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# Empire, Crown and Canadian Federalism\*

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In the late twentieth century the most distinctive feature of Canada's federal system is the strength of its unit governments. As opposed to their counterparts elsewhere, Canadian provinces enjoy a rare amplitude of autonomy. By seizing the scope for action this autonomy provides, the provinces have propelled intergovernmental relations into an alignment Canadian scholars have labelled executive federalism. The operation of executive federalism has been extensively discussed elsewhere and will not be re-examined here, nor will such explanations for its vigour as the comprehensive fiscal arrangements which empower the provinces to use their legislative armory. Instead, this article analyzes the structuring impact and continuing influence of Canada's imperial origins on its present-day federalism. It is argued here that these origins precluded in Canada the long-run development of the centralism evident in North America's other federal system—the United States.

In any comparison between the two systems, the imperial legacy which still pervades Canadian society and institutions is ignored only at considerable explanatory cost. Despite a common mother country (excluding for the moment Quebec's distinctive origins), the imperial experience of the two North American federations cannot be equated. It would be profoundly misleading to think of Canada as just slower than the United States in severing its ties with Great Britain. Arguably, its imperial provenance is the root of modern Canada's distinctiveness and, most particularly for the present argument, the basic explanation for the nature of the relations that currently exist between federal and provincial governments. Imperial practices and imperial modes of thought were internalized in Canada's federal system, while they were expelled from America's; concentrations of power characterize the one, dispersal of power the other. This structural contrast, as much as any other,

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explains the different responses of the two federations to common social, economic and political experiences.

Both the imperial connection and its dissolution, as well as adjustments to this change in condition, have strengthened the provinces in their relationship with Ottawa. This has been true for several reasons, although none more important than the perpetuation of the monarchical form of government at both levels of the federal system. Although Canada was once the senior Dominion of the British Empire, the empire along with Canada's prominence in it ceased to exist after 1945 (however the Commonwealth may be defined and whatever its obligations, no constitutional implications flow from membership in it), yet the monarchy survives. But where once it was the symbol of an allegiance external to Canada, today the loyalties it embodies are "indigenous."<sup>1</sup> The function of the monarchy is far from apparent to many Canadians, because in the absence of an hereditary aristocracy or an established church, monarchy in Canada is essentially a political arrangement without social consequences. For this reason the use of the term "Crown," which carries a less personal connotation, is to be preferred. The organizational principle nonetheless remains the same and, as will be discussed below, it is this principle as much as any other that sets Canadian and US politics apart, for monarchy in Canada is mainly about politics. By way of contrast, the influence of imperialism has been diffuse, touching the country's geography, its settlement and economy. In order to provide backdrop for the political discussion to follow, the article turns to these last subjects first.

Before these subjects are discussed, it should be emphasized that the imperialism in question was the one Canada experienced for over two centuries as part of a vast empire that possessed governmental institutions of great variety and complexity. The discussion that follows has nothing to say, therefore, about Canada's increasing dependency on the United States. As important and pervasive as that development may be, it is a topic separate from the one at hand and, possibly, best studied after reading Robin Winks's cautionary essay "The Idea of American Imperialism."<sup>2</sup> Empires take different forms according to the values that energize their elites and the degree to which these values are shared by their subjects. For the British Empire and its British North American possessions, a driving idea was the political autonomy of the colonies. This imperative to self-government motivated a host of colonial reformers from the early decades of the nineteenth century through to the

1 On the metamorphosis of loyalties, see A. R. M. Lower, "The Origins of Democracy," in Welf H. Heick, ed., *History and Myth: Arthur Lower and the Making of Canadian Nationalism* (Vancouver: University of British Columbia Press, 1975), 26.

2 Robin W. Winks, *The Relevance of Canadian History: U.S. and Imperial Perspectives*, The 1977 Joanne Goodman Lectures, University of Western Ontario (Toronto: Macmillan, 1979), Part 3.

