CANADIAN FEDERALISM: THE LEGAL PERSPECTIVE

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Within the writer's short lifetime the Canadian constitution has had to withstand two particular crises: that of the 1930's caused by the general economic collapse, and that of the 1960's, caused principally—but by no means exclusively—by the revolutionary changes taking place in Quebec.[1] In the first of these crises, it was the economic system which had failed. Unemployment and stagnation brought ruin to the industrial east, while drought and low prices devastated the agricultural west. Yet the constitution remained unshaken in all its essentials, and when the *Sirois Report* was issued its main recommendations were intended to strengthen the central government, the provinces having been shown to be helpless in face of such a calamity. Today we seem to be in the reverse situation: the constitution is under fierce attack, provincial autonomy and separate policy-making have brought the central government to its lowest ebb since Confederation, and what seems to be holding us together is the strength of the economic system and our dependence on its continued expansion for a rising standard of living. We may see a comparable situation in Belgium, where two warring linguistic groups are held by the economic advantages of union not only in the same country, but in a unitary state.

The Importance of the Constitution

In this situation the law of the constitution may seem to be an irrelevancy. The whole emphasis is on constitutional change rather than upon the application of existing rules. Professor Alfred Dubuc of the University of Montreal has recently written of the B.N.A. Act:

> Today this document no longer serves as the principal guide to the elaboration of central economic policies. The new realities of the 20th century simply cannot be guided by its light . . . . The federal-provincial and inter-provincial conferences at the political level now fulfil the function formerly carried out at the juridical level by the Constitution and the courts.[2]

More explicitly, Professor D. V. Smiley has explained that:

> "Canadians and Canadiens" do not agree on the community to which they give their primary allegiance—Canada or French Canada—and this difference in allegiances makes impossible any agreement on the appropriate distribution of powers and privileges between federal and provincial governments.[3]

Similarly Professor Cheffins has recently said:

> It appears as if the [Supreme] Court is being by-passed as an important arena for the making of vital constitutional decisions.[4]

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1 Severe as were the conscription crises in the two World Wars, they were of short duration and did not directly affect the constitution; the Francoeur revolution on the secession of Quebec in 1918 was debated but withdrawn. See Elizabeth H. Armstrong, *The Crisis of Quebec*, 1914-18, at 209 ff.

2 *Nationalism in Canada*, Peter Russell ed., at 126,129.

3 *Two Themes of Canadian Federalism*, 31 C.J.E.P.S., at 88.

4 *The Supreme Court of Canada: A Quiet Court in an Unquiet Country* (1966), Osgoode Hall, L. J., at 259.

The social scientists of every type are in the saddle, and if the cold voice of the constitutional lawyer is heard at all, it carries little weight. The firm statement that "This is the law" is apt to be met by the rather irreverent comment "So what!"

Now I would be the last to pretend that the law which is, is the law which should be. The pace of change has accelerated in every sphere of human activity, and the law cannot be exempt. As a great American jurist has said:

> Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night is not the journey's end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth.[5]

You will note that this statement contains two main ideas: first, that the law must change, but secondly—and equally importantly in my opinion—that the law which is about to change gives us a present location, a latitude and longitude, and thus our bearings. In other words, it tells us the point from which we must start. Out situation is therefore quite different from that of a man lost in the forest who does not even have the choice of direction since he knows no direction. The existence of a functioning constitutional law prevents us wandering around in circles. We are not in the sad position of the motorist who, having lost his way, asked a farmer whom he met on a by-road how to reach the next town; the man scratched his head, suggested going down the road and turning right, or better, going up the road and turning left, and then ended up by saying, "If I was going to the next town, I wouldn't start from here". If we start to change our constitution, we do so from the basis of the law that exists. It may be desirable now and then to remind ourselves of some of its important characteristics.

The reason why it is possible to treat the Constitution today as though it was a kind of remote nuisance is precisely because it has one great virtue: flexibility. It permits a very wide freedom of choice in respect of governmental policy and intergovernmental relationships. Constitutional law in some respects is different from other kinds of law. The ordinary laws tell us what to do and what not to do; constitutional law does not make these laws, but tells us who has the right to make them. The Constitution rarely says what must be done, in respect of government policy. Hence the comments of Professors Dubuc and Cheffins just quoted seem to me to be somewhat beside the point; policy-making is not the prime concern of the courts. The Constitution confers jurisdiction and authority upon various bodies, leaving them free to exercise their powers in any way they see fit. The legislature endowed with jurisdiction is not even obliged to exercise it; it may prefer not to legislate. And if the area happens to be one of concurrent jurisdiction, like immigration or agriculture, or some overlapping parts of sections 91 and 92, then the withdrawal of federal legislation leaves the field wide open to the provinces. The so-called handing over of part of the income tax field to the provinces, for example, did not involve a change of sovereignty, but merely a change in the direction of the tax, and all governments have as much legal right to raise or lower their taxes after as they had before the agreement.

