

of industry before it was declared unconstitutional in 1925 and subsequently revised). More recently the federal government has proposed a comprehensive social security program, which in two important aspects, unemployment insurance (following a constitutional amendment) and Family Allowances, has been implemented. In the labour relations field, the federal government has proposed a constitutional amendment in the event that some provincial governments might "want to transfer jurisdiction over some types of industrial relations activities to the Dominion or to have Dominion legislation apply thereto." This proposal, obviously one of expediency, is based on a keen appreciation of the sacred nature of "provincial rights." No doubt both the federal government and labour desire, and would welcome, a more thorough going transfer of jurisdiction.

Among industrialists, there is, according to a recent survey (December, 1945) conducted by the Industrial Relations Committee of the Canadian Manufacturers' Association, considerable support for federal jurisdiction over labour matters. It is, according to the survey, fairly general in the Western Provinces and the Maritimes; in Ontario and Quebec there is considerable difference of opinion, particularly in Quebec, where there is a strong feeling in favour of the province retaining jurisdiction. Among provincial government officials, Mr. Duplessis has been adamant for retention of provincial jurisdiction, while Colonel Drew has favoured a national labour code. From

time to time the remaining premiers have expressed either their desire for a national labour code or their willingness to consider the matter. But the question is much broader than a national collective bargaining system: it is labour legislation in its entirety.

The answer may be given in the near future when the scheduled Dominion-Provincial Conference on labour matters is convened. Should the tradition of previous conferences be followed, breakdown will be its only success with provincial authorities bundled even tighter in their petticoats of power. That the provinces have a keen interest in labour matters must be acknowledged. But they have no interest so important or to be preferred to a national policy which can alone comprise all labour matters. The Canadian Association of Administrators of Labour Legislation, organized expressly with the object of improving legislative and administrative standards and securing a greater measure of uniformity, though it includes in its membership representatives of every governmental agency administering any labour law, is a panacea on paper. Even if no other problems existed, past experience in securing uniform provincial action in a variety of fields has shown, whether the impetus came from such an agency or the federal government, that constitutional osmosis has never been in Canada an effective and ready substitute for constitutional power. Should the conference succeed, significant progress may be made *at once* toward an essentially national labour policy.

The Dangers of Dissolution of Parliament

BY RAPHAEL TUCK

IT has recently been suggested by the Progressive Conservative Party that the term of the Canadian Parliament be fixed in duration, allowing no opportunity to the Prime Minister of cutting its term short when necessary, or to Par-

liament of prolonging its life during a period of crisis. Such a change would undoubtedly have serious repercussions on our whole governmental system. On this decision will depend the question whether we are to continue to have a strong, stable, and responsible government, or whether our governments are

EDITOR'S NOTE: Raphael Tuck, jurist and political scientist, English by birth, has been teaching for the last few years at the Law School of the University of Saskatchewan and at McGill University.

to degenerate into weak, unstable, and more or less irresponsible factions.

Power of Dissolution

Canada at present conforms to the British parliamentary system—as far as the dissolution of parliament is concerned. Parliament has a fixed maximum term to its existence, but no minimum term. Thus the Prime Minister could, if he wished, ask for a dissolution of parliament the very day it started sitting. In the United States, on the other hand, the term of the House of Representatives is fixed by the Constitution, at two years, and nothing short of a constitutional amendment could alter this term. The institution of such a fixed term, was probably due to the fear, on the part of the Fathers of the American Constitution, of the excessive exercise or abuse of power by any of the organs of government, and particularly the fear of an over-strong executive. The result is that whatever crisis may arise, whatever the situation—national, or international—may be, Congress is quite safe for its legal term.

Let us look at the results of the two systems. In England, the contingent power of dissolution is one of the ways through which party discipline is maintained. It is often referred to as the “big stick.” The management of a majority is not an easy task, by any means, and it is this weapon perhaps more than any other, available for use by the government, which exerts a psychological influence over private members, and induces them to remain loyal to the government. The threat of this coercive power thus enables the government to subdue rebellion in its own ranks. The average private member on the government side knows that if he and a sufficient number of his colleagues vote against his government on any major issue, or a sufficient number of times even on minor issues, it is probable that the government will seek electoral approval for its measures. (The government will generally resign only on a large issue of major importance, but its defeats must be rare

on those small matters upon which it will not resign, since each defeat means a loss of prestige, while on matters of great moment, it cannot afford defeat unless it is almost sure of electoral approval on the issue). It must be remembered that a government must be strong in order to carry through the business of the country. Its strength depends on its prestige, and its prestige depends of its being able to maintain its majority. If it loses that majority in the House, or if it is forced to give way on a theme of vital importance—or a number of times on issues even of minor importance—it loses its prestige both in the Commons and in the constituencies. In such a case, it should be able to refer to the electorate, and this it is able to do in England, and Canada. The private member on the government side will therefore consider carefully before he exposes his party—and with it himself—to the risk of overthrow, for such overthrow will almost invariably mean dissolution. This means, of course, that the private member will have to fight another election, which, in any event, entails great expense for him, but in this case he will probably have to fight without the support of his own party—i.e. without his party label—and his chances of re-election are thus infinitely smaller.

