

WHY NOT "EMPIRE"?

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A WRITER in the public press not long ago suggested that when Pitt sent Clive to India and Wolfe to Canada, it was then that the British empire came into existence. I think it may be said to be a prevalent idea that it was the acquisition of overseas possessions by the British Crown which had the effect of constituting the British Dominions an "empire." It will perhaps therefore be well to point out that the name was applicable long before England had any colonies at all.

The statute of 24 Hen. VIII, c. 12, opens with these words:

Where by divers sundry old histories and chronicles it is manifestly declared and expressed that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king having the dignity and royal estate of the imperial crown of the same. . . .

And in the statute I Elizabeth, c. 1, we find words referring to the crown of England as "the imperial crown of this realm." Among the old authentic chronicles probably referred to in the statute of Henry VIII we have the charter of Edgar quoted in Calvin's case (2 State Trials 647-8), and also the three famous canons laid down by William the Conqueror:

- (1) That no pope should be acknowledged or papal letters received in England without the king's consent.
- (2) That the decrees of national synods should not be binding without the king's confirmation.
- (3) That the king's barons and officers should not be excommunicated or restrained by any penalty of ecclesiastical vigour without his permission. (Eadmer's His. 1: Nov. i, p 6. Select Charters, 79).

A further usage was claimed by Hen. I as a precedent or rule to be followed—That no papal legate should exercise any power or even land in England without the regal licence. (See Taswelle & Langmead. Hist., pp. 55, 56).

Before proceeding further, it may be well to consider what it is that constitutes a state an empire. It is submitted that the fundamental principle which distinguishes an empire from other kinds of states is the fact that *it has no overlord*,—that its sovereign is supreme in his own dominions, and owes no fealty or subjection

to anyone else either in the temporal or in the spiritual sphere, save God Himself. It is because the ancient monarchs of England had, in fact, this supremacy, that it was rightly claimed that England was an empire. In process of time, the persistent claim of the papacy to exercise jurisdiction in spiritual affairs in England came to be more or less conceded, notwithstanding its being a clear breach of that fundamental principle of the British Constitution. See for example, 25 Edw. 3, st. 4, i; 7 Ric. 2; 13 Ric. 2, st. 2, c. 2; 16 Ric. 2 (It was under this statute that Cardinal Wolsey was convicted: 1 State Trials 367) 2 Hen. 4 c. 3; 4 Hen. 4; 1 Hen. 5. c. 7. At the great upheaval of the English Reformation, the papal exercise of jurisdiction in England was declared to be unlawful, and definitely and finally forbidden. The supreme right of the Crown was confirmed by the Act of Supremacy.

The late German empire was an illustration of various separate and independent states being united together under the overlordship of one Supreme and Sovereign Lord the Emperor. No one was in any way superior to him, but none of the sovereigns of the other German states could claim the like supremacy even in his own territory. In like manner the United States of America constitute an empire, having no overlord, but none of the several states can be said to be empires, because all are subject to the supreme overlordship of the President. It is possibly somewhat of this kind of empire that at the recent Imperial Conference the British empire has been, or is to be, converted into. And yet in one respect it will be materially different. In the empire of the United States there is one supreme governing power and authority capable of exercising the supreme collective power and authority of the entire group of states composing the Union. But this central power and authority of the British empire seems likely to vanish, and in lieu thereof we are to have a collection of empires, because His Majesty—as King of Canada and King of Australia, and of all the other separate kingdoms by reason of his kingship and his supreme authority—*ipso facto* constitutes each of these separate and independent kingdoms an empire.

Many persons conclude that an empire must necessarily have an emperor as its sovereign; but the ancient statutes of the realm seem to show that although the English reigning sovereigns have always been designated as kings and queens, none the less they claimed and exercised imperial powers. Furthermore, we usually associate with the idea of an empire an autocratic sovereign, and there can be little doubt that originally the sovereigns of England claimed to exercise and did in the early days exercise autocratic

powers. Though in the course of time these powers have been diminished and now no longer exist, yet in the forms and usages of our present constitutional procedure indications of the former autocratic power of the sovereign are to be found. We have only to take up any statute book and read the preliminary phrases of any statute to see that it purports to be a law made by the sovereign. The procedure by which statutes are made points in the same direction; a bill or petition to the sovereign praying that such and such a law may be made, and the ceremony which attends its passage *Le Roi le veut*. The Stuart monarchs endeavoured to galvanize into life a corpse from which the spirit had fled, and they signally failed.

It is to be earnestly hoped that before constitutional changes are made in the line suggested at the Imperial Conference, the parliaments both of Great Britain and of the overseas Dominions will give careful consideration to the legal effect of what may be decided, so that no man may for a moment be left in doubt as to whether or not he has lost the supreme right and privileges of his British citizenship.

Now, if what has been said above is the correct view of the matter, then it follows that, long before Pitt sent Clive to India and Wolfe to Canada, England was an empire. The subsequent acquisition by England of its vast overseas dominions merely effected so many accretions to an already existing empire, and not, as some people suppose, the creation of a new political status by the mere acquisition of new territory. The recent Conference of the premiers of the various Dominions of the Crown, by which it would appear to have been agreed that a new political status shall be accorded to the overseas "Dominions" as they are called, and that henceforth they are to be recognized as separate and independent nations, seems to threaten that union to the motherland which has so happily existed in the past, and entitled all subjects throughout the vast dominions of the British Crown to claim, wherever situated, the benefits and privileges of the *Pax Britannica*.

Mr. Baldwin has stated that what has been agreed to does not involve any such danger to our political rights, and yet it is somewhat difficult to see how two apparently contrary propositions can be reconciled. Canada's position in the British empire up to the recent Conference appears to be comparable to that of a junior partner in an old established concern; our political position now foreshadowed would seem to be that of a new and independent nation, under the same king as Great Britain, and having the same relation to the British empire that the Kingdom of Hanover had

to Great Britain when George I became King of England. It would seem necessarily to follow that Canada is no longer to be a part of the British empire, but is to be a separate and independent empire of itself, and that the only national status that the people of Canada can there rightfully claim, if the Conference proposals are carried out, is that of members of the Canadian empire. We would be no longer entitled to claim, as of right, the protection of the British empire of which we would have become merely allies. It will probably be somewhat of an unwelcome surprise to the people of Canada if, as a result of the Imperial Conference, they find that they have ceased to be Britishers and henceforth are only to be entitled to call themselves "Canadians", and that the mighty aegis of Great Britain is no longer theirs. Our legal position hereafter would appear to be that we are no longer partners of Great Britain, but her allies.

Already suggestions have been made that Canada should enter into the same kind of relationship with the United States; and if we are hereafter to have the rights and powers of an independent nation, there seems no reason why Canada could not, if she pleased, make such an alliance. It has already been pointed out that the position of an independent nation, to which some of our politicians seem so ardently to aspire, is very different from that of a junior partner. In the other status we enjoy, as of course, all the benefits of the plant of the concern of which we were partners. Its citizens abroad could, as Britishers, resort in case of need to the British ambassadorial and consular services; but as citizens of a separate and independent nation, we seem necessarily to forfeit all such rights and privileges. We should have hereafter to provide our own ambassadorial and consular services. Hereafter Canadians could no longer claim, as of right, the protection of the British navy, and would have to establish their own navy to protect their commerce throughout the world. When statesmen were so ardently claiming freedom from all British control, they may perhaps have failed duly to appreciate the obligations which they were incidentally incurring on behalf of the countries they claimed to represent. It does seem certainly a very grave responsibility for any statesman to assume, without any mandate or parliamentary authorization from the people he claims to represent, to put forward any such claims on their behalf.