Correspondence

The King, the Governor-General and the Indian President

TO THE EDITOR:

Mr. Ramaswamy's valuable and comprehensive article in your June-July issue, on the constitutional position of the Indian President, contains a few statements on which I should like to comment.

1. "The constitutional relationship . . . between the President and his . . . Ministers will be substantially analogous to the position the King of Great Britain occupies *vis à vis* the British Cabinet. In other words, the President . . . will be a constitutional head who has only the right to be kept informed of and to express his views upon the many questions which arise within the Union orbit of activity but who cannot override the advice tendered to him by his ministers . . ." (p. 649). But at p. 655 Mr. Ramaswamy admits "reserve powers, especially in relation to the dismissal of the Ministry and the dissolution of the Popular House", and at p. 651 he says that "if the situation is extremely serious and [the executive head] has the strong feeling that the policy being pursued by his cabinet, supported by the legislature, is contrary to the wishes of the electorate . . . , then he may dismiss the ministry and order a dissolution". This, I think, goes farther than precedent and authority, in Britain or the Dominions, warrant, and farther than is desirable, safe, or consonant with the proper functioning of parliamentary government. But it certainly recognizes the existence of a very large "reserve power", something vastly more than "the right to be kept informed and to express his views". It follows that if the President's position is analogous to the King's, he also must be presumed to have some "reserve power"; and at the bottom of p. 657 Mr. Ramaswamy gives it to him, though he takes it back again at the bottom of p. 660.

Further, on p. 657, Mr. Ramaswamy says that in Britain, "It is . . . well-established that a Ministry, which after being defeated in the House of Commons has advised a dissolution and is later defeated . . . at the ensuing general elections, cannot ask for a second dissolution". But this implies that if it does ask the King can refuse.

2. Mr. Ramaswamy says (p. 649) that the Canadian Constitution provides for "a Council of Ministers to aid and advise the Governor-General . . . (section 11 of the British North America Act, 1867, calls that body the Queen's Privy Council for Canada)." The British North America Act does not provide for a Council of Ministers. It does provide for the Queen's, or King's, Privy Council for Canada, but that body includes not only all the Council of Ministers, but also all ex-Cabinet Ministers, and a lot of people

who have never been in our Cabinet at all, some of them (like the Duke of Windsor and Mr. Hughes, the Australian ex-Prime Minister) not even Canadians.

3. Mr. Ramaswamy quotes (p. 652) a statement by Sir Isaac Isaacs in 1931, that his plain duty was "simply to adhere to the normal principle of responsible government by following the advice of the Ministers who are constitutionally assigned to me". This statement was made in granting dissolution to a defeated Government. But what Mr. Ramaswamy does not mention is that Sir Isaac, in giving reasons for the grant (a procedure which itself implies recognition of a reserve power to refuse), also noted that the strength and relation of the various parties in the House, the fact that the Appropriation Bill had been passed, and the probability of an early election being necessary, tended to support the case for acceptance. (See Commonwealth *Parliamentary Debates*, 1931, vol. 132, pp. 1888 et seq., esp. pp. 1899, 1906, 1910, 1926-7.)

4. Mr. Ramaswamy says "the precedents governing the exercise of the Crown's reserve powers, especially in relation to the dismissal of the Ministry and the dissolution of the Popular House of Parliament, are conflicting and leave the matter in considerable doubt" and a few lines further on he calls them "conflicting and not easily reconcilable" (pp. 655-6). As far as dissolution is concerned, I should be interested to see the evidence for these statements. I have produced a good deal of evidence to the contrary, and have yet to see it disproved. Nor are we dependent solely on precedent; we have also the opinions of constitutional authorities, though of course not all of these can be accepted uncritically.

5. Mr. Ramaswamy's account of the Canadian crisis of 1926 (pp. 656-7) is inaccurate and misleading in several respects:

(a) The statement that the Progressives, "it would appear had agreed to support" Mr. Meighen, does not make clear that the Progressive memorandum, to which, presumably, it refers, was not even drawn up till after Mr. Meighen had accepted office. Mr. Meighen had apparently received, before accepting office, informal assurances from a number of Progressives that they would support him in passing Supply and winding up the session, which was within a few days of prorogation.

(b) Mr. Ramaswamy does not mention the crucial fact that Mr. King asked for dissolution while a motion of censure against his Government for misconduct in the administration of a great department of State was under debate. This request was absolutely unprecedented in the whole history of Britain and the Dominions. If it had been granted, no Government could ever have been defeated in the House except by its own consent. It would always have been possible, in Blake's words, "to withdraw from the cognizance of the people's representatives the great cause pending between Ministers and their accusers". Anything more subversive of parliamentary government it would be hard to imagine.

(c) Mr. Ramaswamy speaks of "the now famous 'acting ministry' " and seven "acting ministers". There was no "acting ministry" and no "acting ministers". There was a temporary Government consisting of Mr. Meighen, with portfolio, and *six* Ministers without portfolio, *acting Ministers of departments*. They were all fully qualified Ministers. (Mr. Bennett joined the temporary Government only eight days later, as Minister without portfolio, and was not appointed acting Minister of anything.) There were, I may add,

at least 15 precedents for such a Government. Mr. Ramaswamy can find a list of 16 at pp. 287-8 of my *Royal Power of Dissolution of Parliament;* but I have since found out that Sir Wilfrid Laurier's Government, from July 11th to 13th, 1896, consisted of himself alone as Prime Minister and President of the Privy Council. (I believe also that the Palmer-Gray Cabinet of 1859-1863 in Prince Edward Island did include Ministers with portfolio at some time after 1860.) In at least 12 cases the Cabinet consisted entirely of Ministers without portfolio, and in six they were not even acting Ministers of departments. Eleven of these Cabinets held office much longer than Mr. Meighen's temporary Government.

