

the confederation of tomorrow conference

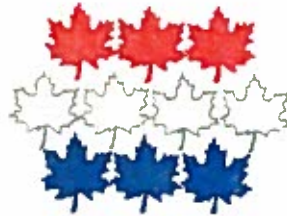
Theme Papers

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the confederation of tomorrow conference

THEME PAPERS

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CONFEDERATION OF TOMORROW CONFERENCE

Theme Papers

INTRODUCTION

The following five papers were prepared for the Confederation of Tomorrow Conference. Their aim was to provide some background material for the discussion of the major themes on the agenda of the Conference. It is important to note that the contents did not and do not necessarily represent policies of the Government of Ontario.

The first edition of these papers was distributed to the delegates to the Conference from each province, to newspaper, television and radio reporters, and to a variety of interested individuals. The degree of interest aroused by the Conference has led to many further requests for the papers. This second edition, which combines in one volume the original and separate English and French versions, is designed to meet this demand. A number of changes have been incorporated into this second edition to correct typographical errors and a few errors of fact which inadvertently appeared in the first edition.

H.I. Macdonald,
Deputy Minister,
Treasury Department
(Finance and Economics)
and
Chairman,
Ontario Advisory Committee on
Confederation.

January, 1968.

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THE GOALS OF CANADIANS

Second Session
Monday afternoon
November 27, 1967

THE GOALS OF CANADIANS

The assessment which Canadians are now making of their country is a normal, indeed a healthy, development. Yet there is the danger that this national introspection could begin and end with a fractious discussion of means without sufficient attention to ends. This paper will attempt to identify the contemporary concerns that all Canadians share.

Few, if any, would disagree with the view that since 1867 the nature of Canada and the formula on which the country was founded as a national entity have changed almost beyond recognition. Not all of these changes have resulted from decisions taken by Canadians; indeed, many have resulted from decisions over which Canadians had little more than marginal control. The traumatic effects of two world wars, the recurring phases of economic recession and depression, and the revolution in social mores are instances of developments which have had a profound impact on the lives of people everywhere. Yet there have also been changes made wholly or partly by Canadians which have affected both the kind of country Canada is today and the ways in which Canadians have chosen to run their affairs. Among the changes in this category, which have shaped both our external image and our internal institutions might be cited the progress in Canada's evolution to full independence, the shifts in the balance of power between the federal and the provincial governments, the increasing role of government in the economy, the changes in the ethnic composition of the population, and, more recently, the "quiet revolution" in Quebec and reaction in the rest of Canada to this development. None of these changes has been experienced without strain on the fabric of Canadian society. Yet they have made Canadians both more sensitive to the nature of their country and more mature in their efforts to cope with an often bewildering variety of external and internal challenges.

This outline suggests the general framework in which Canada has developed, and one through which the shared concerns of Canadians might be viewed. What are some of the more urgent problems confronting the country in 1967, and what questions do these problems suggest in an attempt to see more clearly the goals of Canadians? The problems might broadly be divided into two categories, internal and external.

1. Internal Problems

The kind of society Canadians might wish to have is determined by three general forces - political, economic and social. It might be useful to look at each of these in turn.

(A) Political

The crux of any federal system is the balance which is achieved between the opposing pulls of centralization and decentralization. In any federal system, and the Canadian is no exception, the practical heart of the issue is: what is the necessary authority which must be granted to the central government if a viable federal state is to be preserved? Apart from the central government's present and exclusive jurisdiction over national defence, and apart from the generally recognized necessity that the central government must possess the fiscal and economic instruments to control the national economy, do Canadians seem prepared to grant any further 'controlling' powers to their central government? If so, is there a consensus as to the nature of these powers and their range?

More specifically, and constitutionally speaking, can Canadians agree amongst themselves on the approach which should be taken towards the written portion of their constitution, i.e., the British North America Act? Do Canadians want to:

(a) revise the present division of powers to take account of changing needs and circumstances?
or

(b) make more precise the written provisions of the constitution and thereby clarify the 'grey area' of divided jurisdiction?
or

(c) alter the constitution substantially by delegating powers, or by providing for special regional programs, a special status, or differing arrangements for one or more Provinces?

These are political ends on which Canadians must pass judgment and seek a consensus if they are to make progress in their pursuit of shared goals.

(B) Economic

Canada is confronted not only by the internal, lateral strain between national and regional interests, but also by the external, southward pull of continentalism. These twin forces underlie the debate on the economic future of Canada. Do Canadians wish to preserve their political sovereignty even though it might involve the risk of continuing to be the economically poorer cousins of their southern neighbour? Or do they wish to throw in their lot with the United States and, at the possible cost of political independence, enjoy the economic fruits of a continental market? Or can Canadians have their cake and eat it too? These questions are as old as Canada itself and the answers to

them perhaps lie in the testament that Canada, during its first century, has opted to live apart from the United States.

While that part of the debate may have been settled, there are certain other and related fundamental issues that have not been determined. The most central of these is the question of differential regional growth as contrasted to the concept of approximate regional equality across Canada. And does an approximate regional equality mean equality in basic standards of public services, of per capita personal incomes, or of growth in population? Are Canadians prepared to continue sacrificing a measure of regional economic growth to ensure the maintenance of a minimum national standard of economic well-being? Are Canadians willing to pay this price, and can they afford to pay this price, to preserve their identity as Canadians?

(C) Social

What are the chief factors contributing to the social and cultural goals of Canada? In what ways do Canadians participate in the 'revolution of rising expectations'? And how do these ways affect the admittedly elusive notion of the quality of Canadian life?

Among the many factors which could be cited in this category, four might be singled out for special attention since they appear to be common to the interests of most Canadians.

(a) Since nearly 65 per cent of the population now live in urban centres, most Canadians face the problems that modern urbanism implies. Population projections indicate that urbanization will continue to increase. More and more Canadians, therefore, will be confronted with the need to consider measures to mitigate (if they cannot solve absolutely) the worst effects of such problems as cramped, inadequate housing, air and water pollution, dense vehicle traffic, and impersonal human relationships.

(b) The influence of governments, be they federal, provincial or municipal, touches more and more Canadians every day. There is continued and growing pressure on governments to play a larger role in the life of all citizens in every region of the country. This development is in sharp contrast to the spirit of laissez-faire that prevailed in an earlier age. What impact is this new, positive phase of government having on individuals? Should Canadians be taking greater stock of the dimension of the public sector in their society? Should they be asked to determine more precisely what role they want their governments to play in their lives?

(c) In a technical and increasingly specialized society, the necessity of education - and sophisticated patterns of education - is becoming ever more apparent. What values do Canadians attach to education and are they prepared to pay the spiralling costs of universal education at all levels? Have Canadians been too much concerned with the need and demand for education and insufficiently concerned with establishing discriminating kinds of education to fit a wide variety of social and economic demands?

(d) Finally, there is the fact of the existence within Canada of two predominant social or cultural communities, one English-speaking, the other French-speaking. The tensions created by this duality are familiar, although its attributes may not always be fully understood and appreciated. Does the existence of these two quite different communities detract from or add to the quality of Canadian life? If it detracts, what are the implications for Canada? If it adds, in what ways can its influence be made more evident to all Canadians? Are Canadians prepared to accommodate the pronounced distinctions of the two communities; and if so, to what degree?

These are some of the shared social concerns of Canadians. Some consensus about their relative importance and contribution to Canadian society must be achieved since they, too, are aspects of the goals of Canadians.

2. External problems

The kind and scope of relationships which Canada traditionally has had with the international community have reflected one aspect in particular of Canada's existence. For historical reasons, Canada's external concerns have focussed more on its English-speaking antecedents - on the Empire and the Commonwealth and on the United States - than on relationships with countries whose cultures seemed, to the majority of Canadians, to be more distant. The 'naturalness' of this bias should be emphasized both because it was a result of the major role of Britain in the early development of Canadian independence, and because it evolved in response to the continuing presence and influence of the United States. In recent years, however, these traditional focusses have changed. While there are undoubtedly many reasons for this change, the following are obvious.

First, there has been a decline in British power and, inevitably, a loosening of the relationship among the former dependencies of Britain. Second, there has been an increase in American power and an instinctive

Canadian ' withdrawal ' in the face of such power. Third, there has been forced on Canada the necessity to view the world more broadly and, in particular, to help less fortunate parts of the world. Finally, there has been the resurgence of the ' French fact ' within Canada, with the practical result of making the country reflect its composite national image more clearly in its international relationships.

What are the implications of these developments? They can be summed up in the form of several questions which Canadians might address to themselves.

(a) Can and should Canada seek to maintain a more distinctive identity vis-à-vis the United States?

(b) Should Canada seek to achieve a greater measure of equilibrium between its traditional relationships with the Commonwealth and the U.S. and its new ties with the under-developed or ' third ' world?

(c) Does Canada's dual cultural personality constitute a strength or a weakness in relation to the above two issues?

Summary

These are some of the major concerns of Canadians in 1967. Whether these concerns are of an external or internal nature is less important than the fact that they constitute issues with which all Canadians have to grapple. The solutions at which they arrive, either permanently or temporarily, depend in large measure on how Canadians see themselves, on how they define themselves concretely rather than abstractly. It is not what Canadians were or what they might have been that is important. It is what they are today and hope to be in the future, that is crucial. It is not whether Canadians are English or French or neither that is significant. The essential factor is the willingness and determination of Canadians to agree on the kind of country they want to have in common.

