

Constructs of Freedom

Constitution of Canada

R. Rogers Smith

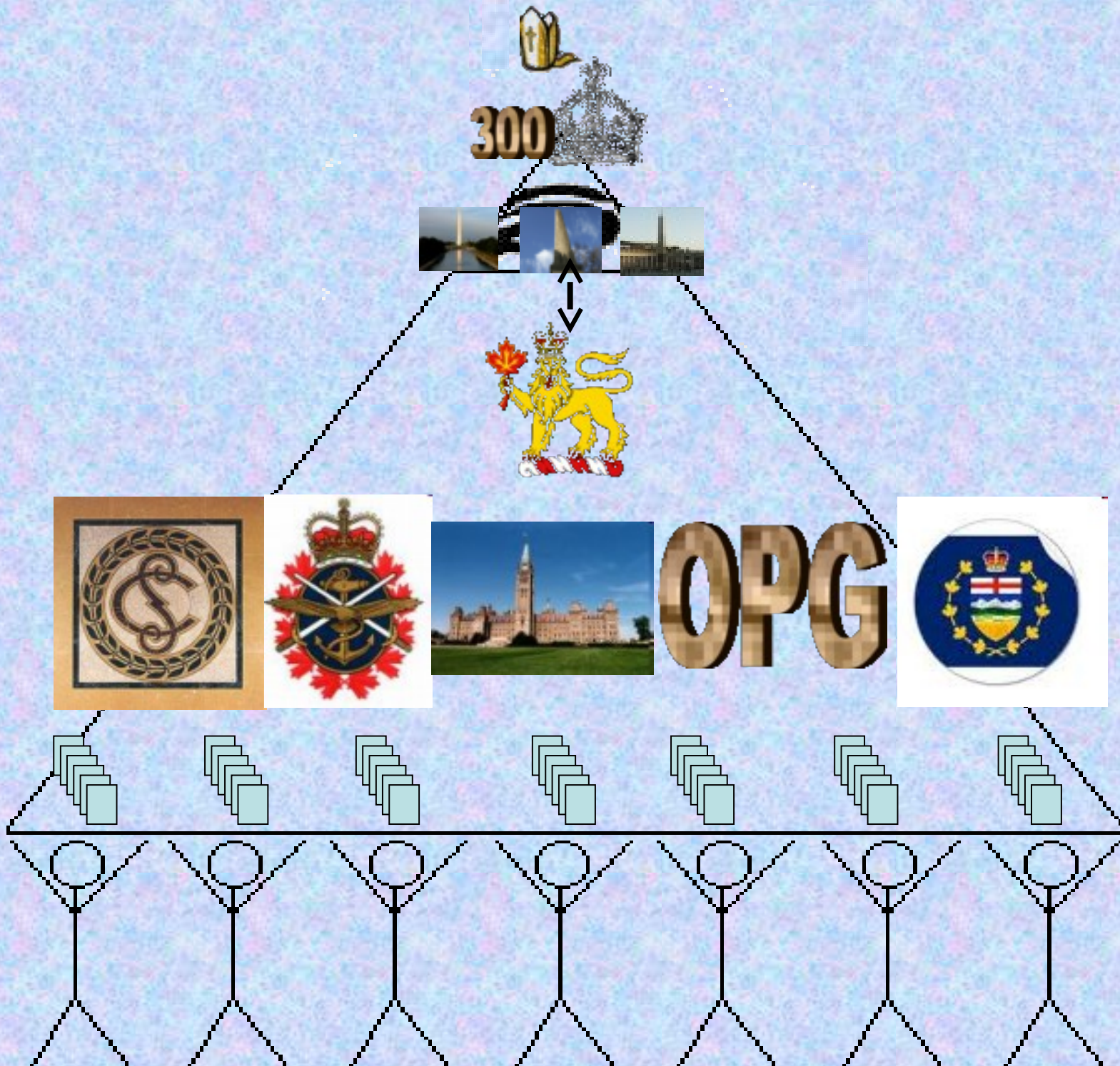
Class #37

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- Don't believe a word I say.
- Look all this up for yourself!
- Make up your own mind

