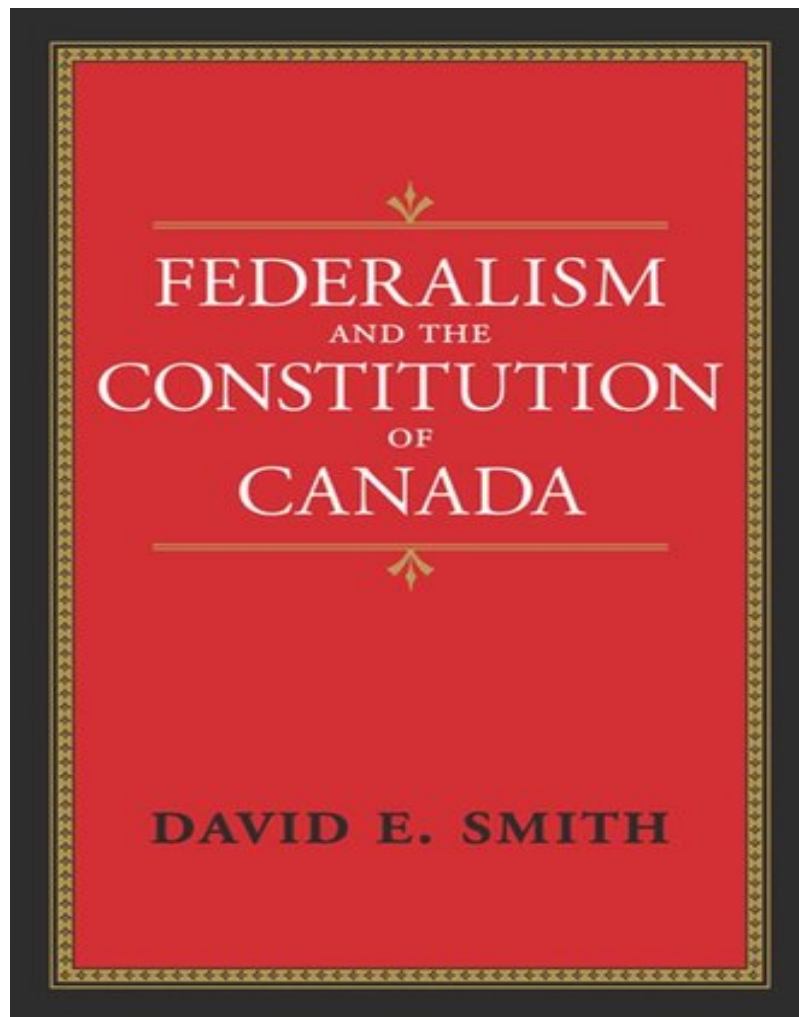


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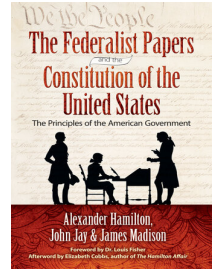


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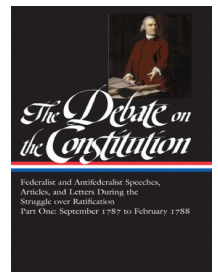
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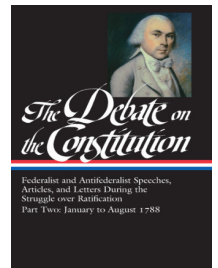
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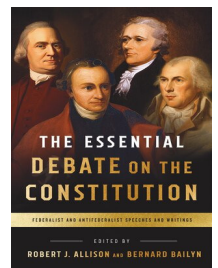
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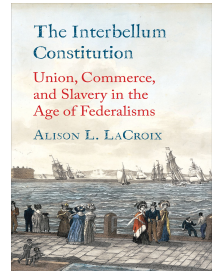
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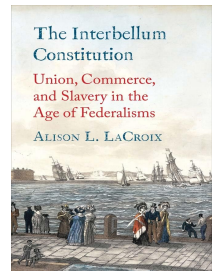
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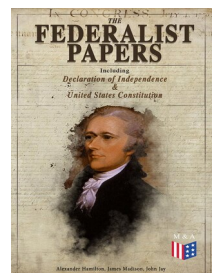
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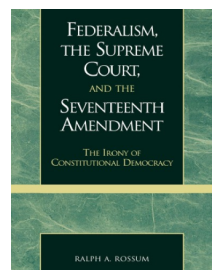
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FEDERALISM AND THE CONSTITUTION OF CANADA

The Canadian system of federalism divides the power to govern between the central federal Parliament and the provincial and territorial legislative assemblies. In what can be seen as a double federation, power is also divided culturally, between English and French Canada. The divisions of power and responsibility, however, have not remained static since 1867. The federal language regime (1969), for example, reconfigured cultural federalism, generating constitutional tension as governments sought to make institutions more representative of the country's diversity.

In *Federalism and the Constitution of Canada*, award-winning author David E. Smith examines a series of royal commission and task force inquiries, a succession of federal-provincial conferences, and the competing and controversial terms of the Constitution Act of 1982 in order to evaluate both the popular and governmental understanding of federalism. In the process, Smith uncovers the reasons constitutional agreement has historically proved difficult to reach and argues that Canadian federalism 'in practice' has been more successful at accommodating foundational change than may be immediately apparent.

DAVID E. SMITH is a professor emeritus in the Department of Political Studies at the University of Saskatchewan and a policy fellow in the Johnson-Shoyama Graduate School of Public Policy at the University of Regina.

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DAVID E. SMITH

Federalism and the Constitution of Canada

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For John C. Courtney, colleague and friend

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Preface

Ever since 1867, federalism and the constitution of Canada have been locked in an uneasy relationship that the passage of time has neither moderated nor clarified. One source of the problem is that unlike other Anglo-American federations to which it is often compared, Canada's is a double federation of cultures *and* territory. This book describes the first type of federation as vertical, the second as horizontal. A half-century ago that same geometric allusion was used – but not borrowed from for the purposes of this study – to describe the country's literary landscape. In a lecture he gave in 1960, Laval University sociologist Jean-Charles Falardeau said that 'if one compares the English and the French literatures in Canada, one is impressed by the fact that the former expresses itself along an axis that [is] horizontal and the latter along a vertical axis.' The first literature, he maintained, was about individuals and their milieux, the second about individuals and themselves.¹ How relevant that distinction is to the politics of Canada, particularly since 1960, is a subject for discussion in the chapters to follow. What may be said with confidence is that the two contrasting orientations to federalism present a challenge for any single constitution to accommodate.

The Constitution Act, 1867, does not speak of cultures and territory; rather it refers, on the one hand, to linguistic and denominational rights in regard to education in some but not all provinces, and, on the other hand, to jurisdiction assigned to all provinces. Even here, the allocation was not uniform. The prairie provinces, created after 1867 by acts of Parliament, were denied their natural resources for some decades, thus laying down a regional grievance that joins the present to the past, as witness the response of the governments of Alberta and Saskatchewan to the National Energy Policy in the 1980s, and that sets claim to the

future in prospective intergovernmental disagreement over regulation of the environment. Nor was clarity in the relationship of centre to parts deemed necessary (or desirable): for well over a century, the constitution provided no domestic amending formula by which to discern the distribution of power necessary for agreement on union in the first place or to indicate what constituted sufficient consent for its alteration.

Similarly, there is nothing of substance in the 1867 Act to tell its reader how constitutional monarchy and parliamentary responsible government work, certainly not when joined – for the first time – to what the Preamble of the Act described as a federal union. Much depends upon the attribution given the phrase, in the Preamble, that Canada should have a ‘Constitution similar in Principle to that of the United Kingdom.’ In this context it is worth noting W.E. Gladstone’s cautionary comment of the same period – that the British constitutional system ‘had settled down ... only in the last fifty years.’² The conventions of the constitution as they applied to the practice of responsible government were far from settled then or for some time thereafter. More than that, how the constitution of an island realm of great antiquity that ruled an empire might be adapted to the conditions of an enormous continental state, whose origin lay in the conquest of one European people of another, remained unappreciated. Decades had to elapse before constitutional scholars acknowledged the astuteness of J.R. Mallory’s epigram: ‘While the seed of the plant was brought across the Atlantic ... it has grown and nourished itself in Canadian soil and become a distinctly Canadian tree.’³

Until the 1960s Canadian politicians were singularly taciturn when it came to elaborating their parliamentary federal form of government. Nowhere was this reticence more evident than in a document, prepared in Ottawa in 1947, to inform the Newfoundland delegation on ‘the Constitution and Government of Canada and on the Canadian Federal System.’⁴ Only four of its forty-three paragraphs deal with ‘the division of powers’ as laid down in the BNA Act; just five describe ‘provincial governments’: legislatures (unicameral except for Quebec), adult franchise, and the office of lieutenant governor. Parties and intergovernmental relations receive no mention. The noun federalism does not appear.

After 1960 a major change in perception of federalism occurred. The discipline of political science grew in sophistication as a result of the introduction of different approaches to its study. University departments multiplied and turned their attention toward research and public policy. Symbolic of the transformation was the work of the Royal Com-

mission on Bilingualism and Biculturalism, appointed in 1963 to make recommendations to lessen tensions now recognized as associated with vertical federalism. As innovative as policies such as bilingualism were, and as influential as they became for the conduct of politics in Canada, equally noteworthy was a contemporaneous recognition that federalism was not the prerogative of governments alone: its web caught people as well as politicians.

For more than a century after union, federalism was detached from the constitution. Most sections of the 1867 Act dealt with the distribution of powers and the institutions associated with that distribution. It is only with the Constitution Act, 1982, that political values that inhere in individuals and minority groups appear: constitutional recognition of official languages, of minority-language educational rights, of the rights of Aboriginal peoples, of equalization, and of provincial control, exploitation, and regulation of natural resources. At the same time, the Canadian Charter of Rights and Freedoms (Part One of the 1982 Act), which guarantees pan-Canadian values, throws into question the diversity that federalism was designed to protect. Here is a further apparent contradiction between federalism and the constitution to challenge the capacity of the country's politicians.

In part because of its imprecision – a parliamentary resolution here, a prerogative act there – the constitution permits politicians to adopt an ambivalent stance when it comes to advocating or defending federalism. For that reason, it may be open to dispute whether the constitution aids or hinders the realization of federalism in Canada. Still, the promise of federalism as articulated by the Fathers of Confederation – to create one independent country out of several dependent colonies – has been realized. The evolving interpretation of federal theory to achieve that end and the role of government, commissions of inquiry, academics, and the people of Canada in that enterprise is the central theme of this study.

I have dedicated this book to John Courtney, colleague and friend for half a century. John and I met the first day of graduate school at Duke University in September 1960, where we were part of a contingent of students from the old Dominions and India and Pakistan admitted to the Commonwealth Studies Program. Few universities outside of Canada have had as strong an influence over a single academic discipline in Canada as Duke University did over political science in the 1960s and 1970s. During the years we were in Durham, our Canadian contempo-

raries included Ed Black, Fred Fletcher, Ken Kernaghan, Hans Lovink, and Peter Meekison. Later graduates of the Duke department who took up Canadian teaching positions included Keith Archer, Barry Cooper, Neil Nevitte, and American-born Tom Flanagan.

The primary theme of this book is the interrelationship of federalism and Canada's constitution. A secondary concern is the influence that fashions in social science analysis exert on exploring and assessing that relationship. A third topic, more implicit than explicit, is the effect that interpretation by succeeding generations of political science scholars has on public understanding of the Canadian federal system. The years at Duke, under scholars such as Taylor Cole, William Livingston, Richard Preston, Harris Proctor, and Robert Wilson, sparked my initial interest in these questions.

The Commonwealth Studies Program experienced marked change as a result of events in 1960. In February that year, Harold Macmillan, then prime minister of the United Kingdom, warned the South African Parliament of the 'wind of change' about to sweep over the continent. In October, Nigeria, the continent's most populous country, became independent, thus signalling the true beginning of the end to British colonialism in Africa. At Duke, Canada, Australia, New Zealand, and South Africa still attracted interest, but their new Commonwealth partners, along with the arrival of behaviouralism in political analysis, transformed the curriculum. Those Canadians who graduated after the mid-1960s returned to Canada not only with a very different perspective on politics from the one they had when they left but also with a different conception of what politics itself consisted.

Many people have helped me while I have been writing this book. Some were once graduate students when I was; some are former graduate students of mine who now teach in universities. Such continuity is reassuring in an era more often distinguished by rapid and dislocating change. Notwithstanding their critics, and warts, universities remain unique and beneficent institutions for learning that transcend place and time.

One unanticipated consequence of retirement, for a person who has always composed manuscripts in longhand for subsequent typing by someone else, is that if he wants a typed manuscript, he must do it himself. As a result, the customary authorial declaration of responsibility for mistakes in the pages that follow is made in this Preface with greater sense of responsibility than has heretofore been the case.

I wish to thank the Dean of the College of Arts and Sciences, Univer-

sity of Saskatchewan, and the Johnson-Shoyama Graduate School of Public Policy, University of Regina, for their support in the completion of this book. The Humanities Research Institute at the University of Regina has provided a subvention of funds to aid in the preparation of the index, support I gratefully acknowledge. As on former occasions, Ursula Acton has provided great assistance in preparing the manuscript for electronic submission to the press and in compiling the index to the book. Finally, I wish to thank Matthew Kudelka for his light editorial guidance.

The manuscript was completed the first week of September 2009, a period that marked the 104th anniversary of the creation of Alberta and Saskatchewan and their admission as the last of the continental provinces to the federation.

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FEDERALISM AND THE CONSTITUTION OF CANADA

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1 Primary Matters: Federalism and the Constitution

Improbable as it may appear, the first reference in this study of Canadian federalism is to a letter from Evelyn Waugh to Osbert Sitwell. Writing at the beginning of the Second World War, Waugh invited Sitwell to join him in launching a new literary magazine: 'Its point would be the duration of the things we value – not universal suffrage or disarmament or federalism and all that but good jokes and luxurious writing.'¹ The relevance of Waugh's comment to this book lies in its timing and content. In the early 1940s, federalism as a field of study in political science was underdeveloped. This is not to say that there were no problems deserving of federal solutions: Ireland and India were obvious candidates, though Ireland, despite periodic interest in the subject, never became a federation, and though those parts of the Government of India Act, 1935, that provided for a federation on the subcontinent, failed because of objection from the princely states.² Organized treatment of the topic had to wait until after the war. While Waugh was no political scientist, and his opinion scarcely representative of scholars who were, still the analogy he drew between federalism and a universal good, such as disarmament, indicates the ambiguity then attached to the concept – ambiguity that had grown in the interwar period. As early as the 1920s, Harold Laski, who subscribed to a pluralist theory of the state, had pronounced 'federalism [as having] reached the limit of its creativeness.'³

That would change after 1946, the year K.C. Wheare's *Federal Government* was published.⁴ As a result of this book, Wheare, Australian-born but Oxford-based, became the master explicator of the subject. *Federal Government* was the first and, arguably, is still the only attempt to reify a concept that remains, as the author found it six decades ago, con-

fused and imprecise. In the first chapter, 'What Federal Government Is,' Wheare defines the 'federal principle' as 'the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.' Few works in the vast literature on the subject over the last half-century have not begun either by adopting or disputing the Whearean principle.