THE ROLE OF THE ENGLISH AND FRENCH LANGUAGES IN CANADA

Third Session
Tuesday morning
November 28, 1967

THE ROLE OF ENGLISH AND FRENCH LANGUAGES IN CANADA

The following paper attempts to assist in a discussion of the public position of the English and French languages in Canada. It offers no definitive study of the current status of the two languages, nor an outline of all the proposals for change in present practice and law. The paper is simply intended to suggest some matters for discussion.

The historical and linguistic roots of Canada have evolved from two communities: one French-speaking, the other English-speaking. Together with the many immigrants of other language groups, these two original communities have moulded the shape and character of Canada. The focus of this paper is on the use of the English and French languages because traditionally and historically these are the two working languages of the Canadian people and of Canadian public administration. In choosing to come to Canada, the immigrant, whose mother tongue was neither French nor English, has been aware that he should learn one (or both) to participate fully in the life of his adopted country. This fact is not related to the status of Canadian citizenship the immigrant eventually acquires, as he enjoys the same rights and privileges as any Canadian whose ancestors have been here for generations.

The problem of language is not a new one, nor is it unique to this country. Any state which contains one or more officially recognized language groups within its borders has experienced the frustrations and tensions produced by this condition. The particular nature of the language issue in Canada lies in the fact that French-speaking Canadians live mainly in one province. According to the 1961 census, 28 per cent of the Canadian population listed French as their mother tongue. Of this figure, 83 per cent lived in Quebec. These French-speaking Canadians face an English - language majority in their own country, and to the south they confront another two hundred million English-speaking Americans. Every aspect of their daily life is conditioned by these facts and they are forced therefore to be ever watchful in a desire to preserve their linguistic and cultural homogeneity.

With this background in mind, it might be useful to identify four major viewpoints which emerge in most discussions about the future status of the two languages in Canada:

1. Since it is part of North America, Canada should be an English-speaking country.
2. The use of French should be confined to the Province of Quebec.

3. French and English should be made the official languages of Canada, and both should be used in such public institutions as its legislatures, courts and schools, and in its public administration.

4. In areas where the population of the English- or French-speaking group is large enough to make bilingual services feasible, these should be provided.

Faced with these competing views and the overwhelming dominance of English on this continent, it is evident that many French Canadians have come to believe that their only hope for cultural survival lies with the one government which is elected by a French-speaking majority - Quebec. Thus the question: what is the relationship between linguistic rights and cultural, economic and fiscal goals? The French Canadian wants to preserve his language because he believes it is central to the attainment of all his aspirations. The French Canadian, because he belongs to the minority, is much more conscious than the English Canadian of the need to safeguard his identity, and the most obvious and tangible fact of this identity is his language. Therefore, the preservation of his language becomes integrally related to every aspect of his development. Many French Canadians argue today that Quebec is the homeland of all French Canadians. They want Quebec to be free to make decisions on a wide range of issues: education, social security and health, cultural fulfilment, economic planning and some aspects of international relations. They want this freedom because they do not believe that Canada as a whole is prepared to give them the means to be themselves in a country they can call, with other Canadians, their own.

Insofar as English-speaking Canadians show a lack of sympathy or an unwillingness to ameliorate this perceived situation, it is difficult to see a solution. If, on the other hand, the federal and provincial governments show themselves determined to achieve linguistic equality as between French- and English-speaking Canadians, at least in the areas where sufficient numbers make this goal practical, then there are grounds for suggesting a different relationship. Essential to this relationship will be the belief by all Canadians that their countrymen are interested in and concerned about the preservation of Canada's dual heritage.

French and English Today

The present status of the two languages varies greatly from province to province. The only explicit mention of language in the Constitution is found in section 133 of the British North America Act:

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 those 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 Languages.

Clearly, the scope of this section is narrow. It covers the most formal legislative functions, but not the subordinate functions which have evolved rapidly in the past century. By subordinate functions is meant the growth of administrative law: regulations, rules, orders, by-laws, ordinances, orders-in-council and proclamations. These now number in the tens of thousands and affect all Canadians. Custom and practice have seen both the federal and Quebec governments extend the use of the two languages in the realm of subordinate legislation. To some extent the same development has taken place in the judicial process with respect to the activities of the quasi-judicial boards and commissions which are also not mentioned in section 133.

Nor does section 133 deal at all with the language of public administration. No provision is made for the official usage of either French or English at the provincial or municipal levels, with the notable exception of Quebec, where French and English enjoy reasonably equal status. It is apparent that both the federal and Quebec governments could, despite custom and practice, return to the strict letter of section 133 and abolish the joint use of English and French in the areas where it has grown up and is now found. The obvious question is: should the Constitution have an enlarged and a more precise section 133?

Federal Policy

The present federal government has sought to define a policy on bilingualism in its public service. Prime Minister Pearson stated in April, 1966 that his government was "taking practical steps to encourage bilingualism in the federal public service as part of its fundamental objective of promoting and strengthening national unity on the basis of the equality of rights and opportunities for both English-speaking and French-speaking Canadians". The intention behind the federal government's declaration was to set out clearly a

policy which would ensure a bilingual federal government. The end sought was outlined under four headings:

1. It will be normal practice for oral or written communications within the federal public service to be made in either official language at the option of the person making them, in the knowledge that they will be understood by those directly concerned;
2. Communications with the public will normally be in either official language having regard to the person being served;
3. The linguistic and cultural values of both English-speaking and French-speaking Canadians will be reflected through civil service recruitment and training; and
4. A climate will be created in which public servants from both language groups will work together toward common goals, using their own language and applying their respective cultural values, but each fully understanding and appreciating those of the other.

At the same time a Special Secretariat on Bilingualism within the Privy Council Office was created with a director responsible directly to the Prime Minister. These moves coupled with others, such as the expansion of the language training courses, have set the federal government on a definite path towards bilingualism in the public service. The effectiveness of this policy will take several years to prove itself. However, it is expected that within the next five or ten years a significant proportion of public servants at the intermediate and senior levels will be able to use, to a capable degree, both English and French.

Provincial Policies

The attitude of the provinces towards the question of the wider role of English and French can best be viewed under two separate headings: the provision of government services and the provision of educational facilities. At the outset, one additional division must be made between the policy of Quebec and the policies of the other provinces.

Quebec has the only bilingual government in the country and in no other province is French and English used so extensively. Quebec's status in this regard is due in part to section 133, but it is also due to extended practice and subsequent subordinate legislation. The Quebec Municipal Code, for example, sets out the right of any Quebecer to speak in French or English

at municipal council meetings. Two educational systems have evolved, and although they were originally established on denominational grounds, one is primarily English-speaking, the other French-speaking. And while French is the main language of Quebec's public administration in the sense that it is the language of the majority in the province, the rights granted to English-speaking Quebecers have been assiduously protected and expanded.

The other nine provinces present a widely disparate picture. In none are the two languages official whether by legislation or by custom. However, in some provinces, there is a discernible trend towards a wider official usage of the two languages.

In New Brunswick, where, by mother tongue, French-speaking people constitute 35 per cent (1961 census) of the total population, the use of French has been broadened in recognition of the necessity of administering to the needs of this significant group. In the province, almost all government departments and agencies as well as the municipalities in the north, use both French and English in their daily work. This year simultaneous translation was introduced into the New Brunswick Legislative Assembly. It is apparent that New Brunswick is moving towards an official policy of bilingualism in the public sector.

The official use of the two languages is also increasing in Ontario, in part, no doubt, because of the large number of Ontarians who are French-speaking. According to the 1961 census, 425,302 Ontarians claimed French as their mother tongue. Outside Quebec, this is the largest French-speaking group in Canada. The Franco-Ontarians are concentrated mainly in the east and northeast along the Quebec border; more recently, however, many Quebecers, and Franco-Ontarians from the northern part of the province, have moved into southwestern and south-central Ontario to add to other traditional French-speaking settlements in, for example, Windsor, Penetanguishene and Welland. Several Ontario government departments and agencies that deal directly with the public (e.g., Agriculture, Social and Family Services, Provincial Police) have found it a practical necessity to engage bilingual personnel to serve these regions and localities.

Like New Brunswick, however, the wider usage of the two languages in Ontario is governed by practice rather than statute.

In the field of education only Quebec has a fully integrated system of English and French schools from kindergarten through university. New Brunswick and Ontario are next in providing the fullest educational

facilities for both their French- and English-speaking students. Ontario has had, since Confederation, bilingual primary schools, and there are also two bilingual universities, at Ottawa and Sudbury. In August of this year, the Ontario government announced plans to create French-language secondary schools within the existing public secondary school system of the province. New Brunswick has French-language instruction at both the primary and secondary levels as well as the French-language University of Moncton.

Again, it should be noted that provision for French-and English-language educational facilities in these two provinces is not guaranteed by legislation. It has evolved and is ensured only through practice and custom.