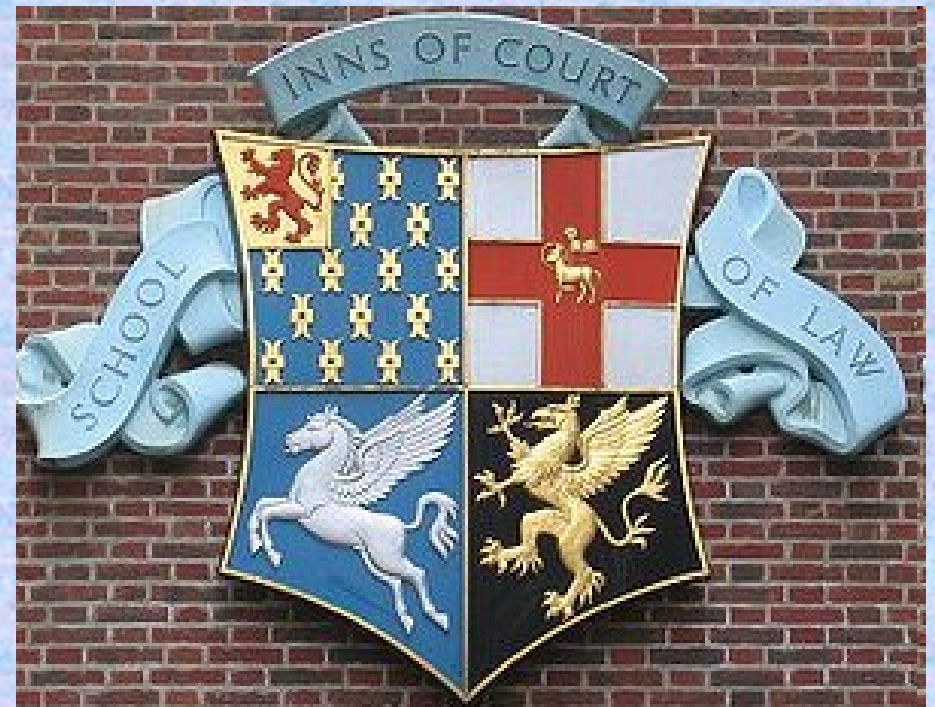
What is the root of authority in Canada?

- Review interview with R. Rogers Smith
- There are lots of feudal implications
- Lots has changed in Canada since the 1940's