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**Abstract.** This article argues that imperialism and the Crown have determined the development of Canadian federalism. It maintains that the prominence of the provinces, the most distinctive feature of this country's federal system, is traceable, first, to the empire's evolution in the last century and its dissolution in this and, second, to the capacity of the Crown to endow the provinces with unlimited potential for action in areas of jurisdiction not assigned to Parliament. The structuring effect of these primary influences is examined from several perspectives: geographic, economic, social and constitutional. The article concludes that the provinces have been the true beneficiaries of Canada's heritage of empire and Crown.

**Résumé.** L'empire et la Couronne ont déterminé le développement du fédéralisme canadien. La prééminence des provinces—le trait le plus distinctif du système fédéral de ce pays—est liée en premier lieu à l'évolution de l'empire et à sa dissolution en ce siècle et, en second lieu, à la capacité de la Couronne de doter les provinces d'un potentiel illimité d'action dans des sphères de juridiction non-assignées au Parlement. L'effet structurant de ces influences de première importance est examiné dans cet article de plusieurs points de vue : géographique, économique, social et constitutionnel. Il est montré en conclusion que les provinces ont été les bénéficiaires privilégiés de l'héritage canadien de l'empire et de la Couronne.

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beginning of this century, and is captured in the following comment from the *Farmers' Advocate* on the eve of the creation of the provinces of Saskatchewan and Alberta: "Great Britain's success as a colonizer is due to the fact that her children were early granted and expected to exercise self-government, and to shoulder the responsibilities attendant thereon. . . ."<sup>3</sup>

While British imperialists and colonialists may have been united in their constitutional objective, its achievement was veiled by institutions—of which the Crown was paramount—that belied the evolution taking place. Political autonomy signified that "one 'King' ha[d] come, for some purposes at least, to have many personalities, perhaps many 'Crowns.'"<sup>4</sup> The "political forms of monarchy" had become but "hollow shells," or "constitutional drapery transmitted from a previous state of things," within or behind which the political executive in control of the legislature exercised authority derived from both the Crown prerogative and statutory power.<sup>5</sup> In consequence of this permanence in form but variation in function, imprecise nomenclature is understandable, as Geoffrey Marshall has reminded students of the constitution in an article entitled "The State, the Crown and the Executive."<sup>6</sup>

3 Quoted in C. Cecil Lingard, *Territorial Government in Canada: The Autonomy Question in the Old North-West Territories* (Toronto: University of Toronto Press, 1946), 106.

4 Stephen A. Scott, "Queens as Nursing-Mothers: Federal Public Expenditure under the Canadian Constitution," draft of paper delivered at a conference at the University of Calgary, October 12-13, 1990 on "The Power of the Purse: Financial Incentives as Regulatory Instruments," 63.

5 Paul Romney, "From the Rule of Law to Responsible Government: Ontario's Political Culture and the Origins of Canadian Statism," in *Historical Papers* (a selection from the papers presented at the annual meeting [Canadian Historical Association] held at Windsor, 1988), 114, and Gordon T. Stewart, *The Origins of Canadian Politics: A Comparative Approach* (Vancouver: University of British Columbia Press, 1986), 70.

6 Geoffrey Marshall, *Constitutional Theory* (Oxford: Oxford University Press, 1971),

### Empire and Canadian Geography, Settlement and Economy

It has been said that the American Revolution created two countries: the United States and Canada. Two hundred years after the arrival of the Loyalists, the story is familiar: from the former 13 colonies 40,000 persons streamed north into the remaining British colonies, which, on the eve of the Revolution, had a combined population of 110,000. The Tory values they carried created and then sustained imperial sentiment in areas previously either sparsely populated or predominantly French. Geographically, the most visible reminder of the migration was the creation in 1784 of the colony of New Brunswick out of that part of Nova Scotia lying to the north of the Bay of Fundy. Of comparable significance, demographically, was the arrival of the first large concentration of English-speaking settlers in Eastern Townships of Lower Canada south of the St. Lawrence River.

