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“OF THINGS TO COME”

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Post-war World*

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The Constitutional Barrier

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The Constitutional Barrier

In all our discussions so far about problems of health, education, housing, and so forth—there has been this one common element: we can see changes which might and should be made. But who is to do it? In most cases it appears that the provinces have the *legal right*, but the dominion government has the *financial power*. And so we seem to reach a stalemate.

Many people would say these present constitutional arrangements are a major barrier to social progress. Is this true? This is the subject of tonight's discussion.

We have found in our previous discussion that when we spoke of government in Canada, it wasn't always certain exactly what we meant. Did we mean the Dominion government in Ottawa or the nine provincial governments in their various provinces? We have seen for instance that the present Health Bill suggested a scheme administered by the provincial governments. The Federation of Agriculture, on the other hand, states it wants a health plan run by the Dominion government. The same difference of opinion is true of other matters as well. Provincial governments in the past have been solely responsible for education. We now hear certain voices claiming that the Dominion government must play its part in this sphere.

This problem is obviously important, for if we decide that action on these matters is necessary, we must decide which of our governments we want to act—the provincial ones each for its own province or the Dominion government for the whole of Canada. And once we have decided, in the various cases, whether we want the power to be in the hands of the Dominion or provincial governments, we must see if this is possible under our present constitutional arrangements. Often we may find that though it seems best for the Dominion government to carry out certain legislation, it has not the constitutional power to do so. In the midst of the depression, for instance, the Dominion government passed several measures such as minimum wage regulations, unemployment insurance, and marketing laws, that were intended to ease the economic situation. These were found to be outside the jurisdiction of the Dominion government, and so our Parliament at Ottawa was unable to act effectively to meet the widespread suffering of the depression. As one writer has put it:

"The losses in human and material resources during the depression were much greater than they would have been, if the machinery of government had been more modern and efficient." (R. M. Fowler)

Are we going to be faced with this same problem at the end of the war? Are we going to find that though we want certain things done, we are blocked because we haven't the right government machinery to carry them out? The question is then—Can we build a better Canada with our present division of powers between the Dominion and the provinces?

OUR FEDERAL SYSTEM

The reason why we in Canada face these particular problems about government machinery is that we have a federal system. The total powers of government are divided into two parts. Our Dominion government centred at Ottawa is in charge of those matters affecting all of Canada. The provincial governments look after the particular affairs of their own provinces. For instance, the Dominion government is in charge of national defence, a subject affecting the whole of Canada. The provinces are in charge of education, a matter where there are local differences. But how is this dominion-provincial division of responsibility arrived at? What is the dividing line between the two spheres?

Division of powers In 1867, the British North America Act under which Canada was unified into one country set up, in the form of law, what matters were provincial and which were for the Dominion to handle. Under this Act, the provinces were given control over all local matters, including education, poor relief, hospitals, natural resources and power to legislate on matters affecting "property and civil rights". All powers not given to the provinces were to be in the hands of the Dominion government. This general control was made clearer by specific mention of a number of spheres such as currency, banking, trade and commerce, transportation between the provinces, criminal law, tariffs, international relations, etc. Also, the Dominion government could disallow any provincial legislation.

Financial powers Governments have to have money to carry out their work, so the B.N.A. Act divided the power to tax between the Dominion and the provinces. Because the Dominion seemed to have the most to do, it was given the right to raise taxes of any kind. The duties of the provincial governments seemed not very great. So they were given only limited tax revenue and were provided with extra subsidies from the Dominion government.

The courts decide Any dispute arising as to whether some matter fell into the hands of the Dominion or provincial governments was to be decided by the Courts of law.

The final decision was in the hands of the Judicial Committee of the Privy Council in London. Thus in the 1930's when it was not certain which government had the right to legislate about the new invention, radio, the Privy Council decided it was a matter for the Dominion government.

WHY WE HAVE A FEDERAL SYSTEM

Before we proceed to discuss how our federal system has worked out in Canada, we must pause for a moment to discuss why we had such a system in Canada. People from other countries often ask why we have these two sets of governments, rather than one central body with power over everything, as is the case in Great Britain.

The Rowell-Sirois Commission on Dominion-Provincial relations described the reason for our system in these words:

"Federal Union was a plan whereby through initial concession, cultural and local loyalties could be preserved and reconciled with the political strength and solidarity of the whole."

It must always be remembered that we are a country of two main cultures, English-speaking and French-speaking. Our federal system of government was formed to give our French-speaking people a guarantee that their local affairs would not be interfered with by the majority of English-speaking Canadians. By their control over the province of Quebec the French-Canadians have been able to keep their own system of education, their own laws, their own religion. The second main reason for our federal system, is that we are a vast country. Many local problems in Nova Scotia are very different from those in Alberta or British Columbia. By our federal system we have guaranteed that these local problems can be met by the provincial government on the spot, rather than the Dominion government in Ottawa. If there was only one government, local differences would be hard to deal with.

