

CANADA BREAKS HER SHELL

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SOMETHING analogous to Canada's political evolution may be seen in the development from a protoplasmic speck to a run-about chicken. There is in both a passage (as Spencer phrased it) "from an indefinite, incoherent, homogeneity to a definite, coherent, heterogeneity",—a passage in the case of political Canada from British military government to the assumption of control in almost all departments of national life. In both the process is, to a large extent, unconscious, while at the same time it is altogether natural, involuntary, and imperative. Canada is now at the shell-breaking stage. She is partly in and partly out of her incarcerating enclosure. Like the chicken's, her efforts are spasmodic and intermittent, the one lacking physical force, and the other lacking concentration of will power. If it be as impossible as it is immaterial to posit any particular date for the appearance of the earliest crack in Canada's calcareous envelope, we cannot be wrong in affirming that now—although still to some extent unreleased—her head has emerged through a sufficiently enlarged aperture. Indeed the most significant and satisfactory feature of the parliamentary debates of last session was the acknowledgment of this fact by the imperialists.

In this respect, contrast 1923 with 1913. In the earlier year the language of the imperialists was that of Mr. Cockshutt who said:

This country is sick and tired of the word "autonomy"; it has been worked to death.¹

Sir Herbert Ames likewise said:

Autonomy, which was the slogan of the last century, has done its work, accomplished its purpose, and belongs to the last century. It does not belong to the Canada of to-day.²

In 1923, on the contrary, when Mr. Lapointe and Mr. Morin deemed it advisable to point to Canada's national development, and in so doing to offer quotations from recent writers and speakers,

1. *Hansard*, Dec. 17, 1913.

2. *ibid.*

they were told that they had wasted their time, for everybody agreed with them. Among the quotations are the following:

Sir Robert Borden—

The dominions, as signatories of the Peace Treaty, became members of the League of Nations and acquired, at least vis-a-vis the other members of the League of Nations, a distinctive international status that they had not previously possessed.³

Mr. Rowell—

This is a great step in advance, and opens the way to the dominions obtaining full satisfaction of their national aspirations within the British Empire, just as the United States obtained the satisfaction of her national aspirations without the Empire.⁴

Dr. Malcolm M. Lewis—

The dominions consolidated their newly acquired international status by becoming, and being recognized as, original members of the League of Nations. In fact, as far as the League is concerned, they have the same rights and duties as independent States.⁵

Mr. Lloyd George—

The dominions had been accepted fully into the comity of nations by the whole world, and they were equal partners in the dignities and the responsibilities of the British Commonwealth, with liberty as its binding principle. based not on force but on goodwill and a common understanding.⁶

Lord Milner—

The only possibility of a continuance of the British Empire is on a basis of absolute out-and-out equal partnership between the United Kingdom and the dominions. I say that without any kind of reservation whatsoever.⁷

Professor MacNeil—

The establishment of the Irish Free State preserves to Ireland her position and indefeasible status as an independent nation, and her entrance into the British Commonwealth of Nations.⁸

Colonel Amery, First Lord of Admiralty—

That which has most impressed the outside world is the fact that at that conference—Paris—the full equality of the dominions

3. *The Yale Review*, May, 1923.

4. *The British Empire and World Peace*.

5. *British Year Book of International Law*, 1922-23, p. 33.

6. Quoted by W. P. M. Kennedy in *The Constitution of Canada*, p. 370.

7. Quoted by Sir Robert Borden in *Canadian Constitutional Studies*, p. 114.

8. *Journal of Comparative Legislation and International Law*, p. 53.

with ourselves as nations has been recognized not only by us but by the other governments. They have been treated not only as equal nations within the brotherhood of the British Empire, but as equal nations with other nations outside the Empire.⁹

General Smuts—

The dominions have in principle authority and power, not only in respect to their domestic questions, but also their international or foreign relations and the questions of peace or war which may affect them. If a war is to affect them, they will have to declare it; if peace is to be made in respect of them, they will have to sign it. Their independence has been achieved.¹⁰

