

# CONSTITUTIONAL AMENDMENT NOW

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THE almost universal acclaim with which Sir William Beveridge's great report on the social services was received shows how intimately the problem of security has become involved with the objectives of the war. Its terms have brought home concrete war aims to the common man in a way that the vague liberalism of the *Atlantic Charter* failed to do. That our own government is aware of the importance of concrete social objectives in its war programme is shown by the appointment of the National Reconstruction Committee.

We have a problem of our own in connection with the social objectives of the war and the peace to follow. It is a problem which is peculiar to federal countries. It is interesting to notice, therefore, that Australia, which has a similar problem, is already taking steps to meet it.

In spite of the fact that Australia is still in danger of invasion from the Japanese, the Commonwealth Government has called a constitutional convention to consider certain specific amendments to the constitution. Nor is preoccupation with the minutiae of the constitution in a time of such national crisis a form of political levity on the part of Mr. Curtin and his colleagues. They are genuinely concerned over Australia's ability to solve the problems of post-war reconstruction, and to uphold her international obligations, unless an immediate alteration is made in the federal balance of power.

In the opening address to the Convention, Prime Minister Curtin declared that the powers of the government of Australia were sufficient for war but not for peace. The general purpose of the amendments which he was going to propose was to confirm the war-time powers of the central legislature over industry and trade, employment and unemployment, health services and rehabilitation, so that the problems of the reconstruction period could be met by effective legislative action, and the government's obligations to discharged soldiers and to other nations under Clause Five of the *Atlantic Charter* could be met. In introducing for consideration the bill which the government had prepared, Mr. Evatt, the Attorney-General, indicated that the

powers were to be defined as being limited to the purpose of post-war reconstruction, and subject to review by the High Court of Australia.<sup>1</sup>

The Australian government has chosen to lay the foundations for its post-war policy at a critical period in the war itself. It is natural to ask if such a step is advisable. Mr. Wendell Willkie has warned us in one of his speeches that now is the time to be clear in our war aims, for in the post-war period we shall be so weary and preoccupied with our own problems of survival that the sense of common purpose will have been lost and the opportunity for common agreement on common objectives will be gone.<sup>2</sup> What is true of war aims is no less true of the machinery of reconstruction. The success of our efforts to fulfill the promise of a decent life for the common man will depend very much on the effectiveness of our government machinery. One does not wait until the storm to mend the leaks in the roof. Only by preparation in advance can any predictable catastrophe be avoided.

We in Canada have a federal system very similar to that of Australia. Our government, too, is adequate to the needs of war. It has yet to prove its adequacy in the kind of exhausted world which peace will bring. Its inadequacy lies in the nature of our federal system itself. Too few of the people who talk glibly of the necessity for full employment and wider social security after the war realise that the Parliament of Canada lacks the constitutional power to lay the necessary foundations for those objectives. Most of our post-war objectives imply the continuation of at least part of the machinery of control which the new war agencies of the government exercise. Mr. Grant Dexter, of the *Winnipeg Free Press*, has shown in a recent series of articles<sup>3</sup> how much the control of prices, the rationing of commodities, and the allocation of supplies have saved us from the runaway inflation of the last eighteen months of the other war. The post-war period will be just as vulnerable to inflation, and to catastrophic declines in employment and the standard of living, as was the last one. This time, however, the area of suffering will be greater, and the period of recovery longer in duration.

Our constitution was drafted in an age of *laissez-faire*, when the high functions of government related mainly to defence

1. Associated Press Despatch from Canberra, dated 24th November, 1942.

2. Speech in Toronto at Aid to Russia Rally, 25 November, 1942. *Saskatoon Star-Phoenix*, 26 November, 1942.

3. *This War and Last*. *Winnipeg Free Press*. Various dates, November, 1942.

and the maintenance of justice. The special difficulties of a pioneer country, where development was costly but necessary, led to the inclusion of the development of transportation as a matter of common concern appropriate to the central government. But we have been from the beginning a federal country. Those functions of government which relate to the preservation of local values have been the field allotted to the provincial governments. Because of the uniqueness of the language, culture and institutional life of French-speaking Canadians, this area of local government is necessarily of some magnitude in order to include two languages and two systems of law. The purpose of the Canadian federation is to preserve these local differences, and at the same time to meet common problems of survival in a hard but rewarding geographical environment by common measures.

