

THE INDEPENDENCE OF THE LIEUTENANT-GOVERNOR

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THE extent to which the Lieutenant-Governor may or does exercise an independent will and judgment in the government of a Canadian province has been one of the most disputed constitutional points since the time of Confederation. Does the Governor-General, for example, simply "delegate his impotence to a puppet Lieutenant-Governor in each province?"¹ Is the Lieutenant-Governor a real as well as a nominal head of the provincial parliament? To what extent is he justified in imposing his will on his cabinet? If he does influence his cabinet, does he do so as an individual expressing his own views, or as a mere mouthpiece of the Dominion Government to which he is ultimately responsible? These are some of the questions that are raised by any discussion of the independence of the Lieutenant-Governor, and neither writers on the Canadian Constitution nor writers on Canadian history have given the same answers or supplied consistent precedents.

The problem of the independence of the Lieutenant-Governor must be considered from two points of view. In the first place, it will involve a study of the most important factors that affect his personal position, those circumstances which largely determine the type of man chosen for the office, and which encourage or discourage him, when appointed, in using his individual discretion and judgment. In the second place, we must consider the independent official powers which are given to the Lieutenant-Governor by the Constitution as well as the manner in which those powers have been exercised since the time of Confederation.

The office was made a necessity by the federation of 1867, and was created by the *British North America Act*.² There were Lieutenant-Governors in the colonies before that time,³ but their position was quite different: they held office directly under the Colonial Secretary; they had large discretionary powers; and the colonial parliaments of which they were the heads performed much more important functions than did the provincial parliaments under the

new Constitution. ⁴ Since 1867, the position of the Lieutenant-Governor has been that of the Governor-General in a somewhat humbler capacity, owing in the main to the general inferiority of provincial as compared with Dominion jurisdiction. Within this smaller sphere, however, he is authorized to exercise "all Powers, Authorities and Functions" previously "vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces" prior to Confederation "as far as the same are capable of being exercised after the Union." ⁵ The Judicial Committee has held ⁶ that the local legislatures have the same plenary powers within the limits prescribed as has the Dominion Parliament, and that the Lieutenant-Governor is as much a representative of the Sovereign for purposes of provincial government as is the Governor-General for purposes of Dominion government. But although the Lieutenant-Governor may be considered to be in some respects a cheap reprint of his illustrious superior, there are many differences which are fundamental and place an entirely different aspect on his independence as the chief executive.

One important difference is the matter of appointment. Both the Governor-General and the Lieutenant-Governor are frequently appointed because of their services to a political party, but although this is of no consequence in the first case, it is of vital importance in the second. The impartiality of the Governor-General in Canada is never seriously questioned on the grounds of his former political activity in Great Britain, because Canadian and British politics have few, if any, points of contact. But the impartiality of the Lieutenant-Governor in provincial affairs is being continually discredited because his past political career has been closely associated with one or other of the warring parties in the province. Goldwin Smith declared:—

The Lieutenant-Governorships are bestowed by the party leader invariably on his partisans and usually on worn-out politicians. That they form a decent retirement for those who have spent their energies in public life but on whom the community would not consent to bestow pensions, forms the best defence for their existence. ⁷

Charges of partiality against the Lieutenant-Governor have been given additional strength by the poor type of men that are frequently appointed to the office. In 1891, for example, when it became apparent that Sir Hector Langevin might be driven from the Dominion cabinet on account of charges of political corruption, Sir Charles Tupper naively proposed that Sir Hector might be made Lieutenant-Governor of Quebec. ⁸ The suggestion was not followed;

but in view of the high official position held by Sir Charles Tupper, the incident is not without significance.

The tenure of the Lieutenant-Governor is during the pleasure of the Governor-General in Council; but he can be removed only "for cause" within five years of his appointment, and this "cause" must be immediately communicated to Parliament.⁹ The interpretation of the five-year clause has given rise to numerous disputes in the Canadian House. During the decade 1885-95 it became the custom to allow the Lieutenant-Governors, after the expiration of their term, to continue in office "during pleasure" without re-appointment or removal—a condition which, the Liberal party insisted, was not in accord with the spirit of the Constitution:—

The Constitution . . . never contemplated that Lieutenant-Governors should be allowed to hold office simply at caprice and pleasure, on the understanding that if they pleased their friends at Ottawa they may keep a comfortable situation, and that if they do not please their masters they shall be bundled out without any formality of assigning a reason or without informing the House that their usefulness was gone.¹⁰

Mr. Robinson, Lieutenant-Governor of Ontario, held office from 1885 to 1887 at pleasure; Sir Leonard Tilley was Lieutenant-Governor of New Brunswick from 1890 to 1893 under the same precarious tenure; and Mr. Schultz was Lieutenant-Governor of Manitoba from 1893 to 1895 without a renewal of his term.¹¹ The consequences in this last instance might have been very serious. It was the time of the dispute between the Dominion and Manitoban governments on the school question, and the uncertain tenure of the Lieutenant-Governor might easily have been used by the federal authorities as a convincing argument to secure his co-operation in repressing the refractory province. This danger was not unperceived in the House of Commons:—

You (the Government) allow the five years to expire; you do not renew his commission; he does not stand before the country, nor does he hold his office in the same way that he did before. He is not independent; you have him in your power.¹²

Two months later a resolution was introduced in the House to the effect that "the practice which has become prevalent, of permitting Lieutenant-Governors to continue in office for long periods of time after the expiry of their commissions, by which they become removable at any time, without assignment of cause is an abuse of authority calculated to impair responsible government in the provinces."

