

**THE DEVELOPMENT AND SIGNIFICANCE OF DOMINION STATUS.  
(Revised version)**

**By W. David McIntyre.**

Some thirty years ago I was put on the spot during a live television broadcast by Lee Kuan Yew the Prime Minister of Singapore. During a long interview, we got to Singapore's path to independence, when Mr Lee suddenly turned the question round and asked: When did New Zealand get independence? Not something people have a pat answer for. I said it was 1947. I was referring to the adoption of the Statute of Westminster, the golden jubilee of which is on 25 November this year.

Mr Lee expressed surprise, and later on I, too, was a bit shocked to get a bollocking for my answer from Alister McIntosh, the former Secretary of External Affairs. In an interview with McIntosh by Michael King in 1977, in connexion with the Peter Fraser biography, they pulled apart a chapter on Fraser I had written in a volume on New Zealand in World Affairs. When Michael drew McIntosh's attention to my remark that we were not a fully sovereign state until 1947, his response was forthright:

Well, that's all balls. In strict legality we might not have been, but we became a sovereign state when we signed the Treaty of Versailles. That gave us an international status...in the League of Nations. ... Of course we were a sovereign state. All the Dominions were really Sovereign States.<sup>1</sup>

Carl Berendsen, his predecessor, said in his unpublished memoirs that the Dominions were 'in fact, if not in theory, entirely independent'.<sup>2</sup> Even earlier, James Hight, professor of history at Canterbury, and author of the standard constitutional text of the day, said in a lecture on leave in England in 1927 that the Dominions had entered the League of Nations as 'unquestioned Sovereign States'.<sup>3</sup>

Dominion Status, therefore, was very important, and I salute the Prime Minister for giving us the opportunity to discuss it today,

One of the paradoxes of our history is that a title which signified subordination came to mean independence. Colonies were the Crown's 'dominions beyond the seas'. 'Dominion' from the Latin *dominus*, master, signifying subordination. But by 1947, and the first of many independence acts, it had come to mean the opposite. The Indian Independence Act provided for the creation of the two Dominions of India and Pakistan, thus clinching the new meaning in law.

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<sup>1</sup> Transcript of interview, 22 July 1977. Alexander Turnbull Library 77-107-16.

<sup>2</sup> C. A. Berendsen, 'Reminiscences of an Ambassador', typescript in Beaglehole Room, Victoria University Library. MS 13488, II, p. 18.

<sup>3</sup> 'New Zealand and the British Empire', typescript in High Papers, MB 242, 95/6, b/4-7, Macmillan Brown Library, University of Canterbury,

For this transition we have to thank Leonard Tilley of New Brunswick and our own Sir Joseph Ward. When the Canadians wrote their constitution they wanted to be the Kingdom of Canada, but feared this might upset the neighbouring republic. In his Bible reading Tilley lit on the words in Psalm 72 – ‘He shall have dominion also from sea to sea and from the river unto the ends of the earth’. The psalmist obviously knew of Canada’s geography! So the British North America Act, 1867, set up ‘one Dominion under the name of Canada’,<sup>4</sup> known for many years in popular parlance as the ‘Dominion of Canada’ to distinguish it from the old ‘Colony of Canada’.

Sir Joseph Ward’s contribution came a hundred years ago at the 1907 Colonial Conference where they looked at membership for regular Prime Ministers’ meetings to be known as ‘Imperial Conferences’. Ward was the one who first suggested that self-governing colonies should be distinguished from the rest. Those not yet called ‘Dominion’ like Canada, or ‘Commonwealth’ like Australia, should, he said, have a designation like ‘States of the Empire’ or some such.<sup>5</sup> This idea was taken up enthusiastically by the conference and an absolutely fascinating debate ensued, the full text of which can be read in the Appendix to the Journals of the House of Representatives. The most constitutionally correct version came from Alfred Deakin of Australia who offered ‘British Dominions possessing responsible government’. That was too prolix. They settled for ‘Dominions’, which Wilfrid Laurier of Canada said, rather enigmatically, is ‘a general term which covers many words which it is not possible to define otherwise’.<sup>6</sup>

Ward then arranged for Parliament in Wellington to pass a request to the King that the style ‘Dominion of New Zealand’ should be adopted. In the speech from the throne the aim was given as ‘to place New Zealand in a higher position in the eyes of the world’.<sup>7</sup> Ward said there were scores of colonies, but only one other Dominion. The change he said would ‘raise in the imagination of the people the status of the country we belong to’.<sup>8</sup> He had found in Britain that people seemed to think that New Zealand was a part of Australia.