Sir Kenneth Wheare died in 1979. In an appreciation of his life and work, Geoffrey Marshall, whose reputation as a constitutional scholar by then rivalled that of his Oxford colleague, criticized those who labelled Wheare's federal principle as 'rigid.' Marshall thought it rigorous. Wheare, he said, preferred a 'clear and precise identification of an idea or concept.' By contrast, the dissenters treated the concept 'permissively ... less a mechanical arrangement than a state of mind.' Such imprecision, Marshall concluded, left 'no serious or clear sense for the term "federal."'⁵

The 'mechanical arrangement' – the division of powers between general and regional governments – has more substance than Waugh's undefined values. Still, the two perspectives share one characteristic in common: they are both theocentric, in the sense that the force for federalism – in Wheare's world, judicial review – is beyond and above the society contained within the boundaries the federal system establishes. In the Whearean model, the people the federation serves are remote, the link between them and government uncertain. For those who adopt Marshall's perspective, attenuation is the necessary cost of precision.

For others it is unacceptable. Almost as well-known as *Federal Government* is the book by American scholar William S. Livingston, *Federalism and Constitutional Change*, published in 1956.⁶ Here the order of priorities found in Wheare is reversed: rather than law and jurisdiction being the concern, the focus of attention is on behaviour and attitudes. In Livingston's words, 'the essence of federalism lies not in the constitutional or institutional structure but in the society itself.' That premise is reflected in the title of his first chapter, 'The Character of Federalism,' and in its subject matter: the sociology of federalism, the spectrum of federal societies, and what are called diversities and instrumentalities.

The foregoing description of Wheare and Livingston might itself be described as a caricature, or at very least a stereotype, of their work. For instance, Wheare did write – but not in his famous book – about federalism as 'a device through which different nationalities could unite and ... create ... a new sense of common nationality,' and Livingston, despite his introductory discussion about 'diversities,' is elsewhere

in his book quite legalistic.⁷ That said, the contrast between the two approaches, as set down in the preceding paragraphs, is emblematic of the themes this book will explore.

Wheare and Livingston examine the same federations: Australia, Canada, Switzerland, and the United States. These four were the principal exemplars of federal constitutions in the 1940s; and today, in a much more populous world of federations, they are still the classical representatives of that category of governments. That status comes with age. India, newer but more densely populated than any of the classical 'four' – and parliamentary as well – has received little attention from Canadian scholars of federalism working on Royal Commissions or on their own.⁸ While the literature on federalism grows yearly, the appearance of these books only a few years before the beginning of unprecedented change in Canada – specifically, the Quiet Revolution in Quebec – has conferred on them especial prominence. The contrasting importance they attribute to law on one hand and to society on the other, makes them, in the language of administrative analysis, ideal types to employ when conceptualizing federal governments, constitutions, and systems. As this book will argue, the tension that exists between a federal arrangement that emphasizes coordinate and independent spheres – one that is horizontal in its orientation and territorial in construction – and an arrangement that looks to the link between societies and governments – one that is vertical in its orientation and cultural in complexion – is central to understanding the evolution of modern Canadian politics.⁹

The inference to be drawn from Marshall's comment on federal studies that deviate from Wheare's legal principle is necessarily pejorative. Adjectival or metaphorical federalism, in such forms as open federalism, or cooperative federalism, or asymmetrical federalism, or a host of other formulations (twenty-five years ago one American political scientist compiled a list of 326 'metaphors and models of federalism'¹⁰) fell under his censure, and for a straightforward academic reason: they 'blunted' federalism's meaning and its 'analytic utility.' A metaphor is a descriptive term with imaginative not literal application – understanding comes through association. This is not the way of the law. It is, however, the way of politics, as witness the electoral power recently in Canada of phrases such as 'participatory democracy' and 'democratic deficit.' The contrast between law and politics in this regard deserves discussion (which it will receive later in this book) because both federalism and the constitution draw, in different and fluctuating degrees, upon each.

'The adjectival modifier "politicizes" [federalism],' says Deil Wright, an American political scientist.¹¹ This explains the force and originality of an article such as Alan Cairns's 'The Governments and Societies of Canadian Federalism' (1977); or the sense of a new, foundational language when Richard Simeon reinterprets the familiar and, up until then (1972), routine world of federal-provincial meetings as an exercise in 'diplomacy.'¹² At one level, it is hardly news that federalism in Canada has been politicized, if by that is meant the continuing promotion of federal and provincial interests. It was always thus, and it would be an odd federal system if this were not the case. But more is implied by the word 'politicize'; consider the range of modifiers, now so great and that convey meanings so different from that of traditional federalism. An example would be rights or Charter federalism; another would be people's federalism.

It is that transformation in understanding that explains the title of this book: *Federalism and the Constitution of Canada*, and that sets it apart from the approaches of scholars such as R. MacGregor Dawson and James Mallory (see 46–7). There are three meanings to the word *constitution*. Actually, there may be more than three, since the sense of constitution as written law (that is, the Constitution Act, 1867, and its amendments) *and* as unwritten convention (for example, except on rare occasions the Governor General only acts on advice of the prime minister) is complex, uncertain, and infinitely expandable. The Constitution Act, 1867, has 147 sections. Most deal with the structure of the federation: numbers 9 to 16 deal with the executive power; 17 to 52 with the legislative power (basically the structure and composition of the Senate and the House of Commons); and 58 to 87 and 134 to 147 with those provinces (largely Ontario and Quebec) whose provincial constitutions are found within the enactment that founds Canada. Sections 91 to 95 are the best known because they set out the divisions of powers that have been the primary source of federal-provincial legal wrangling. The remaining sections deal with taxation and revenues and the composition of the judiciary.

Nonetheless, appearances may be deceiving. How does parliamentary federalism reconcile its internal contradiction: concentrated power at the centre as a result of party discipline and the prerogatives of the prime minister; versus the distributed power that is inherent in a federal arrangement, whether it leans toward the Wheare or Livingston interpretation? Moving from the written law, what are the *conventions* of federalism in Canada? Is it in part through these unwritten under-

standings that the tensions implicit in parliamentary federalism are lessened? Chapter 3, 'A Constitution in Some Respects Novel,' chapter 4, 'Parliamentary Federalism,' and chapter 5, 'The Practice of Federalism' explore these questions while assessing Canada's experience with a system of parliamentary federalism. It needs to be remembered that Canada was the world's first parliamentary federation and that, largely because Australia – the monarchical, parliamentary, and federal country it most resembles – preferred American over Canadian example when the Commonwealth was created in 1901, this country remains the principal if not unique representative of its type.

Thus constitution, as in *founding*, is one meaning.

Another is constitution as in *composition*. While there is a link between the two meanings, they are not to be confused. It is important to recall, because it is essential to conceptions of modern Canada, that at this country's founding there were four provinces and that a large part of the history of Canada concerns the rounding out of the federation. Of particular note is the retention by Ottawa of the natural resources of the prairie provinces. This action, along with a protective tariff, a trans-continental railway financed through the alienation of prairie land, and freight rates that were perceived to be regionally discriminatory, created an 'empire within an empire' with, this book will argue, lasting and even irremediable effects. The imperial theme, both internally as well as in relations with Great Britain, is heard early in the history of Canada: in the Confederation Debates (the debates in the Parliament of United Canada on the 1865 Quebec Resolutions), D'Arcy McGee described the 'Imperial Government as the common arbiter of us all, in our true Federal metropolis.'¹³ The contrast with Australia – a continent for a country, a country for a continent – is striking. An act of inclusion so complete was denied to Canada, at least until 1982 with the adoption of the Charter, and then the simultaneous inclusion was of individuals, not territories.

In one respect the United States is more like Canada than Australia, since it took more than a century for the frontier to move across the continent. Yet with regard to federalism and the constitution, the resemblance lies with Australia, for within a decade of the Revolution the American states had been re-created. The verbs most often used to explain this are 'reconstitute' and 'reconceive'; the favourite adverb has been 'simultaneously.' After 1787 the states owed their legitimacy to the United States Constitution. They had no prior claim to recognition based on historic, collective, or popular identity; rather, their security lay through Con-

gress in 'the mutual recognition of the legitimacy of statehood.' More fundamental still, by accepting that recognition the American states forfeited 'the essential prerogatives of sovereign statehood.' Congress successfully claimed control of the Western lands on behalf of the nation; later those lands reappeared in the 'new status of territory' and, eventually, in a 'mechanical [and] automatic way,' as states. This process, says American historian Peter Onuf, 'debase[d] statehood.'¹⁴

What is the significance of the contrast between Canada, on one hand, and Australia and the United States, on the other – between sequential and simultaneous entry of states or provinces? In Canada, the entry or proposed entry of new provinces was received with unease. When in the early 1940s preliminary discussions were under way with the then British colony of Newfoundland to explore terms of union with Canada, the agent of the federal government reported that Newfoundlanders 'really [do not] appreciate or understand the workings of the Federal system of government.' More than that, said another observer, if the colony became a province, 'it would very quickly take over as its own all the old Maritime grievances.'¹⁵ The view was that instead of creating a stronger federation, expansion might destabilize the union. How else to explain the lack of consensus, still, on how a territory becomes a province? The Constitution Act, 1982, subjected, for the first time, the admission of new provinces to the consent of seven provinces with 50 per cent of the country's population; the Meech Lake Accord would have raised the barrier to unanimous provincial approval; the Charlottetown Agreement sought to go back to the pre-1982 custom of creating new provinces by Act of Parliament following consultation with all the existing provinces.

The subject of this study, it should be emphasized, is the constitutionally established federal and ten provincial governments: 'Canada's three territories, Nunavut, the Northwest Territories, and the Yukon are in effect federal protectorates without constitutionally rooted executive authority but have been delegated much of that authority from the federal government.'¹⁶ The decision to omit the three territories is not just a matter of convenience. As will be elaborated in chapter 4, 'Parliamentary Federalism,' the Crown is an essential element, historically and currently, in the operation of Canadian federalism. For that reason, its absence 'has both symbolic and practical consequences.' Among the latter is that 'territorial ownership of land and resources in their own Crown right' is impeded.¹⁷ Control of land and resources is a perennial theme in the Canadian federal story.

A third meaning of constitution is *strength or vitality*. In the context of the present discussion, what is federalism's contribution to the health of Canada's constitution? The quick, because it is familiar, answer is that federalism exhausts Canadians' understanding of the constitution. More than half a century ago, Harold Innis lamented that 'multi-regional, bilingual and bireligious countries [consume] their energies in compromise.'¹⁸ The much later complaint about 'constitutional fatigue,' after the failure of the Meech Lake and Charlottetown proposals to win approval, echoes the same sentiment. Peter Russell's *Constitutional Odyssey* is a chronicle of federalism lost, at least insofar as unanimous agreement on a constitutional form to embody it remained unobtainable.¹⁹

There is more to the constitution than federalism, and it is to that other dimension that Innis alludes. Few of the practices of responsible government that are usually assumed to lie at the heart of parliamentary democracy are mentioned in the Constitution Act, 1867. If not taken for granted, they are largely unknown or misunderstood by the general public and the media. It is out of this shadowland, rather than the more visible structures of Canadian federalism, that the democratic deficit of unresponsive politics appears. It is true that critics of the Senate of Canada never tire of complaining about its structure and more particularly its lack of democratic legitimacy because it is unelected. But that is part of the problem. Preoccupation with securing the unity of the federation, through mechanisms such as a distorted representation-by-population principle in the House of Commons, rigid adherence on the part of all parties in the House to party discipline, and prime ministerial domination of the legislature, has been at the cost of democratic norms, whether measured in terms of accountability, responsiveness, or representation. The controversy associated with the sponsorship program (see the Commission of Inquiry into the Sponsorship Program and Advertising Activities, 2006), which, following the near victory of separatist forces in the 1995 Quebec referendum, saw some federal officials improperly divert money to organizations in Quebec in order to promote the cause of Canadian unity, is an egregious but not unique example of the cause of federalism in conflict with the cause of the constitution.²⁰

Is there a less doleful assessment to be made of federalism's effect on Canadian politics? Without a doubt. Canadian federalism – and especially the relationship between federalism and parliamentary institutions – has proven resilient and innovative. Take medicare, as one example. T.C. Douglas, the Co-operative Commonwealth Federation

he led, and the government of Saskatchewan, of which he was premier after 1944, were key participants in achieving, by stages, comprehensive medical care insurance. Still, they were not alone. In the words of one who was at the centre of events, Allan Blakeney: 'Then the federal government came to the rescue.'²¹ Initially, that government was Liberal, led by Louis St Laurent, but its successor, the Progressive Conservative government led by John Diefenbaker, was of the same mind. Here fiscal federalism in the form of shared-cost agreements designed by Ottawa made provincial ambition a reality. As well, it was the Diefenbaker government that appointed the Royal Commission on Health Services, headed by Mr Justice Emmett Hall of the Supreme Court of Canada. To put it bluntly, the recommendations of the Hall Commission made national what had been a provincial program. In the matter of health care, the sequence in Canada of province and then nation is not found in the United States, where such programs as Medicaid originated in Congress and have not been emulated by the states. Why are the policy hierarchies in the two North American federations different?

Another example, perhaps less universally applauded by Canadians than medicare, is the emergence of the Parti Québécois and the growth of nationalist sentiment in the province of Quebec. The journey without end in the quest for a constitutional settlement to which the government of Quebec will assent clouds judgment on the nature of the issue. True, political agreement has yet to be achieved, but in the meantime Quebec has been transformed from a province where French-speaking Quebecers faced discrimination – for example, in the workplace because of their language – to one where the French-speaking community has taken control of the province's economy. Rather than seeing themselves as a minority in Canada, they now see themselves as a majority in Quebec. This reversal in self-perception has come at a cost, most certainly when seen through the prism of federalism: it has created a distance between French-speakers inside Quebec and French-speakers outside the province. It would be trite to say that Quebec and Canadian federalism is a large and complicated topic; but it is. Aspects of it will arise throughout the following chapters. Contrary to the jeremiad that sees the flowering of nationalist sentiment in Quebec as an index of federalism's failure in Canada, this book treats it as a mark of this country's ability to accommodate foundational change.

One of the unexamined premises held by some critics of Canadian federalism is that, among the units of a federation, equality is a necessary condition. The origin of this assumption is open to debate, but one

possible source is Wheare's statement that 'the federal principle has come to mean what it does because the United States has come to be what it is.'²² In the practice of American federalism, equality is a value much celebrated. At entry into the Union each state is guaranteed at least one member of the House of Representatives and, regardless of population, two senators. Redistricting – the decennial allocation of the 435 House seats among the fifty states – is carried out with a precision that, by Canadian standards, is unemotional, ahistorical, and illustrative of the description one American has given her fellow citizens – 'a calculating people.'²³ Historic claims do not exist. Even before Confederation, the contrast between American and British North American perspectives was noted (in Canada):

No matter how raw and rude a territory may be when it is admitted as a State into the Union of the United States, it is at once by the popular belief invested with all the dignity of manhood and introduced into a system which ... every American believes and maintains to be immortal – But how does the case stand with us? – no matter how great the advance of a British colony in wealth and civilization – no matter how absolute the powers of self Government conceded to it – it is still taught to believe that it is in a condition of pupillage from which it must pass before it can attain maturity.²⁴

By contrast, in 2009 Saskatchewan had – as it has had since 1976 because of a grandfather clause in the redistribution formula – fourteen seats in the House of Commons. Since Canada has a population of around 33 million people, the House of Commons 308 seats, and Saskatchewan a population of approximately one million, the province should, by a rep-by-pop measure, have nine or at the most ten MPs. It has more members for the same reason the provinces were not treated equally at the time of their entry into Confederation. Distribution of House seats has been determined by a political calculus, not a mathematical one.²⁵ It was for this reason that the recent campaign for a Triple E Senate – at least the E that stood for equal number of senators per province – as opposed to the present range of twenty-four to four – was an uphill fight. Notwithstanding what people might say about wanting equality, no one wanted it achieved at the risk of losing seats in the Commons.

