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AUTHORITIES CONSULTED

Constitutional Documents of Canada.....Houston

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The Constitutions of the Canadian SEnate.

Introductory.

Throughout the British Empire,possibly no subject is attracting the attention of Statesmen both Imperial and Colonial,so continuously as the function in government of the Second Chamber. That this dignified member,hereditary in the Imperial Government,nominated in the majority of the colonies,exercises an enormous power,while being irresponsible to the Sovereign power,the people,has called forth vigorous protest from one party at least in politics. Only a month ago, Mr. Lawson Walton urged in the English House of Commons,that the power of the House of Lords to overrule the decisions of the Commons, urgently demanded attention. Naturally some radical stands were taken in the debate which followed;yet the unanimous opinion of the moderate Liberals was,that it could not be right,that one party in the State should have such a vast preponderance of power in the House of Lords.

Early in February the Premiers of the six Australian Colonies, meeting at Melbourne,agreed upon a constitution for an Australian Federation,in which the States Assembly,(Senate) is to be,not nominated, but elected upon a principle of equality in representation.

In a recent speech at Montreal,Sir Wilfred Laurier condemned the present constitution of the Canadian Senate,declaring himself in favor of removing the referrendum power of that body,by instituting a joint meeting of SEnate and Commons to decide all differences.

As evidence of a concerted move against the Canadian Upper House, comes the news that resolutions embodying Sir Wilfred's plan have been introduced into the Nova Scotia Legislature by Attorney-general Longley,and into the Ontario House by Premier Hardy.

Judging from these facts,the attack upon the Hereditary or nominated Chamber,as an anomaly in responsible government,appears too universal to be explained away, in any instance,as an outburst of party prejudice. That the anomaly exists in so many colonies,is the result of a wholesale imitation of the English Constitution in democratic countries,where the social conditions are far from being those of the mother country. The theory long prevailed that in a

that in a free government both an initiating and a revising chamber were necessary. This being the case, it was most natural, that in the eyes of English Statesmen dealing with the problems of Colonial Government, the House of Lords should bulk as the only model of a Second Chamber. The discontent which is manifesting itself in parliamentary circles today, would seem to indicate that Colonial Statesmen are beginning to realize that the social and economic conditions of the colonies cannot be made to harmonize with the feudal tendencies of the English Constitution. It is the purpose of this treatise to discuss the formation of the Canadian Senate, and more particularly to consider how far an undue imitation of the House of Lords, in its constitutions, has interfered with the free working of the Colonial Government.

The Development of the Legislative Council I774-I867.

The Quebec Act provided for a Legislature in the Province of Quebec under the following terms; "whereas it is at present inexpedient to call an Assembly,(inexpedient because of the failure of the people to appreciate responsible government);be it therefore enacted that it shall be lawful for his Majesty, with the advice of the Privy Council,to constitute and appoint a Council for the affairs of the Province of Quebec,to consist of such persons resident there,not exceeding thirty-three, not less than seventeen,as his Majesty shall be pleased to appoint." The powers of the Council were limited by with-holding the right of taxation,and by the necessity of submitting every ordinance to his Majesty for approbation.

By the ~~Continual~~ Constitutional Act the Province of Quebec was divided into Upper and Lower Canada,and it was further enacted that there should be in each of these provinces a Legislative Council and an Assembly. The Governor or Lieutenant Governor in each province was empowered to summon to the Legislative Council " a sufficient number of discreet and proper persons," not fewer than seven,to the Legislative Council of Upper Canada,and not fewer than fifteen to the Council of Lower Canada. There was further reserved to his Majesty the right to authorize the Governor or Lieutenant Governor to summon, "such other persons as his Majesty shall think fit." No person under twenty-one was to be summoned;members were to hold their seats for life. It was further enacted that his Majesty might annex to hereditary titles of honor,the right of being summoned to the Legislative Council,such hereditary rights if forfeited or vacated to remain suspended during the lives of the parties interested,but on their deaths to go to the persons next entitled to them.
Questions respecting the right to be summoned,or vacancies were to be referred to Legislative Council;while the right of appeal to his Majesty was reserved to the person interested.