Of the other seven provinces, only Manitoba, Saskatchewan and Alberta have explicit legislation on the use of French as a language of instruction in their schools. Manitoba's recent legislation states that French may be used for a period not exceeding half the school day. It also requires that any French-language instruction must have the approval of the Minister of Education who has full discretion over the courses to be offered in that language. In Saskatchewan, where the local board so directs, French may be used as the language of instruction in the public schools for up to an hour a day. The Alberta School Act states that all instruction shall be in the English language but allows a school board to permit instruction in French and in English, from grades one to nine. However, after grade three not more than one hour a day can be devoted to instruction in the French language. Alberta also has a teacher's college in Edmonton for French-speaking students supported by public funds. The Collège St. Jean is now affiliated with the University of Alberta, and it will be interesting to see how well the school is able to serve existing French-language schools in the West.

In the remaining four provinces, Newfoundland, Prince Edward Island, Nova Scotia and British Columbia, there are schools in which French is the language of instruction, but these are not numerous. The amount of government aid granted such schools varies from province to province, but for the most part it is small. To date in these provinces, there have been few formal or extensive efforts to extend the use of French as a language of instruction.

In any case, without increased direct aid from provincial governments, it will be very difficult for any French-language schools outside Quebec to exist for long.

Six Possible Areas of Reform

Any attempt to suggest what the status of the French and English languages should be in Canada raises several problems. If there is no sentiment favouring an extension of the official use of these two languages, then the existing situation is not likely to change. To opt for the status quo would confine the widespread use of French essentially to the province of Quebec although it would of course continue to have an official status in the Federal Parliament and Courts. There is the risk that the adoption of this course might provoke Quebec to become unilingual, except as specifically precluded by section 133. If, however, there is support for a sensible extension of bilingual services throughout the federal, and at some provincial and municipal levels, many constructive changes might be contemplated. Such changes might, in particular, be suggested in six areas.

1. A bill of rights could include reference to the official and equal status of the French and English languages across Canada or at least in jurisdictions having a viable number of French- or English-speaking persons. This suggestion, if agreed to by the federal and provincial governments, could then be strengthened by entrenching the bill of rights in the Constitution.
2. In the field of education, provinces could enact legislation to ensure that both their French- and English-speaking communities would have access, where practicable, to schools in which these groups could be instructed in their own language. The provincial governments concerned could support these new schools in the same manner as they now support their present schools. Some people have suggested that the federal government might provide financial and technical assistance to help develop these new schools, particularly in provinces where, for a variety of reasons, the provincial governments believe they cannot provide these schools.
3. A third possible area of reform would be the right to justice in either French or English across the country or in certain areas declared to be bilingual districts. This would necessitate an extension of that part of section 133 which concerns the judiciary. The main difficulty in the way of implementing such a policy is that at present few, if any, provinces have sufficient numbers of bilingual personnel to carry it out. Interpreters are now, of course, provided when needed. Most admit that this is not an ideal solution. An alternative suggestion worthy of investigation would be to create teams or central pools of judges, court clerks and lawyers who could hear and argue cases in either language anywhere in the country. However, in provinces such as New Brunswick and Ontario, it may be possible and practical to ensure the use of French and English at all levels of the

judicial process at least in areas where there are large numbers of French-speaking people.

4. Another area where French and English might be extended is in all public institutions and services in Canada. The federal government has already made considerable progress towards this general goal in areas under its jurisdiction. Of all the provinces excepting Quebec, New Brunswick seems closest to the creation of a bilingual provincial administration. In Ontario, because the Franco-Ontarians are relatively concentrated, a system of bilingual districts could be practicable. In these districts all provincial and municipal government services could be offered in either French or English. It has been suggested that county borders might be used as boundaries for these districts. Where English or French formed 10 per cent (by mother tongue) of the population, bilingual services could be implemented. Such a criterion could also be employed in other provinces.

5. Broadcasting facilities, for French-speaking persons outside Quebec, could be improved. It should become possible to extend the French radio and television networks throughout Canada for the mutual benefit of both French- and English-speaking Canadians. The experience which Toronto has had in this regard shows the promise of such a policy.

6. The federal capital should be the model of a bilingual centre. Many suggestions have been put forward to make Ottawa a better mirror of the two major, cultural communities in Canada. Some would like to see the capital made an eleventh province; others a capital district under the control of the federal government. Many believe that the most feasible approach might be to effect changes by a greater degree of cooperation among the federal, Quebec and Ontario governments. Within a certain defined area, which could be the one now under the authority of the National Capital Commission, a concentrated effort would be made to make the national capital a more vivid symbol of Canadian unity.

THE WAYS IN WHICH THE FEDERAL
SYSTEM COULD BE IMPROVED

Fourth session
Tuesday afternoon
November 28, 1967

THE WAYS IN WHICH THE FEDERAL SYSTEM COULD BE IMPROVED

This paper will examine the means Canadians possess to achieve the goals they share in common. Any such examination must begin with the reality of the federal fact in Canada.

The classic notions of what federalism is or what it ought to be need not be the central issue in the debate on the future of Canada. What is more important today is what the Fathers of Confederation sought in 1867 - the necessity of having a federal system that will work. Practicability is more essential than textbook logic. Modern Canadian federalism should be so designed that it is both adequate to present needs and adaptable to future change.

One does not have to probe the psyche of the Fathers of Confederation to be able to pass judgement on their accomplishment. They saw, in 1867, the need for a centralized union in which the federal government was the dominant partner. That this decision had its merits in the earliest years of Confederation is without question. But as time passed, and indeed well before all of the first nine provinces became members of the Canadian Confederation, it was equally evident that the kind of centralized federalism which the British North America Act reflected was not in keeping with the strong regional instincts of the country. These instincts have not changed and while in times of national emergency, for example, during the two world wars and the Depression, the pendulum of power in the federal system has swung to the centre, it is not likely that a highly centralized form of federalism will permanently meet the needs and desires of all Canadians. Canada is a nation of regions, which are still usually identified with the provinces. These regions have quite different political, cultural and economic configurations that must be respected if they are to add their unique contributions to the whole country.

If centralism is not the complete answer to the successful governing of Canada, there are forces at work which suggest that the option at the other end of the federal continuum, viz., a high degree of decentralization, is also not a viable choice. The support for this argument is two-fold. First, Canadians agreed to Confederation one hundred years ago because, essentially, it was realized that together they could do what apart they could not. This condition has not substantially altered in the course of the last century and is not likely to change in the foreseeable future. Second, Canadians learned through the painful lesson of the Depression that a measure of fiscal and economic authority must reside in the central government if the various regions of the country are to be served

in an approximately equal manner. The thirty years that have elapsed since the Depression have reinforced the truth of this conclusion, for Canada has required central power to cope with fluctuations in both the stability of the international and the Canadian economies.

The Viable Options

If Canada cannot afford the luxury of the extremes of either excessive centralization or decentralization, it also seems apparent that the country cannot rigidly maintain the status quo in its federal arrangements. The wind of change is blowing across Canada and most, if not all, governments desire certain, though not necessarily similar, reforms. Which direction should Canada take? Which direction can it take? Is it sufficient to modernize the constitution and the practice of intergovernmental relations in Canada to reflect a division of responsibilities more in keeping with current problems and conditions? Or is more radical change required? There are several possible options each of which might be briefly examined.

1. The structural option

This option would involve an alteration in the existing number of provinces. The source for such a suggestion merits a brief, introductory comment.

In an ideal federal state, no doubt, the constituent parts would be approximately equal in size and capacity. The classical and characteristic division of powers could then operate with maximum effectiveness. However Canada has not had such an ideal federal structure and, while some of the disadvantages in the Canadian model might be mitigated by greater centralization or decentralization, both these extremes seem to be ruled out by the considerations already noted. Thus Canada must continue to cope with a federal structure in which the parts are widely disparate in size and capacity. So great is the disparity that two of the ten provinces possess approximately 65 per cent of the total population, 65 per cent of the Gross National Product, and 80 per cent of the manufacturing output. Contrast this situation with that of the United States and the federal 'imbalance' in Canada is revealed in all its starkness. It is not surprising, therefore, that a variety of proposals have been advanced to correct this structural 'deficiency'. Usually, they have taken the form of suggesting a reduction in the number of Canadian provinces though, on occasion, proposals have been made to increase the number of provinces.

If the idea of expanding the present number of provinces is somewhat novel, the idea of amalgamating several existing provinces is as old as Confederation. Suggestions for the reduction or amalgamation of those

provinces now in existence have usually taken the form of a four-province Atlantic union, a three-province Prairie union, and the maintenance of a separate British Columbia, Ontario and Quebec with different possible variations for the Yukon Territory and the Northwest Territories. Progress towards such ventures has rarely passed beyond the stage of speculation - for several reasons that are quite sound. For example, what effect would such unions have on the present representation of these provinces in the House of Commons? Would such unions improve significantly the economic health of the provinces involved? Would there be gains or losses in the efficiency of administration in the new areas? Answers to such questions have not been forthcoming, but in their absence certain informal, voluntary measures of economic cooperation have been implemented among the four Atlantic provinces and the three Prairie provinces, in order to take advantage of the complementarity of these regions without sacrificing the individuality of their respective parts.