The constitutional adjustments that have been made over time (official bilingualism, for one) – and that are still being made, as witness the growing acceptance of the claims of Aboriginal peoples but no consti-

tutional entrenchment of Aboriginal rights – testify to the depth as well as the breadth ('from sea to sea to sea') of Canadian federalism. They also demonstrate its elasticity in accommodating major demographic and social changes. For this reason it seems tendentious for Geoffrey Marshall to summarize Canada's experience as 'the world's most complex system of federal distribution, which remains an awe-inspiring example of what is to be avoided by any modern draftsman allocating legislative powers.'²⁶ Admitting, for the purposes of argument, that it is a very complex system, what – the reader of this assessment wonders – might have been 'avoided,' and with what consequences?

Perhaps the complexity lies in the different meanings of the word constitution and in how these meanings intersect with the activity associated with federalism. What happens when the constitution no longer means what its text seems to say?²⁷ Perhaps, too, there is a temporal dimension implicit in the remark – Canada as others once saw it and continue to see it. Here is federalism through time. But is there any communion between leaders such as Sir John A. Macdonald, Sir Wilfrid Laurier, and Pierre Trudeau on the topic of Canadian federalism? Is there a theory to weave the decades into a whole, or only a sequence of linked events?

Another possible explanation for Marshall's pessimistic judgment is related to when he uttered it – 1982. That was the year the Canadian Charter of Rights and Freedoms was adopted, as part of the much larger package of amendments found within the Constitution Act, 1982. He may have foreseen what later critics of the Charter have described as its de-federalizing influence on Canada's political culture. Rights know no jurisdiction; they transcend provincial boundaries. These arguments and the literature that expounds them are discussed in chapter 6, 'Courts and Charter: Constitution and Federalism.' Marshall could not have been familiar with either of them since they came after he passed his opinion on the condition of Canadian federalism. However, he might well have been aware of the heated debate that took place in Canada prior to adoption of the constitutional package, one aspect of which focused on the compatibility of instituting a higher law in a parliamentary federation. From his perspective at that time and from the perspective of others since then, the advent of the Charter in a system of divided jurisdictions that subscribed to the principle of parliamentary sovereignty created a conundrum that required clarification, if not solution.

Whether, and how, the Charter has affected the operation of the Canadian federation is for later consideration. What it *has* done, as discussed in chapter 7, 'The Habit of Federalism,' is reinforce the federal-

ism of small things. The seed of that idea lies in the insight of American political scientist Daniel Elazar, who maintained that American federalism is 'an orientation [that] emphasizes each individual's place in a network of cooperative communities, where individualism is defined not through one's detachment but through partnership with others.' There is, he says, 'a federalist way' of organizing civil life.²⁸ Does this insight apply to Canada?

If it does, it is not because the Fathers of Confederation mapped Canadian federalism on American federalism. Indeed, there are significant differences between the two federal experiments. Nor does it mean that society on one side of the forty-ninth parallel duplicates that on the other. The degree of difference is a subject of permanent interest to Canadians.²⁹ In Livingston's world, constitutional federalism may recognize diversity and may promote diversity; but Elazar's perception is something different again: *within a state*, Americans organize their social clubs, their professional associations, their sports groups, and more on the federal principle. As will be shown later in this book, the same organizational sense of personal federalism prevails in the provinces of Canada, and not only for practical considerations that derive from their occupying large land areas with small concentrated populations. Federated colleges, federated Aboriginal groups, provincial athletic leagues, and provincial cooperatives are but a few examples of organizations that often ascribe to the federal idea.

On one hand, as its proponents argued it would, the Charter has nationalized values and in the process promoted an increased sense of Canadianness. It has done this through specific reference to equality between male and female persons, to the multicultural heritage of Canadians, and to minority-language educational rights. It has done it in another way – through heightened awareness of legal rights for all and of their potential for abuse. The list of individuals mistreated by the police, unlawfully confined, wrongfully imprisoned, whose names have become bywords for justice gone wrong – Neil Stonechild, David Milgaard, Donald Marshall Jr, Guy Paul Morin – makes the point.³⁰ The administration of justice in Canada may be a provincial matter (the practice of policing is less jurisdictionally precise, since the RCMP serves as the provincial police in eight of the ten provinces), but the publicity accompanying reports of miscarriages of justice is anything but provincial.³¹ Here rights have acted as a nationalizing force that transcends the provinces.

On the other hand, and at the same time, rights and a heightened sensibility about rights work in the reverse direction, by enhancing rather

than limiting the scope for activity within the provinces. The expansion of social justice networks, the growth in activity of provincial human rights commissions, the introduction in the provinces of legislation to permit class action lawsuits (which may be invoked to challenge a perceived abuse of rights or to secure recognition of a hitherto unorganized interest as a class) – these have broadened the base for federal–provincial interaction. Rights, as expressed within the boundaries of the provinces, augment federalism. Chapter 5, ‘The Practice of Federalism,’ will examine an argument often heard about the basic weakness of Canadian federalism – that it inadequately represents provincial concerns at the centre, with the result that federalism in Canada lies in the parts and not at the centre.³² For the moment it may be said that as a result of the Charter and the proliferation of concern for rights, the real world of personal and social consciousness has insinuated itself into the provinces through the federalism of small things.

The effect has been to make the provinces organic to the whole. It is misleading therefore to posit federalism as institutionalized rivalry between the central and provincial governments – and leave it at that. Of course, there *is* rivalry; that is inevitable. But the persistence of seeing federalism in terms of conflict narrows the dimension of analysis in two ways: by privileging governments – usually the central and unit governments of traditional federations – over individuals, societies, and cultures as subjects of study; and, in consequence, by privileging the national over local or global perspectives. The concept of boundaries is fundamental to the approaches Wheare and Livingston adopt, just as it was to the labours of the JCPC as that body delineated the jurisdictions of the provinces and the central government, and to the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois) in its search for efficiency through the elimination of legislative and bureaucratic redundancy. Yet boundaries are out of fashion today because respect for them is impractical. If, as two scholars of federalism say, it is ‘impossible to sharply distinguish between federalism and intergovernmentalism,’ then some adjustment in perspective is required.³³ As chapter 4, ‘Parliamentary Federalism,’ argues, it is no longer adequate to say that Canada is a parliamentary federation, since that designation communicates little about the operation of government at the centre or in the parts.

But the ‘boundaries question’ also arises when the perspective is *external*. In the postwar years the concern of scholars of federalism was inward – what went on, for example, in the Canadian (or Australian)

federation, and how a country's constitution and institutions affected what went on within it. Sixty years later, in Canada in particular, the vantage is outward as well. Consider the Forum of Federations, an 'international network on federalism' launched in 1998 at the initiative of the government of Canada and, according to its mission statement, 'concerned with the contribution federalism makes and can make to the maintenance and construction of democratic societies and governments.' On its Web page, two of forum's 'three core functions' refer to 'the practice of federalism' and to 'practitioners (and future practitioners) of federalism.'³⁴

The two perspectives – looking out and looking in – are not separate. Indeed, a strong motivation for the Forum of Federations initiative lay in the government's 'conviction that ... knowledge of other federations will strengthen Canadian unity.'³⁵ It would do this through a demonstration effect: federalism works – thus the emphasis on practice – and it does so through rich and variegated means. This catholic approach, evident in the forum's publications (as in the handbook, *Federalism: An Introduction*) and in the programs of its conferences, has rejected the hermetic and seemingly permanent categories of early federal literature.³⁴ For example, in the July 2008 issue of forum's magazine *Federations*, whose subtitle is 'What's New in Federalism Worldwide,' there is a 'Special Section: Decentralization and Devolution in Non-Federal Countries' as well as an article on the 'Practitioner's Page' devoted to Mexican cities.³⁵ By comparison, Daniel Elazar's scrupulous delineation of American federalism as neither centralized nor decentralized but rather non-centralized seems laboured and overly refined.³⁸

A second reason why an approach to federalism that takes rivalry as its theme is analytically deficient is that it is static. It ignores the collapse of structures of meaning that make sense of Canada's development as a federation. At one time, there was conflict of jurisdiction (the familiar division-of-powers question); at another, the internal struggles of federated political parties competing to form the national government; then there was administrative and fiscal federalism; and now societal federalism, according to which territoriality is 'represented' through myriad patterns of association (some centrally inspired, some not).

The new sense of Canadian federalism is wholly other than its antecedents. The old ideas of the federal government presiding from on high, or of the federal system being no more than a multiple of provincial unitary systems, or of the provinces and the federal government locked into an eternal quest for balance, are insufficient for understand-

ing modern Canada. All are necessary features of that enterprise, but none alone is sufficient. It hardly needs to be said – since federalism at some level is always about doubleness – but a weakness of interpretations of the subject is that they lean toward one dimension. One explanation for this characteristic in Canada, says Richard Simeon, is ‘the pull of current events,’ which leads to a ‘present-mindedness ... in our work.’³⁹ Uppermost in scholars’ minds, at least since the 1960s, has been Canada’s survival as a nation. Variations on the theme ‘must Canada fail?’ and how to prevent that outcome are just that – variations on one theme, which because of its subject matter concentrates principally on the weakness of federal institutions and their capacity to change.⁴⁰ Two consequences flow from this constricted perspective: federalism as an arrangement for living that affects culture, politics, economics, and society is forsaken for attenuated mechanical descriptions – the federalism of metaphors; and discussions about federalism become a substitute for federalism, with the result that scholars loom larger than the subject itself.

After 1960 a series of proposals and a succession of conferences sought to reconcile within a single constitution cultural (that is, binational) federalism and territorial federalism. The contemporaneous tension evident between the two, relieved in part by the Constitution Act, 1982 – for example, Section 92A (provincial control over non-renewable natural resources) – but also exacerbated by Quebec’s refusal to agree to its terms, along with subsequent failure to secure agreement to the 1982 Act, even in modified form, illustrates the conundrum of attempting to integrate federalism within the constitution through a deliberative process. One result has been to undermine national political parties in consequence of the formation of the Bloc Québécois and the Reform Party. Another has been to feed public frustration with government and politicians, and with the constitution and federalism itself. For those without a collective memory defined by binationalism, the more negotiators agreed on unanimity for constitutional change the more confederal – and less recognizable – the federation became. For those with a collective memory – that is, something more than the sum of individual memories – refusal by others to acknowledge the need to protect the smaller community, as through a ‘historic’ constitutional veto, has placed the legitimacy of the federation in doubt.

2 The Measure of Federalism

The power of the state is monopolized by government. In a unitary system there is one government; in a federal system there is more than one government. Modern federalism begins with the Constitution of the United States agreed to by the Founding Fathers at Philadelphia in 1787. Following American example, a federal constitution was adopted by Switzerland in 1848, by Canada in 1867, and by Australia in 1901. While some scholars trace the seed of the federal idea to the conciliar movement of medieval times or to the biblical concept of the covenant, federalism associated with a geographical division of power originated in 1787. The United States and the other three basically nineteenth-century federations remained, until the middle of the twentieth century, the singular applications of the federal idea. It was only after 1945, when the European powers, and particularly Great Britain, sought to provide their former colonies in Africa, the West Indies, and Asia with independent constitutions, that federalism ceased to be a monopoly of Western and predominantly Anglo-American countries.

As noted in chapter 1, the first attempts at examining the federal idea translated into constitutional form appeared in the decade or so after the end of the Second World War. Among the best known, but by no means unique, were the studies by K.C. Wheare and W.S. Livingston.¹ For the present discussion, what is relevant is that all of these works were comparative in their treatment of federalism. In this characteristic they were harbingers of federalist literature to follow. The comparisons were not always international – they could be domestic: How, for instance, does one state or province of a federation fare relative to another unit of the same federation? – but there was always a comparative aspect to the literature, and perhaps necessarily so since federations encompass more than one jurisdiction.

It is a feature of federal studies that there is always assumed to be some 'other,' to which the subject under examination should (or even must) be compared. Never, as the late Eugene Forsey once said of Canada, do 'we star[t] from the premise that Canada is not the exception to the rule but its own rule. All references to other federations or to the nature of federalism in general are beside the point.'² Holding this view, Forsey would never have agreed, even in the most sombre of moments such as the collapse of the Meech Lake Accord, to the following proposal: 'Faced with the realization of a potential breakup of the federation as the only alternative, a more radically asymmetrical federation [for Canada] might be accepted. The clearest example of such an arrangement is the Malaysian federation where there is a marked greater autonomy for the two Borneo [island] states.'³

In this respect the study of federal government is markedly different from the study of non-federal or unitary government. In fact, there is no study of unitary *systems* of government, as opposed to a particular unitary government, such as found in France. The reason why, as one Australian political scientist has observed, is that federal systems are considered to be the exception while unitary systems are treated as the norm.⁴ In the Confederation Debates, John A. Macdonald's defence of his second-best alternative, a federal over a legislative union, is phrased in this way: federalism is defined by what it is not – legislative union.

This distinction between 'regular' and 'irregular' explains the attraction of federal studies. But only in part: A.V. Dicey's disparagement of federalism as 'weak,' as a system that 'limits on every side the action of government and ... splits up the strength of the state,' suggests another reason.⁵ Federal systems are not just exceptional; they are treated as incomplete, handicapped, with special needs. Vinerian Professor of Law at Oxford, Dicey's opinion counted for much in academic and legal circles in the three-quarters of a century following the appearance of his *Introduction to the Study of the Law of the Constitution* (1885). The centrepiece of his great treatise was the assertion of the sovereignty of Parliament. Federalism's failing was that it undermined singular sovereignty by establishing rival jurisdictions. Marrying the two principles in one parliamentary federation, of which Canada was the first and remains a major example, could be viewed as a recipe for constitutional tension, if not turmoil.

Like Tolstoy's 'happy families,' unitary governments are all assumed to be the same, while federations, the 'unhappy families,' are considered to be different. The contrasting fate of the two governmental forms

is widely attributed to the differences in structure and composition among (and, equally important, within the units of) federations. Thus the measure of federalism, both as a concept and as a practice, derives from acknowledgment, first, of difference and, second, of magnitude. The remainder of this chapter will examine the topic by answering the following questions: What is measured? Who measures? And when and where do they measure?

What

The capacity for difference is hinted at in the prefixes and adjectives that are commonly heard in discussions about federalism in Canada: bi-, coordinate, concurrent, divided, double, dual, inter-, intra-, quasi-, triple, two; and in such nouns as balance, compartments, jurisdictions, levels, and spheres. It is the essence of federalism that territory and power be divided. Usually, but not invariably, the powers allocated to the units of a federation are the same. Not so the geographic size of the units, which may vary enormously: Rhode Island and Texas in the United States, Tasmania and Western Australia in Australia, and Prince Edward Island (PEI) and Quebec in Canada. In Canada, the difference in geographic area has implications that extend far beyond the question of size. For reasons deriving from the country's federal parliamentary system, PEI, which today has a population one-twentieth that of Metropolitan Toronto, has contributed to the rigidification of an already rigid constitutional amending process. Because its premier sits at the federal-provincial table alongside the premier of Ontario, and because of its conventional representation in the federal cabinet, small PEI is a continuing irritant to large municipal governments, like Toronto, that under the Canadian constitution go formally unrepresented both at table and in cabinet.