In connection with the above attempt to establish in Canada a political Aristocracy,it is significant that the proposal,emanating from Pitt and endorsed by Burke,gave rise to a spirited debate in

the Imperial Parliament.

the Imperial parliament. Strong opposition was offered by Fox, who manifested a decided preference for an Elective Council, a stand which was striking at such an early stage in the development of colonial constitutions.

In Lord Durham's report we have a concise account of the difficulties in Lower Canada which called for the "Constitutional Act Suspension Act" of ~~1883.~~ 1838. On the part of the Assembly, almost a universal demand was made for a change to the system of Election in the formation of the Legislative Council. The British House of Commons adopted a series of resolutions which declared it "inexpedient" to comply with the demands for an Elective Council.
The refusal of the Assembly to accept the verdict of the Imperial Parliament, led to ~~this~~ prorogation and a resort to arms on the part of the leaders of the Assembly.
The Union Act provided for a Legislative Council, of not more than twenty members, to be nominated by the Crown, and to hold office for life, subject to conditions which were later embodied in the B. N. A. Act. In the course of the debate upon the Union Act in the English House of Commons, objection was raised to life membership, but to no purpose. Mr. Joseph Hume suggested that a part of the Council be elected by the people, but the suggestion was not pressed. The circumstance is however noteworthy, in view of subsequent amendments to the Act of Union.

The "Union Act Amendment Act" of 1854 reads," It shall be lawful for the Legislature of Canada to alter the manner of composing the Legislative Council of said Province, and to make it consist of such a number of members appointed or to be appointed or elected by such persons and in such manners as to the said Legislature may seem fit". Accordingly, taking advantage of this concession, the Canadian Parliament in 1856, passed an Act, making the Legislative Council Elective. The menbers then sitting were to complete their term, twelve new ~~new~~ members were to be elected every two years for a term of eight years. For election purposes the country was to be divided into forty-eight districts.

Erroneous Theories as to Development of Legislative Council.

The foregoing review of the stages in the development of the Legislative Council has been made, not so much as to throw light upon the question of Senate reform, as to clear away the dead-wood piled about the controversy by men who seek to defend the present constitution by an appeal to history. So completely are these men swayed by a consideration of the past, that they are blind to the conditions which make the question essentially a present day issue. It will be well at the outset, to deal with the more common misconceptions which have arisen in connection with the Constitutional growth of the Canadian Senate.

In the first place, the statement that the Senate is a second House of Lords, and has an equal claim with that body upon existence, is wide of the mark. The House of Lords represents a social caste. There is in Canada no such caste to be represented. It is true that the Constitutional Act aimed at importing an aristocracy; but the complete failure of the attempt has long since convinced both English and Canadian Statesmen, that there is no place in a democratic colony for an element so foreign as a nobility. "To make a colony an outpost of aristocracy, for the purpose of maintaining that institution at home, is to sacrifice ~~the political~~ an American community to the interest of a European caste."

In the second place, a careful estimate of its growth would indicate that Legislative Council was not established to serve as a second chamber. Throughout the early stages in the development of the ~~institution~~ Province, it was found "inexpenient" to summon an assembly; the colony was not ready for responsible goverhment, and a nominated legislature was a political necessity. As soon as Canada was ready for responsible government, an assembly was summoned, and the Legislative Council swung into line as a chamber of revision.

Now it is posible that the present friction in government is due to the fact that, while undergoing a marked change in function, the Senate has continued unaltered, in its constitution. So far then from history affording a defence of the present constitution,

it furnishes evidence of its anomalous character;in that while the Council performs the function of a modern Senate,it is still constituted as at the beginning by nomination.

Finally, the history of the Canadian constitution discredits those authorities who hold that the Imperial Government would never consent to any material change in the formation of the Senate. If the debates upon the Quebec, Constitutional and Union Act,and upon the amendments thereto,give evidence of any fact,it is that English Statesmen are ever ready to grant Colonial demands. Precedent for vital change is afforded in the Act of I856, "to make the Legislative Council Elective". If the Imperial Government, gave its consent to the election of Senators,what proposed reform would,if demanded by the representatives of the Canadian people,call forth its veto? On the contrary we find during the debates on Confederation,in the House of Commons,such men as Bright warning Canadian Statesmen against a return to the nominative system. Moreover, Elective Second Chamber is no novelty,existing as it does in four out of nine British Colonies Speaking of this diversity of practice Mr. Todd says,"it is not based upon any definite or abstract principle,but is simply owing to the prevailing tone of popular opinion in the particular colony, to which upon this question the Imperial Government has invariably deferred."