[5] Benjamin N. Cardozo, *The Growth of the Law*.

Public and Private Governments

Should, however, all the public authorities refrain from legislating, then the private authorities—which include you and me, of course, but over much of our lives today means principally the large private corporations—make their own policies and govern us in the way that best suits themselves. We do not escape government, but we do have a choice between public and private government. The electors who choose and can call to account our public governments are you and I and other adult citizens; the electors who choose and theoretically are in control of private governments are those entitled to vote at shareholders' meetings (theoretically, because in practice the managers control), and while you and I have only one vote at elections a single shareholder (which may be another corporation) may have ten thousand. What I may call the constitutional law of the private corporation is in many respects today quite as important to Canadians as what we call constitutional law proper. There are very large private governments in Canada that have no Canadian electorate whatever since all the shares are owned by the parent company in the United States. J. K. Galbraith in the Reith Lectures, recently given over the BBC in England, points out that we now live under an increasingly planned economy, in which the large corporation has become a planning unit. He writes:

> We have difficulty in thinking of the private firm as a planning instrument because we associate planning with the state. But the modern industrial enterprise operates on a scale that is far more nearly comparable with that of government than old-fashioned market-oriented activity. In 1965 three American industrial corporations, General Motors, Standard Oil of New Jersey, and Ford Motor Company, together had more gross income than all of the farms in the United States. The income alone of General Motors of $20.7 billion about equalled that of the 3,000,000 smallest farmers in the country—around 90 per cent of all farmers. The gross revenues of each of the three corporations just mentioned far exceed those of any single state. The revenues of General Motors in 1963 were fifty times those of the state of Nevada, eight times those of the state of New York, and slightly less than one-fifth those of the Federal Government.
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> Such is the corporation as a planning authority. It rivals in size the state itself. It has authority extending over and uniting the capital and organized talent that modern technology requires. Its authority extends on its supply of capital. And its power is safely removed and protected from the extraneous or conflicting authority either of the state or its own owners or creditors.[6]

I have called the large corporations private governments because I think it is essential we include their powers, their jurisdiction and their policies in our thinking about the constitution and government of Canada in general. It is obvious that some of these corporations have a definite foreign policy, or, what is more striking, are told from the parent company outside Canada what policy they should follow. Thus our public international policy may be frustrated by our private international policy. For example, some of these corporations have involved us directly in the Vietnam war on the side of the United States, though our public government professes to be a member of a neutral Control Commission. The two roles are contradictory, and if Canada chooses to allow the sale of arms and munitions to the United States to be used in the country we are supposed to be supervising, then I think we must ask ourselves how long we can hope to maintain a neutral reputation. If we want to play a Scandinavian role, we must pay a price for it. I think it is time

[6] Quoted in *The Listener*, Vol. LXXVI, 1966, at 756-7.

that political scientists, constitutional lawyers and others who pay so much attention to federal-provincial relations, should turn their analytical powers to the field of corporation law and practice. A *de facto* constitution will be seen alongside the *de jure* constitution. Most scholarship today is directed to the issue of federal versus provincial government; an equally important issue is that between public and private government. In that context it might be found that new common interests exist for all public governments, federal and provincial, in Quebec as elsewhere, and that they are all confronted with a challenge to their power that they can only collectively withstand.

Constitutional Purposes

Every written constitution—and the Canadian constitution is partly written and partly unwritten—serves two general purposes. It first of all constitutes a framework of law under which the government of the country is carried on. It distributes authority, authorizes various activities, and above all proclaims certain social and political values. Parliamentary democracy would be one such value. Though the working out of the Constitution may be very different from the written law, so that merely reading the words in the text may convey a very false impression of how government is carried on, nevertheless these values are explicitly or implicitly contained in the law and in that sense constitute profoundly important guidelines for future policy. The written words may be only the dry bones, but they shape the manner in which the flesh and blood may grow.

