

The Meaning of Provincial Equality in Canadian Federalism

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INTRODUCTION

The principle of the equality of the provinces has become ubiquitous, an increasingly important feature of the ongoing efforts to resolve Canada's national unity crisis. To some, the principle is an essential part of any solution to the crisis. To others, it is a dark cloud that stands in the way of a solution. Obviously, then, the principle is controversial. What, precisely, does it mean?

Since there are enormous geographic, demographic and economic differences between the provinces, it is necessary to consult the constitution for instruction. But the constitution does not yield an unambiguous answer. On the one hand, each of the provincial legislatures enjoys exclusive legislative authority in relation to the same list of subject matters, has access to the notwithstanding clause of the Charter of Rights and Freedoms, and possesses a veto over the amendment of specified items in the constitution as well as the right to utilize the opting-out provision of the general amending formula.¹ In the matter of legislative competence, on the other hand, some of the provisions of the constitution apply to only one or two but not all of the provinces, like the provision on denominational schools, which applies only to Ontario and Quebec.² Moreover, the terms on which each of the provinces entered the union varied, as did the instruments that authorized their entry, which ranged from imperial statutes to imperial orders-in-council to federal statutes.³

Peter Hogg contends that the differences just noted in the constitutional positions of

the provinces are not sufficiently marked to justify the view that one or some of them enjoy a special status or special powers denied to the others⁴. David Milne, by contrast, is more impressed by the differences, although he calls them "asymmetries" and defines the category more broadly to include the "formal differences in law among the units [of a federation] either with respect to jurisdictional powers and duties, the shape of central institutions, or the application of national laws and programs."⁵ After a systematic review of constitutional asymmetry in law and in practice, and in important federal programmes and policies, Milne is led to wonder how the equal-provinces idea could have come to be as widely held as it is. Pondering the logic of Hogg's contention that lack of uniformity in the constitutional position of the provinces is not the same as inequality between them, he notes that there is no genuinely asymmetrical distribution of legislative powers of the sort that implies, say, different classes of provinces. He concludes that the provinces could be held to share "a fundamental equality with respect to the basic grant of legislative powers."⁶

On both Hogg's account and Milne's, therefore, the formal jurisdictional equality of the provinces, buttressed by their formal equality in relation to some of the provisions of the amending formula, is *the* constitutional basis of the equality of the provinces. Certainly the provinces are not equal by virtue of being equally represented in national government institutions. Nor are they equal as sovereign founders of the federal union – the three provinces instrumental at Confederation were British colonies, as was the Canada that they formed.

This leads to a question: does it matter that the jurisdictional equality that underpins the equal-provinces doctrine is more formal than real? Does it matter that, without the assistance of resources generated outside of their

boundaries, some provinces would find it difficult to exercise the legislative powers assigned to them in a manner in any way comparable to that of other provinces? Is the economic inequality that coincides with the jurisdictional equality fatal to the doctrine of the equality of the provinces? If so, is it also fatal to federalism?⁷ And what are the implications of such considerations for constitutional reform?

This article seeks answers to these questions, initially in the theoretical realm. In the first section, there is a review of theories of federalism that is designed to uncover how firmly embedded is the requirement that the members of a federation be equals, and in what ways they are supposed to be equals. This builds on the work begun by Milne. In the second section, the inquiry is broadened to include an examination of the concept of provincial autonomy and how it relates to the concept of equality. In the third section, the effect of the economic factor on equality and autonomy is taken up from the standpoint of the government of Nova Scotia during the Depression.

The Nova Scotia case is fruitful because Angus L. Macdonald, the Liberal premier of the province from 1933 to 1940, and again from 1945 to 1954, was responsible for the production of two impressive statements on the subject of federalism. These statements, which take the form of government briefs to royal commissions, were written four years apart, in 1934 and 1938.⁸ The timing is significant. Macdonald took the idea of provincial equality as a given, as might be expected of someone who was heir to the provincial rights tradition. Moreover, in his view it was closely allied to the idea of provincial autonomy. On the other hand, he was facing the beginning of the rise in public demand for government-funded social services, a demand that his government was unable to meet on its own. He was thus in the middle, looking

back, as it were, at an era of limited government and ahead at the era of activist government that would unfold after the second World War. He tried to hold fast to a conception of federalism that features both inter-provincial equality and provincial autonomy, and at the same time to find a rationale for the distribution of wealth from richer to poorer provinces that would not be inconsistent with either of these principles.

My conclusion, for reasons that are set out at the end of the article, is that his argument ultimately fails. Nevertheless, his is an important failure that rewards close attention. It is *theoretically* important because it shows that a coherent theory of federalism that is based on the ideas of provincial equality and provincial autonomy is impossible to realize in the face of radical, economic inequalities between the provinces. The economic dependence of some of the provinces on the others undermines their autonomy and negates their equality. His work is also *practically* important because it suggests that, under the present configuration of provinces, the principle of provincial equality is a significant obstacle to the resolution of the country's constitutional woes, a line of thought that is explored in the conclusion.

1/ FEDERALISM AND EQUALITY

In 1932, Herman Finer wrote that, although the federal idea is ancient in origin, federalism is of "extreme modernity." He continues: "Its theory and practice in the Modern State are not older than the American Federation, which came into existence in 1787."⁹ In the inquiry that follows I focus on American and Canadian theories of federalism and classify them in accordance with the particular equality issue that they address. In the first group, which is collected under the heading of "jurisdictional equality," the notion of the member states as equals is assumed, and the overriding con-

cern is to capture the right relationship between these equal member states, understood as one level of government, and the general government, understood as the other level of government. In the second group, which is collected under the heading of "representational equality," the problem is the representation of the states, or the citizens of the states, in the design of central-government institutions. The issue of the equality of the member states necessarily arises in connection with these arrangements. In the last set of theories, which appear under the heading of "economic equality," the problem of uneven patterns of economic development is addressed. As the inquiry indicates, in one way or another the question of equality is central to all theories of federalism.

(a) Jurisdictional Equality

Recently some students of federalism have sought to retain the federal value of local autonomy but at the same time to abandon the idea that federalism requires each member state to possess an identical jurisdiction. In the case of Vincent Ostrom, the concern is to match the level of government with the object(s) of collective action. He suggests that there might be several levels of government, each possessed with the constitutionally-secured autonomy to cope with the matters assigned to it.¹⁰ Ostrom's point of departure is the individual, whose unimpeded expression of social preferences is held to be the basis of the most efficient system of producing and distributing public goods. Others theorists, like Charles Taylor, seek instead to explore ways of accommodating self-identifying communities by matching them with an appropriate and secure range of jurisdictional autonomy.¹¹ This approach is often referred to as asymmetric federalism, and its advocates argue that a federal system ought to be able to incorporate variously empowered communities. Like Ostrom, they are looking to move beyond the conventional, two-level federal structure.

Flexible federalists face a serious obstacle in how to represent the constituencies of variously empowered local governments in the institutions of the central government. Referring to the asymmetric proposal of special status for Quebec, Milne points out that it would generate demands to reduce the voting power of Quebec's representatives in central institutions. He warns: "This is a prescription for Quebec's increasing alienation from the centre and rising resentment elsewhere."¹² Moreover, in principle there appears to be no easily definable limit to special status. Instead it heads in the direction of independence, and therefore beyond a federal constitution altogether, a point that was signified in Rene Levesque's proposal of a sovereignty-association between Quebec and Canada.¹³ Thus the work of most students of federalism continues to proceed on the assumption of the jurisdictional equality of the member states, and focuses instead on the way powers are divided between the member-state governments and the general government

Of course, the division-of-powers question depends, in turn, on the resolution of the sticky issue of sovereignty.¹⁴ Under the arrangement embodied in the constitution of the Articles of Confederation, which the Continental Congress of the thirteen American states adopted in 1777, the member states were sovereign equals of one another in the constitutional sense, and practical equals in the sense that they directed their own internal affairs. And they were superior in every conceivable way to the feeble central decision-making body, or congress.¹⁵ The constitution drafted at the Philadelphia Convention in 1787, and subsequently ratified, departed from the Articles in many respects, the most important being the fact that it could be understood to be the product of a sovereign people rather than sovereign states, and to reflect the people's wishes in the

arrangement of governmental institutions. This arrangement included a real central government that legislates directly on citizens as well as the existing state governments, both levels of government being subject to the constitution. Thus state sovereignty was muted. But state equality was retained.

As James Madison documented in *The Federalist*, No. 39, the new constitution was designed to give effect to the equality of the states in important ways. One was the founding of the constitution by means of ratification through the use of elected state conventions. Another was equal state representation in the Senate. Yet another was the procedure that is invoked should the election of the president be thrown into the House of Representatives, for which purpose the representatives of each state cast one vote. In addition, the states possess a "residuary and inviolable sovereignty" over all matters not assigned to the national government.¹⁶ What changed was the relationship between the states, understood as one level of government, and the general government. Potentially it was one of equality, although not according to the compact theory and the doctrine of nullification.

In his draft of the Kentucky Resolutions which, with some amendments, was adopted by that state's legislature in 1798, Thomas Jefferson developed a compact theory of the constitution, according to which the states were understood to have contracted with one another to establish the general government, and to have delegated some of their powers to it, reserving the rest to themselves. As the parties to the contract, each of the "co-states" (not the Supreme Court), he argued, had the right to determine whether the general government had usurped powers not delegated to it and, if so, what should be done about the problem. One course of action for a state was to nullify the offending federal law.¹⁷ John C.