The Debate upon the Constitution of the Senate. I867.

In spite of the contention of Sir Charles Tupper, that the raison d'etre of the Senate must be sought for in history prior to Confederation, it must suggest itself to the unprejudiced that Senate reform is a question of to-day, and must be viewed in the light of the B. N. A. Act, and the working of the Canadian Constitution during the thirty years of its existence.

The provisions of the B. N. A. Act, relating to the constitution of the Senate, which called forth discussion at Confederation were those dealing with the representation of the Provinces, appointment by the Crown, the limitation of the number of members, the addition in a crisis of "three or six qualified persons", and life membership. To attempt even an analysis of all the speeches bearing upon the above questions, would be to indulge in needless repetition. The defence of the Quebec resolutions was fully set forth in the speeches of Sir John MacDonald and the Hon. George Brown; while the ablest criticism thereof was that made by Mr. Dunkin in, what has been almost universally regarded as, the most admirable contribution to the debate on Confederation. In the light of thirty years experience of the working of the Senate, as constituted by the B. N. A Act, the arguments advanced by these three speakers are extremely suggestive and are invaluable in a consideration of the present crisis.

Sir John MacDonald, in defence of the "controlling and regulating" branch of the Legislature, which was to represent the "sober, second thought in legislation" advanced three important arguments. In the first place the Senate, chosen as it was from the three great divisions, Ontario, Quebec, and the Maritime Provinces, on a principle of equality, was intended to protect sectional interests and remove sectional jealousies. In the second place, a nominated second chamber was less likely to occasion a deadlock than one elected by the people. In the latter instance each house would claim to be representative of the people, and would in consequence be the less disposed to give way in case of conflict. Moreover the rapidly changing character

of the Upper House would decrease the chances of a deadlock. To illustrate this fact the speaker pointed out that in 1856 forty-two life members had responded to summons, in 1858 thirty-five, in 1862 twenty-five, and in 1864 only twenty-one. The Government of the day might, in order to bring the two Houses into harmony, fill vacancies with men "of the same political feelings and sympathies" as the government. In conclusion, the speaker admitted that the arguments in favor of the election of Senators were very strong. "I hold", he said, "that this system has not been a failure in Canada, but there are reasons why it has not fully succeeded." The principal reason was to to be found in the inconvenience occasioned by the size of the electoral divisions. The labor and expense of Candidacy shut out many good men, and consequently the quality of Senators materially deteriorated.

The Hon. George Brown, while agreeing with the Attorney-General West in his defence of the Noninative System as likely to secure a House less liable to block the legislation of the elective assembly, hinted at the possibility of the former being brought too completely into sympathy with the popular feeling of the day. The principle of life tenure he upheld by emphasizing a serious objection to the limited term. In the case of a limited term, say of nine years, during the last three years Senators would be looking to the administration for reappointment. This would place one third of the Senate continually under the control of the ministry of the day.

Im entering upon his criticism of the proposed constitution of the Senate, Mr Dunkin pointed out the absurdity of comparing that body with the House of Lords, claiming for it rather comparison with the Senate of the American Commonwealth.

Further if the Senate was, as Mr Macdonald had said, to be the special federal feature in the new government, why was it to be chosen by the Ministry of the day? Was it reasonable that the House which was to defend the interests of the Provinces, should be nominated by the agents of the very body, against whose encroachments provincials interests were to be protected.

The limitation of the number of Senators Mr Dunkin

dealt with by means of a historical review. From the inception of the Legislative Council, the power of the Crown to appoint new members had been unlimited. As a result the Council had been filled with members of one political party, as for example, under Lord Sydenham. In 1848 it became necessary, with a change of ministry, to carry measures to which the upper House would be opposed. There was talk of swamping the Council but that body soon gave way and afterwards acquiesced in an alteration of its own constitution. If under such circumstances, when the crown possessed the power of creating an unlimited number of Councillors, a change to the elective system was found necessary; how much greater the necessity then (at confederation) with no such constitutional check in existence?

