AREAS OF CONFLICT IN THE FIELD OF PUBLIC LAW AND POLICY†

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The public law of Quebec, unlike the private law, derives its principles and general content from the public law of England. By the *Treaty of Paris* in 1763 the sovereignty over New France passed from the King of France to the King of England; and automatically the law relating to the Crown, the government and the political rights of citizens, became those of an English colony. The legislative, executive and judicial organs, which were established and developed after the cession, copied the paterns of the new mother country, as formerly they had those of the old: in this sense New France became New England. But the underlying social institutions, such as the Church, the seigneurial system and the family, with the French language, private law and traditions, did not change:[1] in this sense New France became Old France. Thus Quebec offers an early example of British institutions of government being first imposed upon and then accepted, by a non-British people, who in other respects guarded jealously their own laws and customs.

Through the successive constitutional changes in Canada after 1763, such as in 1792, 1841 and 1867, the public law of Quebec remained English in character, though new institutions of government were introduced. These new institutions, with few exceptions, were not peculiar to Quebec but followed the model set up also in other Canadian jurisdictions. Quebec was integrated into a developing imperial system. Though French Canadian nationalism steadily increased during the nineteenth century, the law of the constitution takes little note of it. The *B.N.A. Act* of 1867 contains few special provisions for Quebec. Outside sections 71-80, establishing the Quebec legislature, most of which concern the Legislative Council, there are few references to the province by name. Some of the clauses applicable to Quebec were for the protection of the Protestant minority only, or were equally beneficial to Catholic and Protestant; an example of the former is the special vote required for changes in the representation from the Eastern Townships (sec. 80), predominantly English in 1867; of the latter, the extending to Quebec of the guaranteed separate school rights of Ontario (sec. 93-2) and the protection for the two official languages (sec. 133). These rules, far from enlarging autonomy in the province, all impose restrictions on it in the interest of minority rights which are not exclusively French or Catholic.

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[1] I leave aside the question as to whether the French private law was temporarily displaced by the Royal Proclamation of 1763.

The most noticeable singling out of Quebec, as a province, in the Constitution is to be found in the uniformity provisions of sections 94,[2] where Quebec is omitted, and in section 98 which provides that judges in Quebec courts must always be drawn from the Bar of Quebec. Section 94 does not permit the Legislature of Quebec to delegate to Ottawa jurisdiction over "property and civil rights" by the easy process which other provinces may employ, and shows that the preservation of the French law was one of the purposes of the Union of 1867 as it had been of all previous constitutions since the *Quebec Act* of 1774. This is also the reason for the requirement that judicial appointments in Quebec must be made from among the members of the provincial Bar (sec. 98). Like the guaranteed use of the English and French languages, these provisions recognize the bicultural nature of Canada. They do not add to provincial autonomy, however, but rather restrict it. Nor do they prevent a transfer of jurisdiction, as for unemployment insurance and old age pensions, by the amendment of the constitution. Cultural diferences in 1867 were not expressed in greater legislative autonomy for provinces; indeed, the dangers to unity which they entailed were one of the reasons for establishing a strong government at Ottawa with the residue of power in the hands of the central authorities.

In the basic distribution of legislative powers under sections 91-92 of the constitution, there is no mention of Quebec: the original legislatures are all given the same powers. Preservation of the two cultures was a principle on which the Canadian nation was built, but the constitution did not create in Quebec a special kind of "state" to which was entrusted an exclusive guardianship over French culture. On the contrary, minority rights and provincial autonomy are kept quite distinct, and autonomy is frequently subordinated to the higher value of minority rights. This is shown by the fact that Ottawa is specifically given a power to legislate on education in certain circumstances, in Quebec as elsewhere, for the protection of minorities (sec. 93-4), and by the federal veto power over provincial laws (sec. 90), which was intended to operate as a control over any legislature abusing its power. As Cartier himself said during the Confederation debates, "I would recommend it (disallowance) myself in case of injustice".[3]

The superstructure of the constitution, however, is one thing; the living forces within peoples are another. The States of the American Union, under its constitution, are treated with even more equality among themselves than are Canadian provinces, yet the deep-seated differences between North and South are still patent though not based on language and religion, and produced a doctrine of nullification and claims to secession which could not be resolved

[2]This section, which has never been used, enabled provinces to abandon jurisdiction to the federal Parliament by consent.

[3]Confederation Debates, pp. 407-8. See also Scott, F. R., "Dominion Jurisdiction over Human Rights and Fundamental Freedoms," 27 Canadian Bar Review at p. 530.

by judicial process. From 1867 Quebec became an autonomous community in the sense in which any state in a federation is autonomous, namely, it could exercise its legislative powers as it chose in any way that did not conflict with the law of the constitution. In particular, its jurisdiction over "property and civil rights" which it shares with other provinces, gave it a wide field for self-expression, particularly as its content was greatly expanded through judicial interpretation. Over the course of the years its provincial legislation has changed certain parts of the public law in Quebec in ways that differ from the direction taken in other parts of Canada, though a basic similarity remains. More important even than the differences which such local legislation produces — and Quebec is not unique in this form of regionalism — are the attitudes and feelings in the province about "provincial autonomy"; here the opinions expressed with increasing conviction in Quebec often stand in strong contrast to those prevalent elsewhere. While opinions are not law, they tend to produce interpretations of law and certainly produce conflict in the judicial as well as in the political sphere.

Some of these contrasting views will now be analysed. But while the emphasis is on differences of outlook, it must be remembered that not all French-Canadians think alike and still less do all other Canadians. Quebec is by no means the only defender of provincial autonomy, though under Premier Maurice Duplessis, as often in the past, this has been a leading characteristic of its policy. Hence cross-currents blunt the edges of opinion which, if too sharpened, might make impossible that degree of ethnic co-operation without which Canadian federalism could not survive. The areas of conflict here outlined must be seen against a much wider background of day-to-day collaboration in almost every phase of Canadian activity.

STATUTE OR COMPACT?

A primary question, still unresolved by Canadian publicists, is this: What is the nature of the *British North America Act* of 1867? Is it simply a statute of the British Parliament, distributing powers afresh among Canadian governments through the exercise of an ancient imperial sovereignty? Or is it a solemn compact or treaty not only between provinces but between the French and English races in Canada? On the answer given this question many others will inevitably depend.