But the Loyalists are only one example of the impact of empire on Canada. Twenty years before, on the Plains of Abraham at Quebec City, armies of rival empires had clashed, with the British emerging victorious; as a result, according to A. R. M. Lower, Canada became "a state founded on one of the deepest of historical experiences, the conquest of one people by another."<sup>7</sup> So searing a birth has yet to be reconciled with modern Canada's interpretation of itself:

A tourist, uninitiated in the problems of Canadian historiography, might expect the Plains of Abraham to be developed as one of the country's leading historical monuments, akin to Hastings in England or Bunker Hill in the United States. Instead, as he descends from the Citadel toward the legislative buildings he finds remarkably little to mark its history. There is a monument to some Indians burned during the French-Iroquois Wars and mention made of the attack on the city by Montgomery during the Revolutionary War. There are acres of lawns traversed by stately avenues but of Wolfe and Montcalm there is precious little. The development of the Plains of Abraham . . . reflects one of [the heritage movement's] principal weaknesses [the inability to come to terms with competing nationalisms].<sup>8</sup>

The origins of Western Canada, if anything, are more distinctively imperial than those of the East. For two hundred years (1670-1869), the territories that are now the provinces of Manitoba, Saskatchewan and Alberta were governed by the Hudson's Bay Company (HBC), and until

chap. 2. For a Canadian source that discusses the same ambiguity of terminology, see David W. Mundell, "Legal Nature of Federal and Provincial Executive Governments: Some Comments on Transactions Between Them," *Osgoode Hall Law Journal* 2 (1960), 56-75.

7 A. R. M. Lower, "Religion and Religious Institutions," in Heick, ed., *History and Myth*, 75.

8 C. James Taylor, "National Historic Parks and Sites, 1880-1951: The Biography of a Federal Cultural Program" (unpublished Ph.D. dissertation, Carleton University, 1986), 52.

mid-nineteenth century, when connection with the American frontier was made at St. Paul, "the Hudson Bay route made the Red River Valley a frontier of Great Britain just as much as of Canada."<sup>9</sup> For strategic reasons (Russia to the north and an expansionist United States to the south), the British Parliament allowed the Company to extend its monopoly to Vancouver Island in 1849. Later, under the aegis of the imperial government, the Company's proprietary interest in its territories was extinguished and the land transferred to the Crown in right of Canada (that is, to Canada's new federal government).

Those parts of present-day Canada not yet mentioned possess imperial origins as well: the areas that became Prince Edward Island and Nova Scotia passed from the French to the British Crown between 1713 and 1763, while much more recently Newfoundland, Britain's oldest colony, became Canada's tenth province in 1949 as a result of a series of imperial calculations. Early in the Depression Newfoundland became bankrupt and went into economic and political receivership, losing its institutions of self-government and reverting to commission rule directed from London. During the Second World War the straitened British government determined to abandon newly-prosperous Newfoundland but rejected either its return to Dominion status or conversion to a status analogous to that of Northern Ireland. Instead, as one British MP, who took a spirited and rare interest in the colony's future, noted: "'*Whitehall*' was set upon confederation and stealthily working for it all the time . . . . Because of dollars we have had to be rather shabby."<sup>10</sup>

Britain's actions in this last instance constituted only a modern manifestation of a century-long policy to promote Confederation among its British North American colonies. As every student of Canadian history knows, it was British officials who in 1866 pressed disenchanted Maritimers back into negotiations with the politicians of the United Canadas, when the federal scheme agreed to two years before at Quebec had collapsed. It was the imperial government who summoned the colonials to London, took charge of the meetings and drafted the resolutions that became the basis of the federative act. The only legislature to debate (and then in cursory form) the terms of union was the Parliament at Westminster. In form and in timing, Confederation was as much a British production as it was Canadian.