The concluding sentences of Mr Dunkin's speech, although marked by a characteristic exaggeration, yet contain enough true prophecy to warrant their quotation in this connection. "At all events," he said "here is this proposed body, which we are told is to be federal, but which is not to be so." "We are told it is to be a constitutional check, but it is not to be that either." "It is rather a cleverly devised piece of deadlock machinery and the best excuse made for it is, that it will not be strong enough to do near all the harn it seems meant to do."

THE SENATE CONSTITUTION IN PRACTICE,

An estimate of the usefulness of the Senate, as constituted by the B.N.A. Act, must be materially affected by a consideration of its attitude toward legislation under the Liberal and Conservative administrations, which have made up the political history of the Dominion. One can readily understand the Fathers of Confederation erring in some of the details of a constitution, in its main features new to Canada. Upon their own admission they were not heaven-born statemen: nor can we, having at hand the history of the Senate through out the thirty years of its existence, allow our judgment to be too freely swayed by the arguments, either of Mr Macdonald and Mr Brown, or of Mr Dunkin. Whatever be the outcome of the present agitation for reform of the Upper House, there can be no doubt but that that institution will be condemned or acquitted, on the ground of what it has done or failed to do. No traditions, no fancied resemblance to that august body the House of Lords, no theatrical appeals to the country to stand by the fundamental principles of the constitution, can to any material extent affect the final verdict.

Briefly, the arguments advanced at Confederation in support of the proposed constitution of the Senate were, first, that the Senate would constitute the special federal feature, protecting provincial interests: secondly, that the danger of deadlock would be minimized by nomination, by the provision for the creation of new Senators, and by placing the nomination in the hands of the Ministry of the day: finally, that the Senators, holding their Seats for life rather than for a limited term, would be more independent. A careful consideration of these claims in the light of thirty years of experience will go far toward proving that the framers of our constitution were indeed, as far as the Senate is concerned, merely earth born statesmen.

If the Senate was to be the special federal feature, chosen on a principle of equality, why stop short of equal representation from the provinces? In case of a conflict of interests, what could save Prince Edward Island, with a representation of

four members, against the aggressions of Nova Scotia with ten members. How could Manitoba with four members hope to make good its claims against Ontario with six times that number. The American Commonwealth, in the formation of a Senate, has in reality adopted the principle of state equality. In the new Australian federation the States Assemby (Senate) will represent the States (Colonies), state by state equally, large and small alike, each returning six members. Why then in Canada should we halt midway between representation by population and equal representation from all the provinces?

Yet in spite of this contradiction one could well imagine the Canadian Senate, if non-partisan, actually defending provincial interests, but unfortunately the history of legislation since 1867 is almost destitute of illustrations of such useful service. The The Liberal Press critizes the action of the Senate in giving its assent to the famous C.P.R. bargain, to the Franchise Act of 1885, and to the Redistribution Act of 1882: while the conservative organs commend that body upon its stand in connection with the recent Yukon Bill, and the proposed extension of the Intercolonial Railway. Upon the merits of these well known cases it is needless to dwell, but it should be noticed in passing that in nearly all of them the Conservative majority has maintained an unbroken front, a circumstance which forces thoughtful men to ask whether it can be right, that there should never occur a split in a majority which is bound by the consitution to consider interests other than those of party. A striking commentary upon the Senate is the fact that, under the Mackenzie administration, it opposed strenuously the removal of the Township of Tuckersmith from one Constitutency to another, while in 1882, under a Conservative Mninistry, it adopted without hesitation a wholesale gerrymander which altered the electoral divisions of Ontario beyond all hope of recognition. Upon the whole then it would appear that the theory of Senatorial protection of sectional interest has not been converted into practice. On the contrary, what the provinces have gained under confederation, they owe to the Courts of law and not to the so called special federal feature.

Again, the danger of deadlock in legislation was to

be removed by nomination -- by the Ministry in power --, and by provision for the creation of new Senators. Now, that a nominated legislature presents less danger of deadlock than one elected, cannot be doubted. The wisdom, however, of placing the nominations in the hands of the government of the day, is open to question. Doubtless Mr Macdonald, under the influence of his subsequent political experience, would claim that in this ~~slip~~ step the framers of Confederation were divinely inspired. On the other hand, it is quetionable whether Mr Mackenzie was, by the year 1878, as firm a believer as his political opponents in divine inspiration of Canadian Statesmen. This much in view of the fact that, by the year 1891, of the seventy-six Senators all but nine had been appointed by a single party leader. Little wonder than that the Statemen of a certain political complexion failed to see any danger of a deadlock, while to others the vision was ~~ex~~ an ever present nightmare.

