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THE DOMINIONS AND FOREIGN RELATIONS.¹

It is just 150 years since the genius and imagination of a great Irishman discerned and expressed the ideal that has given strength and unity to the British Commonwealth of Nations. In his great speech on Conciliation with America, Burke laid down the principle which more than half a century later was to form the basis of Lord Durham's report. "My idea, therefore," he said, "without considering whether we yield as matter of right or grant as matter of favour, is to admit the people of our colonies into an interest in the Constitution. . . . For all service . . . my trust is her (America's) interest in the British Constitution. My hold of the Colonies is the close affection which grows from common names, from kindred blood, from similar privileges and equal protection. These are ties which, though light as air, are as strong as links of iron. . . . Deny them this participation of freedom and you break that sole bond which originally made and must still preserve the unity of the Empire."

If the motion with which Burke concluded his speech had been carried instead of defeated by an overwhelming majority, history would have had a very different story to tell of the relations between the two great English-speaking Commonwealths during the past century and a half. It may well be that separation would have come, but under peaceful auspices, with good will and cordial understanding, unattended by bitterness and prejudices difficult to eradicate.

In 1848 it was a very simple procedure to open the door of self-government to the Canadian people. No statute, no order in council, no formal despatch was necessary. The key was the selection of ministers enjoying the confidence of the elective branch of the legislature. When Lord Elgin used that key not even his imagination foresaw that he opened a door through which seventy years later a

¹Address by the Right Honourable Sir Robert Borden before the Institute of Politics, Williamstown, Mass., on the 17th August, 1925.

million men from oversea self-governing nations would march to the Commonwealth's defence.

The British North America Act was necessary to accomplish the union of the four Provinces, to provide for the admission of the additional territory since acquired, and, as a federal system was adopted, to define the limits of federal and provincial jurisdiction both in legislation and in executive action. But the relations between the Dominion and the Mother Country and future relations between the Dominions and foreign countries were left to the ordinary processes of constitutional development. In this development convention and usage have played an exceedingly important part. On such conventions the governance of the United Kingdom is largely based. The British prime minister and his cabinet are quite unknown to the formal enactments of the law. There is a sharp distinction in the British system between legal power and constitutional right. The British Parliament has legal power but absolutely no constitutional right to enact laws imposing taxation or affecting property and civil rights, or otherwise restricting the powers of self-government confided to the Canadian people. Any such law, although legal in form, would be without constitutional validity or effective sanction and could not be enforced. Thus the British Parliament has no more effective control over the domestic affairs of the Canadian Dominion or Provinces than has the Congress of the United States. Even in the United States a century-old convention destroyed the clear intention of the constitution with respect to the method of electing the president.

The subject for discussion is the Dominions and Foreign Relations. I have read with much interest and appreciation the speech of Professor Smiddy, who has set forth with great clarity his conception of the existing situation. In all important aspects I am in complete agreement with his views. With all respect, I do not agree that the Halibut Treaty of 1923 between Canada and the United States was the first striking instance of a commercial or civil treaty between a Dominion and a foreign country. In 1884 Sir Charles Tupper negotiated a treaty with Spain, and in 1892-93 a commercial treaty with France. In both instances the actual negotiations were carried on by Sir Charles Tupper, although the British Ambassador was formally associated with him. In 1907 and again in 1909 Mr. Fielding and Mr. Brodeur negotiated commercial treaties with France. In 1909 the negotiations for the Boundary Waters Treaty were carried on by Sir George Gibbons in co-operation with Mr. Bryce, under the direct supervision of Sir Wilfred Laurier as prime min-

ister. Other similar illustrations could be given. The circumstance that the Halibut Treaty was signed by the Canadian Minister alone, and not by the British Ambassador as well, does not seem to be material. In either case such a treaty must be signed under full powers issued by the Crown. The question of including the Ambassador in such powers would seem to be one of courtesy and good taste rather than of constitutional development. Finally, the whole subject was under consideration at the Imperial Conference of 1923, when principles were formulated and procedure laid down which should govern such cases and which fully recognize the right of each Dominion to negotiate and enter into a treaty affecting only its own interests, but not without due consideration of its possible effect on other parts of the Empire or on the Empire as a whole. Such a treaty, imposing obligations on one part of the Empire only should be signed by a representative of the government of that part. The ratification of such a treaty is effected at the instance of the government concerned.