Professor Oppenheim—

But the position of self-governing dominions underwent a fundamental change at the end of the world-war. Canada, Australia, New Zealand, South Africa, and also India were not only separately represented within the British Empire delegation at the Peace conference, but also became, side by side with Great Britain, original members of the League of Nations. Separately represented in the Assembly of the League they may, of course, vote there independently of Great Britain . . . Now the League of Nations is not a mere administrative union . . . but the organized family of nations. Without doubt, therefore, the admission of these four self-governing dominions to membership gives them a position in international law.¹¹

To all this the reply in 1923 is not, as in 1913, that "the country is sick and tired of autonomy," but, in the language of Mr. Meighen—

With those quotations enunciated I have no quarrel whatever; with some of them I had to do at the time of their creation, but I am no more loyal to them than I am to the others. I do not know any at this day who disagree.

The change from 1913 to 1923 is full of significance. Canada's head is out of the shell. No one denies it. And to the assertion of complete political equality with the United Kingdom—that is, of complete, independent sovereignty—no one objects. The language has, indeed, somewhat outrun the fact, but its justification cannot be long delayed. Its employment will facilitate arrival of the fact. Even Mr. Massey, the New Zealand Premier—that most stalwart of all the remaining imperialists—has, in a very important particular, succumbed to its currency. He has said—

9. Speech in House of Commons, July 30, 1919.

10. South African Address.

11. *International Law*.

There is one aspect of the Imperial problem which is rarely discussed. We are partners in the Empire, but have never fully assumed the privileges of partnership. . . . We have not as yet got to the stage when dominion representatives are able to join with the representatives of the British Government in making communications to the Sovereign, the head of the British Empire. We should have exactly the same rights as Ministers who represent the British Government, and be in a position to approach the Sovereign.¹²

Acquisition of these "same rights" would mean complete dissolution of the imperial tie—the relation of dominant and subordinate—and the establishment of two separate and independent kingdoms with the same king. The United Kingdom and Canada would bear to each other the same relation as existed between the United Kingdom and Hanover in the days of the Georges.¹³

From a purely legal point of view, the fact that the Halibut Treaty with the United States was signed by a Canadian, and by him alone, falls far short of proving (as is sometimes alleged) that Canada makes her own treaties. For (1) the negotiations were carried on through the British ambassador at Washington, who took his instructions from the British Foreign Office; (2) the treaty is not one between Canada and the United States, but one between

the United States of America and His Majesty, George V, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Emperor of India:

and (3) although Canada requested that authority to sign the treaty should be conferred upon Mr. Lapointe, and upon him alone, the request went to the British Colonial Office and was complied with only because of the British Ministry's advice to the King. We had no direct communication with him. It is not yet true, as asserted by the dominion Prime Ministers in March, 1919, that in diplomatic affairs

The Crown is the Supreme Executive in the United Kingdom and in all the dominions, but it acts on the advice of different Ministries within different constitutional units.¹⁴

From a popular and more important view, however, the method of signing the treaty must be recognized as a further enlargement of the orifice through which, until recently, we had been content to peep. Note the progress since Sir John A. Macdonald, in 1882,

12. Speech in parliament of New Zealand, July 6, 1923, as cabled to the London *Times*.

13. Mr. Massey supplied further evidence of his advancement by moving a resolution to the effect that no "resolution passed at the Imperial Conference should be binding on the Dominion until it had been ratified by the parliament of New Zealand."