Constitution-making is a political art, widely practised in recent times with the development of so many new independent states. I call it an art, because a constitution is a kind of artifact; it is designed by man and may have infinite variety of form and content. Ultimately, we know, it is no stronger than the will to accept and to work it. If that will vanishes, so does the constitution. This ultimate reliance on something other than the law is however not peculiar to constitutions. All human societies and institutions depend upon a more fundamental sense of social solidarity. A constitution may itself develop that sense of solidarity if it enables a given society reasonably to evolve according to its inner directives.

But beyond this general function of constitutions there is in each particular state a special purpose which the constitution seeks to attain. The Canadian Constitution was drawn up a century ago to suit the needs of the country then being created. The Fathers of Confederation were not theorists in constitution-making; they were practical politicians with a long experience of previous constitutional battles and proposals, and a strong sense of Canadian history. The chief impulse toward Confederation and the principal ideas about it came from the Upper and Lower Canadians, not from the Maritime provinces and of course not from the Western provinces which were then not in the Union. The most vivid memories and experiences in the lives of the most prominent Fathers, particularly Cartier and Macdonald, came from the immediate past experience of the old province of Canada established in 1841 after the two rebellions. It was in central Canada that the economic power lay, and that was where the confrontation between English and French, Pro-

testant and Catholic, was most real. What was true then has continued to be mainly true of the entire subsequent development of Canada, though in recent years the economic and political power at least of Western Canada has made itself more evident. The present cultural and linguistic crisis is but a continuation of that noted so vividly by Lord Durham.

What then were the prime purposes accepted and written into our constitutional law one hundred years ago? These may be briefly listed. The first purpose was Union. The B.N.A. Act is an act for the Union of provinces into a new state. It was not an act for disunion, though it is crucially important to remember that in so far as Lower Canada was concerned it was an act which for the first time freed Quebec from the domination, first of an English oligarchy and then of an English majority, in respect of all those matters—and we realize today how large they were—which were assigned exclusively to provincial legislatures. For Quebec, Confederation was a partial application of the separatist principle. It is precisely the harmonizing of the two conflicting concepts of union, and independence, which makes federalism so peculiarly adaptable to so many contemporary communities blessed with cultural diversity. A "new nationality" was envisaged in 1867, of a political character, which some of the Fathers rashly thought would be "redeemed from provincialism".

It was also assumed in 1867 that an economic unity would match the political unity. The old provincial tariffs disappeared, and free trade across provincial boundaries was written into section 121. Here the American example was followed; the Fathers sought to provide a system of government which would enable an economic development across the whole of the northern half of the continent to take place as successfully as it had in the southern half. The B.N.A. Act, particularly explicit on the distribution of economic powers, was evidently designed to enable businessmen and entrepreneurs to go ahead with their plans for development under the aegis of the central government. This government was deliberately made strong, both that it might bring into the new state those undeveloped portions and unallied colonies that were still outside the system in 1867, and also that it might undertake basic developments of its own, too large for any province, in the form of railways, canals, telegraphs, etc. essential for the rapid expansion of private business. Ottawa was the big new centre to which the most able and imaginative politicians were attracted. It could hardly have been foreseen that the very success of the federal government in completing the Union from coast to coast and providing these basic economic services would itself transform the nature of the federal structure by casting upon the supposedly insignificant provinces obligations and opportunities so vast as to magnify enormously—with much unexpected help from the Privy Council—their political and economic powers.

The Union, though intended to be strong at the centre, was nevertheless to be federal. Provincial autonomy was guaranteed, subject to the federal power of disallowance and paramountcy, though I do not believe the concept of autonomy was intended to dominate the future interpretation of the Constitution in the manner subsequently laid down by the courts. But provincial autonomy obviously meant something very

special to the province of Quebec. It provided a constitutional basis for cultural diversity. There were important provisions in the Constitution designed to safeguard minority rights, understood then as including protection for the use of the French and English languages and for existing Protestant and Catholic separate schools. These protections benefited the English minority in Quebec, but, as it turned out, did next to nothing for the French minorities outside Quebec. The constitutional guarantees nevertheless resulted in an extension of the official use of the French language far beyond anything that had previously existed in British North America, for the laws of the Parliament of Canada, which of course operate across the entire country, were to be in the two languages. Thus when British Columbia entered the Union in 1871, and Prince Edward Island in 1873, all the federal laws in those provinces were as authoritatively written in French as they were in English. Moreover, when the federal Parliament created the three Prairie provinces it did so in statutes written in the two languages. Thus the constitutions of Alberta, Saskatchewan, and Manitoba are still written in French as well as English, and in this sense French is an official language even here. The Manitoba decision to abolish the use of French in its provincial statutes in 1890 did not abolish the French text of the Manitoba Act. If Ottawa were to decide to publish its statutes in parallel columns on each page in both languages, as Quebec does for her statutes, the whole of Canada would suddenly awaken to the presence of the French language in its official laws. Able lawyers would then begin to enquire whether their clients might not be better protected by the French rather than the English version.

