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SIR LYMAN DUFF AND THE HONG KONG INQUIRY

In October 1941, at a dark hour in her fortunes, embattled Britain asked Canada for whatever reinforcements she could spare for the Hong Kong garrison. The island colony off the Chinese coast must certainly stand in the full tide of Japanese onslaught should the worsening relations with the Far Eastern power result in war. Canada responded; on 27th October two battalions, the Royal Rifles of Canada and the Winnipeg Grenadiers, sailed from Vancouver aboard the troopship *Awatea*, bound on the most ill-fated and disastrous military venture in Canadian history. Less than two months later, the British outpost, bereft of both naval and air defence, fell to Japanese forces. The Canadians, those who survived the siege and assault, passed into Japanese captivity, along with two British units (the 1st Middlesex battalion, 2nd Royal Scots), the 2/4th Punjab battalion, the 5/7th Rajputani Rifles, and last but not least, the Hong Kong Volunteers.

Understandably indeed shocked amazement swept Canada, for never before had Canadian troops suffered such a catastrophe. Who was responsible? Were the two Canadian units properly trained and equipped? Should they have been dispatched at all on so hopeless a mission? It was not surprising, therefore, that the King government shortly came under Opposition fire. Colonel George Drew, redoubtable veteran of the First World War, then Conservative member for Simcoe East in the Ontario legislature, laid the responsibility for the disaster squarely on the shoulders of Canada's wartime Prime Minister, the wily Mackenzie King. King first considered that a parliamentary inquiry would serve to defend his government against Drew's charges, reflecting as they did on the cabinet's competence and collective responsibility, but then decided that nothing short of a full scale Royal Commission would suffice to clear his government and satisfy the nation.

The Prime Minister's choice at this critical moment fell naturally upon Canada's most eminent jurist, Sir Lyman Poore Duff, now in his seventy-eighth year; Duff had sat on the bench of the Supreme Court of Canada since 1906, and for the last ten years as Chief Justice. In the course of his distinguished career he had participated in no fewer than 1,840 Supreme Court decisions, and had won renown in the legal profession for his work on three well-publicized Royal Commissions—on Shell Contracts in 1916, Railways and Transportation in 1932, and the inflammatory *I'm Alone* incident, involving the sinking on the high seas of a rum-runner under Canadian registry by an American Coastguard cutter in 1929. Duff's reputation as an eminent and gifted jurist had spread far beyond the borders of his native Canada; indeed, as far back as 1919 he had been appointed a member of the Judicial Committee of the Privy Council, one of the few Canadians surely to be accorded the distinction. Certainly Duff stood very high in King's estimate, for the Prime Minister recorded in his diary, following the death of Lord Tweedsmuir in office, that Duff would have been the first choice for Rideau Hall if only he had had a wife to act as hostess and consort.¹ As it was, Duff served on several occasions as Administrator, and in 1931 had the honour of being the first Canadian to open Parliament.² It is hardly surprising, therefore, that King's choice should fall, in his hour or trial, upon the Meaford-born son of a Congregationalist minister, whose law career had begun nearly a half century before in the sleepy little farming town of Fergus, Ontario.

Fortunately for the Prime Minister, the Chief Justice accepted the charge after considerable hesitation, considering his advancing years. Accordingly he was appointed a one-man Royal Commission, under Order-in-Council, 12th February 1942, with broad terms of reference: responsibility for approval of the expedition in the first instance, for the selection of the two battalions which composed it, the means by which the two units were brought up to strength, and the general organization and supply of the force.³ The hearings extended throughout the month of March, in which civilians and the military of all ranks were called to testify.

On the basic point of the inquiry, government responsibility for dispatching the expedition on what the critics rightly termed a hopeless and fatal mission, Duff entirely exonerated the government, as indeed he did on all the other counts, save one. Duff's Report contended that Canada had no contacts in the Orient, and so was utterly dependent on British intelligence, from which no forewarnings had come concerning the imminence of war in the Far East. This defence really amounted, in essence, to laying the blame at

Britain's door, on the premise that the colony was indefensible.

