

provincial legislatures relating to provincial constitutional institutions and government matters. Federal and provincial Orders in Council, legally authorized by their respective statutes, provide further constitutional material as do the decisions of the courts which interpret the British North America Act and all ordinary statutes and indeed possess the power to set aside any laws which they hold to be *ultra vires* or beyond the jurisdiction of the enacting legislative bodies, whether federal or provincial. Moreover, the Canadian Constitution comprises, in addition to the statutory law and its judicial interpretation, substantial sections of the common law, unwritten constitutional usages and conventions and principles of democratic government which were transplanted from Britain over two hundred years ago and since then have been thriving and evolving in the Canadian environment. For example, the Cabinet system of responsible government (see pp. 85-86) 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. 90 and pp. 105-106).

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.)

Treaty-Making Powers.*—The Federal Government has exclusive responsibility for the conduct of external affairs as a matter of national policy affecting all Canadians. The policy of the Federal Government in discharging this responsibility is to seek to promote the interest of the entire country and of all Canadians of the various provinces within the over-all framework of the national policy.

In respect of matters of specific concern to the provinces of Canada, it is the policy of the Canadian Government, in a spirit of co-operative federalism, to do its utmost to assist the provinces in achieving the particular aspirations and goals that they wish to attain. The attitude of the Federal Government in this respect was illustrated by the "entente" signed by representatives of Quebec and France in the field of education in February 1965. The Quebec and federal authorities co-operated actively in a procedure

* Extracted from "The Provinces and Treaty-Making Powers", Appendix to *Votes and Proceedings of the House of Commons of Canada*, No. 8. Apr. 26, 1965.