whenever parliament is dissolved by the governor-general.	Every three years.
No property qualification.	Same.

Qualification of electors for members of house of commons as provided by parliament—at present a uniform franchise based on property and income under a dominion statute.	Qualification of electors for members of the house of representatives as prescribed by the law of each state for electors of the more numerous house of the parliament of the state.
A fresh apportionment of representatives to be made after each census, or not longer than intervals of ten years.	Same.
Speaker of house of commons elected by the members of the house.	Same.
Quorum of house of commons twenty members of whom the speaker counts one.	Quorum of house of representatives—one-third of the whole number of members, until otherwise provided by parliament.
No such provision.	Member vacates his seat when absent, without permission, for one whole session.
No such provision.	Parliament to be called together not later than thirty days after that appointed for return of writs.
Allowance to each member of senate and commons $1.000, for a session of thirty days, and mileage expenses, ten cents a mile going and returning. Not expressly provided for by constitution but by statute of parliament from time to time.	Allowance of £500, to members of both houses until other provision is made by parliament.
Canadian statutes disqualify contractors and certain persons holding office or receiving emoluments or fees from the crown sitting in parliament.	Same classes disqualified in the constitution.
Each house determines the rules and orders necessary for the regulation of its own proceedings; not in the constitution.	The constitution has a special provision on the subject.
MONEY AND TAX BILLS.	MONEY AND TAX BILLS.
The same.	Money and tax bills can only originate in the house of representatives.

Same by practice.	The senate can reject, but not amend, taxation or appropriation bills.
Not in Canadian constitution.	The senate may return money and appropriation bills to the house of representatives, requesting the omission or amendment of any provision therein, but it is optional for the house to make such omissions or amendments.
Legislative Powers of the Parliament of the Dominion.	**Legislative Powers of the Parliament of the Commonwealth.**
Respective powers of the federal parliament and provincial legislatures, enumerated and defined in the constitution; the residuum of power rests with the central government in relation to all matters not coming within the classes of subjects by the British North America Act assigned exclusively to the legislatures.	The legislative powers of the federal parliament are alone enumerated, and the states expressly retain all the powers vested in them by their respective constitutions at the establishment of the commonwealth as to matters not specified as being within the exclusive jurisdiction of the federal parliament.
The Provinces.	**The States.**
Legislatures may alter provincial constitutions except as regards the office of lieutenant-governor.	Constitutions may be altered under the authority of the parliaments thereof.
Lieutenant-governors appointed by the governor-general-in-council, and removable by him within five years only for cause assigned and communicated by message to the two houses of parliament.	The parliament of a state may make such provisions as it thinks fit as to the appointment of governor of a state, and as to the tenure of his office and his removal.
Not in the constitution, but provided for by statutory enactments of parliaments and legislatures.	A member of the senate or house of representatives cannot be chosen as a member of the parliament of a state.
Acts of the provincial legislatures may be disallowed by the governor-general-in-council one year after their receipt.	When a law of the state is inconsistent with one of the commonwealth, the latter shall, to the extent of the inconsistency, be invalid.
Education within exclusive jurisdiction of the provinces, but with	No special provisions in the constitution, education being one of the

conditions for the maintenance and protection of rights and privileges of religious bodies in a province with respect to denominational schools.	subjects exclusively within the powers of the state parliaments, under the clause leaving them in possession of all powers not expressly given to the federal parliament.
The federal parliament can alone impose duties or taxes on imports.	A state shall not impose any taxes or duties on imports except such as are necessary for executing the inspection laws of a state, and such laws may be annulled by the parliament of the commonwealth.
Not in the Canadian constitution, but the regular constitutional practice.	All communications that a state may deem it expedient to make to the queen in parliament shall be made by the governor-general, and the queen's pleasure shall be made known by him.
Similar power.	The parliament of the commonwealth may from time to time admit new states, and make laws for the provisional administration and government of any territory surrendered by any state to the commonwealth, or of any territory placed by the queen under the commonwealth, or otherwise acquired by the same.
THE JUDICIARY.	THE JUDICIARY.
Same in Canada.	The parliament of the commonwealth can establish a supreme court and other courts for the commonwealth; the judges to be appointed by the governor-general, to hold office during good behaviour, not to be removed except upon an address of both houses of parliament, and to receive such salary as may be fixed by the parliament, but so that the salary paid to any judge shall not be diminished during his continuance in office.
No such provision with respect to diminution of salary during tenure of office.	

Similar provisions by statutory enactments of dominion parliament.	These courts can adjudicate in cases arising out of the constitution, or controversies between states, or in which the commonwealth is a party.
No such provision in the constitution, but appeals in civil—though not in criminal—cases are allowed by virtue of the exercise of the royal prerogative, from provincial courts as well as from the supreme court of Canada to the queen-in-council; *i.e.*, to the judicial committee of the privy council, in practice.	Appeals heretofore allowed from the highest court of final resort of any state to the queen-in-council to be hereafter heard and determined by the supreme court of Australia, and its judgment to be final and conclusive.
Not in the constitution, but a constitutional right of Canada as a dependency of the empire.	An appeal to the queen-in-council allowable in any case in which the public interests of the commonwealth, or of any state, or of any other part of the queen's dominions are concerned.
Judges of the superior and county courts in the provinces (except those of probate in New Brunswick, Nova Scotia and Prince Edward Island) appointed by the governor-general-in-council, and removable only by the same on the address of the two houses of parliament. Their salaries and allowances are fixed by the parliament of Canada.	Judges in the states, appointed and removable under existing state constitutions which the state parliaments can change at will.
The provinces have jurisdiction over the administration of justice in a province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including the procedure in civil matters in those courts.	Similar powers in the states.
The enactment and amendment of the criminal law rests with the dominion parliament.	With the states.

The enactment and amendment of all laws relating to property and civil rights rest with the provinces.	With the states.
TRADE AND FINANCE.	TRADE AND FINANCE.
Customs and excise, trade and commerce, within exclusive jurisdiction of dominion parliament.	The parliament of the commonwealth to have sole power to impose uniform duties of customs and excise, and to grant bounties upon goods when it thinks it expedient. As soon as such duties of customs are imposed, trade and intercourse throughout the commonwealth, whether by internal carriage or ocean navigation, to be free.
The dominion government can veto any such unconstitutional law.	The parliament of the commonwealth may annul any state law interfering with the freedom of trade or commerce between the different parts of the commonwealth, or giving preference to the ports of one part over those of another.
The power of direct taxation is within the jurisdiction of both dominion parliament and provincial legislatures, the one for dominion and the other solely for provincial purposes.	Direct taxation may be imposed by the commonwealth and by each state within its own limits—but the power of taxation, when exercised by the commonwealth, must be uniform.
Both dominion and provincial governments have unlimited borrowing power under the authority of parliament and legislatures.	Same is true of commonwealth and states.
Certain money subsidies paid annually to the provinces for the support of their governments and legislatures.	The revenue of the commonwealth from customs and other taxes is applied in the first instance to the payment of the expenses of the commonwealth and the surplus returned to the several states in proportion to the amount of revenue raised therein respectively, subject to certain special conditions in the constitution with respect to duties of customs and excise and the proceeds of direct taxes.

Canada is liable for amount of the debts and liabilities of the provinces existing at the time of the union, under the conditions and terms laid down in the constitution.

The parliament of the commonwealth may consolidate or take over state debts by general consent, but a state shall indemnify the commonwealth and the amount of interest payable in respect to a debt shall be deducted from its share of the surplus revenue of the commonwealth.

Imperial Control over Dominion Legislation.

Bills may be reserved by the governor-general for the queen's pleasure, and her majesty-in-council may within two years after receipt of any dominion act disallow the same.

No such provision.

Recommendation of crown required before initiation of a money vote.

Amendments to the Constitution.

By the imperial parliament on an address of the houses to the queen.

Imperial Control over Australian Legislation.

Same.

State legislation is subject to similar power of disallowance by queen-in-council, subject of course to the provisions of the constitution in matters under the control of the commonwealth, like customs duties, and trade and commerce.

The governor-general may return any "law" presented to him for the queen's assent and suggest amendments therein, and the houses may deal with them as they think fit.

Same.

Amendments to the Constitution.

The constitution can be amended only by consent of a majority of the senate and house of representatives, and with the approval of a majority of the states, represented in conventions chosen by the electors of the several states; if the people of the states, who so approve, constitute a majority of the people of the commonwealth, the proposed amendments shall be submitted to the governor-general for the queen's assent.

