2. *The Problem of 'Property and Civil Rights'.*—The extent of the 'safeguarded' clauses of the Constitution has been the major barrier to agreement on a new amending procedure for a quarter of a century. The essence of the matter is to determine the true area of 'property and civil rights' in the Constitution. The intention of the Fathers of Confederation was, in all probability, to safeguard by this phrase the system of private law in the Province of Quebec, which is founded on Roman rather than Common Law principles. The provision in Sect. 94, for uniformity of laws in the other provinces, to be brought about with their agreement by the enactment of uniform laws by Parliament suggests that this was their intention. However, the courts have interpreted the phrase much more widely to include practically the whole area of public policy in social legislation. A strong case on practical grounds can be made for making such legislation uniform throughout Canada. The chief obstacle to such uniformity is that the juridical widening of the meaning of 'property and civil rights' has made it possible for the Province of Quebec to assert its right to develop its own unique approach to social welfare.* If this part of Sect. 92 can be amended only by unanimous consent, there is introduced a severe rigidity and a completely effective obstacle to uniformity in the field of social legislation.

3. *The Problem of Delegation.*—The difficulty created by entrenching 'property and civil rights' in the Constitution might be avoided if it were possible, in the interests of efficiency and uniformity, for the provinces to delegate to the Federal Parliament powers that are assigned to them under the Constitution, but which they are willing to transfer.

There are two difficulties that stand in the way of modifying the present distribution of legislative power in order to permit the Federal Government to deal with a number of problems of national concern which were not foreseen as major functions of government in 1867. The first difficulty is that the Constitution as presently interpreted by the courts appears not to permit such delegation of authority from one level of government to another, because the courts have viewed the Constitution as dividing legislative power into "watertight compartments".† It would be possible to avoid this obstacle by a constitutional amendment validating such delegation.

The second obstacle is that, unless there were unanimous agreement among the provinces on what might be delegated, a situation might be created in which some provinces would be exercising legislative authority over a field—such as health insurance or the marketing of a natural product—while others had delegated their power to do so to Parliament. Thus the principle of symmetry and uniformity in the federal system would be lost. However, Sect. 94 already envisages a kind of asymmetry in which one province makes its own law relating to property and all of the others delegate the power to make uniform laws to Parliament. Thus, it may be that such a solution to the problem might be envisaged, though from one point of view it concedes far too much to the notion of "provincial rights" and seems to recognize the existence of a federal system in which the national Parliament and Government perform only the most limited and narrow functions in the Province of Quebec, but act as the centre of a much more unified federal State for the other nine provinces. There are many reasons why such a partial solution would be undesirable, but it may be the only workable compromise if the matter of domesticating the amending procedure is regarded as so urgent that further delay cannot be tolerated.

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* "Quebec, in particular, could not easily consent to [the amendment of Sect. 92 by simple majority of provinces without renouncing not only part of its political autonomy but also its cultural autonomy, that is to say, the power of organizing independently the social life of its population according to its own conceptions of Man and life in society. For Quebec it was not merely a matter of greater material security, but of the maintenance and progress of its social institutions and of the way of life and very existence of the French-Canadian group as such." Quebec: *Royal Commission of Enquiry on Constitutional Problems* (1956) p. 167 (English text).

† *Attorney-General of Canada v. Attorney-General of Ontario* (1937) AC 326 at p. 354; *Attorney-General of Canada v. Attorney-General of Nova Scotia* (1951) SCR 31.