(d) The temporary Government was not formed "so as to avoid by-elections". It was formed, as Mr. Meighen plainly stated, to bring the session to an end promptly. Only two or three days' business remained; but Mr. King had publicly refused even to discuss arrangements for winding up the session. He and his colleagues had not followed the customary practice of holding office till their successors were appointed. They had left the Crown, in Mr. King's own words, with "no Government" and "no Prime Minister". Adjournment to allow time for by-elections would have involved six weeks' delay, at a time highly inconvenient to members, especially farmer members. The avowedly temporary Government was, as Mr. Meighen said, "merely to meet an unusual if not unprecedented situation".

(e) Mr. Ramaswamy mentions the temporary Government's defeat "two and a half days after it had come to office". He does not mention that it was defeated by one vote, thanks to a broken pair. Nor does he mention the vitally important events which intervened: (1) a new Liberal exculpatory sub-amendment to the Stevens amendment of censure, defeated by a majority of 12; (2) the censure against Mr. King and his Government, carried by a majority of 10; (3) the main motion, as amended by the censure, carried by a majority of 10; (4) a Liberal motion of want of confidence in the new Government's fiscal policy, defeated by a majority of 7. These events are an essential part of the story because they show that Lord Byng had, as indeed Mr. Ramaswamy admits, "good ground for believing that . . . Mr. Meighen would be able to form a stable ministry".

(f) "Mr. Meighen thereupon resigned his office and advised the Governor-General to dissolve the House of Commons." Mr. Meighen did not resign his office; if he had, he could not have advised dissolution.

6. Mr. Ramaswamy asserts confidently that Mr. King, "although he was in a minority in the House of Commons when he was defeated there, was entitled, according to British constitutional practice, to advise and get a dissolution of the House of Commons at the hands of the Governor-General. This is clear." It is the very reverse of clear. The overwhelming weight of authority is decisively against it. It would be easy to give pages of quotations to prove it; but one will suffice. Sir Ivor Jennings says: "Persons of authority have never, so far as is known, asserted the duty of the monarch to grant a dissolution on request", and even Keith sets forth several sets of circumstances in which the King might properly refuse. At least four of his propositions fit the 1926 case like a glove, and would amply justify Lord Byng's action. Indeed one of the mysteries which are really quite insoluble is that Keith in his later years spent much time elaborating the functions of the King as "guardian of the Constitution", but persisted in declaring Lord Byng's action wrong when he was performing precisely that function against a peculiarly flagrant series of violations.

7. Mr. Ramaswamy thinks the King ought to have, and the Indian President will have, the right "to refuse a dissolution to a minority leader who is defeated in the House of Commons when he can get a stable alternative Ministry from the House without recourse to a dissolution" (p. 657). The provisions of the Irish Constitutions, old and new, and the new French and West German Constitutions, lend support to his opinion of what is desirable. Article 53 of the old Irish Constitution made it virtually impossible to dissolve Dail Eireann without its own consent. Article 13(2) of the 1937 Constitution says: "The President may in his absolute discretion refuse to dissolve Dail Eireann on the advice of a Prime Minister who has ceased to retain the support of a majority in Dail Eireann". When this was being debated, the only question anyone raised was whether a defeated Government should ever be allowed a dissolution at all. No one questioned the proposal to give the President absolute discretion to refuse it.

The French Constitution, I understand, provides for granting dissolution to a defeated Government only after the fall of two Ministries within six months of each other, and after the Assembly has been in existence for a year and a half. The West German Constitution, according to newspaper reports, provides that the President can dissolve Parliament only if it denies the Chancellor a vote of confidence, and even then Parliament can prevent its own dissolution by electing a new Chancellor.

8. Mr. Ramaswamy accepts the view that William IV dismissed Melbourne in 1834. Surely modern scholarship has at least cast doubt on this view?

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Books Received

The mention of a book in the following list does not preclude a detailed review in a later issue.

The Canada Year Book 1950: The Official Statistical Annual of the Resources, History, Institutions, and Social and Economic Conditions of Canada. Published by authority of THE RIGHT HONOURABLE C. D. HOWE. Ottawa: The King's Printer. 1950. Pp. xliv, 1238. ($2.00)

Criminal Procedure. By A. M. WILSHERE, M.A., LL.B. Reprinted from the eighteenth edition of *Harris and Wilshere's Criminal Law.* London: Sweet and Maxwell, Limited. Toronto: The Carswell Company Limited. 1950. Pp. xxvi, 298. (15s.)

The Law of Real Property. By RICHARD R. POWELL. Volume 2. Albany: Matthew Bender & Company. 1950. Pp. xiii, 857. ($16.50)

A Practical Manual of Standard Legal Citations: Rules, Rationale and Examples of Citations to Authority for Lawyers, Law Students, Teachers and Research Workers. By MILES O. PRICE, B.S., B.L.S., LL.B., Librarian, Columbia University Law Library. New York: Oceana Publications. 1950. Pp. vi, 106. ($2.00)