The idea of New Zealand, with its independent Government and with its independent destiny, being mixed up with the Australia Commonwealth is one of which the minds of people should be disabused.<sup>9</sup>

Dominion Day, 26 September, the date of the proclamation, was hailed by one MP as our ‘Fourth of July’. *The New Zealand Times* said ‘We desire henceforth to be known for what we are, an independent people making our own laws’.<sup>10</sup>

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<sup>4</sup> *Dictionary of Canadian Biography*, Vol. XII, p. 1055.

<sup>5</sup> *AJHR*, 1907, I, A-5, pp. 30-1.

<sup>6</sup> *Ibid.*, p. 81.

<sup>7</sup> *NZPD*, 1907, 139 (27 June) p. 2.

<sup>8</sup> *Ibid.*, (3 Jul 1907), p. 44

<sup>9</sup> *Ibid.*, (12 July) p. 372.

<sup>10</sup> *Lyttelton Times*, 27 Sep 1907, p. 7c.

At the time, then, Dominion status was meant to signify the well-established *political independence* of the country. By 1911, former British Prime Minister Arthur Balfour was saying the Empire depended on ‘the co-operation of absolutely independent Parliaments...absolutely independent’.<sup>11</sup> The Oxford jurist A.V. Dicey used ‘dominion’ as his shorthand term for ‘colonial independence’.<sup>12</sup>

After political independence came *independence in international affairs*. The precedent was set in the aftermath of the *Titanic* disaster in 1912, which led to two international conferences, one on radio telegraphy, the other on safety at sea, and at both of these the Dominion was separately represented by an ex-Prime Minister. But the big change came with the First World War.

The Dominion went to war on the British declaration, for which it had no say, but its material participation was by its own choice. This led to demands for a voice in policy-making, which, in turn, led to the critical constitutional adjustments.

To meet Dominion demands Lloyd George insisted on wartime Imperial Conferences in 1917, 18, and 19. He also instituted Imperial War Cabinets on alternate days. The immediate sequel of these intimate consultations was separate representation of the Dominions at the peace conference on the ground that they had suffered more casualties than many other belligerents. There were separate delegations from each Dominion except Newfoundland and on 28 June 1919 Massey joined the queue to sign the Treaty of Versailles. This included the Covenant of the League of Nations. When quizzed in Parliament as to the significance of his signature, Massey said we had adhered to the Covenant

not as an independent nation in the ordinary sense of the term....We signed it as partners in the Empire—partners with everything that the name implies.<sup>13</sup>

The meaning of this partnership was subject of debate throughout the 1920s and represented the long-term effect of the wartime consultations.

So impressed were the Dominion leaders with the Imperial War Cabinets that in 1917 they passed a resolution calling for a special post-war conference to adjust the constitutional relations of the Empire. The resolution was moved by Sir Robert Borden of Canada and seconded by Massey. (Massey had, in fact, drafted his own version, which is much more succinct, but he left it behind in his hotel,<sup>14</sup> and was content to support Borden). The idea was to preserve the Dominions’ existing complete control of their domestic affairs, to recognize their right to a voice in foreign policy, and to make arrangements for continuous consultation.<sup>15</sup> They all agreed that Dominion status needed

<sup>11</sup> B. E. C. Dugdale, *Arthur James Balfour, First Earl of Balfour* (London: Hutchinson, 1939), II, p. 278.

<sup>12</sup> Dicey to Keith 24 June 12. R. F. Shinn and R. A. Cosgrove (eds.,) *Constitutional Reflections: The Correspondence of Albert Venn Dicey and Arthur Berriedale Keith* (Lanham Md.: University Press, of America), p. 86.

<sup>13</sup> *NZPD*, 1919, 185 (17 Oct) p. 519.

<sup>14</sup> Motion drafted for Imp. War Conf., 1917. Archives NZ: PM 14/54.

<sup>15</sup> Text of Resolution IX, *Great Britain: Parliamentary Papers*, 1917, XXIII [Cd. 8566], p. 5.

definition. Jan Smuts of South Africa called them ‘equal Nations of the Empire’ and this needed formal recognition. Borden wound up the discussion by stressing the importance of *constitutional convention* and drew the distinction between what he termed ‘legal power and constitutional right’. The British Parliament had the *legal power* to repeal all their constitutions, but there was no *constitutional right* ‘to do so without our assent’.<sup>16</sup> Here was the principle around which the debate on Dominion status would proceed over the next decade.

The most influential contributor to the debate was the young Australian historian Duncan Hall. A graduate of Sydney University, he went to Oxford on a travelling scholarship 1915. He joined the Fabian Society and Professor Sidney Webb of the LSE commissioned him to write a book about dominion constitutional evolution in preparation for the special post-war conference. Hall saw his task as one of finding a balance between equality and unity. Reviewing developments since the Durham Report, he at first found nothing but a ‘chaos of particulars’. When he hit on a solution, he included it in a three-page typed memo for a British Labour Party Imperial Questions Committee in 1920. To reconcile equality and unity he said they could build on the distinction made by Borden between legal authority and constitutional right:

by a general declaration of constitutional right or independence, the Dominions could achieve complete constitutional equality in all respects.<sup>17</sup>

This, he said, would ‘render innocuous’ the legislative sovereignty of Parliament and the Crown power of veto without destroying either. He then published this idea, first in a 12-page Labour Party booklet, and then in the major book. These both included the recently-invented style ‘British Commonwealth of Nations’ in their titles.<sup>18</sup> The aim was given as—to reconcile ‘absolute equality of nationhood and constitutional independence with formal unity of the Empire’. He called it now a ‘declaration of constitutional right’ leaving off the word independence.

