

If this catalogue were read literally and in isolation it would give a completely distorted idea of the current practice of Canadian federalism. Yet all of these powers are real and all of them are open to political abuse. A determined federal government could seriously damage the federal character or balance of our institutions. But no federal government ever would act that way because our politicians and our people have far too great a respect for our federal system. We have seen our system evolve from a highly centralized, quasi-federalist system in 1867, to a largely decentralized, truly federal system in 1981. We have not required any external "guardian" to keep us on the true federalist road.

This is why any Canadian parliamentarian must find offensive the select committee's conclusion that Westminster must serve as the "guardian" of the federal character of our constitution. The federal government is already endowed with more than enough means to make a legal assault on Canadian federalism if it ever chose to do so. But it never will. Certainly it is not proposing any such assault in its present constitutional proposals. If it were, it would have to answer to the people in the next election.

It is this answerability of the Canadian parliament which is fundamental to the present exercise. A large majority in the House of Commons has decided that Canada cannot continue indefinitely in the constitutional stalemate we have known so long. All of us who support the present package believe very deeply that it will secure and strengthen the federal character of Canada. The select committee gives great weight to its unsubstantiated view that certain parts of the charter of rights would limit provincial jurisdiction, but it does not mention that whatever the charter may do, it will apply equally to both the federal and provincial jurisdictions. It in no way represents a transfer of power between levels and it is fundamentally federal in its objectives. The only action in relation to provincial powers will be to confirm their ownership of resources and to extend their powers in inter-provincial trade. Beyond that, the amending formula will give them new rights, in that they will have a constitutional role in amendments. Thus the federal proposals do pass the test the Kershaw report established. They do not directly affect federal-provincial relationships except where they give the provinces additional powers. There is in the federal package not a single instance in which provincial powers are directly diminished in favour of the federal government. Where the provinces lose, they lose to their own people, not the federal government.