The view that the constitution is a statute — a view which commands wide though not universal support in English Canada — sees all the present provinces as deriving their governmental powers from a superior legislative grant which is equally binding upon federal Parliament and provincial legislatures. The authority of the Parliament at Westminster, which established the present system of government, is still used to change its fundamental provisions, and for the amendments this Parliament alone can make, no provincial consent is legally necessary, however politically wise it may be to

secure it. The law of the constitution does not give any province, or any number of them, a veto on changes requested by the federal Parliament. Moreover, with this approach "provincial autonomy" is no more a chief purpose of Confederation than federal autonomy, or decentralisation than centralisation; the *B.N.A. Act* was an Act for the Union of provinces, not for disunion, and while a federal form of government was adopted, the provinces, in the words of the *B.N.A. Act,* "shall form and be one Dominion under the name of Canada" (sec. 3).

On this understanding of the *B.N.A. Act,* the struggle of the French-Canadian minority for its due share of status and power in Canada and for the recognition of its fundamental rights must express itself through the Parliament of Canada, as well as through the Quebec and other provincial governments, Federal institutions, as well as provincial ones, are its proper outlet. Quebec is and doubtless will remain a "homeland" to all French Canadians, except perhaps the Acadians, but this is an historic fact rather than a constitutional rule. All Canada is the homeland for all Canadians. Canada is thus two cultures but not two states; a federal system and not a dyarchy. The ten provinces are equal in status and French culture, while geographically centred in Quebec, radiates outward through various social and political channels but not through any special governmental institutions. The government of Quebec, though controlled by French Canadians, is neither French nor Catholic, being designed for all its inhabitants, 20% of whom are not of French origin. "Dans notre pays il n'existe pas de religion de l'Etat," says Mr. Justice Taschereau.[4] Indeed, since all government in Canada is carried on in the name of the Crown, and the Queen must by law be in communion with the Church of England, Quebec has a Protestant as formal head of the government, whatever may be the religion of the Premier and Cabinet.

If the B.N.A. Act is viewed as a compact or treaty rather than a statute — an opinion almost official in Quebec[5] — at once different aspects of the federal relationship are stressed. Ottawa becomes, in a very real sense, the "creature" of the provinces,[6] who agreed in 1867 to set up a new form of government. The creators, being equal in rights, would seem to have an equal voice in proposing and approving changes in the constitution. On this argument every province has — or should have — a veto power over amendments. Though it is true that some provinces were established or admitted after Confederation, and cannot strictly be considered as parties to the compact, and though Quebec and Ontario were united in a single Province of Canada when the compact was formed, the basic fact of provincial pre-existence

[4]In *Chaput* v. *Romain,* [1955] S.C.R. 834 at p. 840.

[5]It has been written in to the preamble of the Quebec statute 2-3 Eliz. 11, cap. 17.

[6]This view has also English-Canadian support: see e.g. Watson, S. J., *The Powers of Canadian Parliaments* (1880) p. 51, O'Sullivan, D. A., *A Manual of Government in Canada* (1879) p. 21.

remains in so far as Quebec opinion is concerned. French Canada had its separate existence as New France until 1763, as Lower Canada from 1792-1841, and was recognised as a distinct entity by the tacit federalism that was practised under the Union government of the Province of Canada from 1841-1867. Its sense of identity survives and pervades every form of constitution. Lower Canada also had its own delegation, separate from that of Ontario and composed of both French and English members, at the Quebec and London Conferences preceding Confederation. These facts lend special strength to the compact theory in Quebec.

Some recent thinking in Quebec goes far beyond the compact theory and defines Confederation as a fundamental agreement, not merely between provinces, but between the two races, French and English. This notion, like the compact theory, opens up new lines of constitutional analysis but leads to quite different conclusions. Not unnaturally, among all the influences that shaped the constitution, the French-English relationship stands out most vividly in the Quebec mind. There seems no straining of history in calling the eventual agreement a treaty between races, even though the text of the *B.N.A. Act* mentions no race at all except the Indian. On this approach there exists a dualism in the constitution reflecting a predominant fact of Canadian life, and the government of Quebec at once appears as a "French" and "Catholic" government, a champion of the race, set over against the English-Protestant government of Ottawa. Symbolisation of the racial and religious struggle takes place on the constitutional level, though the language of the law is neutral. The treaty-between-races theory explains the importance for Quebec of having its own flag, as a sign of nationhood, and its own anthem — *O Canada!* — whose French version hymns the traditions of Old France rather than the aspirations of the new federal state stretching from sea to sea.

If the races in Canada are equal, so the theory goes, then the governments representing the races should be equal. Therefore Quebec is the equal of Ottawa and not just one part of a larger whole. Such is the easy transition from the aspirations of the people to the supposed law of the constitution. This concentration on the provincial government as defender and sole representative of Quebec's rights, as distinct from merely regarding the province as a focus of culture, is something relatively new in Quebec though the ideas being defended are as old as the cession of 1763. The degree to which these ideas have penetrated into the realms of constitutional theory can be seen in the following typical statements. One is from a speech of the Honorable Antonio Barrette, Minister of Labour in Quebec, who said in May, 1955:[7]

> "There is now such a thing as a French-Canadian nation. Not only have we accomplished the miracle of survival, but we have reached the point where we have our own government, our own religion, our own language, our own culture, our own universities and our own literature.

[7]Quoted by J. Harvey Perry, "What Price Provincial Autonomy", Can. Journal of Economics and Political Science Vol. 21 at p. 445.

> The acts of heroism of Quebec's early settlers were beginning to pay off in a tangible manner.
> "We have reconquered our autonomy and we are now well on the way to retake possession of our taxation rights which are at the very basis of our existence. Without our power to tax, our freedom of legislation would be a sheer illusion."

Another is from the recommendations of the Tremblay Commission on Constitutional Problems, the second of which states:

> "2. With regard to French-Canadian culture, the Province of Quebec assumes alone the responsibilities which the other provinces jointly assume with regard to Anglo-Canadian culture."[8]

A third is from an article by a member of the Bar of Quebec, M. Philippe Ferland, Q.C. published in *Thémis,* the law journal of the University of Montréal.[9] Writing of the meeting of Prime Minister St. Laurent and Premier Duplessis in "neutral" Montreal on October 5, 1954, to discuss a new taxation agreement, M. Ferland said:

> "Nous sommes ramenés au point de départ, à l'origine de la Confédération. Deux parties sont en présence: l'Etat canadien-français et l'Etat canadien.
> Pour la première fois depuis 1867, ces deux Etats se rencontrent seul à seul. Le dialogue doit s'engager entre les deux seules parties qui n'ont ni négocier ni signer: Québec et Ottawa. La discussion doit s'engager entre les véritables délégués qui se font face: l'Etat fédéral, représentant de l'union législative, l'Etat provincial du Québec, représentant le peuple qui veut refaire ses chances de survie, celui des Canadiens-français. Deux Etats, deux conceptions, deux peuples."