The contrast between the smallest and the largest units of the respective American, Australian, and Canadian federations presents a significant challenge for economic adjustment and political accommodation. How this has been addressed in Canada is the story of fiscal federalism (particularly equalization) in the first instance, and the redistribution of House of Commons seats in the second. Both involve complex formulae that have changed over time. Equalization and redistribution are calculated on the basis of data that are collected by an agency of the federal government but that are of paramount importance to the provinces, a fact recognized early in the life of the federation. In the debate

on first reading of 'An Act respecting the First Census,' Alexander Macenzie, later to be Canada's second prime minister, cautioned that 'it was particularly important to have the personal Census taken with great accuracy as on that depended the political relations of the several Provinces under the Union Act towards each other.'⁶ In an appreciation of the life and work from 1916 until 1942 of Canada's first Dominion Statistician (Robert H. Coats), the economist Nathan Keyfitz observed that 'he always saw the collection and publication of statistics as something of a judicial function to which disinterestedness was as essential as expertness.'⁷

'Towards each other' – or more precisely, how did the provinces compare to one another in relation to federal authority? That was the referent for this early comparison, as it was to be on many occasions thereafter. The most dramatic demonstration of this occurred in the same year (1870) and subsequently in 1905, when Parliament retained the natural resources of Manitoba and then Alberta and Saskatchewan (the three Canadian provinces whose constitutional root is an act of Parliament), transferring them only in 1930, while all other provinces possessed their resources from the moment of their creation. This engendered a sense of regional discrimination, grievance, and sensitivity that continues to be expressed in modern Canadian politics. Or, when the New Democratic Party (NDP) government of Saskatchewan in 2007 went to court to challenge what it claimed was discrimination in the dollar amount of equalization payment it received from Ottawa.⁸ The cases for comparison were Nova Scotia and Newfoundland and Labrador, which under agreements with the federal government did not have their natural resource revenues included in their equalization calculations, while Saskatchewan did.

For Quebec, the referent is sometimes the policies and conditions of Ontario, but more usually it takes as its focus Ottawa's treatment of Quebec when compared to the rest of the country. The reason for the latter perspective – one central to understanding Canadian politics – lies in Canada's double federalism. Double federalism does not mean double government, where citizens are subject contemporaneously to the laws of two jurisdictions – for example, the provincial highway code and the Criminal Code of Canada. This is the *sine qua non* of a federal system. Nor does it mean dual government, where citizens are subject to the laws of one jurisdiction, which at the same time may act as an agent for another government. This was the defining feature the Articles of Confederation in the United States between 1777 and 1789.

It was this hierarchical as opposed to horizontal arrangement of power and the lack of a national voice and purpose it allowed that drove the United States into a more integrated federal constitution. Double federalism is something else again.

There are two reasons for adopting a federal constitution. One is to recognize cultural difference, defined by features such as language, religion, or ethnicity. The other is to incorporate territory. Most federations are attributable to one or other imperative. Canada is unusual in having as its origins both imperatives: one, to give Quebec jurisdiction over matters deemed essential to the preservation of its culture, which the experience of the Province of United Canada for a quarter-century before Confederation and the rise to demographic dominance of English-speaking Protestants threatened by 1867; and two, to establish the central political institutions that would make territorial expansion possible through the transfer to Canada from the Hudson's Bay Company of Rupert's Land and the North-Western Territories.⁹

Much of the complexity of *Canadian politics* and – something slightly different – of *federal politics in Canada* may be traced to double federalism. Quebec sees itself in a constitutional arrangement with Ottawa, which speaks for the rest of Canada. The other provinces see themselves individually in a bilateral relationship with Ottawa (over a range of provincially specific issues – for example, fish, lumber, and the auto industry), but they also see themselves as aligned in order to press the federal government for better terms in policy areas of mutual concern, such as health care. Nonetheless, it is important to note that the two halves of Canada's double federation are not mutually exclusive. To cite two examples, the Official Languages Act, 1969 (OLA), and the denominational educational provisions of the Constitution Act, 1867, take their meaning from the cultural dimension of the federative act of 1867. Yet they have had a direct and often disruptive impact on the life of the other, territorial federation. Denominational rights lay at the core of the original Confederation settlement, but outside of central Canada they were seen to trespass upon provincial rights. The effect of the 'schools question' that resulted was to slow down the rounding out of Confederation. The rationale offered by the Royal Commission on Bilingualism and Biculturalism for passage of the OLA (which was that English- and French-speaking Canadians were the country's two founding peoples) promoted strong opposition in western Canada to the policy as well as to the central government and Liberal party that gave it life.

The primary measure of federalism is the number of units into which a federation is divided – fifty in the United States, ten in Canada, six in Australia. The number is important, for the more there are the easier it is to form and re-form alliances among the unit governments and between the unit and central governments. However, such behaviour among the fifty states is foreign to politics in the United States, since in that country the states (and their governors) do not monopolize or even dominate the expression of state interests in national affairs. That is a key role played by members of Congress and by senators. In this vein, it would be a very different matter in Canada if twenty provincial premiers sat alongside the prime minister in federal-provincial meetings. Whether the provinces would be weaker or stronger than at present may be debated, but that their larger number would alter the behaviour of national parties (from leadership selection to election campaigning) and the practice of parliamentary government is beyond doubt. One basic example: If the number of provinces were doubled, would it be feasible for all of them to be represented in what Canadians now call a federalized cabinet?

The number of units determines the location of boundaries. Yet the subject of boundaries seldom arises in the study of Canadian politics. It comes as a surprise to learn that between 1867 and the admission of Newfoundland and Labrador to Confederation in 1949, twelve separate maps were required to depict boundary changes.¹⁰ In 1905 the provinces of Alberta and Saskatchewan were created out of a portion of the Northwest Territories remaining after the creation of a postage-stamp sized Manitoba in 1870 and the District of Yukon in 1898. Between 1898 and 1912 vast areas taken from the Territories were added to the existing provinces of Manitoba, Ontario, and Quebec. Additions to existing provinces were made, rather than new provinces created, on the grounds of climatic conditions: the northern areas of what are now the prairie provinces were deemed by the federal government as ‘absolutely unfit for agriculture,’ without which there was ‘little hope of “thick and permanent settlement,” and, consequently, stable provincial government.’¹¹ To this practical reason were added others, such as Manitoba’s claim, made ‘in the spirit of confederation,’ to territory equivalent in area to that held by Saskatchewan and Alberta, and Quebec’s proposition that its boundaries be extended ‘as compensation for any advantages that Ontario, Manitoba, and Saskatchewan would gain if they were extended to the western shore of Hudson Bay.’¹²

The following year (1913) and from a distant quarter arose another

claim – whose rationale cited the extension of boundaries of Manitoba, Ontario, and Quebec – for special treatment in the allocation of seats in the House of Commons. Prince Edward Island argued that the Maritime provinces ‘had as good a right to share in the public demesne of Canada as had those provinces upon which it was bestowed ... The territories added out of the public demesne will increase to a limit not now possible of calculation the representation of these provinces in the federal Parliament.’¹³ To the extent this prediction proved correct it added to the problems of Canadian federalism. In 1938, when he appeared before the Royal Commission on Dominion-Provincial Relations (popularly known by the names of its chairmen, Rowell-Sirois), Mitch Hepburn, then premier of Ontario, expressed the frustration that came with seeking to reconcile the numerical claims advanced by some of the Canadian provinces:

One could not find a more striking illustration of the impracticality of compensating provinces for the disabilities they claim (even the real ones) as a result of federal policy. The Canadian Government expended hundreds of millions ... in opening the prairies to markets; when Nova Scotia’s sons (among others) went West to seize opportunity – Mr [Norman McL.] Rogers [counsel for Nova Scotia] presented a bill for Nova Scotia’s stagnation, and the Premier of Manitoba presented another one for the social services of an expanding population.¹⁴

Representation is intimately linked to the subject of boundaries, and for this reason political decisions may have long-term and irreversible impact. That was true when Ottawa responded to PEI’s memorandum. In 1915 the Westminster Parliament – the only legislative body that at the time could alter the Constitution Act, 1867 – passed at Canada’s request an amendment guaranteeing that no province should have fewer members of the House of Commons than it had Senators (S.51A). Seven decades later (1982), when Canadian politicians finally agreed on a domestic amending formula, that provision became one of four specific subjects (the others dealt with the Crown, the use of the English and French languages, and the composition of the Supreme Court of Canada) for which unanimous consent was deemed necessary for its future amendment.

Outside of the Atlantic region the Canadian provinces are large – Saskatchewan and Alberta are each almost as big as Texas. They are also vertical in their orientation, with the provincial capital and population

concentrated in the South, and mineral and water resources of the Laurentian Shield in their hinterland North. (Provincial life runs, one might say, at right angles to federal or national life. Alberta and Saskatchewan each had four-lane highways between their two principal cities before they had twinned their portions of the Trans-Canada Highway.) A principal theme in the history of each province is exploitation by the south of northern resources. In this, the western provinces stand in marked contrast to the western states of the United States, for not only do the American states not control mineral resources, as the provinces do in Canada, but even where they do control resources such as water, the states are too small – except perhaps for California – to develop adequate policies to regulate or exploit them.¹⁵

The western provinces may be large, but they are not *too* large. Before the creation of Alberta and Saskatchewan in 1905, some territorial politicians pressed for 'one prairie province.' That proposal found little favour with the federal Liberal government, led by Sir Wilfrid Laurier, for the simple reason that such an entity would threaten the dominance of Ontario. At the time he introduced the autonomy legislation to establish the two new provinces, the prime minister told the House that 'unequal siz[e] ... is not a fatal fault ... but ... when provinces are not the result of historic tradition, when they have not come to us formed and when they have control of events, it is preferable that the provinces should be as near as possible about the same size.'¹⁶ The territorial expansion of Ontario in 1912 created a province of over 1.0 million square kilometres; Saskatchewan and Alberta together totalled just over 1.3 million square kilometres.

In twenty-first century Canada one topic of political discussion is asymmetrical federalism – that is, disparity in the relationships that provinces have with Ottawa.¹⁷ The cause of disparity is fuelled by a number of reasons, though one seldom mentioned now is differences in geographic size of the provinces. This element in the design of the federation distinguishes Canada from the United States, the other federation Canadians think they know. The authors of a recent book on federalism illuminate the contrast:

In what must be deemed one of the most fortuitous and farsighted acts of the Congress, the Northwest Ordinance [1787] ... required that the United States not hold the territory it had acquired north of the Ohio River and west of the Allegheny mountain ridge as colonies, but instead provided for the admission of new states on the principle of strict equality with the

old. And rather than allow the Northwest Territory to enter as a single state ... it required democratic governance within it and set the boundaries for not less than three and not more than five new states ... In this way the United States ... avoided the kind of asymmetry that plagued the USSR and Czechoslovakia [and Canada, perhaps] two hundred years hence.¹⁸

The provinces of the Canadian federation – their number, size, and boundaries – remembering that two of them are actual islands, while another (British Columbia) is isolated from the rest of the country by the Rocky Mountains, and that a fourth (Quebec) is culturally distinct and was created to preserve and acknowledge that character – are less the units of measurement of federalism than the activities they contain, whether we view them demographically, in terms of ethnicity, language, or religion; or fiscally, as sources of taxation or transfers between levels of government. It is these features that deepen the otherwise flat jurisdictional or physical dimensions of federalism. And it is concern for these subjects and others, such as the quality of health care and education policy, that feeds the disposition to draw comparisons among the units of the federation and between one federation and another.

Counting leads to comparing. Taken together, those two activities account for a large part of the content of federal studies. Consider, for instance, the report (May 2008) written for the Canadian Research Policy Networks, ‘The Current State of Federalism Studies in Canada (2000–2007): A Quantitative and Qualitative Review of the Scholarly Literature.’¹⁹ The interest of the authors (Patrick Fafard, Graduate School of Public and International Affairs, and François Rocher, School of Political Studies, both of the University of Ottawa) is directed toward answering the question of who studies federalism in Canada and what aspect of the subject occupies them. Their comparisons are intra-Canada but interprovincial and interdisciplinary. The findings of the report are not relevant to the present discussion, except in the following respect: like the bulk of the literature on federalism in Canada for some decades, it is the work of social scientists.

Who

Academics and bureaucrats – but not the general public – study federalism. Perhaps this is to be expected. One might presume that the same kinds of people study unitary systems, except (as noted earlier) no one

studies that subject. As Rufus Davis has said: 'There is a treatise to be written on "the non-federal system of government."' Yet among the many respects in which a federal system is different from a non-federal one is that federalism acknowledges diversity and gives it constitutional expression. More important, that diversity is attached – not solely but nonetheless significantly – to people. Chapter 7, 'The Habit of Federalism,' will examine societal and personal federalism. Still, it gives nothing away to say that the federalism of place, as experienced by residents of Nanaimo, British Columbia, or Rimouski, Quebec, is different from the privileged perspective of the professional social scientist. For a start, the social scientist travels and meets other social scientists when conducting research. Using the metaphor of the globe, the academic, like other professionals, stands above the Arctic Circle, where the longitudes converge. Here is where accommodation happens. The average Canadian is somewhere (to continue the metaphor) between the Tropics of Cancer and Capricorn. He or she does not encounter the richness of federalism through travel but only from what is available at home. Here is another treatise to be written, this time on the relationship between mobility and perceptions of federalism. A place to start would be to ask whether academics – who travel – pay too much attention to collective rather than individual conceptions of federalism.

Canadian federalism as a subject of study has been the preoccupation of many Royal Commissions and inquiries (not just federally appointed, which is the focus of this discussion, but also as created by the provinces – for example, the Royal Commission on Constitutional Problems [Quebec], 1956, or the Royal Commission on Renewing and Strengthening Our Place in Canada [Newfoundland and Labrador], 2002). Nor should the federal exemplars be confined to the best known with the largest research agendas, such as the Royal Commission of Dominion-Provincial Relations (appointed 1937, reported 1940) or the Royal Commission on the Economic Union and Development Prospects for Canada (1982, 1985). The more focused Royal Commission on Energy (1957, 1959) recommended a National Oil Policy. That policy divided the market for oil in Canada between the consuming East and the producing West, at the Ottawa River. While the concern of that commission was the development of an industry, the implication of the policy it recommended – and which the government adopted – for Canadian federalism once world conditions changed in the 1970s can hardly be exaggerated.

The distinction between the federal and provincial provenance of

Royal Commissions is less precise than might be assumed. Consider, for instance, the archetypal inquiry on federalism, Rowell-Sirois. The genesis of that commission was the default by Alberta on debentures in 1936 (the first provincial default in Canadian history) and the possibility of further defaults there and elsewhere on the prairies, along with pressure for federal action from 'men with graduate degrees in economics and business experience occupying senior positions in the federal civil service,' particularly the newly formed Bank of Canada. The attitude such individuals held of the provinces may be gauged by the comment of J.A.C. Osborne, deputy governor of the bank, who described the provinces as incapable of 'any serious or consecutive thinking.'²⁰ Sectional representation of the commissioners was a paramount consideration. Initially, there were to be four commissioners, one each from Ontario, Quebec, the Maritimes and the West. The original western member was J.W. Dafoe, editor of the *Winnipeg Free Press*. At the beginning the prime minister, William Lyon Mackenzie King, had said British Columbia might be ignored on the grounds that representation according to senatorial regions was sufficient. The premier of British Columbia, Duff Pattullo, was unimpressed by this argument, while Ian Mackenzie, the province's minister in the federal cabinet, explained to King the prejudicial partisan implications of omitting British Columbia. Henry Angus, a professor of economics at the University of British Columbia, was subsequently appointed.