The imperial desire for union was understandable in light of the problems this collection of scattered colonies presented. That they were scattered is evident on a map of Canada even today: 10 units comprising two island provinces, Quebec a cultural barrier to communication

9 R. O. MacFarlane, "Manitoba Politics and Parties after Confederation," *Canadian Historical Association Report* (1940), 46.

10 A. P. Herbert, *Independent Member* (London: Methuen, 1950), 409-10, emphasis in original.

between Ontario and the Maritimes, British Columbia insulated by the Rocky Mountains and the prairie provinces separated from settled eastern Canada by the immense Canadian Shield that embraces Hudson Bay and extends far southward. The centrifugal forces of race, religion and geography, which the British sought to transcend through Confederation, remain the cardinal cleavages of Canadian politics.

Colonial settlement reinforced geographic separateness. Small colonies grew slowly around military garrisons manned largely by British troops until late in the nineteenth century (few countries can match Canada's peaceful history, fewer still its collection of prominent bastions and citadels), or around Hudson's Bay Company forts (some as impressive in scale as the military's fortifications), while in French-speaking Canada the dominating presence was always the Roman Catholic hierarchy. The Crown's control of land determined the pace and pattern of settlement, but affected each colony differently. For this reason and because of the lack of local control thus symbolized, Crown land and its alienation became a major source of conflict in several colonies. In the Canadas the issue was clergy reserves, in PEI absentee landlords, while in New Brunswick "four-fifths of the colony's acreage was locked in Crown lands."<sup>11</sup> Excluding the insular Québécois, the English-speaking colonies remained, socially and culturally, dependents of the mother country. Communication between the imperial power and the individual colonies long exceeded inter-colonial contact in British North America. Even after Confederation, the surprising effect of the dependence was "to retard the reception by the fragmented societies . . . of the fullness of their metropolitan cultural heritage."<sup>12</sup> Imperialism and geography arrested their development, so that rather than looking out, the fragment cultures turned their attention inward. Vulnerable and isolated, they sought to consolidate, to centralize and to conserve.

As Canada's Laurentian school of political economists and historians has shown, a succession of staple economies based on fur, timber and grain did nothing to moderate these societal characteristics. Although the development of each extended at some stage beyond the borders of a single colony, either the control of its harvest or the organization of its transport to European markets required the co-ordination which only a single institution could provide. That might be achieved through the hands of a private company like the HBC or under the auspices of a government which controlled access to resources: before 1867 the government in control was colonial, after 1867 provincial

11 Jeffrey Simpson, *Spoils of Power: The Politics of Patronage* (Toronto: Collins, 1988), 52; see all of chap. 2, "Responsible Government: The British Legacy."

12 Alfred Goldsworthy Bailey, "Evidences of Culture Considered as Colonial," *Culture and Nationality: Essays by A. G. Bailey* (Toronto: McClelland and Stewart, 1972), 184.

(where such had been created); otherwise the federal government held sway over resources, as it still does over vast reaches of Canada's North.

The socio-economic consequences of geographic separation could be tolerated when the difficulties of transporting staples were minor—where the cargo was small and light (fur) or where it provided its own mode of transport (timber booms)—but development of new transport (railways and canals) and a new staple (grain) in areas distant from tidewater directed governments and local financiers into larger ventures to provide services. The impetus for Confederation lay in the need for greater public works as much as it did in providing increased security or an escape from political instability in the United Canadas. For this reason the scheme adopted in 1867 can best be described as purposive federalism, whose object was to achieve practical rather than representational or philosophical ends.

The colonies had controlled their resources, and the new provinces of the federation had control of theirs. Because of their dependency on this source of revenue, Harold Innis labelled the provincial economies feudalistic.<sup>13</sup> Except in the unusual case of the prairie provinces before 1930, Parliament did not control provincial resources but instead depended on the tariff to achieve its ends. For this reason, Innis labelled the national government capitalistic. Whatever the utility of this distinction for political economy, it explains the continuation of imperial practices even after the Empire proper faded from the Canadian picture. Control of resources empowered the governments of the provinces not only to determine the sequence and kind of resource that would be exploited within their boundaries but, through these decisions, to exercise as well determinative influence over social development. In this regard it needs to be remembered that, with the exception of the Maritime provinces, each of the other provinces administered along a north-south axis huge territories (the smallest of the remaining seven, Manitoba, embraced an area of 251,000 square miles; by way of comparison Texas covers 267,000 square miles). With no exceptions, the principal resources of the provinces are located in the north, where large numbers of native persons are located, while the bulk of the non-native population lives in the agricultural south and, increasingly, in urban areas.

