

CONSTITUTION AND GOVERNMENT OF CANADA

Country, shows the error into which he has been betrayed. The fact is that, except in such details as naturally arise from a federal system and the absolute necessity in such a system of settling certain business questions and of clearly dividing the legislative, executive and judicial jurisdictions between the Dominion and the provinces, the constitution of Canada is in all essential points the constitution of the United Kingdom. There are numerous constitutional rules and principles, fundamental in their character and constantly appealed to in parliamentary and judicial discussion, which are not alluded to in the British North America Act. The only new principles added to the constitution of the Canadian provinces as they existed before 1867 is the federal principle. It merely divides up those portions of the sovereign powers of the State left to Canada between the general and provincial authorities in accordance with the agreements made between the provinces previous to the Union.

The Act united the provinces politically, distributed constitutional powers already existing, defined the jurisdictions of authority as between the Union and the units, and adjusted certain financial relations among them. The preamble of the Act states that certain provinces have expressed a desire to be federally united, "with a constitution similar in principle to that of the United Kingdom." They might have asked for a constitution similar in principle to that already existing in each of the provinces, parties to the agreement, which would have meant precisely the same thing. Each province had a constitutional government in working order at the time of the proclamation of the Act. The law uniting them into one Dominion merely transferred the constitutional principles already in existence to the new organization. The nature of the new legislative authority and of the new executive government thus provided was along old lines, and former powers and functions were distributed and arranged to meet new conditions. No new principle of authority or government or new function was established. It no more created a new constitution for Canada than it created Canada itself. Like Canada itself, the constitution was created long before the Union by no single agency, by no special statute, but through political forces acting upon the practical necessities of the case throughout the whole history of the country. The principles were settled by means of political and judicial decisions dealing with innumerable cases and covering long periods of time in the old as well as the new world.

In its application to Canada the constitution is operated through a federal system merely as a business arrangement and as a matter of convenience. The Act, as has been said, is merely "a skeleton," the flesh, blood, nerves, muscles and spirit being supplied from other sources. A study of this constitution in its numerous phases, altogether outside the statute, is of the greatest value; but our attention at present is to be drawn more directly to a consideration of the terms of the Act itself.

Executive and Legislative Powers.—The Imperial Act, after providing for the union of the provinces originally entering into the confederation, among its earliest enactments arranged for the taking of