
Beauchesne's Constituent Assembly

During the present round of constitutional discussions a number of politicians, academics and other interested observers have called for a broadly based constituent assembly to consider the whole question of constitutional reform. There are strong arguments against such a process and a number of reports and studies have rejected the argument. However, if the present round of constitutional discussions do not lead to an acceptable agreement there will be strong pressure to consider another method of dealing with constitutional issues in Canada. The next issue of the Review will publish extracts from a recent detailed study outlining how a Constituent Assembly might work. In the meantime we are reprinting a short article by one of the earliest advocates of a constituent assembly for Canada. The author is none other than Arthur Beauchesne whose work on parliamentary procedure is still used in most Canadian legislatures. The following is taken from a presentation he made to the House of Commons Committee examining amendment of the British North America Act in 1935. The more things change the more they stay the same!

When the *British North America Act* was passed, the population of the four provinces which formed the Dominion of Canada aggregated 3,070,601, or less than the present population of Ontario or Quebec. The total revenue of the Dominion in 1868 was \$13,687,928.00 and the total expenditure \$14,071,689.00. The net debt of the country was \$75,757,135. Our railway mileage was 2,278. Motor vehicles were not known; aviation was a dream. The west was uninhabited except by Indians, half-breeds, fur dealers and roaming buffaloes. The population of British Columbia was very small since it was put down in 1871 to 45,000 of which number only about 9,000 were whites. Prince Edward Island had a population in 1861 of 80,857.

The Act was passed mainly as a compromise because the legislature was so deadlocked that nobody could form a government. We were then a colony with a governor who still received elaborate instructions from the colonial office. There was not question of our representation in foreign countries; we were not even allowed to negotiate our own treaties; there were British garrisons in our country; social reform was looked upon as the last word of dangerous radicalism.

We have since progressed very materially; our industries have been multiplied; our urban population has exceeded our rural population; the war and its dire consequences have appeared; Imperial Conferences have taken place; the British Commonwealth of Nations has been formed: the Statute of Westminster has altered our status. Most of the provinces have lived beyond their means, but they have let up on the autonomy principle in later years. Nobody will doubt that economic legislation in Canada is more difficult of introduction than in any other country in the world on account of our dual system of government. The time has come, in my humble opinion, when the *British North America Act*, except as to minority rights, should be transformed and a new constitution more in conformity with present conditions should be adopted. Amendments here and there would be mere patchwork which could not last. The people of 1935 are different from those of 1867. What we want is a new constitution.

By what procedure should it be adopted? Drafting a constitution is a serious matter, particularly in a federated country like Canada. Suggestions have to be weighed with calm deliberation and reconciled with the

needs of the nation. Some plan embracing the whole life of the nation has to be accepted. Geography, natural resources, avenues of trade, transportation, social legislation and racial harmony have to be considered. It is idle to think that this can be done in the same formal way as an amendment to a public statute. The new constitution must leave nobody with a grievance. A spirit of conciliation should predominate. For these reasons, the task must be intrusted to an independent body in which all the elements of the country will be represented. I, therefore beg to suggest an imposing Constituent Assembly formed of eminent men coming from all parts of Canada. Provincial conferences, attended by a few ministers meeting behind closed doors, would hardly satisfy public opinion. The debate should be public. I submit that a Constituent Assembly, chosen by the provincial legislatures and by the House of Commons, representing the main political parties and groups in proportion to the votes given at the last general elections, should meet in session at Winnipeg and discuss the constitution from all its angles.

I am not stressing Winnipeg. I want the assembly to sit in a city in the west. It would not be necessary for a delegate to be a member of parliament, or of a provincial legislature.

Constituent Assemblies have been resorted to for framing constitutions in many countries. One of the best known in history was the Assemblée Constituante which sat in Paris from 1789 to 1791 and drew up a new constitution for France. It consisted of 1,200 members. The population of France was then 24,800,000. The chairman was only elected for two weeks, as the assembly did not want to give too much authority to any of its members. The debate lasted from August 4, 1789 to September, 1791.

In 1848, a Constituent Assembly, consisting of 880 members, was elected by universal suffrage in France for the purpose of drawing up a new constitution. 7,835,327 electors, or 84 percent of the population voted. The assembly opened on the 4th of May and was only through with its constitution on the 4th of November.

When in 1787 the United States agreed to consider a change of constitution, each state, with the exception of Rhode Island, sent delegates who assembled at Philadelphia on May 14. The convention consisted of fifty delegates, and the population of the thirteen states was then 3,500,000 people, i.e., about the population of Ontario today. George Ticknor Curtis, commenting on this convention in "The Constitution of the United States and its History", says:

This body of men, assembled for the unprecedented purpose of thoroughly reforming the system of government with the authority of the national will,

comprised a representation of the chief ability, moral and intellectual, of the country; and in the great task assigned to them they exhibited a wisdom, a courage and a capacity which had been surpassed by no similar body of law givers ever previously assembled. The world had then seen little of real liberty united with personal safety and public security; and it was an entirely novel undertaking to form a complete system of government, wholly independent of tradition, exactly defined in a written constitution, to be created at once, and at once set in motion, for the accomplishment of the great objects of human liberty and social progress. Their chief source of wisdom was necessarily to be found in seeking to avoid the errors which experience had shown to exist in the Articles of Confederation. Naturally, the individual members of the convention were men of widely different views; the debates extended over four months' time; but the counsels of the leading spirits at last prevailed—of such men as Hamilton, Madison, Franklin, Gouverneur Morris, Edmund Randolph and Rufus King. Washington was the presiding officer.

