THE CANADIAN CONSTITUTION AND CONSTITUTIONAL CHANGE

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The Canadian constitution is today under serious challenge from segments within Canadian society who are lobbying for a massive reconstruction of the constitution. The constitutional crisis which has resulted from these challenges is very complicated and involves many issues. An examination of all these issues is beyond the scope of this paper. Rather we intend to concentrate upon one element which is at the center of the controversy : the question of constitutional change.

We will begin this examination by first discussing the composition of the Canadian constitution and by providing an historical perspective of the constitution's major component, the British North America Act of 1867. We will then review the arguments of the two major sides involved in this controversy-those who favor a massive reconstruction of the Canadian constitution and those who favor either slight modifications or no formal changes at all. We will conclude by discussing the future prospects of formal constitutional change in Canada.

THE CATEGORIES OF THE CANADIAN CONSTITUTION

"The constitution of Canada is not easy either to describe or to discover, for it does not exist in any single document", explains J.R. Mallory. "It is customary to speak of the British North America Act, 1867, together with its various amendments, 'the Canadian constitution', but in fact only a part of the important provisions of the constitution are contained therein" (1). A useful way of understanding the complex structure and composition of the Canadian constitution is by dividing it into several analytical categories. The most important categories into which the constitution can be divided are the British North America Act of 1867 and its amendments, custom or usage, acts of the Canadian Parliament, acts of the British Parliament, and judicial decision.

The first of these categories of the Canadian constitution, the British North America Act of 1867 and its amendments, will be discussed in greater detail in the next section of this paper. For the time being, however, it should be noted that this Act marked the beginning of the Canadian federation and also stated many of the essentiel rules under which the new government was to function. Among the most important rules that appear in the written clauses of the B.N.A. Act of 1867 are the following : the powers of the federal government ; the powers of the provinces ; the

broad features of the executive, judiciary, Senate and House of Commons ; general provisions regarding the provincial governments and special provisions concerning Ontario and Quebec. Amendments, which are formally passed by either the British or Canadian Parliaments, occupy the same basic constitutional position as the original Act.

A second category of the Canadian constitution is custom or usage. "The government of Canada, like these of the colonies before federation, has always rested to a remarkable degree upon custom", writes R.M. Dawson. "That is, certain things have tended to be done in a way because they have been done that way before" (2). These customs and usages have had such a great influence upon Canadian constitutionalism that, as W.J. Lawson aptly notes, "A reading of the British North America Act itself would convey to a foreigner not familiar with British constitutional principles and pratices a completely wrong idea as to how Canada is governed" (3). For example, the B.N.A. Act provides that the whole executive authority in Canada is vested in the Queen who is represented by a Governor General. The Governor General, in turn, is supposedly assisted by a Privy Council whose members he chooses and removes. But in reality, because of the development of various customs and usages which have become an integral part of the constitution, Canada is of course not ruled by an all-powerful Governor General. The contemporary Governor General, in fact, does not act according to his own judgement but on the advice of his Cabinet, a body not mentioned anywhere in the B.N.A. Act. The Cabinet is, of course, chosen by the Prime Minister who himself is not mentioned in the Act, but who is – again by custom – the leader of the political party having a majority of the seats in the House of Commons or which is able by agreements with other parties to control the House. Another related customary part of the constitution requires that if the Prime Minister and his Cabinet lose the support of the House of Commons they must either resign immediately or hold a general election. "No part of the written constitution is any more firmly established than this cardinal principle which rests on nothing more substantial than a generally accepted usage", states Dawson . "It is the most important single fact about the government of Canada "(4).

A third important category of the Canadian constitution consists of acts of the Canadian Parliament. These acts constitute an important part of the constitution because many aspects of Canadian government are covered by the ordinary statutes which are enacted by Parliament. Some of these, such as the statute which created the Supreme Court of Canada, are of phenomenal importance while others often deal with relatively minor constitutional matters. These statutes may be altered again at any time by the Canadian Parliament.

