

The constitution

2.1

The Canadian federal state of 10 provinces and two territories had its foundation in an act of the British Parliament, the British North America Act, 1867, fashioned for the most part from Seventy-two Resolutions drafted by the Fathers of Confederation at Quebec in 1864. The BNA Act provided for the federal union of three British North American provinces — Canada (Ontario and Quebec), Nova Scotia and New Brunswick — into one dominion under the name Canada. The act made provision for possible future entry into Confederation of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia, and of Rupert's Land and the North-Western Territory, a vast expanse then held by the Hudson's Bay Company. In 1870, the company surrendered its territories to the British Crown which transferred them to Canada. In exchange it received a cash payment from the Canadian government of £300,000, one-twentieth of the lands in the southern part, "the fertile belt", of the territory, and designated blocks of land around its trading posts. From this new territory was carved Manitoba in 1870, much smaller at its inception than now, and later, in 1905, Saskatchewan and Alberta. British Columbia entered Confederation in 1871 on condition that a railway linking it with Eastern Canada be commenced within two years. It was not until 1873 that Prince Edward Island entered the union, and much later, 1949, that Newfoundland joined (see Table 2.1).

Although the BNA Act of 1867 and its amendments contain a substantial portion of Canada's constitution, it is not a comprehensive constitutional document. There are unwritten and equally important parts such as common law, convention and usage transplanted from Britain over 200 years ago and basic to the Canadian style of democratic government. Among these are the principles of the cabinet system of responsible government with close relationship between executive and legislative branches.

The constitution, in its broadest sense, also includes other Imperial statutes (Statute of Westminster, 1931) and Imperial orders-in-council admitting various provinces and territories to the federation; statutes of the Parliament of Canada pertaining to such matters as succession to the throne, the royal style and title, the Governor General, the Senate, the House of Commons, the creation of courts, the franchise and elections, as well as judicial decisions that interpret the BNA Act and other statutes of a constitutional nature. The constitutions of the provinces of Canada form part of the overall Canadian constitution, and provincial acts which are of a fundamental constitutional nature similar to those listed above are also part of the constitution. The same can be said of both federal and provincial orders-in-council that are of a similar fundamental nature.

Although the essential principles of cabinet government are based on custom or usage, the federal structure of Canadian government rests on written provisions of the BNA Act. A dominant feature of the act was the distribution of powers between the central or federal government and the component provincial governments, granting to the Parliament of Canada legislative jurisdiction over all subjects of general or common interest while giving provincial legislatures jurisdiction over all matters of local or particular interest.

Unlike the written constitutions of many nations, the BNA Act lacks comprehensive "bill of rights" clauses, although it does accord specific although limited constitutional protection to the use of the English and French languages and special safeguards for sectarian or denominational schools. Freedom of speech, freedom of assembly, freedom of religion, freedom of the press, trial by jury and similar liberties enjoyed by the individual citizen were not recorded in the BNA Act but rather depended