There were 1,200 delegates in the Constituent Assembly of France when its population was 24,800,000 and 880 when it was 35,400,000. There were fifty delegates at the Philadelphia convention when the population of the United States was one-third of Canada's present population. Considering, therefore, the vastness of our country, the conditions in the west and in the east, and our bilingual character, we would make no mistake if we formed a constituent assembly of 223 delegates.

The number of members representing the Dominion and each province would be equal to one-fourth of the membership in the Senate, the House of Commons and in the legislatures, including the Quebec Legislative Council, which membership is now as follows:

	Members of the Legislatures	Representatives in Constituent Assembly
Senate	96	24
House of Commons	245	61
Alberta	63	16
British Columbia	48	12
Manitoba	55	14
New Brunswick	48	12
Nova Scotia	30	8
Ontario	90	23
Prince Edward Island	30	8
Quebec Legislature	90	23
Quebec Legislative Council	24	
Saskatchewan	63	16
Total	882	223

I submit that the British government should be asked to send a delegation. My suggestion is that if the constitution is passed, the *British North America Act* should be repealed. I would imagine it would be a very serious matter for the British government to abolish or renounce its authority over Canada which was given to it by the *British North America Act*. Besides that, there are many other things to be taken into consideration as to why, if we pass this constitution, we should not ignore Great Britain. There is, for instance, the question of defence, the question of Great Britain's interest in America on the Pacific and on the Canadian coast.

The assembly should be convened by provincial proclamations issued in each province and by a Dominion proclamation in which it would be clearly stated that the minority rights now guaranteed by the *British North America Act* should not even be discussed.

In choosing the delegates to this Constituent Assembly, due regard should be given to the representation of all classes. Businessmen, farmers, professional men, scholars and labour men should be represented. Although the Dominion would send an important delegation, the assembly should not be a Dominion assembly, but rather an assembly of the provinces' representatives in consultation with the Dominion.

There ought to be no government side and no official opposition in such a body, which should work on the lines of coalition. A committee consisting of the premiers and leaders of the opposition in the House of Commons and legislative assemblies would have charge of the agenda and daily order of business which, under ordinary rules, could be adjusted daily by experienced parliamentary clerks. Speeches ought to be recorded by Hansard.

I would suggest that the assembly do not sit in Ottawa, in order that it may not have the appearance of being dominated, or even influenced, by the Dominion power; and, as the western provinces are of such paramount importance in the country, I suggest the best city for the representatives to gather in would be Winnipeg.

The first days of the Constituent Assembly should be devoted to debating the following motion:

That, in the opinion of this assembly, it is expedient that the *British North America Act* should be amended so as to meet the requirements of present conditions while preserving the minority rights guaranteed by the said act.

The Assembly would first meet at 11 o'clock a.m. and sit until one, and then from 3 to 6. After a full discussion on the general principles had taken place, several committees would be formed. Then the Assembly would adjourn until the committees reported. A draft

constitution would afterward be submitted to the assembly.

At the first meeting of the Assembly, each province would present its case, as would the Dominion and the British delegation.

The committees would deal with every chapter of the *British North America Act*, and more particularly with section 91 and 92.

A Constituent Assembly could take up every question that has been mooted in the past twenty years with regard to the constitution. For instance, the questions of reducing the number of provinces, the electing of senators, the question of fisheries, the *Companies' Act*, insurance law, the radio, etc., could all then be considered. Conditions with regard to all these matters are so different from what they were in 1867 that they should be carefully surveyed. Whether our country should be changed from Dominion to Kingdom is also a subject which might then be discussed. I would suggest that the country could be called "The Federated States of Canada."

After our constitution is in force, how should we amend it? I do not think it would be advisable again to call a Constituent Assembly such as I have suggested above. This procedure may be resorted to when a new constitution has been drawn up, but it does seem a little absurd to adopt it every time the country feels that some amendment ought to be made. The right of each province to amend its own constitution as provided in Section 1 of Section 91 of the *British North America Act* should be preserved, but whenever any material amendment to the Dominion or provincial powers might be needed, a vote of two-thirds of the Dominion parliament and of the legislatures should be required.

Speaking about questions that may be debated at the Constituent Assembly may I suggest that subsidies should be taken up. They should not be paid to the provinces. Those subsidies infer a certain idea of subservience which is not in keeping with real autonomy. I would rather have taxation readjusted so the each province would have sufficient revenue to manage its own affairs without begging support from the federal treasury. It may be that certain services are too expensive for local governments, and they should be transferred to the Dominion.