The remedy provided for in the creation of additional Senators, experience has proved to be not only inadequate, but also too extreme to win for its adoption the sanction of the Imperial Government. In 1873, on the report of Mr Mackenzie, the Canadian Privy Council advised that an application be made to her Majesty to add six members to the Senate "in the public interests." The application was refused on the ground that her Majesty could not interfere unless the difference between the Houses was of a "Serious and permanent character," and when it was evident that the creation of new Senators would apply an "adequate remedy". The inadequacy of such a remedy may be estimated in the face of such a majority, for instance, as that which defeated the recent Yukon Bill. The system of Senatorial appointment recalls the words of Mr Bright, who in discussing the substitution of an appointed for an elective Council said,"I venture to say that the clause enabling the Governor General and his Cabinet to put seventy-two men in that Council for life, inserts into the whole scheme the germ of a malady which will spread, and which before long will require an alteration of this Act and of the constitution of this new Confederation."

In his defense of the system of life tenure, the Hon Mr Brown pointed out that, if the terms were limited, the Senators looking for re-appointment would be servile to the government. Thus, in a nine years term, at least one third of the Senate would be continually under Ministerial control. This is of course a danger inseparable from the elective system, but but how trifling would a one-third control be compared with the influence excercised by the party leader who had appointed fifty-seven of the seventy-six Senators of his day!

THE IDEAL SECOND CHAMBER.

Where is it to be found? Goldwin Smith has stated, evidently with the American constitution in mind, that the second chamber of the Canadian ~~legislation~~ is not a modern Senate at all.

Making due allowance for Mr Smith's annexation tendencies, it must be admitted that the Canadian Senate is less suited to a federal Government than is that of the American Commonwealth. The difference of opinion on this point, however, presents a difficulty in our search for an ideal Second chamber. Are we to look to the English constitution or to that of the United States? Possibly in both are to be found legislative functions which fall within the province of a competent Canadian Senate.

The individaul who has read widely upon the subject of the English constitution, and has his mind filled with the theory thereof, is liable to ~~xxk~~ to look upon the House of Lords as a perfect check upon legislation. That body he finds, acts as a check upon the Commons in the case of minor legislation, upon which public opinion never fastens. The nation at large is concerned with the big issues, such as those which sway an election, but beyond these the Commons would be absolutely uncontrolled in the absence of a Second House. Further, against an ever present danger of combinations, as for example of railway interests, which cannot be foreseen at elections, the Upper House constitutes the National Safeguard. Again, a revising body of a more permanent and independent character stands to oppose the greatest possibility of injustice, namely that which rests with the Ministry. With a majority in the Commons completely bound by considerations of a party, a strong administration may force through minor measures of a character adverse to the interests of the nation as a whole. Finally, a second chamber does good service in revising the hasty legislation of a body which in many of its sessions is overburdened with business. Such theoretically, ~~the functions of the House of Lords. To decide whether that in-~~

functions of the House of Lords. To decide whether that institution, with its apparent apathy, its too uniform composition, its less than average ability, its lack of political experience and interest, performs these important functions, is apart from the object of this paper.

The purposes for which the United States Senate was established are set forth by Alexander Hamilton in the ''Federalist'' in the following terms ;- "to conciliate the spirit of independence in the several states by giving each an equal representation in one branch of the National Government;'' '' to create a Council qualified by its experience to check the President in his executive duties;'' ''to restrain the inpetuosity and fickleness of the popular House and to guard against the effects of gusts of passion or sudden changes of opinion in the people;'' ''to provide a body of men whose greater experience, longer term of membership, and comparative independence of popular election, would make them an element of stability in the government of the Nation;'' ''to create a court proper for the trial of impeachments, a remedy deemed necessary to prevent abuse of power by the executive.'' Of these functions, the second and fifth must be, for the purposes of this discussion, set aside, as being peculiar to a system in which the executive and legislature are, by reason of their election, independent of each other. The remaining functions are especially worthy of consideration, as resembling those claimed for the Canadian Senate.

