

The War and the Constitution

By JOHN WILLIS

THE average Canadian must be aware that a war cannot be waged in accordance with the principles of Magna Carta and is probably content to suffer a war-time revolution in what his government does and how his government does it. If he is not, the events of the last few months must have made him very unhappy. With the outbreak of war the Dominion Government became able to push the Provincial Governments into a back seat for the duration—for even the Privy Council has conceded that provincial rights which are too sacred to admit of violation by a national scheme of unemployment insurance are not sacred enough to prevent the effective prosecution of a national war effort. All constitutional barriers now being down, the federal War Measures Act was put into effect and the Dominion Government acquired power “to do and authorize such acts and things, and make from time to time such orders and regulations as it may...deem necessary or advisable for the security, defence, peace, order and welfare of Canada”—or, to put it less politely, to shove people around without asking Parliament’s permission. Armed with this all-embracing authority, the Cabinet went right ahead and did just that.

Under the Defence of Canada Regulations your letters can be opened and your favourite newspaper suppressed; you must not gossip lest you betray vital information; you must not express an opinion lest you be subversive. Do you want to send money to relatives in England, to import silk from Japan, to sell your American securities? You must ask leave of the Foreign Exchange Control Board. How did the inalienable human right to horse-trade in the necessities of life become transmuted into a

criminal offence; who saw to it that we got our sugar last fall; who buys our raw wool for us and sees that we don’t run short of coal? Study the regulations and orders dealing with the War-time Prices and Trade Board. There is a Board for this and a Committee for that—the Nova Scotia Apple Board, the Agricultural Supplies Board, the Shipping Control Board, the Bacon Supply Board, the Censorship Coordination Committee, the Committee on Information, and the rest of them. We are now a much-governed nation. Liberty, private property and private enterprise are taking a bad beating. But that is not all: in a country which is steeped in the traditions of Parliamentary democracy, every one of these revolutionary changes has been effected, not by Parliament, but by the naked fiat of the Cabinet in the exercise of its powers under the War Measures Act.

It is always interesting to lay bets on what will happen when new needs and new ways of filling them collide with our pretty little mental pictures of what a government ought to do and how it ought to do it. How much of our war-time revolution will survive the war?

Liberty,—personal freedom, freedom of speech, freedom of the press,—is the most deeply cherished of our democratic ideals, an ideal to which the Quebec Padlock Law and the attempted government control of the press in Alberta have only lent added strength. We may not have a thought in our heads or any desire to use our feet, but the right to gossip, to damn our institutions, to walk about without the suspicious glances and pert questions of somebody in a uniform are to us the very breath of life. It is therefore unlikely that the Canada Defence Regulations will long survive the necessity that gave them birth. With the rest

of the war measures the odds are the other way.

There the Government is only treading a few steps further down a road it has been hewing out for many years; if it thereby infringes an ancient ideal, it is at the same time fulfilling a newer and more vigorous ideal which is rapidly replacing the old. The rugged old pioneer trail of individual enterprise and private property may still be the best of all possible roads on the political Sundays we call elections, but very few of us now expect our governments to use it for travel. For the twin ideals of "as little government as possible" and "the devil take the hindmost" we are substituting "the infinite duty of each to all" and the high calling of the government to make that duty effective. "Private enterprise?" The government sells liquor, power, transportation and entertainment: it buys wheat and gold; it hands out "Maritime freight rates" and a salt fish bonus. "The devil take the hindmost?" The government furnishes relief, hospitals, old age pensions, and mothers' allowances; it throws its weight on the side of labour by means of workmen's compensation, minimum and fair wage schedules, and Trade Union Acts. "Sanctity of contract?" The government scales down mortgage debts, investigates securities and security salesmen, prescribes the conditions of insurance policies and contracts for carriage. "Freedom of competition?" The government fixes railway and power rates directly by means of utility boards, and industrial prices indirectly by means of the tariff; it prescribes standards for agricultural produce and channels through which it must be sold.