What would surprise the Canadian from Nova Scotia or Alberta who might read this last statement (assuming he understood French), is the notion that Ottawa speaks for all the other "English" provinces as well as for itself, and that because the population of Quebec is predominantly French and Catholic, all provinces except Quebec disappear leaving only two "states" on the Canadian scene. Yet this has become a deeply felt reality in Quebec, where the idea that federalism in Canada exists solely to guarantee the survival of French culture, and that without it Canada would be a unitary state, finds ready acceptance. The regional loyalty of the Maritimes, for example, or the separatism inherent in geography, which imposed federalism on Canada quite regardless of Quebec feeling, are factors to which no attention is paid.

The "dual state" theory is quite inconsistent with the compact theory, since the latter claims only that all provinces are equal sovereign entities whose rights cannot be changed without their consent, whereas the former denies the existence or importance of all provinces save Quebec. The attractiveness of the theory for Quebec lies in its attribution of equal status to the smaller of the two Canadian communities: it thus plays the same role as "Dominion status" within the Commonwealth and "sovereignty of states" within the international order. That it is revolutionary in its implications is obvious. It could not be worked out to its logical conclusions without totally destroying the present constitution of Canada. Already certain extremists in Quebec have no hesitation in dismissing all French-speaking federal Members of Parliament from Quebec (though duly elected) as *vendus,* as indeed by

[8]Summary of the Report, 1956, p. 18.

[9]No. 14 Dec. 1954, p. 105 at p. 109.

definition they must be for associating with "the other side". Even though *Le Devoir,* traditional defender of Quebec nationalism, may protest at the injustice to Quebec of having too few French Canadians in the federal civil service, any Quebecer who takes an Ottawa post is likely to suffer the accusation of having lost his essential French character.

Unless Quebec is to become an independent state outside Confederation, which virtually no one in Quebec seems to desire, the limitation of legislative and executive powers imposed by the present constitution on the Quebec government would seem to make it wholly inadequate as the *exclusive* defender of French culture, even if all French minorities in other provinces are disregarded. The elevation of this government as the sole champion of the race has therefore grave dangers for that race: it might have the unexpected effect of imprisoning the vital energies of the French-Canadian people. A "state" such as a Canadian province, deprived by the constitution of control of money and banking, foreign and inter-provincial trade, transportation and tele-communications (including radio and television), the armed forces and the criminal law, whose taxing powers are limited and whose laws can be vetoed, is not in a position to control all the important areas in which a culture flourishes, still less to provide a secure economic base for that culture. Besides these legislative limitations, the constitution gives to the government at Ottawa the appointment of all the Senators from Quebec, all the Superior Court and Court of Appeal judges in Quebec, and the Lieutenant-Governor of Quebec, while the Parliament of Canada can declare any public work in Quebec to be for the "general advantage of Canada" and thus gain control over it.

These provisions were not aimed at Quebec, but apply to all provinces equally; they are part of the traditional fabric of Canadian federalism. The Fathers of Confederation, witnessing the American civil war, drew therefore the lesson that an exaggerated provincial autonomy could spell disaster, and took steps to avoid any such danger in the Canadian constitution. There is little in Canadian history to suggest that they were mistaken in this view. The Quebec nationalist is far from being alone in his dislike of federal authority. Before Confederation was a year old, Nova Scotia (not Quebec) was endeavouring to secede entirely; secessionist movements were developing on the prairies during the 1930's; the Social Credit Party's attempts to secure financial autonomy for Alberta under Premier Aberhart fully match the similar efforts of Mr. Duplessis in Quebec. The Canadian nation, in demographic shape still a long ribbon of population broken at several points, has difficulty holding itself together against strong centrifugal forces at all times. This is the reason why Canadian federalism contains the unitary features, already referred to, which mark it off from other systems, more typically federal.

Behind the rather outspoken claims of supporters of the compact and racial theories of Confederation lies a natural desire for survival and expansion that is constantly seeking new symbols to express its aspirations. The French Canadian is at home in Quebec. So is the English Canadian in the province, though some other minorities are perhaps not so secure. The French Canadian wants to feel as much at home when he lives in Ontario; that is, he wants his own language, his own school, his church and parish, and his French Canadian way of life. To some extent he has achieved this in districts adjacent to Quebec. But his minorities farther from the homeland have not achieved it, and the English-speaking inhabitants of other provinces are surprised, if not startled, to discover that they are expected to adapt their local laws (e.g. as to separate schools) so as to make possible the steady development of a French-speaking cultural minority as an island colony in the midst of their already heterogeneous populations. Meeting this resistance, the French minorites look to Quebec for help, which in turn reacts with stronger claims. The fact that an exaggerated provincial autonomy may actually weaken the outside minorities by subjecting them still further to local majorities and depriving them of the protection of Ottawa does not deter the nationalists in Quebec. An "autonomous" Quebec is a fortress in a dangerous land, without which the struggle for survival seems hopeless. Thus a strong Quebec government seems necessary to pry loose more freedom for its minorities outside as well as within, using at the same time provincial autonomy, influence at Ottawa, and pressures of every kind to achieve the single purpose. The conflicting interpretations of the constitution as between statute and compact, or as racial treaty, are phases of this wider engagement. For this reason legal argument is of little avail in changing opinions, and proofs that the B.N.A. Act is or is not founded on a compact or treaty do not go to the real issue, which is one of power rather than of law.

NEW FUNCTIONS OF GOVERNMENT

While debates about the nature of the Canadian constitution continue, new functions of government arise to alter the basic foundations of federal-provincial relations. These new functions create new conflicts of opinion. The provision of social services, and the maintenance of economic equilibrium, make demands upon Canadian governments which the original constitution was ill-equipped to fulfill. Economic equilibrium and high employment are inevitably federal responsibilities, for no province has sufficient control over taxation or finance to be capable of maintaining them. The Social Credit government's record in Alberta between 1935-1940 exposed this provincial weakness, both in fact and in law. Social legislation, about which Quebec is deeply concerned, is more easily conceived of in provincial terms in so far as administration goes, and even the financing of minor services can be borne by provinces, but the larger social insurances affecting unemployment, health and old age are too costly for most provincial budgets without federal part-

icipation. Already unemployment insurance and old age pensions have been attributed to Ottawa by constitutional amendment. Other provincial services are developing so fast that they too are demanding federal aid. University education is a case in point. National economic policies and social service demands tend toward centralization, no matter what interpretations the courts place upon the constitution or what arguments are brought forward for provincial autonomy. Hence Quebec's fears for the future of her distinctive way of life are increased, and the conflicts of opinion which are always present in the federal system are exacerbated.

