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Canada
cc. chief whip's office

10 DOWNING STREET

From the Private Secretary

23 December 1980

Xear Paul

Patriation of the Canadian Constitution

During a meeting to discuss other matters yesterday afternoon, the Defence Secretary took the opportunity to report to the Prime Minister and the Foreign and Commonwealth Secretary about his talk with Mr. Trudeau in Ottawa on 19 December. Since both the Prime Minister and Lord Carrington had seen the reporting telegrams on Ottawa, Mr. Pym did not rehearse his discussion with the Canadian Prime Minister in detail.

Mr. Pym said that, in his view, Mr. Trudeau was determined to resolve Canada's constitutional problems, as he saw them, and was not very interested in the problems to which this might give rise for the British Government. He had little room for manoeuvre. He could not, for instance, drop the so-called Charter of Rights. He had a majority in the Federal Parliament and intended to use it to force the legislation through. He would probably need to use the guillotine but expected to be in a position to forward his request to Westminster in March.

Mr. Pym said that, given the difficulties that the Government would face in both the House of Commons and the House of Lords, we ought to be thinking of shifting our ground. We should perhaps be saying that we would have to wait for the decision of the Canadian Supreme Court. The Foreign and Commonwealth Secretary pointed out that this might take a year to be forthcoming. We should therefore be giving more thought to the possibility of patriating the Constitution unilaterally with an amending clause but without the Charter of Rights.

In further discussion it was agreed that Mr. Trudeau probably underestimated the difficulties he was going to face in the Provinces. It was by no means certain that he would be able to hold the country together. Nonetheless there was no foreseeable likelihood of his Party splitting. The problem would therefore probably be thrown into Westminster at some stage in the spring. For the moment the Government had little choice but to await developments. However we should be thinking both of ways to maximise our room for manoeuvre and of the need to protect ourselves against accusations of residual colonialism.

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I am sending copies of this letter to Brian Norbury (Ministry of Defence), Robin Birch (Chancellor of the Duchy of Lancaster's Office), Michael Collon (Lord Chancellor's Office), Jim Nursaw (Law Officers' Department) and David Wright (Cabinet Office).

Yours ever

Michael Alexander

Paul Lever, Esq.,
Foreign and Commonwealth Office.

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