14. *British Year Book of International Law*, 1922-23, p. 32.

answered Hon. Edward Blake's proposal for direct negotiations concerning commercial arrangements with foreign States: "Disguise it as you will, this means separation and independence." Two years afterwards, Sir Charles Tupper succeeded in having himself appointed joint-plenipotentiary with the British ambassador in Spain in connection with the negotiation of a commercial treaty. In 1895, Sir Charles was again a joint-plenipotentiary—this time in connection with a French treaty—and this time he, chiefly, did the work. In 1907, Messrs. Brodeur and Fielding (in nominal association with the British ambassador at Paris) negotiated a commercial treaty with France, and the only knowledge which the British Government or the British ambassador had of the proceedings was, as Mr. Balfour said, "a purely technical knowledge." In 1909-11, the International Joint Commission was set up. It is composed of three Americans and three Canadians (appointed by Canada), and, without the slightest reference to the British Colonial or Foreign Office, has successfully dealt with a large number of questions affecting the two countries. In 1910, Messrs. Fielding and Graham negotiated reciprocal trade arrangements with the United States. They had no authority other than that given them by their own Government.

These occurrences brought us thus far: we could negotiate commercial treaties as we pleased; but Canadian signature of them was not only authorized by the King on the advice of the British Ministry, but was accompanied by the signature of a British ambassador. On the other hand, reciprocal arrangements with foreign States could be put into operation without even the appearance of British sanction by the passage of a Canadian statute. And finally, matters of great importance (other than of commercial character) in difference between us and the United States were frequently arranged without any reference to British authorities. To such a situation, the addition of a sole-Canadian signature to treaties which Canada had sufficient power to negotiate was not a very long step; but, as in the case of every previous step, it tapped the ready wrath of the imperialists. Mr. Meighen referred to "its execution in this new fangled manner." He went on—

I wonder how much better off we are. Is our autonomy in the smallest degree enlarged? Does anyone understand just how we are advantaged by the supreme glory of having the Minister of Marine and Fisheries execute this treaty alone, having, figuratively speaking, kicked the British ambassador out of the door in the execution of a treaty with a foreign Power? . . . Why should we continue this process of offering one affront after the other, in

order, if possible, to magnify and emphasize before the world our desire to dissociate ourselves from the Empire in general? . . . My criticism is directed against the unnecessary, and, to my mind, indelicate action by the Government with relation to the historic form of executing treaties in which this country is chiefly interested.¹⁵

Mr. Meighen was on better ground when he objected to that part of the Government's resolution approving the treaty which referred to it as having been—

signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named.

There is nothing in the treaty which limits the capacity in which the King acted, and the British Government could not possibly shelter itself under any such pretence. When the King approves the treaty, he will act upon the advice of his British Minister. It may well be doubted whether the King can, in any case, act for Canada as a separate political entity.¹⁶ He certainly did not do so when he appointed Canadian plenipotentiaries to negotiate and sign the Versailles Peace Treaty and the Washington treaties. He appointed them—each separately—

Our undoubted Commissioner, Procurator, and Plenipotentiary, in respect of our Dominion of Canada: Giving to him all manner of power and authority to treat with the plenipotentiaries of other States, and to sign for Us and in Our name in respect of Our Dominion of Canada.¹⁷

Upon these and other occasions, the King was not acting through his plenipotentiaries for Canada or for any other special place. He was acting for "the British Empire"¹⁸—as the documents state. And the plenipotentiaries—some of them with authority "in respect of Our Dominion of Canada", and others without geographical limitation—represented the King.¹⁹ Evidently, the aperture needs enlargement.

The parliamentary session will be further remembered as the first in which such a resolution as that of Major Power—a war-scarred veteran—was moved:

15. *Hansard*, pp. 4612-13.

16. That he has power to do many things of purely local application—assent to bills, for example—is, of course, not inconsistent with the above statement.

17. Mr. Mackenzie King thought that this language justified that to which Mr. Meighen objected.

18. It will be observed that in the Halibut Treaty the King was the contracting party. That is the usual form.

19. "Under British practice the Letters Patent constituting full powers are signed by the King as Head of the State without any counter-signature" (Borden: *Canadian Constitutional Studies*, p. 160, note).

That, in the opinion of this House, it is expedient to declare that, save in the case of actual invasion, the Dominion of Canada shall not be committed to participation in any war without the assent of the parliament of Canada.