IV.

Briefly stated the strength of the constitution of Canada largely rests on the following conditions:

1. An enumeration of the respective powers of the federal and provincial governments, with the residuum of power expressly placed in the central or general government.

2. A permanent and non-elective executive in the person of the reigning sovereign of England who is represented by a governor-general, appointed for five or six years by the queen-in-council to preside over the administration of Canadian affairs, and consequently elevated above all popular and provincial influences that might tend to make him less respected and useful in his high position.

3. The existence of responsible or parliamentary government after the English model.

4. The placing of the appointment of all judges in the dominion government, and their removal only on the address of the two houses of the dominion parliament, which address can only be passed after full inquiry by a committee into any charges formally laid against a judge.

5. The reference to the courts of all cases of constitutional conflict or doubt between the Dominion and the Provinces that may arise under the British constitutional law or the British North America Act of 1867.

These are the fundamental principles on which the security and unity of the federal union of Canada rest, and I shall now proceed to show briefly the reasons for this emphatic opinion.

As the queen, or reigning sovereign, who is made the executive authority over Canada by the constitution, cannot be present in the Dominion to discharge her constitutional functions, the British North America Act provides for the presence, as her representative, of a governor-general, who has in point of dignity the position, though he has not the title or all the regal attributes of a viceroy. Canadians have never raised a claim, as some of the Australian colonists have done, that they should be always consulted in the choice by the sovereign of this important public functionary, nor have Canadians ever demanded the privilege of electing from their own statesmen their governor-general, as was actually proposed in the Australian convention.

Sir George Grey of New Zealand, whose democratic tendencies were constantly *en évidence* in the debates of the convention, moved an amendment with the object of testing the feeling as to an elective governor, but it was supported by only three votes against five in the negative. Sir John Downer, whose speeches were always distinguished by much constitutional knowledge and statesmanlike breadth of view, said with truth: "I would ask in what position would the governor-general be when he is elected? If he is elected by the voice of the people, does the hon. gentle-

man assert that history will not repeat itself, and that the governor-general will not assume a position something like that of the president of the United States, so that the cry amongst political parties will be 'Who is for the president, and who is against him?'" It would be assuredly an unfortunate thing for Australia, as well as for Canada, were the governor-generalship to become the object of the contentions of political parties and factions, like the presidency or governorships of the United States.

The elective principle has never been applied in the constitutional practice of Canada to administrative, executive or judicial officers—despite their close neighbourhood to the United States,—but has been confined, in accordance with the English system which obtains throughout the empire, to representatives in parliament or in the municipal councils of the country. Consequently Canadians have been spared the excitement and expense that have followed the adoption of the elective principle in the United States, where the president of the nation and the governors of the forty-four states are elected for short terms of office—the former for four years and the latter from one to four years. Removed from all political influences, since he does not owe his appointment to any Canadian party, exercising his executive powers under the advice of a constitutional ministry who represent the majority in the legislature, representing what Bagehot would call the dignified part of the constitution, the governor-general is able to evoke the respect and confidence of all classes of the people, and not only to exercise a decided influence on the administration of public affairs by consultation with his ministers, under the unwritten but well understood conventions and rules of the constitution, but also to elevate the tone of public opinion by his public speeches on those numerous occasions when he is called upon to address audiences on questions of general import relating to education, literature and science, and other matters not mixed up with party politics but having an intimate connection with the development and prosperity of the country. By his hospitalities as head of Canadian society, he is able to bring men of all political parties together in social intercourse, and do much to assuage the bitterness of faction in a country where the current sets so steadily towards democracy. Were the governor-general elected, he could not possibly occupy the same vantage ground, since he would be necessarily the leader of his party, like an American president—the subject of the sharp and unfair criticism of his political opponents. He would again occupy the position the governor-general practically held for over fifty years in Canadian political history before the establishment of responsible government, when he was too often personally brought into the arena of political discussions and conflict, and made a target of the abuse of the popular leaders, since there were no ministers sitting in parliament to assume full responsibility for the acts of the executive authority.

The history of the old thirteen colonies is full of instances of the unpopularity of royal governors, who were constantly in antagonism to the people's representatives on account of their arrogant exercise of executive power and interference with strictly colonial affairs, and who did much consequently to create that sentiment against the parent state which eventually led to separation. In Canada, too, the constant interference of the imperial government—really of a few officials in Downing-street—in matters which should have been settled in Canada, the obstinacy and want of judgment on the part of some governors, the arrogance and selfishness of officials who owed no responsibility to the legislature, the indiscretions of the appointed legislative councils, the ignoring of the just claims of the people's representatives to control the public moneys and expenditures, led also to a popular outbreak, which has been generally called a rebellion, although it never assumed very large proportions, even in the French province of Lower Canada, but was confined to a very limited area and an insignificant faction, whilst in the English province of Upper Canada it was almost contemptible as respects the standing and number of the people immediately engaged in it.

V.

It was the concession of responsible government, in the period from 1840 to 1854, to the provinces that now compose the Dominion of Canada, that relieved the Canadians of the personal rule of governors and officials, and removed all reason for the discontent that led to the ill-advised insurrections of 1837 and 1838. It was paternal government exercised too often without judgment or knowledge of the wishes of the colonial communities in America, that led to the independence of the old colonies, as well as to the Canadian outbreaks of over half a century ago. It is local self-government, in the fullest significance of the term, that has been for fifty years the source of the content and prosperity of the Canadian people. From 1792, when the two provinces of Upper and Lower Canada were formed out of the old province of Quebec, that extended from the Gulf of St. Lawrence to the western lakes, down to 1841, when these two sections were re-united under one government in accordance with the recommendation of Lord Durham, the public men of Canada learned many valuable political lessons from the very trials and struggles of the country for larger political rights. When responsible government was at last conceded by England, it had become a necessity of the political situation in the provinces; the public men had been fully educated in its principles and were ready to work them out with as much intelligence as if they had been taught in the legislative halls of the parent state. Step by step the provinces were relieved from all those commercial and political restrictions which the imperial government had regarded as necessary to

a condition of colonial pupilage, until by a quarter of a century after the union of 1841, these committees possessed full control over their trade and commerce, and were able even to enter into a treaty of reciprocity with the United States that provided for a free interchange of the natural products of the respective countries. The customs, the post offices, and other matters were handed over to the jurisdiction of the provinces, and the English government exercised only the supervision over Canada that is the constitutional and necessary sequence of imperial supremacy. When the legislative union of 1841 became unequal to the political conditions of the Canadas, and it was expedient to afford greater facilities for commercial intercourse between the provinces, give unity to the isolated British American communities that stretched from the Atlantic to Lake Superior, establish additional guarantees for the protection of the rights and privileges of the French Canadian nationality, and at the same time erect a barrier against the ambition of the great federal republic that had just subdued the south, the statesmen of British America assembled in conference and gave expression to the popular sentiment in favour of a larger sphere of political action. They succeeded in forming a federal union, which originally consisted of only four provinces—Nova Scotia, New Brunswick, Ontario and Quebec.—but extended its authority, in the course of a few years, over the fertile island of Prince Edward in the east, added an immense territory in the northwest, out of which was immediately carved a new province, and finally reached the Pacific shores by the addition of British Columbia, with its stupendous range of mountains, and the picturesque island of Vancouver, placed as a sentinel to guard the approaches to the western shores of a Dominion whose laws are executed over nearly half the continent.

VI.