And so indeed had no less a personage than Winston Churchill considered it before the war; indeed, he had favoured a reduction of the garrison in the exposed colony. He was then persuaded by ill-informed advisers that the addition of two or three battalions would enable the colony to withstand a siege for several months, which would encourage the embattled Chinese on the mainland; indeed, perhaps assistance might be anticipated from that quarter. Overdrawn herself, having barely survived the threat of German invasion, with no troops to spare, Britain turned to Canada. The Canadian Government, under the dire circumstances of the time, could not refuse Britain's plea. Particularly was this the case considering that in October 1941 Canadian troops had yet to meet the enemy, whereas Australian forces had been heavily committed in the see-saw battles of the Western Desert, New Zealanders had taken part in the vain if heroic defence of Crete, and South Africans had engaged in the Ethiopian campaign. According to Duff's findings, to be so savagely attacked by George Drew soon afterwards, General Grasset, former Commander-in-Chief, China Command, in passing through Ottawa on his way home, had told General Crerar that the timely addition of "two or more battalions" would make all the difference to Hong Kong's defence. Grasset, who had just been replaced at Hong Kong, believed that such reinforcement would enable the colony to withstand an extended siege. According to Crerar, the War Office and Chiefs of Staff in London had been so informed.⁴ The inference of this testimony of course was that since the British with their considerable experience over several centuries of defending outposts of Empire could be so self-deceived, was it any wonder that the Canadian authorities should have followed suit!

Drew, in a letter circulated to the leaders of the Opposition Parties and eventually published after the war, stated that on the contrary, the Canadian Government had received two dispatches from London on the 18th and the 24th October (the latter three days before the expedition sailed) that as a result of the change of government in Japan, war was imminent. Therefore, charged Drew, King and his ministers were fully aware of what they were doing. In Duff's Report, however, a General Stuart was quoted "there were no wires received by us during that period from the United Kingdom that indicated any change in the situation". To this Drew replied in his open letter:

Having regard to the messages which were placed before him, the finding of the commissioner is utterly incomprehensible. . . .

The impression is conveyed that the British Government did not com-

municate any warning to the Government of Canada. That is not so. . . .⁵

The Royal Commission Report quoted Colonel C. G. Power, then acting Minister of Defence, as saying, "if war broke out with Japan the Canadian forces in Hong Kong would be in a very difficult position".⁶ Drew charged that Duff had quoted only part of Power's statement; the Minister foresaw himself the likelihood of war with Japan:

I felt, perhaps, without any sound basis except having read these dispatches, that there was a very good chance of war breaking out with Japan, and in such a case our men would be in a very difficult position.⁷

On the premise, then, that the Canadian authorities were aware of the imminence of war, could they honourably have withheld their assistance, turned a deaf ear on Britain's request rather than risk two Canadian battalions on a forlorn mission? This is a political, rather than a military question. In the introduction to his Report, Sir Lyman touches on this point in relation to his principal critic:

It was urged by Mr. Drew that the change of Government in Japan on October 16, by which a cabinet notoriously sympathetic with the Axis powers came into office, ought to have led the Canadian Government to re-examine the question of policy raised by the invitation of the United Kingdom. . . .⁸

The inference is clearly that Canada had no choice morally but to honour her commitment to Britain, whatever the cost.