It is worth while to bear in mind that each Dominion does formulate and put into force its own policy with respect to two highly important subjects involving foreign relations, namely, immigration and fiscal policy. This power seems inherent in the right of self-government which each Dominion enjoys.

Previously to 1911 the British Government dealt with the larger issues of foreign relations in its own right and under a theory of trusteeship for the Dominions and other portions of the Empire. It was not thought necessary or expedient that the Governments of the Dominions should be consulted or informed in such matters. There may have been a few exceptions, such as the informal consultation by Mr. Chamberlain during the events which preceded the South African War; and the powerful personality of Sir Charles Tupper undoubtedly exercised an influence upon Lord Salisbury during the period when the United States claimed the right to seize and confiscate Canadian sealing vessels in the Behring Sea. But in 1911, the Prime Ministers at the Imperial Conference of that year were invited to a conference with Sir Edward Grey, the Foreign Secretary, who communicated to them very full information respecting the foreign relations of the Empire. The same course was followed in 1912, when the Prime Minister of Canada and three of his colleagues visited London in connection with naval defence. At the beginning of 1917, a little more than two years after the outbreak of war, the Prime Ministers of the Dominions were invited to become members of what was termed the Imperial War Cabinet. It

was a consultative body in which all important questions respecting the conduct of the war and the war effort of the Empire were discussed and determined, and in which Dominion ministers sat on terms of perfect equality with their British colleagues. Matters not directly concerned with the conduct of the war were discussed in what was termed the Imperial War Conference of 1917. The well-known resolution passed by this Conference to which the British Government was a party, based the constitutional relations of the Empire upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, confirmed the right of the Dominions and India to an adequate voice in foreign policy and foreign relations, and declared the necessity of providing effective arrangements for continuous consultation and necessary concerted action.

The principle established by this resolution was carried to its logical conclusion at the Peace Conference where the Dominions and India were represented by their delegates. At Paris the Imperial War Cabinet functioned under the designation of British Empire Delegation. As a corollary to representation it was considered that the Dominions and India should be parties to the Peace Treaty and members of the League of Nations, and that the Treaty should be signed by Dominion and Indian plenipotentiaries and submitted for approval to Dominion parliaments. Thus, at the council table of the nations the British Commonwealth entered on a new stage of its existence and development. The situation so created was not free from anomalies; but the governance of the British Commonwealth, and for that matter international law itself, are full of anomalies. The outstanding fact was that a certain status in the family of nations was secured. Mr. Lloyd George has said that the Versailles Treaty is the Magna Charta of the Dominions.

It remains to consider the system and method by which the principle of equal nationhood, complete autonomy and adequate voice in foreign relations may be carried into effective operation. At Paris and afterwards at Washington during the Disarmament Conference no serious difficulties were met. On occasion there were strong differences of opinion, but in every instance a formula was devised to which the plenipotentiaries of Great Britain and of each Dominion felt it possible to adhere. Whenever it is possible to deal with foreign relations by means of such conferences, I am confident that there will be a similar result. In my experience, the representatives of the Dominions were regarded as on terms of

perfect equality with their British colleagues and every possible deference and respect was accorded to the views which they put forward. With good will, mutual understanding and a desire for united action (and this may always be expected) I should have no fear as to the outcome of any such conference.