Calhoun's doctrine of nullification, as set out in the South Carolina Exposition, 1828, is an elaboration of the same argument.¹⁸ Both men assumed a radical equality of the states, radical because the states were said to retain their sovereignty as the ultimate interpreters of the constitution. Indeed, that sovereignty was the basis of their constitutional superiority to the general government. The Canadian version of the compact theory, as articulated by a Quebec judge, T.J.J. Loranger, and advanced occasionally thereafter by provincial premiers, was more modest than its American counterpart, since it advanced no doctrine of nullification and no attack on the role of the courts as the sole arbiters of the constitution. Moreover, given the legal structure of British colonialism, the principal parties to the compact had to include the British Parliament as well as the provinces, as Loranger pointed out. However, he followed the American compact theory in so far as he asserted that the provinces established the central government, ceding to it a portion only of their powers.¹⁹

In the United States, the Civil War put an end to the idea of sovereign states that are constitutionally superior to the general government. In the rival theory of dual federalism, which was widely accepted as the correct interpretation of the constitution in the years following the war, there is instead a preoccupation with the legal equality of the two levels of government. Under dual federalism, the general government and the state governments are held to legislate independently of one another. Thus they are constitutionally equal, because neither is legislatively subordinate to the other.²⁰ Related to equality is the idea of balanced jurisdiction. In the Slaughter-House Cases, 1873, Justice Miller commented favourably on the Supreme Court's role in sustaining the balance in the American system: "...this court, so far as its functions required, has always held, with a steady and an even hand, the balance be-

tween state and Federal power."²¹ The role of the courts as the ultimate arbiters of the constitution caught the attention of many observers, including the British constitutionalist, A.V. Dicey, who regarded federalism as a contrivance designed to reconcile national unity and state independence through the operation of three main features: "the supremacy of the constitution – the distribution among bodies with limited and co-ordinate authority of the different powers of government – the authority of the Courts to act as interpreters of the constitution."²²

Critics of the theory of dual federalism like Daniel J. Elazar argue that it presents an entirely misleading picture of the practice of nineteenth-century American federalism.²³ Still, even Elazar concedes its rhetorical power: "The doctrine has been expounded as representing classic American federalism so long and so forcefully that it has been accepted, by students of American institutions and others, as fact."²⁴ It has also been influential as a description of federalism in general. Indeed, Robert Vipond argues that it had some influence in British North America during the Confederation debate, 1864-1867. Students of the period are well aware that the architects of the Confederation agreement regarded their handiwork as superior to the American constitution on several counts, not the least being that it avoided the mistaken concept of state sovereignty and that it established an impressively-empowered central government.²⁵ Nevertheless, they chose to assign some matters to the exclusive jurisdiction of the provinces, and in that way they can be argued to have adhered to the classical federal model. Certainly they did not adhere to it in any other way, since they made no attempt to divide powers evenly between the two levels of government, or to represent the provinces equally in, say, the Senate. Vipond concludes: "It is an indication of the force of the new constitutional conception of federalism that despite all of

the centralizing mechanisms [in the Confederation agreement] even [Sir John A.] Macdonald was forced to accept its core principle: the principle that, within its sphere of jurisdiction, each province has the 'exclusive' power to legislate."²⁶

Since the concept of exclusivity of jurisdiction does not reach to the issue of scope of jurisdiction, it is a much narrower standard of federalism than the combined concepts of exclusivity and balance. And the most influential student of federalism in the twentieth century, K.C. Wheare, adopted it, in all its narrowness. On the basis of his analysis of the American constitution which, like Finer, he took to be the key to the federal puzzle, Wheare defined the federal principle as "the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent."²⁷ The important thing was not the size of the sphere but the authority to act independently within it. The equality between the two levels of government, then, subsists in their possession of some such authority. The equality of the states, for their part, subsists in the fact that each possesses the same sphere of jurisdiction and is thereby "co-equally supreme" with the others.

(b) Representational Equality

Wheare also wrote that while equal state representation in national government institutions like the American Senate is not a logical requirement of federalism, it often makes for a better federal system.²⁸ Following this observation, some Canadian students of federalism have turned instead to the study of intrastate federalism, which Donald Smiley and Ronald Watts define as the "arrangements by which the interests of regional units – the interests either of the government or of the residents of those units – are channelled through and protected by the structures and operations of the central government."²⁹ Of course there is disagree-

ment about what constitutes a better federalism, and so paradoxically some pursue intrastate federalism to find ways of strengthening the influence of the provinces over the national government,³⁰ while others pursue it to find ways of strengthening the legitimacy of the national government, itself.³¹ Thus, as Alan Cairns points out, advocates of provincialist intrastate federalism look to institutional arrangements that represent provincial governments, while advocates of centralist intrastate federalism prefer arrangements that represent the people of the provinces.³² No matter which path is pursued, the analysis that is required involves a host of complex considerations.³³ Nevertheless, the one, ever-present question is whether there ought to be equal provincial representation or representation in accordance with some other formula. The debate over Senate reform in Canada illustrates the point.

As Smiley and Watts remark, equal member-state representation in federal second chambers is common, although not universal.³⁴ On the side of member-state equality there is the unambiguous example of the American Senate. Its importance to the understanding of federalism in terms of representational equality was underscored by the American Supreme Court's decision in *Garcia v. San Antonio Metro* in 1985. In his majority opinion, Justice Blackmun argued that the framers of the constitution chose to protect the interests of the states largely in the design of the federal government rather than in the establishment of discrete limitations on the legislative scope of the Congress.³⁵ According to him, the principal procedural safeguards of the states that are incorporated in that design are the equal representation of the states in the Senate and the state-based composition of the Electoral College that chooses the president.³⁶ The Canadian Senate features equality, too, but in the form of equal regional representation. At the time of Confederation, the idea possessed

considerable merit as a way of finessing the notion of equal provincial representation that Quebec was bound to find odious. It might be argued that it still does, and some proposals on Senate reform continue to adhere to it or to some variant of it.³⁷ Indeed, as late as 1985 almost all of them did, and Smiley and Watts were able to write that "there seems little support in Canada for this [equal provincial representation], and we believe it should be rejected."³⁸ On their reasoning, the few large provinces, measured by territory or population or both, which are much richer than the many small provinces, similarly measured, could not be expected to tolerate a second chamber in which all are represented equally.³⁹

Public opinion has proven fickle. When a new political party with national aspirations, the western-based Reform Party, advanced a serious proposal of Senate reform that features equal provincial representation, and packaged it under the attractive and easily understood title of the "Triple-E Senate" – equal, elected, effective – the proposal generated considerable public interest and the support of some political leaders, notably the premier of Newfoundland.⁴⁰ Moreover, elements of the scheme, including equal provincial representation, found their way into the constitutional amendment proposal known as the Charlottetown Accord. The accord was voted down in a nation-wide referendum held in October 1992. However, the Triple-E Senate, now a contender in the Senate-reform sweepstakes, has surely reinvigorated the idea that federalism requires the second chamber of the national legislature to feature member-state equality.

(c) Economic Equality

The third concept of equality, the economic equality of the member states, is a late arrival on the federal scene. In the theory of dual federalism, as developed in the United States, and the doctrine of the provincial

rights movement in Canada, the concern is to defend the autonomy of the member states within their legislative sphere, the very logic of which suggests that what they do there is their own business. The logic must have made intuitive sense to people when government activity was minimal in any event, certainly by comparison with today.⁴¹ In Canada opinion about provincial autonomy began to change during the economic crisis of the Depression, which is when the government of Nova Scotia made economic equality a central concern of the province's position before two royal commissions. The real sign of the importance of the idea, however, is the fact that it is now part of the country's constitution. Section 36 of the *Constitution Act, 1982* expresses the commitment of the federal government to the principle of equalization payments, the purpose of which is stated to be "to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

Although they are not directly concerned with the concept of the economic equality of the member states, the two recent and rival theories of cooperative and competitive federalism do speak to it, which immediately distinguishes them from the earlier theories that do not. The theory of cooperative federalism is essentially a description and analysis of the practice of federalism during and following the second World War. The key to the practice is the collaboration that took place between the two levels of government, and what inspired the collaboration was a problem, a new standard and a remedy. The problem was the economic misery generated by the Depression, which not only incapacitated several of the provincial governments but at the same time widened the already significant economic disparities between the regions of the country. The federally-appointed Rowell-Sirois Commission, reporting in 1940, accepted the proposition that citi-

zens everywhere should have access to comparable public services at comparable rates of taxation, a new standard which implied that regional disparity was a national problem.⁴² The remedy was rooted in the economic ideas of John Maynard Keynes, as set out in his *General Theory of Employment, Interest and Money* in 1936.⁴³

As Richard Simeon and Ian Robinson point out, the pursuit of Keynes' advice on the use of fiscal and monetary policy to smooth the ups and downs of the business cycle required that the federal government adopt a new, interventionist role in the economy, including the initiation of programmes like family allowances and unemployment insurance that fall squarely within the provincial sphere. Such programmes have national redistributive effects. Meanwhile other elements of the welfare state, like education, health care, and social services, remained in provincial hands. Simeon and Robinson describe the practice of cooperative federalism that developed: "In short, the adoption of new roles for the state was achieved not by the dominance of the central government but by the collaboration of both orders of government, federal and provincial, in the Canadian state. Indeed, federal initiatives were frequently implemented by provincial governments and federal policies were often crucially influenced by provincial governments and officials."⁴⁴

Cooperative federalism, then, is associated with the development of the idea that regional economic disparities are a problem with which the federal system as a whole must contend. The leading advocate of the rival theory of competitive federalism, Albert Breton, takes account of the problem of regional disparities as well, although in an entirely different way. Breton begins with the definition of federalism as a system in which powers are constitutionally divided between governments, usually national and local

governments. He then argues that the key to the dynamic of federalism is competition. The effect of the division of powers on the relationships between the governments is to make them competitive ones: "The central and most important implication is that in the search for popular support – something that is as needed for the effectiveness of governing parties as revenue is essential for the effectiveness of business firms – the governments of a federation will find themselves competing with each other. Federalism thus adds more competition to that already present in responsible or party government."⁴⁵ For example, it adds "horizontal competition," or competition between provinces. But how could horizontal competition help to alleviate provincial economic disparities? The answer is "competitive equality."