Acts of the British Parliament, the fourth important category of the Canadian constitution, used to comprise an extremely important category of the constitution but they have decreased in importance because of a constitutional usage which developed whereby the British Parliament became very careful not to enact any laws which might be interpreted as an interference in Canadian affairs. The Statute of Westminster of 1931, which emphasized the general policy of the British Parliament to abstain from legislating on Canadian affairs, also provided explicitly that no future British statutes would apply to Canada unless Canada requested that they apply. Past acts would still apply to Canada but these could be modified or repealed by the Canadian Parliament – with the exception of the British North America Act of 1867 which even today cannot be changed at will by the unaided efforts of the Canadian Parliament.

Judicial decisions, the fifth major category of the Constitution, constitute an extremely important category because of the fact that the courts have made significant contributions to the constitution through their interpretation of the law in cases which have been brought to them for decision. The chief influence of the judiciary on the Canadian constitution has been with respect to the courts' interpretation of these sections of the British North America Act dividing legislative power. If the courts decide that a statute of either the national or provincial legislatures has gone beyond the powers given that body by the B.N.A. Act, they declare the statute void of that legislature. The courts thus stand as an arbiter between rival national and provincial authorities and they prevent intrusion on rival fields of jurisdiction. Of course the courts also deal with other questions of jurisdiction in regard to the legal powers of other bodies. Thus the courts may decide, for example, whether the Governor General has exceeded the statutory power vested in him by Parliament or whether a municipal authority has passed a by-law which exceeds the power granted in it by a provincial statue, or whether either has transgressed a section of the B.N.A. Act.

The Canadian constitution takes other forms in addition to the five categories of the constitution we have noted above. For example, the English common law which came to Canada with the first British colonists is an essential part of the constitution, especially as it affects the fundemental rights of the citizen. British orders-in-council as well as Canadian orders-in-council comprise a small part of the constitution. The rules and privileges of Parliament make up still another minor section of the Canadian constitution.

THE HISTORICAL ORIGINS OF THE BRITISH NORTH AMERICA ACT OF 1867

The British North America Act came into being as a result of a mixture of external and internal pressures upon the British North America colonists for confederation. First of all, the colonists were afraid of a belligerent United States which had just ended its civil war ; thus, it seemed obvious that British North America colonial defenses could be greatly strengthened by a form of British North America union. Secondly, the colonists were motivated by the need for a larger economic market and they thought that economic union between them would be the beginning of a larger and more prosperous economy. Also, they were feeling pressure from Great Britain who believed that the British North American colonies would become less dependent upon her as a result of confederation. Nervertheless, the most overriding reason for confederation, and thus for the British North America Act of 1867 coming into being, was the nearly total collapse of the political system in the old Province of Canada, which combined what is now the provinces of Ontario and Quebec. This province had equal representation for the eastern (French) and western (English) portions in its single legislature, but an increasinly expanding English-speaking population demanded increased representation. The continual necessity of gaining the support of a majority of the representatives of both Canada East and Canada West for every measure had become increasingly difficult. To resolve these difficulties, all the leaders of the old Province of Canada, with the exception of a small political group called the *Rouges,* joined together with the leaders of the Maritime colonies (who were primarily concerned about their relative isolation and weakness in North America) to seek a new political union and to draw up a document stating the essentiel political terms necessary to bring about this union (5).

The initial meetings to discuss confederation took place at two preparatory conferences in 1864. The first of these conferences was held at Charlottetown, Prince Edward Island, in September 1864 where the delegates of all the provinces agreed to form a federal union of the British North American provinces. The second conference took place at Quebec four months later where the delegates metase Constituent Assembly in order to work out the details. The outcome was a group of resolutions agreed upon by the Assembly which were called the Quebec Resolutions. These resolutions still faced, however, bitter debates in the provincial legislatures which prevented their passage until 1867 when they were passed in a slightly modified form as the British North American Bill. It was this document which was passed by the British Parliament as the British North America Act of 1867, although some minor changes were made at the last minute at a conference in London between Canadian and British officials.