The notion of increasing the number of provinces has met, generally, with similar indifference and has been impeded by a lack of concrete data as to the viability of these proposed new provinces, e.g., the division into three or four approximately equally-sized parts of both Ontario and Quebec.

The conclusion is difficult to avoid that this structural option as a means of coping with the new realities of Canadian federalism has too many unexamined assumptions to warrant it being seriously considered at present.

2. The functional option

This option envisages provinces joined together in one country, but separately or severally having a variety of relationships with the central government. This option is at the root of the present debate, and perhaps is one which deserves most serious consideration.

The premise of this suggestion is that each province is sufficiently distinct in its combination of preferences and demands to warrant an equally distinct relationship with the central government. To a degree, this premise was recognized in 1867 and subsequently, as various provinces joined Confederation. The provision of statutory fiscal subsidies for the Maritimes; of language and religious guarantees to Quebec; of high tariffs largely of benefit to Ontario; and of special freight rates to the West illustrate those different regional preferences. To note these provisions is not to stress unduly their significance, but to emphasize that the regions of this country were recognized as being different and having their own

and often separate patterns of needs and aspirations. Today, the fact remains unchanged. The character and quality of regional demands on the central government have changed as much as the country itself, but the fundamental particularities of the regions have remained a constant factor in Canadian federalism.

The issue in 1967, therefore, is not why should the demands be different from those of a century ago, but can the contemporary demands be accommodated and the country still preserved?

The unevenness of the current demands is, in part, a product of the unevenness of economic development among the various regions. Equally, in the case of Quebec, it is a result of a cultural renaissance and of a vigorous concern for the place of Canadiens in Canadian society. Both these economic and cultural factors must be taken into account in any attempt to assess the merits of the new demands.

In one sense the economic side of the problem can be simply posed: the provinces believe they need more revenue to discharge properly their constitutional obligations - especially those for education and the rapidly growing fields associated with urban development. However, the real problem is more complex: to what extent should each sphere of government have the spending power and, hence, which sphere should determine the expenditure priorities? Furthermore, should the Constitution be altered to reflect the new conditions? And if so, how? By defining the division of powers more precisely - or more flexibly? And would either of these approaches be adequate to meet the new demands of interdependence? Although answers to these questions are vitally important, in their absence some provinces, and in particular the smaller or less advantaged provinces, more than others likely will continue to look to the central government, with all its present fiscal powers, as the key to their economic destinies. Such provinces, thereby, will remain more centralist-oriented than their wealthier partners in Confederation.

The more specific example of a substantially different relationship between the provinces and the central government arises from Quebec's interest in a "special status" (statut particulier). It should be emphasized that this interest derives from Quebec's desire for cultural self-affirmation and its ambition to be "maître chez nous".

While there has been a host of special status proposals, and while some have been lightly cloaked semi-separatist programs, a number have suggested federalist solutions to the problem of Quebec's role in Canada.

What are their common features? Very briefly, they are:

- (a) There is a need for endowing the central government with powers which are necessary to maintain a viable federalism but do not impede the development of Quebec's particular traditions.
- (b) It is necessary that powers of a social or cultural nature must be so allotted that either of the two major 'societies' in Canada can preserve and strengthen its own linguistic and cultural heritage.
- (c) The federal government should not have exclusive jurisdiction in such areas as international relations and broadcasting. Certain national institutions should be reformed - particularly the Senate and the Supreme Court.

The advantages and disadvantages of these special status proposals need to be carefully probed and evaluated. Here, only a few questions can be raised but they may indicate the kinds of issues that must be tackled.

- (a) Is a "special status" equivalent to a preferential status?
- (b) Is there an insurmountable difficulty in Members of Parliament from a province with a special status discussing and voting on measures which are not dealt with by the Federal Government in their province?
- (c) Although "special status" or special arrangements is a proposal normally associated with Quebec, is it reasonable to imagine that different provinces could have a variety of differing relationships with the Federal Government?
- (d) Could the Federal Government administer programs of a highly complex nature for smaller provinces which might find it impossible or impractical to establish the necessary complex machinery?

3. The bilingual option

Finally, consideration should be given to a third possible option which, if adopted, might reduce substantially the argument for a "special status". This option concerns the possibility of having Canada reflect faithfully its dual and composite cultural heritage. The practical effectuation of this possibility has many complex aspects, but the following standards might be considered as realizable ideals necessarily to be attained if this option is to be labelled viable.

- (a) All federal, public institutions in Canada should mirror the English and French linguistic traditions of the country.
- (b) Where possible and practicable, both English- and French-speaking persons across Canada should have access to judicial, governmental, educational and broadcasting facilities in the language they know best.
- (c) The unique place of the two dominant cultural communities of Canada should be expressly in and protected by the Constitution.

Immediate Issues

Among the many pertinent questions now confronting Canadians, three seem of immediate and fundamental importance.

1. To what extent would some degree of change in Canada's federal system be beneficial or, at least, to what extent should it be contemplated?
2. If no change is effected, what are the implications for the continued existence of the country? If some change is effected, have Canadians a sufficient knowledge of the issues? And are they prepared to listen to one another in good faith in the course of detailed negotiations?
3. Should and can Canadians establish a mutually acceptable timetable of priorities in order to determine better the future direction of their country?

THE WAYS IN WHICH THE FEDERAL SYSTEM COULD BE IMPROVED

Fifth session
Wednesday morning
November 29, 1967

THE WAYS IN WHICH THE FEDERAL SYSTEM COULD BE IMPROVED

This paper discusses some means by which the Canadian federal system might be improved to meet the goals of the Confederation of Tomorrow. If Canadians agree that the status quo is no longer acceptable, the necessary reforms in our institutions and practices will largely be determined by the consensus reached about national goals and the type of federal system that can best be designed to achieve them.

Although the major decisions that Canadians must make concern their economic future and the linguistic and cultural nature of their country, it may be useful here to examine some of the institutions in which reforms have been strongly advocated. The range of proposals put forward illustrates the widely differing opinions of Canadians on the direction in which Canada should develop.

If changes are to be made in the Canadian federal system it is relevant to consider the means whereby they may be made. The latter part of this paper deals briefly with this question. The three options discussed are: change by adjustments in practice; change by formal amendment; and, change by the adoption of a new constitution.

I

A BILL OF RIGHTS

Canadians are fortunate that their rights as citizens and individuals are patterned on those developed in the course of British political and legal history. In 1960, the Canadian Parliament formalized these rights and passed a bill of rights for which the federal government is responsible. However, during the past seven years, Canadian courts have interpreted this statute restrictively and have relied on the more traditional means of protecting the rights and freedoms of the individual.

This restricted interpretation has partly resulted in a continuing discussion on the desired contents and form of an ideal bill of rights. The present Bill, as is often pointed out, applies only to federal areas of responsibility without effect on those freedoms that fall under provincial jurisdiction. It is also argued that it fails to mention economic, social and linguistic rights -- freedoms the guarantee of which is largely alien to the common law tradition but is included in the constitutions of some European countries.

Discussion of a revised bill of rights is particularly relevant at this time because a federal-provincial conference on this subject has been called by the federal government early in the new year. Many of the proposals for reform presented here will undoubtedly be raised at the conference.

The concrete suggestions for reform include:

1. Entrenchment

(a) Since the present Bill of Rights is only a federal statute subject to repeal or abrogation by Parliament, it has been suggested that it should be specially entrenched in the Constitution in order to give it symbolic importance and careful protection as a fundamental law of the land. Such action would enhance the Bill's legal significance.

(b) A variant of the entrenchment scheme proposes that a bill of rights be the basis of the preamble of a revised constitution. It has been suggested that reference to economic, social, educational and linguistic rights be included in this preamble. Thus, individuals might be guaranteed the right to work, the right to a fair standard of living, the right to an education in either official language, and so on.

The entrenchment proposal has been criticized by some commentators because it would put these rights beyond the reach of the country's legislators and make them subject to the vagaries of judicial interpretation. If this interpretation should prove restrictive, the legislators could not easily remedy the situation.

2. Group Rights

Bills of rights have usually provided protection for citizens as individuals. Several people have suggested that a new Canadian bill of rights should also contain a guarantee of group rights so that both the French-speaking and English-speaking groups would be assured a variety of educational, cultural and linguistic rights.

3. Provincial Bills of Rights

(a) Many freedoms not covered by the federal Bill of Rights have already been protected by provincial statutes, and some commentators argue that little further action is needed. Others, however, argue for the adoption of formal, provincial bills of rights, protecting the individual against such dangers to his rights as discrimination in housing, employment, public accommodation, and religion, or even limitations on his provincial franchise.

If such a course was adopted, the federal and provincial bills of rights would thus guarantee to the individual the full range of his rights and freedoms.

(b) It has also been proposed that the federal Bill of Rights be amended to include matters lying essentially within provincial jurisdiction. The Bill could then either be entrenched in the Constitution and made binding on all levels of government or open to ratification by each province, taking effect in that province only when so ratified.

THE SUPREME COURT

The final court of appeal in the Canadian federal system renders decisions on all matters of law brought before it. It is the supreme judicial arbiter not only on constitutional matters but also on those of criminal law and civil wrongs. In regard to this latter category in particular, these decisions help to provide a uniform core in the common law and civil code traditions of the country.

