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CANADA, like the United States, is a federation. Its people are not homogenous in ethnic origins, in economic interests, in traditions, or in social outlook, and this heterogeneity stands in the way of governmental centralization. In addition, constitutional provisions divide functions and revenues between the Dominion and the provinces. Extension of federal functions, if no constitutional bars existed, would be difficult because what appeals to Nova Scotia may not appeal to Ontario; what is satisfactory to Alberta may be unsatisfactory to Quebec. Yet changing conditions and shifts in economic and social philosophy demand some adjustments in Dominion-provincial functions and revenues.<sup>1</sup>

The federal structure is protected in Canada, as in the United States, by constitutional provisions, yet, as far as words go, the Dominion appears to have much more extensive powers. This appearance of power is illusory, but the basis for it goes back to the circumstances under which the British North America Act was written.

Deliberating in the shadow of the American Civil War, the fathers of confederation meant to establish a strong central government. In the British North America Act, for example, the Dominion government is given the power to disallow provincial legislation and in the early decades the power was used freely.<sup>2</sup> Section 91 gives the Dominion power "to make laws for the peace, order and good government of Canada" about all matters "not assigned exclusively to the legislatures of the provinces". But "for greater certainty" twenty-nine subjects are specified. In Section 92 the powers of the provinces are enumerated under sixteen heads, of which the thirteenth is "property and civil rights in the province". While in all these examples, Dominion power would appear to be great, it has in fact been whittled away by provincial pertinacity, by the force of events, and by court decisions. In Canada no less than in the United

<sup>1</sup> The account given here of developments before 1941 is mainly a paraphrase of my article, Canadian Dominion-Provincial Financial Relations, *Quarterly Journal of Economics*, August 1942.

<sup>2</sup> From 1924 to 1936 the power was in abeyance and some thought it had become obsolete. Since then, however, it has been used against several Alberta statutes.

States, the constitution is what the judges say it is, and the judges then making the final decisions for Canada were the members of the Judicial Committee of the Privy Council sitting at Westminster. The distribution of powers between the Dominion and the provinces came to be little different from that in the United States but very different from the centralized federalism envisaged in 1867. The general residuary powers of the Dominion shriveled up and the twenty-nine heads of Section 91 became almost the sole sources of Dominion power. Meanwhile provincial powers with respect to property and civil rights expanded.<sup>3</sup> Unemployment insurance, hours of labor, minimum wages, and the like fell in the provincial sphere; yet, in recent years, national action about them has seemed imperative.

It would be an error, however, to emphasize too strongly the influence of the Privy Council. The domineering pretensions of the Dominion were challenged in the 1880's by a genuine and deep-rooted agitation for "provincial rights". A large section of public opinion was insistent upon some restriction of Dominion power and the inherent federal character of Canada found expression. Moreover, it should be remembered that no rigid division of constitutional authority would long be satisfactory in a federal state. Economic and social relationships "stubbornly refuse to be compartmentalized. As a result, the different governments come across one another's paths in a way that was never expected at the time of Confederation."<sup>4</sup>

Thus there is a curious historical-constitutional difference between Canada and the United States. In the former the framers of the federal government had a unitary bias; in the latter, they did not. Opponents of centralization can, therefore, make a

<sup>3</sup> "There is much truth, as well as some exaggeration, in the contention that the 'property and civil rights' clause has become the real residuary clause of the constitution." *Report of the Royal Commission on Dominion-Provincial Relations*, Book I (King's Printer, Ottawa, 1940), p. 247.

<sup>4</sup> J. A. Corry, *The Growth of Government Activities Since Confederation* (King's Printer, Ottawa, 1939), p. 6. The Canadian constitution has no provision for amendment, and in recent years a sharp debate has been carried on concerning the proper procedure. At one extreme is the view, presented by Quebec, that the British North America Act is a compact, amendable only with the consent of all the provinces. Historical evidence in support of this position is unimpressive and the handicap it imposes upon effective statesmanship is serious. Opinion has not, however, crystalized around any more reasonable scheme.

more effective appeal to history in the United States, although the usefulness of this appeal may be doubted for two reasons. First, the broad trend of intergovernmental relations has been markedly similar in the two countries. Second, discovery of the intentions of the wise men who deliberated at Philadelphia in 1787 and at Quebec in 1864 provides little direct guidance in the solution of today's problems. At present the demand is for a social service state; eighty or one hundred and sixty years ago the sphere of government was narrowly viewed. This is not a criticism of the framers of the constitutions of either country. These men were neither prophets nor soothsayers. The proof of their wisdom is that the constitutions they wrote have been flexible enough to survive a revolution in economic and social philosophy.

#### THE ROYAL COMMISSION ON DOMINION- PROVINCIAL RELATIONS

The regional diversity of Canada is not as obvious or as marked as that of the United States, principally because Canada has no such variety of climatic conditions. "Economically Canada can be compared to a string of beads, and they are not all pearls."<sup>5</sup> More than nine out of every ten Canadians live in a discontinuous belt of land, two hundred miles wide, along the American border.<sup>6</sup> The Appalachians separate the maritime provinces from Quebec; a vast V-shaped area of ancient rocks surrounding Hudson Bay — the Canadian shield — separates the prairie provinces from Ontario; the Rockies separate British Columbia from the prairie provinces.

The ruinous incidence of the depression of the early 'thirties upon the prairie provinces, and therefore upon the finances of the provincial governments, was the occasion for the appointment of a Royal Commission on Dominion-Provincial Relations in August 1937. It was to investigate the distribution of functions and revenues between the Dominion and the provinces, "and to express what in its opinion, subject to the retention of the distribution of legislative powers essential to a proper carry-

<sup>5</sup> *Report of the Royal Commission on Dominion-Provincial Relations*, Book I, p. 186.

<sup>6</sup> F. R. Scott, *Canada Today* (Oxford University Press, 1939), p. 5.