A further evident purpose in the original Canadian Constitution was the preservation of the monarchical principle and the parliamentary form of government. But the monarchic principle in Canada was from the start and is today quite different in its social implication from its position in Great Britain. Not only do we have no resident sovereign, but in the law we talk more about the Crown than we do about the Queen. We do not speak about the Queen's corporations, we call them Crown corporations. We speak of the Crown in right of Alberta and the Crown in right of Quebec. The term "Crown" is simply a variant on the term "state". There is no theory of the state in English public law, nor is there in Canadian public law, because the concept of the Crown suffices as a substitute. The B.N.A. Act itself uses non-monarchical language in many sections, as when it says "Canada shall be liable for the debts and liabilities of each province existing at the Union"; "Nova Scotia shall be liable to Canada . . ."; "The assets enumerated in the Fourth Schedule to this act belonging at the Union to the province of Canada shall be the property of Ontario and Quebec conjointly". As Maitland once pointed out,[7] this is the language of statesmanship and of common life; to introduce the strict legal concept of the Queen as owner of the various assets and liabilities would be as stilted as it is accurate.

This monarchical principle, moreover, was to express itself in the traditional constitutional form of parliamentary government, with all that that implies about free elections, fundamental freedoms of the in-

7 In his essay *The Crown as Corporation.*

dividual, and indeed the constitutional basis of a free society. Here it is essential that we distinguish between the constitutional provision of a parliamentary system and the way parliaments actually conduct their business. To say that Parliament should be reformed so that it can more efficiently conduct the increasing amount of business that comes before it, is one thing, and there is a growing body of opinion to this effect. To say that the parliamentary system itself should be scrapped and replaced by the American presidential system, as some far out individuals have done,[8] is quite another thing. We must be careful not to throw the baby out with the bathwater. Mr. Gerin-Lajoie has suggested that Cabinet Ministers should not sit in the Legislature because it wastes too much of their time; this change would play havoc with cabinet government as we have known it, but a province has the power to change its constitution in this way if it so chooses. A province has not the legal power, however, to turn itself into a republic, for this would interfere with the office of Lieutenant-Governor, something not permitted in the present constitution. Such a decision involves the whole of Canada.

Amendment of the B.N.A. Act

Surveying the present situation in Canada, and comparing it with what existed at the end of the great depression of the 1930's, it is obvious that very great changes in governmental practice have occurred with remarkably little change in the formal law of the Constitution. How many amendments have been made in that period requiring the participation of the United Kingdom Parliament? There was the 1940 amendment adding unemployment insurance to federal powers; there was the 1943 amendment postponing readjustment; there was the amendment making new provisions for representation in the House of Commons, enacted in 1946 but since 1949 within federal control; there was the union with Newfoundland in 1949; there was the important addition of the federal power to revise the Constitution in purely federal matters, also in 1949; there was the addition of a federal jurisdiction over old age pensions in 1951, amended in 1964; and there was the limitation of the age of judges to seventy-five years, added in 1961. It is therefore true to say that the only changes in legislative jurisdiction as between Ottawa and the provinces have been the unemployment insurance and the old age pension provisions, both of which increased federal authority. The provinces have so far had no additional jurisdiction granted them by fundamental change in the Constitution. All their increased authority has come from within the Constitution itself. Even Quebec's accord with France for the exchange of teachers has been authorized by an overall agreement between Ottawa and France made under the federal power to conduct international relations. And it is clear that we have by no means exhausted all the permutations and combinations possible under the existing constitutional law.