Sir Wilfrid Laurier had, on several occasions, asserted that Canada would decide for herself whether or not she would participate in British wars. And the present Government, in reply to the George-Churchill despatch of 15th September last, "inviting them" (the dominions) "to be represented by contingents" in connection with the Near East embroglio, had said that

It is the view of the Government that public opinion in Canada would demand authorization on the part of parliament as a necessary preliminary to the despatch of any contingent to participate in the conflict in the Near East.

But never before had the opinion of Parliament upon that chiefest of all Canadian questions been challenged. The Major ably argued his case, dividing the subject into

the sentimental argument; next, the moral argument; and last, the legal or constitutional argument.

Dealing with the first of these, he argued that, in the historic sense, Canada's "Mother Country" was France rather than Great Britain:—

Now I hardly think that any member of this House will venture to assert that we should go to war on any occasion when France is at war.

Dealing with the moral argument that—

As Canadians we owe to the British Empire or to Great Britain that we have been protected by the British army and the British navy, and furthermore we owe to Great Britain our constitutional development and the freedom and privileges we enjoy under the British Constitution,

the Major replied that

We have not, as a matter of fact, been protected to any great extent by the British army.

With reference to protection by the British navy, the Major said—

I go further, and I say that not only has the British navy

not protected us, but it has on several occasions intervened to our disadvantage.

He denied that

our constitutional development, the constitutional freedom and rights and privileges that we now enjoy are due in a large measure to what I may call the benevolence of Great Britain.

British anxieties, in 1790, with reference to Canada the Major found in a letter from Lord Grenville, Colonial Secretary, to Lord Dorchester (Governor-General), asking

by what means the connection and dependence of Canada on this country may be so preserved and cultivated as to be rendered most beneficial to Great Britain during its continuance, and most permanent in its duration.

Replying to assertion with reference to our duty of gratefulness for protection, the Major alluded to "our experience with British diplomacy"—

During the whole course of our Empire, when we were in early youth and in young manhood, we were protected, firstly—if we were protected at all—in order to suit the interests of the Mother Country, and as soon as it no longer suited their interests we were made the butt of their diplomacy in order to placate and to please the Americans on every possible occasion.

Dealing with an asserted constitutional obligation to participate in British wars, the Major quoted a letter to Sir Charles Tupper (12th March, 1885) in which, refusing to furnish a contingent for service in the Soudan war, Sir John A. Macdonald said—

Our men and money would therefore be sacrificed to get Gladstone and Co. out of the hole they have plunged themselves into by their own imbecility. Again, the reciprocal aid to be given by the colonies and England should be a matter of treaty, deliberately entered into and settled on a permanent base.

The Major quoted also the declaration of Sir Wilfrid Laurier at the time of the despatch of a contingent to South Africa—

I claim for Canada this, that in the future Canada shall be at liberty to act or not to act, to interfere or not to interfere, to do just as she pleases, and that she shall reserve to herself the right to judge whether or not there is a cause for her to act.

Answering the question

Was the government of Canada justified, in August 1914, at the time Great Britain entered the war, in pledging Canada's

active military support to Britain without securing the consent of the parliament of Canada?

the Major said—

I am under the impression that owing to some more of those conversations, for instance the interchange of officers between the British general staff and our exchange of officers, and also owing to a certain resolution passed unanimously in this House of Commons in 1909, we were practically pledged to go to war in case the British Empire was forced into war through aggression on the part of Germany. It is to prevent any such contingency in future, without the knowledge and full consent of parliament, that this resolution is being introduced. . . . The passing of a resolution such as this is one way that would keep us from undertaking any entangling alliances or engagements.

After some remarks by Mr. D'Anjou, the debate was adjourned, Mr. Meighen saying—

I know that this motion is not debatable, but I do think it is lamentable that a motion of this kind, supported by speeches of the character we have heard, should now be adjourned and the whole discussion abandoned. I enter my protest."

During the session before last, the Government announced that the cruiser *Aurora* and the submarines would be retired, and provision was made for two destroyers—"one on each coast, accompanied by two mine sweepers on each coast," (Speech of Mr. Graham, 6th March, 1923).