This resolution was defeated on a straight party vote.¹³ There can

be little question that in view of the active interest of the Dominion government in provincial politics, the practice of allowing the Lieutenant-Governor's tenure to extend years beyond the regular term does imperil that independence and impartiality which form the necessary equipment for the duties of the office.

Two Lieutenant-Governors have been removed by the Dominion government since Confederation: Mr. Luc Letellier de St. Just, Lieutenant-Governor of Quebec in 1879, and Mr. T. R. McInnes, Lieutenant-Governor of British Columbia in 1900.

Mr. Letellier saw fit, for reasons that will be discussed later, to dismiss his ministry. He then called on the leader of the opposite party to form an administration, and granted him a dissolution, which resulted in the new government being returned with a slight majority. His arbitrary action (so called) in dismissing his ministry was strongly resented by the Conservative party, and Mr. Letellier was accused of having used his position to gain a party advantage. Motions were introduced in both Houses of the Dominion parliament to the effect that such conduct was contrary to the principles of responsible government: the motion passed the Senate, where the Conservatives had a majority, and was lost in the Commons, where the Liberals were in power. Following the election of 1878 and the return of Sir John A. Macdonald as Prime Minister, a motion similar to that of the previous year was passed in the Commons. The Ministry thereupon advised the Governor-General to dismiss Mr. Letellier. This was carried out by Order in Council on July 25, 1879, the "cause" assigned being that "Mr. Letellier's usefulness as a Lieutenant-Governor was gone."¹⁴

Several conclusions as to the tenure and removal of the Lieutenant-Governor may be drawn from this very interesting case:

I. The tenure is not, like that of a judge, during good behaviour, but during pleasure. "It confers no vested right upon a Lieutenant-Governor to retain his office for any number of years, and it gives a wide scope for the exercise of discretion on the part of the removing power."¹⁵

II. The tenure during pleasure, however, is not to be interpreted as meaning that the Governor in Council may arbitrarily remove a Lieutenant-Governor: there must be a cause assigned. That "his usefulness was gone" is, of course, an extremely vague reason for removal, though no doubt amply sufficient; yet the real cause was that expressed in the motion in the House that his action was subversive of the principles of responsible government. The removal, in short, was not undertaken without serious deliberation as to its advisability, which was undoubtedly the object which

section 59 of the *British North America Act* endeavoured to secure.

It was the spirit and intention of the *British North America Act*, 1867, that the tenure of the high office of Lieutenant-Governor should, as a rule, endure for the term of years specifically mentioned, and that not only should the power of removal never be exercised, except for grave cause, but that the fact that the political opinions of a Lieutenant-Governor had not been, during his former career, in accordance with those held by any Dominion ministry, who might happen to succeed to power during his term of office, would afford no reason for its exercise.¹⁶

III. A third reason advanced for dismissal was that given by the Government of Sir John A. Macdonald in a memorandum of April 14, 1879, which stated that the censure of the Dominion Parliament rendered Mr. Letellier unable to discharge his functions with success.¹⁷ That, however, was an evasion of the real question, and it was added that "a Lieutenant-Governor is still removable and ought to be removable whenever it is felt by the Dominion Government that it is for the public interest that he should be displaced."¹⁸ But the question immediately arises: What will justify removal in the public interest? To find an answer, it is necessary to go behind the official memorandum to the debates in the Commons. Sir John A. Macdonald spoke in favour of removal because the Lieutenant-Governor had dismissed a ministry which had the support of the House of Assembly, and because his motives for dismissal were partizan.¹⁹ It is on this last point that emphasis must be laid, for the dismissal of a ministry has not always been followed by the removal of the Lieutenant-Governor.²⁰ It may also be noted that although the province supported Mr. Letellier's action by returning the new government with a bare majority, that did not prevent his dismissal; though had the people not done so, his removal would probably have been rendered imperative.²¹ The first motions disapproving of Mr. Letellier's conduct had been introduced in Parliament before the provincial elections took place.