According to R.A. MacKay, the Maritime member of the Royal Commission and professor of political science at Dalhousie University, there was pressure from some provinces to 'federalize' the commission's staff. While denying that provincial representation on staff was a criterion, MacKay did admit, in a letter to the displeased New Brunswick premier, first, that the commission had been 'under fire to some extent in the French press on the ground of French-speaking Canadians ... being ignored,' and, second, that it was 'indeed regrettable that we are unable to find more experts in New Brunswick for the particular jobs we wanted done ... Of course it is no reflection on any province that we were unable to find in the province the experts on the particular topics we wanted investigated.'²¹

The staff MacKay was principally looking for, he said, would consist of 'economists and statisticians though there will be three or four appointments of political scientists and authorities on constitutional history and constitutional law.' If there was a problem finding such specialists in New Brunswick – according to one scholar, MacKay urged

the Commission's press secretary, Wilfrid Eggleston, 'to moot it about that S.A. Saunders [a Nova Scotian economist] had been born in St. John' – there was none in Saskatchewan. George Britnell and Vernon Fowke, of the Department of Economics and Political Science at the University of Saskatchewan, and F.C. Cronkite, Dean of Law, were given an office in the legislative building in Regina and supplied with letterhead: 'The Royal Commission Brief Committee.' Here they collected data on the tariff, exchange, and monetary policy; corresponded with economists elsewhere, such as Jacob Viner at the University of Chicago; and wrote Saskatchewan's Brief to the Royal Commission. The result, said the Minister of Justice, to whom they reported, was 'more or less a Bill of Rights' for Saskatchewan.²²

When

If who studies federalism is important to knowledge of the topic, so too is when that study occurs. J.A. Corry's *Democratic Government and Politics*, the introductory political science text for a generation of Canadian university students, appeared in 1946.²³ One of its chapters, titled 'Federalism,' focuses on the growth of governmental activity in the twentieth century and on which level of jurisdiction in a federation should perform that activity. (It should be noted that Corry wrote two studies for the Rowell-Sirois Commission: 'Difficulties of Divided Jurisdiction' and 'Growth of Government Activities since Confederation.') Federalism is treated as an administrative convenience and federation as one stage on a continuum that runs from disunity to a unitary state, which the author describes as 'the last step in political unification.'²⁴

The following year saw R. MacGregor Dawson's *The Government of Canada*. Long the premier work on Canadian politics, Dawson's book went through six editions, the last of these in 1987. Significantly for this discussion, nowhere on its contents page does the word federalism or any of its derivatives appear, though 'Confederation,' 'Dominion-Provincial,' and 'Dominion and Nation' do. In the index, there is one entry for 'Federalism, Canadian,' followed by the phrase 'see Distribution of powers.'²⁵ J.R. Mallory's *The Structure of Canadian Government*, originally published in 1971, illustrates the same reticence: in the revised edition of 472 pages, four are devoted to a discussion of 'federalism and politics' and thirty-five to 'the federal distribution of legislative power,' which includes the distribution of financial resources.²⁶ Before and for some time after the Second World War the academic measure of feder-

alism was pragmatic and mechanical. It dealt with who won and lost power – thus the familiar metaphor of the swinging pendulum as it arced between federal and provincial jurisdictions. All counting and no weighing, the story of Canadian federalism took the form of a sequence of linked events absent a unifying theory. Compared with what is to come after 1960, the period before is federalism minor.

Neither Dawson nor Corry was exceptional in the perspective he brought to the subject. The same could be said of another frequently cited book of the mid-1950s, *Evolving Canadian Federalism*, with contributions from leading Canadian historians, political scientists, and legal scholars.²⁷ It was 'ironic,' said William Livingston, who reviewed the book for the *American Political Science Review*, that 'in a volume whose central theme is the place of French Canada in the Canadian federal system, there is no contribution of any French Canadian.' (In the *Canadian Historical Review*, Eugene Forsey described the book as 'brilliantly written,' took one of its contributors, A.R.M. Lower, to task for multiple errors of fact, and said nothing of French Canada. Though received, the book was not reviewed in the *Canadian Journal of Economics and Political Science*.)²⁸ Here again because the emphasis is on the adjective and not the noun, the analysis is narrow and the interpretation parochial. Who can know federalism who only Canadian federalism knows? The point of this comment is not that these books are inadequate examinations of federalism today – they are – but that they are period pieces: pre-Suez and of a world defined by British-Canadian assumptions; pre-Quiet Revolution and the stretching of the constitutional imagination this entailed; pre-New West and an energy-dominated prairie economy; pre-behaviouralism as an approach to the study of politics with its heightened awareness of the political system as opposed to government. As David Malouf, the Australian author, has noted of a classic study of that country, Manning Clark's *A Short History of Australia*, originally published in 1979, works such as these 'assume an added dimension that comes from [their] place in the time when [they] were written.'²⁹ In that respect, they communicate a sense of the past that 'is quite as much a matter of history as what happened in it.'³⁰

It would be difficult to exaggerate the role the Quiet Revolution played in contributing to what Alan Cairns has described as 'the constitutional world we have lost.'³¹ As important from the perspective of the study of federalism, however, was the federal government's response: the appointment of the Royal Commission on Bilingualism and Biculturalism in 1963. Writing a decade and a half later, political scientist

Reginald Whitaker said of the commission that it 'played something of the role for political scientists that the Rowell-Sirois Commission played for political economists and historians in the 1940s.'³² The commission gave political scientists a well-financed (certainly when compared to support for the social sciences of only a decade earlier) and highly visible forum at the very moment the discipline itself was undergoing an intellectual and demographic transformation. The behavioural approach to politics, the concept of the political system (this last the title of a prominent book published in 1953 by David Easton, Canadian-born but then University of Chicago professor of political science and later senior adviser on research to the B-and-B Commission³³), the emphasis on the benefits to be had from adopting a comparative perspective, the introduction, elaboration, and even promotion of the idea of a civic culture – all this innovation so different from what had characterized political science a few years before but now viewed as essential tools for the study of politics in the new, independent, and predominantly federal states of Africa and Asia. In short, Canadian federalism meant one thing – division of powers – before the B-and-B Commission; it meant considerably more – language and culture – after that. One consequence of the change is that discussions of Canadian federalism before and after the Quiet Revolution and the B-and-B Commission begin with different premises and imply different expectations. The idea of a federation of cultures, in addition to whatever other assumptions interpreters might hold, was ratified by the events of the 1960s.

The early 1960s marked the beginning of the rapid growth of universities, in the number of institutions, students, and faculty. At the outset, among political scientists, the faculty were returning Canadians who had taken their graduate studies predominantly in the United States and who been trained there in behavioural and comparative methods.³⁴ Institutional analysis, the description that best fits Canadian political writing before 1960, was in decline if not disrepute. The B-and-B Commission, in the language of behaviouralism, offered the first opportunity to 'aggregate' – a favourite verb of the decade – the youthful, American-trained political scientists and to focus their talents and energy upon saving that aspect of Canadian federalism associated with cultural dualism but which now threatened the unity of the federation itself.

Canada may have been a double federation – of culture and of territory – from its beginning, but neither of these dimensions had been emphasized. The nineteenth century had been preoccupied with the

rounding out of Confederation, the twentieth with two world wars and a devastating depression. The lens through which this almost century-long history was viewed was not that of province, or territory, or culture. Rather it was national, as in Canada's march to autonomy – fiscal, defence, and diplomatic – within the British Empire and Commonwealth. A rough measure of that development can be found in W.P.M. Kennedy's *Statutes, Treaties, and Documents of the Canadian Constitution, 1713–1929*, published in 1930.³⁵ Half of the thirty-one documents included in the section of the collection devoted to the period after Confederation deal with imperial relations. It should also be noted that out of a total of more than two hundred documents, only thirty-one come from the federal period. The discrepancy between the history of Canada's constitution and of its experience with federalism was cause for frustration. Kennedy commiserated with J.W. Dafoe: 'I get weary and weary of the eternal emphasis on nationhood. A nation does not go around advertising its nationhood.'³⁶

The long road to Dominion autonomy, the era of the National Policy, and the years devoted to the pursuit of the war efforts focused attention on Ottawa and eclipsed interest in the provinces as sites of economic, social, and (even) political activity, except for limitedly defined events – say, the formation of protest parties. Chapter 5, 'The Practice of Federalism,' will discuss political parties and federalism, and, more particularly, third parties as vehicles for the release of pressure in a parliamentary system whose signal characteristic is discipline. It is only in the last half of the 1960s that this attitude begins to change, as signalled in the 1966 article by Edwin Black and Alan Cairns, 'A Different Perspective on Canadian Federalism.'³⁷ Still, interest was not consistent, as surveys of the literature on provincial politics and the program of the annual meetings of the Canadian Political Science Association reveal. Nor was federalism a principal dimension of the book-length treatments of seven provinces (but not Alberta, Quebec, or British Columbia) published in the Canadian Government Series by the University of Toronto Press between 1951 and 1975. (In Quebec there is a parallel scarcity of publications on Canadian federalism in French.³⁸) A reader of these works could be excused for concluding that Canadian federalism, as seen from the provinces, was hermetic and horizontal, no more than the summation of so many unitary governments.

By contrast, and more significant for the long-term study of federalism in Canada, is the prominence Quebec assumes for academics. The coincidence of the timing of the appointment of the B-and-B Commis-

sion with the advent of a generation of social scientists less unquestioning of traditional institutions contributed to a heightened interest in the potential of federalism. Stated more emphatically, rather than being uninquisitive, social scientists actually began to voice doubts about the adequacy of existing political institutions. If the preliminary report of the commission was right when it said that Canada was 'passing through the greatest crisis in its history'³⁹; if the voluble critics in western Canada were right when they rejected as offensive the commission's terms of reference, which spoke of the country being composed of 'two founding peoples'; if French-speaking Quebecers were right that they had been treated as second-class citizens in their own province – then the institutions of representation and federalism might well be deemed a failure. The assumption of a homogeneous British Canada was clearly an erroneous assumption.

For the first time the institutions created in 1867 (the House of Commons and the Senate) and the practices inherited from before Confederation (responsible government) fell under a shadow of doubts as to their adequacy for Canada's purpose. Not immediately or all at the same time, but the seed of the idea that institutions might require change was planted. More than that, the view of Canada's purpose also seemed less indisputable. After 1867, except for French-speaking Canadians living in the province of Quebec, the 'purposes of the Dominion' (as the phrase went) were focused on the territorial expansion and integration of the northern half of North America. The policies that enabled those purposes to be realized lie at the core of the history of Canada (for example, the building of the Canadian Pacific Railway and the passage of the Dominion Lands Act). All of them had one feature in common: the realization of a transcontinental nation. That objective reinforced another: Canada as the senior Dominion of the Empire, the largest patch of pink on the globe. The future that Canadians early in the last century were told belonged to them did not grant French-speaking Canada a special, let alone an equal, voice to the rest of the country.

How different from these assumptions were the concerns of the B-and-B Commission! Gone was the national, territorial perspective with its long-standing assumption of a primary role for the federal government; in its place was a new, more particular interest in identity, social integration, and accommodation, frequently in a comparative mode. The research program of the commission, the broadest of any inquiry up to that time, supports this generalization. Paradoxically, the site chosen to study these topics was not necessarily countries like

Canada – vast, settler societies, still (in the 1960s) significantly rural in complexion – but entities that were small, highly urban, and not always federal in constitution – Belgium and the Netherlands are examples.

It may be an exaggeration to say that the B-and-B Commission introduced into Canadian politics the concern for national unity, but it is only an exaggeration. While after 1867 relations between English- and French-speaking Canadians had been tested, usually over the manner by which provinces other than Quebec treated linguistic and denominational educational claims made by French-speaking Roman Catholics, and while Canada's participation in and support for Great Britain in the two world wars and in the Boer War had stirred anti-imperialist feeling among a portion of the Quebec population, still these tensions were not viewed as having the potential to cause national disintegration. The work of the B-and-B Commission suggested that this assumption was no longer valid. Research on countries with multi-ethnic and culturally plural populations, long ignored by Canadian social scientists, directed attention to the potential for political fragmentation where social cleavages were allowed to deepen. The unfamiliar language, concepts, and emphasis directed academic and political attention toward new concerns at the same time as the sense of a dominant British Canada was in retreat, now that the object of national autonomy and status within and outside the Commonwealth had been achieved.

A sense of a new kind of Canadian federalism with different priorities took hold in the 1960s. The centrepiece was language or, more accurately, languages – English and French – and the need to acknowledge constitutionally their pre-eminence. The policies used to reach this goal, of which passage of the Official Languages Act in 1969 was most noteworthy, lie outside this discussion, except for their influence on the climate and conduct of federalism. The reference here is not just to relations between Quebec and the rest of the country – one dimension of what this chapter earlier called Canada's double federalism – but to relations between the rest, most particularly in the West, and central Canada – that is, the other dimension of double federalism. Critics of bilingualism and biculturalism said that this innovation changed the intent of the Fathers of Confederation. This claim is indisputable. If the intent of the Fathers of Confederation had been to create a bilingual and bicultural federation, they would have acted so as to accomplish that end to some degree. Yet the provisions for language in the 1867 Act are precise and limited in their application.

Still, intent is a different matter from meaning. It could well be

argued that a century after their work at Charlottetown and Quebec City, and after the creation of a transcontinental nation, the meaning of the Fathers' intent requires for its realization broader constitutional protections for language. (French in the workplace, instead of the colonization of the French language by English – in the workplace and elsewhere – is a matter the Fathers of Confederation never considered, let alone addressed.) American legal scholar Laurence Tribe, writing about the equal protection clause of the Fourteenth Amendment to the United States Constitution, makes a similar observation: 'The relevant inquiry is *not* what the original drafters and ratifiers of the Amendment imagined or even expected the concept they wrote into the Constitution would come to require, but *what concept they intended to enshrine* by the language they used, and *what that concept, rightly understood, had come to demand*.'⁴⁰

It is important to note that the West was not party to the original understanding, however that was interpreted. And it is the West's absence from the original settlement, as reinterpreted in the 1960s, that contributes an additional strain to Canadian federalism. Province building has been one response to this strain.⁴¹ While not confined to the West, a distinctive feature of that phenomenon in the West has been espousal of a model of Canadian federalism that sees all provinces as equal (thus rejecting claims to special status by any single province) and maturation of that view into a call for a Triple E (equal, elected, and effective) Senate.

These matters are raised in order to make the point that the response which the tensions of the 1960s and later elicited took constitutional form. Constitutional not only in the sense of the solutions sought, for instance, in restructuring institutions like the Senate or altering practices such as the amending procedure, which until 1982 looked to Westminster for authoritative action; but constitutional too in the development of a mechanism to forge agreement. While not rare before 1960, Dominion (renamed federal)–provincial conferences became a familiar feature of public life after that date, in part because for the first time they were televised. They also took place more frequently. The conferences become an integral part of the search for constitutional (some scholars called it mega-constitutional) accord.