The imperial pretensions of the federal government, of which more is said below, have been catalogued by a legion of commentators, and not all from western Canada, a region particularly exposed to the effects of national policies. All of the reasons K. C. Wheare posits for Canada's being a quasi-federal system (for example, Parliament's unlimited taxing power, its declaratory and the executive's appointment powers, and the exercise of reservation and disallowance of provincial legislation by

13 Harold A. Innis, "On the Economic Significance of Cultural Factors," *Political Economy in the Modern State* (Toronto: Ryerson Press, 1946), 88.



federal officials) have been cited by critics as evidence of internal colonialism.<sup>14</sup> In short, there are many strands to the imperial tapestry, of which Canada's original relationship to Great Britain is only one. To that must be added Ottawa's relationship to the provinces, the provinces' relationship to their hinterlands and, for at least some observers, Canada's relationship to the United States.

### Empire, Crown and Politics

The preceding section suggested the contribution empire made to Canadian regionalism: imperial decisions and imperial policies reinforced the centrifugal effect of Canada's sprawling geography. If a metaphor were wanted, the colonies of pre-Confederation Canada resembled a string of beads, each accessible only to its immediate neighbours, and then sometimes with difficulty. After 1867 national development slowly began but along a single horizontal line as well: the Canadian Pacific Railway in the last century, the Trans-Canada Highway in this, along with telecommunications links, are all confined for most of their route to a narrow corridor near the US boundary. In contrast to the American frontier stretching from New England to the Carolinas, which swept westward engulfing all before it, the Canadian frontier was the last point on an advancing line, subject to control from behind, most frequently from the point at which the line began in the heartland of the St. Lawrence Valley.

The physical unity of Canada was accomplished in 1867 and later, as the rounding out of Confederation proceeded and the territorial integrity of the area north of the 49th parallel became secure. The achievement of political unity is less easy to summarize, in part because the act of federation itself is subject to contradictory interpretation. It is generally assumed that in 1867 a new federal government was created with nation-building powers, while the colonial governments, with some adjustments, reappeared as provincial governments. At one level of analysis this is true, and yet the desire of colonial leaders "to redeem themselves from provincialism" was so strong that the provinces emerged with greatly reduced powers. An exception to this generalization, said F. R. Scott, can be made for Quebec, for whom "Confederation represented a partial escape from centralized control [that is, the unitary government of the United Canadas], whereas to all other provinces Confederation represented an acceptance of a measure of centralized control."<sup>15</sup> It could be argued that the provinces constituted a lesser order of government than the colonies they replaced, and that

14 K. C. Wheare, *Federal Government* (3rd ed.; London: Oxford University Press, 1953), 19-21.

15 F. R. Scott, "Centralization and Decentralization in Canadian Federalism," *Canadian Bar Review* 29 (1951), 1095-1125, reprinted in Scott, *Essays on the Constitution* (Toronto: University of Toronto Press, 1977), 252.

the federal government, now holding many of the colonies' former powers, had more in common with the old colonies than did the provinces.

Nothing conclusive can be read into the appropriation by the new Dominion of the old United Canada's capital, Ottawa, or its Parliament Buildings, but this pre-emption symbolized the inauguration of a federal arrangement of powers quite unlike that of the United States where the states, by design and through compact, had created the national government. All this is speculation, but speculation with a point: the different interpretations of the event, the possibility that the same event might be interpreted in diametrically opposite fashion (was the federal government the true successor of the colonies or were the provinces?) suggests not unusual obtuseness on the part of the federation's architects but rather a remarkable assumption of continuity despite structural change. It is to that political equanimity that the discussion now turns, for of all the contributions of empire to Canadian federalism none has had more pervasive or permanent influence than its source—the Crown.