IV. The Lieutenant-Governor's political responsibility is enforced more strictly than that of the judge; for the former is held responsible for errors made in good faith, while the latter is considered to be immune. When the matter was debated in the House, Mr. Laurier endeavoured to secure for Mr. Letellier the same privilege as was extended to the judge:—

Therefore, I say, Mr. Letellier has acted in good faith, and he has good authority to do what he did. If he acted in good faith, though he may have acted unwisely and unconstitutionally, will there be found a majority in this House to say this man is to be censured and dismissed because he may have acted unwisely?²²

This contention has been proved to be unsound, and was emphatically denied both in the House ²³ and in Sir John A. Macdonald's dispatch to the Colonial Secretary. ²⁴

The second instance of the removal of a Lieutenant-Governor was that of Mr. T. R. McInnes in British Columbia. He, like Mr. Letellier, had dismissed his ministry; but, in the election which followed, the new government of his choice was decisively beaten. The Dominion Government thereupon removed him. The incident, although it did not arouse as much excitement as that of Mr. Letellier, is nevertheless of exceptional interest because Sir Wilfrid Laurier, who had opposed the removal of the Lieutenant-Governor of Quebec, was the head of the administration that dismissed the Lieutenant-Governor of British Columbia. The reasons for the removal of Mr. McInnes were stated in a report of a committee of the Privy Council, dated June 21, 1900:—

On a memorandum dated June 20, 1900, from the Right Honourable Sir Wilfrid Laurier, stating that the action of the Lieutenant-Governor of British Columbia in dismissing his Ministers has not been approved by the people of that province, and further, that in view of recent events in the said Province of British Columbia it is evident that the Government of that province cannot be successfully carried on in the manner contemplated by the constitution under the administration of the present Lieutenant-Governor, His Honour Thos. R. McInnes, whose official conduct has been subversive of the principles of responsible government,

The Right Honourable, the Premier submits that therefore Mr. McInnes's usefulness as Lieutenant-Governor of British Columbia is gone, and he recommends that Mr. McInnes be removed from the said office, and that the cause to be assigned for such removal shall be the matters set forth in this Minute.²⁵

It will readily be seen that the grounds given for removal were not quite the same as those given in the Letellier case. There appears to have been some belief that Mr. McInnes was actuated by political motives in dismissing his ministry; but as this partiality was towards the Liberal party, that phase of the incident was not given prominence. ²⁶ Emphasis was laid, however, on the fact that the people of the province did not support the action of their Lieutenant-Governor, a view which was quite consistent with the earlier Liberal position in the Letellier case:—

"The Lieutenant-Governor," said Sir Wilfrid Laurier on March 6, 1900, "has acted within the precincts of his power. Whether he has acted wisely or not is a question which is submitted, not to this government, not to this parliament, but to the people of British Columbia. . . . It is for the people of the province of British Columbia to declare whether they approve or disapprove of the action of the Lieutenant-Governor." ²⁷

In 1879 Sir Wilfrid had stated in no ambiguous terms the acts which would, in his opinion, justify the removal of a Lieutenant-Governor:—

I believe that these causes of removal can well be offences of a personal character, but never offences connected with the discharge of duties of an official character. If, for instance, the Lieutenant-Governor by some grossly dishonourable conduct brings the dignity of the Crown into contumely, this and similar offences might be causes of removal; but, if he sticks within the circle of his functions, however tyrannical his acts may be, he is not removable, because he is covered by ministerial responsibility. He is amenable to the people, who can set him right, if they believe him wrong, and undo what he has done.²⁸

Later in the same speech he stated explicitly what he implied above, that even if the people showed their disapproval, the only punishment of the Lieutenant-Governor would be that he would have to reinstate the advisers whom he had dismissed.²⁹ Sir Wilfrid's position had undergone a change by 1900, and he found that it was easier to state principles in Opposition than to act on them as Prime Minister. He was compelled to alter his opinion that personal misconduct would alone justify removal, and he found it much more simple to accept the people's verdict as decisive. Ministerial responsibility in the event of a dismissal is necessarily *ex post facto*; and unless the action of the Lieutenant-Governor has received the support of the people of the province, such responsibility cannot be held as a mitigation or an excuse for his behaviour.

The salary of the Lieutenant-Governor has a small direct effect on his independence, and a large indirect effect because of the limitations which it imposes on the number of candidates for the office. When the matter was discussed in the Dominion Parliament in 1868, it was realized that the salary paid was not enough to maintain "the social dignity of the position."³⁰ The amount has been raised since that time;³¹ but it is a recognized fact that no one without a private income can hope to fill the office acceptably. This does not necessarily "exclude intelligence,"³² but it certainly does not always obtain it. The tendency towards mediocrity is further accentuated by the custom of appointing second-rate politicians to the position, for no man with a political future will acquiesce in the withdrawal from active public life that acceptance of the office entails. There have been instances, of which Mr. Joseph Howe and Sir Oliver Mowat are the conspicuous examples, where the office was filled by a man of unusual ability and was bestowed as the crown of a distinguished career; but such cases have been very exceptional.

