

provincial jurisdiction is rights-protecting by granting self-government over culture, language, and the local economy to Quebec.

### Judicial Review

Judicial interpretation of the division of legislative responsibilities found that the allocation implied certain restrictions on provincial power when it came to civil liberties. In a series of famous cases in the 1950s, Justice Ivan Rand of the Supreme Court of Canada developed the idea of an "implied bill of rights." The bill of rights implied by the division of powers shielded individual rights like freedom of speech from provincial incursions. In light of the Canadian Charter of Rights and Freedoms, it is questionable whether this series of precedents has had any lasting impact. Overall, though, we can conclude that the Canadian constitution and its interpretation by the judiciary did not accord high priority to human rights -- the question for courts and governments was: who had the power to do what, not whether they should (Swinton 1990: 186).

### The Spending Power

Canadians have overcome some of the difficulties of divided jurisdiction through mechanisms of inter-governmental cooperation, like delegation to administrative agencies and the rise of the federal "spending power." Though not explicitly mentioned among the list of federal powers, the spending power emerged as an important mechanism by which the federal government could exercise leadership in the promotion of human rights values, like rights to health and education. The federal power to spend monies collected through taxation has enabled the establishment of national social programs considered ordinarily within areas of provincial jurisdiction. Federal monies are transferred to individuals (as in family allowances), to provinces conditional on the delivery of certain provincial services (like education or health under the Canada Health and Social Transfer), and to provinces for spending in any area (under equalization payments). The use of these financial incentives has been controversial with certain of the provinces, though most of them are recognized in section 36 of the 1982 Constitution. With the signing of a Social Union framework in February 1999, it seems to remain controversial only for the Government of Quebec.

### Failure of the Nerve

Intergovernmental cooperation requires governmental will and, on some matters, this has been more absent than present. Abandoning conditionality in federal transfers to the provinces for the purposes of welfare -- requiring minimum levels of assistance, services, and availability of appeals -- has resulted in provincial reforms that are, in Martha Jackman's words, "highly regressive and discriminatory in their impact" (Jackman 1995, 378). Similarly, the federal government has capped social program expenditures related to Aboriginal on-reserve social services, while squeezing entitlements to Aboriginal peoples off-reserve. As jurisdiction over "Indians, and Lands reserved for the Indians" is allocated to the federal government, provincial governments have been reluctant to step in while Aboriginal people have been hesitant to have provinces take up responsibility for social services in regard to matters related to treaty rights. The Royal Commission on Aboriginal Peoples observed that this results in social policy vacuums where social services for status Indians living off-reserve are imperiled (RCAP 1996, 544-45).