Breton argues that in an efficient horizontal competition, the smaller units of the federation must be able to compete on an equal footing with the larger units. Since the units are unequal in terms of geographic size, resources and population, the equal-footing condition requires intervention on the part of the only candidate available, the central government. The central government is the natural monitor of interprovincial competition. It plays this role, in part, by engaging in province-building. Breton offers several examples, one of which is equalization payments. He writes: "These grants...are primarily an instrument aimed at improving the competitive position of the weaker *governments* of the federation and ameliorating the productive features of the competition in which they are engaged *vis-a-vis* other provincial governments."⁴⁶ Breton discusses other conditions of interprovincial competition, and indeed other competitive relationships, such as the vertical competition between the provincial governments and the national government. The point is that the notion of the competitive equality of the member states, which he discusses largely in

relation to economic competitiveness, supplies a new standard of equality for federalism to meet.

2/ FEDERALISM AND PROVINCIAL AUTONOMY

In federalism, the axis of equality intersects with the axis of autonomy. The concept of jurisdictional equality, as noted above, can be applied to the member states alone, or to the relationship between the member states and the central government. The concept of autonomy refers to the freedom of action of governments – usually member-state governments – within their jurisdiction. The constraints on that freedom of action are political and economic. A typical political constraint is the predatory behaviour of other governments. Thus in the years following Confederation provincial leaders took to the courts in a celebrated series of cases to defend the provinces' sphere of jurisdiction from the legislative sallies of the federal government.⁴⁷ The economic constraints on provinces, whether internally or externally generated, serve to prevent them from making as much use of their legislative powers as they might otherwise choose to do. But what ought they to do with what they have? This is a question about the purpose of provincial autonomy within Canadian federalism, and analysts agree that it is not much pursued, except in Quebec.⁴⁸

The fullest statement of provincial autonomy available in Canada was issued by the Royal Commission of Inquiry on Constitutional Problems (the Tremblay Commission), which was appointed by the government of Quebec in 1953. The report is described as conservative, nationalist and Catholic.⁴⁹ It also contains a theory of federalism that maintains the tension arising out of the desire of states to associate for some purposes but to retain their independence for other purposes. According to the report, federalism

establishes two orders of government "which are equal and co-ordinated, one of them represented by a central government charged with the general interests of the new collectivity and the other formed by the regional governments whose mission it is to watch over the particular and special interests of the original political communities. Therein lies the prime and distinctive feature of the federative system."⁵⁰ The authors of the report take a very large view of this mission, and they interpret the Confederation agreement accordingly: "...there was reserved to the provinces all...that concerned social, civil, family, school and municipal organization; everything which touched the human side most nearly and which influenced the Canadian citizen's manner of living."⁵¹

This description of provincial jurisdiction over the social fabric of the society is consistent with the idea that the provinces were fully formed communities when they entered the federation and with the expectation that they will remain that way in it. In the words of the report, the federal system contemplates "the union of national groups rather than their unification."⁵² It is important to emphasize that the Tremblay Commission viewed Quebec as a province within the federation, and that it accepted the province-based compact theory of Confederation. But it also regarded Confederation as the product of a compact between the two principal national groups, French and English. This meant that Quebec, the home of the French-speaking nationality, possesses special responsibilities for its survival.⁵³ Confederation, then, was a double compact, the operation of which requires the oil of a generous measure of provincial autonomy.

The Nova Scotia government produced the only English-language statement that comes close to the Tremblay Commission's conception of the purpose of provincial autonomy. Albert Breton describes this conception as

communitarian federalism.⁵⁴ However, one of the principal sources of distinction between the Nova Scotia and Quebec statements is the particular dimension of equality with which each is concerned. As Simeon and Robinson note, the Quebec government appointed the Tremblay Commission in the midst of its battle with the federal government over the latter's decision to provide annual grants in support of Canadian universities.⁵⁵ In response, the commission articulated a defence of the province's equality in relation to the federal government by rooting it in the autonomy of the province within a generously-conceived sphere of jurisdiction. Angus L. Macdonald, by contrast, was worried about another dimension of equality, namely, the equality of the provinces. His belief in the equal-provinces principle was threatened by the very provincial autonomy that he championed, not by the federal government, and the reason was the straitened financial circumstances of Nova Scotia. In Nova Scotia, too much provincial autonomy worked to negate the province's position of equality in relation to the other provinces. Macdonald's project, then, was to find a way of marrying provincial autonomy and the equal-provinces principle in a coherent theory of federalism, and it is taken up below.

3/ NOVA SCOTIA AND CANADIAN FEDERALISM

By the time Macdonald took office in 1933, Nova Scotia had been studying its political⁵⁶ and economic⁵⁷ decline within Confederation for the better part of a decade. The trigger was the inability of the Maritime provinces to surmount the post-WW1 recession as quickly as other provinces. Evidently there was more at work than factors like rising protectionism worldwide which applied to everyone and were beyond the control of Canadian governments anyway. The

federal government's actions were an issue as well, and prominent among them were changes in transportation and tariff policies that injured the competitive position of Maritime manufacturers in relation to their central Canadian rivals.⁵⁸ These policies became targets of the "Maritime Rights" phenomenon, a regional protest movement that E.R. Forbes dates from 1919 to 1927.

(a) Royal Self-Reflections

The Nova Scotia government began the interwar set of inquiries in 1925 by appointing a royal commission on the province's coal industry, which at that point was in catastrophic shape.⁵⁹ A year later, the federal government asked the chairman of the coal inquiry, Sir Andrew Rae Duncan, to head another commission, this time to examine "from a national standpoint...all the factors which peculiarly affect the economic position" of the Maritime provinces, and to make recommendations designed to improve it.⁶⁰ The Duncan Commission on Maritime Claims was the federal government's political response to the Maritime Rights movement. But the commission also proved to be an intellectual event in the sense that it moved thinking beyond the subject of federal subsidies to the provinces toward the notion of uneven regional effects of national economic policies. And there was more thinking to come. In 1927, the federal government appointed a commission on the fishery, yet another sector of the region's economy in serious trouble.⁶¹ The coal question was revisited in 1932 – by Duncan, himself, as a matter of fact.⁶² And then, in 1934, the federal government appointed a commission to review the recommendations of the Duncan Commission on Maritime Claims, and to make, it was hoped, a final determination on the issue of federal subsidies to the Maritime provinces.⁶³ By any measure of the time, the effort entailed in this prolonged flurry of analytical activity was enormous. But what

did it yield?

According to Forbes, not as much as anticipated, and certainly not enough to reverse course economically, as the upcoming Depression years emphatically demonstrated. Indeed, he argues that once the carefully limited nature of the federal government's response to the recommendations of the first Duncan Commission was appreciated throughout the region, the optimistic spirit of the Maritime Rights movement was replaced by a mood of cynicism and apathy.⁶⁴ David Alexander makes a similar point. He interprets the specific nature of some of the inquiries to signify an assumption that the various problems could be overcome, at least in part. He suspects that as the Depression dragged on, however, a very different notion was developing, namely, that the problems were intractable.⁶⁵ And yet in this unpromising climate, the Macdonald government thought to embark upon another commission.

The proposal to establish a commission was not exactly a leading feature of the 1933 provincial election that brought Macdonald's Liberal party to power.⁶⁶ That honour was reserved for the franchise fiasco, which supplied immense drama in the form of a court case, incomplete voters' lists and crowds of voters trying to get on them.⁶⁷ Still, the proposal occupied a prominent location in the party manifesto; it was worded vigorously – "to institute a thorough and independent inquiry or commission into the conditions which cripple the economic life of Nova Scotia, composed of the best men available within and without the Province"; and it was accompanied by promises to take the commission's findings to Ottawa and to press the government for reductions in tariffs. The suspicion that federal tariffs were the key to the problem was carried into the terms of reference that the new government established to direct the Royal Commission of Provincial Economic Inquiry (Jones Com-

mission). And there was another angle. The commission was asked to assess federal-provincial financial relations "in the light of the powers, obligations and responsibilities of the Dominion and Province respectively under the Federal constitution."⁶⁸ This opened up matters considerably.

(b) Provincial Identity

The government engaged Norman McLeod Rogers, a professor of political science at Queen's University, to prepare its own submission.⁶⁹ Rogers had gained some familiarity with the material during his brief stint as a secretary of the Duncan Commission on Maritime Claims.⁷⁰ He researched and wrote the brief. Macdonald contributed a four-page introductory statement to it, and both he and Rogers presented it to the Jones Commission. Since the brief represented the Macdonald government's position and because the premier was so closely associated with it, I mostly refer to it as his.