The federal union was the inevitable sequence of the self-government that was the immediate result of the liberal colonial policy adopted towards the colonies soon after the present queen ascended the throne, and with which the names of Durham, Russell, Grey and Gladstone must be always associated in the history of the empire. The constitution of Canada, which is known as the British North America Act of 1867—embodying the resolutions of the Quebec conference of 1864—only enlarged the area of political sovereignty of the provinces, and gave greater scope to their political energy, already stimulated for years previously by the influence of responsible government. The federal constitution has left the provinces in the possession of the essential features of that local government which they had fairly won from the parent state since Acadia and Canada were wrested from France, and representative institutions were formally established throughout British North America

In every province there is a lieutenant-governor appointed by the dominion government, who, in regard to this officer, occupies that relation to the provinces which was formerly held by the imperial authorities. This officer is advised by an executive council chosen, as for forty years previously, from the majority of the house of assembly, and only holding office while they retain the confidence of the people's representatives. In the majority of the provinces there is only one house—the elected assembly. The legislative councils that assisted before 1867 have been abolished in all the legislatures except those of Quebec and Nova Scotia, and in the latter the example of the majority will soon be followed. The upper houses had become to a great extent expensive and almost useless bodies, since they were the creation of the respective governments of the day—who too often considered only the claims of party in their appointments—with no responsibility to the people, rarely initiated important legislation, and had no legislative control over the purse strings of the provinces, and, at the best, only revised the legislation of the lower house in a perfunctory sort of way. It is questionable, however, whether it would not have been wiser, in view of the hasty legislation that may be expected from such purely democratic bodies as the lower houses are becoming under the influence of an extended franchise—manhood franchise existing in nearly all the provinces, including the great English province of Ontario—to have continued the English bicameral system, which still exists in the great majority of parliamentary bodies throughout the world,[1] and which even the republican neighbours of Canada have insisted on, in every stage of their constitutional development, as necessary to the legislative machinery of the nation and of every state of the union. It would have been much better to have created an upper house, which would be partly elected by the people and partly appointed by the crown, which would be fairly representative of the wealth, industry and culture of the country—the last being insured by university representation. Such a house would, in the opinion of those who have watched the course and tendency of legislation since the abolition of these upper chambers, act more or less as legislative break-

[1] "The bicameral system has met the approval of most of the leading political writers [Victor Tiszot, "Unknown Hungary," I. 134], and is realized in practice by the legislatures of the principal countries. Legislative bodies with a single chamber are common in cities, in departmental, provincial and county councils. Many of the smaller American cities, and some of the larger, have a council of one chamber, but every American state legislature has two houses. The unicameral bodies fall into three or four main groups: the parliaments of the minor states of southeastern Europe, Servia, Bulgaria and Greece; the congresses of the states of Central America, Nicaragua excepted, compose another group; the landtags of the Austrian crown lands are one-chambered, and so are nearly all the diets of the minor German states, excepting those of the free cities." See "The Representative Assemblies of To-Day," by E. K. Alden; Johns Hopkins University Studies, 1893.

waters against unsound legislation and chimerical schemes. As it was, however, these second chambers had lost ground in the public estimation through their very inherent weakness, representing as they did, too often, merely the favours of government and the demands of party, and not many words of dissent were heard against their abolition. No doubt, economical considerations also largely prevailed when it was a question of doing away with these chambers. No doubt, too, when these bodies disappeared from the political constitutions of the provinces, some importance was given to the suggestion that the veto given by the federal law to the dominion government over the legislation of the provinces, did away to a large extent with the necessity for a legislative council, for its *raison d'être*, if one may so express it. But, in the practical working of the federal union, the vehement and persistent assertion of "provincial rights," and the general trend of the decisions of the courts to whom questions of jurisdiction have been referred, have tended rather to give a weight and power to the provincial communities that was not contemplated by the leading architects of the federal framework; certainly not by the late Sir John Macdonald, who believed in a strong central government, dominating the legislation and even the administration of the provinces, whenever necessary for reasons of urgent dominion policy. But the powers, granted in express terms or by necessary implication to the provincial authorities, take so wide a range, and the several provincial governments, from the inception of the union, have been so assertive of what they consider their constitutional rights, that it has not been possible to minimize their position in the federation. As it is now, the governments of the several provinces legislate on subjects which, though local and provincial in their nature, are intimately connected with the rights of property, and all those personal and public interests that touch men and women most nearly in all the relations of life,—far more so, necessarily, than dominion legislation, as a rule. In view of such a condition of things, the veto of the Dominion is now rarely exercised—in fact, only in cases where an act is clearly unconstitutional on its face, and any attempt to interfere with provincial legislation on other ground than its unconstitutionality or illegality, will be strenuously resisted by a province. In view then of the position of the veto—a subject to which I shall again refer—there are not a few thinkers who regret that there are not still in all the provinces an influential upper house, able, from the nature of its constitution and the character and ability of its *personnel*, to initiate legislation and exercise useful control over the acts of a lower house now perfectly untrammelled, except by the courts, when legislation comes before them in due course of law. The consequences of the present system must soon show themselves one way or the other. I admit that these fears may be proved to have no foundation

as the union works itself out. On the face of it, however, there is a latent peril in a single chamber, elected under most democratic conditions, liable to fluctuation with every demonstration of the popular will, and left without that opportunity for calm, deliberate second thought that a second chamber of high character would give at those critical times which must occur in the history of every people.

VII.

In the constitution of the dominion government, however, the British North America Act has adhered to the lines of the British system, since it provides for an advisory council of the governor-general, chosen from those members of the privy council of Canada who have the confidence of the house of commons; for a senate of nearly eighty members, appointed by the crown from the different provinces; for a house of commons of two hundred and fifteen members, elected by the people of the different sections on a basis of population, and on the condition that the number of members given to Quebec by the constitutional act shall not be disturbed. The growth of democratic principles is seen in the very liberal dominion franchise, on the very threshold of manhood suffrage, with limitations of citizenship and residence. The members of the senate must have a very small qualification of personal and real property, and are appointed for life. The remarkably long tenure of power enjoyed by the Conservative party—twenty-four years since 1867—has enabled it to fill the upper house with a very large numerical majority of its own friends; and this fact, taken in connection with certain elements of weakness inherent in a chamber which has none of the ancient privileges or prestige of a house of lords, long associated with the names of great statesmen and the memorable events of English history, has in the course of years created an agitation among the Liberal party for radical changes in its constitution which will bring it more in harmony with the people, and give it a more representative character, and at the same time increase its usefulness. This agitation has even proceeded so far as to demand the abolition of the house, but it is questionable if this movement is sustained to any great extent by the intelligence of the country. On the contrary, public opinion, so far as it has manifested itself, favours the continuation of the second chamber, on conditions of a larger usefulness, in preference to giving complete freedom to the democratic tendencies of an elective body—tendencies not so apparent at present, but likely to show themselves with the influx of a large foreign population and the adoption of universal suffrage, which is looming up in the near future. The senate, as at present composed, contains many men of ability, and cannot be said to display a spirit of faction, despite its preponderance of one party, while for two years back its leaders have seen the necessity for initiating in this chamber a large number of important

public measures. The movement for a remodelling of the senate, however, has not yet taken any definite shape, and is not likely to do so so long as the present Conservative government remains in power, although the writer is one of those who believe that it ought soon to be strengthened by giving it a more representative character, on some such plan as has been suggested in the case of legislative councils in the provinces. Of course no constitutional changes can be made in the body except on an address of the two houses to the crown. The British North America Act does not allow an unrestricted use of the royal prerogative in case of a deadlock between the two houses, since it provides for the appointment of only six senators at the most. When, some years ago, the Liberal government attempted to make use of this constitutional provision, they were rebuked by the imperial authorities on the ground that the circumstances did not justify an addition to the senate at that time. With this precedent before them, it will be always difficult for a government to increase their strength in this way.

With experience of the Canadian senate and their own legislative councils before them the framers of the proposed Australian federation have followed the example of the United States and provided for a senate whose members are elected for six years by the legislatures of the colonies—or parliaments of the Australian states, as they are more ambitiously called in the bill. The constitutional provisions that govern the house of lords, and the Canadian senate with respect to the initiation or amendment of taxation, and annual appropriation bills are fully recognized in the Australian draft. Some enlargement of power is, however, given to the new house in the case of money bills and it is permitted at any stage to return any proposed law, which they may not amend, with a message requesting the omission or amendment of any items or provisions therein. This practice seems to have been followed for some years in South Australia, but in introducing it into their proposed constitution the convention appears to have been largely influenced by a hope that it would give the upper house greater power and also some resemblance to the senate of the United States. But they have forgotten that that great body has long wielded the three elements of authority—executive, legislative and judicial. It goes into executive session on treaties and appointments made by the president, acts as a court of impeachment for the president and high functionaries, and exercises the supreme legislative power of directly amending money bills. Until the popular assemblies in Australia are able or willing to give such sovereign powers to an upper house, it is idle to talk of comparisons with the senate of an *independent* federal republic.