The Rowell-Sirois Report has described a sane federal system, showing how a balance is set up between the Dominion and the various provinces.

"National unity and provincial autonomy must not be thought of as competitors for the citizen's allegiance, for they are but two facets of the same thing a federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout Canada."

The perfect balance is not too much power at the centre and not too little.

HOW OUR CONSTITUTION HAS DEVELOPED

Our federal system was created in 1867. It is now 1944. If we are to understand what our constitutional problem is today we must glance at the great changes in Canadian life which have affected our government in those 75 years. Any structure of government must always be made to fit changing times and the years 1867-1944 have been full of change for Canada. What has been the impact of these changes on our constitution?

The expanded role of government In 1867 Canada was a pioneering country. 80% of the population lived on the land and were to a great extent self-sufficient.

In such a country the role of government was not great. It acted as policeman and defended the country from attack. Today we are almost completely changed. Nearly 55% of our population live in cities. We have vast industrial wealth (we are the fourth largest producer of war materials among the United Nations). We are no longer a pioneering country, but an economically developed nation. With such a change has come, quite naturally, an equal change in the role of government. It is no longer merely a policeman. It enters into nearly every part of our economic order, directing and controlling our lives. To take one example, in 1867 all Canadian governments spent only 1 million dollars on social services—in 1937 they spent 250 million dollars. A former Prime Minister of Manitoba has said:—

"The extent of this vast load may be illustrated by the case of Manitoba. In the 55 years between 1881 and 1936 the general expenses of government increased no faster than the population, but the cost of education increased six times as fast and the cost of public welfare services including relief increased sixty times as fast as the population."

Large spheres of government, like unemployment insurance, marketing control, minimum wage laws, old age pensions, expanding educational schemes, which were hardly known when our constitution was framed, have come into existence to meet the needs of our changing world. These new areas of government had to be given either to the Dominion or provincial governments. The Privy Council has almost always decided that within the framework of our constitution they are provincial duties. But as has been mentioned before, the provinces have only small taxing power. It is the Dominion that has the money.

The result of all this has been as one writer puts it:

"In the result, the provinces found themselves with legal powers to provide these expensive social services, but without adequate revenue sources to do so. The Dominion, with much more extensive powers to raise money, was unable to spend it on social services. This difficulty, more than anything else, threw the Canadian federal system out of balance. The provinces scrambled for revenues and, in the process, distorted the Canadian tax structure. They collected revenues wherever and however they could be found without considering either the efficiency or the fairness of their taxes and without regard for possible damage to the prosperity of the country. The provinces, driven by the need to provide increasingly elaborate social services, also incurred heavy public debts, and interest charges began to take a higher and higher percentage of annual provincial revenues."

"The depression which began in 1929 was in large measure caused by uncontrollable external factors. But it fell with crushing force on a country that was already weakened by years of failure to recognize and cure the constitutional defects in its system. The losses in human and material resources during the depression were much greater than they would have been if the machinery of government had been more modern and efficient. Prosperity continued to hide elusively around the next corner for much longer than it would have done if we had not been shackled by an old-fashioned constitution." (R. M. Fowler)

Inequality between provinces The rising cost of government was not the only factor which made it difficult for the provinces to undertake these necessary new services. The other cause was the inequality in taxable wealth between the various provinces.

As the Rowell-Sirois Report puts it:

"It is a distinguishing feature of the Canadian economy which has particular significance for public finance that a very large proportion of the surplus and taxable income of the country is concentrated in a few special areas."

The result of the difference in taxable wealth among the various provinces, is that people in some parts of the country are receiving educational, health and other social services much inferior to those in other areas. As we have noted on a previous evening, one Canadian province spends \$31.70 per child on education. Another province spends \$83.38—two and a half times as much. In the last depression Saskatchewan, hit hardest by the slump and therefore most in need of social services to meet the suffering, was the least able to provide these services. It had the least taxable wealth.

The Rowell-Sirois Report states what it feels about this:

"Education is basic to the quality of Canadian citizens of the future and it is highly undesirable that marked disparities in the financial resources available for education should exist as between Canadian provinces. Social services like education cannot be subjected to marked disparities without serious reactions in the general welfare and national unity."

What has made this difference in wealth seem particularly unfair to sections of the country is that it has often been caused in part by policies undertaken by our Dominion government. For instance, our tariff policy made at Ottawa has, according to the leaders of the western provinces, acted in favor of Ontario and Quebec, so that a large part of western wealth has been channelled into eastern hands. As the former Prime Minister of Manitoba has said:

"The nature of the Canadian economy and the Canadian national policy is such that in this country great corporations draw wealth created in outlying Provinces into their head offices in Ontario and Quebec. And they leave behind the social costs of creating this wealth. The fact that the wealth has been taken away, and social costs of creating it remain, creates treasury problems of great difficulty for the outlying provinces, among which are the Prairie Provinces."