In 1949, the Supreme Court of Canada replaced the Judicial Committee of the Privy Council as the final court of appeal for the country. During the Depression, the Judicial Committee had come under increasing criticism from many Canadian legal authorities and political commentators for a series of decisions that limited the scope of the federal government especially in regard to social welfare legislation. After the Second World War, this criticism and a growing Canadian nationalism spurred the federal government to seek advice on whether it was legally empowered to terminate appeals to the Privy Council.

The change in 1949 was welcomed by many Canadians as the severance of one of the last few links by which Canada remained dependent on the United Kingdom. However, a series of decisions during the 1950's in which the Supreme Court reversed several verdicts of the Quebec Court of Appeal, the so-called 'civil liberties' cases, brought the Supreme Court into disfavour in that province. It was argued that the civil law of Quebec was being badly interpreted by a court in which only three of the nine justices were trained in the civil law. Furthermore, it was argued of these three, only two were originally French-speaking and therefore products of the culture and society that the civil code was designed to reflect.

With the growth of Quebec nationalism and its increasingly vocal expression, the Supreme Court of Canada received much strong criticism

as a strictly federally-appointed body. How could a province expect a sympathetic hearing of a constitutional case it brought before the Supreme Court of Canada if the justices were all appointees of the federal government? Such an argument implicitly assumed that the Supreme Court justices were delegates of the federal government. It also suggested that the provincial government should have its delegates sitting on the Court. Other critics have demanded a Supreme Court consisting of an equal number of delegate-justices from English-speaking and French-speaking Canada. English-Canadian legal commentators have criticised the Court for being too conservative and for failing to take sufficient initiative in matters of social reform. These critics have usually thought in terms of the judicial activism of the United States Supreme Court but in doing so, have overlooked the differences between the American political system of 'checks and balances' and the Canadian system of a supreme parliament.

More recently, criticism of the role and functions of the Court has emanated from some of the provinces likely to be affected by the federal government's decision to seek an advisory opinion from the Supreme Court on the question of off-shore mineral rights. These critics want the question settled at the political level only, rather than by acceptance of a legal decision.

Two Categories of Proposed Reform

A. As a result of these criticisms, a number of proposals for the reform and improvement of the Supreme Court have been advanced. Several of these would make alterations to the structure of the present Court.

1. The appointment system

A number of proposals have been made for reforming the method by which judges are appointed to the Court.

- a) The federal Minister of Justice would formally have to consult with provincial governments, the provincial bar associations, and/or the Canadian Bar Association before making Supreme Court appointments.
- b) The federal government would select the justices from a list of nominees drawn up by a nominating commission consisting of representatives of the provincial governments, provincial bar associations and/or the Canadian Bar Association.

- c) The provinces would select the Supreme Court justices.
- d) The justices of provincial High Courts would be appointed by the provincial governments. The then provincially appointed Chief Justices would join their colleagues on the Canadian Supreme Court to hear constitutional cases.
- e) The Court would consist of an equal number of justices named by English-speaking and French-speaking Canada, a concept based on the notion of 'associate states'.

2. The efficiency of the Court

The number of justices sitting on the Court might be increased so that the justices could develop more specialized functions. The practical result might be specialized panels of judges hearing cases of a particular legal category.

B. The other category of suggestions would result in a new form of the Court.

1. A constitutional court

This proposal makes a distinction between a general court of final appeal and a specialized constitutional court. It advocates the establishment of a separate court that would deal only with constitutional matters. Appointments to this court could be made according to the present system or according to any of the methods mentioned above.

2. Appeals from Quebec

This proposal stems from the complaint that the present Supreme Court, two-thirds of whose justices are trained in the common law, may distort the civil law of Quebec. It advocates making the Quebec Court of Appeal the final court of appeal for all cases arising in Quebec, except for those of a constitutional nature. Constitutional questions would be submitted to the Supreme Court under the present system, or to the constitutional court if that reform was adopted.

3. A federal-provincial arbitrating commission

Constitutional questions that bring the federal and provincial governments into conflict might be decided by the Supreme Court,

by a special constitutional court, or by a federal-provincial arbitrating commission. Such a commission could deal with those cases judged to be highly political in nature. The off-shore mineral rights question might well serve as an example of this type of case. The members of the commission would represent both the federal and provincial governments. Presumably, each government would appoint its own representative.

The Commission might also serve as a standing committee to recommend constitutional changes.

THE SENATE

Almost from its inception, the Canadian Senate has been subjected to much criticism. Major criticisms have dealt with five phases of the Senate.

1. Role

Whatever role the Fathers of Confederation envisaged for the Senate, critics today argue that this body does little useful work and asks what role an upper house can play in a modern, democratic, parliamentary cabinet system of government in which power is concentrated in the lower house.

2. Appointment

Critics claim that in a modern democratic country an appointed Senate is an anomaly.

3. Criteria for appointment

With very few exceptions, senatorships have been awarded to faithful party members for long and valued service. This has not meant that talented and able men have been excluded from the Senate, but it has often resulted in the appointment of persons not necessarily possessing the skills and temperament ideally desired to make the Senate a reflective forum of 'sober second thought'.

4. Length of appointment

Until 1965, senators were appointed for life. An amendment to

the British North America Act in June of that year stated that senators appointed after that date would have to retire at age 75. Criticisms directed at the life appointment, and applicable also since the amendment, stated that the length of the appointment tended to make the job something of a sinecure and sapped the appointees of their initiative and incentive.

5. Representation of provincial interests

Consciously or subconsciously, critics of the Canadian Senate often contrast it with its American counterpart. Whereas the American Senate is an active and equal partner in the governing of the United States at the federal level, the Canadian Upper Chamber appears unexciting, unimportant and, at times, unnecessary. Nowhere is this more obvious than in its failure to develop the role intended for it: a strong voice in representing and protecting provincial interests. It was in this House that the principle of representation by population was compromised in favour of additional representation for Quebec and the Maritime Provinces. Nevertheless, from the very first years of Confederation, it was recognized that local and provincial interests would better be represented in the federal Cabinet.

Over the years, many suggestions for Senate reform have accompanied these criticisms. More recently, growing dissatisfaction with the Canadian federal system has called forth recommendations for additional reforms.

1. Abolition

The most radical suggestion for remedying the ills of the Senate calls for its abolition. Proponents of this reform argue that in modern times, a second chamber, particularly one whose members are almost exclusively 'party men' and who are appointed rather than elected, is no longer appropriate in the governing and legislative process. They point to the fact that the provinces, with the exception of Quebec (and even its Upper House has been brought into question), have all been able to govern with unicameral legislatures without any serious drawback.

2. Length of appointment

To end the debilitating effect on the Senate of appointment until age 75, it has been suggested that a fixed term be implemented for, say, a period of five or ten years. This would result in an opportunity for an increased number of Canadians to serve in the Senate and might even open the way for more appointments of men who have distinguished themselves in fields other than politics. A senatorship might then be regarded less as a reward for merely partisan service or a sinecure.

3. The role of the Senate

- a) Some critics believe that objections to the Senate might be reduced if it was deprived of its absolute veto power over legislation passed by the House of Commons. They advocate a system similar to that imposed on the British House of Lords that would give the Senate the power to delay legislation for a year but which when re-passed by the Commons, would become law without Senate approval.
- b) Other critics suggest an expansion of the Senate's responsibilities to give it a more activist role. Under these proposals, the Senate would be given such powers as approval of the appointments of judges and ambassadors, ratification of treaties, and protection of the rights of minorities.

The question then arises, particularly with regard to this last responsibility, of the effect of such a change on the institution of parliamentary government. Would the Senate have exclusive jurisdiction over the protection of minority rights? Could the Senate reject government-sponsored legislation over this matter without bringing down the government? Such alterations involve a new and complex element that must be carefully considered.

4. Election of Senators

This proposal would end the appointive system and give senators a political base. Critics of the proposal point out that elected senators would claim to represent the people as much as members of the Commons and thus accentuate rivalry and conflict between the two Houses. With the Senate's present veto, such rivalry might often result in a parliamentary deadlock. Furthermore, once senators were elected, it would not be long before there developed a demand for representation by population in that chamber.

5. Protection of provincial interests

In order to restore the Senate to its intended role as protector of provincial interests, it has been proposed that senators be appointed by provincial governments. Variants of this scheme, in which the federal and provincial governments would alternate in the appointment of senators from a province, have also been proposed. This scheme would also have the advantage of bringing into the Senate representatives of minority political parties which have never been able to win federal power but which have formed provincial governments, in some cases for long periods of time.

Critics of these proposals argue that a provincially appointed Senate would soon be in conflict with the House of Commons. Parliament would rapidly become a standing federal-provincial conference with all the rancour and uncompromising positions that have come to be associated with this type of conference.

6. An 'associate states' Senate

This proposal is predicated on a Canada consisting of two associate states. The Senate would have an equal number of English- and French-speaking members representing the Canadian and Quebec associate states respectively.

THE CROWN

In 1867, the Fathers of Confederation rejected any sort of republicanism for the federal state and chose instead a constitutional monarchy. It was only after a good deal of persuasion by the British government that Sir John A. Macdonald agreed to adopt the term 'Dominion of Canada' instead of the 'Kingdom of Canada' that he favoured.