The British North America Act was the exclusive work of the so-called "Fathers of Confederation", principally John A. MacDonald and George-Etienne Cartier who were its prime architects ; neither the people or any electoral bodies were consulted. Mac Donald was the leader of those elements who fought to stress the unitary features in the Act. Cartier was the leader and principal spokesman for the French Canadian elements which fought for the security of the French language and institutions. In this respect, F.R. Scott states that "MacDonald was the Halmiltonian and Cartier the Jeffersonian among the Fathers — though the analogy must not be forced, since Cartier was a strong monarchist and interested in minority rather than individual rights" (6). Perhaps the chief opponent of the resolutions which were to become the basis of the British North America Act of 1867 was a French Canadian named Antoine-Aimé Dorion who was the leader of those elements who opposed the strong unitary features of the resolutions. That which was proposed, he claimed, is "tout simplement une union législative déguisée sous le nom de Confédération parce qu'on a dans chaque province un simulacre de gouvernement sans autre autorité que celle qu'il exercera sous le bon plaisir du gouverneur général" (7).

Gerard Bergeron of the Université Laval describes the authors of the British North America Act as follows :

> Les "Pères de la Confédération" n'étaient certes pas des esprits incultes ; mais ce n'est pas médire d'eux que de les soupçonner de n'avoir guère pratiqué Montesquieu, Hamilton, Jefferson, Tocqueville ou Proudhon. Ils étaient et se piquaient d'être des hommes éminemment pratiques, placés en face d'un problème concret et complexe à résoudre rapidement (8).

The combination of these latter two factors — practical men and a complex problem which had to be resolved quickly — to a great extent determined the kind of constitutional document which was promulgated at the outset : a pragmatic document which was not intended to be a definitive statement of Canada's constitutional functioning, but simply a document stating the essentiel political terms which were required in order to unite some of the British North American colonies into a confederation. Consequently, a major characteristic of the British North America Act of 1867 was that it lacked many features normally expected to be found in a nation's primary constitutional document such as a bill of rights, a means of amending itself, or the establishement of a final court of appeal for the new nation. But another reason for these omissions and for the generally limited nature of the N.B.A. Act was that its authors saw no reason to include elements that they perceived as already inherent in their British common law tradition. This view reflected in the preamble to the Act which expresses the desire of the federating Provinces to establish "a Consti-

tution similar in Principle to that of the United Kingdom".

The practical outlook of the Fathers of Confederation was also reflected in the type of federation which the B.N.A. Act implanted. Thus although they considered the United States model of federalims, they rejected it because of the American Civil War which had just recently occured under such a system. They concluded that the American States had too much power and the central government in Washington too little. They were determined that there would be no similar mistake in their new nation. Thus the federal government received all the great powers, such a regulation of trade and commerce, defense, the raising of money via taxation, banking, as well as all powers not specifically granted to the provinces (This was, of course, in contrast to the United States where residual powers rest with the States). The provinces were given strictly limited powers over what at that time seemed to be relatively minor matters such as education, property and civil rights, and municipal institutions.

ARGUMENTS FOR THE RECONSTRUCTION OF THE CANADIAN CONSTITUTION.

Professor Gerald E. Le Dain has written in *The Canadian Bar Review :*

> There come times in the lives of men and nations when the dislocations and stresses produced by the changing flux of forces to which we are subject outrun our power of improvised and pragmatic response, and a new synthesis and integration are required. I believe we are in such a time as this in Canada (9).

Similarly Pierre Trudeau has stated :

> I do not accord an absolute and eternal value to the political structures or the constitutional forms of states . . . With the exception of a certain number of basic principles that must be safeguarded, such as liberty and democracy, the rest ought to be adapted to the circumstances of history, to traditions, to geography, to cultures, to civilization (10.)