These are the most important conditions³³ which affect the

personal position of the Lieutenant-Governor. The system of political appointment coupled with the insufficient salary usually obtains men who have been in the front rank of party mediocrity, a qualification which leaves much to be desired if the Lieutenant-Governor is to discharge important functions in the state. His tenure stands midway between that of a civil servant and that of a judge: he holds office at pleasure, but both law and convention have tended to make this approximate to good behaviour. Removals have been rare, and have been effected with caution and deliberation. On the whole, the Dominion government has endeavoured to give free scope to the activities of the Lieutenant-Governor, and it has encouraged his independence so far as that is determined by his political responsibility and by the manner in which it is enforced. This leads us to the second part of the discussion, viz., the opportunities that are given by the Constitution for the exercise of the Lieutenant-Governor's independence, as well as the manner in which he has availed himself of those opportunities since the time of Confederation.

The Lieutenant-Governor has the same power to refuse a dissolution or prorogation to his provincial ministry as has any Governor holding office directly from the Crown. In 1879 the Lieutenant-Governor of Quebec refused a dissolution to Premier H. G. Joly, and in 1883 the Lieutenant-Governor of New Brunswick gave a similar refusal to the Premier of that province. In both cases this was followed by the Premier's resignation, and a new ministry was formed without difficulty.³⁴ Thus the "constitutional discretion" of the Lieutenant-Governor in the matter of dissolution has not been merely in abeyance, but in active operation, and his action in the above cases would appear to be justified by the ease with which a new ministry was formed without the necessity for an election.

The cases in which a Lieutenant-Governor has ventured to dismiss his ministry on his own initiative are even more frequent. The most famous case is that to which allusion has already been made, the dismissal of the De Boucherville ministry in Quebec by Lieutenant-Governor Letellier. Mr. Letellier had been an active Liberal before his appointment, the provincial government was Conservative, and from the time the Lieutenant-Governor assumed office his relations with his ministry were marked by mutual distrust. The break came on March 1, 1878, when Mr. Letellier demanded the resignation of his advisers, contending that he had not been consulted or heeded on certain legislation and that he was not taken into the confidence of his ministry.³⁵ He called upon Mr. Joly to form an administration, granted him a dissolution, and

succeeded in having the new government returned by a very small majority. The question then passed into Dominion politics with the final result that Mr. Letellier himself was dismissed.

Whatever justification the Lieutenant-Governor may have had for his *coup d'etat*,³⁶ he acted within the bounds of his constitutional authority. "There can be no doubt," wrote the Colonial Secretary, "that he has an unquestionable constitutional right to dismiss his provincial ministers if, from any cause, he feels it incumbent upon him to do so. In the exercise of this right, as of any other of his functions, he should, of course, maintain the impartiality towards rival political parties which is essential to the proper performance of the duties of his office."³⁷

This case shows the difficulty that may result from the appointment of a partizan Lieutenant-Governor. The essence of the trouble lay in the political history of Mr. Letellier and the effect of that history on his mind and on the minds of his ministry. He was not disposed to make the path of his advisers smooth, and they were not anxious to take one into their counsels who had been a short time before their leading opponent. If it is true that the Lieutenant-Governor endeavoured to exaggerate the importance of his office, it seems equally true that his cabinet did their utmost to belittle it:—

M. Letellier was an able legislator, a pronounced and often rash partizan, haughty in his relations with opponents, and defiant where conciliation might have been employed without sacrifice of justice or of dignity. . . . M. Letellier was suffused with the party instinct; he had little of the moral and none of the judicial.³⁸

The account is, no doubt, a bit harsh; but even with a liberal discount for prejudice, it is scarcely a description of an ideal Lieutenant-Governor.

In 1891 Quebec furnished another instance of the dismissal of a ministry by the Lieutenant-Governor, when Mr. A. R. Angers, acting on an interim report of a Royal Commission,³⁹ dismissed the Mercier Government. Mr. De Boucherville was called on to form a new administration, and was able to win in the ensuing election two-thirds of the seats in the House.⁴⁰ The action of the Lieutenant-Governor was much criticized both in parliament and in the press. He was politically opposed to the Premier; he had virtually appointed the Royal Commission⁴¹ (all of whom had formerly been identified with Mr. Mercier's opponents); he appeared unduly eager to hasten the Government's downfall. "All these things" said *The Week*, "give more or less plausibility to the cry, that the Lieutenant-Governor was actuated by partizan feelings

and the desire to snatch a party advantage from the disgraceful circumstances.”⁴²

Lieutenant-Governor McInnes of British Columbia succeeded in getting the affairs of that province into hopeless confusion in 1898-1900 through a misguided use of the power of dismissal. The Turner Government was dismissed by Mr. McInnes in 1898 because it had been returned with the same number of seats as the Opposition, and had, in his opinion, not retained the confidence of the people.⁴³ The succeeding ministry, led by Mr. Semlin, was defeated immediately after the opening ceremonies on January 4, 1900; but it held on for two months longer, sometimes by a majority of one, sometimes by the Speaker's casting vote. Later in the session it was again defeated, and was dismissed in its turn by Mr. McInnes.⁴⁴ The distraught Lieutenant-Governor next turned to Mr. Martin, who consented to form a ministry, though neither he nor Mr. McInnes seem to have been very optimistic as to the probable result.⁴⁵ In the election that followed, both the Martin Government and the Semlin party were badly beaten; and Mr. McInnes hastened to point out to the Governor-General that although the electorate had not approved his choice of a Premier, they had approved his action in dismissing the Semlin Government:—