Since then, the decline of Britain, the rise of American culture and influence, and the changing social views of the Canadian population have contributed toward a shift in attitudes among many Canadians towards the Crown and the monarchy. A number have asked whether a true Canadian identity and nationalism can develop fully if their system of government reflects the symbols and trappings surrounding a monarchy domiciled in another country. They would prefer to develop a set of symbols distinctively Canadian.

These critics of the Crown also point out how difficult it is for French Canadians, and many Canadians of other than British origin, to identify with and feel part of a country whose institutions and symbols are almost completely British in their orientation.

The adoption of the new flag and the growing acceptance of 'O Canada' as the national anthem have spurred these critics to suggest that the time has come to break the tie that binds us to the Crown. Some of these critics advocate instead the adoption of a republic but one wedded to the parliamentary system of government. A president in this system would take the place of the monarch and the governor-general.

Other critics of the monarchical form of government propose that the parliamentary system be abolished and in its stead a congressional model be adopted. They argue that government has become too complex for a

minister to be able both to administer his own department adequately and to serve his constituents well as a member of Parliament. Furthermore, they believe that the party system in Parliament has become too rigid and inflexible, not allowing members sufficient independence or initiative. If the congressional system were adopted, so this argument goes, cabinet members would not be politicians and could devote their full time to the running of their departments. The departments would be subject to the scrutiny of the politicians who could afford to be more critical knowing that a censure of a particular minister would not result in the fall of the government.

Since each province is now able to amend its own constitution with regard to any matter except to office of the lieutenant-governor, the question is raised whether an individual province now has the power to adopt a republican form of government. Perhaps a parliamentary republic could be adopted. Since the powers of the two men would be substantially the same, the lieutenant-governor could play the part of president. The adoption of a congressional republic, however, would require changes in the office of lieutenant-governor and is beyond provincial power at present. Repeal of Section 92(1) might be considered in order to give each province the power to assume whatever system of government it desired.

Many Canadians, it must be noted, are opposed to the adoption of a republican form of government and advocate the retention of a constitutional monarchy. Some do so, not for any reason of attachment to the monarchy, but simply because they believe that the acrimony that will be raised by this issue will turn the attention of Canadians from more substantive questions of reform. Others are strongly imbued with the traditions and customs from which Canada's constitutional monarchy has evolved and believe that this form of government is more in line with the Canadian character than a republican system would be.

' GREY AREAS' OF THE CONSTITUTION

Responsibility for several matters that have assumed greater importance in recent times is not clearly assigned by the British North America Act either to the federal government or to the provincial governments. This responsibility has been clarified by court decisions but in the process these have created much dissatisfaction at one level of government or the other.

An example of such disputed jurisdiction that has recently been raised is the matter of international relations. Section 132 of the British North America Act refers only to Canada's relations with foreign countries as part of the British Empire and appears to have no relevance today. Should

the provinces have the power to make agreements with foreign countries on matters which fall clearly within provincial jurisdiction? Should the provinces have the right to seek representation on those international bodies which deal with such matters? Present Canadian practice is the result of the 'Labour Conventions' case of 1937 in which it was decided that the federal Parliament has the power to conclude treaties on any matter but that it could pass legislation to carry out the treaty obligations only on those matters within its own jurisdiction. Any matters under provincial jurisdiction dealt with by the treaty can be put into effect only with the approval of the provinces.

Several provinces now maintain offices abroad. Some have made unofficial agreements with neighbouring American states or with foreign countries with regard to matters within their own jurisdiction. Recent proposals call for formalization in the constitution of this provincial role in international affairs, i.e., an end to exclusive federal jurisdiction in this area.

II

Adjustments in Practice

If it is assumed that some changes in the Canadian constitution are both necessary and desirable, the question then arises how such change might take place. The answer depends partly on the degree of change desired and partly on the national consensus that can be created with regard to it. However, it should be noted that an alteration of both large or small consequence can be undertaken by any of the methods of change suggested here: practical adjustments, formal amendment, and the adoption of a new constitution.

Constitutional reform by means of adjustment in practice assumes that the British North America Act is, on the whole, an acceptable document for our constitutional development. Greater centralization or decentralization could be effected by reinterpreting the wording of the Constitution, i.e., by practice, without changing an iota of sections 91 and 92 of the B.N.A. Act. Similarly, the constitutional balance could be changed by various fiscal reforms, such as increased tax sources for the provinces.

Constitutional Amendment

The British North America Act is the symbol of one hundred years of Canadian history and development. Over the years judicial interpretation, formal amendment, and convention moulded it to accord with contemporary needs. Many of the staunchest defenders of the B.N.A. Act would, however, concede that there are some sections of the Act no longer relevant or meaningful. In other sections, practice has developed with little relation to the wording of the text. Such commentators would agree that the Act requires amending to cleanse it of these dated sections but would oppose the complete rejection of a flexible constitution that has served Canada for a hundred years.

Many of the constitutional reforms proposed would require an amendment for their implementation. Even some proposals that could be implemented administratively might well be introduced in the form of an amendment as a symbolic gesture to show the degree of commitment to change.

The lack of an agreed formal amending procedure, and in particular one over which Canadians have sole control, makes difficult the adoption of constitutional amendment as an ordinary technique of implementing changes in the constitution. It might, however, be argued that, faced with the need for extensive constitutional revision, it might prove possible to devise an amending procedure acceptable to all Canadian governments.

A New Constitution

Some critics of the British North America Act argue for its complete repeal. They claim that it was intended for a country only semi-independent and that it no longer reflects the general character or true needs of Canada; many of its sections now bear little if any semblance to the realities of the political system; as a British statute, its wording, particularly in the preamble, is hardly inspiring; a genuinely Canadian constitution is required; finally, since the Act has caused so much rancour among Canadians and has been such a source of disunity makes it preferable to start afresh and draft a new constitution. According to the critics, such a constitution could take into account the changes that have occurred in the past one hundred years as well as the needs of a federal system in the modern age.

THE MACHINERY AND STRUCTURE OF FEDERAL-PROVINCIAL
AND INTERPROVINCIAL RELATIONSHIPS IN CANADA

Sixth Session
Wednesday afternoon
November 29, 1967

THE MACHINERY AND STRUCTURE OF FEDERAL-PROVINCIAL
AND
INTERPROVINCIAL RELATIONSHIPS IN CANADA

It has been almost axiomatic of Canadian federalism that the relative importance of provincial and municipal governments increases in time of peace and diminishes in time of war. So it has been since World War II that Canadian provincial and municipal governments have grown relative to the federal government. In the last 22 years, the federal government has been forced to transfer significant amounts of revenue to provincial governments which have had to satisfy the greater part of the increase in demands for public goods and services because of their constitutional responsibilities. This transfer has been effected through four main types of federal-provincial arrangements: shared cost programs, conditional and unconditional sharing of taxes, and equalization payments. In order to negotiate the terms of these arrangements and administer them, many channels of communication between federal and provincial government representatives have had to be constructed or enlarged.

There is, however, an additional need, which lies within the very structure of federal and provincial governments in Canada, for expanding the avenues of intergovernmental communication. Only recently has it been widely recognized that there is in some cases a high degree of interdependence between provincial and federal government programs as they presently function. Since these programs are interdependent, they must be coordinated if the Canadian state is to achieve most effectively certain common goals. The need for coordination of programs has been and will continue to be translated into a need for more intergovernmental communication.

Thus, the negotiation and administration of federal-provincial financial arrangements and the interdependent nature of the programs of the eleven governments in Canada all necessitate intergovernmental communication. What, in this paper will be called 'the machinery' of federal-provincial and interprovincial relationships, comprises all the institutions and practices which bring representatives of the federal and provincial governments into communication with one another. In short, the subject of machinery is one of intergovernmental communication. It includes a vast range of activities from informal telephone calls between provincial and federal civil servants to the formal Plenary Conference of Prime Ministers and Premiers.

Communication involves both consultation, where governments seek advice from each other, and persuasion, where governments seek to give advice to each other.¹ Each of these involves an exchange of information and opinion. Other aspects of communication, such as public relations, are merely intended to enlarge and improve the channels for this exchange.

I. DESCRIPTION OF EXISTING MACHINERY

Formal Machinery

Machinery for intergovernmental communication in Canada can be broadly separated into formal and informal. Outside governments, little is known about the nature and degree of the latter. The formal machinery is better known and, to say the least, extensive. It comprises all federal-provincial and interprovincial meetings. From 1957 to 1965, the annual number of these meetings grew from 64 to 125.² However, the number of annual meetings appears to have levelled off; in a recent compendium, 122 meetings were scheduled for 1967.³

Intergovernmental meetings may be classified into four major groups:

1. Meetings of prime ministers and premiers, ministers, or officials;
2. Federal-provincial and interprovincial meetings;
3. Departmental meetings and broader interdepartmental meetings;
4. Meetings of a periodic, ad hoc or continuing nature.

1. (a) Meetings of Prime Ministers and Premiers

There are four meetings under this classification. The most important is the Plenary Conference of Prime Ministers and Premiers which has

¹ For example, the Tax Structure Committee is a federal-provincial conference which is predominantly characterized by the attempts of the provincial and federal governments to persuade each other of the merit of their views. In contrast, the Provincial Premiers' Conference is one in which premiers mainly consult with their counterparts.