The age of conferences began with the Confederation for Tomorrow Conference, called by the Government of Ontario in November 1967. While technically not a federal–provincial conference since Ottawa did not take part, the background papers (prepared, in the words of one

participant, by 'well-known scholars'), the conference agenda, and the remarks of the provincial premiers set the tone and introduced the topics for federal-provincial conferences to come, beginning in February of the following year. Contrast, for instance, the proposition advanced by John Robarts, then premier of Ontario, that in Canada there are 'two distinct ways and philosophies of life [but] while our Constitution still contains elements which are valid for organizing Canada as a partnership of ten, we are forced to conclude that much of this other two-partner Canada remains to be invented,' with the riposte by Ernest Manning, then premier of Alberta, to the proposal that the French language and French culture be granted 'formal and constitutional status': 'You cannot ... say that this particular group has a legal and constitutional right that ... over five million Canadians today who are of neither Anglo-Saxon or [*sic*] French origin ... do not possess.'⁴² Not for the last time would enthusiastic promotion of dualism at the centre thwart its acceptance in the parts. The riddle this posed was also a challenge: 'How to reconcile a federalism based on provinces with one based on cultures?'

Where

The B-and-B Commission and the Confederation for Tomorrow Conference stood apart from previous intergovernmental meetings, for where the latter had as their object to find agreement on some defined question, such as a domestic amending formula for the Constitution Act, 1867, the initiatives of the 1960s adopted as their premise institutional and constitutional failure. Initially, the flaw was presented less in purely structural terms than as a claim on rights: 'The Constitution does not provide for equality between English and French in other provinces,' said John Robarts at his conference. Short of every premier pledging to act in a complimentary manner to guarantee linguistic equality, it remained to the federal government to initiate, as it did in 1969, the Official Languages Act to ensure delivery of federal government services in both official languages across Canada. As the Canadian Charter of Rights and Freedoms a dozen years later made all residents of Canada part of a whole, so the OLA made Canada accessible to all English- and French-speaking Canadians. Both enactments transcend in their effect the internal boundaries of the federation and in this respect are analogous to the frontier in the nineteenth century in that they, too, increase the power of the federal government. Indeed, in some parts of the coun-

try the frontier, language, and the Charter may almost be perceived as stations on a continuum. The Charter as a twenty-first-century frontier is discussed in chapter 6.

Despite (or because of) the emphasis on rights, the theme of institutional failure mounted. The fact that the Senate of Canada did not offer an elected forum for the provinces, as the upper chambers in Australia and the United States did for their unit governments, was offered by critics as one example. Others pointed to the distorted partisan composition of the House of Commons owing to the single-member-district-simple-plurality-vote electoral system. Provinces and people were badly served by their representative institutions. The list might be lengthened, but the moral offered was accepted as fact. Yet the succession of constitutional conferences and reports that followed, up to the referendum on the Charlottetown Accord in 1992 – with the notable exception of the events of 1982, which saw, among other achievements, adoption of the Charter, agreement on a domestic amending formula, and reaffirmation of provincial control over non-renewable natural resources – resulted in no change. The apparent immovability of institutions and the intransigence of opponents to change, coupled with a succession of publicized but rejected constitutional schemes, deepened the sense of institutional failure.

Talk but not action marked the decades; convergence of federal theory, practice, and approval seemingly unachievable in Canada. 'Talk' needs to be understood broadly, for the word is used here to embrace both the oral and the written word. Before 1960, interpreters of federalism were few in number and concentrated mostly in law and history faculties. Their research concerns centred on struggles over the division of powers – who gained and who lost – and on the proposition, by now cliché, that federalism signified unity in diversity. What unified the federation, what diverse elements it might embrace, and whether that diversity was organic to the whole remained largely unexamined. There was no consensus in the literature on whether theory should be studied in order to understand Canadian federalism or Canadian federalism studied in order to understand federal theory.

It was against this backdrop that political scientists in Canada engaged for the first time in a sustained manner with the malleable concept of federalism. They did this in university departments, newly created institutes, and government departments and agencies, as well as in the research arms of Royal Commissions and task forces. The history of these bodies in this period has yet to be written, though there are

Random documents with unrelated
content Scribd suggests to you:

"Anyway, he seems to have made a good try," said Ingles. "I suppose he'll live on post-obits, now, and go to the dogs as fast as possible."

"If he's let go his hold lately," declared Atwater, "it's on account of his brother. Everything's done for him; he is just run right ahead. Do you know," he continued, dropping his voice and glancing aside towards Fairchild, "that Brainard has just pushed that Burt of his into the vice-presidency? Right over everybody. I don't see how Fairchild can stand it. And what could be better calculated to infuriate the other one—what is his name?—Marcus. I'd take to drink myself."

Ogden listened to all this, and was swayed accordingly. His brief, fluttering attempt to idealize Abbie Brainard ended, and he saw her only in the cold, garish light of crass reality that was beating down so fiercely on the rest of the family. He had been meditating on calling upon her at her father's house, moved by the kind of sympathy that anticipates an invitation, or does without one; this project he now determined to abandon.

VIII

McDowell had not quartered himself on the twelfth floor of the Clifton—as distinguished from the eleventh or the thirteenth or any other—by a mere chance. He had not been influenced by any finicky consideration of light, prospect, ventilation, or nearness to the elevators. His sole reason for selecting room number 1262 was that room number 1263 was occupied by Arthur J. Ingles, the owner of the building.

Ingles occupied a very small room, upon whose door was his name—his name and nothing more—in very small letters. The next door beyond was lettered "Office of the Building," and this second room had communication with the first by a door between. None of these three doors, however, had as much interest for McDowell as the one between his own office and the private office of Ingles. This door was

closed, but it was McDowell's dream and ambition to see it open. In his thoughts he constantly saw it standing ajar in an intimate and friendly fashion, while he and Ingles and other magnates of Ingles's ilk circulated through it freely and all did business together.

Up to the present time this door had never been opened, nor had McDowell ever had access to the other suite except by the farther door, through which tenants passed to request repairs or to pay their monthly rent.

Ingles was enough of a lawyer to be a real-estate man, and enough of a real-estate man to need to be a lawyer. He supervised the drawing of his own deeds and leases, and seldom took counsel in matters between landlord and tenant. As a landlord, he had found it advantageous to divest himself of his soul by making the Clifton into a stock company; he himself held all the shares but five. He had an extraordinary faculty for keeping himself out of the papers; but this did not prevent McDowell from knowing that he was constantly engaged in enterprises of the first magnitude, and he felt that association with this great capitalist would be immensely to his own advantage.

But he had accomplished only one step that might be reckoned an advance: he had undertaken the financial arrangements connected with St. Asaph's choir. This was a large, well-trained body, and was provided with all the expensive paraphernalia of a "high" service. It included four or five tenors and basses who commanded rather good salaries, as well as an expert organist and an experienced choir-master who commanded larger ones. The management had been by committee, and several of the pillars of the church, Ingles among them, had learned the difficulty of mediating between music, money, and ritualism. A member of a previous committee had delighted in translating and adapting Latin hymns for Christmas and Easter, and in putting his hands into his pockets now and then to make good a small deficit in the budget. Ingles and his compeers were ready enough to put their hands into their pockets, but they were glad, one and all, to escape the details of administration.

It was here that McDowell stepped forward; he cynically acknowledged that religion must be made to play into the hands of business, and he justified himself to himself by many good arguments. The details of the new dispensation were arranged in a down-town office. McDowell had tried to contrive that that office should be Ingles's own; but the meeting was held, after all, in another tall tower a block or two down the street, and Ingles himself was not present more than ten minutes. McDowell regretted this; he felt very well disposed towards Ingles. He would have done almost anything for him—for a commission.

But McDowell did not push this choir matter to the neglect of his own proper business. He was engaged at about this time with a new subdivision out beyond the South Parks. He had bought up a ten-acre tract, which he himself acknowledged to be rather low-lying, and which his rivals, with an unusual disregard of the courtesies of the profession, did not hesitate to call an out-and-out swamp. He had mended matters somewhat by means of a dam and a sluice, which drained off a part of his moisture on to grounds lying lower still—other men's grounds; and on the driest and most accessible corner of his domain he had placed a portable one-story frame shanty which had already done duty on other subdivisions, and alongside of it stood a tall flagpole which flaunted a banner with his own name and number on it. This tract, by the way, had absorbed some moderate portion of Ann Wilde's hoarded savings.

A week of rainy weather now and then would lay a complete embargo on McDowell's operations in this quarter. His plank walks would float off in sections; the trees along his avenues would sag deeply into the slush and would sway sidewise, in spite of their networks of rusty wire; and the cellars of the three or four unfinished houses that he had artfully scattered through this promising tract would show odds and ends of carpenters' refuse floating around in muddy water a foot deep. It was an appalling spectacle to one who realized the narrow margins upon which many of these operations were conducted, or who failed to keep in mind the depths that human folly and credulity may sound.

"Oh, it's all right enough," McDowell would say. "It's going to dry up before long."

Occasionally it did dry up and stay so for several weeks. Then, on bright Sunday afternoons, folly and credulity, in the shape of young married couples who knew nothing about real estate, but who vaguely understood that it was a "good investment," would come out and would go over the ground—or try to. They were welcomed with a cynical effrontery by the young fellow whom McDowell paid fifty dollars a month to hold the office there. He had an insinuating manner, and frequently sold a lot with the open effect of perpetrating a good joke.

McDowell sometimes joked about his customers, but never about his lands. He shed upon them the transfiguring light of the imagination, which is so useful and necessary in the environs of Chicago. Land generally—that is, subdivided and recorded land—he regarded as a serious thing, if not indeed as a high and holy thing, and his view of his own landed possessions—mortgaged though they might be, and so partly unpaid for—was not only serious but idealistic. He was able to ignore the pools whose rising and falling befouled the supports of his sidewalks with a green slime; and the tufts of reeds and rushes which appeared here and there spread themselves out before his gaze in the similitude of a turfy lawn. He was a poet—as every real-estate man should be.

We of Chicago are sometimes made to bear the reproach that the conditions of our local life draw us towards the sordid and the materialistic. Now, the most vital and typical of our human products is the real-estate agent: is he commonly found tied down by earth-bound prose?

"You fellows," said Floyd to McDowell, during one of Sister Ann's sessions, "are the greatest lot I ever struck." He spoke in a half-quizzical, half-admiring way, and showed some effort to handle the language with the Western ease and freedom of those to the manner born. "Do you know, when I had been here three or four months some fellows took me with them to the banquet of the Deal Estate Board. Well, it was an eye-opener; I never saw anything like it. It was

Chicago—all Chicago. Heavens! how the town was hymned and celebrated! It was personified—"

"That's right," said McDowell.

"And glorified—"

"Of course."

"And deified—"

"Why not?"

"Why not, indeed?" cried Aim Wilde. "*I* haven't been around much yet, but you strike me as the most imaginative lot of people I ever saw."

"Whenever Chicago is involved," amended Walworth.

"Sure."

"How you idealize it!" cried Ann, enthusiastically. "How you—"

"It needs to be idealized—and badly," said her sister.

But McDowell's interests in the southern suburbs as well as at St. Asaph's were soon set aside by another matter; domestic interests claimed his attention.

His father-in-law had now passed some two or three months in Chicago. He had entered the city without any conception of its magnitude, and he had remained in it without rising to any conception of its metropolitan complexities. He had made a change that was too great and too late. He made but an ineffectual attempt to connect and identify himself with the great rush of life going on all about him. He came down town almost every day to spend an hour or more in McDowell's office, where he took a certain satisfaction in following out the intricacies of the local topography by passing a thin, blue-veined hand over McDowell's maps and his canvas bound books of plats. McDowell treated him with considerable patience and with as much respect as was due to a man who had no great experience in real estate and little aptitude for learning. One day old Mr. Ogden, who apprehended the lake winds little better than the local "lay of the

land," took a slight cold in returning home from the office; two days after pneumonia developed, and within a week he died.

George undertook the charge of such arrangements as recognized the old New-Englander as a dead man merely, and McDowell subsequently took charge of those which recognized him as a dead property-owner. First, the funeral; afterwards, the Probate Court.

A funeral is more disagreeable than a wedding, chiefly because its multifarious details make their demands with but a scanty notice in advance. All of these details George was now called upon to face and to dispose of.

He squared his jaw, set his eyes, put a cold, heavy paving-stone in place of his heart, and met these details one by one. It was a man's privilege.

Brower went with him to the undertaker's, and mediated between grief and rapacity.

"Be careful here," Brower said to him in an undertone. They were in a room where sample caskets stood on end against opposite walls and were let down one by one for the inspection of purchasers.

"They always show the most expensive ones first. Don't look at these. You don't need to pay a hundred and fifty dollars. You can select a suitable one for eighty or ninety—perfectly good and no loss of respect."

"How about the outside box?" asked the man in due course. He was in his shirt-sleeves and wore a high silk hat.

"Here," whispered Brower, "you'll have to take the most expensive. It's chestnut—fifteen dollars. Nothing else but plain pine for a dollar fifty. Shameful, isn't it?"

Brower arranged for the handles and the plates. He also met the family at the railway-station next day, and saw the casket put on board the east-bound express.

He and George were walking slowly up and down the platform alongside the train when a man in blue overalls leaned out of the door

of the baggage-car and called to them. He held a paper in his hand.

"This ain't quite regular," he said. "Our road is pretty strict. The airtight casket is all right for inter-state travel, but the doctor hasn't signed this certificate."

George turned on Brower with a look of anguish.

"Here!" cried Brower, stretching up his hand. "How forgetful of me! I'll sign it now. Go along, Ogden."

The man hesitated. "Not contagious?"

"Certainly not. Hand it down. Got a pencil? There! Here's a two. Take extra care."

The dead man's son paid for the music and flowers, his wife and daughter folded away his clothes, and his son-in-law undertook to see his estate through the courts.

"I don't believe you'd better pay the doctors and undertaker yet," he counselled. "Let them file their claims with the Probate people. It doesn't cost but a dollar, and if you pay without, you might be liable over again—you are on other claims. I'll keep a general eye on matters, of course, but questions will be coming up all the time. I don't know but what we'd better have a lawyer first as last. The Probate arrangements are different now from what they used to be—more expensive, for one thing. Now there's Freeze & Freeze—they're as good as any, and they're right there in the Clifton, George, only five floors above you."

"Have we got to go into this thing right away?" asked George, as if in physical pain.

"Oh, no. Wait a few weeks—wait a month, if you like."

"Yes, we'll wait," he sighed.

McDowell made no opposition to his wife's suggestion that her mother now come and live with them. He had not anticipated his mother-in-law as a member of his own household; but he liked her well enough, and he generally treated her with a dry and sapless sort of kindness. Besides, he looked on domestic arrangements as a mere incident in

business life, anyway. George, who for some time had been anticipating a home with his parents, could not find an equivalent in a home with the McDowells, and he remained with Brower on Bush Street.

There was no will; the recasting and consolidation of the small estate had required too much time and attention to leave much for any thought of its redistribution. Mrs. Ogden went into court at the proper time and qualified as administratrix. She was a figure-head, of course. She signed various documents at George's instance; George himself was guided by McDowell, principally; and McDowell got a point, now and then, from the attorneys. However, the legal labors of Freeze & Freeze on the Ogden estate were chiefly clerical; this did not prevent them from charging like chancellors and chief-justices.

These charges and others were paid, by McDowell, who began informally by giving checks on his own private account. He came to receive, too, most of the rents and other payments, which were more conveniently made to him in his own office than to George in the office of the bank. And since he paid the estate charges out of his own private account, it seemed natural enough that his own account (which was with the Underground) should receive the sums coming in. This arrangement came about gradually, without receiving any formal acquiescence; but George appeared satisfied with the business capacity of his sister's husband; while his mother was an inmate of her son-in-law's house, where inquiry and explanation were easily enough made.