Similarly, the man who had read Bourinot diligently and in simplicity of faith, but who had never visited Ottawa, would probably inform you that the Canadian Senate is performing the same lofty functions, to the discharge of which the English House of Lords and the American Senate owe their continued existence. The Fathers of Confederation may be pardoned for having in 1867 cherished such a delusion, but not so even the humblest ci-

tizen of to-day. Who would claim that the Senate as constituted, is a '' check upon hasty legislation,'' a ''safeguard against combinations'' or ''ministerial aggressions?''

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DEFECTS IN THE CONSTITUTION OF THE CANADIAN SENATE.

The fact that for so many years the Senate has been a nonentity in legislation, makes it difficult to advance reasons for its condemnation, unless one dwell upon the absurdity of fostering a member in government which seldom, if ever does anything remarkable enough to attract the attention of the public. But surely, now that there is talk of reform and even of abolition, the time has come when the weaknesses, which make it impossible for the Senate to fulfil the purposes of its creation, should be brought to light and if possible removed. There are three main defects in the composition of the Upper House which completely unfit it for a discharge of its duties.

The most obvious defeat, namely an extreme partisanship, has already been illustrated and is too patent to require further evidence. But why condemn Senators for being partisan? How can they consistently be otherwise? Can it be expected that men who have received their appointment from their party, the party with which they have been intimately connected throughout their entire political experience, will veto the legislation of that party, even to protect provincial interests? Why, according to the statesmen who draw up our constitution, they are put into the Senate in order to bring the two Houses into harmony. Yet they are to protect, if need be, the the provinces against unexpected "combinations" in the Commons. Manifestly one or other argument must be dropped. Either the Senate does actually protect Sectional interests, and so lays our constitution open to the danger of deadlock, or it is constituted to harmonize with the Commons, and so does not stand for provincial interests. That the Upper House would protect the Provinces, was the sanguine dream of the framers of our constitution; that it has ignored them and"registered the will" of the Lower House, has been the reality of twenty-three years of experience. History has proved that the Senate has never been a check upon the unbridled party spirit, but " a means of perpetuating, exaggerating and crystalizing partisanship "

Further, the Senate is weak in consequence of the extreme age of its members. The average age of the Canadian Senators is over sixty-seven years; while the average of the American Senate falls about ten years short of that figure. Now, as a rule, the politician who has been in harness for sixty-seven years is incapable of meeting the responsibilities of a parliamentary career. True there are a few striking exceptions in the present Senate, but this circumstance only presents the additional risk of a dictatorship in a body whose members are too impotent to exercise an independent judgment. Beyond a doubt, the prophecy of "Bystander" (Toronto 1880) has been fulfilled, who in discussing the composition of the Upper House, asked; " of what sort of men is the Senate to be composed?" "of old men?" "Then will it be impotent."

The Senate is, moreover, defective in the uniformity of its composition, an evil inseparable from the present mode of appointment. Of the eighty-five members, twenty are of the legal profession, seven of the Medical, while four are journalists, four farmers and thirty-eight men of business. The remaining eight have no visible means of support and may be classified as politicians. As will be seen, nearly one half of the Senators are engaged in business. Of the remainder, one half have acquired large commercial interests. Of the whole institution, therefore, seventy-five per cent may be said to represent a single national interest. Now it has been urged against the House of Lords, and with considerable justice, that its members represent the landed interest only, a fact which militates against that body in its function of revision. May it not then with equal justice be contended that the Canadian Senate, composed as it is mainly of men bound by commercial interests, is unfit to perform that function which calls for a broad diversified view of legislation? Too much has been made of practical business training in the choice of legislators. That a man has been successful in building up a large business, does not argue that he is thereby qualified to take his seat in a legislative body whose members are expected to represent the conservative thought of the nation.

On the contrary, it would appear that the qualities that go to make a man Successful in business, are the very qualities that unfit him for an impartial view of legislation.

REFORM OR ABOLITION?

The present constitution of the Senate is assailed by two classes of critics," Reformers" and "Abolitionists," the former headed by the Toronto "Globe, the latter represented in greater maturity of policy by the Liberal Party in politics. Less comprehensive plans of reform are forthcoming from different sources, among others one suggested by "Bystander" (Mr Goldwin Smith).