Macdonald's theoretical understanding of federalism appeared in its strongest form in the 1934 submission. The lynchpin was the idea of the federating units as "distinct entities" that persist in their distinctiveness because of the "tenacity of local sentiment," especially in the older provinces. No concrete evidence was adduced to bear this out, but there is a reference to authority in the form of James Bryce's vivid metaphor of the church buildings, which was quoted in full in the submission and is reproduced in part here:

The central or national government and the state governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other. It is a combination sometimes seen where a great church has been erected over more ancient homes of worship....The identity of the earlier buildings has however not been obliterated and if the

later and larger structure were to disappear, a little repair would enable them to keep out wind and weather, and be again what they once were, distinct and separate entities.⁷¹

The implication of the endurance of distinct identities was that the federation did not produce one, new identity out of them. It did not submerge them in a national identity. Thirty years later the Tremblay Commission would state this point explicitly. Meanwhile, in the Nova Scotia brief there is simply no mention of a national identity. On the contrary, the federation is said to resemble "a limited partnership wherein the individual members preserve their separate character even while for certain purposes they conduct their business in common as a single firm." Moreover, it is supposed to remain a limited partnership. The phraseology employed has a remarkably contemporary ring: "...a federation exists not to destroy but to maintain the distinct identity of its component communities."⁷² And identity was said to arise out of the cultural, social and economic life of the communities.⁷³

Four years later, in the brief to the federally-appointed Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission), Macdonald continued to sound the identity note, insisting that Nova Scotia rightly retained its "separate political identity" upon entering Confederation.⁷⁴ Now it might be supposed that the stress on the retention of identities was prelude to an argument in favour of de-centralization on the ground that local governments are likely to care more for local identities than the central government, which might actively dislike them. But it was not. Macdonald's emphasis was on financial competence rather than scope of jurisdiction, and his province was poor. He argued that provincial responsibilities ought to match provincial resources, even if that turned out to mean that provincial governments should have fewer respon-

sibilities.⁷⁵ Thus alongside the purpose of preserving identities, which requires a *laissez-faire* attitude on the part of the federation as a whole, Macdonald developed a second, related purpose of a federation that might require a more active stance. It was the economic well being of the members, but members understood as provinces, not citizens. In the 1934 submission, the idea was expressed in negative terms: "a federation defeats its primary purpose if, through its constitutional arrangements or by policies instituted by the national government, it accomplishes the debilitation of one or more of the political communities of which it is comprised."⁷⁶ The provinces, fully formed communities, were regarded as irreducible units which are vulnerable to bad constitutional arrangements and bad national policies. In 1938, when Macdonald had firmer proposals about constitutional reform, he put the point in positive terms, contending that successful federal-provincial relations depend upon a central government that pays regard "to the principle that its policies should maintain the identity of the component parts of the federation."⁷⁷ But how do federal policies do that?

(c) Provincial Autonomy, Jurisdictional Change and Taxes

The answer was that the federal government must be willing to take responsibility for social programmes in the provinces. The problem, of course, was that under the constitution the provinces are responsible for these matters, and in some cases, like Nova Scotia, financially unable to act on them. This line of thought inevitably led Macdonald to advocate change to the constitutional division of powers, but before he could get to that point, he needed to clear the path of remedies meant to be workable in the absence of such change. In the 1934 report, the leading villains were conditional grants and special subsidies.

Conditional grants, then in their infancy, are paid by the federal government to the provinces for the support of specified programmes on condition that the provinces pay a portion of the cost, not always a simple matter. To take the extreme example, Nova Scotia initially determined that it was unable to join the federal government's Old Age Pensions programme in 1927 because it could not afford its fifty percent share. Macdonald objected to conditional grants because the provinces were not equally capable of assuming their share of the costs, so the grants had the effect of imposing unequal burdens on them.⁷⁸ He objected to special subsidies because they were doled out from the federal treasury in arbitrary fashion. Besides, they would be unnecessary altogether if the general subsidies formula applicable to the provinces under the constitution were adequate, which it was not.⁷⁹ The solution was formal jurisdictional change.

The proposal on jurisdiction in 1934 was to transfer to the federal government full responsibility for social services like old-age pensions and unemployment insurance (should it be adopted). These are the only two programmes mentioned.⁸⁰ The candidates for jurisdictional change did not increase much in the 1938 report, in which Macdonald continued to propose that the federal government assume responsibility for old age pensions, and added mothers' allowances on the ground that this, too, is the type of programme to which national standards ought to apply.⁸¹ He carried forward the idea that the federal government take over unemployment insurance, and added to it employment services and labour law.⁸² In both reports, the argument for the transfer is the same, namely, to free the Nova Scotian economy from the constraints of an uncompetitive social services network. Although he did not use the phrase, it is a "level-playing field" argument.

There was no recommendation for a reordering of taxes in 1934, merely a request to clarify provincial taxation powers and generally review the subject of taxation. In 1938 there was extensive analysis as well as recommendations on the subject. Macdonald moved beyond the 1934 theme of "low taxable capacity" to a new, "shifting incidence" argument. The argument was that central Canadian companies, dominant in the Maritime region, will find ways to pass some of their costs of taxation to Maritime consumers: "Accordingly the capacity of the weaker outlying regions to expand their tax systems is limited, not only by their own economic weakness and their burden of provincial taxes, but also to the extent that they are forced to bear part of the incidence of taxes raised by taxing authorities outside of the province itself."⁸³ The remedy was to rely mostly on direct income taxes, which help to limit the shifting incidence-problem, and are potentially progressive in any event. Thus Macdonald recommended that the federal Parliament gain exclusive jurisdiction over inheritance and income taxes, two direct taxes that the provinces can and did impose, while the provinces be given access to the indirect taxes forbidden to them under the constitution, at least to the extent of sales taxes.⁸⁴

Macdonald sought to resolve the tension in a poor province between provincial identity and provincial well being by a realignment of legislative responsibilities and powers of taxation between the two levels of government. He was prepared to shrink the sphere of provincial jurisdiction, largely in the interest of the well-being side of the equation, but he wanted something in return. He wanted to secure the "water-tight compartments" feature of classical or coordinate federalism, according to which each level of government is autonomous within its own sphere of jurisdiction.⁸⁵ He wanted to secure the provincial sphere from the predations of

a dirigiste federal government prepared to use conditional-grant mechanisms to impose all manner of policies on the provinces. He thought that some measure of provincial autonomy is necessary to protect and develop provincial identity. And then there is provincial dignity, an intangible thing that probably only matters to those for whom provincial identity is important. Macdonald seemed to think that identity and dignity require that the principle of the equality of the provinces be maintained.

(c) Provincial Equality and Fiscal Need

Gross economic differences between provinces represent a challenge to the notion of provincial equality, the more so if some provinces are thought to be dependent upon others. Macdonald sought to finesse the problem by developing a concept of fiscal need to be used in the determination of provincial subsidies instead of the existing population-based formula. Commentators quite correctly have seized upon it as a key theme of both reports. But it is the relationship between the *tariff* issue and fiscal need that is crucial, reflecting as it does a sensibility about the province's status in the federation that is not common today. It should be emphasized that nearly the whole of the 1934 report examines the adverse effects on Nova Scotia's economy of federal economic policies, and in particular, the protective tariff, the heart of the Conservative government's "National Policy" implemented in 1879. The analysis is sweeping in scope and methodologically ambitious, but the political calculus was simple enough: the protective tariff was a matter of choice on the part of the federal government; it has had a sustained, negative impact on the province's economy, and is the prime cause of inadequate (by national standards) provincial government revenues and fiscal need; and equity demands remedies. But how would remedies be determined?

Incredibly, Macdonald and Rogers determined to produce some figures. From the quagmire of negative effects like population decline and low tax yields, which are cumulative, they plucked the notion of the "provincial incidence" of the tariff, which turned out to be dramatically unequal, of course. They called upon the experience of another federalism, Australia, where it was commonly argued that the tariff contributed to strained financial relations between the Commonwealth and the states. Thus the *Report of the Special Commission on the Australian Tariff, 1927* was the origin of the useful notion of the tariff as both tax and subsidy: "The assistance given to Tariff-protected industries is in fact a bounty, but it is paid by consumers and much of its cost falls collectively on the export industries."⁸⁶ In other words, the tariff imposed to establish protected industries in some states turned out to be a tax on the unsheltered export industries of other states. More useful still to Macdonald and Rogers was the idea that the costs of establishing and maintaining protected industries could be measured, as they appeared to be in the brief submitted by South Australia to the joint Committee of Public Accounts in 1930.⁸⁷ Rogers attempted such a procedure and reached the conclusion that Nova Scotia's net loss in 1931 as a result of the protective tariff was \$4.47million.⁸⁸ The amount is huge when it is considered that for the fiscal year ending in September 1934, the first year of the Macdonald administration, expenditures tallied some \$9.144 million.⁸⁹ Predictably, only two provinces, Ontario and Quebec, showed net gains.