Assuming the obligation to send two battalions to Hong Kong, was the selection made a happy one? Sir Lyman's Report deals exhaustively with this aspect of the expedition, although his arguments have not recommended themselves to posterity. Both units had been engaged in the sedentary function of garrison duty, the Royal Rifles of Canada, a Quebec City unit, in Newfoundland, and the Winnipeg Grenadiers in the West Indies. It was alleged by critics of the government that some of their reinforcements had not completed their basic training. In this section of his *Report*, in which he justifies the selection of these two units for dispatch to Hong Kong (where after all they would again be engaged on garrison duty), the Chief Justice's reasoning, on at least some points, will appeal more to the civilian than to the soldier. Although Duff was an avid student of military history, he had undergone no military training, and so was not closely familiar with the technicalities of the soldiers' trade. At one point in the hearings, it transpired that one or other of the units had never trained with live grenades, but with dummies. The

Commissioner did not attach too much significance to this, reasoning no doubt that the transition to live ammunition would not be too difficult a one. A man who has never thrown a live grenade might well reason thus; in any case, there would be plenty of time to make up for this deficiency on arrival at Hong Kong. Both units had completed basic rifle training only, and so had had no experience with such sophisticated weaponry as Bren guns, anti-tank rifles and grenade launchers.⁹ Duff's *Report* quoted General A. G. L. McNaughton to the effect that both units were "of proven efficiency".¹⁰ To this Drew rejoined that McNaughton "was only answering hypothetical questions and that he knew nothing whatever about the state of training of these units".¹¹ The prime responsibility for the selection of the Royal Rifles and the Winnipeg Grenadiers, however, lay with General Crerar, the Chief of the General Staff, whose memorandum to the Minister of Defence of the 30th September 1941, justified the decision with the observation that the garrison duties the troops would face in Hong Kong were not unlike what they had already experienced in Newfoundland and the West Indies.¹² Obviously this was written on the premise that Hong Kong was not in danger of attack.

The only point on which Duff found fault with the organization of the expeditionary force concerned the Quartermaster General's Branch, whose lack of initiative and foresight condemned the expedition to departure without their mechanical transport. The *Awatea*, the only transport available in late October, a converted passenger liner, had but a third of the cargo space required for the loading of the vehicles assigned to the force. Hence, on 15th October, a little under a fortnight from the scheduled departure, the Transport Controller stopped shipment of this equipment to Vancouver, resulting in the *Awatea* sailing for Hong Kong with two holds empty. Shortly thereafter the American transport *San Jose* was made available to the Canadian authorities. She sailed with the Canadian vehicles on 4th November for Hong Kong, but was diverted by the exigencies of the American operations, first to Honolulu, then to Manila, where she docked on 12th December—in good time for MacArthur's Phillipine debacle, but manifestly too late for doomed Hong Kong, already under siege.¹³ Duff faulted the authorities for not foreseeing these difficulties, and so at least ensuring that the *Awatea* sailed with full holds.

Drew's open letter made a great deal of this dispatch of the ill-starred expedition without its mechanical transport, particularly as regards gun carriers and water carriers. The Chief Justice observed that gun carriers were not offensive weapons in the sense that tanks were, hence that this deficiency constituted a handicap rather than a serious deficiency. Again, this argument

may have appealed more to the civilian than to the soldier. Drew charged that with the destruction of the water mains under Japanese bombardment, the lack of water carriers inflicted untold suffering on the hard-pressed troops, heavily engaged in tropical heat. Drew further stated that the Canadian authorities had received three cables from Hong Kong, giving terse but terrible testimony to the sufferings of the hard-pressed defenders and their lack of transport.¹⁴ Duff found, however, that the troops did not suffer from the lack of these vehicles, which in any case were likely, for want of evidence to the contrary, supplied by the British in Hong Kong.¹⁵

Summing up the Introduction to his *Report*, submitted on 4th June 1942, the Chief Justice wrote:

In October, 1941, the Canadian military authorities undertook a task of considerable difficulty . . . Canada sent forward, in response to the British request, an expedition that was well trained and (subject as aforesaid, in so far as the shipping facilities allowed) well provided with equipment. In spite of the disaster which overtook it soon after its arrival in Hong Kong, it was an expedition of which Canada can and should be proud.¹⁶

On 4th June, the very day that the *Report* came out, King confided to his diary the relief he felt at the outcome:

Its wording really made me rejoice. It contains a first-rate crack at Drew, the implication being that once there was a possibility of fighting due to change of government in Japan, the Government should have reconsidered the force. . . . There could not have been a finer vindication of the Government's whole attitude in undertaking the expedition and the manner in which it was handled. I phoned Ralston after reading the Report and told him of its contents. I could feel the joy in his heart and his sense of relief which, in his case, I know, is particularly great.¹⁷

The publication of Duff's *Report* was the signal for a concerted attack on the King administration, and upon the Chief Justice, whose findings had supported the action of the government throughout. Never perhaps in our history have the findings of a Royal Commission come under such fire as have those of Sir Lyman Duff on the ill-fated Hong Kong expedition. The chorus of criticism was as damaging to the Chief Justice's integrity as to the competence of the government he had defended. Drew's charges were publicized on 13th July; the following day King visited Duff. The Prime Minister wrote in his diary that he had found Sir Lyman very upset, speaking of the "whole procedure as being a plot in Toronto to try and oust me".¹⁸ King's

reaction to Drew's charges was one of outrage: "a perfectly appalling communication attacking the Chief Justice, . . . I have never read a more extreme or dangerous type of letter".¹⁹

A full dress debate in the House followed on 27th July, the Government being sustained the following day by a vote of 130-34. That night King recorded:

I confess I felt a sense of inner rejoicing and would have rejoiced outwardly as well had I not been so greatly fatigued. . . .²⁰

And there for the time the issue rested. It was fanned to life again however, in 1948, through the publication in England of Major-General Maltby's account of the fall of Hong Kong in the *London Gazette*: Maltby had been in command at Hong Kong at the time of its fall. The leader of the Opposition, John Bracken, demanded a tabling of the evidence in the House. The cabinet was divided on the wisdom of this course. King consulted Duff, now in retirement, who replied that he had nothing to hide. Only the infamous Drew letter should be withheld.

It was undoubtedly a pity that the Chief Justice was fated to be enmeshed in this maelstrom of an issue so very near the end of his illustrious career. He complained to the Prime Minister that the *Toronto Globe & Mail* and C.B.C. Radio had cast reflections on his integrity, a radio commentator having observed that it looked as if Drew had been right after all.²¹ On the night of 24th February 1948, having read the Government's statement to the House, Mackenzie King wrote finis to the contentious issue with yet another entry in the faithfully-kept diary:

Was immensely relieved to find that there was nothing in all the correspondence that would in any way reflect on either myself or run counter to the judgment of Chief Justice Duff. There is, of course, much that would indicate that our men were sent far too quickly, insufficiently trained, etc., but there is enough in the telegrams from the United Kingdom to make clear there was no reason to expect they would be involved in any engagements as soon as they were.

It really has been a waste of an entire day, having to go over all this material which belongs to six years ago but which comes up now in ways to occasion embarrassment.

It is this sort of thing which makes one increasingly weary of public life.²²

And again the following night:

Nothing exhausts me more than contention over a matter like Hong Kong, where one realizes that it is only adding to the problems of the day to be discussing Hong Kong and that the whole purpose of the Opposition is political.²³

In the first of the above excerpts, the Prime Minister admitted at least some of the very charges which Duff's *Report* had dismissed. On the publication of Drew's bombshell of 1942 in the *Ottawa Evening Citizen* of 1st March 1948, King asserted in the House that the Opposition's purpose in resurrecting the issue was to provoke a battle between Drew (now Premier of Ontario) and the retired Chief Justice, in order to make King himself the scapegoat for the disaster.