"Bystander", after expressing himself as strongly opposed to a single legislative chamber, suggests as the simplest solution of the present difficulty, that there be given to the House of Commons the power of overriding the veto of the Senate by a two thirds or three fourths majority. Even the author of this plan seems to admit that its chief recommendation lies in the fact that it is moderate and would in consequence meet with the ready approval of the Imperial Parliament. Such a remedy would, if adopted, prove entirely inadequate in the face of large majorities in the Commons. For instance, the Redistribution Bill of 1882 and the Franchise Act of 1885 passed the Lower House by such majorities as would, under Bystander's plan, place them beyond the reach of senatorial veto. The change would mean merely the reduction of the amount of legislation subject to revision by the Senate, not an improvement in the character of that body. If an overwhelming majority in the Commons were evidence of the excellence of the measure under consideration, and not merely an index to the influence of the party in power, the suggested reform might be worthy of serious consideration.

The cry for abolition is fast becoming popular, and is perhaps for that reason the more open to criticism. Politicians who on the spur of the moment are eager to do away with the Upper House, have their attention fixed upon the misdeeds of that institution and upon the offensive partisanship of its membebers, but have possibly never stopped to consider the danger of exposing the country to the legislation of a single House Evidence of this fact is to be found in their arguments, which are strong in cirticism of the Senate as at

present constituted, but weak in the defence of the theory of unrevised legislation. No one denies that the Senate has fallen far below the ideal set up by the Fathers of Confederation, but that may or may not be an argument in favor of abolition. Confronted with the question, whether the alternative is a partisan Senate or abolition, extremists are all but silent. Do away with the Senate and immediately difficulties present themselves for which "abolitionists" fail to suggest a solution. For instance, the party which carries an election on some great issue may not represent the people upon a score of minor questions. Moreover, the confidence of the electors manifested at the polls may and in fact often does cease before the close of an administration. Again Canadian political history has not been without instances of majorities at an election failing to represent the people, to such an extent do corrupt practices prevail. All these and many other contingencies call for a safeguard, giving permanence to government, and such a safeguard is to be found only in a second chamber.

If these arguments are not weighty enough to condemn the theory of unrevised legislation, there remains to be considered an evil connected with our present government which would be greatly magnified under the single chamber system. The extent to which legislation is determined by the Cabinet, and forced through the Commons on the strength of party majorities ever ready to follow the lead of the administration, must give rise to no little anxiety in the minds of thoughtful citizens. In this respect our constitution is in marked contrast to that of the American Commonwealth. The House of Representatives, being in no way connected with the executive, has no recognized leaders, but transacts its business by means of an elaborate system of committees. We are perhaps too prone to condemn the chaotic legislation which such a practice entails, while under our own constitution we foster even a more serious defect, in the dictatorship maintained by the Cabinet in the House of Commons. Do away with the Senate and you give over the Government of the country to the ministry of the day, or rather, if he be a man of strong personality, to the Premier. However the violence of the advocates of abolition seems destined to

to exhaust itself in vain. It may be said of the Canadian Senate, as Bagehot has said of the House of Lords, that "its danger is not in assassination but in atrophy: not in abolition, but decline.

The only matured plan of reform at present discussed appears to be that adopted by the Liberal party, if we are to judge by Sir Wilfred Laurier's late speech in Montreal, and the resolutions submitted by Attorney General Longley in the Nova Scotian Assembly and by Mr Hardy in the Ontario House. In accordance with this plan, all differences arising between the Commons and the Senate are to be decided by a joint vote. It should be noted that this scheme is quite distinct from that adopted by the new federal constitution of Australia. Therein it is provided that in case of disagreement both Houses may be dissolved. If the new parliaments continue to disagree as separate chambers, a joint sitting is to be held, at which a two thirds majority shall decide the passing of the bill in dispute.

The obvious objection to the change proposed by the Liberal party in Canada, has already been pointed out, namely that it is not a reform, but merely a device for minimizing the danger of conflict between the two Houses. It lessens the possibility of obstruction to legislation, but passes over entirely the question of senatorial appointment. Seriously, the Liberal party cannot be regarded as having faced the problem of Senate reform. The device of a joint vote will doubtless meet the political demands of the near future, but the most sanguine statesman, must fail to see in it any permanent improvement of the constitution. The change would create an absurd situation, by placing the Upper House, chosen to revise legislation, at the mercy ofthe Lower House whose measures were subject to revision.