No doubt the members of the Australian convention hope that a senate with a longer tenure of power, and an indirect method of popular election, will be to a considerable degree more conservative in its legisla-

tion than a more democratic lower house elected on a short term of three years—one more than the house of representatives of congress, and two less than the house of commons of Canada. Of course, some of the Australian colonies have had experience of an elective upper house, and it is somewhat curious that while they continue that system in the proposed federal union, the Canadians have returned to an appointed house as preferable to the one they had before 1867—even so thorough a radical as the late George Brown, then leader of the Liberal party, earnestly urged the change in the Quebec convention. When we consider the character of the agitation against upper houses, we see that, in the nature of things, democracy is ever striving to remove what it considers barriers in the way of its powers and will. An upper house, under modern political conditions, is likely to be unpopular with the radical and socialistic elements of society, unless it is elective. As the Australians are obviously admirers of the American federal constitution, from which they copy the constitution of their upper chamber, we direct their attention to the fact that an agitation has already commenced and made much headway in the United States, to change the present indirect method of electing senators, and to give their election directly to the people. It says something, however, for the conservative and English instincts of the Australians that they have not yielded to the full demands of democracy, but have recognized the necessity of an upper house in any safe system of parliamentary government.

VIII.

We see accordingly in the dominion and provincial constitutions the leading principles of the English system—a permanent executive, responsible ministers, and a parliament or legislature. The central government follows directly the English model by continuing the upper house, but the majority of the provinces vary from all other countries of English institutions by abolishing the legislative councils. In the enumeration of the legislative powers respectively given to the dominion and provincial legislatures, an effort was made to avoid the conflicts of jurisdiction that so frequently arose between the national and state governments of the federal republic. In the first place we have a recapitulation of those general or national powers that properly belong to a central authority, such as customs and excise duties, regulation of trade and commerce, militia and defence, post office, banking and coinage, railways and public works "for the general advantage," navigation and shipping, naturalization and aliens, coast service, fisheries, weights and measures, marriage and divorce, penitentiaries, criminal law, census and statistics. On the other hand, the provinces have retained control over municipal institutions, public lands, local works and undertakings, incorporation

of companies with provincial objects, property and civil rights, administration of justice, and generally "all matters of a merely local and private nature in the province." It will be remembered that the national or general government of the United States is alone one of enumerated powers, whilst the several states have expressly reserved to them the residuum of power not in express terms or by necessary implication taken away from them. In their anxiety to avoid the sectional and state difficulties that arose from these very general provisions and to strengthen by constitutional enactment the general government of the Dominion, the framers of the British North America Act placed the residuary power in the parliament of Canada—in the words of the law that parliament is allowed "to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces."

But despite the earnest effort that was made by the Canadians to prevent troublesome questions of jurisdiction too constantly arising between the general and provincial governments, the courts have been steadily occupied for a quarter of a century in adjusting the numerous constitutional disputes that have arisen in due course of law under the union act. Five large octavo volumes of nearly four thousand pages now contain the decisions that have been recorded by the judicial committee of the privy council of England and the courts of Canada. Discussions are frequently arising in the legislative bodies on the varied interpretation that can be given to the constitution on these very points of constitutional procedure and jurisdiction which the framers of the federal union thought they had enumerated with great care. But it is in this very reference to the courts that the strength of a written instrument of federal government lies. In Canada, as in all other countries inheriting English law, there is that great respect for the judiciary which enables the people to accept its decisions when they would look with suspicion on the acts of purely political bodies. We need look only to the experience of the United States to test the value of judicial opinions on constitutional issues. The following remarks of a very judicious writer, Professor Dicey,[1] may be appropriately quoted in this connection:

"The main reason why the United States have carried out the federal system with unqualified success is that the people of the union are more thoroughly imbued with constitutional ideas than any other existing nation. Constitutional questions arising out of either the constitutions of the several states or the articles of the federal constitution are of daily occurrence and constantly occupy the courts. Hence the people become a people of constitutionalists; and matters which excite the

[1] "The Law of the Constitution," 3rd ed., p. 167.

strongest possible feeling—as, for instance, the right of the Chinese to settle in the country—are determined by the judicial bench, and the decision of the bench is acquiesced in by the people. This acquiescence or submission is due to the Americans inheriting the legal notions of the common law; that is, of the most legal system of law, if the expression may be allowed, in the world."

These remarks apply with full force to the Canadian people, who look to the courts for the only satisfactory solution of many difficulties in the working of their constitution. This judicial interpretation of written constitutions is not new in the experience of British countries, but is coincident with the creation of colonies or provinces in America. The privy council of England was always the supreme court of appeal for the dependencies of the crown, to whom could be referred those questions of law that arose in the old colonies as to the construction to be put on their charters of government. An American writer[1] has very clearly explained, in the following paragraph, the principles on which the courts have always interpreted written instruments or charters of government:

"In deciding constitutional questions, the supreme court [of the United States, and Canada as well] interprets the law in accordance with principles that have long governed the courts of England. For when an English judge finds conflict between an act of parliament and a judicial decision, he sets aside the decision, as of an authority inferior to that of the act; and if two parliamentary acts conflict, the earlier is set aside as superseded by the later one,—the court interpreting the law simply by determining what *is* law as distinguished from what *is not*. The range of this English usage was somewhat amplified in the colonies, owing to the fact that, instead of parliament, the colonial courts had legislatures to deal with, which acted, in most instances, under written charters limiting their powers, as also under the general domination of the home government. The colonial judiciary did not hesitate to adjudge a local statute invalid if its enactment could be shown to have exceeded powers conferred by charter; and the privy council, in the capacity of a supreme court for the colonies, decided in like manner conflicts between laws. When state constitutions succeeded to the charters, the process was continued by the state courts in cases showing conflicts between statutes and the new constitutions judicially interpreted. The national government, with a constitution of its own, created an element of superior law, in conflict with which not only state but national enactments of lesser authority are nullified. All that the judiciary does in England, and all that it does in the states, and in the courts of the United States [and we may add Canada], is to uphold the authority of what it decides to be

[1] Dr. Stevens's "Sources of the Constitution of the United States," pp. 191, 192.

the higher law, as against all lesser laws or judicial decisions. What, therefore, has been supposed to be the most unique feature of the American supreme court, is really only another adaptation from the past, and rests upon colonial and English precedents."

IX.

Cases involving constitutional questions may be tried in any of the superior courts of the provinces, with the right of appeal to the federal supreme court, and finally, under certain limitations, to the English privy council. The judgments of the judicial committee have been always received with the respect due to the learning of so high a court, and, on the whole, have given satisfaction, though there have been occasions when the lay, and even the legal mind, has been a little perplexed by somewhat contradictory decisions, arising from the difficulty of the judges to comprehend what are largely provincial issues. For instance, in cases relating to the sale of intoxicating liquors, the jurisdiction was at first declared to be in the dominion government, but subsequently in the provincial authorities, with the obvious result of leaving a troublesome issue more complicated than ever. The tendency of the judgments of the courts has been towards strengthening the provincial entities and minimizing, to a certain extent, the powers of the central authorities. For instance, the judicial committee have gone so far as to lay it down most emphatically:

"That when the imperial parliament gave the provincial legislatures exclusive authority to make laws on certain subjects enumerated in the act of union, it conferred powers not in any sense to be exercised by delegation from, or as agents of, the imperial parliament; but authority as plenary and as ample within the limits prescribed by the section 92, as the imperial parliament, in the plenitude of its power, possesses and could bestow."

The consequence has been the very opposite of the decisions, as a whole, of the supreme court of the United States, where the late Chief Justice Marshall did much to mould the constitution in the direction of enlarging the scope of the powers expressly given to the national government. It is a question whether the judicial committee, however ably constituted, would not find its usefulness increased by the membership of a great colonial lawyer, who would bring to his duties not only legal acumen and judicial fairness, but "a comprehension of the nature and methods of government which one does not expect from European judges who act within the narrow path traced for them by ordinary statutes."[1]

[1] Professor Bryce in "The American Commonwealth," vol. 2, p. 1. Since this passage was written, the imperial parliament has passed an act providing for the appointment of colonial judges to the committee, but the colonies must provide sal-

As long as this imperial court is composed of men of the highest learning—and it is very rarely this is not the case—it is a positive advantage to the people of Canada and of all the other dependencies of the crown to have its independent decision on constitutional questions of moment. In the Australian convention doubts were expressed as to the necessity of this reference, when the new federation will have a supreme court of its own, but it would be a serious mistake to ask the crown to give up entirely the exercise of a prerogative so clearly in the interests of the empire at large. To quote the apt words of Sir Henry Wrixon:

"At present it is one of the noblest characteristics of our empire that over the whole of its vast area every subject, whether he be black or white, has a right of appeal to his sovereign. That is a grand right and a grand link for the whole of the British empire. But it is more than that. It is not, as might be considered, a mere question of sentiment, although I may say that sentiment goes far to make up the life of nations. It is not merely that, *but the unity of final decision preserves a unity of law over the whole empire*."