In the mid-nineteenth century the whole task of government which we now call the social services was not regarded as a function of government at all. Where such matters as the care of the indigent poor and a certain minimum of health regulation became the object of government, it was the concern of the parish or town. When they came to assume larger proportions, the constitutional allocation of control of municipal authorities in the provincial governments indicated where the responsibility must fall.

Furthermore, government in the nineteenth century was based on the premise of a fundamental harmony of interest within the community. What was to the benefit of one was thought to react to the benefit of all, so that the whole modern tendency of government to narrow down the disharmony of interests between regions and between classes could hardly have been present in the minds of the Fathers of Confederation. The idea of a depressed area as a region which has a right to rehabilitation would have been as foreign to them as is our present belief that the poor are not necessarily wicked and the unemployed not necessarily shiftless.

For better or worse we have accepted a philosophy of government which imposes a duty on the state to create the economic and social conditions of the good life for its citizens. As the Prime Minister has put it:

"The people of no country can be made happy, contented and prosperous except by safeguarding the lives and welfare of the many, and by protecting from injustice and misfortune the homes of the humble in the land . . . Of the kind of objectives

I have in mind, I would merely mention the following as a national minimum: useful employment for all who are willing to work; standards of nutrition and housing, adequate to ensure the health of the whole population; social insurance against privation resulting from unemployment, from accident, from the death of the breadwinner, from ill health, and from old age.<sup>1</sup>

What the citizen makes of himself in a democracy is his own affair, but for the common good the state now prescribes and enforces certain minimum standards of health and welfare for the common protection. For unemployment, frustration, and disease have a way of spreading, of contaminating and blighting their surroundings, so that government now accepts the implications of the lesson that welfare and security are, like peace, indivisible.

Our machinery of government, however, contains many elements of a now discarded political philosophy, and our problem is to bring our machinery of government into line with our new concept of its purposes. The government of Canada is determined by the *British North America Act*, 1867, together with its amendments and the amplification and elaboration which judicial interpretations have placed upon them. Over the years, for reasons which are too controversial to be touched upon here, the new powers of government have been vested in the main in the provinces rather than in the federal government. The result has been an inequality of treatment and opportunity as between province and province in Canada, since provinces differ widely in revenue structure and in vulnerability to industrial fluctuations. Not unnaturally the provinces have upon occasion attempted to protect their inhabitants from the rigors of a depression by erecting barriers against the free movement of trade and labour from province to province. Past experience suggests that the provinces, or perhaps the provincial governments, are incapable of the unity of purpose necessary to a unified policy of regulation. They are too prone to serve the immediate and the local interest at the expense of the long run and the national objective—and some at least of them lack the resources to undertake the necessary measures. The problems of our age are great in scope and in area; they must be solved by authorities no less great than they. The attempt to combat a world depression on a less than provincial basis, and the solution to the problems of collective security in a world overcome by the logic of national sovereignty, are but two illustrations of a rather obvious point.

1. Right Hon. W. L. Mackenzie King, M.P., *Labour and the War*. An address to the American Federation of Labour 1942 Convention at Toronto, 9 October, 1942. King's Printer, Ottawa, 1942. Pp. 5-6.

After the last war there came a period of economic dislocation in which the federal government attempted to ease the transition by the continuation of measures of control which had been evolved during the war period. But that attempt was not to succeed. The constitutionality of those powers was challenged in the courts, and the Judicial Committee of the Privy Council ruled that the attempted use of such powers constituted an unwarranted invasion of the sphere which belonged to the provincial governments and that such intervention was not permissible except in the emergency of a war.<sup>1</sup> Economic collapse of the early nineteen thirties made widespread unemployment a problem of national magnitude. Yet attempts to deal with unemployment and its causes through the provision of some measure of social security and the regulation of marketing to stabilise economic conditions were held to be beyond the powers of the government of Canada.<sup>2</sup>

By the end of the pre-war period it had been established that the whole area of social legislation and industrial regulation was a sphere of provincial action. As a consequence of this, the government of Canada could not even prescribe certain minimum standards in wages and hours of labour as sequel to an international convention.<sup>3</sup> The result is that there are even certain kinds of treaty which the government of Canada is powerless to carry out. Furthermore, they are increasingly the kind of international agreement which will be, if the declared war aims of the United Nations mean anything, a very important part of the world order we hope to establish. The fulfilment of Article Five of the *Atlantic Charter*, which provides certain international standards in social security and labour conditions, is quite as much beyond the powers of the government of Canada as it is beyond the powers of the government of Australia.