² Gallant, "The Machinery of Federal-Provincial Relations I," Canadian Public Administration, (December 1965), P.515

³ Source: Calendar of federal-provincial conferences 1967 prepared by the Federal-Provincial Relations Division of the Federal Department of Finance.

in recent years met on at least an annual basis. It is called to exchange views on major policy items, such as patriation of the constitution, the quinquennial revenue-sharing arrangements between the federal and provincial governments, medicare, etc. It has often been criticized for being, in effect, a third tier of government despite the fact that "agreements" which are made at this meeting (if any) are subject to approval by the federal and provincial legislative bodies.

Next in importance is the Provincial Premiers' Conference which has been careful to state that its deliberations are restricted to items of provincial concern. Apart from its secret deliberations, the main functions of this meeting appear to be the creation of goodwill among the premiers and general discussion followed by referring certain items of mutual concern to more specialist committees.

The other two meetings in this classification are regional in scope. Every year, the Atlantic premiers meet to discuss matters of regional concern as do the premiers of the three prairie provinces.

(b) Ministerial Meetings

As of 1967 there are an estimated 24 ministerial meetings, 19 of which are federal-provincial and 5 of which are interprovincial.⁴ (A list of these is provided in Appendix I to this paper.) Most of them are departmental meetings, e.g., the Federal-Provincial Meeting of the Ministers of Health, the Ministers of Agriculture, and the Committee on Financial Institutions and Securities Legislation, while two of them, the Tax Structure Committee and the Federal-Provincial Meeting of the Minister of Finance and Provincial Treasurers, are general, in the sense that their discussions are often concerned with broader fiscal and state-of-the-economy questions which cut across departmental boundaries. The Tax Structure Committee is a task force comprising the Minister of Finance and the Provincial Treasurers, although on occasion it has included many premiers owing to its consideration of the important quinquennial tax-sharing, cost-sharing and equalization payments arrangements between the federal and provincial governments. At the Federal-Provincial Meeting of the Minister of Finance and Provincial Treasurers, views on the economic and financial situation in Canada and in the various provinces are exchanged prior to budget formulations, in order to facilitate more effective coordination of the fiscal policies of federal and provincial governments.

(c) Officials' Meetings

These are too numerous to mention or describe here. Appendix II

⁴ Not all these meetings necessarily take place in a given year.

of this paper classifies the federal-provincial and interprovincial meetings by department and by level. (i.e., deputy minister or other).

2. Federal-Provincial and Interprovincial Meetings

An interesting comparison can be made between the number of federal-provincial and interprovincial conferences. At the prime ministerial and ministerial levels combined, there are 8 interprovincial and 20 federal-provincial, a fact which indicates that there is more formal communication between the two levels of government than among the provinces. This statement may be partially misleading because federal-provincial meetings provide also, in effect, a forum for discussion among provincial government representatives. Nevertheless, while interprovincial communication may be extensive at federal-provincial meetings, it is likely to be concentrated on topics of federal-provincial rather than interprovincial concern.

3. Departmental and Broader Interdepartmental Meetings

Of all the intergovernmental meetings only eight transcend departmental lines in the sense that discussion at these meetings may often be concerned with broader economic, fiscal or constitutional problems of an intergovernmental nature. These eight meetings comprise the four meetings of prime ministers and premiers, the Tax Structure Committee, and its back-up committee, the Continuing Committee on Fiscal and Economic Matters, the Conference of Federal and Provincial Economic Councils or Advisory Boards which was held in 1965, and The War on Poverty Conference which was held also in 1965. There have been, however, a number of meetings on specific problems that may have involved two or more departments of the same government.

4. Ad Hoc, Periodic and Continuing Committees

Continuing and ad hoc committees are sometimes regarded as ideal because they allow communication to take place when, and usually only when, a situation or development requires it. On the other hand, the periodic conferences (e.g., annual or semi-annual) are associated with a more rigid timetable which sometimes produces one of two unfortunate results: either a conference is held for its own sake and there is nothing much of importance to discuss, or there are too many important items on the agenda to be discussed adequately at the meeting. Admittedly, the annual meeting can be shortened or lengthed and it can be held at different times of the year. However, there still remains some inflexibility in this type of meeting because there are practical restrictions on its length. For example, it is difficult to

extend a federal-provincial meeting beyond five days and a one day conference is rather short for those delegates who come to Ottawa from the extremities of Canada.

On the other hand, there is an important reason why provincial governments may prefer periodic to ad hoc or continuing conferences. Traditionally, the federal government has taken the initiative in calling federal-provincial meetings. Some provincial representatives feel that too often the federal government has called an ad hoc meeting at its convenience rather than at the convenience of provincial governments. In some cases this has meant that no meeting has been held when it appeared desirable from a provincial government point of view. But, when meetings are formally made annual or semi-annual, the federal government has no choice but to call them whether or not they are convenient.

In point of fact, of 113 intergovernmental committees,⁵ 58% are periodic, 25% are ad hoc, and 17% are continuing in the sense that they are held as they are required. Of the periodic meetings, 76% are held annually. This percentage composition changes markedly for ministerial conferences. Of the 24 ministerial conferences, 11 are periodic, 11 are ad hoc, and 2 are continuing; the percentage composition is 46% periodic, 46% ad hoc, and only 8% continuing.

Informal Machinery

Naturally, less is known about the informal visits, telephone conversations and private correspondence among the ministers and officials of the eleven governments. However, it appears that the amount of this informal liaison is growing. One official recently remarked, not altogether facetiously, "There aren't many officials in Ottawa these days: they're all out consulting with provincial officials."

The premiers will, of course, have more information about the degree and quality of liaison with their counterparts in other provinces and with the Prime Minister. Do they regard this liaison as useful? Do they regard it as more valuable than their formal contacts at their annual conferences? Do they think that changing the mix between formal and informal communication would improve the quality and/or increase the overall exchange of information and opinion among them? These questions can only be answered by the premiers themselves.

⁵ These do not include non-governmental conferences at which some delegates may be civil servants or subcommittees. They do include all federal-provincial and interprovincial ministerial and officials' committees.

II THE IMMEDIATE AIMS OF INTERGOVERNMENTAL MACHINERY

The immediate aims of intergovernmental machinery are:

1. to provide for more and better communication among governments;
2. to effect more cooperation among governments;
3. to effect more coordination of the activities and programs of the eleven governments in Canada.

Some conferences have been criticized because they appear to involve a high degree of public relations but at which not very much of substance is discussed. However, the public relations aspect of these conferences may be valuable insofar as it creates goodwill and hence makes future communication among the delegates easier. Perhaps the Premiers' Conference illustrates this aspect best. It is most likely that the cooperation among provinces is enhanced by the close personal relationships among the premiers.

Communication is not, however, sought for its own sake. It leads to the more important results of intergovernmental cooperation and coordination. These two terms ought to be distinguished because they are often used interchangeably. Cooperation is defined as the act of working together for mutual benefit. When the federal and provincial governments agree on a conditional grant program, the federal government benefits insofar as its conditions are met and the provincial governments, of course, gain financially.

Coordination is defined as the bringing of the parts into proper relation so as to achieve a given objective. When the federal and provincial governments, without raising taxes, respectively increase defence expenditures and build highways in times of severe unemployment, they are coordinating their efforts towards the reduction of unemployment. The benefactors are, of course, the public as a whole and the unemployed in particular.

Intergovernmental cooperation does not necessarily require coordination, although cooperation is usually a precondition for coordinating programs of different governments. It is difficult to imagine any coordination of federal and provincial agricultural programs without some willingness of the federal and provincial governments to cooperate. By definition, there must be a common objective towards which cooperation is aimed and there must first be federal-provincial cooperation in order to decide on the common objective.

Closely related to intergovernmental coordination is intra-governmental coordination, that is, the coordination of programs in different departments within a government towards a common objective. When provincial governments set out to do this, they inevitably are confronted with conditional grant programs which may distort their priorities if they yield to financial temptation and subscribe to the conditions of the programs. Thus, the decision to coordinate programs within a government may be in partial conflict with the attempt by two levels of governments to coordinate their programs.

One of the most important of the recent developments in Canadian federal-provincial relations has been the movement away from shared-cost programs in fields of provincial jurisdiction. Insofar as the negotiation, administration and in some cases coordination of the hospital insurance program, health grant programs, and programs under the Canada Assistance Plan will move out of the realm of the federal-provincial into the realm of the provincial, there will be a lesser need for federal-provincial communication and coordination and a greater need for intragovernmental administration and coordination.

This development raises a number of questions. Is the trend likely to continue? Will new fields of government activity associated with urban problems, for example, presage a revival of the shared-cost approach to federal-provincial arrangements? Will the phasing out of federal involvement in these fields reduce and/or constrict channels of intergovernmental communication in other areas of federal-provincial relations? Is intragovernmental coordination easier to achieve than federal-provincial coordination? Finally, will coordination of programs among provinces become more important as a result of this development?

III THE IMMEDIATE AIMS OF INTERGOVERNMENT MACHINERY AND THE GOALS OF CANADIAN FEDERALISM

What is the relationship between intergovernmental cooperation and coordination and the goals of Canadian federalism?