The words we have given in italics are unanswerable, and it is unfortunate, we think, that such arguments did not prevail in the convention to the fullest extent. That body in this, as in other matters, appears to have been largely influenced by a desire to make Australia independent of England as far as practicable, and the majority were only at the last persuaded to adopt a clause providing for a modified reference to the queen-in-council of cases "in which the public interests of the commonwealth, or of any state, or any other part of the queen's dominions are concerned." Probably, however, before the constitution is finally adopted all limitations of this exercise of the royal prerogative in the dependency will be removed.

When we consider the influence of the courts on the Canadian federal union we can see the wisdom of the provision which places the appointment, payment and removal of the federal as well as provincial judges in the hands of the dominion government. It may be said, indeed, that, by the nature of their appointment and permanency of tenure, all the judges of Canada are practically federal, though the organization of the provincial courts rests with the provincial governments. The consequence is, the provincial judges are removed from all the influences that might weaken them were they mere pro vincial appointments. In the United States the constitution provides for federal judges, whose appointments rest with the president and sena. For many years after

aries adequate to the position, a fact likely to create a difficulty since the amount required will be so far beyond what is paid colonial judges. On the other hand the advantage to the dependencies will be so great that both Canada and Australia should move in the matter.

the formation of the states, the appointment of the state judiciary rested with the governors or the legislatures, or both conjointly, and only one state, Georgia, made them elective. It was the state of New York, among the older states, that really led the way to the election of all judicial officers, from the highest to the lowest, throughout the union. At the present time, out of the forty-four states, thirty elect the judges by a popular vote. The federal judiciary has always held a far higher position in the estimation of the intelligence of the country than the elective judiciary of the states, since its mode of appointment, permanency of tenure and larger scope of duties have given it a positive strength and dignity that the latter, under its inherent conditions of weakness, cannot possibly possess.

It is but just, however, to add that flagrant cases of corruption or impropriety are remarkably rare among the state judiciary despite its election by political and popular influences; the most shameful instances having occurred in the city of New York, where the party machine, under the Tammany control, has always exercised a baneful influence on public morals. The evils of the elective system would have undoubtedly been far greater had not the good sense of the people eventually recognized the necessity of giving a longer tenure of office to the judges, and re-electing them when they have discharged their duties with fidelity. At present the terms of office average ten years throughout the union, a number of the states having extended them to fifteen, fourteen and twelve years. Swift retribution has generally followed such flagrant examples of corruption as those of Barnard, Cardozo and McCunn in New York, under the Tweed régime; and when Judge Maynard, of the Albany court of appeal, whose conduct in reference to election returns had been most discreditable, presented himself in 1893 for a renewal of his term, he was met by a popular majority against him, and was literally, to use an Americanism, "snowed under." Although the evils of an elective judiciary are not so apparent on the surface, it is admitted by American thinkers and publicists, who are not politicians, but can speak their honest opinion, that the system has been most unfavourable to the selection of men of the best ability, and to the exhibition of courage and fidelity in the discharge of their important functions. Judicial decisions have been wanting in consistency, and too constantly fluctuating and feeble. Men of inferior reputation have been able, by means of political intrigue and most unprofessional conduct, to obtain seats on the bench. Confidence in the impartiality of judges is sensibly lessened when it is the party machine that elects, and professional character and learning count for comparatively little. If the interpretation of the constitution had depended exclusively on this state judiciary, the results would have been probably most unfavourable to the stability of the union itself, but happily for its best interests the men who framed the fundamental law

of the republic, wisely provided an appointive federal judiciary, removed from the corrupt and degrading influences of election contests, and made them the chief legal exponents of their written instrument of government. It is, therefore, a happy circumstance for Canada that all its judges are entirely independent of political influences, as well as of the fluctuating conditions of a narrow range of provincialism. As exponents of the constitution, the dominion judiciary has greater elements of strength than the judiciary of the United States, since it is federal from a most important point of view, while that of the latter country is divided between nation and states. In another respect the Canadian government has made a step in advance of their neighbours, with the view of obtaining a reasoned opinion from the higher courts in cases of legal doubt and controversy between the central and provincial governments, and between the provinces themselves. The governor-in-council may refer to the supreme court for hearing and argument important questions of law or fact touching provincial legislation or any other constitutional matter; and the opinion of the court, although advisory only, shall for all purposes of appeal to her majesty-in-council, be treated as a final judgment between the parties. No such provision exists in the case of the federal judiciary at Washington, which can be called upon only to decide controversies brought before them in a legal form, and are therefore bound to abstain from any extra judicial opinions upon points of law, even though solemnly requested by the executive. A similar provision exists in Ontario for a reference to the provincial courts, and the question may be fully argued—a provision that does not exist in the few states of the federal republic where the legislative department has been empowered to call upon the judges for an opinion upon the constitutional validity of a proposed law. Either house of the Canadian parliament may also refer a question of jurisdiction in the case of a private or local bill, but so far the senate alone has availed itself of what might, in many instances, be a useful check on hasty legislation.

I have dwelt at some length on these carefully devised methods of obtaining a judicial and reasoned opinion in cases of constitutional controversy, with the view of showing that they are recognized as the best means of arriving at a satisfactory solution of legal difficulties that cannot be settled in the political arena. The necessity of making the courts in every way possible the arbiters in such cases is clearly shown by the history of the veto given by the British North America Act to the government of the Dominion over the legislation of the provinces. Although the president and the governors of the states may by their veto prevent the passage of any act of congress or of their respective legislatures which they consider objectionable from a constitutional or public point of view, provided there is not a sufficient majority in those bodies—

two-thirds in each house of congress and a majority (generally speaking) in the legislatures—to override that veto. the constitution does not confer upon the executive authority of the nation that sovereign power entrusted to the dominion government, of vetoing the legislation of the states.

Dr. James Bryce[1] tells us that the impression prevailed in the convention of 1787, which framed the constitution of the United States. that the exercise of such a power by the federal authority "would have offended the sentiment of the states. always jealous of their autonomy. and would have provoked collisions with them." This has been the experience of Canada whenever the power has been exercised on grounds of public policy. Collisions. which threatened at one time to be serious. arose between the central government and the province of Manitoba on account of the dominion authority vetoing certain provincial railway acts. in conflict with the obligations which the general government had assumed in connection with the Canadian Pacific Railway—a national work of great importance. The provincial acts were vetoed time and again, but the Manitoba government persisted in re-enacting them. and the difficulty was only settled by the intervention of the dominion parliament, who gave to the Pacific Railway certain privileges in consideration of its consent to the removal of the restrictions that had created the dispute. From these and other cases it is clear that the exercise of the power is viewed with great jealousy. and may at any moment lead to serious complications by creating antagonisms of much gravity between the central and provincial governments. It is now. however. becoming a convention of the constitution that the dominion authorities should not interfere with any provincial legislation that does not infringe the fundamental law; that the only possible excuse for such interference would be the case of legislation clearly illegal or unconstitutional on the face of it. or in direct violation of the original compact or terms on which the provinces entered the union, or dangerous to the security and integrity of the dominion or of the empire. The debates of the Canadian parliament of recent years have shown what an advance has been made in the direction of strengthening provincial autonomy since the early days of the union. when Sir John Macdonald. who would minimize the powers and privileges of the provinces to the extreme point. was bringing the veto in practical operation. It is now deemed the wisest policy to leave as far as possible all questions of constitutional controversy to the action of the courts by the method that the law. as I have already pointed out, provides to meet just such emergencies. In ordinary cases. however. where there is an undoubted conflict with powers belonging to the central government, or where the province has stepped beyond its con-

[1] "The American Commonwealth," vol. i., p. 343.

stitutional authority, the veto continues to be exercised with much convenience to all the parties interested. It must be admitted that on the whole the authorities of the Dominion have exercised this sovereign power with discretion, but it cannot be denied that it may be at any time a dangerous weapon in the hands of an unscrupulous and reckless central administration when in direct antagonism to a provincial government, and it can hardly be considered one of the elements of strength, but rather a latent source of weakness in the federal structure.

X.

