

## Watershed and Divining Rod: The Statute of Westminster, 1931

**By Shawn M. Wade, LL.M.**

The Statute of Westminster, a document seminal in Canada's Constitutional framework, laid the foundations for Post-Colonial relations between Great Britain and her former colonies, and between the Dominions themselves. This statute laid out the formula that henceforth, no law passed by the Parliament in Westminster automatically applied to the Dominions unless they themselves asked that it apply to them, or unless they themselves went to Great Britain and asked her Parliament to legislate in this area on their behalf.

This marked another step on the road to nationhood for Canada and the other Dominions. Canada and South Africa almost immediately enacted this statute into their domestic law, whilst Australia (1941) and New Zealand (1947) waited a few years to do so.

Events during the World War (World War I) had pointed out the need for some separation between Britain and the Dominions as each Dominion sorted out their place in the world and their Nation's identity. The dominions had fought valiantly, in such places as the Dardanelles, Vimy Ridge, the Hundred Days and the Somme, and some felt that they had earned the right to a greater voice in their own affairs.

The Chanak Crisis of 1922, in which Britain, or some in the British government, prepared to intervene in the Greco-Turkish War, the Minister of Munitions, Winston Churchill pressed for intervention and Lloyd George (Prime Minister of Great Britain) thought that they could authorize a general mobilization of Imperial troops, including the Dominions without reference to their governments is a case in point. Prime Minister Mackenzie King was especially vocal in insisting that the Canadian Parliament debate to authorize such a deployment. In the end none of the Dominions were prepared to send troops and the intervention was dropped.

An example of how things had changed in four years can be seen from the declaration of war in 1914. In 1914 when Britain went to war she declared war on behalf of her Empire, the Dominions included. Canada, Australia, New Zealand and South Africa were automatically at war and few questioned it. After four long years and tens of thousands of casualties, the Dominions won the right to attend the Paris Peace Conference and to be independent signatories and to have independent seats within the emerging League of Nations. This new-found status meant that there should be some separation between the Dominions Parliaments and the Imperial (British) Parliament.

This new status (post Statute of Westminster) meant that in 1939 Canada recalled Parliament, consulted with her Parliamentarians and declared war on her own after going through a domestic political process. This process was made possible by and mandated in part because of the Statute of Westminster.

This law (the Statute of Westminster) was also very timely as the depression of the 1930's hurt many nations and before the onset of Imperial preference could have weakened the ties of Empire, especially those in Canada and South Africa who wanted greater say in their affairs.

In looking at the constitutional evolution as a whole it can be said that Canada's road to autonomy began with Confederation in 1867. This model of a Dominion with self-government, more rights than a colony but not quite on par with the Imperial Parliament was the model for all that followed. New Zealand 1907, The Commonwealth of Australia (1901) and the Union of South Africa (1910) were all based upon the model established by Canada.

The establishment of significant self-government in Canada was an amazing experiment in shared sovereignty, as the Imperial Parliament (pre-1918) still ran the large-scale foreign policy of the Dominions and could still legislate for them (pre-1931) and on their behalf. The Dominions were also expected to contribute to Imperial defence (which in part explains the heated debate over whether to

establish a Royal Canadian Navy or see a significant Canadian contribution of men, money and materials to the Royal Navy of Britain).

The experience of the Canadian Dominion proved that substantial self-government within an Imperial family was possible, practical and feasible. The mistakes made in the American colonies to the South at the time of George III and Lord North were not repeated. This model formed the basis of what was to become the structure of the Dominions within the Empire (from 1867) and eventually within the Commonwealth (post 1931).

The success of this model, from 1867 on, notwithstanding, the changes wrought by a half century of change, war, upheaval and depression, caused some Dominions to press for change and request additional powers, after World War I. Besides incidents, like Chanak described above, some of the Dominions were beginning to chafe at aspects of this current arrangement (pre-1931). Canada, in particular, was upset by the continued right of Appeal of Criminal Cases to the Privy Council in London. The Dominion statute forbidding this was over-ruled by one of the Imperial Parliament. This caused some controversy within some circles in Canada. The King-Bying affair, in which Viscount Byng of Vimy (Governor General of Canada) refused Prime Minister MacKenzie King's request for a dissolution of Parliament after he lost a vote of confidence in Parliament, also spurred on the desire of Canada for some clarity in its relations with Great Britain.

During the Colonial Conference of 1926, a declaration drafted by A. J Balfour, called the Balfour Declaration (not to be confused with the Balfour Declaration of 1916 dealing with Palestine), which declared that statutes passed by the Imperial Parliament would only apply to those Dominions who expressly wished them to apply and who asked for them to do so. Dominions would have their own legislation which would apply exclusively to themselves. In this new structure the Declaration declared that:

*They (The United Kingdom and the dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, although united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations. [1]*

The framework of a common allegiance to the sovereign, and the continual ties of law, custom and concert of action would now define the new relationship, moving forward. The final adoption of this was deferred until the 1930 Colonial Conference.

The Statute of Westminster was passed in 1931. It was adopted immediately by Canada and South Africa. In 1941 Australia adopted it, back dating it to 1939. New Zealand adopted it in 1947.

In assessing the Statute of Westminster it can be said to be the model for the Commonwealth, in fact the new political structure which emerged was entitled The British Empire and its Commonwealth (the Commonwealth being a Dominions' Association) and was something new and different. When most colonies received their independence, they were welcomed into this "Dominions Club", as Associated States, Dominions, Members of the Commonwealth with their own Monarchies (Malaysia and Brunei for example) or after 1947 as Republics.

The last innovation in 1949, actually went contrary to the original structure set up by the Statute of Westminster, and represented an evolution of the Commonwealth into more than a loose association of states to a more complicated and sophisticated organization, one with the Sovereign as its head, and eventually the more complex and professional structure we see today within the Commonwealth. When viewed this way it can be seen that the Statute of Westminster was both a Watershed and a Divining Rod to Post-Colonial relations and its eventual structure in and between the lands and territories of the Commonwealth.

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[1] Hogg, P. W.: Constitutional Law Of Canada (1996) Toronto Carswell at 49. Hereinafter "Hogg"