Inns of Court

- Grey's Inn
- Lincoln's Inn
- The Inner Temple
- The Middle Temple



Temple Bar



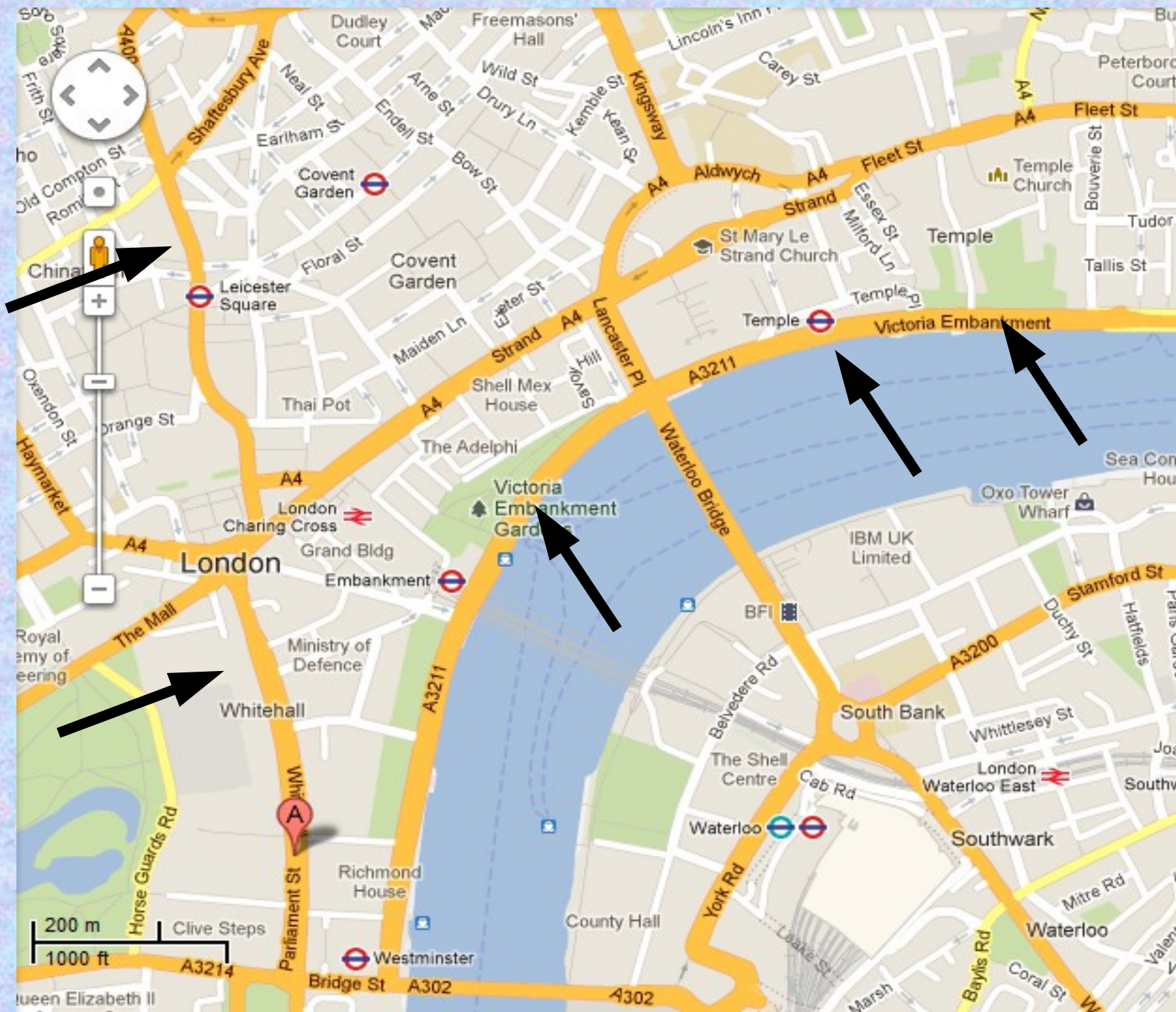
Root of Authority

'Only the owner of land can make the law of the land. Sovereignty and the ownership of land go hand in hand. This is the most important axiom to be learned by the student of constitutional and International law.'

R. Rogers Smith

Root of Authority

- In the case of Quebec-a “Constitution” was granted to Governor James Murray November 21st., 1763, by the “Board of Trade and Plantations”, signed Yorke and Yorke (see Sessional Papers 18). The Lords of Trade and Plantations, afterwards known as the Board of Trade and Plantations, and, finally, as the Board of Trade, received their authority from the Crown in Chancery. In the reign of Queen Elizabeth “Members of Her Majesty’s most learned and honourable Privy Council (divers orders thereunto called) **conceived and established the Crown in Chancery to administer affairs in connection with and exercise authority over the waste lands or commons of England**”. Newly discovered or conquered lands were placed under this Department of Lands, whose offices are at **Whitehall, London**. When the Treaty of Union, 1707, uniting England and Scotland, was signed, the administration of affairs in connection with Scottish land was granted to this Department.



Crown in Chancery

- A section of the Ministry of Justice (UK)
- Has custody of the Great Seal of the Realm
- Administrative functions with courts and judicial process
- Keeper of the Rolls of Peerage (titles)
- Prepares royal documents like warrants, letters patents, etc.

- It has direct ties into the Inns of Court through the BAR associations of the Justice / Legal system.

Crown in Chancery

- Title to all lands were placed here

Secretary of State (UK)

Nova Scotia, which was now a “British” possession also, was placed under the Crown in Chancery. It is a common assumption that the Monarch, or the House of Commons, or House of Lords, grant authority to a Governor General. Such is not the case. **Governors General receive their authority only from the Crown in Chancery.** It is not permitted that the King, or any member of the House of Commons or Lords even suggest that anyone be appointed. The affairs of the Crown in Chancery are administered by the Sec’y of State that he be appointed. The Sec’y of State alone is responsible for the retention of a colony as a British Possession. He must not be circumscribed in any way in the exercise of his powers.

Sir George Fiddes

Under Secretary (1909-1916)

“The Secretary of State, broadly speaking, has no executive authority within the territorial limits of a Colony or Protectorate. His authority is exercised through the Governor (or, in the case of some protectorates, the High Commissioner) with whom he alone corresponds and to whom alone he issues his instructions.”

After the Governor General is appointed by the Secretary of State “Letters Patent” are drafted and signed by Clerk of the Crown in Chancery.

Dictatorship

After the “Letters Patent” are attested, the Governor now is introduced to His Majesty at the Court of St. James, where he receives a letter of directions from His Majesty called “Instructions”. If we add to the “Letters Patent” and “Instructions” the added powers granted to the Governor General in the British North America Act, we have the same sum of dictatorship on March 23rd., 1931 as were granted to Governor James Murray by the Board of Trade and Plantations November 21st., 1763.

Post Statute of Westminster 1931

Today the King can sign a lease or enact a law “by and with the advice and consent of the Lords Temporal, Spiritual and Commons in Parliament Assembled and with the authority of the same as follows: (The King alone has no power.)

Today the People of Britain are Sovereign, not only over the British Isles but also all Colonies which they own.

The “Titles” to these lands are in the custody (guardianship) of the “Crown in Chancery”. This is the reason we call them “Crown Lands”.