Cooperation will be sought for its own sake and therefore may not necessarily have a positive influence on the goals of federalism. When the federal and a provincial government agree to have their income tax revenues collected by one agency only, they are cooperating. Both parties taken together benefit insofar as collection costs are reduced through the elimination of duplicate collection machinery. But does this cooperative agreement have

any important effect on a goal such as minimum national standards? In fact, such a collection agreement has not led to equal income tax rates across the country: Manitoba and Saskatchewan have levied income taxes over and above their abatements. Moreover, some critics might argue that the collection agreement per se was never intended to create equal income tax rates in all provinces. On the other hand cooperative interprovincial cultural exchange agreements no doubt have an effect on the promotion or maintenance of the linguistic and cultural heritage of all Canadians. The point which is being made here is that intergovernmental cooperation may or may not be directly related to the achievement of the goals of the Canadian federal state.

The most important relationship in intergovernmental relations is that between intergovernmental coordination and the goals of federalism. By definition, jurisdiction in a federal state is divided; often a provincial government will have jurisdiction over certain programs which should be coordinated with federal programs or programs of other provincial governments if certain goals are to be more effectively or easily attained. Thus, the importance of interdepartmental coordination depends on the particular division of powers between levels of governments. For example, if there is a high degree of interdependence among the different education programs, they can be coordinated largely within provinces or among provinces. Furthermore, insofar as the costs and benefits of education programs are not shared among provinces, there is little interprovincial interdependence and hence little need for interprovincial coordination of these programs. This does not mean that there is no need to standardize education programs among provinces, but only that the standardization may affect a very small number of Canadians. Thus, in this example, the main problem may be one of intragovernmental rather than federal-provincial or interprovincial coordination. And while intragovernmental coordination is important, it is a problem of unitary and federal states alike.

However, there are areas where coordination is very important. Coordinating provincial and federal regulatory activities on consumer protection to protect effectively the Canadian householder is a case in point.

When speaking of coordination, it is necessary to distinguish between legislative and administrative coordination. The latter is perhaps more easily attainable because the former involves certain political risks. Consequently, efforts to coordinate activity at the political level may be more dependent on politics than machinery. In other words, the effect of machinery on the goals of federalism may be very limited if intergovernmental coordination is required at the political level.

IV. WHAT IS WRONG WITH EXISTING INTERGOVERNMENTAL MACHINERY?

Essentially, the machinery breaks down when it fails to provide the type of communication which will lead to intergovernmental cooperation and coordination.

Communication may be inadequate in several respects. Its timing may be inadequate in the sense that it does not take place when required, e.g., the perhaps overly high incidence of periodic committees.

The mix of formal and informal communication may be unsuited to the program at hand. So it may be with the mix of communication among political representatives and officials. Furthermore, communication between politicians and officials may be inadequate, although this is a problem within governments rather than between governments.

What is clearly needed is an assessment of the merits of existing machinery by those involved in the process of communication. To this end, the Continuing Committee on Fiscal and Economic Matters has commissioned the Institute of Intergovernmental Relations at Queen's University to do a major study on the machinery of intergovernmental consultation.

Two other criticisms have been levied at federal-provincial meetings. One is that they are held too frequently in Ottawa. Provincial representatives from the extremities of Canada are particularly strong proponents of this argument.

The other criticism is that some of the more important federal-provincial conferences are not open to the news media. Those left outside argue for public education while those inside argue that communication among delegates is much better when the news media are not allowed into meetings.

Finally, the possibility that expectations of machinery may be too high must be considered. If such is the case, the whole range of alternatives from delegation of administrative authority to constitutional change may have to be considered in those areas where coordination is both desirable and important.

V. NEW FORMS OF MACHINERY

It was stated above that many federal-provincial meetings are held annually. The charge is often made that this arrangement does not allow for

adequate intergovernmental communication because it does not allow governments to communicate when it would be most profitable for them to do so - despite the fact that the channels for informal communication are presumably open at any time. Several suggestions have been made to correct this apparent deficiency.

One of these is the suggestion that a permanent intergovernmental affairs secretariat in Ottawa be instituted. This secretariat would include both federal and provincial officials each responsible, of course, to his respective government. Officials in this secretariat would likely be below the deputy minister level and the question arises whether the efforts of this secretariat as a communications centre would be as valuable as the informal communication carried on among deputy ministers in the provinces and the federal government. There is the additional question whether provincial civil servants could effectively represent their respective governments in an Ottawa environment. Another variation of this proposal is that the members of the secretariat would be "intergovernmental" civil servants responsible only to a conference or committee.

Some have suggested an interprovincial affairs secretariat which would be similar to the intergovernmental affairs secretariat in Ottawa but without federal government representation. Its terms of reference would presumably be reduced to those areas which require cooperation and coordination among provincial governments.

Another suggestion has been the placement of permanent provincial representatives in Ottawa. This suggestion is subject to the same consideration as the previous one.

A fourth suggestion calls for the establishment of departments (or divisions within departments) of intergovernmental affairs in each provincial government, such as the Department of Intergovernmental Affairs in the Quebec Government or the Federal-Provincial Affairs Secretariat in the Ontario Department of Economics and Development. It is hoped that such departments or divisions would achieve more effective coordination within provincial governments and that they would also aid in the development of consistent positions at major federal-provincial conferences. If the trend in federal-provincial arrangements is towards intragovernmental coordination, as has been suggested above, this suggestion would be worth considering as one which would more effectively meet the requirements of the future.

All of these suggestions are intended to formalize the intergovernmental communications process. Hence, some crucial questions about

these new forms of machinery are in order.

1. Does intergovernmental communication need formalizing?
2. Will these new forms add to the total amount of intergovernmental communication or will they become merely substitutes for informal communication or other federal-provincial meetings?
3. Are either of these substitutions desirable?
4. Will the costs of creating these new forms of machinery outweigh the benefits?

In a world where technological improvements in communication are occurring at a rapid rate, considerations of geography are becoming less important. In this context the geographical centralization of these new forms of machinery may be of doubtful value.

For the time being, the best answers to the questions raised in this paper are likely to be found in careful and intensive analysis of the apparent successes or failures of existing forms of machinery.

APPENDIX I

LIST OF MINISTERIAL CONFERENCES
AND THEIR PERIODICITY⁶

Federal-Provincial

1. Meeting of Ministers of Finance and Provincial Treasurers (annual)
2. Tax Structure Committee (as required)
3. Agriculture Outlook Conference (annual)
4. Meeting of Ministers concerned with ARDA (ad hoc)
5. Civil Emergency Measures Conference (ad hoc)
6. Resource Ministers Council (semi-annual)
7. Meeting of Ministers of Fisheries (ad hoc)
8. Meeting of Ministers of Forestry (ad hoc)
9. Committee on Financial Institutions and Securities Regulation (as required)
10. Conference of Ministers of Health (ad hoc)
11. Conference on Highway Safety (ad hoc)
12. Conference of Ministers on Indian Affairs (ad hoc)
13. Meeting of Ministers of Justice and Attorneys General (ad hoc)
14. Meeting of Ministers of Labour (ad hoc)
15. Tourist Conference (annual)
16. Meeting of Ministers of Welfare (ad hoc)

⁶ This is an unofficial list compiled in the spring of 1967. Not all 'ad hoc' and 'as required' meetings will be held in a given year.

17. National Committee on the Centennial of Confederation (semi-annual)
18. National Conference on the Centennial of Confederation⁷ (semi-annual)
19. Canada-British Columbia Liaison Committee (Columbia River) (annual)

Interprovincial

1. Conference of Ministers and Deputies of Agriculture (annual)
2. Meeting of Ministers of Education (annual)
3. Provincial Ministers of Mines Conference (annual)
4. Meeting of Provincial Ministers of Health (ad hoc)
5. Maritime Provinces Welfare Association (annual)

⁷ This conference acts as an advisory council to the Federal Government.

APPENDIX II

NUMBER OF INTERGOVERNMENTAL MEETINGS OF OFFICIALS
BY DEPARTMENT AND LEVEL (1967) ⁸

DEPARTMENT	Number of Meetings				TOTAL
	Federal-Provincial or Federal-Regional		Interprovincial		
	Dep. Min. Level	Other Of- ficial Level	Dep. Min. Level	Other Of- ficial Level	
Agriculture & Rural Dev't	5	15	0	7	27
Civil Service	1	0	0	0	1
Education	2	0	0	0	2
Emergency Measures	0	3	0	0	3
Energy & Resources ⁹	5	26	1	1	33
Health & Welfare	3	14	1	0	18
Indian Affairs	1	4	0	0	5
Industry & Trade	0	2	1	1	4
Labour	1	0	0	0	1
Manpower	2	6	0	0	8
Public Works & Housing	0	2	1	0	3
Revenue	0	1	0	0	1
Statistics	0	12	0	0	12
Transport	0	1	0	0	1
Welfare	2	5	1	0	8
Other	0	4	0	0	4
TOTAL	22	95	5	9	131

⁸ Unofficial estimates for 1967. Data include subcommittees as well as committees.

⁹ Includes mines, forestry, fisheries and energy departments and water commissions.