"How's this, Jo?' asked Ogden."

These details, once in hand, appeared to give little hinderance to the course of McDowell's regular business. His acquaintances in his own line noticed its increasing spread, and agreed among themselves that he was flying a little high for a man of his limited resources. He had more work for the surveyors and sign-painters, and he presently added a clerk or so to his office force.

Various small claims were filed in the Probate Court and were allowed. "I think," said George to McDowell, "that we'll use Kastner's rent for them. To-day is the third; he has been in, I suppose?"

"He'll have to be punched up," replied McDowell. "It doesn't do to give them any leeway."

"He has always been prompt on the first," said George, somewhat annoyed.

The next morning he entered the paying-teller's pen for a moment, as occasionally happened. His eye chanced to alight on the balance sheet that ran from L to Z.

McAvoy, Louis M.	81.98
McCloud, Peters & Co.	1187.25
McDowell, E. H.	.0

"How's this, Jo?" asked Ogden. "What's the matter with McDowell?"

"Pulled out yesterday," responded the payer, briefly.

IX

McDowell's defection, from the Underground was presently followed by an addition to its working force. One morning, a month or so later, Ogden, in an interval of leisure, glanced across to the window before which Burton Brainard had railed in his desk, and saw a young woman within the enclosure. She sat there alone, before a desk of the peculiar kind that has been contrived for the typewriter, and her effect at the moment was that of leisure finally and elegantly achieved.

He was at once struck by her peculiar facial expression; she had one eye open and the other shut. All at once she effected an instantaneous change which closed the open eye and opened the closed one. Then she opened both and gave out a smile of recognition, surprise, and pleasure, which he now perceived to be the work of the features of Cornelia McNabb.

"Here we are!" she seemed to say.

She had followed Burt's elevation to the vice-presidency, along with the new desk and the handsome rail-work enclosing it. Burt's concerns, despite his rise in rank, were now, as heretofore, largely outside the hank proper; he did something in stocks now and then, and he kept the

run of things on the Board of Trade. But he was like his father in looking upon the bank as a personal and family matter—a point of view which the action of the body of stockholders somewhat justified: as a general thing they made up a chorus that huddled in the wings—several of them declining to come "on" even for the election that advanced Brainard, Jr., to the second place. So he saw no very good reason why the bank generally should not foot the bill for his own clerk-hire.

"Why can't you use the man we've got here already?" his father had asked him, however. "Ain't one enough?"

"No. Somebody else has always got him. If I could have one for myself just for an hour or so, it would be a great help."

"Why don't you get one of those girls that circulate around upstairs? I hear there's one or two of 'em."

"I believe I will." And thus Cornelia McNabb came in for a brief daily attachment to the Underground.

She sat in her place quite unoccupied for an hour or so, looking about inquiringly, fidgeting a little, and watching the clock. Ogden glanced over in her direction once or twice. He saw that she had contrived to express her rise by several subtle alterations in her dress, and that she had succeeded in enveloping herself in a promising atmosphere of gentility. She, in her turn, kept an eye on him and contrived to time her own luncheon along with his. She thrust her hat-pin into place just as he buttoned on his cuffs, and she drew a black-dotted veil across the tip of her nose just as he was reaching up for his hat.

They sauntered out separately, but came together in the hallway.

"Do I look nice, or don't I?" she asked him, as she passed one of her gloves over the smooth surface of the massive marble balustrade. "You needn't think the Pewaukee girls are jays; they're too near Lakeside and Waukesha for that."

"You do, indeed. But where are the chains and rings?"

"Fiddle! I hope I know better than that, now."

The elevators were sliding up and down behind their gilded *grilles* with great rapidity, and hundreds of hungry helpers were stepping out of

them in search of brief refreshment. Some of these stopped in the basement vestibule, and our young people, looking over the balustrade, saw them buying packages of cigarettes or the noon papers. There came to them, too, the voice of the man who stood at the foot of the elevator shafts and who regulated the movements of the various cabs by calling out their numbers with a laconic yawp. He wore a blue uniform with gilt buttons and he had a gold band on his cap. He was as important as Ingles himself—perhaps more so.

"I believe I'll go up to the restaurant to-day," said Cornelia, with a precious little intonation. Her mincing tone intimated a variety of things—altered conditions among them.

"I go up there occasionally myself," said Ogden. "You have entertained me several times downstairs, and you ought to give me my chance now, don't you think?"

"Quite happy, I'm sure," she murmured demurely.

"Up!" called Ogden, and up they went.

"Well," said Cornelia, a few minutes later, taking off her gloves with a self-conscious grace, and pushing aside her tumbler so as to find a place to lay them, "I can't say I've been overworked *this* morning. I haven't seen my new man at all."

"He's out a good deal."

"But the old one was on deck."

"In what way?"

"Oh, he put me through a regular drill. Had quite a number of remarks. I shouldn't care to take *him* down. May have to, though, if he gets too bossy. Eh?—oh, well, I don't know that I care for so very much, thank you. What are *you* going to have? Chicken-soup?—all right. Yes, chicken-soup, John."

She leaned back in her chair with a genteel grace, and looked out of the window down on the snow-piled roofs below.

"Do you know, I used to think I was a pretty smart girl, but I begin to believe I'm a good deal of a dummy, after all. That man has been in the building all this time, and I have just found it out."

Ogden's eye involuntarily followed the waiter.

"Not that black man—nix. But how could I be expected to spot his name among all the 'steen hundred on that bulletin by the door? I did see it there this morning, though—just by accident."

"Whose?"

"Oh, Ingles's. Arthur J. Ingles. Think of his being in this very building all this time!" She put the rim of her tumbler up under the edge of her veil.

"In it?" repeated Ogden. "He owns it."

"He does? Great Scott!" she choked and spluttered, setting her glass down suddenly. "Well, I'll be switched!"

She gave another gulp. "I suppose his father willed it to him."

"No; he put it up for himself; I heard him say so."

"And you know him?" A new light shone in her brimming eyes.

"Yes."

"Well," she declared with emphasis, "now I see my way. He's got to have me do shorthand for him, and then I shall see—her."

"Ah!"

"Yes. Can't you tell Mr. High-and-mighty that you know a respectable girl who is trying to make her own living?" She ran her fingers over the edge of one of her cuffs, which was slightly frayed. "You see how poor I am."

George laughed. "The laundries *are* pretty rough, for a fact."

"How mean of you!" she exclaimed, and laughed too.

She thrust back her soup.

"I don't want it. I don't want anything. I can't eat a mouthful. Then I was wrong about his being a society dude?"

"Completely."

"And how is she? S'posing I've made a mistake about her, too?"

"I don't know, I'm sure. I've never seen her."

"You're telling me a fib."

"Ho, truly, I never have. I don't believe there's any such person. I think she's somebody that the papers have just made up. How many people have you found to work for?"

"Oh, three or four. But time for more. Rhyme, ain't it? I'm trying for the Massachusetts Brass, but I'd rather get Ingles. She gave a dance at Kinsley's night before last."

"How many words can you do?"

"About ninety—enough for business; of course I couldn't manage courts or banquets or sermons. I expect she comes down to his office for a check every now and then. Why don't she ever have her picture in the Sunday papers?"

"O Lord! I hope they're above *that*!"

"What's the objection? I'd have mine there quicker 'n scat if I could. I will some time—bet you. And not in any office togs either."

"But don't dream of rivalry. She isn't real; she's only a beautiful myth. What will you take next—roast beef?"

"I don't mind; yes. When I'm alone I usually skip right from soup to pie—or pudding. But I guess I will take something a little solider this time; nothing makes me tireder than sitting still and fidgeting." She tapped her toes on the mosaic pavement, and gave a hitch and a pat to the dimity curtain alongside her. "I squirmed around for an hour, with a whole bookful of other people's notes that I might have been writing out. What sort of a young fellow is he?"

"He has his own way."

"Only child, I suppose?"

"N—no."

"Only son?"

"No—yes—I don't know. How do you like your work?"

"Middling. I'm terrible enterprising, but I guess I was never meant for a drudge. Say, what does a patroness really do?"

"Oh, nothing much; she just has her name on the list. Sometimes they don't even go."

"I notice that your Mrs. Floyd is beginning to be one; I've seen her in the papers two or three times."

"She doesn't like it, though; sometimes names get put on just to fill up. 'My dear Mrs. Floyd, we thought you wouldn't mind; you don't, do you?' they say. 'But my name in the papers,' she objects. 'You are too sensitive,' they reply. 'You've had your name in the papers at home,' her husband reminds her. 'Yes,' she answers, 'but—here!' She hates the town."

"Well, if I was a patroness I guess I'd have some say—no figure-head for me. I wouldn't be put on, either; I'd put the others on."

"I see you were cut out for a 'society' career."

"I guess you've about struck it. I went to a dance a week ago to-night—Periclean Pleasure Party."

"Like it?"

"Twa'n't much. And I was invited to a firemen's ball—such impudence!"

"Right—don't cheapen yourself."

"I guess I understand that."

Meanwhile a nooning of a different character was going on in the directors' room of the Underground. This is not to be taken as indicating that the green-baize plane of the long centre-table was littered with reports and memoranda, and that the high-backed, leather-seated chairs were filled with the solid figures of a dozen solid men. No; the aspect of the room was that of Sunday-like disoccupation, and the only people in it were an appealing young woman and a stubborn old man.

"Let her come in, father; please do."

"Take care, Abbie. You know what I think of you, but you make a mistake when you try this."

Abbie Brainard passed her handkerchief across her tearful face. Her father stood before her with his legs spread wide and his feet firmly planted; he had his hands thrust deeply into his trousers pockets. His

jaw was set, and his shaggy brows were drawn down over eyes that glared fiercely at nothing.

"Then meet her out in the hall somewhere, just for a minute." She laid her hand tremblingly upon the old man's arm. He moved, as if to shake it off.

"Then just walk by outside; she can see you from the cab."

He turned his eyes upon her, half in expostulation and half in threat. "Abbie!"

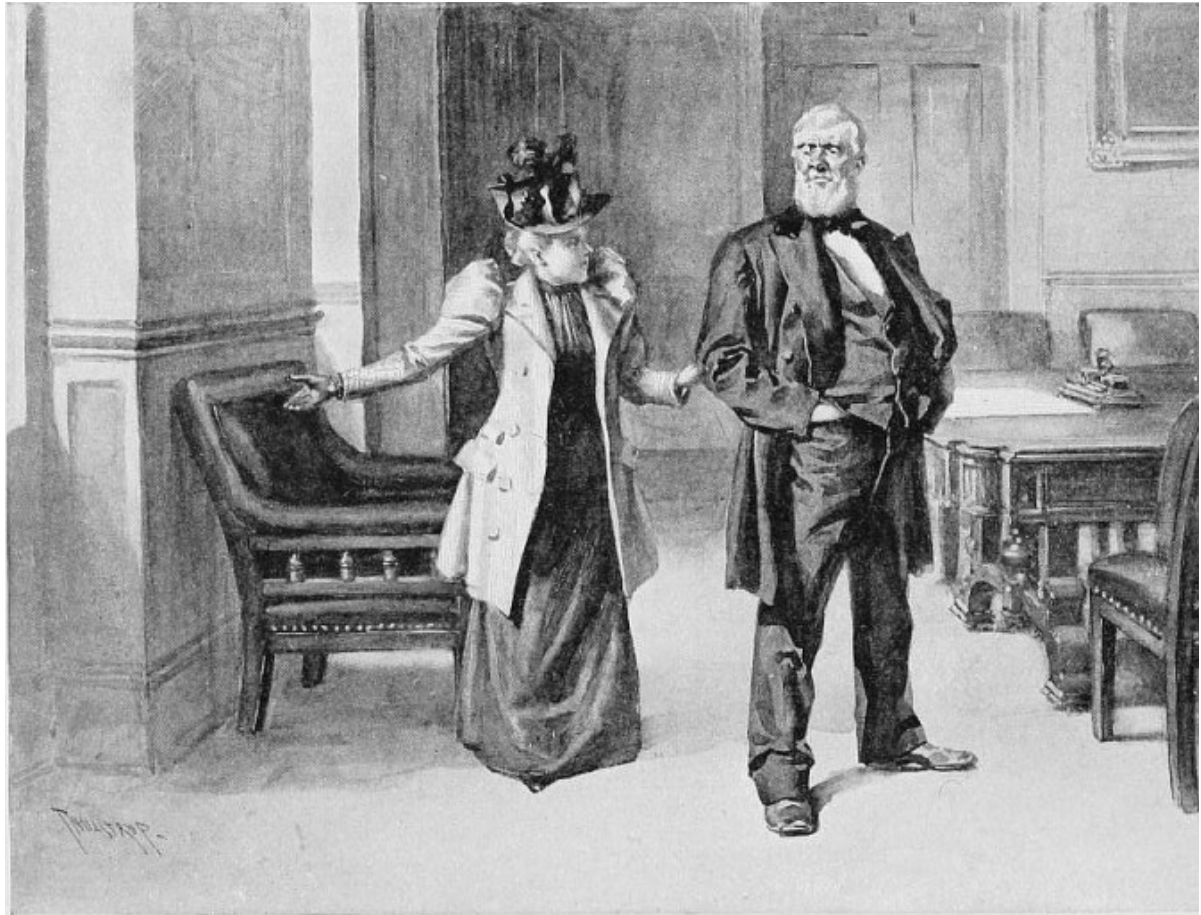
"Then, father, just step here to the window; she'll see you and know it's all right. Come." She caught hold of a fold of his sleeve. "You won't keep her waiting out there such a cold day as this?"

Brainard moved his feet, but he turned his back on the window and fixed his eye on the fireplace. His daughter's light touch was quite powerless on his huge bulk.

"Father, you know Burt says—"

"Abbie," he interrupted sharply, "don't you say a word to set me against Burt. I won't hear it. Don't drag him in, or you'll be sorry for it." "But, father, don't you understand? He *struck* her; there's a mark on her face now."

Brainard's great frame shook, but he made no other sign. This quiet she took as a favorable symptom. She would have done better in perceiving that he was between two contending forces so nearly equal as to hold him almost in equilibrium. The wretch had struck his daughter—a brutal, hateful thing as regarded his daughter or any daughter or any other woman; but his daughter had defied him, overridden him, and the man whom she had chosen for a master was now the instrument of her punishment. The accounts appeared to balance. However, figures do lie, and his own agitation indicated that the *x* of human emotion had not been completely eliminated from his problem.



"She laid her hand tremblingly upon the old man's arm."

He cleared his throat. "She has made her bed, Abbie," he said in a husky tone, "and now she must lie on it."

"No, father; you must hear what Burt says. He has had to go up there and—"

"Burt? Is that where he has been this morning? Has he turned against me too? Good God! what have I done to deserve such treatment as this? First it's Mark, with his drawing and his trying to play the fiddle; and then it's this pen-pusher that puts on those things Sundays and marches around singing songs; and now it's Burt, who's had every chance to make a good business-man of himself, and everything done for him. It's too bad; it's too almighty bad."

Abbie steadied herself against the corner of the table. Her breast heaved with fearfulness; she had never before openly protested to her father

against himself.