Most professional economists at the time regarded the Rogers' calculus as bogus. In his study of the economic background of federal-provincial financial relations for the Rowell-Sirois Commission, W.A.Mackintosh could not even write the phrase, tariff burdens, without using quotation marks, as in tariff

"burdens." He attacked both the Australian and Nova Scotian analyses in deadly prose: "Aside from the unanswered question as to what it has been attempted to measure, calculations such as these could only be accurate and reliable if the customs tariff contained no prohibitive duties, if commodities or classes of commodities were completely homogeneous over both imports and production, if there was accurate knowledge of the extent to which prices were enhanced by protection, and if consequently no arbitrary assumptions had to be made. In a country such as Canada...the pitfalls in such calculations cannot be avoided by even the most ingenious statistician."⁹⁰ He conceded that statements of "descriptive probabilities" about the long-term effects of the tariff are admissible (as J.Murray Beck patriotically noted), but not Rogers' statements about tariff burdens (patriotically unnoted). According to Mackintosh, the tariff was a factor in the Maritimes' economic decline, but not the fundamental factor. It had accentuated difficulties in communities dependent on traditional export industries, and "presumably restricted the revenues of provincial governments and increased the expenditures necessary to cope with the problems of declining industries and declining areas."⁹¹

From the standpoint of the Nova Scotians, the idea that the tariff was one among many causal factors, possibly not even the most important, was unacceptable. Not once in the province's 1934 brief was there the slightest hint of the possibility that the province was responsible for its own economic problems. The causes were said to have been external, and for that matter predicted by astute Nova Scotians both before Confederation and after, in the struggle for "better terms."⁹² Moreover, there were winners as well as losers in the federal game. Nova Scotia's loss was some other provinces' gains. Since the federal government was not about to change its basic national economic policies, Macdonald

and Rogers reasoned, it should be required to even out benefits and costs in a redistribution of national income. Thus they called for the recalculation of federal subsidies to the provinces according to a fiscal-need formula driven by an appraisal of the effects of the policies. In the language of the report, the federal government should serve as a "conduit through which a portion of the income which has been transferred from the other provinces to Ontario and Quebec as a result of the protective tariff shall be returned to those provinces whose taxable capacity has been affected adversely as a result of the unequal incidence of the protective tariff."⁹³ It is startling to see how emphatically this argument for what are now referred to as equalization payments is rooted in *resentement provinciale* as opposed to contemporary notions of citizen entitlements.

The idea of redistributing national income from wealthier to poorer provinces, not simply as a matter of redistributive justice but to correct the compounding inequities of national policies, was bound to be unpopular with provinces that failed to appreciate the argument. Just how unpopular was indicated at the end of 1935, when the newly-elected federal Liberal government led by Mackenzie King called a federal-provincial conference to discuss such issues as unemployment, public finance, and taxation. During the deliberations of the sub-committee on finance, Macdonald aired his arguments on the inadequacy of provincial revenues, the need for clarification of the division of taxing powers, and the idea of transferring to Parliament full legislative responsibility for selected social programmes. The subsidies issue, notably, was not on the agenda. The sub-committee's report, inconclusive on any particular idea, reflected the general view that the way forward in the crisis of the Depression was to rationalize the resources and responsibilities of each level of government within the context of a classical federal-

ism. There was no support for Macdonald's ideas at all.⁹⁴

Macdonald never wavered from his position that the need to redistribute wealth from province to province flows from inequitable national policies. Conceptually it meant that Nova Scotia was not a dependent, not a "have-not" (a word that does not yet appear), and not second-class. The province was simply gaining redress, as an equal, from the beneficiaries, also equals. However, by 1938, prudence and experience dictated a softening of the national-policy argument, which was reflected in the province's submission to the Rowell-Sirois Commission. What was the point of continuing to excoriate national economic policies if there was no hope that they might be changed? Thus Macdonald shifted his emphasis from an analysis of the causes of the state of fiscal neediness to a defence of the use of the concept in the determination of subsidies, a defence designed to counter the position of the White Commission, appointed by the federal government in 1934 with instructions to make a final determination of the annual federal subsidy to Nova Scotia.⁹⁵ The commission had rejected the province's argument that fiscal need be the determining factor in its calculations, accepting instead the existing, competing principle favoured by the federal government and the wealthier provinces, namely, equal treatment of the provinces in a per capita formula.⁹⁶ But all of this was prologue to the real point of Macdonald's analysis, which was that the provinces should have access to additional subsidies for the ordinary purposes of government – a vivid indicator of the desperation of the situation that the Nova Scotian government faced.⁹⁷

It was obvious to Macdonald that the wealthier provinces and the federal government were not about to depart from the population-based formula used to determine the annual subsidies to the provinces.⁹⁸ So he concen-

trated instead on additional or special subsidies, and tried to remedy their inherently arbitrary flavour by recommending the establishment of a grants commission patterned after the Commonwealth Grants Commission in Australia to review applications from the provinces for them. He suggested two standards of assessment that the commission might use, one being the extent to which the applicant lags behind the national standard in government services and exceeds it in rates of taxation. The other, rather less precise, was the notion that provinces ought to be able to deliver a "normal" standard of government services at "normal" rates of taxation, and Macdonald justified it as a way of correcting for the effects of national policies.⁹⁹ He was determined to inject this justification into the calculation of subsidies, a justification that assumes both the prior nature of the provinces in the federation and their equality. It is such a strong provincial rights position that Macdonald might be thought to have been a "compact" theorist. But like his friend Rogers, he was not.

(d) Constitutional Flexibility

In the Canada of the 1930s, the notion of amending the constitution was as much a Pandora's box as it is today. Perhaps it was even worse, because in those days, out flew the need for an amending formula, the very tool of change itself, on which there was no agreement. In 1931, Rogers published a lengthy and much admired rebuttal of the compact theory of Confederation, which had been adverted to only the year before by the Premier of Ontario in a letter to the Prime Minister of Canada. In his letter, Premier Ferguson asserted that the constitution is the "crystallization into law by an Imperial statute of an agreement made by the provinces after full consultation and discussion ... [and] ... should not be altered without the consent of the parties to it."¹⁰⁰

In the rebuttal, Rogers argues at length that

the Confederation agreement was not negotiated among equal parties in the manner of a treaty, and that the unanimous consent of the provinces has not been a requirement for subsequent amendments to it. But his final objection was entirely prudential. He charged that the requirement of unanimity as the condition of constitutional change is "wholly untenable" in the "conditions existing in Canada." And what are they? He wrote: "The economic interests of several provinces or groups of provinces are dissimilar. Provincial sentiment slumbers but does not sleep. Differences of race and religion are a potential cause of misunderstanding and friction. A *single province* [my emphasis] labours under a deep sense of injustice against the Dominion Government. The interests of the extremities of the Dominion are frequently in opposition to the interests of the central provinces."¹⁰¹ Unanimity was untenable because it was dangerous, and it was dangerous because it prevented change. And provinces like Nova Scotia wanted change.

In the 1938 report, Macdonald tackled the subject of amendment in pragmatic fashion. Fully aware of the popularity of the compact theory among the big battalions, he made an argument for a kind of hydra-headed formula, that is, different rules for different kinds of amendments, with the toughest reserved for changes to provincial rights and powers. This is essentially the type of formula that Canada finally adopted in 1982. He also took up the idea of legislative interdelegation, which has never been adopted. According to Macdonald, the existing provisions for interdelegation in the Canadian constitution (section 94), and in the Australian constitution (section 51(37)) were deficient and unused because they contemplate only provincial-to-federal-parliament transfers of jurisdiction, and permanent ones at that.¹⁰² Rightly understood, however, interdelegation means transfers either way, from the provincial legislature(s) to the federal

parliament or the federal parliament to the provincial legislature(s), and in an agreement that specifies the conditions under which the jurisdiction in question is to be returned. He used the phrase, "conditional reference," to describe the transaction, the key being the capacity of either party to terminate it.

Macdonald invested a good deal of energy pursuing this idea, not wholly without success. He persuaded the Rowell-Sirois Commission to recommend it as a way of injecting some flexibility into the division of powers between the two levels of government. However, in the face of opposition from provinces like Ontario and British Columbia, the commission's recommendations were more or less buried at the Dominion-Provincial Conference held in January 1941.¹⁰³ If the prospects for formal constitutional amendment looked bleak, there was always the chance of finding room in the existing constitution, but Macdonald did not get anywhere before the courts, either. In the Nova Scotia Interdelegation case, 1951, the Supreme Court of Canada unanimously held that, under the constitution, legislative powers are defined and limited, and that a power to delegate, nowhere expressed or implied, is not among them.¹⁰⁴ However, successive Nova Scotia governments carried the idea of interdelegation forward in the ongoing search for an amending formula, and while nothing of the sort is to be found in the formula finally adopted in 1982, there were echoes of it more recently in the failed Charlottetown Accord, 1992, in the form of intergovernmental agreements in specified subject areas.¹⁰⁵

For Macdonald, the conditional nature of interdelegation saved the principle of the equality of the provinces, at least formally. His last proposal for the equality of the provinces, an amendment requiring annual federal-provincial conferences, buttressed by a permanent secretariat, confirms his

province-based image of federalism. Once again, he was influenced by the Australians who, he claimed, had been meeting annually and to good effect at such conferences since the country's founding in 1901. He appears to have envisaged an informal venue of equals engaged in discussion and problem-solving, province-to-province and province(s)-to-federal government. Among the less tangible but equally important by-products of such meetings would be the cultivation among participants of a spirit of co-operation, and sympathetic understanding of one another's problems. Macdonald referred to the desirability of "a willingness based upon sympathy and understanding, on the part of one section of the Dominion to assist in so far as possible in correcting the difficulties of another section."¹⁰⁶ Province-based to the end.

