

(b) The 1937 Labour Conventions:

It is often claimed that the argument concerning the Letters Patent is nullified by the judgment of the Privy Council in 1937. According to some, the judgment handed down in the 1937 Labour Conventions case has the effect of permitting the provinces to establish direct, separate relations with foreign countries and even to sign international agreements in the fields of their jurisdiction. I seriously question the level of legal knowledge of people who can come to such conclusions. Thirty-two years after the judgment was handed down, people should really know what it is about. In fact, all the Judicial Committee of the Privy Council said in 1937 is that, in matters which, under the BNA Act, are within the exclusive jurisdiction of the provinces, the Federal Parliament cannot take over the right to legislate by claiming that such legislation is necessary to carry out a treaty signed by Canada; on the other hand, the Privy Council did not cast doubt in any way on the exclusive right of the Federal Government to conclude treaties and, as a consequence, to conduct Canada's international relations. I agree that there can be no interference in the internal legislative competence of the provinces in Canada, but there can also be no provincial interference in the ultimate competence of the Federal Government abroad.

(c) The diversity of federal constitutions:

Sometimes it is pointed out that different federal constitutions exist throughout the world, that no two are the same, and that, as a result, Canada can do what it likes with its own. It is conveniently overlooked that, although different on other points, all are virtually alike concerning foreign affairs -- the external power always remains, in one way or another, in the hands of the central authority. It is quite true that there are some federal states, such as Switzerland, the United States, the Federal German Republic and the Soviet Union, where constitutional practice apparently permits member states to conclude certain kinds of agreement with foreign states. Once again, it is ignored that even a superficial examination of these constitutions shows that in each case this power of the member states must be exercised under the federal authority or by means of the federal government. Moreover, any specialist in comparative constitutional law can point out that even the powers of this kind which members of federal states can exercise have been used less and less often over the years.

(d) Post-war evolution in the field of foreign affairs:

Some claim that international life has changed, and that we must change with it. We are told: "The nature of foreign relations has greatly developed since the war and, as it no longer involves just questions of war and peace or trade but also bears increasingly on questions of culture, technology or education, a new international law has been developing which permits members of federal states to have access to the field of international relations". A splendid theory, which has only one weakness -- it has no basis in reality. International exchanges have been increasing, and not just recently; they have been doing so for half a century. But they remain in the hands of