No doubt the experience of the Canadians in the exercise of the veto power has convinced the promoters of the proposed federal union of Australia that it would be unwise to incorporate it in their draft of constitution, which simply provides that "when a law of a state is inconsistent with a law of the commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid." The political government of the federation is given no special authority to act under this clause and declare any "state" legislation unconstitutional by a proclamation of the governor-general, as is done in Canada, but the provision must be simply a direction to the courts, which also in the proposed commonwealth are to have all the legitimate authority that is essential to the satisfactory operation of a federal system.

The only power of veto expressly given to the commonwealth is that of annulling any law or regulation made by any state, or by any authority constituted by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the commonwealth. As a matter of fact, any such state law would be decided unconstitutional, since the regulation of trade and commerce is within the exclusive jurisdiction of the general government of the commonwealth, and consequently the provision in question only states the law more emphatically, and seems in a sense almost supererogatory.

Some of the members of the Australian convention, however, have seen a means of controlling "state" legislation in the following provision:

"5. All references or communications required by the constitution of any state or otherwise to be made by the governor to the queen shall be made through the governor-general, as her majesty's representative in the commonwealth, and the queen's pleasure shall be known through him."

This section was severely criticized by the advocates of "State Rights" in the convention, but it is certainly necessary, unless we are to see the strange spectacle presented at all times of the general and state governments communicating separately with the imperial authorities, who would soon become thoroughly perplexed, while the federation

would constantly find itself plunged into difficulties. By means of one channel of intercourse, however, some order will be maintained in the relations between England and the new federation. It is quite true that the clause does not say, as it was urged by more than one prominent member of the convention, "that the executive authority of the commonwealth shall have the right to veto any bill passed by the different states, or even to recommend her majesty to disallow such bill;" but there is nothing to prevent the governor-general, as an imperial officer, from making such comments in his despatches to the secretary of state for the colonies as he may deem proper and necessary—indeed it is his constitutional duty—when he transmits the acts of the respective "states" to the queen-in-council for approval or disapproval—all such acts continuing to be so referred as at present. Of course the imperial government is not likely to interfere with strictly local legislation any more than they do now; all they ever do is to disallow colonial legislation that conflicts with imperial acts or imperial obligations. It is quite clear that this provision is for the advantage of the empire at large and necessary for the unity and harmony of the federation. Some means must exist for the instruction of the imperial authorities as to the relations between the central and state governments, and as to the character and bearing of state legislation; and the governor-general is bound to avail himself of the opportunity the clause in question gives him of promoting the best interests of the Australian union.

XI.

When we come to consider the subject of education—one of the matters placed under the direct control of the provincial governments—we see again the difficulties that always arise in connection with questions involving religious and sectional considerations. In the formation of the constitution it was necessary to give guarantees to the Roman Catholics or minority of Ontario, and to the Protestants or minority of Quebec, that the sectarian or separate schools, in existence at the union, should not be disturbed by any subsequent legislation of their respective provinces. It is consequently enacted in the fundamental law that while the legislature of a province may exclusively make laws on the subject of education, nothing therein shall prejudicially affect any denominational schools in existence before July, 1867. Where in any province separate schools existed in 1867 or were afterwards established by legislative authority, an appeal lies to the governor-general-in-council from any act or decision of the provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority in relation to education. In case the provincial authorities refuse to act for the due protection of the rights of minorities in accordance with the constitutional law, then the parliament of Canada may pass a remedial act for the due execution of the law which

has been framed to meet such an emergency. Such a case has arisen in the province of Manitoba, where there existed under provincial statutes passed since 1870, "denominational schools, of which the control and management were in the hands of Roman Catholics, who could select the books to be used and determine the character of the religious teaching." These schools received "their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for these purposes by local assessment was, so far as it fell upon Catholics, applied only towards the support of Catholic schools." But by statutes passed in 1890, the legislature of the province did away with all denominational schools, although they provide for certain religious exercises, which are to be "non-sectarian," and are not obligatory on the children when their parents object. Schools conducted according to the Roman Catholic views will receive no aid from the state, they must depend "entirely for their support upon the contributions of the Roman Catholic community, while the taxes out of which state aid is granted to the schools provided for by the statute fall alike on Catholics and Protestants." While the Catholic inhabitants remain liable to local assessment for school purposes, "the proceeds of that assessment are no longer destined to any extent for the support of Catholic schools, but afford the means of maintaining schools which they regard as no more suitable for the education of Catholic children than if they were distinctly Protestant in their character." This statement of the grievances of the Roman Catholic minority of Manitoba is given in the language of the lords of the judicial committee of the privy council of England, to whom the question of the right of that minority to appeal to the governor-general-in-council of Canada under the constitutional law, governing such matters, was expressly referred. The governor-general-in-council has passed the order contemplated by law, calling upon the legislature of Manitoba to remedy the grievance of the minority and this matter is consequently now relagated to the proper provincial authority.[1] Only in case of its refusal to provide a constitutional remedy, can the supreme power of the parliament of the Dominion be called into operation. The subject is necessarily one of great embarrassment, since it involves an interference of dominion power in what is primarily, under ordinary conditions, within the exclusive jurisdiction of a province. The fact that the judicial committee, or the highest court of the empire, has practically decided that a right or privilege of the Roman Catholic minority has been affected, and that a remedy should

[1] Since this paper was written the provincial government have sent an answer, practically refusing to obey the order, but the dominion government have not yet introduced any remedial law on the subject. They have deemed it advisable to enter into further correspondence with the Manitoba executive, in the hope of some settlement, and on the understanding that a session of parliament will be held early in January, 1896, to consider the whole question in accordance with the law of the constitution. See Can. Com. Hansard, July, 1895.

be provided in accordance with the constitution, has given a judicial aspect to this vexed question that it would not possibly assume were it a mere matter of political controversy or sectional agitation, and has thrown a very serious responsibility upon those whose duty it is to obey the law of the constitution and respect the judgment of the courts who, under a federal system, can be the only safe interpreters of the written fundamental law.

All these questions show some of the difficulties that are likely to impede the satisfactory operation of the Canadian federal system, and the projected Australian federation is fortunate in not having similar intensified differences of race and religion to contend with. Its constitution wisely leaves all educational and other purely local matters to the exclusive jurisdiction of the "states," and does not make provision for the exercise of that delicate power of remedial legislation which is given to the Canadian parliament to meet conditions of injustice to creed or nationality.

Throughout the structure of the Canadian federation we see the influence of French Canada. The whole tendency of imperial as well as colonial legislation for over a hundred years has been to strengthen this separate national entity, and give it every possible guarantee for the preservation of its own laws and religion. The first step in this direction was the Quebec Act of 1774, which relieved the Roman Catholics of Canada from the political disabilities under which they had suffered since the conquest. Seventeen years later what is known as the imperial "Constitutional Act" of 1791, created two provinces, Upper Canada (Ontario), and Lower Canada (Quebec), with the avowed object of separating the two races into distinct territorial divisions. From 1792 until 1840, when the Canadas were re-united, there was a "war of races" in French or Lower Canada, where the English party, who had all the executive and official power in their hands, became eventually embroiled with the popular and French majority in the assembly. When the insurrection led by Louis Papineau—an eloquent and impulsive French Canadian—had been easily repressed, French Canada was united to the western or English section, and an equal representation was given to both provinces in the elected assembly, although the French had still the larger population. The English language was alone to be used in the legislative records. The main object of these constitutional changes was confessedly, as foreshadowed by Lord Durham, "to establish an English population, with English laws and language, in the province, and to trust its government to none but a decidedly English legislature." The attempt to denationalize the French Canadians signally failed; the union of 1841 came too late to destroy or even minimize the work of the Quebec and Constitutional acts for over half a century. French Canada became a powerful factor in the affairs of the union that lasted from 1841 to 1867; the French language was restored, the elective councils that Papineau fought for were won,

and responsible government—the principles of which that popular chief never understood—was established largely through the discretion and ability of Lafontaine and other French Canadian public men who saw that their great advantage lay in the operation of such a system. If Sir John Macdonald was able to exercise so much influence in the politics of Canada before and after confederation, it was largely—sometimes entirely—through the aid of men like Cartier and his compatriots, who recognized in that eminent statesman that liberality as well as pliability which would enable their race to hold their own against the aggressive assaults of the extreme reformers or "Clear Grits," led by Mr. George Brown, a very able but impracticable politician, who did not give sufficient importance to the fact that Canada could be governed only by principles of compromise and conciliation in the presence of a large and closely welded French Canadian people, jealous of their institutions and their nationality. Eventually government got to a deadlock in consequence of the difficulties between the two political parties; a majority of French Canadian and a minority of English representatives, comprising the conservatives led by Macdonald and Cartier, and a majority of western or English and a small minority of French members, comprising the liberals and grits, led by Brown and Dorion. These political difficulties, arising from the antagonism of nationalities, led to the federation of all the provinces and to the giving of additional guarantees for the protection of French Canadian interests. In the senate of the Dominion, Quebec has a representation equal to that of English Ontario, with nearly double the population, with the condition that each of its twenty-four members shall be chosen from each of the districts of the province—a condition intended to ensure French Canadian representation to the fullest extent possible.