"Why haven't you done anything for the others? Why didn't you give Mark an education?—the kind, I mean, that would have helped him, and the only kind. Why haven't you taken this Mr.—Mayme's hus—this man and made the best of it, and found something for him to do?—he can work in an office. Oh, father," she moaned, with a softening note of deprecation, "you have made it pretty hard for all of us."

"Abbie," he gasped, "are you turning against me too? Abbie, I've always thought so much of you, and I've done well by you. But I want you to go away—I won't see her. I won't. She must go away, and you too."

He caught her by the arm and tried to move her towards the door—gently, as if she might go of her own accord.

Ogden, on coming in from lunch, found himself intercepted by Freddy Pratt. This youth had a few moments' leisure, and he assailed Ogden between the wardrobe and the wash-stand.

"I went over to see the Viberts again; last night," he communicated. "Poor Mayme—I wasn't going back on her, if others did. She was sitting there all alone in the dark. I guess she had been crying. Anyway, when I lit the gas her eyes looked red. She wouldn't say much—"

"Good plan."

"And after he came in she wouldn't say hardly anything at all. Slow work talking to *him*! He wasn't drunk exactly, but he had been drinking; didn't need a light to tell that. I wasn't doing anything at all, and all of a sudden he blurted out, 'I say, you young fellow you, what do you mean by coming here and destroying the peace of a man's family?' You can bet I was taken back. Then he got up and came towards me—he looked big, too! 'You get out of here'—that's what he said."

"And did you?"

"Oh, yes, I got out," responded Freddy Pratt, with a meek complacency.

"You surprise me. You showed sense."

Freddy looked at him doubtfully. "I heard this morning that he had just lost his place with those insurance people," he resumed cautiously. "That was what was the matter, I guess."

"Possibly," said George, who had heard from Brower that something of the kind was likely to occur. The fellow's work had been done indifferently of late, and he was far from being worth the increased salary he had asked for.

As Ogden passed up to the other end of the office Brainard appeared in the doorway of the directors' room and beckoned to him. His face was pale and disturbed; the veins in the end of his nose showed redly; his eyes burned with an appealing fierceness.

"Ogden," he said, in a loud, hoarse whisper, "where is that type-writer girl? Tell her to bring some water here as quick as she can."

"She isn't here, sir; she has gone back upstairs."

"Then you get some yourself. Here; take this tumbler. Be quick, and don't make any fuss."

Ogden hastened to the wash-stand near which Freddy Pratt had detained him. Returning again, he saw through the half-open door that Abbie Brainard was lying back in one of the big chairs with her face pallid and her eyes closed.

Her father dipped two of his great, clumsy fingers into the glass and made an awkward attempt to sprinkle her face. "My poor girl has fainted," he said.

The girl's eyes half opened; she seemed to see Ogden standing just outside.

She clutched both arms of the chair and raised herself half up. Her bosom heaved; her mouth was drawn tensely.

"Fainted?" she tried to say; "not at all!" She gasped once or twice and rose to her feet. "I never fainted in my life," she said grandly; "I never should think of doing such a thing!"

She reeled; her eyes closed. George rushed forward to catch her. Her hand dropped numb on his arm, and her head fell heavily on his shoulder.

X

Ogden and his mother were now beginning to have frequent conferences with regard to the management of the property and to McDowell's connection with the matter. Perhaps the word "conference" puts, however, too set and formal a stamp on the brief, hap-hazard interchanges of ideas that took place, as chance permitted, within McDowell's own house—a few words after a Sunday dinner or at the front door late at night. And besides being handicapped as to occasion, they were further hampered by McDowell's new relation to them and by their own presence under his roof. Besides, Mrs. Ogden, with a multitude of small experiences, had no ability for grasping things in a large and general way; while George, with a broader and more comprehensive outlook, was embarrassed by a lack of experience in the actual details of business transactions. Added to this, he was a new-comer, under all a new-comer's disadvantages; he hardly knew where to turn for the proper agents, legal or financial, that might have been employed; while many of the agencies—courts, for instance—were different in procedure and even, in name from anything he had known East.

"All the same, though," he said to his mother, "things ought to be in different shape for you. I'm bound hand and foot in that bank—no time or thought for anything outside. I don't know but what you'd better put everything with some good real-estate firm, and let them look after repairs and collections and taxes."

His mother fixed a pair of anxious eyes upon him, and the wrinkles of perplexity appeared on her forehead.

"Eugene is real-estate."

"Or those lawyers," he went on. "Anyway, you ought to have an account as administratrix with some bank. I believe I'll open one to-morrow. Something has got to be done to make things quicker and clearer."

He presently took upon himself the delicate task of intimating to McDowell that a simpler and more regular way of doing things was desired.

He went up to McDowell's office in the latter part of the afternoon. As he entered, a tall, dark man was standing in the middle of the room. There was a sinister look in his eyes and a contemptuously sarcastic smile on his heavy red lips. He gave a last fold to a small piece of paper that he held in his hands and thrust it into his vest pocket. It was Vibert.

"It's pretty near four now," he was saying to McDowell, "so I can't try again to-day; but I expect to find this all right after ten to-morrow morning."

He gave his hand a hardy flip across one side of his dark moustache and passed out. McDowell looked after him sourly. "Damn the brute!" he muttered.

As Vibert's words implied, he had been in McDowell's office once before on the same day. His salary at St. Asaph's now meant more to him than it had meant a month ago, and he had called with reference to it and to the delay in its payment. Hitherto, the financial arrangements of the church had gone on with the same precision as its anthems and its processions. In the present condition of things delay to Vibert was more than a surprise, more than an embarrassment; it was an exasperation.

"I don't sing for glory," he had declared with an offensive brusqueness. "It's the here and not the hereafter that I'm busy with."

McDowell looked at him uneasily. "I'm going to fix up all the salaries next week in one batch. I don't see why any particular man should be favored."

"Favored!" repeated Vibert, with a loud insolence. "I should say not. I don't feel favored in running my legs off for money three weeks overdue. We can't live on air. We have bills to pay. We ain't singing for the pleasure of it."

McDowell contracted his eyes to a critical narrowness. "You may not be singing much longer for anything else, either."

"That's another matter; it isn't you that put the choir together."

McDowell tapped his fingers on the yellow varnish of his desk. "I don't know about that. From what I hear, you're not making the sort of record for yourself that's useful in a church."

"My private life is nobody's business. I sing; I'm worth the money."

"That may work on the stage; it won't work quite so close to the pulpit. Come, now; I know a little something of your daily doings. Plenty of men sing who *don't* hang around race-tracks and loaf in pool-rooms. And, from what I hear, you're helping that young Brainard along at a good gait, too. You'd better wait—along with the others."

"Waiting be hanged! I'm here for money—money that's mine. If I can't work it with the man who pays out the loaves and fishes, I'll try one of the men that contribute them, in the first place." He tossed his head insultingly towards the door that led to Ingles's office.

McDowell's elbow rested on the edge of his desk (his thumb on the tip of his ear and his middle finger rubbing his farther eyebrow) as he looked out steadily on Vibert from under his hand. "Joseph," he called to his clerk, "bring me that check-book."



"He looked steadily on Vibert from under his hand."

The man opened a lower drawer and brought out a book whose covers enclosed a number of stubs and three or four blank checks.

McDowell wrote and passed the check to Vibert, who went out with no further words on either side.

McDowell did some figuring and saw some people, and somewhat later Vibert returned. He threw his check on McDowell's desk contemptuously. "That's no good."

"How's that?"

"No account with 'em."

"No ac—oh, I see. We've changed banks, and I forgot to change the name in the check." He picked up a ruler and drew the red-ink-bottle a little nearer. "I'll fix it. Sorry to have troubled you. We want to look out for this, Joseph."

Vibert withdrew, speaking the words that Ogden had heard on his entrance—words that would have been the reverse of assuring if he had fully understood them. "Bad egg," said McDowell to him, wagging his head in the direction of the just closed door.

George looked at him studiously. He appeared to be in a state of extreme nervous irritation. His wiry moustache moved up and down stiffly as he felt about with, his teeth for the inner membrane of his lips. His long, lean fingers were interlaced, and a clicking sound came from his snapping his finger-nails together. It was clearly no occasion for more than a partial statement of Ogden's matter, and this was the most that he permitted himself.

But McDowell was in the sensitive state of mind when one word does the work of three, and in the irritable state of mind when talk is such a relief that three words evoke thirty in reply. He met George's brief and modest suggestions with a hitching of his shoulders, and answered them in a harsh and strident tone.

"The first thing in doing business," he said, "is to have an office to do it in." He looked about his own—his desks, his cashier's window, his letter-press. "And the second is to know how to do it." He looked out of the

window in a wholly impersonal way, but his words had a more personal slant than he would have given them at almost any other time. "Gad knows I've got enough to do already, but Kittie's affairs are mine. She has equal interests with the others, and she seems to feel that I am able and willing to look after them."

He spoke with some show of reason, and George was obliged so to concede.

"There's taxes, for one thing. Or, take special assessments alone; they're almost a business by themselves. Say you've got ten acres or so just beyond the limits. Some fine day it's six hundred dollars or more for half a mile of side-walk—a sidewalk that won't be walked on by seven people a week. What's the reason? Oh, some one of those township politicians or other has got a friend that's a carpenter. Now, who's going to tackle the boards and stave off such things?"

George looked at him silently.

"There's tax-sales—I guess you never went to one of them. You'd strike a bloodthirsty crew if you did. Supposing you've got a mortgage, and the mortgager don't come to time with his taxes? You've got to buy 'em up to protect yourself. And you've got to get there first. Last year I fought this point for a week with one of those tax-sharks. And so it goes. Real estate is no kindergarten business, I can tell you."

The truth of this view was becoming more and more apparent to Ogden. He withdrew, after some further parleyings, in a confused and inconclusive state of mind—well convinced, however, of McDowell's abilities and more fully conscious of McDowell's position as the husband of his father's daughter. Never did the town of his adoption seem less, indeed, like a kindergarten than when he took his way northward to dinner, or when, later in the early evening, he made his way over to the West Side to call at the Brainards. The thousands of acres of ramshackle that made up the bulk of the city, and the tens of thousands of raw and ugly and half-built prairie that composed its environs, seemed together to constitute a great checker-board over whose squares of "section" and "township" keenness and rapacity played their daring and wary game. And through the middle of the board ran a line, a hinge, a crack—the same line that loomed up in all those various deeds and abstracts of his

with the portentousness and unescapability of the equator—the "line of the third principal meridian."

The Brainard house reared itself in the same frivolous ugliness that we have already viewed; but an excess of light came through the front parlor windows, and Ogden was prepared to find that at least four of the eight burners in the big chandelier were lighted. This turned out to be the case; it was as great a tribute as the family ordinarily paid to society. The family he found represented by Brainard, his wife, and his elder daughter; society was present in the shape of a young couple who were called Mr. and Mrs. Valentine.

The elder daughter received him with a quiet and simple cordiality. He could not help looking about furtively for the possible presence of the younger. He had not remained ignorant of her half-hour wait in a cab outside the bank; but he might have surmised the inflexibility of her father's will. The old man had refused to see her or to let her see him; the most that he would yield was a species of non-committal communication through Burt.

Mrs. Brainard presented herself to Ogden as a peculiarly faded and ineffective person; it was easy enough to grant her an abysmal incapacity. Her husband, in fact, had fallen upon her, crushed her, absorbed her—as a heavy blotting-pad falls on a page of light and delicate writing. Except for one thing she had no aim, no occupation, no diversion—beyond her ills and remedies. This was a penchant for chess. To those who object that chess is an intellectual game, one may simply put the question: have you ever seen it taken up by an elderly, invalided female who has rested content with a mere learning of the moves? It was thus with Mrs. Brainard; she played a good many games with herself every day, and they really soothed and rested her.

On the social board, however, she had hardly learned the first "opening," and the entertainment of the brilliant young couple now in her house fell almost altogether on Abbie; for the girl's mother sank back into a passive silence, while her father toured through the rooms occasionally, and threw out remarks, more or less *à propos*, in a gruff and abrupt fashion peculiar to himself.

His manner with young men had simply closed the house to them. To him it was an inexplicable and harassing thing that a young fellow of twenty-five should not possess the capacity, experience, and accumulations of a man of thirty-five or forty. He regarded every intruder in the light of a potential son-in-law, and no more potential than undesirable. Most of these callers would gulp down once, with such smile as they could master, the old man's abrupt ways and disconcerting comments; then they got out of the house in good order and never came back. However, at the present juncture he did not appear to resent Ogden's appearance—notwithstanding the young man's share in the episode at the bank; perhaps he looked upon him as a serviceable prop in another bad quarter of an hour.

"Yes, Mr. Brainard," Mrs. Valentine was saying, as George entered, "it's just as I have been telling Abbie; you ought to move over on the North Side, too."

Brainard happened to be passing through the room; it had occurred to him that he might turn down one of the side-burners in the back parlor.

"Um, no," he said, in an off-hand way; "too near the lake: fog; damp; rheumatism."

"And pneumonia too, perhaps," his wife suggested feebly.

"I'll risk it!" cried Mrs. Valentine, vivaciously. She had an expansive and affluent effect; she appeared mettlesome, decisive, confident. "It seemed to me that, so long as I was going to build, I might as well make a complete sweep—an out-and-out break. I've always had a fancy for that part of town. So I sent Adrian around to the different offices—"

She threw a look of passing reference towards her husband, who made a little bow in return.

"—and I had the good luck to get a lot on Bellevue Place—one of the last left, and only a block from the Lake Shore drive. Then I went to Mr. Atwater, and he has made my house a perfect little dream! I thought it best to have him to dinner once or twice, and I'm glad I did—he's been so interested all through. There hasn't been the least hitch to speak of, and I expect to get in within a fortnight. This," she went on, turning to Ogden with an undiminished vivacity, "is really my P. P. C."

Ogden glanced at the husband of the lady whose use of the first person singular was so frank and continuous. He was a young man with a pleasant and amiable face, and that face was set in a meek little smile, from whose forced lines the element of deception was most pitifully lacking.

"Yes, Abbie dear," Mrs. Valentine went on, "I'm afraid it's good-by—or nearly the same thing." She took the girl's hand within her own and gave it repeated pats in a rather careless and self-absorbed way. "I shall try to see you often, of course; but it will be so far. How nice it would be if you could only come up there and settle down right next door to me."

Ogden sighed unconsciously. He had fancied the first rays of social illumination as falling upon this benighted family; but it was only the last faint glow of a Speeding twilight, after all.

Abbie withdrew *her* hand with a quiet dignity; she seemed to put but a moderate value on these protestations.

"I believe we are satisfied where we are, Fanny," she said in a low and even tone. "We have always lived here; we feel more at home in this house than we could anywhere else. All our—all our—friends are near us"—a desolate little blush came in here—"and then there's the church and everything. I've heard my sis—I'm told that the North Side is very pleasant on some accounts, but I don't think we are likely ever to change."

"Change!" called her father, suddenly. "I wouldn't live anywhere else if you paid me to. What's better than this?"

"So attached," murmured her mother, vaguely.

Mrs. Valentine continued for some time further to flutter her hands, her clothing, and her conversation, but she was very slow about getting up and fluttering away. She was a neighbor, and her return home was a matter of three minutes. Ogden's return was a matter of nearly an hour, and he left first. He carried away the discontented feeling of a young man whose aim in the direction of a young woman is frustrated by the presence of uncongenial elders and irrelevant outsiders. He had been quite certain of his ability to meet Abbie Brainard after the bank episode without any particular embarrassment or restraint; certainly he had

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