The power of dissolution, it is apparent, in the hands of the Prime Minister and his cabinet, is a powerful weapon by which strong control is exercised by the government over its own party member in the House. As Dr. Finer states—it throws them “into a state of frightened self-enquiry, which is followed by a tightening of party discipline.” However, it is not only on the government side of the House that this influence is felt. The power of dissolution is a two-edged weapon in the hands of the government of the day, for, to a certain extent, it can thereby prevent its opponents from going to extremities. The opposition knows that if it defeats the government, it is more than probable that parliament will be dissolved, in that case the opposition will find itself face to face with

the electorate. If, therefore, it is not sanguine of its chances, it will, in all probability, yield to the threat of dissolution more readily than it would do if such a threat were impossible.

On the other side of the picture, the weapon of dissolution can, as it were, be turned against the government itself, either by the House, or by the electorate. If the government is pursuing a policy which runs entirely counter to the views and consciences of the members of the House (including the government's own supporters), they can either force the government to abandon such a policy, or defeat it in the House on a vote of no confidence. The government has then no alternative but to resign or dissolve parliament, and if it resigns, the new government generally cannot carry on for long without dissolving parliament and asking the electorate to give it a majority in the House. The same applies (perhaps to a lesser extent) when a strong public feeling is aroused—outside the House—against the government's policy. In such a case, the government will have to modify that policy or cease to be the government through loss of its party backing. For its power lasts only so long as it does not outrage the feelings or principles of its own party, since it can secure a majority in the House only if its members secure a majority of votes in their constituencies. Its supporters in the House will therefore make every effort to keep in touch with the opinions of the electorate, and they will sooner or later turn against a cabinet that is leading them to defeat. Its control will thus depend for its success on its being sensitive to the opinion of its supporters directly, and ultimately to public opinion throughout the country. We often find instances of governments giving way before an onslaught of public opinion, despite a majority in the House—as, for example, Mr. Ramsay MacDonald in 1934, over the Unemployment Assistance Regulations, or Lord (then Mr.) Baldwin, in 1935, over the Abyssinian crisis, when he also had to jettison Sir Samuel Hoare in order to save himself.

Criticism

A criticism has often been levelled at this system, which it would be well to answer at this point. It is argued that since dissolution can be used as a penal measure, it prevents members of the House from being able to exercise an unbiased judgment upon every issue brought before them, fearing neither the Crown on the one hand, nor the people on the other.

Now this argument might have served well in the middle of the 19th century, but to-day, the House of Commons is an entirely different institution from what it was a hundred years ago. In the mid-19th century, it could well be called a "Gentlemen's Club." The sphere of governmental activity was small, and the private member enjoyed a considerable degree of prominence. During the present century, however, the increased pressure of business has made it increasingly impossible for the private member to remain an integral and important factor in the operation of legislation in the House of Commons. The very nature of government has changed, and parliament to-day has to cope with matters which no one in the 19th century ever dreamed would come within its purview. The need for coherent planning has changed the whole face of the House, which has been relegated more or less to the position of the "formal organization through which the executive obtains the legal registration of its will." For it is to the executive that the real legislative power has shifted; it is the executive which, to-day, must control the main stream of political activity, and it does this by means of party discipline and control. The result is that there are not the surprises in the division lobby which we find common in the 19th century; nowadays each member votes with his own party. In 1835-9, the Whig Government was defeated on 53 occasions in the British House of Commons. To-day, a government simply could not be defeated ten times in one session, for it would have ceased to hold the reins long before its tenth defeat. Thus, although

it is in the House of Commons that the *ultimate* power lies, its working turns upon an all important pivot—party discipline. It is impossible, in our modern system of government, to ask each member of parliament to an individual opinion upon every issue which the House decides. The House of Commons is the body for getting business done, and the private member's duty is to be on hand and support the main lines of policy of his party. The alternative is a body of numerous individuals, with as many different policies—a complete lack of a broad outline of policy—with its inevitable corollary, the downfall of the democratic system.