Our constitution after the depression With the experience of the depression behind us, most experts agreed that three main facts emerged as to our

constitutional position.

1. The provinces had the power under the B.N.A. Act to carry out the growing functions of government, such as social services and education.
2. The Dominion had the tax powers, to support these powers and carry them out effectively.
3. Certain provinces could not provide nearly as effective social and educational services as others.

There was an obvious contradiction between these three things.

THE ROWELL-SIROIS COMMISSION

To meet the growing difficulty of this situation, the government appointed a Royal Commission on Dominion-Provincial Relations. This Commission came to be known by the names of its two leading figures Rowell and Sirois. It travelled the length and breadth of the country, during its two and a half years' work. It received statements from all the large national and provincial organizations; it interviewed people in every walk of life; it hired experts to investigate the complicated problems of government and finance. Out of all this work it produced its report. The first part of this tells what the problems are that Canadian government must face and traces how these problems have developed since Confederation. The second part goes on to describe what it thinks are fair and careful solutions of these problems. It is of course impossible in so short a space to more than touch upon recommendations of such a massive report but the main ones are listed below.

1. The dominion government should be in charge of unemployment insurance.
2. The Dominion should assume all provincial debts.
3. The provinces should relinquish their rights to the present federal subsidies and to levy income taxes.
4. The Provinces that are unable to provide education and social services equal to the average Canadian standard, without placing an undue tax burden upon their residents, are to receive annual money grants from the Dominion government.

These recommendations, which it was hoped would meet the situation, have not been put into effect (except for the first one). After the Report had been made the Dominion government called a Conference in 1940, of itself and the nine provincial governments to discuss these recommendations and to decide on a course of action. The Conference unfortunately broke up, as several provinces (namely Ontario, Alberta, and British Columbia) attacked the recommendations for varying reasons. Since that time, during these years of war, nothing further has been done.

So the situation stands today. During the war we have been able to accomplish a unified national effort—because in wartime the Dominion government has full powers during the national emergency. But after the war what will happen? Will we be able to accomplish what we want? Or will we always be told that things we want to do are not allowable within our constitution? One thing stands out—the chronic conflict between the Dominion and provincial governments, which leads to neither power being able to act, is a luxury that Canada cannot afford. In the world after the war, we must have effective government machinery.

MORE INFORMATION

In a subject of such scope, it is important that further reading should be done.

Royal Commission on Dominion-Provincial Relations: King's Printer, Ottawa, 1940. Bk. I and II. The Rowell-Sirois Report is the basic information on the constitutional problem. Book I gives an exhaustive summary of Canadian political and economic life. Book II gives the recommendations of the commission. A document all Canadians should read.

The Rowell-Sirois Commission: by S. A. Saunders and Eleanor Back. Part I a summary of the report. Part II a criticism of the Report. The Ryerson Press, 40c for each part. A good summary for those who do not want to wade through the whole report. Also a good criticism.

Inquest on the Sirois Report: by Hon. John Bracken and Dr. G. M. Weir. Food for Thought, May 1941. The attitudes of the governments of Manitoba and British Columbia toward the Constitutional problem.

Confederation Marches on: R. M. Fowler. "Behind the Headlines". 10 cents. A good description of where we stand after the Rowell-Sirois Commission.

Canada After the War: ed. by A. Brady and F. R. Scott. Macmillan Co. The chapter on the constitution by F. R. Scott.

REPORT QUESTIONS

- I. What effect has the British North America Act had on the prosperity of your province?
- II. What social services (i.e. health, pensions, unemployment insurance, etc.) should be under the jurisdiction of the Dominion? Which should be under the provinces?
- III. What part should the Dominion government play in the field of education?

SEND YOUR REPORTS TO YOUR PROVINCIAL OFFICE.

THINGS TO DO

Have a public hearing on the Report of the Rowell-Sirois Commission. Find out what its recommendations are; what effect these recommendations would have on your particular province. Ascertain whether your provincial government supported the findings of the Commission or disapproved of them; why it followed the course it did.

FURTHER QUESTIONS FOR GROUP DISCUSSION

- I. Will a guarantee of provincial rights interfere with effective post-war reconstruction? Is such a guarantee necessary in a country such as Canada?
- II. Should the final court of Appeal on Canadian constitutional questions be the Judicial Committee of the Privy Council in London or Canada's Supreme Court at Ottawa?
- III. Will it be necessary for Canada to put the recommendations of the Rowell-Sirois Commission into effect—for the sake of efficient government?
- IV. The province of Nova Scotia suggested in its brief to the Rowell-Sirois Commission that yearly conferences should be held between all provincial governments and the Dominion government to help bring about closer cooperation. Members of the Commission agreed with this recommendation. Discuss the possibility and value of such a proposal.

Next week: One People—Two Cultures.