The book was amazingly influential. His ideas were taken up by Smuts and by Leo Amery, Britain’s most thoughtful Conservative Imperialist. It became a textbook for the Irish nationalists when the Free State became a Dominion. It was read by Indian nationalists. Smuts incorporated some of Hall’s ideas in a very detailed paper for the first post-war Imperial Conference in 1921.

The paper was never circulated. The special constitutional conference never took place. But when Smuts lost power in South Africa in 1924, his Afrikaner Nationalist successor General Hertzog found Smuts’s paper in the files and went to the 1926 Imperial Conference determined to get a declaration of South African independence.

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<sup>16</sup> *Ibid.*, p. 66.

<sup>17</sup> Draft memo on ‘The Problem of Inter-Imperial Government’, for the Labour Party Advisory Committee on International Questions-Imperial Questions Sub-committee, 30 April 1920. Hall papers, MS 5547, Box 66.

<sup>18</sup> H Duncan Hall, *The Government of the British Commonwealth of Nations* (Letchworth: Garden City Press, 1920), and *The British Commonwealth of Nations: A Study of its Past and Future Development* (London: Methuen, 1920).

The British, for their part, were ready for him. Leo Amery, who had agreed with most of Hall's ideas, had persuaded the government to create a separate Dominions Office with himself as Secretary of State. He arranged for 78-year-old ex-Prime Minister Balfour to chair a Committee on Inter-Imperial Relations where no minutes would be taken. Here Hertzog tabled his draft declaration of independence, but soon agreed to omit the word independence at the request of the Canadians.<sup>19</sup> So the formula that was finally agreed in 1926 (and did not do anything new) noted that Britain and the Dominions were each self-governing communities sharing three things: —they were equal in status, had a common allegiance to the Crown, and were freely associated in the British Commonwealth of Nations.<sup>20</sup>

Gordon Coates from New Zealand made only one contribution to the committee and that was to move an adjournment. Privately he called the status formula a 'poisonous document'.<sup>21</sup> And Hertzog, its instigator, was rather ashamed of himself:

I thought I had come here to fight a great battle for the constitutional independence of my country. [But he found at the committee that] all I had thought I had got to fight for is, in fact, the position as it exists today and only needs to be put into words.<sup>22</sup>

And he was entirely happy with the beautiful formula produced by Balfour.

The Irish, on the other hand, were less impressed by beautiful words. They had come with a detailed paper specifying all the 'anomalies and anachronisms' of Dominion status.<sup>23</sup> These could not be ironed out at a stroke. It took several years of analysis, a special Conference on the Operation of Dominion Legislation in 1929, and another Committee on Inter-Imperial relations in 1930, before the formula was brought into law by the Statute of Westminster in 1931. It recited in the preamble the 1926 formula of equal status and free association as well as citing the Crown as the symbol of the free association. The key operative section provided that UK acts would cease to have effect in the Dominions unless they were specifically requested and consented to. Geoffrey Marshall has suggested that the Statute of Westminster is 'possibly the most important United Kingdom Act of the 20<sup>th</sup> Century',<sup>24</sup> and I see it as the big landmark in our *constitutional independence*. To quote Australian historians Hudson and Sharp 'independence given is not somehow inferior to independence taken'.<sup>25</sup> It is true that,

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<sup>19</sup> Hertzog's draft, 28 Oct 1926. E.(I.R.-26)1. British National Archives. CAB 32/56, fol. 49.

<sup>20</sup> *AJHR*, 1927, A-6, p. 8-9.

<sup>21</sup> Hankey to Balfour 1 Nov 1926. P. Wigley and N. Hillmer 'Hankey Memoranda on the 1926 Imperial Conference', *Journal of Imperial and Commonwealth History*, 1979, 8(1): 112.

<sup>22</sup> The Earl of Swinton [P. Lloyd-Graeme, later Cunliffe-Lister] *Sixty Years in Power* (London: Hutchinson, 1966), p. 33.

<sup>23</sup> Published in D. Harkness, *The Restless Dominion: The Irish Free State and the British Commonwealth of Nations 1921-31* (London: Macmillan, 1969), pp. 101-4

<sup>24</sup> G. Marshall, 'Kenneth Clinton Wheare 1907-1979', *Proceedings of the British Academy*, 1981, 67, p.503.