The most powerful centripetal forces are created by the fundamental dynamic in Canadian society — industrialisation. This is the real enemy to provincial autonomy as conceived in racial or any other terms, and the most serious challenge which French Canada must face — more dangerous than the English majority in Canada, also carried along by the forces of change, or than "Ottawa" or any other external symbolisation of the "threat to Quebec". Industrialisation and technical change are sweeping Quebec as never before in her history, for the rugged Laurentian country which for so long maintained the near-subsistence agriculture on which Old France could survive in North America, is now found to be rich with minerals and resources which an expanding economy requires for its voracious mills and factories. The remotest regions of the province are being brought under exploration and development. Great amounts of capital are needed that few French Canadians can provide, and the large private corporations which, in a capitalist society, are the chief instruments used in development, relentlessly transform the ancient pattern of Quebec life, introduce new centres of authority, and tie the province to world markets. The movement from farm to factory is accentuated, despite Quebec's belief in "colonisation" of marginal lands; immigrant labour can for the first time be absorbed in French communities; international trade unions reach out to protect workers who feel themselves to be unsympathetically treated even by their own government. Even the Catholic trade unions, originally designed to protect Quebec, have affiliated with the single Canadian Labour Congress. The cultural curtain which history and institutional policy have placed around Quebec is brushed aside at every point.

It is ironic that the man who most invokes the political appeal of provincial autonomy, Premier Maurice Duplessis, is the one who has most encouraged the very process which is undermining his own philosophy. Being conservative in background and political outlook, he promotes private enterprise in its purest forms, so that while it is true, as *Le Devoir* said,[10] that "the only government over which the people of Quebec exercise absolute control is the Quebec Government", the Quebec population has very little control over the policies of the financiers and entrepreneurs who are shaping the future relationships of Quebec to Canada and to the outside world. Corporate under-

[10]Quoted and translated in Montreal *Gazette*, 31 March 1955.

takings of the modern type are themselves a form of government, and to use the words of an American constitutional authority, "corporations, in the process of conducting their operations in a number of states, render control by any state extremely difficult, leaving the federal government the only potentially effective master".[11] Even Ottawa seems powerless in face of the general trend. The forces threatening Quebec are international in scope, and battles over provincial status seem peculiarly beside the point.

It is not only economic forces, however, which play this formative role in the federal system. Canada's international obligations, and her essential part in the defence system of the western world, also change the basis of federalism. During World War II, Canada became virtually a unitary state. Emergency conditions necessitated a high degree of centralisation. That this did not permanently destroy the autonomy of provinces is evidenced by their present strength. But some after-effects of war show no signs of disappearing. One is the continuing need to spend large sums on defence, which necessitates a high level of federal taxation. Both in law and in policy defence demands have priority over provincial claims. Money for this programme must be obtained from taxation spread over the whole country, including Quebec. In addition, Canadian industry must be available as needed for defence supplies; this has necessitated federal legislation under which very stringent controls can be imposed by Ottawa upon sources of production. Each individual industry in a province forms part of the national defence potential. No industry falls exclusively within the jurisdiction of the province in which it is situated, though "property and civil rights" are provincial matters under the constitution. Given nothing worse than a cold war, the defence power leaves room for provincial freedom, but no concession can be made to provincial governments which threaten defence planning for the security of Canada and her western allies. The conflicts that occur in the field of public law in Canada, and the constant attempt to find new solutions to the financial problems facing provincial governments, are carried on under the overriding necessity of facing the realities of the international situation.

FISCAL POLICY AND PROVINCIAL AUTONOMY

It may be admitted that provincial autonomy must have a sound financial base or it is an empty formula. In insisting on this point, Quebec voices a widespread belief. With federal taxes geared to the double requirement of equilibrium economics and defence spending, the field of taxation is so largely occupied by the federal government that provincial legislatures are hard pressed to find the additional funds needed for their expanding social services. Under the constitution they are denied the right to levy any but direct taxes. All provinces other than Quebec — and, for a time, Ontario — accepted Ottawa's solution to this problem up to 1957, in the form of five-year tax

[11]Swisher, *The Growth of Constitutional Power in the United States*, p. 208.

rental agreements by which, in return for their withdrawal from the income and corporation tax fields, they received additional grants from the federal treasury on formulae equally available to all. Quebec refused to enter these arrangements after 1945, though she was a party to the War-Time Tax Agreements, 1941-45. Mr. Duplessis has consistently interpreted his refusal as a defence of the fundamental rights of Quebec, and Ottawa's taxation policies as an attack upon those rights. The following extracts from a speech he delivered at Rouyn, P.Q., on August 21, 1955,[12] state his position clearly enough:

> The Premier said the efforts of the Government were limited by the amount of taxes collected . . . "To do what is required to meet the growing needs of our province and our people, additional funds will be required . . ."
> "As far as I am concerned," the Premier asserted, "I don't know how many more years Providence will allow me to continue as the head of the Government. I know it would be simple for me to take the easy way out and sell the rights of Quebec for a few million dollars. It would be easy but it would not be honourable.
> I have said before and I say it again," declared the Premier, "that I will never betray the province of Quebec whether the price is a few pieces of silver or millions of dollars . . ."
> "We must have additional funds to provide our schools with the educational facilities to which they are entitled; we must have financial independence to build our own hospitals and to provide the people of this province with the social services which they have come to expect from their government."

Stated in these general terms, these propositions have evoked almost universal support in Quebec and a good deal outside. The problem is to know whether in fact the rejected taxation agreements, or others which may replace them, are the real danger to autonomy which they are painted to be. Sharp conflicts of opinion between Quebec and the rest of Canada have arisen on this point. Other provinces find it difficult to believe that a French-Canadian Prime Minister of Canada, or the Quebec members of the Senate and House of Commons, would have approved the tax arrangements had they contained a betrayal of Quebec's rights. The general view outside Quebec seems to be that some such form of financial co-operation between all Canadian governments is essential for the economic well-being of the whole country, and that any province attempting to "go it alone" will not only injure its own people but others as well. The smaller and poorer provinces in particular want a federal policy which redistributes national income through federal support of social insurances and direct subsidies to provincial governments. The opposition of so powerful a province as Quebec could mean the collapse of national plans and a general free-for-all in which existing inequalities between regions and classes would be greatly accentuated.