During last session, the amount voted "for the maintenance of the Royal Canadian Navy" was the rather paltry sum of \$1,500,000. When explaining the uses to which the money was to be put, Mr. Graham said—

There are two lines of policy advocated by naval authorities. One is that it is the duty of a nation to prepare for high seas warfare, and the other is that its first duty is to develop the defence of its coast. There is a good deal of difference of opinion on this point among the authorities, but the technical officers in my department advise me that the latter is the proper thing for the Dominion of Canada, that is, training for the defence of our coasts. The object of the whole navy scheme, as I have tried to point out, is not to begin to try to undertake the defence of the high seas—that is impossible for the Dominion of Canada at the present time—but believing that in years to come as we develop we will require naval protection as we require a militia, it is thought best, at least by the members of the Government, that the present is the time to give our young men that training which will fit them, both as officers and men, to take their place in the naval service of Canada as it develops.

The permanent force, officers and training staff, at Halifax

and Esquimalt, comprises approximately 500 men. . . . In addition to that, there are 500 men of the naval reserve. These men are professional sailors. They need no training in high seas service; but training in gunnery, and all that kind of thing, will be given them so many days each year at our training grounds either at Esquimalt or Halifax. . . . In addition to the 500 men of the naval reserve, we are providing for the training of approximately 1,000 men of what will be known as the Volunteer Naval Reserve. . . . The training will vary from 14 to 21 days according to the class of rating.

For expenditure in these ways and in connection with a few men taking courses in the British navy, the million and a half was provided, but not without Mr. Meighen's declaration that

We are simply a laughing stock. Just a laughing stock, just wasting money. We are depending on another country to keep our high seas safe, knowing no enemy will reach our shores, knowing that the only things that can reach our shores are wasps and hornets that could not give trouble even to an invader.

Let us ascertain whether or not we have a naval service, and whether we should vote a million and a half for what is actually being done to-day. That is what is before the committee for consideration. But do not let us deceive ourselves into thinking that we are lifting a hand at all to aid in the naval defence of which we share the advantage every hour. We are not. It would be far manlier for us to sweep the decks clear, and say that we are not, and to stand before the world in our true colors. . . . I do not think we ought to expend on a naval service the equal *per capita* of what the Mother Country does. She has responsibilities that are not ours in an equal share. But we ought to do something that is worthy of our standing, of our strength, of our responsibility, of our wealth, of our exposure here on two coasts, worthy of our place in the Empire, the place we have won, and I think the Government would be well advised to come before parliament with a programme that measures up to these requirements.

These remarks might have led to prolonged and interesting debate. That they did not, illustrates once more how unwilling almost all the members are to declare themselves as Canadians or imperialists.

Replying recently to a question in the British House of Commons, Sir William Joynson Hicks, Financial Secretary to the Treasury, said that the approximate cost of defence per head of population in the various parts of the Empire was as follows:—

Great Britain	58 shillings (\$14.50)
Australia	17 shillings (\$ 4.25)
New Zealand	11 shillings (\$ 2.75)
South Africa	12 shillings (\$ 3.00)
Canada	6 shillings (\$ 1.50)

If the amount of expenditure on war-preparation ought to depend upon the extent of the danger of attack, those figures are well justified. Insurance premiums are high or low according to risk. Great Britain is in the extra-hazardous category of war-risks. Canada is in the extra-safe. Ask Lloyd's for insurance of the two countries against war—upon the basis of each being uninvolved with the others—and you will find that the difference in the premiums demanded would, at the least, be a difference between 58 and 6. If, on the other hand, Canada is to be at war whenever the United Kingdom is at war, the premiums would be identical, and upon that basis expenditure upon war-preparation ought to be equal. It may be that the United Kingdom, as Mr. Meighen said, has "responsibilities which are not ours in an equal share." From a Canadian, if not from an imperialist point of view, she certainly has. But the fact is immaterial if Canada is to be drawn into war when these "responsibilities" are being discharged. Preparation ought to be based upon danger of war, not according to the sort of circumstances which may produce it. And the question for us is, upon what basis ought we to prepare for war—as geographically safe, or as politically entangled? as a part of the continent of North America and free from menace, or as an adjunct of a world-Power laden with imperialistic responsibilities and dangers? Major Power is not alone in desiring the adoption of definite policy in that regard.