At that point I respectfully submit my responsibility ends. For if the people themselves could not indicate a leader in whom they have confidence—and they certainly have not done so—I submit that I cannot fairly be condemned for having failed to select a leader under whom they would unite.⁴⁶

The plea, however, was of no avail; the politics of the province were by this time in such confusion that the Dominion Government was forced to intervene, which it did in a very effective manner by removing the Lieutenant-Governor. Mr. McInnes would appear for the most part as more sinned against than sinning, for the political parties in British Columbia were inextricably mingled and confused. But “he had set about to endeavour to turn the province into a good Liberal province, and had dismissed a couple of ministries as a preliminary to this result, and had kept another ministry in office for months without a parliamentary majority.”⁴⁷ The history of these years illustrates the danger of allowing a Lieutenant-Governor to exercise the prerogative of dismissal when it is combined with the power of calling on whom he pleases to form the new government. It would also seem to show that in some circumstances, at least, it is scarcely fair to allow the verdict of the provincial election to decide the removal of the Lieutenant-Governor; for as Mr. McInnes remarked, if the people of the province do not know their own leader,

it is too much to expect that a Governor can choose one of whom they will approve.⁴⁸

On two occasions when charges of corruption have been made against a ministry, Lieutenant-Governors have taken decisive action which has ultimately resulted in the defeat of the ministry. Mr. Angers, Lieutenant-Governor of Quebec, forced Premier Mercier in 1891 to agree to a Royal Commission which he suggested.⁴⁹ In 1915 Sir Douglas Cameron, Lieutenant-Governor of Manitoba, compelled the Government to appoint a similar Commission to investigate charges which had been made in reference to the construction of the Parliament buildings.⁵⁰ There can be no doubt that the subsequent defeat of the Government in both these cases was due in a large measure to the stand taken by the Lieutenant-Governor, who had by his action cast the stigma of guilt upon the offending ministry.

The Lieutenant-Governor has often refused to make appointments recommended by a government in doubtful standing. Mr. Angers, while charges were pending against the Quebec Government in 1891, informed the Premier that he was to limit his actions to those of "urgent administration,"⁵¹ and Mr. McInnes adopted the same attitude in British Columbia in 1898.⁵² The Lieutenant-Governor of New Brunswick refused in 1908 to ratify appointments because the Government had just been defeated at the polls;⁵³ although three years before, the Lieutenant-Governor of Ontario had approved appointments made under precisely the same conditions.⁵⁴ It is now generally agreed, owing in a large measure to a precedent set by Lord Aberdeen in the Dominion in 1896, that under certain circumstances the Lieutenant-Governor may, if he wishes, refuse to assent to appointments which are recommended to him.

In an interregnum between governments the Lieutenant-Governor must use his discretion in the choice of a new Premier for the province. This, however, rarely causes any difficulty, as the opposite party has almost always a recognized leader. Mention has been made of the pathetic position of Mr. McInnes in British Columbia when he found himself burdened with the unsatisfactory task of supplying the province with a leader. Sir John Hendrie, Lieutenant-Governor of Ontario, was in a similar dilemma in October, 1919. The elections had returned 43 United Farmers, 28 Liberals, 27 Conservatives, 11 Labourites, 1 Independent Liberal and 1 Soldier: no party had a majority, and there had been no coalition at the time of the election. The Lieutenant-Governor did not make matters any better by an announcement which he issued to the Press:—

I think this is a case for the Lieutenant-Governor. I believe that under the circumstances I can call anyone in the House or out, and ask him to form a government. Of course, it goes without saying that such a man would need to have the support of a majority of the legislative assembly in order to carry on.⁵⁵

Mr. H. H. Dewart, the Liberal leader, thereupon issued a statement to enlighten Sir. John Hendrie as to the actual position of the Lieutenant-Governor in the matter:—

It is rather early for the Lieutenant-Governor in an inspired interview to suggest where he will look for a leader, or how he will deal with the situation. His natural course is to call upon the successful (*sic*) leader of the Liberal party to form a government. It will be time enough to discuss the calling in of an outsider when it appears that it will be impossible for the groups to get together in the common cause of establishing popular government. . . . The people of the province of Ontario are not in the humour to tolerate any further manipulation of the business of government, no matter what source it comes from.⁵⁶

The rebuke was deserved: a coalition was formed between the United Farmers and Labour, and the Lieutenant-Governor found himself with no alternative but to call upon Mr. E. C. Drury to form a government.