Among the war measures which the government has taken to meet war-time needs are the control of prices, the allocation of supplies, the rationing of consumer goods, the regulation of wages, and the control of industrial disputes. As the constitution now stands, these measures are valid only as war-time legislation. The restoration of peace would remove the conditions under which those powers are exercised. Transition to a war economy has altered the whole industrial pattern of Canada. Canada's

1. *Fort Frances Pulp and Paper Company v. The Manitoba Free Press*, (1923) A.C. 698; *In re Board of Commerce Act, 1915* (1922) 1 A.C. 191.

2. *Attorney-General of Canada v. Attorney-General of Ontario* (1937) A.C. 350; *Attorney-General of British Columbia v. Attorney-General of Canada* (1937) A.C. 377.

3. *Attorney-General of Canada v. Attorney-General of Ontario* (1937) A.C. 326.

mighty industrial war machine was achieved and can be maintained only in a context of elaborate controls. The transmutation of this great productive plant to the needs of peace will bring with it intricate and widespread problems of dislocation. That transformation can be achieved without serious distress only if it is carefully planned, and if the earning power of the community can be sustained until the new goods are in production again. The responsibilities of government in that period may be even graver than they are at present, if conditions of economic stability are to be restored. Even if the nine provincial governments attack those problems with a concerted will, their resources and their limited authority would be inadequate to meet the problem.

It is clear, therefore, that the Government of Canada must have the power to discharge its post-war responsibilities. It cannot wait until after the war to seek a confirmation of those powers. To do so would invite delay and indecision at a critical time. Now is the time to prepare, to take out our insurance before the fire

Two methods are open. One is to widen gradually the federal power through piecemeal amendments to the constitution, such as that which created the unemployment insurance scheme. That would involve time, and the danger that lack of foresight would leave loopholes in our legislative armour. The course attempted by Mr. Curtin's government in Australia, which is to bring the work of reconstruction within the ambit of the emergency power, is at the same time the most logical and the most certain.

Of course it will be objected that such controversial measures should not be attempted in wartime. But post-war survival is as vital as military survival. We do not wish to win the war only to lose the peace. Now is the time to take advantage of our all-too-brief wartime unity to lay the foundations for post-war recovery. It is certain that a concerted attempt will be made after the war to remove the controls and return to *laissez-faire*. Such an attitude is evident in that section of the press which is ably represented by the *Montreal Gazette*. But those sections of the community most anxious to return to the good old days of individualism in business have reluctantly conceded the necessity for putting individualism away for the better prosecution of the war. It is only fair to assume that they would be equally wise after the event, were they to see the close connection between stability or security and any individualism at all.

The final question remains. What would be the effect of conferring these paramount powers on the federal government? Would it not destroy the balance of the federal system, and bring about atrophy of those regional values which Confederation is dedicated to protect? To that there can be only one answer. Confederation was achieved for the common solution of common problems. Transportation was clearly a federal task in 1867, for without it westward development would have been impossible. Now industrial controls and social security are a federal task, for without them we cannot recreate the conditions of peace in this country. Already it is clear that the provincial power over industry and standards of living has done the national cause more harm than good by exacerbating our regional differences without solving them.

The purpose of our federal system is, after all, to preserve certain important cultural and social differences. But no political life, let alone culture, is possible in a state of contingent anarchy. There is ample scope for provincial governments in education, in public health, and in the provision of public welfare above the necessary national minimum. Our provincial governments make it possible for us to express different regional preferences. The business of the federal government is to establish and maintain a basis of security and freedom upon which these preferences can be realised. Our constitution was intended to be a protective garment, not a strait-jacket.