The British people do not own Canada today.

Sovereignty of the Provinces

None of the Provinces are required to pay rent. Since December 11th., 1931, the ownership to the land is held by each Province. The Legislature of each Province can make laws exclusively in connection with property and the title is held in the custody of the Department of Lands. All Provinces of Canada today are Sovereign States.

The Province does not divest itself of ownership when the Department of lands grants a title to a “homestead” in “fee simple” or “free and common socage”.

Feudal Tenures

- Fee Simple
- Socage – The tenure of land by certain determinate services other than knight-service

Fee-Simple

In English law, a fee simple (or fee simple absolute) is an estate in land, a form of freehold ownership. It is the way that real estate is owned in common law countries, and is the highest ownership interest possible that can be had in real property. **Allodial** title is reserved to governments under a civil law structure.

Source: Wikipedia

Feudal Service (servant)

It is well understood by both the purchaser and the Province that the Legislature retains the right to “tax” the land. This “tax” is the rent the purchaser pays. If a person dies intestate or fails to pay his “tax”, the land reverts to the Province in the first case or is repossessed by the Province by way of a “tax” sale.

'Canada' has no 'land'

The Sovereign right to govern originates in, nor can it be divested from the ownership of land.

In order that “Sovereignty” be exercisable by a Central Government in Canada, it is indispensable that the Sovereign Provinces divest themselves of those powers which they collectively desire the Central Government to administer and to **“cede” to the Central Government some land**, such as the District of Columbia, U. S. A.; Mexico City, District Federal of Mexico; or District of Canberra in Australia. This is called the right of “Eminent Domain”.

Statute of Westminster 1931

the Statute of Westminster is the only enactment pertaining to Canada which has in any way altered our status since the Sessional papers 18 were granted to James Murray in 1763.

No governor general since the enactment of the Statute of Westminster has received any papers from the Crown in Chancery of Great Britain to act as Governor General in Canada.

Today's Governor General

I understand the successor to Bessborough was John Buchan, afterwards Lord Tweedsmuir. How was he appointed?

Lord Tweedsmuir has a commission, signed by R. B. Bennett, which was never Gazetted in the Canada Gazette. This is the only paper extant in connection with Lord Tweedsmuir's appointment to Canada.

How was Mr. Bennett appointed?

It should be understood that Mr. Bennett was made a member of His Majesty's Imperial Privy Council' that acting in this capacity he could commission a governor general but he could not grant any papers to him to govern Canada. (**a commission without authority**)

Government vs Parliament

A distinction should be drawn between government and parliament. The governor general is the governor of Canada. The House of Commons and the Senate of Canada, and the Privy Council for Canada, as well as the Lieutenant Governors of the Provinces and the Legislatures of the Provinces were to **aid and advise the governor general in the government.**

It should be remembered that in this connection Canada was a Dominion and “a Dominion” is defined by Lord Thring in section 18, para. 3, of the Interpretations Act (Imperial) as follows;

“The expression “Colony” shall mean any of her Majesty’s Dominions (exclusive of the British islands and British India) and where parts of such Dominions are under both a Central Legislature and Local Legislatures, all parts under the Central Legislature shall, for the purpose of this definition, be deemed to be one colony”

so that, in answer to your question, I would say that the Cabinet of the house of Commons, or any members of the House of Commons, have no more power or authority than have the members of any Legislative Assembly of any of the British Colonies. The function of a Legislature of a Colony is to aid and advise the governor, who is the government, and the Cabinet is to administer affairs in any department to which he is appointed by the Governor General. **But it cannot be remotely said that either the Legislative Assembly of Canada nor the House of Commons of Canada, are responsible to the Canadian people-they are responsible only to the Governor General.**

Sovereign State

The Statute of Westminster has altered the status of each and every Province of Canada. Section 11 of the Statute of Westminster raises each Province of Canada from the position of a Colony to that of a sovereign state. Section 11 is as follows;

“Meaning of “Colony” in future acts. Notwithstanding anything in the Interpretation Act, 1889, the expression “Colony” shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a dominion or any Province or State forming part of a Dominion”.

Real Constitution ...

Under these circumstances, Mr. Smith, what would your recommendation be to the Canadian people in order to remove this anomaly and establish a Government that would be the sovereign authority?

In my opinion, the logical solution is a Federal Union of the Provinces. It is illogical for us to decry disunity in Canada before a union has been achieved. The definition of a Federal Union, as given in the Law Dictionary, is a “union of sovereign states mutually adopting a Constitution.” There can be no coercion in the construction of a mutually adopted Constitution. It is only by co-operating that Nationhood can be made a reality.