

order and good government of Canada" has not conferred much legislative power on the federal government in peace time. Generally, if a subject upon which the dominion wished to legislate was not within one of the specified powers, the courts found it unconstitutional except, of course, in time of war, when "the peace, order and good government" clause comes into full force and effect.

The provincial governments were given exclusive legislative authority over a long list of subjects including the raising of money by direct taxation; the management and sale of public lands; maintenance of hospitals, asylums and charities; municipal institutions; local works and undertakings; the incorporation of companies with provincial objects; solemnization of marriage; property and civil rights in the province; the administration of justice in the province; and generally all matters of a local or private nature. One of these powers, namely property and civil rights within the province, has as the result of judicial interpretation, become of great importance and many legislative powers have been allotted to the provinces under this head.

In addition to powers allotted to each legislature the federal and provincial legislatures have concurrent powers in respect of agriculture and immigration, though it is declared that federal laws in relation to these matters override provincial laws. Provincial legislatures have exclusive authority with regard to education, subject to certain safeguards for the rights of religious minorities.

The point I wish to make clear is that the Fathers of Confederation were concerned to divide the legislative field between the provincial and federal legislatures. With one or two exceptions, they did not attempt to limit legislative powers. For example, you will not find in the British North America Act limitations on the powers of the provincial or federal legislatures such as are found in the constitutions of the United States and many other countries. There are no provisions in the Act similar to those in the United States which guarantee freedom of worship, freedom of speech, which prevents the government from abolishing trial by jury or demanding excessive bail. There is nothing parallel to the provision in the United States constitution that neither the federal or state government can deprive any person of life, liberty or property without due process of law. For their civil liberties and for protection against the arbitrary exercise of powers by the executive, the Canadian citizen like his counterpart in the United Kingdom, looks not to any special provisions in the B.N.A. Act but to the ordinary law of the land.

Though the Fathers of Confederation had no trouble in dividing up the field of legislation between them, difficulties arose later. This is not surprising. There are many subjects which now engage the attention of our legislators which are not mentioned in the B.N.A. Act - for example, you will find nothing about public health, old age pensions, unemployment relief or insurance and for obvious reasons, aeronautics or broadcasting. When current political thought called for legislation about these and many other subjects a legal tussle usually occurred between the federal and provincial governments which was only settled when the Privy Council gave its judgment. Sometimes the subject was allotted to the federal government and sometimes it was allotted to the provinces.