The major argument used by those who want to rewrite the British North America Act of 1867 is implied in these two quotes. That is, Canada has changed drastically since 1867 but the Canadian Constitution has not changed with it and consequently does not reflect these changes. The areas of the Act that most require changing, many constitutional critics claim, are with respect to constitutional amendment, civil liberties, and federalism.

"In discussions respecting constitutional change, probably no area has been more discussed than that of finding a suitable amendment formula for the British North America Act", states Professor Ronald Cheffins (11). And it is likely that no other area has been the target of as many constitutional critics who point to this area as proof that the B.N.A. Act is inadequate and needs a massive reconstruction. The reason for this is that it is still necessary to obtain formal statutory action by the British Parliament in order to amend the British North America Act. Many thus argue that it is humiliating that Canada should have to seek parliamentary approval from another country to change parts of its constitution.

In response to the many critics of this area of the constitution, a series of federal-provincial conferences since 1927 have focused on the problem of finding an amending formula that does not require recourse to the British Parliament. It seemed as if success had finally been achieved in 1964 when the representatives of the federal and provincial governments finally agreed on the complicated Fulton-Favreau formula. Briefly speaking, this proposal would have given the Parliament of Canada sole authority to amend the constitution, subject in certain instances to approval of some or all of the provinces depending on which portion of the constitution was to be amended. This was the first time that all the parties had unanimously agreed on a purely domestic amending scheme. Their hopes of success ended, however, when the Quebec government reversed its position and rejected the formula shortly after the 1964 conference. As a result the constitutional critics have continued to argue that not only is it humiliating to seek parliamentary approval from Great Britain in order to change parts of the Canadian constitution, but that Canada will not become a fully sovereign nation until this requirement is changed and the constitution is finally "brought home".

Another constitutional area which requires changing, argue many critics, is that of the protection of civil liberties. Prime Minister Trudeau has led the fight for the entrenchment of a bill of rights in the constitution. This is considered necessary because the present Bill of Rights is not a part of the BNA Act but simply a statute passed by the Canadian Parliament in 1960 and therefore it may be repealed or altered by any subsequent Act of Parliament. Trudeau and his supporters have still other criticisms of the present civil rights arrangement. First of all, since the Canadian Bill of Rights is a federal statute it is binding only at the federal level of government. Secondly, the effect of most existing civil rights legislation in Canada is rendered uncertain by the present division of legislative powers between the national and provincial legislatures. Thirdly, the present Bill of Rights does not sufficiently cover certain language and cultural rights of French Canadians. But many critics have a much broader

reason for their support of the entrenchement of a bill of rights in the constitution, i.e., in order to set the stage for a more complete reconstruction of the Canadian constitution. "As lawyers, you will appreciate that the adoption of a constitutional Bill of Rights is intimately related to the whole question of constitutional reform", Trudeau said in an address to the Canadian Bar Association. "If we reach agreement on the fundamental rights of the citizen, on their definition and protection in all parts of Canada, we shall have taken a major first step toward basic constitutional change" (12).

It is with respect to the issue of federalism that the arguments over constitutional change have taken the most ethnic profile, with those French Candians who are pro-federalist usually wanting constitutional changes reflecting the special place of the province of Quebec in the Canadian Confederation while the English Canadians more often favor the *status quo* on this matter. Many French Canadians argue that the British North America Act of 1867 was actually a "compact" between the English and French populations and consequently Quebec has a "special status" compared to the other provinces, a status which must be recognized in a new or revised constitution. A representative argument of this group was made by former Quebec Premier Jean-Jacques Bertrand who made the following criticism of the B.N.A. Act while speaking before the Quebec legislature :