The Australian constitution, on the contrary, in requiring an appeal to the people before resorting to a joint vote, avoids a violation of the fundamental principle of parliamentary government. The danger of robbing the Senate of its referrendum powers — the only powers it exercises in case of a conflict with the Commons — is obviously great. Mr Balfour in the Imperial Parliament, during a recent debate upon a motion to deprive the House of Lords of similar

powers, is very emphatic on this point. "I assert", he says, "that the existence of some constitutional machinery, by which the constituencies shall be again asked to reconsider their position, is not only expedient but it is an absolute, vital necessity in any healthy community."

THE REAL ALTERNATIVE

To sum up then, criticism of the Senate is widespread, Abolitionists and Reformers alike condemning its partisanship and irresponsibility. On the one hand we are told that the Senate, because of its disgraceful record, must go; on the other hand that although the Senate has erred, it is still indispensable to the constitution, but must be prevented from performing the function which alone can justify its existence. Extreme as it is, how reasonable does abolition appear in comparison with a change which would perpetuate amember of the Government, while practically robbing it of its utility. Throughout the whole controversy, possibly no single word has occurred to often as'reform', and yet the most popular policy, namely that of a joint vote, ignores entirely the question of reform,while the party of abolition evidenly regards the Senate as bad beyond redemption. Surely both abolition and a measure calculated to nullify Senatorial veto, are premature until it be discovered that the Upper House is hopelessly impotent or partisan. The history of the thirty years which have elapsed since the adoption of our constitution has proved, that the men who have acted as Senators have been on the whole unfit for the position, and not that the institution with which they have been connected is either useless or dangerous.

How then is the Senate to be saved from either abolition or decline? In the first place by making it representative of something and, as a means to that end, elective. At present our ~~electors~~ Senators represent nothing, unless it be the party that secured their appointment. There can be no doubt but that service of party, service taking on the material form of money expended for elective purposes, constitutes a sure means of appointment to the Senate. Were it otherwise, such statements as the following would not pass unchallenged. "when the expenditure of money is a leading qualification, commerce is pretty sure to be well represented. But no one will pretend that the general eminence of Canada is represented in its Senate. No intellectual or scientific distinction finds a place, while illiteracy scarcely excludes those who have served a party leader well."

The necessity for some change in the composition of the Senate is also urged by Sir John Bourinot, who claims that any change in the constitution of that body should be in the direction of making it more "representative of and in closest possible touch with the sentiment of the most conservative and thoughful classes in this country, where the influences of democracy are on the increase." Manifestly, if the Senate is to be in any broad sense representative of the second thought of the nation, the nomination of its members must be taken out of the hands of the ministry of the day. It has been suggested that the provincial legislatures should elect the Senators, a suggestion criticized on the ground that such an arrangement would simply mean handing over the nominations to the Premier. This evil might be met by requiring an equal number to be selected from each party. If half the Senators were elected in this way, the appointment of the remainder might be handed over to the universities, cities or even to the churches. The thought of a learned professor or a divine in the Canadian Senate appears ridiculous: yet what men are better suited to the task of raising that body above its present level? Can anyone doubt that the presence in the Upper House of such men as Principal Grant, Goldwin Smith, or Principal Cavan, would give to that institution such a dignity as would silence all talk of abolition.[2] It is only when you reach the "eminence" of Canada, that you find men too big to be bound down by the fetters of party politics: and unless such men can be attracted into the Senate, the sooner abolition comes the better.

Severe as is the criticism directed againt the House of Lords, it is a well known fact that the English nation at large is profoubdly impressed with the dignity of that chamber. Now, while Canadians are not so constituted as to be impressed by the representatives of an aristocracy they would be the last to admit that, as a nation they do not produce the materials required for a dignified second chamber. With a second House composed largely of men representing the most conservative institutions of the country, all the advantages of revision, to which we in our unfortunate experience have become strangers, would immediately be forthcoming. Measures which have very little political char-

acter would be amended to some purpose. Such a House, free from partisanship, would be a salutary check upon sectional legislation, so altering it as to make it acceptable to the whole country. This would be the task of eminent men, beyond the xapacity of others. One drops the controversy with the conviction that the alternative is not " a partisan Senate or abolition", but rather a dignified Senate or abolition.