From the Quebec point of view, however, the problem is not at bottom economic. Or rather, its economic aspects are not as important as its cultural implications. To be subsidised is to be in some degree dependent. The donor is psychologically and politically stronger than the recipient of the gift; hence if Quebec accepts money from Ottawa, the dual-state theory of

[12]As reported in Montreal *Gazette*, 23 August, 1955.

Canadian government is difficult to maintain. In receiving subsidies the people of Quebec learn to look outside their borders for assistance; their local loyalty is weakened; they become less defensive of their special position. If it is pointed out that subsidies have always existed in the constitution, and that they were an integral part of the agreement of 1867, obviously not destructive of provincial autonomy, the reply is that the original provinces were weak and undeveloped, not obliged to assume the wide functions of their present government, and not faced with the challenge to autonomy which now threatens them. The very strength of the present centripetal forces justifies further measures for safeguarding local self-government. Even though some 'efficiency", from the purely economic point of view, be lost, the value of autonomy, particularly for Quebec, far outweighs this cost.[13]

Even deeper motives can be sensed in Quebec's hesitancy to commit herself to certain forms of tax centralisation. Long range fears, as much as present dangers, compel caution. A particular scheme, such as the Tax Rental Agreements, on its surface may appear fair and reasonable. It avoids dual taxation, supports national fiscal policy, and effects a redistribution of wealth toward the poorer provinces. What can be said against it? The answer often given in Quebec is that it is the beginning of a road, the end of which no one can foresee. Today there may be nothing but benefit in the scheme, tomorrow the strength of Quebec may be undermined beyond repair. Such is the line of thought which has produced a refusal to co-operate in national fiscal plans even when this refusal has cost Quebec millions of dollars of revenue. And since fiscal needs constantly increase, the government of Quebec chooses to impose dual income taxation and to demand that the federal government withdraw from direct taxation fields which the province wishes to enter. Unless Ottawa moves out there is little room for Quebec to move in, since under the law a province has no priority in the exercise of the direct taxation to which it is restricted.[14] But if the federal government is obliged to withdraw from a given field of taxation at provincial request, then not only does national fiscal policy go by the board but a doctrine of nullification or veto by provinces over Parliament becomes part of Canadian constitutional practice, regardless of what the law may be. It was on this point that Mr. St. Laurent stood firm when Mr. Duplessis first imposed his provincial income tax in 1954, and on which the Quebec government eventually gave way by removing the claim to priority from the statute.[15]

In every federal state the division of taxing powers and public revenues presents grave difficulties. In the United States, Australia and Switzerland,

[13]This danger is not felt exclusively in Quebec: see e.g. Augus, H. F., "Two Restrictions on Provincial Autonomy", Can. Journal of Economics and Political Science, Vol. 21, p. 445.

[14]See discussion in Scott, F. R., "The Constitutional Background of Taxation Agreements", 2 McGill Law Journal, p. 1.

[15]See amendment in 1955 Quebec Statutes c. 15.

as well as in Canada where they are part of the original law of the constitution, subsidies to the states and cantons have had to be instituted.[16] Yet these countries have remained federal in form, though the central authority has grown stronger. Quebec's claim for fiscal autonomy is by no means peculiar to herself; it is echoed by other Canadian provinces and in other federations. But in her case it takes on added strength and colour because it becomes part of the general defense of a minority culture.

EDUCATIONAL CONFLICTS

Some of the most acute conflicts in the field of public law have occurred over the educational provisions of the Canadian constitution. The story is a long one, reaching back to the vain attempts of the English not long after the cession to establish the Royal Institution for the Advancement of Learning as a general educational system for the province. Against this unifying tendency Quebec stood firm, claiming the right to separate French parochial schools. In the course of the constitutional evolution since those days Canada has achieved a peculiar school system which varies from province to province and which ranges in theory from the complete separation of Protestant and Catholic schools, as in Quebec, to the notion of the single, undenominational state-supported public school, as in British Columbia. In between are several variations on these two themes, with varying types of separate schools in Ontario, Saskatchewan, Alberta and the Northwest Territories. Newfoundland has added a new note with four kinds of religious schools receiving state support: Catholic, Anglican, United Church and Salvation Army. Needless to say, the Canadian constitution does not contain a fundamental rule barring "an establishment of religion", as in the opening clause of the First Amendment to the United States constitution.

The conflicts that arise in this area are numerous and stem from different motives. They are by no means exclusively disagreements between French-Catholics and English-Protestants. Sometimes English-speaking Catholics are ranged against French-speaking co-religionists, as in the lawsuit which tested the validity of Ontario's attempt to restrict the use of French as the language of instruction.[17] Sometimes two different churches are allied in their opposition to a school law, as in the attack upon the Manitoba School Act of 1890 when Anglicans and Catholics joined forces.[18] The Jewish communities in Quebec have difficulty in fitting themselves into a system divided into two Christian groups, and some Doukhobors refuse to send their children to any school, resulting (in British Columbia) in the forceful separation of children from parents. Ontario law still has provision for separate schools for "coloured

[16]Wheare, *Federal Government*, 3rd. ed. pp. 115.6.

[17]*Ottawa Separate Schools* v. *Mackell*, [1917] A.C. 62.

[18]*Winnipeg* v. *Barret, Winnipeg* v. *Logan:* [1892] A.C. 445.

people", though the last of such schools ceased to exist in 1891.[19] The heterogeneity of the Canadian population, which steadily increases as new immigrants arrive, produces many claims on provincial governments for educational privileges.

From the point of view of Quebec, however, there is one claim which has priority over all others, and that is the right of the French-Canadian minority in all other provinces to possess as favourable a system of separate schools as exists for both Catholics and Protestants in Quebec. Spokesmen for Quebec take justifiable pride in pointing out the favourable situation of the Protestant minority in the province, and claim that no other provincial government treats the minority so well. They contend that the principle of separate schools, written into Section 93 of the constitution, while not universally extended in the early days to all Canada, should be admitted in every province as the French-speaking population grows. They have been bitterly disappointed in certain leading court decisions which have denied their claims, notably with regard to separate schools in New Brunswick and Manitoba, to the use of the French language in Ontario, and to the distribution of school funds in Ontario. They feel aggrieved that British Columbia does not accept their views. Gérard Filion, Editor of *Le Devoir,* lists the inequalities in the school system as one of the great causes of friction between the two races, and he adds somewhat optimistically:[20]

> "On the day when every French-Canadian, wherever he may be in the country, enjoys the same advantages and the same privileges as his English-speaking compatriot, the last obstacle to the unity of the country will have disappeared."