> The problem may be stated thus : how are we to provide, in present-day conditions , for the harmonious co-existence in Canada of two nations which are different, but which share many common interests, namely the English Canadian and the French Canadian nations . . . Here, in the Quebec legislature, whenever we deal with matters of revenue, of economic control, or of cultural development, we come up against institutions that are constitutionally ill-defined or ill-adjusted to our particular needs. Far from encouraging harmony and cooperation between Canadians of the two cultures, the 1867 constitution . . . multiplies occasions for uneasiness and conflict. Canadian federalism, as it exists today, provides for no institution charged and equipped to study and smooth away difficulties arising out of the relations between the principal ethnic groups in the country . . . In the absence of any body charged with revitalizing the relations between Canadians of the two cultures, our French-speaking citizens, in the eyes of some people, are merely one minority among others (13).

A revised constitution, therefore, would contain explicit recognition of the two-nation concept. There would be greater powers for the government of Quebec and specific guarantees for French-speaking Canadians living outside Quebec. Also there would be more recognition in practical terms by Ottawa of English and French

equality as partners in confederation.

ARGUMENTS AGAINST THE RECONSTRUCTION OF THE CANADIAN CONSTITUTION

"The Canadian constitution has demonstrated its durability during the last hundred years ; it has also proven much more flexible than the Fathers of Confederation could have foreseen," states E. RussellHopkins. "As interpreted and applied today it bears only superficial resemblance to what was written in the B.N.A Act" (14). This, in short, is the chief argument of those Canadian scholars who oppose a full scale reconstruction of the Canadian constitution, i.e., it's simply not necessary to reconstruct or rewrite the constitution because it is continually changing by informal means. "Rewrite the constitution ? " asks Jean-Luc Pepin. "What an unbelievable waste of time. It is rewritten daily in the facts." (15).

The proponents of caution with respect to formally altering the constitution refer to two primary informal "agencies of change" of the Canadian constitution. The first of these agencies of change is judicial interpretation. "The record of judicial interpretation of the Canadian constitution, on the part of the Privy Council and of the Supreme Court, is one of pendulum-like swings from an original Founding-Fathers' conception of centralization", wrote law professor Edward McWhinney in 1965, "on through the decentralized, pluralistic federalism of the Watsdone-Haldone era of judicial interpretation, to the modern era, when,I suggest, a strong contripetal trend in federalism is to be observed once again" (16). It has been through these dramatically changing judicial interpretations of the Canadian constitution that the constitution has been able to keep in touch with the realities of Canadian society and politics during these particular periods, argue some scholars, and it is by future judicial interpretations that the constitution will continue to conform to upcoming changes in Canadian society and politics.

The second informal, indirect agency of change which has greatly modified the Canadian constitution since 1867, argue some legal authorities, is executive and administrative practice, manifesting itself through affirmative governmental action and sometimes through conscious governmental inaction. Some observers suggest that the most important modifications since World War II, have taken place at the various dominion-provincial conferences and in the even more informal discussions between Canadian prime ministers and provincial officials, particulurly those from Quebec.

Besides this general arguement that informal changes of the constitution

have assured adaptation of the Canadian constitution without major rewriting in the over one hundred year life of the Confederation, those Canadian scholars who oppose massive formal changes in the constitution also have particular arguments with respect to particular constitutional issues. Thus with respect to the search for an amending formula by those Canadians who want to revise the constitution, some of these scholars reply that a better solution may be to stay with the admittedly confusing present arrangement than to gamble with the unknown problems that a new formula may involve. As Bora Laskin of the Court of Appels of Ontario has put it :

> It was unlikely that either Dominion or provinces would agree to an amending procedure which would afford an easy passage to important constitutional changes. In the dilemma of an easy amending procedure which might make a travesty of the constitution and a rigid amending procedure which might be invoked at too high a price, it is worth speculating whether the courts – and particularly the Supreme Court of Canada – can be effective agencies for reconciling stability with change (17).