4/ CONCLUSION

Macdonald made little headway with his ideas. On the contrary, on the constitutional and financial fronts, he battled continually with the federal government, and generally lost. He wanted a formal constitutional realignment of legislative responsibilities and taxing powers; Ottawa got taxation agreements. He wanted federal-provincial conferences; Ottawa negotiated agreements on a province-by-province basis. He pursued the principle of fiscal need as the basis of subsidies; Ottawa maintained the per capita principle. He wanted exclusive use of some minor sales tax fields; Ottawa was reluctant to withdraw from them, although it eventually did so in the case of gasoline, and amusement and games taxes, none of them at the time especially lucrative as sources of revenue.¹⁰⁷ Is there anything to be learned from this record of failure?

In my view there is much to be learned that bears on Canada's unity crisis. It is worth stressing that Macdonald sought to improve

Nova Scotia's sagging position in Confederation by redesigning Canadian federalism *in a manner consistent with the principle of member-state equality*. In other words, his is the last great effort of the premier of a small, have-not province to retrieve the province's standing as an equal member of the federation. And to do it he thought that he needed to pursue formal constitutional change. He knew that the province's economic plight vitiated its status as a province equal to the others, and therefore he recommended that the jurisdiction of all of the provinces be diminished, and that the federal government assume a greater role in the function of wealth redistribution *as a form of recompense for the regionally negative impacts of national economic policies*. But this approach could not work. For one thing, the stronger provinces would never agree to a diminution of their jurisdiction. Further, no one was interested in Macdonald's notion of redistribution as a form of compensation. What, then, were the poorer provinces to do?

As is well known to students of Canadian federalism, in the post-war years the federal government spearheaded the development of fiscal federalism, which entails an elaborate scheme of intergovernmental transfers designed to support a Canada-wide system of social programmes.¹⁰⁸ The transfers include unconditional grants in the form of equalization payments, which Gerald Bernier and David Irwin describe as a "guaranteed income supplement for poorer provincial governments."¹⁰⁹ Fiscal federalism permits these provinces to maintain a standard of social programmes that they could not hope to finance on their own. But does it help the poorer provinces to retain their autonomy? It might be argued that this is exactly what equalization does, since it consists of payments with no strings attached. But it is hard, nonetheless, to square autonomy with dependency on equalization payments. The payments depend on the decisions of other

authorities who are responsive to other constituencies, and may not be reliable. Bernier and Irwin, for example, contend that in the current economic climate the system of intergovernmental transfers might well prove fragile. "The citizens of rich provinces," they write, "suffering from the effects of the crisis in public finances, will believe they have contributed too much to the welfare of other provinces."¹¹⁰ And even if the crisis eases, there is no guarantee that the rich provinces will continue forever to regard the burden of wealth redistribution to be in their interest, that is, a burden worth assuming.

And so the dysfunctional federalism that Macdonald defined and sought to correct continues. If anything, it has worsened. The economic inequalities among the provinces have widened. And yet the leading constitutional indicator of provincial equality, namely, jurisdictional equality, remains unchanged. Worse, the scope of the dysfunctionality has broadened. Macdonald was juggling two antithetical factors – provincial economic disparity and provincial jurisdictional equality. He never thought to increase the stress on the equality side of the equation by adding a claim to representational equality in the form of, say, equal provincial representation in a newly configured Senate. But as noted earlier, one of the contributions of the Reform Party to the national-unity debate has been to put exactly that idea on the agenda of constitutional reform. Finally, there is the threat of Quebec's secession from the federation, the seriousness of which could hardly have been made clearer on 30 October 1995, when the province's electorate turned down the Quebec government's secession proposal by the hair's breadth margin of 50.6 percent to 49.4 percent. Secession simply was not an issue in Macdonald's day.

It might be concluded that constitutional expressions of provincial equality, be they

jurisdictional or representational, simply cannot withstand the treacherous, shifting sands of provincial economic inequality. Wealth is a basis of political power. A wealthy province like Alberta is unlikely to welcome the idea of being equally represented in the Senate along with tiny Prince Edward Island – unless, of course, such a Senate were to have no power. Indeed, Prince Edward Island is fortunate that wealthy Alberta can still be coaxed into generating the equalization payments on which the Island, like other have-not provinces, continues to rely.¹¹¹ It is true that the idea of member-state equality is a critical feature of theories of federalism. The idea has considerable normative weight. And, in the Canadian context, it is loaded with symbolic value, as indicated by its inclusion in the *Framework for Discussion on National Unity* released by the provincial premiers and territorial leaders (absent the Quebec premier) on 14 September 1997 in Calgary. Nonetheless, the realities of political power suggest the advisability of easing off the

claim of provincial equality, and instead thinking in terms of tiers of provinces, rather like the Germans do in the construction of their federal upper house, the Bundestag. There, the states (or *lander*) are classified according to population, so that the most populous are assigned six representatives, the next populous four, and the least populous three.¹¹² In the Canadian case, such an idea would mean continuing the regional representation that obtains in the Senate now, but adjusting it rather dramatically to conform with current provincial demographic and economic realities. The same notion of tiers might be applied to provincial legislative jurisdictions as well.

To conclude, the persistence of inter-provincial disparities is inevitable, and to compensate for them is one of the functions of federal political institutions. But there are limits, and if the limits are exceeded, the institutions themselves will continue to lose their legitimacy.

Notes

1. See the *Constitution Act, 1867*, ss 92, 92A, 94A, 93 and 95; and the *Constitution Act, 1982*, s. 33 and ss. 41, 38 (3) and (4), 39 and 40.
2. See the *Constitution Act, 1867*, s. 93 (2).
3. See Peter Hogg, *Constitutional Law of Canada*, 2nd. Ed. (Toronto: The Carswell Company Limited, 1985) 29-36.
4. *Ibid.*, 84.
5. "Equality or Asymmetry: Why Choose?" in Ronald L. Watts and Douglas M. Brown, eds. *Options for a New Canada* (Toronto: University of Toronto Press, 1991), 285.
6. *Ibid.*, 292 and 287-91. Samuel LaSelva offers a counter argument based on this interpretation of the uniformity-of-laws clause in s.94 of the *Constitution Act, 1867*. See his "Federalism and Unanimity: The Supreme Court and Constitutional Amendment," *Canadian Journal of Political Science* 16:4 (1983), 759-68.
7. Richard Vernon notices that social scientists are often unhappy about definitions of federalism that concentrate on constitutional features. He responds that a definition is not an explanation, and in any case, the constitutional element is peculiar to the category of political systems that is described as federal: "A federation, as opposed to a unitary state, is a regime of coordinate authority, in which some division of jurisdiction between centre and region is constitutionally protected. See his "The Federal Citizen" in R.D. Olling and M.M. Westmacott, eds., *Perspectives on Canadian Federalism* (Scarborough: Prentice-Hall Canada, Inc., 1988), 3.
8. Province of Nova Scotia, *A Submission on Dominion-Provincial Relations and the Fiscal Disabilities of Nova Scotia with the Canadian Federation*, prepared for the Royal Commission, Provincial Economic Enquiry (Jones commission), 1934. The commissioners were J.H. Jones (chairman), A.S. Johnston and H.A. Innis. Innis wrote a separate, "complementary Report." Government of Nova Scotia, *Submission to the Royal Commission on Dominion-Provincial Relations* (Rowell-Sirois), 1938. They are hereafter referred to as *Submission*, 1934 and *Submission*, 1938.
9. *The Theory and Practice of Modern Government*, Vol. I (London: Methuen and Co. Ltd., 1932), 244.
10. "Can Federalism Make Difference," 3 *Publius*, 1973, 204-5.
11. See Charles Taylor, "Shared and Divergent Values" in Ronald L. Watts and Douglas M. Brown, eds., *Options for a New Canada* (Toronto: University of Toronto Press, 1991), 53-76.
12. "Equality or Asymmetry: Why Choose?," 299.
13. See his *An Option for Quebec* (Toronto: McClelland and Stewart Limited, 1968), 27-8. Levesque argues that Quebec first must become sovereign. Then it can enter into an association with the rest of Canada.
14. See Robert Vipond, "1787 and 1867: The Federal Principle and Canadian Confederation Reconsidered," *Canadian Journal of Political Science* 22:1 (1989), 16-17.
15. "What the Framers Meant by Federalism," in Robert A. Goldwin, ed. *A Nation of States: Essays on the American Federal System* (Chicago: Rand McNally & Company, 1961), 30. In *The Federalist*, No. 9, Alexander Hamilton's disparaging account of a confederacy covers precisely these features, as Diamond points out. See *The Federalist* (Franklin Centre, Pennsylvania: The Franklin Library, 1977), 59.