The opponents of this view employ much the same argument as can be heard in the United States against the claims of parochial schools to a share of tax revenues, though in Canada there is no constitutional barrier to such payments. The need to develop a common sense of citizenship, and to overcome the racial and religious hatreds that too often follow segragation, exists in Canada as well as in the United States. Groups that feel unable to use state schools on conscientious grounds are at liberty to set up and pay for private schools. A belief in the advisability of the complete separation of church and state is firmly held in many parts of Canada, though not written into the fundamental law. The conflict of ideas here is one of principle, not easy to resolve since there is no common point of departure. In the result, Canada remains partly committed to separate schools, and partly not.

The differences of view over schools reach out to other fields of education. Universities in Canada have traditionally been established or regulated by provincial legislation. Some have, like McGill, a Royal Charter antedating Confederation; others, like the University of Montreal, have both a civil and a pontifical charter. All are having difficulty in securing the necessary finances. In 1951 the federal government, which had long been making special

[19]Information supplied by the Ontario Dept. of Education.

[20]In *Saturday Night,* Nov. 24, 1954.

grants for particular forms of university research, adopted a recommendation of the Massey Commission and embarked upon a scheme of subsidisation for all universities based on a formula equally applied in all the provinces. In Quebec, a special committee appointed by the Quebec government supervised the distribution of the funds. All Quebec universities at first accepted the plan, but after one year the Quebec government refused to participate further and declared that Ottawa's subsidies were an invasion of the province's exclusive jurisdiction over education. As no other province took this view, the result has been that all universities save those in Quebec have continued to receive federal funds. Meanwhile the Quebec government has instituted payments on a year to year basis to replace those lost by its own institutions. This additional drain on its resources is urged as a further argument for exclusive use of the direct tax fields allotted to it under the constitution.

The same dispute goes beyond school and university into the realm of culture generally. Is "culture" a provincial matter? The very idea seems to denude the word of any meaningful content, yet many defenders of provincial autonomy claim that it is included by analogy in the term "education", over which provinces have the main jurisdiction. It would follow that Ottawa should not assist at all in the development of the arts and sciences, or in adult education. Yet radio and television broadcasting have been ascribed to federal jurisdiction by legal interpretation of the constitution, the federal responsibility for the whole Northwest Territories and for Canada's 160,000 Indians as well as its need for trained personnel in every branch of government, as patent facts. Legally there is no invasion of any legislative field in a province if the federal Crown, legal proprietor of public funds, offers a subsidy to any institution or group engaged in educational or cultural work, since the making of gifts is not the same as enacting laws.[21] Moreover, as the Massey Report said:

> "If the Federal Government is to renounce its right to associate itself with other social groups, public and private, in the general education of Canadian citizens, it denies its intellectual and moral purpose, the complete conception of the common good is lost, and Canada, as such, becomes a materialistic society."

Despite these facts and this argument, opposition from Quebec is credited with the prevention of the establishment of the Canada Council, as recommended by the Massey Report, thus leaving Canada without any Arts Council or any National Commission for UNESCO.[22] Meanwhile Canadian artists and writers must rely on the generous assistance of American Foundations and such help as may come from provincial institutions (among which the Quebec government is most generous) supplemented by federal aid in the form of radio and television contracts or fellowships paid out of blocked European currencies. This *Kulturkampf* has its casualties in fewer creative artists and lost cultural opportunities.

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[21] Cf. note (14) above.

[22] On November 12, 1956, Mr. St. Laurent announced that his government intended to establish the Council.

LANGUAGE DISPUTES

The law of the Canadian constitution recognizes English and French as the two official languages of the country, within certain limits. They are on an equal footing as regards their use in the Parliament of Canada, in federal statutes, and in federal courts. Since these statutes and courts may operate anywhere in the country, every province is in this sense bilingual. But in provincial legislatures, statutes and courts outside Quebec, English is the sole official language. This results from the wording of section 133 of the *B.N.A. Act*, reading as follows:

> "133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both these Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.
> The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages."

Thus the simple description of Canada as a "bilingual country" is misleading, unless understood in the special Canadian sense.

The incompleteness in Canadian bilingualism is a source of irritation in Quebec, just as any extension of French annoys certain elements in English-speaking provinces. Attacks upon the whole notion of bilingualism have come from several parts of the country. Instead of seeing in these two languages, which happen today to be the two working languages of the United Nations, a source of cultural richness, bilingualism is frequently felt to be a handicap to be overcome. Thus in 1890 Manitoba repealed that section of its original constitution which had made French an official language for the province. In 1877 Ottawa introduced French into the Northwest Territories, but in 1891 permitted the Legislative Assembly of the Territories to decide the question itself, and in 1892 it abolished the use of French for debates — a further example of how local autonomy may be used to restrict minority rights.[23] Ontario's decision in 1912 to limit the use of French as a language of instruction in her schools raised a storm of protest, not alleviated by Court rulings that the law was constitutional. In 1937, Mr. Duplessis put through an amendment to make the French text of the Civil Code and statutes of Quebec prevail over the English in case of conflict, but as this was clearly contrary to section 133 of the *B.N.A. Act* he was induced to repeal the law, so that the two languages remain on an equal footing in Quebec.

French has thus lost some of the status it once held in the law of western Canada. On the other hand the federal control over broadcasting has brought French programmes into areas which, had radio been a provincial matter, would not have permitted it. Strong pressure from Quebec, and a somewhat more rational attitude toward bilingualism, have resulted in the establish-

[23]French continues, however, as an official language in the Courts of the Territories.

ment by the Canadian Broadcasting Corporation of French-language stations on the prairies. A French network has been set up, bringing programmes to French minorities far from their homeland. Radio and television are important influences in the extension of the French language in Canada and of English in Quebec. Since, however, the French are concentrated in the Quebec region and represent less than 30% of the total Canadian population, a widespread familiarity with the second official language is hardly to be anticipated, however desirable it may be.