The foregoing remarks may convey the impression that the writer does not believe we need to make any change in the fundamental law laid down in the B.N.A. Acts. If so, let that impression at once be corrected. The writer has said repeatedly that "we have a rendezvous with the B.N.A. Act", and believes it still to be true. Everyone will agree,

8 *E.g.* Francois Aquin, M.P.P., quoted in *Le Devoir*, Feb. 27, 1967.

for instance, that sooner or later we must repatriate the Constitution, so as to avoid the necessity of appealing to an exterior Parliament to make our own law. This task itself is one of fundamental difficulty, as the slow formulation, acceptance, and then rejection of the Fulton-Favreau formula made clear. A method for amending a federal constitution cannot be formulated without the entire theory of the nature of that constitution being also explicitly or impliedly stated. The present Constitution in strict law is easy to define; it is based on statutes (The B.N.A. Acts and others) emanating from a Parliament that had and still has legal authority over Canada in certain respects, and which can therefore amend its own laws—our Constitution—at any time it so desires without even, some inveterate Diceyans would still hold, the necessity of prior Canadian agreement. It may be said that such a statement, to use the words of Lord Sankey, "is theory and has no relation to realities".[9] The reality is that Canada controls the legislative powers of the United Kingdom Parliament for Canadian purposes. We press the button, and the House of Lords and House of Commons at Westminster spring into action. So much is this true that when Mr. Lesage was contemplating abolishing the Legislative Council in Quebec, and could not obtain its consent, he was apparently prepared to invoke this overriding jurisdiction to procure the direct abolition of a part of the Quebec legislature without the necessity of a Quebec statute. But if we are to rid ourselves of the United Kingdom as a constituent assembly for Canada, then we must have a clear alternative which expresses our notion of the proper relationship between the central government and the provinces, a task complicated by the factor of giving place to the will of the people. Observers cannot but note that it was as much the influence of Quebec as of any province that insisted in the consideration of the Fulton-Favreau formula on a drastic right of provincial veto over future amendments; yet at the last moment it was Quebec which wrecked the very formula it had so very actively supported. In future we may bless Mr. Lesage's change of mind. He saved the country from committing what would have been, in my opinion, a fatal, suicidal error. The Fulton-Favreau formula is fortunately forgotten.

Two Cultures and a Common Political Nationality

So all would agree we must face up to the problem of fundamental constitutional amendment. But that, of course, is only part of the story. Once we come face to face with the Constitution, we open up many other profoundly important questions that are now being debated. Foremost among these will be the question of the relationship between the two cultures, the two official languages, and as some would say, the two nations, of which this country is composed. As a continuing member of a Royal Commission specifically charged with enquiring into some of these matters, and which has not yet issued its final report, I am debarred from saying what I think should take place. But, like any judge, I can take judicial notice of certain facts and certain movements of opinion. The thirty-five per cent of the population of New Brunswick whose mother tongue is French do not have the guaranteed rights that are given by the Constitution to the now thirteen per cent in Quebec whose mother

[9] In the *British Coal Corporation* case, [1935] A.C. 500, 520.

tongue is English, though we must remember that the thirteen per cent are three times as numerous as the thirty-five per cent. In absolute numbers (and it is wise to think of absolute numbers as well as percentages of total population) there are twice as many people of French mother tongue in Ontario as there are in New Brunswick. In a modern industrial society mobility of personnel is an essential need, and we take steps, such as making pensions portable, to promote it. How far should the two official languages be portable? This issue must be faced. Then, too, it is true to say that nearly all provinces have some form of special status under the law of the present Constitution, even if it is only a negative status such as the inability of the Prairie provinces to tax the property of the CPR. The special status for Quebec under the present Constitution is particularly noticeable; should it be increased? Or should it be rendered less special by the elimination of the English minority rights in Quebec? If all human rights are taken away, all citizens can be said to be equal in status. All are slaves.

A combination of forces—military, political, and economic—made it possible to find a common ground for the original Constitution one hundred years ago. We seem to be at the stage that Canadians had reached just before the B.N.A. Act was adopted. To a lesser degree, the war in Vietnam (Senator McCarthy's legacy to America) is playing the part of the American Civil War, by sharpening our sense of separateness from the United States. All sorts of forces are making for change, some of them centripetal, such as the pressure of technology, computerized industry, telecommunications and the other attributes of the post-industrial revolution; some of them, of which Quebec nationalism is easily the most important, are centrifugal. Nationalism has proven strong enough to render obsolete the notion that communism was monolithic and would produce similar results in all countries. In short, nationalism knocks the basis out of what appears to be the foundation of much American foreign policy. We must not think that we can be exempt from its creative force in our own country. Nehru once said that there is a good form of nationalism, and a bad form of nationalism; the good form is that inherent desire in man to live in a society that enables him to express himself to the fullest; the bad form is the rigid application of racist doctrines that can lead to disaster. Both the good and the bad forms of nationalism are usually to be found simultaneously in any nationalist movement, and the question is, which one will prevail? The answer to that depends on many factors, but among them the receptivity of the movement by its environment plays a major role. A frustrated nationalism turns to primitive weapons, just as a frustrated individual may seek release in a primitive nationalism. On the other hand, a strong sense of national identity can be a protection against the crushing conformity toward which technology is constantly driving us.