Frank MacKinnon has argued that the Crown offers a "useful constitutional umbrella" under which a multitude of constitutional arrangements have been made and re-made.<sup>16</sup> Proposals to abolish the Crown have never attracted popular support even when Canada was advancing from colony to nation. On the contrary, the Crown's unbroken continuity is often cited as a fundamental ingredient of peaceful change. Similarly, the Crown has encompassed and helped reconcile the high centralization envisioned by the Fathers of Confederation on the one hand (a truth Gérard Veilleux has conclusively shown in his comprehensive study of *Les Relations Intergouvernementales au Canada, 1867-1967*) with the evolving reality of growing provincial power (punctuated by emergency centralism in both world wars) on the other.<sup>17</sup> This capacity for tolerating unconditional change, for excluding no proposal from consideration, has permitted a catholic discussion of constitutional reforms to satisfy the discontents of Quebec and the West—reforms, it should be noted, conceived and promoted not at the mass level of Canadian politics but by elites. The freedom to propose, to consider and to implement a wide range of constitutional alternatives derives from the prerogative powers of the Crown exercised on the advice of partisan ministers who control legislative institutions. Canada's politics are necessarily partisan, a feature that would discourage agreement except for the role of the Crown in helping to depoliticize the

16 Frank MacKinnon, *The Crown in Canada* (Calgary: Glenbow Alberta Institute, 1977), 162.

17 Gérard Veilleux, *Les relations intergouvernementales au Canada, 1867-1967: les mécanismes de coopération* (Montreal: Les Presses de l'Université du Québec, 1971), chap. 1, "Les Lieutenants-Gouverneurs et le Secrétaire d'État pour les Provinces, 1867-1887."

instruments of government. And at least until the last decade, with the appearance of an entrenched Charter of Rights and Freedoms that limits all governments in Canada, the exercise of these powers has gone largely unquestioned.

Within 20 years of Confederation, and to the surprise of its proponents, judicial interpretation had begun to place limits on the broad powers of the central government and, in the process, to discover what political scientists in the future would label classical federalism. Rather than the hierarchical relationship symbolized in Sir John A. Macdonald's view of federally-appointed provincial lieutenant-governors—representatives of the Crown but taking instructions from Ottawa—the Judicial Committee of the Privy Council found this official “as much a representative of His Majesty for all purposes of Provincial Government as is the Governor General for all purposes of Dominion Government.”<sup>18</sup> The provincial world began to grow as a result of a winning streak in the zero-sum game of federal-provincial litigation and also because the possibility of provincial action had been extended enormously by linking it to the potentiality of the Crown, whose only limit was the impoverished political imagination of its advisors.

Constitutional monarchy requires, according to Lewis B. Naimier, “a Prime Minister and Government taking rise from Parliament, and [being] received rather than designated by the Sovereign.”<sup>19</sup> Canadians more commonly call this responsible government, by which they mean that those who command the support of the elected chamber alone advise the Crown. By monopolizing advice on policy and patronage at the top, those in power expand their base of control at the bottom. As initially organized, Canadian political parties, the accredited nation-building institutions of the nineteenth and early-twentieth centuries, owed more to the monarchical system than they suspected. But party-in-government, the hallmark of Canadian politics, could be found in all the country's jurisdictions, and it was only a matter of time before the tension between the objects of the two levels of government should come into conflict. The tension that animates modern Canadian federalism is similarly rooted in the autonomy that adheres to the Crown and which increasingly eludes the control of any single national institution.