In the adjustment of representation in the house of commons, from time to time, the proportion of sixty-five members, given by the union act to Quebec, cannot be disturbed. The jurisdiction given to the provinces over civil rights and property, and the administration of justice except in criminal matters, was chiefly the work of French Canada, whose people have since 1774 accepted the criminal law of England, but have not been willing to surrender their civil code, based on the *Coutume de Paris*, which they have derived from their French ancestors. Both the French and English languages are used in the debates, records and journals of the parliament of the Dominion and the legislature of Quebec. It would be difficult to conceive a constitution more clearly framed with the view of protecting the special institutions of one race, and perpetuating its separate existence in the Dominion. Of course, the industrial energy of the English people, and the necessity of speaking the language of the English majority, have to a certain extent broken down the barriers that language imposes between nationalities, and it is only in the isolated and distant parishes of Quebec that we find persons who are ignorant of English. The political

consequences of the legislation of the past century have been to cement the French Canadian nationality, to make it, so to speak, an *imperium in imperio*, a supreme power at times in the Dominion. It must be admitted that on the whole, rational and judicious counsels have prevailed among the cultured and ablest statesmen of French Canada at critical times, when rash agitators have attempted to stimulate sectional and racial animosities and passions for purely political ends. The history of the two outbreaks of the half-breeds in the Northwest, and of the recent school legislation in Manitoba so far as it has gone, show the deep interest taken by French Canadians in all matters affecting their compatriots and co-religionists, and the necessity for caution and conciliation in working out the federal union. The federal constitution has been largely moulded in their interest, and the security and happiness of the Canadian Dominion in the future must greatly depend on their determination to adhere to the letter as well as spirit of this important instrument.

XII.

When we compare the British North America Act of Canada with the draft of the bill to constitute the federation of Australia, that was the result of the convention of 1891, we must be impressed by the fact that the former appears more influenced by the spirit of English ideas than the latter, which has copied many of the features of the constitution of the United States. In the preamble of the Canadian act we find expressly stated "the desire of the Canadian provinces to be federally united into one dominion under the crown of the united kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the united kingdom," while the preamble of the proposed Australian constitution contains only a bald statement of an agreement "to unite in one federal commonwealth under the crown." The word "commonwealth" has certainly a general application to a body politic governed on popular principles, and has been constantly so used by poets, orators and writers who have not been called upon to study accuracy of expression. We all remember that Shakspere has said—

> "Hear him debate of commonwealth affairs,
> You would say, it hath been all-in-all his study."[1]

And again—

> "And now, forsooth, takes on him to reform
> Some certain edicts and some strait decrees
> That lie too heavy on the commonwealth."[2]

But the language of the poet can hardly make us forget a very trying period of English history, when the crown was beneath the heel of a

[1] "Henry V.," act i., sc. i.
[2] "Henry IV.," 1st part, act iv., sc. iii.

republican and military despotism — a period best remembered for Cromwell's genius and his successful assertion of England's greatness on sea and land in her conflict with foreign nations. Professor Freeman, in his review of federal government, gives us four famous examples of federal commonwealths—the Achaian League, the Swiss Confederation, the Seven United Provinces of the Netherlands, and the United States of America—all of which stand out at different epochs of the world's progress as remarkable illustrations of the republican system. All of us will also remember that Dr. James Bryce, in his elaborate criticism of republican institutions, could find no more expressive title for his work than "The American Commonwealth." No doubt the word has come to mean a pure republic or democracy, when used in a specific and definite sense by publicists of these days. Shakspere might use all the license of the poet in his dramas; for he was not bound by those rules of correct expression which one would expect from Australian statesmen engaged in framing a new constitution for countries not yet separated from England or governed on a purely republican system of institutions, such as elected president, governors, judges and officials generally.

When we consider the choice of this word of dubious significance, as well as the selection of the word "state" instead of "province," of "house of representatives"[1] instead of "house of commons," of "executive council" instead of "privy council," we may well wonder why the Australians—all English by origin and aspiration—should have shown so steady an inclination to deviate from the precedents established by a Dominion only partly English with the view of carving ancient historic names on the very front of its political structure.

It is an interesting fact not generally known—but the present writer had it from the lips of Sir John Macdonald himself—that the word "Dominion" was only adopted as a compromise in response to the wishes of the English ministry of the day, who were not willing to take the suggestion made by some of the Canadian delegates to the Westminster conference of 1866 that the new federation should be described in the union act as "the kingdom of Canada," simply because English statesmen were afraid to wound the susceptibilities of the people of the United States, who still retained a feeling of antagonism to England arising out of the civil war, and had so recently resented the attempt made by the French emperor to interfere in the affairs of Mexico, and establish in America

[1] The present popular house of New Zealand is called a "house of representatives," and this is not strange when we recall the republican principles of Sir George Grey, who is an earnest advocate of elective governors-general and other republican practices. But this eccentric colonial statesman does not appear to be responsible for the phraseology of the proposed constitution. The debates of the convention, of which he was a member, show that the majority desired to make their new constitution a copy, as far as practicable, of that of the United States.

what would be really a dependency of the French empire. It would, perhaps, be quite in accord with the ambitious aspirations of Australians were they to substitute the words "United Australia" for a word of dubious significance like "commonwealth."

In leaving to the "states" the right of appointing or electing their "governors"—not lieutenant governors as in Canada—we see also the desire to follow the methods of the states of the American republic; and we may be sure that, when once the commonwealth is in operation, it will not be long before the heads of the executive authority will be chosen by popular vote, and we shall see the commencement of an extension of the democratic elective principle to all state administrative, executive and even judicial officers, now appointed by the crown under the advice of a ministry responsible to parliament for every appointment, and other acts of administrative and executive authority.

We see also the imitation of the constitution of the American republic in making the central government alone one of enumerated powers, and leaving the residuary power in the "states." The word "parliament" is also generally applied to the legislative bodies of the federal and state governments, another illustration of the dominant influence of the respective colonies—hereafter "states"—in the proposed constitution.

We see the same American influence in the provision that, "when a law [*sic*] passed by the parliament" [*sic*] is presented to the governor-general "for the queen's assent," he may "return it to the parliament [*sic*] with amendments which he may desire to have made in such law" [*sic*]. One cannot understand the reasoning which justifies the giving of such a power to the executive head: it is quite irreconcilable with the principles and practice of responsible government. The governor-general must, in all cases affecting the government of the colony, act under the advice of ministers. In this case, however, he is to assume the dubious position held by similar officers before there was a ministry responsible to him and the two houses for all legislation. One may also humbly inquire how a bill becomes a "law" before it has received the assent of the queen, through the governor-general. When did "parliament" mean only the two houses in any legal or constitutional document? Such loose phraseology might do for common parlance, but not for a proposed statute, especially when in a former clause "parliament" is said to "consist of her majesty, a senate and a house of representatives." We think that here at least the draughtsmen of the bill might advantageously have copied the correct language of the American republican constitution, which never uses "law" in so incorrect a sense, if they were not prepared to accept the British North American Act as their model, though it was prepared under so high an authority as Lord Thring.

Again, while the bill provides for a supreme and other federal courts to be appointed and removed by the authorities of the commonwealth—

and the influence of the American example is seen in the very language setting forth the powers of these judicial bodies—the "state" governments are to have full jurisdiction over the "state" courts. The federal judges can be removed, as in Canada, only by successful impeachment in parliament and on address of the two houses to the governor-general in council, and as long as the present constitutions of the Australian colonies remain unchanged the "state" judges can be removed only by the action of the "state" parliament. The Canadian constitution in this respect appears to give greater security for an independent and stable judiciary, since a government operating on a large sphere of action is likely to make better appointments than a small and less influential body within the range of provincial jealousies, rivalries and faction. Indeed, it is not going too far to suppose that, with the progress of democratic ideas—already rife in Australia—we may have repeated the experience of the United States and elective judges make their appearance in "states" at some time when a wave of democracy has swept away all dictates of prudence and given unbridled licence to professional political managers only anxious for the success of party.

