Some commentators believe that the federal government can solve this difficulty by seizing authority it has been denied through judicial interpretation. In 1949 McGill law professor F.R. Scott wrote that the problem is not that there is too little jurisdiction for the federal government to protect fundamental freedoms and human rights, but that "there is so much" (Scott 1977: 240). Scott was dismayed by the denial of federal authority in the series of cases implementing Bennett's New Deal – federal legislation establishing national standards in regard to maximum hours of work, minimum wages, employment insurance, and the like. These initiatives were an attempt, however cynical and late in the day, to live up to international covenants adopted by the International Labour Organization and ratified by Canada. All of these matters, the Privy Council ruled, were in the realm of provincial authority -- all that could be done to implement them was to cooperate (*Labour Conventions*). Professor Scott's reading of federal constitutional authority to implement human rights may have been excessive, but he was correct to suggest that some authority resided in the federal government -- all that is needed is the political will and a desire to cooperate.

Divided authority does not so much bar governments from acting, as much as it delays the taking of swift government action (Banting 1982: 68). In their study of intergovernmental cooperation, Fletcher and Wallace conclude that "governments have found ways and means to accomplish many, perhaps most, of their objectives." Rather than barring social policy development, the experience under Canadian federalism "has been more one of delay and frustration that of paralysis ... the system rarely frustrates the popular will" (Fletcher and Wallace 1985: 132-33).

Origins

The 1867 Constitution mostly is silent in regard to the values we associate with human rights. As the political scientist Arthur Lower writes, "in the 1860s everyone took freedom for granted: there was hardly a cloud in the sky" (Lower 1958: 18). Though the Act mentions provincial authority over "property and civil rights" resides with the provinces, the phrase "civil rights" does not mean to capture the kind of rights we associate with the phrase in the modern era. Rather, the phrase is traceable back to section 8 of the *Quebec Act* of 1774, where the *Canadiens* (now Quebecers) were granted the legal capacity to make laws regarding property and civil rights; that the Civil Code would govern legal relations between individuals in the so-called "private sphere."

This is not to say that the 1867 Constitution Act did not at all contemplate protections for minority rights. There are numerous provisions in the Act we would want to include under the rubric of international human rights obligations, particularly those protections accorded to minorities vulnerable to having their rights overridden by the majority. Provisions regarding denominational education had the effect of shielding linguistic minorities in Quebec and Ontario from discriminatory provincial laws. Responsibility for "Indians and Lands reserved for Indians" was allocated to the federal government, in part, to shield Aboriginal peoples from the aggressive intentions of provincial governments (this also was reflected in the Royal Proclamation of 1763, where negotiations between the Crown and Aboriginal peoples in North America were expected to precede any settlement of Aboriginal lands by colonial settlers). Of course, the federal design of the constitution itself ensures the flourishing of the Francophone population of Quebec by granting it control over matters crucial to the survival of the French language and culture in North America (Kymlicka 1998, 135). The recognition that "property and civil rights" resides in