Political Safety Valve

The centre of gravity in English politics has thus shifted, since the beginning of the century, from the House of Commons to the Cabinet and the political parties, and with that shift, there has been a change in the purposes which the power of dissolution has been used to fulfil. In the 19th century, dissolutions were mainly the result of defeats *inside* parliament—a vote of censure or no confidence, or a defeat of the government on a major issue. During the present century, however, dissolutions have been due in large measure to party decisions and party strategy, for example, in 1900, Lord Salisbury appealed to the electorate while it was still enthusiastic about the South African victory, as the opportunity was too good to be thrown away. The practice has also arisen of dissolving when the government wishes to make a plea for renewed confidence of the electorate during a national crisis. This was done in England in 1900, 1918, 1922, and 1931. Similarly, the practice has grown up of dissolving parliament when the government considers it no longer has the confidence of the country. Here, the by-election plays a very important part as indicator of the trend of feeling—indeed, in some cases during the last 80 years, parliaments have actually been dissolved as an indirect result of by-elections. For instance,

Mr. Balfour, in 1905, resigned, even though he had a majority in the House of Commons, as a long series of by-elections had indicated that he had lost the confidence of the country. This resignation precipitated a dissolution by Sir Henry Campbell Bannerman. Again, a dissolution can be sought in order to bring a new and important legislative measure before the electorate on the basis of a mandate, despite the government's having a majority in the House; for example, in 1923, the electorate was asked to pass judgment on Mr. Baldwin's protective tariff scheme—which it promptly threw out, overturning Mr. Baldwin and his government at the same time. It has, in fact, come to be considered that although parliament is legally omnipotent, it is yet constitutionally and practically expedient to ask for fresh authority in dealing with some novel and important measure by submitting it to the people at a general election.

Thus, during the 20th century, the incentive to dissolution has arisen chiefly from *external* forces, such as party decisions taken outside the House of Commons, reasons of party strategy, loss of confidence of the nation, or the wish to secure a mandate for a definite policy. In such cases, dissolution of parliament operates as a kind of political safety valve. Were this power taken away, and a fixed minimum term given to the life of parliament, this "safety valve" could not operate. The government could not test the electorate during a crisis when it wished to have its confidence renewed; a new and important issue could not be brought before the people on the basis of a mandate, for its decision; if the government has completely lost the confidence of the nation, it would still have to carry on as a government, pursuing a policy of which the people heartily disapproved—a policy which might be detrimental to the very life of the nation; defeat in the House on a major issue would mean nothing; a vote of no confidence or censure on the government's policy would either still leave the government in the saddle

(as in the United States), or cause its resignation, which would be followed by another government's assuming office without a majority in the House (as in France). In such a system, party discipline is impossible to maintain, and in consequence, government becomes weak and unstable

American and French Experience

In the United States, both Congress and the government are quite safe for their legal terms. Congress cannot force the government to abandon its policy or to resign, while the President cannot put his programme into operation if he is opposed by Congress, nor can he dissolve Congress when it becomes merely obstructive and recalcitrant. Crises may come, violent differences of opinion may arise, Congress may obstruct the President's programme, and the President may veto Congress' legislation, but the result is stagnation, with no power to end the deadlock by appeal to the people. In France (before the recent world war) the need for constructive politics was urgent, but impossible of realization under the then existing system. A power of dissolution was vested—not in the Premier, but in the President, with consent of the Senate, and this power had not been exerted since 1876. The result of this was a lack of working strength of the government. The political structure was entirely dominated by the group system both inside and outside the Chamber of Deputies, a marked characteristic of the system being the political manoeuvring of these groups, which was an obstacle in the path of constructive politics and progressive legislation. The problem of placating these various groups, by giving them ministerial representation, in order to win their support, was one which confronted every Premier, and even when that support was secured, it was generally of short duration, since these groups could overthrow ministries at will. In con-

sequence, we witnessed the rise and fall of successive ministries with astonishing and nerve-shattering frequency, while the Chamber was left free for the display of disorganised and incoherent animosities, since there was no possibility of an appeal to the people to remedy internal conditions in the Chamber, or to manifest its opinion on a question of paramount importance. Truly, the members of the Chamber (in Faguet's words) "laboured without accomplishment," while the government was at the mercy of party combinations and intrigues, having to substitute the politics of manoeuvre for the politics of policy. The result was disaster.

Stable Government

It is against this background that we must evaluate the recent proposals of the Progressive Conservative Party to institute a fixed term for parliament, with no power of dissolution beforehand. If we remove the power of dissolution from the Premier and his cabinet, defeat in the House would just mean a change of government, and the danger would be ever present of the private member's going into merely factious opposition against his own government whenever he felt so inclined, and of the opposition's obstructing at every turn, both quite confident of retaining their seats until the parliamentary term had expired. Ministries could thus be overthrown at will, and strong, stable, an responsible government rendered impossible. The private member would certainly be restored to something like his old position, but the foundations of government would be weakened and finally undermined. We might still continue to have *representative* government, but it would certainly not be *responsible* government. With the French and American experience before us, we will do well to think seriously before adopting such a proposal. As Dr. Eugene Forsey has said—"It is neither Progressive, nor Conservative, nor British."