As respects any amendment of the constitution after its adoption, the Australians have also copied the constitutional provision of the American republic—that whenever two-thirds of the houses of congress or of the several states shall deem amendment necessary, it will be submitted to a convention and form part of the constitution when ratified by the legislatures or conventions of three-fourths of the states, as congress may determine. The Australian bill permits an amendment to be proposed by the two houses of the parliament of the commonwealth, and then submitted to conventions of the several states; but it must be ratified by conventions of a majority of the states, who represent a majority of the people of the federation, before it can be submitted to the governor-general for the queen's assent. The Canadian constitution may be amended in any particular, where power is not expressly given for that purpose to the parliament or legislatures, by an address of the Canadian senate and commons to the queen—in other words, by the English parliament that enacted the original act of union—and without any reference whatever to the people voting at an election or assembled in a convention. Of course, it may be said that the reference to the imperial authorities will not be much of a restraint on amendment, inasmuch as it is not likely that a parliament, already overburdened by business, will show any desire to interfere with the expression of the wishes of the Canadian houses on a matter immediately affecting the Canadians themselves. So far there have been only three amendments made by the imperial parliament to the British North America Act in twenty-seven years, and these were simply necessary to clear up doubts as to the powers of the Canadian houses. This fact says much for the satisfactory operation of the Canadian constitution, as well

as for the discretion of Canadian statesmen. The Canadian constitution, in this particular, clearly recognizes the right of the supreme parliament of the empire to act as the arbiter on occasions when independent, impartial action is necessary, and to discharge that duty in a legislative capacity, which the judicial committee of the privy council now performs as the supreme court of all the dependencies of the crown. The Australians propose to make themselves entirely independent of the action of a great parliament, which might be useful in some crisis affecting deeply the integrity and unity of Australia, and to give full scope only to the will of democracy expressed in popular conventions. It is quite possible that the system will work smoothly, and even advantageously, though we should have preferred, on the whole, to see less readiness on the part of English colonies to reproduce purely republican ideas and methods of government and to lessen the weight and influence of the parliament and supreme court of the whole empire in the government of the proposed Australian federation.

XIII.

It is not the intention of the writer to review the financial features of the proposed federation of Australia, as that would be presumptuous on the part of a Canadian who cannot have that local knowledge which would enable him to write intelligently or confidently on the subject. All that he has ventured to do is to give his opinion on certain constitutional and political differences between the Canadian system and that suggested for Australia. But before passing away from the Australian bill, there is one matter to which allusion may be appropriately made. The Australian scheme proposes to reproduce that feature of the Canadian constitution which prohibits "dual representation," that is to say, the return of the same man to both the dominion parliament and a provincial legislature. It is questionable, however, if this law has operated as satisfactorily as was anticipated when it was passed at the inception of confederation. The great number of representatives required for the several legislative bodies of Canada, over 700[1] in all, has made a steady drain on the intellectual and business elements of a Dominion of only five millions of people. Many thinking men now believe, after the experience of the last quarter of a century, that the presence of able and experienced men both in the central and local legislatures might do much to prevent many sectional jealousies and rivalries and tend to a larger appreciation of the diverse wants and necessities of the provinces, and to a wider national sentiment, than seems possible under a system of practically restrictive representation or legislative isolation.

[1] See Bourinot's 'How Canada is Governed' (Toronto, 1895), p. 159.

XIV.

Every Englishman will consider it an interesting and encouraging fact that the Canadian people, despite their neighbourhood to a great and prosperous federal commonwealth, should not even in the most critical and gloomy periods of their history have shown any disposition to mould their institutions directly on those of the United States and lay the foundation for future political union. Previous to 1840, which was the commencement of a new era in the political history of the provinces, there was a time when discontent prevailed throughout the Canadas, but never did any large body of the people threaten to sever the connection with the parent state. The act of confederation was framed under the direct influence of Sir John Macdonald and Sir George Cartier, and although one was an English Canadian and the other a French Canadian, neither yielded to the other in the desire to build up a Dominion on the basis of English institutions, in the closest possible connection with the mother country. While the question of union was under consideration it was English statesmen and writers alone who predicted that this new federation, with its great extent of territory, its abundant resources, and ambitious people, would eventually form a new nation independent of England. Canadian statesmen never spoke or wrote of separation, but regarded the constitutional change in their political condition as giving them greater weight and strength in the empire. The influence of England on the Canadian Dominion can be seen throughout its governmental machinery, in the system of parliamentary government, in the constitution of the privy council and the houses of parliament, in an independent judiciary, in appointed officials of every class—in the provincial as well as dominion system—in a permanent and non-political civil service, and in all elements of sound administration. During the twenty-eight years that have passed since 1867, the attachment to England and her institutions has gained in strength, and it is clear that those predictions of Englishmen to which we have referred are completely falsified so far, and the time is not at hand for the separation of Canada from the empire. On the contrary, the dominant sentiment is for strengthening the ties that have in some respects become weak in consequence of the enlargement of the political rights of the Dominion, which has assumed the position of a semi-independent power, since England now only retains her imperial sovereignty by declaring peace or war with foreign nations, by appointing a governor-general, by controlling colonial legislation through the queen-in-council and the queen in parliament—but not so as to diminish the rights of local self-government conceded to the Dominion—and by requiring the making of all treaties with foreign nations through her own government, while recognizing the right of the dependency to be consulted and directly represented on all occasions when its interests are

immediately affected. In no respect have the Canadians followed the example of the United States, and made their executive entirely separate from the legislative authority. On the contrary, there is no institution which works more admirably in the federation—in the general as well as provincial governments—than the principle of making the ministry responsible to the popular branch of the legislature, and in that way keeping the executive and legislative departments in harmony with one another and preventing that conflict of authorities which is a distinguishing feature of the very opposite system that prevails in the federal republic. If we review the amendments made of late years in the political constitutions of the states, and especially those ratified quite recently in New York, we see in how many respects the Canadian system of government is superior to that of the republic. For instance, Canada has enjoyed for years, as results of responsible government, the secret ballot, stringent laws against bribery and corruption at all classes of elections, the registration of voters, strict naturalization laws, infrequent political elections, separation of municipal from provincial or national contests, appointive and permanent officials in every branch of the public service, a carefully devised code of private bill legislation, the printing of all public as well as private bills before their consideration by the legislative bodies; and yet all these essentials of safe administration and legislation are now only being introduced by constitutional enactment in so powerful and progressive a state as New York. Of course, in the methods of party government we can see in Canada at times an attempt to follow the example of the United States, and introduce the party machine with its professional politicians and all those influences that have degraded politics since the days of Jackson and Van Buren. Happily, so far, the people of Canada have shown themselves fully capable of removing those blots that show themselves from time to time on the body politic. Justice has soon seized those men who have betrayed their trust in the administration of public affairs. Although Canadians may, according to their political proclivities, find fault with the methods of governments and be carried away at times by political passion beyond the bounds of reason, it is encouraging to find that all are ready to admit the high character of the judiciary for learning, integrity and incorruptibility. The records of Canada do not present a single instance of the successful impeachment or removal of a judge for improper conduct on the bench since the days of responsible government, and the three or four petitions laid before parliament, in the course of a quarter of a century, asking for an investigation into vague charges against some judges, have never required a judgment of the house. Canadians have built wisely when, in the formation of their constitution, they followed the English plan of having an intimate and invaluable connection between the executive and legislative departments, and of keeping the judiciary practically independent of the other authorities of government. Not only the life and pros-

perity of the people, but the satisfactory working of the whole system of federal government rests more or less on the discretion and integrity of the judges. Canadians are satisfied that the peace and security of the whole Dominion do no more depend on the ability and patriotism of statesmen in the legislative halls than on that principle of the constitution which places the judiciary in an exalted position among all the other authorities of government, and makes law as far as possible the arbiter of their constitutional conflicts. All political systems are very imperfect at the best, legislatures are constantly subject to currents of popular prejudice and passion, statesmanship is too often weak and fluctuating, incapable of appreciating the true tendency of events, and too ready to yield to the force of present circumstance or dictates of expediency; but law, as worked out on English principles in all the dependencies of the empire and countries of English origin, as understood by Marshall, Story, Kent, and other great masters of constitutional and legal learning, gives the best possible guarantee for the security of institutions in a country of popular government.