<sup>25</sup> W. J. Hudson and M. P. Sharp, *Australian Independence: Colony to Reluctant Kingdom* (Melbourne: University Press, 1988), pp. 5, 137.

along with Australia and Newfoundland, New Zealand was exempted from the operative sections of the statute, and simple adoption in 1947 could not clinch things, as it was necessary to gain full power to amend the 1852 constitution. (Andrew will have much more to say on this).

In summary, the three stages I have outlined—political independence, international independence, and constitutional independence—are the key landmarks, but not the only ones. The ‘Dominion of New Zealand’ lasted only thirty-nine years up to 1945 when we joined the United Nations as ‘New Zealand’, and in 1946 the Prime Minister’s department gave instructions that official documentation should follow this form, but this was not to be announced publicly. The Statute of Westminster also lasted only thirty-nine years up to the Constitution Act, 1986, when Parliament authorised its own existence and the Statute of Westminster was repealed in New Zealand.

So, from these events, stretching over seventy-nine years, no simple answer to the Lee’s independence question emerges. The Fourth of July did not catch on? We don’t have a crude revolutionary moment to celebrate. Our path to independence was much more subtle, even surreptitious, and, I find it intellectually fascinating and satisfying.

To conclude: We are asked in this symposium to reflect on where we have come from and where the path ahead may lie. Here is my manifesto for a dozen public holidays a year to celebrate our independence.

Chronologically (by year) the list is:

**26 September 1907 — Dominion Day.**

**28 June 1919 — Versailles Day,** —when Massey signed the League Covenant.

**13 November 1926 — Free Association Day,** —when the status formula was finalized.

**21 July 1931 — Westminster Day,** —when Parliament approved the draft Statute.

**3 September 1939 — D-Day,** —the separate decision to go to war (also the date to which Australia backdated its adoption of the Statute of Westminster.)

**25 June 1945 — New Zealand Day,** — when we adhered to the UN Charter in the new form.

**7 January 1946 — Documentation Day,** — when the instruction was made for using ‘New Zealand’ in official documents.

**25 November 1947 — Adoption & Amendment Day,** — marking both the adoption of the Statute of Westminster and the gaining of full power of amendment.

**6 September 1948 — Citizenship Day,** — the date of the *British Nationality and New Zealand Citizenship Act*, another rather paradoxical mix.

**20 April 1953 — Realm Day,** — when the royal title became Queen ‘*of the United Kingdom, New Zealand, and her other Realms and Territories*’.

**6 February 1974** — A bit tricky here as we already have Waitangi Day and it’s Accession Day in the UK, but we need to fit in a **Royal Title Revision Remembrance** to mark the change to Queen ‘*of New Zealand and her other Realms*’.

**13 December 1986 — Autochthony Day,** — to mark the Constitution Act and the repeal of the Statute of Westminster in New Zealand.

I think you'll all agree there was no simple answer for Mr Lee. There is no Fourth of July. And we all know that the Americans celebrate the wrong day. It was on 2 July 1776 that the Continental Congress adopted the Independence Resolution severing the connexion with the British Crown. The 4<sup>th</sup> of July was just the publicity blurb—a very beautiful one.

If that tells us something about Americans, what does our experience tell about us? In 1945 an unnamed civil servant (probably Frank Corner) wrote 'The surest way of removing doubt about New Zealand's independence is to show independence'.<sup>26</sup> A very practical approach. Philip Joseph's verdict on the Constitution Act 1986 is:

Though itself a product of New Zealand's legislative autonomy gifted by the Westminster Parliament, it repudiated the source of that autonomy and denies the gift was ever made. Parliament's sovereignty may now have factual rather than legal force.<sup>27</sup>

Another practical view. The Statute of Westminster may not have been adopted for fifteen years, but Peter Fraser defended the Government's independent stance in the League of Nations in 1938 with the words: 'this country has to make up its own mind on international problems as a sovereign country—because under the Statute of Westminster ours is a sovereign country'.<sup>28</sup> He simply assumed that it applied. This chimes with the view of an English Lord Chancellor who said 'sovereignty like domicile or sex is a question of fact'.

It sums up rather neatly our story. We trod a satisfyingly firm, if gradual, path to independence. It is nothing to be modest about. It stretches back a long way. The Dominion of 1907 is a very significant landmark and I thank the Prime Minister for inviting us to celebrate it.

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<sup>26</sup> Memo on Use of the term 'Dominion', 8 Nov. 1945. ANZ: EA1 25/1/2, Part 1a.

<sup>27</sup> P. A. Joseph, *Constitutional and Administrative Law in New Zealand* (Sydney: Law Books Co., 1993), p. 417.

<sup>28</sup> *NZPD*, 1938, 251 (21 July), p. 133.