These scholars also point out that even though Canada cannot amend certain segments of her own constitution without obtaining formal statutory action by the British Parliament, this procedure is still primarily Canadian because of customs that have evolved which require that no action will ever be taken by the British Parliament without formal request from Canada.

With respect to the issue of the protection of civil liberties and the demand of many constitutional revisionists for the entrenchement of a bill of rights in the written text of the constitution, more conservative Canadians reply that Canada's constitutional system has protected civil liberties well enough so far under the present arrangement. "When we look at other constitutions with a Bill of Rights in their written texts, not excepting the American constitution", argues F.R. Scott, a former dean of the McGill Law School, "and compare the rights of citizens under them with what has commonly prevailed in Canada, we have not felt that we were under any particular disadvantage" (18). Another popular argument is that it is not necessary to alter the constitution in order to ensure the protection of civil liberties in Canada because Canada has inherited adequate guarantees to civil liberties from British traditions of common law. It is also noted that the B.N.A. Act already includes in its written clauses some important guarantees to civil liberties (19).

As to the issue of federalism and the demands of many French Canadians for constitutional revisions that would provide a special status for Quebec within the Confederation, some Canadians argue that many of Quebec's demands have already

been met under the present constitutional system. Edward McWhinney suggests that, since the second world war, what he calls "dualistic federalism" has been developing in Canada. He argues that on issues of political, social, and economic policy, decision-making comes close to a condition of concurrent English-speaking and French-speaking majorities. He also maintains that a quiet constitutional revolution is in progress, and biculturalism is already part of constitutional "law-in-action" in Canada.

> My point would be, simply, that to a considerable and, I believe, an increasing extent, biculturalism as a constitutional phenomenon having concrete substantive legal and institutional consequences, is already part of the constitutional law-in-action in Canada. If asked to define its character in formal constitutional terms, I would say that it operates by way of a gloss on the constitution as written, a species of developing constitutional conventions or custom. I believe that it has been accepted, by Canadians generally up to date, partly because it has been a quiet constitutional revolution or innovation, achieved without all the fuss and bother and inevitable ill-feeling attendant on any public attempts at securing direct amendment of the constitutional system through recourse to the formal agencies of constitutional change (20).

Since there already exists a practical constitutional requirement of concurrent majorities as to policy issues really affecting the fundamentals of Quebec's culture, reason some Canadians, there is no need of any more formalized and institutionalized protections for Quebec's special interests. Rather, the further realization and implementation of a dualistic, French-speaking and English-speaking federalism can best proceed through the quieter constitutional methods of developing custom and convention because these methods allow compromise to emerge gradually on a basis of give-and-take between the competing community interests of the two groups.

CONCLUSION

The efforts of a long awaited Constitutional Conference of federal and provincial premiers to agree upon the draft of a new Canadian constitution collapsed in June 1971. At that time Quebec Premier Robert Bourassa rejected a compromise reached at the seventh meeting of this Conference in Victoria, British Columbia. Bourassa complained that the proposed charter was too vague for Quebec's approval, but the basic difficulty was that the Quebec leaders wanted their province to have increased powers, especially with respect to taxation and social welfare services. In the years following Quebec's refusal, the rich Western provinces, particularly British Columbia, also began demanding that future constitutional drafts include increased powers for their provinces. Although constitutional revision remained a highly vocal

issue in Canada, these complications made the prospects for formal constitutional change in the near future appear dim.

The November 1976 electoral victory of the *Parti Quebécois* added a new dimension and urgency to the Canadian constitutional question. Any serious constitutional considerations will have to wait until the holding of the referendum on independence promised by the PQ for 1979. However if public opinion polls are correct, the Quebec population will vote heavily against a clean break with Canada. Thus the stage will be set for a possible historic compromise whereby the Canadian constitution could be repatriated and special status for Quebec formally established. In other words instead of leading to the end onf the Canadian Confederation, the PQ electoral success could, ironically, serve as a catalyst for the restructuring and strengthening of the Canadian state.