The Lieutenant-Governor is not only the head of the provincial government; he is also the representative of the Dominion in the province—a position somewhat similar to that of the Governor-General acting in his capacity of Imperial officer. The commission of the Lieutenant-Governor contains a reference to instructions which may be given him by the Governor-General;⁵⁷ but such instructions are rarely issued and are usually of a very general nature. When, for example, the first Lieutenant-Governor of Manitoba was appointed in 1870, he was given preliminary instructions that he should “be guided by the constitutional principles and precedents which obtain in the older Provinces,” and that he “will be expected to maintain a position of dignified impartiality, and to guard with independence the general interests of the Dominion and the just authority of the Crown.”⁵⁸ General information is also sent at intervals by the Dominion Government for his guidance.⁵⁹

One function that is performed by the Lieutenant-Governor as the agent of the federal authorities is the withholding of his assent from any Bill that may come up from the provincial legislature.⁶⁰ This power has been freely exercised in some provinces and allowed to lapse in others; when it has been used, it has generally been under the advice of the provincial ministry on the ground that the legislation was *ultra vires* or otherwise objectionable.⁶¹ This is a ridiculous

proceeding; for the ministers obviously must have agreed to the legislation when it was originally introduced, and later changed their minds as to its legality or advisability. In such cases the Lieutenant-Governor acts not as a Dominion officer but as a convenient scape-goat for the sins of the provincial cabinet. In a minute of November 29, 1882, the Governor-General in Council clearly sets forth the duty of a Lieutenant-Governor in regard to the reservation of Bills, and the same principles may be applied to his refusal to assent to Bills that have passed the provincial House. The minute states that the right of reservation in Canada and the provinces was given, not that the powers of Canadian or provincial ministers might be increased, but in order that the Imperial and Dominion interests respectively might be guarded:—

The Lieutenant-Governor is not warranted in reserving any measure for the assent of the Governor-General on the advice of his ministers. He should do so in his capacity of a Dominion officer only, and on instructions from the Governor-General. It is only in a case of extreme necessity that the Lieutenant-Governor should without such instructions exercise his discretion as a Dominion officer in reserving a Bill. In fact, with the facility of communication between the Dominion and provincial governments, such a necessity can seldom if ever arise.⁶²

While the central government exercises a close control in matters affecting the Dominion, in matters of provincial interest it allows the Lieutenant-Governor a free hand, though Canadian history supplies some accusations to the contrary. In the case of Mr. Letellier it was stated in the Canadian Parliament that "Lieutenant-Governors were purely and simply creations of this Government, under whose control they were. He would frankly say, that he believed Governor Letellier had been influenced in his action on the part of the Federal Government, with the view of seizing upon the Government of Quebec, in order to bring about and control the elections."⁶³ A similar indictment was made by Mr. Borden, the Leader of the Opposition, that Mr. Forget, the first Lieutenant-Governor of Saskatchewan, had been influenced by the Dominion Government in his choice of a Premier for the new province.⁶⁴ The accusation was emphatically denied by Sir Wilfrid Laurier: "My hon. friend knows as well as I do that as a constitutional governor he is not limited in any way in his choice. There is only one limit upon his choice, he can choose whom he pleases provided his choice is endorsed by the people of the province."⁶⁵ On November 23, 1906, Mr. Borden again made the charge: "The Lieutenant-Governor... is not an officer of the federal government (*sic*); he is the direct representative of the Crown, and any attempt to

undermine the dignity and the independence of such an officer is in my opinion a blow aimed against the spirit and indeed against the letter of the constitution.”⁶⁶ Sir Wilfrid’s reply contained the explicit statement that he “never had a word of communication with the Lieutenant-Governor of Saskatchewan as to the party whom he should call to his council.”⁶⁷ The general rule is that the decisions of the Lieutenant-Governor in local matters are taken without any consultation with the Dominion government: he acts first, and then reports to Ottawa what he has done. If the occasion warrants it, the federal authorities may feel called upon to interfere. When, for example, British Columbia was in uproar through the misguided efforts of Mr. McInnes, the Dominion cabinet endeavored to bring order out of chaos by making a number of suggestions, which were in effect instructions, to the Lieutenant-Governor.⁶⁸

An historical survey of the functions of the Lieutenant-Governor therefore shows that the occasions on which he has exercised his own personal judgment are by no means rare. It is true that when he has acted as the agent of the Dominion government he has been little more than an automaton, which has responded to every pull of the strings from Ottawa; but in the exercise of his functions as head of the provincial parliament he has often shown an initiative and a vigour which present a striking contrast to the inertia of his superior, the Governor-General. The Lieutenant-Governor has not been afraid to refuse a dissolution of parliament, to dismiss his ministers, to insist on investigations being held on the conduct of his advisers, and to refuse to make appointments to office if he believed the government to have lost the confidence of the people. It is unfortunate that this independence of action has not always been accompanied by independence from prejudice, and that in a large number of cases partiality has played an important part in determining the action of the Lieutenant-Governor. It is surely more than a mere coincidence that out of the thirteen instances noted above, where questions of dispute have arisen between the Lieutenant-Governor and his cabinet, he has opposed his own party in but four cases and the other party in nine. It must, of course, be remembered that there have been many Lieutenant-Governors, and that the majority of them have given cause for no adverse comment. The explanation, however, is probably found in the fact that circumstances have not compelled them to take any decisive action, and that their duties have been confined to the acceptance of ministerial advice in the ordinary routine of government. When it has so happened that a Lieutenant-Governor has been given an opportunity, he has generally misused it.