Viewed against this background the activities of the Foreign Exchange Control Board are not a mere war-time outbreak of bureaucratic frightfulness, but one more step along the road already pointed out by the establishment of an embryo Bank of Canada—a road which leads to some permanent control of private investment. The War-time Prices Board is not, as all good horse-traders hope, just an unfortunate offshoot of

a war against Hitlerism or "the State"; it is the result of an extension to a wider field of principles which, under the fancy name of public utility law, have long been accepted as applicable to the essential services of railways, telephones and power and are already being tentatively applied to the supply of road transport gasoline and milk. If the Government buys and sells wheat before the war, and bacon, leather, wool and sugar during the war what may it not deal in after the war?

And now, what of the changes in the way Government does its work? To the average lawyer, with his eyes on the sacred symbols of a dim and barely visible past, a civil servant making regulations and a Board deciding controversies are usurpers, trespassers on domains divinely reserved to the legislature and the courts. To him the mass of regulations that deal with the defence of Canada, foreign exchange, censorship, trading with the enemy, and the like, and the host of Boards, specialized governments in miniature, which preside over shipping, bacon, prices, agricultural supplies and the rest, are constitutional monstrosities. If for one moment the spectacles of tradition were to slip down his nose he could see what is really happening. The truth is that our constitution is changing—it has been changing for many years—and no banging of constitutional bibles is going to stop it. Law-making by government departments and government by Boards is the inevitable result of the entry by a government organized for merely holding the ring into the complicated and technical whole-time job of social control. Regulations and Boards are the means whereby the eighteenth century institution of Parliamentary democracy which assumes a minimum of government, and that by intelligent amateurs, is enabled to cope with the needs of a twentieth century society which requires the exertion of governmental power by experts. An increase of social control must therefore mean more regulations and more Boards and if, as has been suggested above, the end of the war will not result in any substantial return to the old ideal of laissez-faire, the post-

war period will continue to blossom with them.

There are, however, two respects in which the experience of war-time is likely to modify the pre-war practice of government in Canada; it is likely to strip from the B. N. A. Act the last shreds of its inviolability, and to inaugurate a new technique in "selling" government to business and the people.

Ready as mankind is to endure the consequences of its belief that institutions—the B. N. A. Act, for instance—are permanent and that the good man is he who strives to cram his awkward self into them and to be worthy of them, most Canadians have long grown weary of well-meant attempts to deal with the commercial and industrial life of Canada as if it was carried on in nine distinct and unrelated petty principalities. During the war the Dominion can under its emergency power behave just as if Canada were what it is, a unity, and actual experience of unified control is not likely to create any great demand for a post-war reversion to the traditional unrealities. But revert we must, unless we change the Act—and here the psychological effect of war will be important. In the pre-war constitutional atmosphere where the driving out of a Privy Council scapegoat and the consultation of a Rowell oracle seemed more important than the real needs of real men, any scheme of practical changes in the Act was doomed to peter out in puddles of learned drivel on the philosophical basis of the Canadian union. In war-time men are practical and do not let fictions and fancies interfere with the practical needs for men, food and work. War is a great reformer and under the hang-over of this war-time "be practical" mood the post-war amendment of the B. N. A. Act will probably be

accomplished with a minimum of theoretical bickering.

The relations between "business" and "government" can hardly be very cordial in an era when the traditional Mason-Dixon line between them is being drastically re-drawn. But business men are capable of being polite to, and even co-operating with, their ordinary competitors, and something more than the fact that government has been getting in their way is needed to explain the verbal broadsides loosed off from time to time by big executives with the apparent approval of "the people". The truth is that the government has heretofore neglected the gentle art of "public relations". If "business" has found that it pays to advertise and to show the public round the plant, why shouldn't the government do the same? With the stringent restrictions necessarily imposed by war on the ordinary conduct of business, the government appears to have woken up to the possibilities inherent in business technique. Instead of appointing a mere civil servant to push around the Napoleons of commerce, you pick out one of the Napoleons of commerce, call him a dollar-a-year man and let him do it. Instead of baldly announcing what you propose to do, you induce a Cabinet Minister to purr it peacefully over the radio and buy space in the press to advertise your activities. Simple devices aren't they? And though nobody would suggest that they will work as well in peace-time as when public opinion will back the government to the limit—and business men know it—the probability is that they represent a departure from the tried method of studied belligerent dictation and foreshadow a new line of enlisting public sympathy and softening any blow to "business" by an equally studied attitude of sweet reasonableness.