

environment. For example, the Cabinet system of responsible government (see pp. 61-62) and its functioning through close identification of the executive and the legislative powers (that is, of the Cabinet and the House of Commons) is not mentioned in the British North America Act but derives from an unwritten convention of the Constitution.

Although the essential principles of Cabinet government are based in custom or constitutional usage, the federal structure of Canadian government rests on the explicit written provisions of the British North America Act. Apart from the creation of the federal union, the dominant feature of the Act and indeed of the Canadian federation was the distribution of powers between the central or federal government on the one hand and the component provincial governments on the other. In brief, the primary purpose was to grant to the Parliament of Canada legislative jurisdiction over all subjects of general or common interest, while giving to the provincial legislatures jurisdiction over all matters of local or particular interest (see p. 80 and p. 93).

Unlike the written constitutions of many nations, the British North America Act lacks comprehensive "bill of rights" clauses, although it does accord specific constitutional protection to the use of the English and French languages (clause 133) and special safeguards with respect to sectarian or denominational schools. Such vital rights as freedom of speech, freedom of assembly, freedom of religion, freedom of the press, trial by jury and similar liberties enjoyed by the individual citizen are not recorded in the British North America Act but rather depend on the statute law and the common law inheritance. Security of these rights was confirmed by the passage of a Canadian Bill of Rights—An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms (SC 1960, c. 44), assented to Aug. 10, 1960. (See also Chapter IX, Sect. 1 on Canadian Criminal Law and Procedure.)

No provision was made in the British North America Act of 1867 for amendment thereof by any legislative authority in Canada but both the Parliament of Canada and the provincial legislatures were given legislative jurisdiction with respect to some matters relating to government. Thus, for example, the Parliament of Canada was given jurisdiction with respect to the establishment of electoral districts and election laws and the privileges and immunities of Members of the House of Commons and the Senate, and each provincial legislature was empowered to amend the constitution of the province except as regards the office of Lieutenant-Governor. By an amendment to the British North America Act passed in 1949, the authority of the Parliament of Canada to legislate with respect to constitutional matters was considerably enlarged and it may now amend the Constitution of Canada except as regards the legislative authority of the provinces, the rights and privileges of provincial legislatures or governments, schools, the use of the English or the French language, and the duration of the House of Commons other than in time of real or apprehended war, invasion or insurrection.

The question of devising amendment procedure within Canada which satisfies the need to safeguard or entrench such basic provincial and minority rights as are noted immediately above and yet possesses sufficient flexibility to ensure that the Constitution can be altered to meet changing circumstances is one that still engages the attention of the federal and provincial governments and legislatures. The constitutional background to the problem, the present amending procedures, the attempts since 1935 to devise amending procedures, and the complexities inherent in amendment of a federal constitution are all discussed in a special article published in the 1961 Canada Year Book, pp. 51-57, entitled "Amendment of the Canadian Constitution".* The only barrier to Canada's complete control over the amendment of its own written Constitution (i.e., the British North America Act, 1867, a statute of the British Parliament) has been the inability of the Canadian people and their elected representatives in the federal and provincial fields to draft amendment procedures on which they will be in general agreement.

* Also available in reprint form from the Dominion Bureau of Statistics, Ottawa, 25 cents.