16. See *The Federalist*, 274.
17. See Saul K. Padover, ed., *The Complete Jefferson* (New York: Duell, Sloan & Pearce, Inc., 1943), 128-134. James Madison drafted a slightly more ambiguous statement in his Virginia Resolutions, 1798, adopting the concept of interposition instead of nullification. In the event that the federal government oversteps its assigned powers, he writes, the states "...have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them." Gaillard Hund, ed., *The Writings of James Madison* vol. VI, 1790-1802 (New York: The Knickerbocker Press, 1906), 326-331.
18. Calhoun rejected the idea that the constitution intends the American Supreme Courts alone to maintain the division of powers between the states and the general government. Such a construction of the court's power, he argues, would raise the courts above the very states which created the constitutional compact that establishes the court, and thereby enable the court, *contra* the amending formula, to alter on its own the division of powers between the states and the general government. He continues that the states retain the right to decide whether the federal government is encroaching on their powers, and that they possess the power to nullify federal law, a power best exercised in state conventions. Clyde N. Wilson and W. Edwin Hemphill, eds., *The Papers of John C. Calhoun*, Volume X, 1825-1829 (Columbia: University of South Carolina Press, 1977), 440-532, and especially 500, 510, 520.
19. Loranger uses the word, *autonomy*, in the place of *sovereignty*. He writes: "In constituting themselves into a confederation, the provinces did not intend to renounce, and in fact never did renounce their autonomy. This autonomy with their rights, powers and prerogatives they expressly preserved for all that concerns their internal government; by forming themselves into a federal association, under political and legislative aspects, they formed a central government, only for interprovincial objects, and, far from having created the provincial powers, it is from these provincial powers that has arisen the federal government, to which the provinces have ceded a portion of their rights, property and revenues." See his *First Letter upon the Interpretation of the Federal Constitution Known as the British North America Act, 1867* (Quebec: printed at the *Morning Chronicle*, 1884), 7.
20. See Daniel Elazar, "Federal-State Collaboration in the Nineteenth-Century United States" in Aaron Wildavsky, ed., *American Federalism in Perspective* (Boston: Little, Brown and Company, Inc., 1967), 190-192; and Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism*, vol. 71 in the series of studies commissioned by the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1990), 47-50.
21. See Paul A. Freund *et al.*, eds., *Constitutional Law and Other Problems*, Vol. II, 3rd. ed. (Boston and Toronto: Little Brown and Company, 1967), 988.
22. Introduction to the Study of the Law of the Constitution, 3rd. ed. (London: Macmillan and Co., 1889), 134-5.
23. Morton Grodzins makes the same point as Elazar. See his "The Federal System" in Pietro S. Nivola and David H. Rosenbloom, eds., *Classic Readings in American Politics*, 2nd ed., (New York: St. Martin's Press, 1990), 64-5.
24. "Federal-State Collaboration in the Nineteenth-Century United States," 192.

25. See Jennifer Smith, "Canadian Confederation and the Influence of American Federalism," *Canadian Journal of Political Science* 21:3 (1988), 449-55.
26. "1787 and 1867: The Federal Principle and Canadian Confederation Reconsidered," 23.
27. K.C. Wheare, *Federal Government*, 3rd ed. (London: Oxford University Press, 1953), 2.
28. *Ibid.*, 93.
29. Donald V. Smiley and Ronald L. Watts, *Intrastate Federalism in Canada*, Vol. 39 in the series of studies commissioned by the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985), 4.
30. See Province of British Columbia, "Reform of the Canadian Senate" Paper No. 3, in *British Columbia's Constitutional Proposals*, presented to the First Ministers' Conference on the Constitution, October 1978, 29-42, for a fully developed statement of this position. The province argues that each provincial government ought to have the power to appoint and remove its respective complement of senators.
31. See Roger Gibbins, *Regionalism: Territorial Politics in Canada and the United States* (Toronto: Butterworths, 1982), 8-11, 194.
32. *From Interstate to Intrastate Federalism* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1979), 11-13.
33. Smiley and Watts, *Intrastate Federalism in Canada*, chs. 2 and 3.
34. *Ibid.*, 1020.
35. *Garcia v. San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985), at 1018.
36. *Ibid.*, 1020.
37. Smiley and Watts, *Intrastate Federalism in Canada*, 121, 127.
38. *Ibid.*, 139.
39. *Ibid.*, 139-140.
40. See Jennifer Smith, "The Unsolvable Constitutional Crisis" in Francois Rocher and Miriam Smith, eds., *New Trends in Canadian Federalism* (Peterborough: Broadview Press, 1995), 79-80.
41. Elazar, "Federal-State Collaboration in the Nineteenth-Century United States," 191.
42. Simeon and Robinson, *State Society and the Development of Canadian Federalism*, 106.
43. *Ibid.*, 108-113.
44. *Ibid.*, 120.
45. Supplementary statement in the *Report of the Royal Commission on the Economic Union and Economic Prospects for Canada*, Vol. III (Ottawa: Supply and Services, 1985), 491.
46. *Ibid.*, 508.
47. For a good review of the leading issues and cases see J. Murray Beck, ed. *The Shaping of Canadian Federalism: Central Authority or Provincial Right?* (Toronto: Copp Clark, 1971).
48. Vipond attributes the lacuna in part to the narrow, legal arguments used by the advocates of provincial rights. They sought to demonstrate that the words of the constitution, properly understood, secure the federal principle which they defined to mean provincial autonomy. "As Effective as the movement was in securing the place of the provinces in Canadian confederation," he writes, "it did not explain fully why the provinces should have their autonomous

place." See "Constitutional Politics and the Legacy of the Provincial Rights Movement in Canada," *Canadian Journal of Political Science* 18:2 (1985), 294.

49. See David Kwavnick, "Introduction," in David Kwavnick, ed., *The Tremblay Report* (Toronto: McClelland and Stewart, 1973), xi; and Simeon and Robinson, *State, Society and the Development of Canadian Federalism*, 144.

50. See Kwavnick, *The Tremblay Report*, 8102.

51. *Ibid.*, xii.

52. *Ibid.*, 97.

53. *Ibid.*, 117, 114.

54. Supplementary statement in *Report*, Vol. III, Royal Commission on the Economic Union, 505-6.

55. *State, Society and Development of Canadian Federalism*, 143.

56. One indicator of political decline is the province's representation in the House of Commons. J. Murray Beck records that in the first federal general election, which included four provinces, Nova Scotia returned 19 members out of a total 181, or 10.5 percent. By the time of the 1930 general election, there were nine provinces, two territories and 245 seats. Nova Scotia returned 14 members, 5.7 percent. See his *Pendulum of Power: Canada's Federal Elections* (Scarborough: Prentice-Hall of Canada, Ltd., 1968), 12, 202. Understandably this trend culminated in fewer members of the cabinet. Between 1867 and 1908, in cabinets of 13 to 16 members, Nova Scotia never had fewer than two representatives. In 1930, Prime Minister R.B. Bennett assembled a cabinet of 19 with two members from that province. See Miriam Koene, "The Size of the Canadian Cabinet: Representation Impera-

tives and the Structure of the Political Executive" (unpublished masters thesis, Dalhousie University, Halifax, 1993), 26, 46. Another indicator was the land question. The Maritime provinces could not increase in size, while other provinces could and did, even the already large ones. In the boundaries settlement of 1912, the federal government extended the northern boundaries of Ontario, Quebec and Manitoba, in the latter case nearly doubling the size of the province. In the debates in the House of Commons on the proposed extensions, Maritime political leaders argued in vain that the distribution of lands from the public domain to particular provinces is tantamount to a subsidy to them, and that provinces unable to expand in this fashion ought to receive payments by way of compensation. See *Debates*, House of Commons, 1911-12, 784. Macdonald was still making the argument in 1938. See *Submission*, 1938, 59.

57. One of the most startling indicators of the economic decline of the Maritime provinces after Confederation is population growth rates. In the 1880s, the growth rates of Canada and the Maritimes began to diverge markedly. Over the period 1871-81, the rate of growth for Canada was 17.2 percent, and for Nova Scotia, 13.6, for New Brunswick, 12.5, for P.E.I., 15.8. In the decade 1881-91, the figures are 11.8 and 2.2, 0.0 and 0.2 respectively; in the boom years of the first decade of this century they are 34.2 and 7.1, 6.3, -9.2; and in the decade of 1921-31 they are 18.1 and -2.1, 5.2 and -0.7. The rate of out migration from the region is consistent with pattern, picking up after the turn of the century until it far exceeds the rates in Ontario and Quebec. See Patricia A. Thorton, "The Problem of Out-Migration from Atlantic Canada, 1871-1921: A New Look" in P.A. Buckner and David Frank, eds., *Atlantic Canada After Confederation*,