In the midst of our present controversies, certain points of law stand out clearly. Neither the federal government nor any provincial governments have by law a racial or religious character. Ottawa is not the "national government of English Canada", nor is Quebec the "national government of French Canada".[10] Both types of government are

10 See *Quebec Year Book*, 1963, at 23.

representative of all the racial elements that come under their jurisdictions. French Canada is bigger than and cannot be wholly represented by Quebec. English Canadians are part and parcel of every provincial government. Both Ottawa and Quebec have a unique position under the Constitution, in that each is officially bilingual in its parliamentary debates, its statutes, and in the administration of justice through its courts. Nevertheless, both these governments should serve with equal consideration all the Canadians that come within their territories.

In regard to subjects which are predominantly provincial in character, such as education and health, the autonomy of the province permits it to make agreements of a political character with other jurisdictions. To take away this power to make agreements would be to limit provincial autonomy. Thus an agreement between a province and the federal government in regard to education is quite lawful. It is not an invasion of a provincial sphere by the federal government even if federal money is spent. Quebec, under the aegis of an exchange of notes between Ottawa and France, has made an agreement with the French government regarding the exchange of teachers; no one has suggested that France is interfering in a matter of Quebec's educational autonomy. It would surely be odd to learn that France had more constitutional right than Ottawa to help in the development of provincial education.

Both the federal and provincial governments make use of the spending power to promote their objectives. It is my opinion that neither government is debarred from spending money, duly appropriated by its legislature, even in regard to matters over which there is no legislative jurisdiction. The province can always refuse an offer. No province can legislate extra-territorially, yet every province can make a contract of loan in New York or buy property in England or France. This is spending money outside the jurisdiction. The same is true for Ottawa, though its jurisdiction is not limited territorially but only in regard to subject matter. I am not here discussing the wisdom, but only the legality, of spending public money.

It is my view also that any government in Canada is entitled to spend money on any kind of research which it feels would be helpful to it. There is no "class of subjects" called research which is ascribed by the B.N.A. Act to any particular jurisdiction. Moreover, in undertaking research, no law is passed which affects any rights of the citizen. The Royal Commission on Constitutional Questions in Quebec, known as the *Tremblay Commission,* was within its powers in conducting research into every aspect of the Canadian Constitution and of the position of other provinces, though it never left Quebec and did not invite any other governments to present their views. Similarly, Ottawa is quite free to investigate the situation regarding education, the promotion of the arts, the development of scientific research, or any other matter which it feels would assist it in its responsibilities for the peace, order and good government of Canada. The federal government, of course, has one further ground to justify its educational and research activities, since it is also a provincial government. We are apt to forget that Canada's eleventh province is the Northwest Territories, and that the

federal government is its legislature. The centennial design very properly symbolises this fact. Every subject matter within the jurisdiction of the other provinces is also within the jurisdiction of the Parliament of Canada with respect to the Northwest Territories. The federal government also has a conditional right to legislate on education in any province under section 93 of the B.N.A. Act, as well as a clear duty to care for the education of its armed forces. It is important that we do not allow the legislative division of powers to spill over into the area of executive action not involving the making of laws but merely the acquiring of information. To do so would be to restrict unduly and improperly the freedom of both the federal and provincial governments. Research today is a prime function of government.

Every problem met by an individual or a country in the course of their lives is both a challenge and an opportunity. Our problems in Canada today are large enough to offer us great opportunities for a clearer definition of the nature and purpose of Canadian federalism. The building of stable multi-cultural societies is a task being faced by a majority of the worlds' governments, and as the nation-state grows more and more obsolete will increasingly demand our attention. Canadians of this generation are challenged to bring a large outlook and a generous humanism to the solution of our constitutional difficulties. But in searching for solutions let us not forget that the Constitution is the supreme law of the land, and that it cannot be fundamentally amended without a common consent that in recent times has had to come from every province as well as from the federal government. The winning of that consent is a prerequisite to orderly change.