After all, it should be remembered that the present PQ leaders include many men who have previously worked within and for the federal structures, especially via the *Parti Libéral du Québec*; and their statements continually border on non-separatism. It is not impossible that these individuals be won over to a new Canadian constitution which would formally recognize the "two-nation" concept. However such negotiations must be conducted with the utmost skill and dignity. Scare tactics, such as the recent statement by Prime Minister Trudeau threatening to use military force in Quebec, might attract Anglophone votes in the next general election but they also repulse many Quebecois who are open to negotiating a new constitution.

NOTES

1. *J.R. Mallory,* **The Structure of Canadian Government,** *Toronto : Macmillan Company of Canada Limited, 1971, p.2.*

2. *Robert MacGregor Dawson,* **Democratic Government in Canada,** *Toronto : University of Toronto Press, 1963, p.18.*

3. *W.J. Lawson,* **The Canadian Constitution : A Study of our System of Government,** *Ottawa : Queen's Printer, 1964, p.8.*

4. *Dawson,* **Democratic Government,** *p.19.*

5. *Ronald I. Cheffins,* **The Constitutional Process in Canada,** *Toronto : McGraw-Hill Company of Canada Limited, 1969, pp. 8-10.*

6. *F.R. Scott, "French Canada and Canadian Federalism", in* **Evolving Canadian Federalism,** *ed. by A.R.M. Lower, Durham, North Carolina : Duke University Press, 1958, p.61.*

7. *Gérard Bergeron,* **Le Canada Français : après deux siècles de patience,** *Paris : Editions du Seuil, 1967, p.96.*

8. **Ibid.,** *p.97.*

9. *Gerald E. Le Dain, "Reflections of the Canadian Constitution after the first century",* **Canadian Bar Review,** *XLV(Fall, 1967),p. 407.*

10. *Pierre Elliot Trudeau,* **Federalism and the French Canadians,** *Toronto : Macmillan Company of Canada Limited, 1968, p.53.*

11. *Cheffins,* **Constitutional Process,** *p. 153.*

12. *Trudeau,* **Federalism,** *pp. 52-60.*

13. *Quoted by Mason Wade and Janet Morchain,* **Search for a Nation: French-English Relations in Canada since 1759,** *Toronto : Bryant Press Limited, 1967, p. 76.*

14. *E. Russel Hopkins,* **Confederation at the Crossroads : The Canadian Constitution,** *Toronto : McClelland and Stewart Limited, 1968, p. 339.*

15. *Quoted by Edward M. Corbett,* **Quebec confronts Canada,** *Baltimore : Johns Hopkins Press, 1967, p.166.*

16. *Edward Mcwhinney, "Federalism, Constitutionalism, and Legal Change : Legal Implications of the 'Revolution' in Québec", in* **The future of Canadian Federalism,** *ed. by P. – A. Crepeau and C.B. MacPherson, Toronto : University of Toronto Press, 1965, p. 159. On the historical trends relating to centralization in Canadian federalism see Richard J. Van Loon and Michael S. Whittington,* **The Canadian Political System : Environment Structure and Process,** *Toronto : MacGraw-Hill Ryerson Limited, 1976, chap. 15.*

17. *Quoted by Mallory,* **Structure of Canadian Government,** *pp. 385-386.*

18. *F.R. Scott,* **Civil Liberties and Canadian Federalism,** *Toronto : University of Toronto Press, 1959, p.39.*

19. *See Kenneth Kernaghan, "Civil Liberties and a Constitutional Bill of Rights", in* **Contemporary Issues in Canadian Politics,** *ed. by Frederick Vaughan, Scarborough, Ontario : Prentice-Hall of Canada, Limited, 1970, p.70.*

20. *McWhinney, "Federalism, Constitutionalism and Legal Change", p. 161.*