- the *Acadiensis Reader: Volume Two*, 2nd ed. (Fredericton: Acadiensis Press, 1988), 37, 39. While there is no disputing the fact of the decline, there is disagreement about exactly when it began, and why. James Bickerton offers a comprehensive review of the explanations in his *Nova Scotia, Ottawa and the Politics of Regional Development* (Toronto: University of Toronto Press, 1990), 11-34.
58. E.R. Forbes, *The Maritime Rights Movement, 1919-1927: A Study in Canadian Regionalism* (Montreal: McGill-Queen's University Press, 1979), 66-71. For a more cautious view of the impact on the Maritime economy of changes in railway management and policy after 1912, see Ken Cruikshank, "The Intercolonial Railway, Freight Rates and the Maritime Economy" in *Acadiensis* XXII, 1 (Autumn 1992), 87-110.
 59. Royal Commission respecting the Coal Mines of Nova Scotia, 1926; see "The Cape Breton Coal Industry and the Rise and Fall of the British Empire Steel Corporation," *Acadiensis*, VII, 1 (1977), 3-34.
 60. *Report*, Royal Commission on Maritime Claims (Duncan Commission), Ottawa, 1937, 6.
 61. Royal Commission Investigating the Fisheries of the Maritime Provinces and the Magdalen Islands, 1928 (MacLean Commission).
 62. Royal Commission respecting the Coal Mines of Nova Scotia, 1932.
 63. Royal Commission on Financial Arrangements between the Dominion and the Maritime Provinces, 1935 (White Commission).
 64. *Maritime Rights*, 191, 158-181.
 65. "Economic Growth in the Atlantic Region, 1880 to 1940" in his *Atlantic Canada and Confederation: Essays in Canadian Political Economy*, compiled by Eric W. Sager, Lewis R. Fischer and Stuart O. Pierson (Toronto: University of Toronto Press, 1983), 52.
 66. *The Canadian Annual Review of Public Affairs, 1934* (Toronto: The Canadian Review Co. Ltd., 1935), 226-7.
 67. *Journals of the House of Assembly* (JHA), 1935, Part II, appendix 30, 4.
 68. In many respects, Rogers and Macdonald, Nova Scotians both, had parallel careers. They obtained their first degrees in Nova Scotia. They were veterans of the first World War. After the war Macdonald took a law degree at Dalhousie, taught at the law school and pursued post-graduate work at Harvard Law School, gaining a doctorate in jurisprudence. Rogers taught history at Acadia, served as secretary to Mackenzie King, and then went to Queen's as a professor of political science. He won the riding of Kingston for the Liberals in the 1935 general election, and served as Minister of Labour in the Liberal government from 1935 to 1939, when he was appointed Minister of National Defence. He died in an air plane crash at Newtonville, Ontario, in June 1940. Rogers believed that there is room for the scholar in public life. In his update of John Lewis' biography of Mackenzie King, he praises King for his scientific approach to political problems, and notes with satisfaction that, as an author, King belongs to a tradition of letters and politics in British public life. See his *Mackenzie King*, rev. ed. (Toronto: George N. Morang, 1935), 6.
 70. Forbes, *Maritime Rights*, 154. His stint as secretary of the Duncan Commission was brief because part way through the proceedings, the government in Ottawa changed hands, and removed him from the job. When the Liberals returned to office,

it was too late to reinstate him.

71. *Submission*, 1934, 2. The citation is not entirely accurate; there are missed commas, a misspelling, and Bryce's "edifices" becomes "entities." Bryce was a good choice for Macdonald because in the first edition of his two-volume study on the United States in 1888 through to the 1911 edition, he carries the same short chapter on the nation and the states, in which he seems to emphasize the state-based nature of American federalism, referring to "the most striking and pervading characteristic of the political system of the country, the existence of a double government, a double allegiance, a double patriotism" (15). The point is so important for his European readers to comprehend that he develops the following schematic: a league or confederacy, like the Germanic Confederation from 1815 to 1866; a unitary state like Britain or France; and the United States, a new and intermediate form. In the United States, the national government acts on the citizens directly (unlike the league). On the other hand, the state possess authority not delegated to them by the national government (unlike local governments in a unitary state). See James Bryce, *The American Commonwealth*, vol. I (New York: The Macmillan Company, 1911).
72. *Ibid.*, 2.
73. *Ibid.*, 21.
74. *Submission*, 1938, 1.
75. *Submission*, 1934, 16.
76. *Ibid.*, 1934, (iv).
77. *Ibid.*, 2.
78. *Ibid.*, 178-9.
79. *Ibid.*, 165-71, 187-8.
80. *Ibid.*, 193. The other item is federal grants to technical and agricultural education.
81. *Submission*, 1938, 37-8.
82. *Ibid.*, 44, 46.
83. *Ibid.*, 125.
84. *Ibid.*, 52.
85. Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990), 24, 48-57, 59-60.
86. Beck, *Government of Nova Scotia*, 331-2; Bickerton, *Regional Politics*, 81.
87. *Submission*, 1934, 88.
88. *Ibid.*, 92.
89. *Ibid.*, 102. The explanation of the technique developed to measure the provincial incidence of the tariff and the application of it began on page 93.
90. *JHA*, 1935, Part II, xvi.
91. *The Economic Background of Dominion-Provincial Relations*, Appendix III of the Royal Commission Report on dominion Relations, 1939 (Toronto: McClelland and Stewart Limited, 1954), 148.
92. *Ibid.*, 154.
93. *Submission*, 1934, 27-8. Garth Stevenson offers an excellent account of the "better terms" campaign in his *Ex Uno Plures, Federal Provincial Relations in Canada, 1867-1896* (Montreal and Kingston: McGill-Queen's University Press, 1993), 114.
94. *Submission*, 1934, 192.
95. Dominion-Provincial Conference, 1935, *Record of Proceedings*, (Ottawa: King's Printer, 1936), 45-6.

96. Beck produced a scathing (for him) comment on the calculations that the commission made to determine the annual federal subsidy for Nova Scotia: "Actually the White Commission itself provided the best argument for fiscal need when it acknowledged its inability to assess each of the provincial claims in detail, and then by sort of hocus pocus which involved the equitable consideration of all the claims in the aggregate recommended that the temporary annual grant of \$875,000 to Nova Scotia should be increased to \$1,300,000 as a final settlement." See his *Government of Nova Scotia*, 331.
97. *Submission*, 1938, 66.
98. *Ibid.*, 75-6
99. Bickerton, *Regional Development*, 86-92; Simeon and Robinson, *State, Society and the Development of Canadian Federalism*, 75-80.
100. *Submission*, 1938, 25-6, 67-70.
101. Senate, *Report re The Enactment of the British North America Act, 1867*, any lack of consonance between its terms and judicial construction of them and cognate matters, 1939 (Ottawa: Queen's Printer, 1961), Letter of Hon. Howard Ferguson, Premier of Ontario, to the Prime Minister of Canada, dated 10 September 1930, Annex 4, 134.
102. *Ibid.*, "The Compact Theory of Confederation," 147.
103. *Submission*, 1938, 22-3. Peter Hogg, writing in 1985, notes that the Australian clause has been used only occasionally. And he rationalizes its one-way effect: "Of course, in Australia most federal legislative powers are concurrent with the states anyway, so that there is little need for a correspondingly federal power of delegation." See his *Constitutional Law of Canada*, 2nd ed. (Toronto: Carswell, 1985), 296, ft. 64.
104. See Peter H. Russell, *Leading Constitutional Decisions*, rev. ed. (Toronto: McClelland and Stewart, 1973), 264; and Simeon and Robinson, *State, Society and the Development of Canadian Federalism*, 106.
105. *Attorney-General for Nova Scotia v. Attorney-General for Canada*. [1951] S.C.R. 31. At issue was the validity of Bill No. 136, "An Act respecting the delegation of jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and vice versa." The Macdonald government was pursuing several objectives. The bill contemplated that Nova Scotia would transfer to Parliament the power to legislate in employment matters under provincial jurisdiction, which included the idea of a contributory old-age pension scheme. It also provided, in return, that Parliament transfer to Nova Scotia the power to legislate on employment matters under federal jurisdiction, and the power to impose a retail sales tax of an indirect nature. If the gambit succeeded, Macdonald would get the direct taxing power he had always sought, there would be a contributory old-age pension scheme in place, and the whole thing would be accomplished by the interdelegation technique if it were found to be valid under the terms of the existing constitution. The court said no because it could not get around the fact that the constitution does not expressly authorize interdelegation, presumably because that would void the whole point of federalism, which is permanently to divide power between governments, not let them fool around with the constitutional lines of demarcation. Rinfret, CJ opines: "The Parliament of Canada and the Legislatures of the several provinces are

- sovereign within their sphere defined by the British North America Act, but none of them has the unlimited capacity of an individual. They can exercise only the legislative powers respectively given to them by sections 91 and 92 of the Act, and these powers must be found in either of these sections." See Russell, *Leading Constitutional Decisions*, 267. Hogg points out that Rand, J. Grappled with the counter argument that interdelegation is not tantamount to an alienation of power, since the delegating party does not permanently "lose" the power. He reasoned that continual delegation might give rise to "prescriptive claims" on the part of the legislature to which a power has been delegated. See Hogg, *Constitutional Law of Canada*, 297.
106. Two of the early amending formula proposals included interdelegation provisions, the Fulton formula, 1961 and the Fulton-Favreau formula, 1964. See Bayard Reesor, *The Canadian Constitution in Historical Perspective* (Scarborough: Prentice-Hall Canada, Inc., 1992), 129-30. The concept of intergovernmental agreements that was developed in the Charlottetown Accord is found on pp. 27-8 of the draft legal text, dated 9 October 1992. It was contemplated that these agreements might cover a wide variety of matters, from culture to recreation to immigration and aliens, as set out on pp. 16-23.
 107. *Submission*, 1938, 41.
 108. Simeon and Robinson, *State, Society and the Development of Canadian Federalism*, 73-115.
 109. The constitution was amended to transfer to Parliament jurisdiction over unemployment insurance in 1940, and over old-age pension in 1951 and supplementary benefits in 1964.
 110. "Fiscal Federalism: The Politics of Intergovernmental Transfers" in Francois Rocher and Miriam Smith, eds., *New Trends in Canadian Federalism*, 272.
 111. *Ibid.*, 284-5.
 112. I am well aware of the fact that Alberta does not write an equalization cheque to P.E.I. or any other have-not province. The system of fiscal federalism is the product of complex negotiations and calculations on the part of many actors, including, of course, the federal government, which presides over the process. My point is simply that in the end, it remains the case that the equalization formula is province-based and, wealth is generated unequally among the provinces. See Peter Hogg, *Constitutional Law of Canada*, 4th ed., (Toronto: Carswell, 1996), 140-141.
 113. See Ronald L. Watts, *Comparing Federal Systems in the 1990s* (Kingston: Institute of Intergovernmental Relations, 1996), 88.