But in the interval between such conferences the necessity for quick decision and firm action commanding the support of all the nations of the Commonwealth not infrequently arises. Apart from the Irish Free State, there are four great Dominions at the four corners of the earth who are entitled to an adequate voice in the determination of policy. How are they to exercise it? No one can doubt that the problem thus presented is of an exceedingly grave nature. Doubtless it was in the mind of Lord Milner when, in addressing representatives of the overseas Dominions in the summer of 1919, he uttered these words:—

“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. It is very easy to say that; but undoubtedly the working out of it in practice without bringing about the severance of relations between us and the Dominions will be one of the most complicated tasks which statesmanship has ever had to face. I am not afraid of it, and yet I have to admit that the difficulties are such that our best efforts may end in failure. I hope not. At any rate, there is no other way out.”

I have the deepest respect for every word on any important subject that Lord Milner ever uttered, but I have a strong feeling and confident belief that the difficulties are not insuperable, and I do not believe that our best efforts will end in failure. The British Commonwealth has a remarkably healthy habit of holding together, and of holding together most strongly when the need is greatest. A well-informed authority has told us that in the early sixties there were not more than four men of important public position in Great Britain who did not apprehend the early independence of the Dominions. They could not bring themselves to believe that full powers of self-government could have any other result. But in truth those powers did not weaken, but strengthened, the Commonwealth. The present problems are serious, but they are not insoluble unless the political genius of our people should fail as it has never failed before.

It was in the faith of past experience and from a sense of the

growing consciousness of nationhood among my countrymen that I pressed for the resolution of 1917, for representation at Paris, for membership in the League of Nations, and later for the right of legation, which I discussed at Paris with British ministers and which was afterwards carried into effect by an arrangement announced to the Canadian Parliament in May, 1920. The genesis of that proposal was the establishment of a Canadian War Mission at Washington at the beginning of 1918, which was in fact, although not in form, a diplomatic mission. I found it of immense service during the last year of the war, and the first year of reconstruction. It was announced and understood that the appointment of a Canadian Minister did not denote any departure from the principle of the diplomatic unity of the British Empire. Members of the Canadian government negotiating treaties with the United States had, for the time being, a diplomatic status, and if such temporary representation was sound in principle as well as advantageous, there seemed no objection to the permanent arrangement proposed. Indeed, there was no advance upon the principle actually in operation in the International Joint Commission. The Canadian members of that Commission were appointed by the Crown on the recommendation of the Canadian Government, and the Commission, comprising two sections, one Canadian and the other American, deals with many matters formerly referred to diplomatic negotiation or correspondence.

Many interesting suggestions have been put forward for securing more effective consultation between the governments of the Dominions and the premier government of the Commonwealth. There is presently the right of each Dominion prime minister to communicate directly with the British prime minister, but since the war this right seems to have been sparingly exercised. Two Canadian high commissioners with long experience at London have expressed to me a strong opinion that each high commissioner should be a member of the government of his Dominion, that he should be in direct touch with the Foreign Office; and that he should periodically visit his Dominion for conference with his prime minister and other colleagues and thus keep in touch with its conditions and public opinion. It would be natural as well as practicable that he should become an Imperial privy councillor, and thus entitled to attend a meeting of the British cabinet if and when summoned. In a certain measure he would have the functions of an Ambassador, but the relation would be more intimate. He would have no authority to commit his government without con-

sultation. In an interesting series of articles published in Great Britain during the present year, it was suggested that the Governor-General in each Dominion should be appointed mainly for his diplomatic qualifications and receive the title of High Commissioner, so that he should possess diplomatic functions in addition to his quality as representative of the Crown. In my view, such a step would be unwise. The Governor-General in Canada has a well recognized status as the representative of His Majesty. His relation to the cabinet is precisely similar to that of the King in Great Britain. He acts altogether upon the advice of his ministers and not otherwise, although he may frequently discuss public questions with the prime minister. In my own experience I frequently found such discussion helpful. Any such change as that suggested would produce misunderstanding and might arouse quite unfounded suspicion of Downing Street interference, which is still a bugbear in certain quarters.