Debate—interesting debate, upon Mr. Woodworth's motion

That, in the opinion of this House, it is in the interest of world peace that Canada should withdraw all claims on Germany for reparation,

ranged from responsibility for the initiation of the war to the benefits to be derived by western farmers from larger purchasing power in Europe. The motion was opposed by the Premier, principally upon the ground that inasmuch as Canada's share of the assets recoverable from Germany was a fraction (4.35 per cent.) of the amount to be received by the British Empire, the question was one for discussion with the other participants. With this view Mr. Meighen agreed, and had not the Speaker ruled the motion out of order, it would certainly have been defeated.

If the debate upon the coming Imperial Conferences was disappointing, it produced, at all events, indication from the Premier that upon one of the principal subjects on the agenda his attitude will sharply contrast with that of Mr. Meighen in 1921; upon a second, it will be identical; while upon a third, it will be non-committal.

(1) Quoting the resolution of the last Conference which favoured the removal of the political disabilities of Indians in the dominions, Mr. Jacobs advocated their admission to the franchise in the British Columbia elections.²⁰ He encountered determined opposition, and was told that "the members from British Columbia are a unit on this question." Mr. Meighen supported the resolution to which he had agreed in London. Opposing the proposal, the Prime Minister took two points—

The important factor is that the question of whether or not the franchise is to be granted to the Indians of British Columbia is a matter, so far as I can see, not to be determined at any Imperial Conference, but to be decided by this parliament in settling the franchise for membership in this House.

Secondly, the Premier related that when Mr. Sastri was here,

I said quite frankly that if the members from the province of British Columbia, regardless of political party, were to be favorable to having the franchise granted to the Indians in British Columbia, the rest of the parliament would fall cordially into harmony with their view; that on the other hand if there was no agreement among the members of the province of British Columbia on this question, if it was clear to the members of this House that so far as British Columbia was concerned instead of being in favor of granting the franchise they were all pretty much the other way, it was hardly probable that the members of parliament generally would seek to impose any view upon them which would be contrary to their wishes. In other words, that it was very doubtful how any situation of unrest in one part of the British Empire could be improved by creating a new condition of unrest in another part.

(2) Agreeing with the attitude assumed by Mr. Meighen in 1921 with reference to constitutional changes, the Premier read a resolution which in that year he had offered to the House, and said that he would act upon it. The resolution was as follows:

That the House, while recognizing the propriety of Canada being represented at any Imperial Conference or conference of the Prime Ministers of the Empire that may be called, desires to record its opinion that at the coming conference no steps should be taken in any way involving any change in the relations of Canada to other parts of the Empire.

(3) With reference to imperial preferences, the Premier declared that

20. Of the fifty-one columns of debate in connection with the coming Conferences, no fewer than twenty-three relate to this question.

the attitude which I will take as regards Canada will be that the matter of a preference is a matter for each parliament to decide for itself.

Otherwise than by what may be gathered from Mr. Graham's remarks with reference to "the maintenance of the Royal Canadian Navy," the Government did not indicate its attitude toward the most important subject on the agenda of the Conference, namely, "imperial defence," and upon it there was little debate. Major Shaw, in a thoughtful speech, reminded the Premier that Sir Wilfrid Laurier had objected to being taken into consultation with reference to foreign affairs, because—

consultation meant responsibility. I think he was correct in making that statement.

Sir Wilfrid once said that it was extremely difficult to meet all imperialistic proposals with unintermittent negatives, but, exhibiting exceptional tact, he succeeded in maintaining his freedom. Will his pupil be as successful?