The fault lies not so much with the officer as with the system. The functions which the Lieutenant-Governor is asked to perform require in a crisis the utmost delicacy of touch, the most strict impartiality of judgment and opinion, and a complete detachment from all party affiliations. His office has been modelled on those of the Sovereign in England and of the Governor-General in Canada, but in neither case does the parallel hold good. Both the Sovereign and the Governor-General occupy positions of isolation so far as the parties over which they preside are concerned, and they are therefore well suited, if need be, to exercise independent powers with success.⁶⁹ But the Lieutenant-Governor approaches his difficult task with quite different qualifications. He is surrounded with many of the external circumstances that make for impartiality and is free from undue Dominion interference; but he lacks those qualities of mind that are the conspicuous merit of both the Sovereign and the Governor-General. The Lieutenant-Governors are too often recruited from "worn-out politicians," men who have grown old in the party service, those whose minds have become accustomed to regard all political questions from a prejudiced point of view; and it is too much to expect that they should change the habits of a life-time and suddenly acquire impartiality and mental detachment. It is not only unwise but unfair to place a man with these antecedents in a position where he is compelled to hold the scales of political justice.

The problem to be solved is how to make the Lieutenant-Governor free from prejudice so that the power which he holds will be used impartially, or, in the alternative, to reduce his more important functions to a mere signing of a paper. The first suggestion may be discarded as impracticable because of the impossibility of surmounting the appointment difficulty. The Lieutenant-Governor must be appointed by and be responsible to the Dominion government if he is to act as the agent of that government. This means that he will be a political nominee: he must be to some extent at least a party man, and he will be conscious of the fact that it is to a party that he owes his office. Political neutrality under such circumstances becomes almost impossible. It may be suggested that a return might be made to the old colonial system of allowing the Imperial government to appoint the Lieutenant-Governors;⁷⁰ but such a scheme would not be tolerated by the Canadian people, nor would it be in accordance with the spirit of the Constitution, which gives to the Dominion the oversight of provincial affairs.

The alternative proposal, viz., to reduce the functions of the Lieutenant-Governor, is certainly more feasible and is probably

more desirable. A similar diminution of power has already taken place in the case of the Sovereign and of the Governor-General. There is little or no real benefit to be derived from having a Lieutenant-Governor who has power to act against the advice of his ministers, and so long as the provinces of the Dominion are content with this remnant of the days before responsible government, they must expect to be ranked as colonies rather than as self-governing states. Provincial autonomy has increased since the day when the Honourable John A. Macdonald spoke of the proposed "subordinate local governments" and added that "the chief executive officer in each of the provinces must be subordinate as well."⁷¹ But provincial autonomy is little more than a phrase on the lips if power in the provincial government is to remain in the hands of a Lieutenant-Governor, with little assurance that it will be used impartially and in accordance with the wishes of the electorate. The Governor-General's exercise of independent powers has shrunk with the passing of the years; that of the Lieutenant-Governor has shown no such tendency, and it can plead no excuse for its continued existence. The powers of the Lieutenant-Governor can, without any serious loss, be confined to representing the Dominion government, to acting under ministerial advice, and to using his influence in the council chamber. The Canadian government, for its part, must endeavour to secure men more worthy of the office and to choose them for impartiality and tact rather than for mere party service. The independence of the Lieutenant-Governor as it exists to-day is a menace rather than an aid to responsible government; and it is only by a severe limitation of function, combined if possible with a greater care in selecting men, that this office can be brought into accord with the other parts of the Constitution.

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1. Smith, Goldwin, *Canada and the Canadian Question*, p.147.
 2. *Brit. Stat.*, 30-31 Vic. c. 3. sects. 58-68.
 3. There was also a Governor-General before Confederation, but he was only nominally superior to the Lieutenant-Governors. cf. *Lord Durham's Report (Lucas)* II. pp. 8, 8n. III. pp. 311-14.
 4. Dispatch of Lord Carnarvon to Lord Dufferin, Jan. 7, 1875, *Can. Sess. Pap.*, 1875, No. 11, p. 38.
 5. *B. N. A. Act*, 1867, Sec. 65.
 6. (1892) A. C. 437.
 7. Smith, Goldwin, *Canada and the Canadian Question*, p. 157.
 8. Tupper, Sir Charles, *Recollections of Sixty Years*, p. 214
 9. *B. N. A. Act.*, 1867, Sect. 59.
 10. Sir Richard Cartwright, *Can. H. of C. Debates*, Jan. 31, 1893, p. 89.
 11. *Ibid.*, July 12, 1895, pp. 4258-59.
 12. Mr Mills, *Ibid.*, May 9, 1895, p. 789.
 13. *Ibid.*, July 12, 1895, pp. 4256-72. cf. case of Sir Oliver Mowat.,
Ibid., March 17, 1903, pp. 114-25.
Ibid., March 30, 1903, pp. 655-64.
Ibid., April 14, 1903, pp. 1204-07.