CIVIL LIBERTIES

The Canadian constitution does not contain a Bill of Rights such as is found in the American and other written constitutions. Some constitutional guarantees, such as those for separate schools, the two languages, and annual sessions of Parliament, are in the text of the *B.N.A. Act,* but freedom of religion, speech, press and assembly are not mentioned in the written law. As in England, they remain sacred by tradition but at the mercy of legislation. The only question for Canada is which legislature has jurisdiction — federal or provincial; the rights themselves are seemingly not beyond parliamentary modification.

Perhaps nowhere in the public law of Canada is the difference of outlook between French and English more marked than in respect to civil liberties. The order of values is not the same in the two peoples; the tradition and situation of Quebec make its people emphasize their own minority rights at all times, while in other provinces the stress is much more on individual rights. The "village Hampden" that Wolfe was reputedly hearing about as he was rowed under the cliffs of Quebec in September 1759 was unknown to New France, where representative institutions, even on the municipal level, had never existed. The Declaration of the Rights of Man, France's great contribution to modern liberal thought, came after the cession, and was then so associated with anti-clericalism as to render it ever afterwards suspect by the Catholic Church in Canada .On the other hand, English public law had not worked out any theory of minority rights guaranteed by law.

The British conquest was the first revolutionary experience French Canada had ever had, and though the new sovereign soon introduced an elected legislative assembly, and replaced the *lettre de cachet* by Habeas Corpus, the cession created racial tensions not favourable to the growth of an indigenous sense of personal freedom. Individual liberties thenceforth had an English face, and the democracy thus begun was discovered by the French to possess unexpected limitations when it seemed likely to transfer power to their hands. Lower Canada's fight for responsible government, as Durham rightly perceived, was a struggle not of principles but of races, though democratic slogans were used. The prime purpose was to assert minority rights against the English, rather than, as in Upper Canada, to secure personal freedom from arbitrary power of any kind. Since those days the concept of the "état

de siège" has persisted in Quebec and in French minorities in other provinces, making them subordinate individual liberty to the common racial goal, and to ostracise those of their own group who deviate from the official line of action.

In the matter of religious toleration, similar differences of outlook appear. No Protestant was ever allowed into New France after 1627; Protestantism was the religion of the conquerors which the French were forced to tolerate. The British, intolerant of Catholicism at home, were obliged to give legal status to Catholics in Quebec by the sheer necessities of Canadian life as well as by the need for allies against the growing threat of revolt in America. Toleration in these circumstances did not carry much conviction. The strong Catholic tradition in Quebec has remained ultramontane rather than Gallican, and authoritarian rather than liberal. Quebec has seen in parliamentary institutions a valuable instrument for asserting cultural differences, while the English accepted toleration and minority rights in inverse proportion to their distance from Quebec.

These various strands have shaped and are still shaping the evolution of the laws relating to civil liberties. Examples can be found on both sides of a disregard for the types of fundamental rights proclaimed in the Universal Declaration of Human Rights of the United Nations. Only since World War II, for instance, have the federal election laws removed several forms of racial discrimination, and Ottawa's attempt to deport some 4,000 Canadian Japanese in 1945-46 will stand as a solemn reminder that racial prejudice can spring up anywhere in Canada. Quebec did not grant votes to women until 1941, and her Civil Code still subjects married women to serious incapacities. But while Ottawa and various provincial governments were removing discrimination from their laws, Quebec has been moving in the opposite direction. Recently, certain Quebec statutes have curtailed the traditional freedom of religion, of speech and of the press in a manner which has marked off its legislation sharply from that of other provinces, and has created conflicts both in public opinion and in the courts.

These statutes were all introduced by Premier Duplessis and backed by his Union Nationale Party. The most notorious of them, adopted in 1937, and popularly known as the *Padlock Act,* makes it an offence to propagate "communism or bolshevism" by any means in a "house" in the province, or to publish or distribute any literature propagating or even "tending to propagate" these undefined doctrines. Any house may be padlocked, and the occupant evicted, by the Attorney-General "on satisfactory proof" that the Act is being violated, without any notice or trial in a court of law; to remove the padlock the owner must institute an action in court and prove either that the house was not in fact being so used or that he was ignorant of it. Thus there is punishment without trial, and the burden of proof is cast upon persons presumably innocent. Since the federal government refused to dis-

allow the Act, it remained in force and has been applied on numerous occasions to activities of suspected communist groups. Its constitutionality was upheld by Quebec courts, but a final appeal to the Supreme Court of Canada is pending. While Canadian opinion, both in Quebec and outside, is overwhelmingly opposed to the spread of communism, this type of legislation is in direct conflict with traditional freedom concepts and nothing similar to it has existed in Canadian law in peacetime.

Other examples may be given of recent Quebec legislation restricting ancient civil liberties. A provincial statute enacted in 1947 enables municipalities to prohibit the distribution on their streets of any literature or pamphlets without the permission of a municipal chief of police. Thus a local policeman becomes a press censor. Many municipalities have adopted such by-laws, and even federal candidates at federal elections have found themselves obliged to submit their election literature to police approval.[24] The prohibition appears to be aimed at the activities of Jehovah's Witnesses and communists; like all such laws, in striking at minorites, it deprives everyone of rights. In 1950 the Quebec legislature adopted the *Act Respecting Publications and Public Morals*, by which the Board of Cinema Censors may issue a censure order against magazines and certain other publications which are found to contain "immoral illustrations", whereupon all copies may be seized by the police with or without warrant. Another Quebec statute enabled municipalities to close commercial establishments on certain Catholic feast days, whether or not they were owned by Catholics. Montreal's attempt to apply the law was, however, held unconstitutional by the Supreme Court of Canada, overruling the Quebec Court of Appeal, and the statute itself was held to be criminal law, a subject outside provincial powers under the *B.N.A. Act*.[25] Still other Quebec statutes have seriously restricted the rights of trade unions. One bars all strikes and lock-outs, and imposes compulsory arbitration, in all "public services" in the province, including municipal and school corporations, public transportation systems and public utilities. No other province in Canada feels such drastic curbs to be necessary. Another Quebec law requires that the certificate of recognition of all trade unions must be refused or revoked if they tolerate so much as one organizer or officer adhering "to a communist party or movement", thus limiting the unions' freedom to choose its own leaders. And in 1954, the Freedom of Worship Act, dating from before Confederation, was amended so as to narrow considerably the toleration hitherto allowed.[26]

While these Quebec laws are in conflict with traditional freedoms in Canada, provisions not so dissimilar have been found in other parts of the

[24]See Scott, F. R., Correspondence, 31 Can. Bar Review (1953) p. 591; also *Dame Dionne* v. *The Municipal Court* [1956] S.C. 289.