There but for the treatment of future historians, the Hong Kong issue, and Duff's *Report* thereon, rests. It is doubtful, in retrospect, whether Canada under any circumstances, could have welched on her obligations at that juncture. Once undertaken, with inferior units, in a manner of speaking, one damned thing led to another. Historians and biographers of the future may disagree on their interpretation of Duff's *Report*, some seeing him as a pliant tool of government, others as a conscientious jurist who interpreted the facts as he found them to the best of his ability. It was charged by his critics that much evidence was withheld; if so, this does not necessarily implicate Duff. In any case, future historians will not find their task of sifting through the Hong Kong *Report* an easy one. But for the selected evidence and testimony appearing in the published *Report*, fully 300 exhibits and 2,288 pages of testimony have vanished into limbo, a circumstance yet to be explained.²⁴

In December 1943 Sir Lyman stepped down from the Bench. Before he did so he received this testimonial from Mackenzie King:

Before you retire from the high office of Chief Justice, may I, on behalf of my colleagues in the Government, and on my own behalf, express to you our deepest appreciation of your devotion to the public welfare, and thank you most sincerely for the help you have given to the administration in office in your position as a member of the Supreme Court and Chief Justice, and particularly in helping to meet the demands of war-time emergencies.²⁵

There is no reason to doubt the Prime Minister's sincerity.

Sir Lyman Duff's long career, spanning a half century, came to its end on 26th April 1955 in Ottawa, in his ninety-first year. Undoubtedly as a jurist he was without a peer in Canada, and the esteem in which he was held in his profession was eloquently expressed by Chief Justice Kerwin:

It is as a jurist that we will particularly remember him. . . . He made his presence felt year after year on Her Majesty's Privy Council in London, England, taking part in a number of constitutional appeals and again, in many cases, writing the judgments of Their Lordships. . . . It is impossible adequately

to express in a short statement the debt that the legal profession and all Canadians owe to his industry, ability and brilliance.²⁶

Perhaps so it is that he will be remembered in the histories of the future. The tangled and contentious Hong Kong inquiry was the one blot on an otherwise brilliant career; nonetheless, government responsibility for the dispatch of half-trained troops, and evasiveness thereafter in its justification, merit as much criticism as the effort of the Chief Justice, if such it was, to defend its conduct.

NOTES

1. J. W. Pickersgill, *The Mackenzie King Record*, Vol. 1, (Toronto; University of Toronto Press) p. 74. Duff lost his wife in 1926 and remained a widower the rest of his life.
2. *Canadian Directory of Parliament*, ed. J. K. Johnson, (Ottawa: Public Archives of Canada, 1968), p. 728.
3. Lyman Poore Duff, *Report on the Canadian Expeditionary Force to the Crown Colony of Hong Kong*, (Ottawa: King's Printer, 1942), pp. 3-7, passim.
4. *Ibid.*, p. 14.
5. *Ottawa Citizen*, 1 March 1948, reprint of Drew letter of 1942.
6. Duff, *op. cit.*, p. 16.
7. *Ottawa Citizen*, March 1948.
8. Duff, *op. cit.*, p. 4.
9. *Ottawa Citizen*, 1 March 1948.
10. Duff, *op. cit.*, p. 21.
11. *Ottawa Citizen*, 1 March 1948.
12. Duff, *op. cit.*, p. 20.
13. *Ibid.*, pp. 51-2.
14. *Ottawa Citizen*, 1 March 1948.
15. Duff, *op. cit.*, p. 8.
16. *Ibid.*
17. Pickersgill, *op. cit.*, pp. 403-4.
18. *Ibid.*, p. 404.
19. *Ibid.*
20. *Ibid.*, p. 407.
21. Pickersgill, J. W. & Foster, D. F., *The Mackenzie King Record*, Vol. IV, pp. 239-42.
22. Pickersgill, *op. cit.*, pp. 242-3.
23. *Ibid.*, pp. 243-4.
24. Henderson, George Fletcher, *Federal Royal Commissions in Canada 1867-1966: A Checklist*, (Toronto: University of Toronto Press, 1967), p. 141.
25. Public Archives of Canada, MG30 E 46, *Duff Papers*, Vol. 3, King to Duff, 7-1-44.
26. *Ibid.*, Vol. 6, file 4, tribute Chief Justice Kerwin.