14. Todd, A., *Parliamentary Government in the British Colonies*, pp. 601-08.
15. *Ibid.*, p. 609.
16. Dispatch of the Secretary of State for the Colonies to the Marquis of Lorne, July 3, 1879, *Can. Sess. Pap.* 1880, No. 18.
17. *Parl. Pap. (G. Britain)* 1878-79, LI. (2445) p. 107.
18. *Ibid.*, p. 108.
19. *Can. H. of C. Debates*, April 11, 1878, p. 1884.
20. Keith, A. B., *Imperial Unity and the Dominions*, p. 114.
21. Willison, J. S., *Sir Wilfrid Laurier and the Liberal Party*, I. p. 358. But see Speech of Mr. Laurier, *Can. H. of C. Debates*, March 12, 1879, p. 329.
22. *Can. H. of C. Debates*, March 12, 1879, p. 329.
23. Mr. H. Langevin, *Ibid.*, p. 333.
24. *Parl. Pap. (G. Britain)*, 1878-79, LI. (2445) pp. 106-10.
25. *Can. Sess. Pap.*, 1900, No. 174, p. 26.
26. Keith, A. B., *Imperial Unity and the Dominions*, p. 432.
27. *Can. H. of C. Debates*, March 6, 1900, p. 1387.
28. *Ibid.*, March 12, 1879, p. 327.
29. *Ibid.*, p. 329.
30. *Ottawa Times*, May 13, 1868.
31. *Can. Stat.*, 36 Vic. c. 31.
32. Hon. Mr. Chauveau, *Ottawa Times*, May 13, 1868.
33. There are others, e. g., his partial immunity from suit cf. A. B. Keith, *Responsible Government in the Dominions*, I. pp. 136-38. *Imperial Unity and the Dominions*, pp. 38-39.
34. Todd, A., *Parliamentary Government in the Colonies*, pp. 795-800.
35. *Can. Sess. Pap.*, 1879, No. 19.
36. Cf. *Canadian Monthly*, April, 1878, pp. 428-33. *Ibid.*, May, 1878, pp. 542-49.
37. *Parl. Pap. (G. Britain)*, 1878-79, LI. (2445). pp. 127-28.
38. Collins, J. E., *Canada under the Administration of Lord Lorne*, p. 56.
39. The report was signed by only two of the Commissioners, the third being ill.
40. Todd, A., *Parliamentary Government in the Colonies*, pp. 677-79.
41. *Ibid.*, p. 670.
42. *The Week*, edit., Feb. 26, 1892, cp. *Ibid.*, edit., Dec. 25, 1891.
43. *Can. Sess. Pap.*, 1899, No. 89, pp. 3-4.
44. *Ibid.*, 1900, No. 174, p. 7.
45. *Ibid.*, p. 9.
46. *Ibid.*, p. 21.
47. Keith, A. B., *Imperial Unity and the Dominions*, p. 432.
48. British Columbia was the scene of another dismissal in 1903. Cf. *Canadian Annual Review*, 1903, pp. 213-15.
49. Todd, A., *Parliamentary Government in the Colonies*, pp. 666-78.
50. *Canadian Annual Review*, 1915, pp. 621-26.
51. Todd, A., *Parliamentary Government in the Colonies*, pp. 666-78.
52. *Can. Sess. Pap.*, 1899, No. 89, pp. 3-4.
53. *Canadian Annual Review*, 1908, p. 402.
54. *Ibid.*, 1905, pp. 218-19.
55. *Ottawa Citizen*, Oct. 22, 1919.
56. *Ibid.*
57. e. g. *Can. Senate Journals*, 1878, p. 175.
58. *Can. Sess. Pap.*, 1871, No. 20, pp. 4-5.
59. *Ibid.*, 1870, No. 35, 1877, No. 89, p. 154.
60. *B. N. A. Act*, Sects. 55, 90.
61. Todd, A., *Parliamentary Government in the Colonies*, pp. 586-89.
62. *Ibid.*, p. 520.
63. *Can. H. of C. Debates*, April 12, 1878, p. 1978.
64. *Ibid.*, March 12, 1906, p. 43.
65. *Ibid.*, p. 53.
66. *Ibid.*, Nov. 23, 1906, p. 27.
67. *Ibid.*, p. 40.
68. *Can. Sess. Pap.*, 1900, No. 174.
69. The independent powers of both the Sovereign and the Governor-General, unlike those of the Lieutenant-Governor, have steadily diminished.
70. The appointment of the governors of the Australian states is still vested in the hands of the Imperial Government.
71. *Confederation Debates*, 1865, p. 42.