[25]See *Birks & Sons* v. *City of Montreal*, [1955] S.C.R. 799.

[26]Statutes of Quebec, 1953-54, cap. 15. The amendment forbids "abusive or insulting attacks against the practice of a religious profession".

country at various times. Certainly the Quebec community is not alone in reacting against communists, Jehovah's Witnesses and trade unions. British Columbia prevented a qualified student from practicing law because he was a communist;[27] the Labour Relations Board of Nova Scotia refused to certify a union whose secretary-treasurer was a communist;[28] Prince Edward Island in 1948 adopted a law amounting almost to total prohibition of trade unions;[29] Alberta has passed a statute limiting the right of Hutterites colonies to purchase land.[30] The Quebec laws, particularly the *Padlock Act,* are severe, but may well represent a temporary reaction to a new situation. There are some signs that within Quebec society itself, particularly among trade unionists, there is a growing awareness of the need for protecting individual rights against Quebec authorities. Industrial disputes place the French-Canadian worker in opposition to French-Canadian employers and provincial police. Racial categories break down before economic facts. Catholic teachers once went on strike in Montreal against the Catholic School Commission, and their union fought valiantly, though unsuccessfully, for its rights to collective bargaining.[31]

Surveying the recent battles over civil liberties which have for the first time been presented to the Quebec courts, it seems fair to say that the judges in Quebec are far more inclined than are the common law judges to uphold the authority of the state as against the individual, though generalisations here must be used with caution. In five recent leading cases, dealing with the definition of sedition,[32] with arbitrary de-certification of a trade union,[33] with the control of pamphlet distribution by cities,[34] with liability of police officers for unlawfully disturbing a meeting of Jehovah's Witnesses,[35] and with compulsory observance of Catholic feast days,[36] the Supreme Court of Canada took a more liberal view of private rights than did the Quebec Court of Appeal, which was overruled every time. Two further cases, involving the

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[27]Meredith, E., "Communism and the B.C. Bar," 1950 28 Can. Bar Review 893.

[28]*Smith & Rhuland Ltd.* v. *The Queen* [1953] 2 S.C.R. 95; 1954 Can. Bar Review, pp. 85, 353.

[29]Forsey, E. A., "The P.E.I. Trade Union Act", 1948 Can. Bar Review 1159.

[30]See *Communal Property Act,* 1947 Alberta Statutes Cap. 16.

[31]The Union, having been illegally decertified by the Quebec Labour Relations Board, won back in the Supreme Court of Canada (overruling the Quebec Court of Appeal) its right to recognition as the bargaining unit, only to have the right taken away by retroactive legislation put through the Quebec Legislature. See *Alliance des Professeurs Catholiques* v. *Labour Relations Board* [1953] 2 S.C.R. 140: 2-3 Eliz. 11, Cap. 11 (Quebec).

[32]The *Boucher* case: [1951] S.C.R. 265; 1951 Can. Bar Review p. 193.

[33]The *Alliance* case: [1953] 2 S.C.R. 140; 1953 Can. Bar Review p. 821.

[34]The *Saumur* case: [1953] 2 S.C.R. 299.

[35]The *Chaput* case: [1955] S.C.R. 834.

[36]The *Birks* case: supra note (25).

validity of the *Padlock Act*[37] and the legality of the cancellation of a liquor license held by Witnesses of Jehovah[38] seems to show the same support of authority by Quebec judges. It is only to be expected that Quebec Courts, like any others, will reflect in large part the prevailing attitudes of the community from which they are drawn, and that community is still highly authoritarian.

CONCLUSION

It is necessary to repeat again what was said earlier about the relationship between areas of conflict and areas of co-operation. Conflict in any acute sense between Quebec and the rest of Canada is the exception, not the rule, but it is often vivid and sometimes profound, and its existence throws light upon the root differences in the two cultures. Within the legal order, cultural conflicts present no different problem from class conflicts or international conflicts; they are one among the many types which it is the purpose of the law to resolve by peaceful means with the minimum of effort. If contained within the bounds of constitutionalism, they are a creative force moulding the law and adapting it to the satisfaction of larger numbers of people. Canadian public law, with its mixture of English and Canadian rules, has shown itself to be sufficiently humane in principle and adaptable in practice to suit the needs of most Canadians, as is evidenced by the small number of substantive changes made in the Constitution since 1867. That the French minorities however, still feel dissatisfied on certain issues has already been indicated, and conflicts of opinion about the nature of Canadian federalism are as acute today at they have ever been.

What immediately lies ahead of Canadians is the problem of completing the "nationalisation" of the constitution. The *B.N.A. Act* remains a British statute; its very name belongs to an age that is past. Fundamental changes in its provisions cannot be made wholly within Canada, for the quaint procedure known as the "Joint Address" of the Senate and House of Commons to the United Kingdom Parliament for proposed amendments has survived Canada's achievement of nationhood. Until a new procedure is agreed upon for these amendments, capable of being carried out inside the country, legal sovereignty cannot be finally transferred from England to Canada. The Constitutional Conference of 1950 failed to achieve this solution because Quebec insisted on the right of veto on every amendment affecting "property and civil rights", though the other provinces were quite willing to entrench the minority rights clauses.[39] Hence the English-French complex is respons-

[37]The *Switzman* case: Padlock Act upheld by Quebec Court of Appeal, [1954] Q.B. 421. Appeal pending in Supreme Court.

[38]The *Roncarelli* case: cancellation upheld by Quebec Court of Appeal, [1956] Q. B. 447. Appeal pending in Supreme Court.

[39]See the two volumes of *Proceedings of the Constitutional Conference of Federal and Provincial Governments,* Ottawa, 1950.

ible for the continuing element of colonialism in Canada's relations with Great Britain. The fear of Ottawa is seemingly greater in Quebec than the fear of London, though since London by constitutional convention must always act at Ottawa's request, the retention of the sovereignty of Westminster does not remove the danger of overriding by the majority.[40] By tacit agreement the political parties now leave in abeyance a question fraught with such danger of race conflict. Perhaps the drafting of a Canadian Bill of Rights, placing fundamental freedoms as well as minority rights beyond the risk of diminution without the unanimous consent of all provinces, might provide a basis on which a reasonably flexible amending process for other parts of the constitution might be established, and the legislative independence of the country finally secured.

[40]Despite the contrary argument in Gérin-Lajoie, *Constitutional Amendment in Canada,* same author, "Du pouvoir d'amendement constitutionnel," 29 Can. Bar Review, 1136 at p. 1149.