Professor Smiddy has alluded to the diplomatic unity of the British Commonwealth as very largely formal. With all respect, I should not so regard it. In all essentials touching the continued existence and development of the British Commonwealth, there must be a real unity; and it does not seem to me that this unity is diminished by the circumstance that in respect of its purely domestic affairs each Dominion may negotiate treaties with foreign countries and have them ratified by the Commonwealth as a whole. On the other hand, it does not seem to me that a divergence of view in the Assembly of the League necessarily weakens the ties which unite the nations of the British Commonwealth, if such divergence does not relate to the essential matters which I have indicated. I thoroughly agree that the representatives of the Commonwealth nations ought to meet before each Assembly for discussion of the subjects that are to be debated and passed upon thereat, so that in essentials, and especially those policies that involve questions of war and peace, there shall be united action, while in minor matters different points of view may well be expressed. As an illustration, questions involving labour conditions on this continent are quite different from those in Great Britain, and in some of the other Dominions. The same is true of questions relating to the use of air craft, and other illustrations might be given. In this connection I venture to repeat the suggestion that as one step toward more effective consultation in foreign relations the following proposal might be useful. It is important that each Dominion should send strong

representatives to the Assembly of the League of Nations. In Canada it has been the practice that two ministers of the Crown and the High Commissioner are accredited for that purpose. Is it not both possible and desirable that these ministers should spend at least a week or more in London before the meeting of the Assembly so that there may be discussion not only of important subjects on the agenda of the Assembly, but also of vital questions touching foreign relations? There would thus be a yearly opportunity for intimate and thorough consultation, whereas the Imperial Conference is usually held quadrennially.

Further, it seems most desirable that each Dominion should develop and strengthen its Department of External Relations. It is important that an oversea Government should have the assistance and knowledge of trained and experienced permanent officials without which its approach to the consideration of international questions must be rather ineffective.

Finally, I entirely agree with Professor Smiddy that the influence of the Dominions upon foreign relations must be for the good of the Commonwealth and for the peace of the world. I should not anticipate any such hasty bellicose action on the part of Great Britain as he has in mind. In our modern democracies a government is very much under the control of public opinion on so grave an issue. This was manifest in the hesitation of Great Britain in 1914 and in the delay of the United States until 1917. And not only would public opinion in the British Islands affect the course of the British government but the sentiment of the Dominion democracies would also exercise a powerful influence. This group of self-governing nations united in its yet imperfect, but not ineffective, organization is thus, and I believe it always will be, a great factor for the upholding of public right and justice and the maintenance of the world's peace. In seeking a common policy there is, especially under present conditions, urgent need of close and sympathetic co-operation between the Commonwealth governments so that each, with due regard to its own point of view and special interests, shall, nevertheless, survey the aspects of external relations from the high standpoint of Commonwealth unity and welfare. It will be wise for British statesmen constantly to remember that the Commonwealth cannot go to war in sections and that engagements which may involve the Dominions in war ought not to be undertaken without their full concurrence. On the other hand the Dominions must not forget that the status of nationhood involves responsibilities as well as privileges.

I pay little heed to voices that occasionally predict the disintegration of the Commonwealth and the establishment of separate nations. Canada could attain that status to-morrow if her people so desired; but such desire is wholly wanting. At the Paris Conference I was intimately in touch with General Louis Botha, and I believe we were in agreement on every question that was debated in the British Empire Delegation. In private conversation we spoke much of the future of the Commonwealth. I recall very vividly the substance of his words. "I fought against the British, but I am a firm upholder of the Commonwealth. In South Africa we enjoy all the liberty that we could have as an independent nation, and far greater security against external aggression; we have complete powers of self-government; we control the development of our country; and in the affairs of the world we take a place far higher and render a service more notable and useful than we could attain or give as a separate nation."