Except for British Columbia, the provinces had experience with responsible government before Confederation. Therefore the politicians of 1867, whose primary concern was to allocate fields of jurisdiction, had no reason to refer to, let alone alter, so vital a part of the political system. Nor did Confederation touch, much less create, the civil society

18 *Liquidators of the Maritime Bank v. Receiver-General of New Brunswick* (1892) AC. 437.

19 Lewis B. Naimier, “Monarchy and the Party System,” The Romanes Lecture, May 15, 1952 (Oxford: Clarendon Press, 1952), 3.

served by that system. Law and the courts, the press and the professions, universities, schools and more preceded Confederation. Everywhere, the institutions, practices and understandings of civil society were the creation of local initiative, and on each of them the Crown conferred legitimacy while impressing upon the whole a unity that pre-dated Confederation. Thus, regardless of the extent or number of powers relinquished by the colonies in 1867, the pre-existing colonial, now provincial, societies continued unaltered.

This is the source of the strength of localism in Canada, so often noted by scholars from André Seigfried onward. Crown, society and geography, all reflecting the necessity of empire, set the new provinces apart from one another and from units of a federal system like that of the United States which, Samuel Beer once said, would likely not exist "if the rectangle had not been invented."<sup>20</sup> Except for the huge size of most of them, the Canadian provinces lack comparable symmetry. The prairie provinces seem to have the most in common, but even here similar topography, demography and economies are uncertain predictors of common development. Instead, the determinative events in their histories arise from within their boundaries, because each of them, like the other provinces, is vigilant in the promotion of its interests to an exceptional degree for units in a federal state. How else is it possible to explain the contrasting political development of the twin provinces of Saskatchewan and Alberta, the former the seat of Canada's most durable socialist party and the latter the birthplace of Social Credit in Canada? Here is the primary source of the *Small Worlds* and "Limited Identities" that Canadian scholars depict as typifying provincial perspectives and experience.<sup>21</sup>

The Crown endowed the provinces with unlimited potential for action, a reservoir of power which, when exercised in the absence of a common national denominator, heightened the distinctive characteristics of each evident since its founding. In turn, the contrasting development that ensued further exaggerated provincial distinctions. Paradoxically, the societal mosaic in which Canadians take pride arose in part because "only in the provinces was the electorate homogeneous enough to allow the majority principle to work without reserve."<sup>22</sup> The legitimacy of the federal state is tested by its capacity to mediate internal cleavages; the provincial "states" have never had to face comparable challenges. More particularly, the economic tensions generated in fed-

20 Samuel Beer, "Federalism, Nationalism and Democracy in America," *American Political Science Review* 72 (1978), 16.

21 David J. Elkins and Richard Simeon, *Small Worlds: Provinces and Parties in Canadian Political Life* (Toronto: Methuen, 1980), and J. M. S. Careless, "'Limited Identities' in Canada," *Canadian Historical Review* 50 (1969), 1-10.

22 W. L. Morton, "The Extension of the Franchise in Canada: A Study in Democracy," *Canadian Historical Association Report* (1943), 79.

eral politics between the "haves" and "have-nots" failed to materialize in provincial politics, not because provincial economic benefits are distributed more equitably but because the inequity is invariably transformed into a claim against the federal government. Similarly, the unity or French-English question, which lies at the heart of national politics, has been absent as a continuing divisive factor in provincial debate. Because Canada's principal minority is concentrated in one province (Quebec), the majoritarian principle has prevailed elsewhere, notwithstanding short, sharp but ultimately futile resistance from numerically small and declining French Catholic minorities. Two exceptions to this generalization are the English Protestant minority in Quebec, who possess under the *Constitution Act, 1867* denominational rights in education and limited language rights, and the francophone Acadians of New Brunswick, whose interests have been advanced by a consociational model of political rule based on convention and recently supplemented by statute.<sup>23</sup> These exceptions, of course, further underline the distinctiveness of the provinces in general.

The preceding paragraphs do not acknowledge the disruptive effect of federal language policy after 1969 or of the Charter, with its twin protections of language rights in education and multiculturalism. These cast doubt on the continuation of provincial hegemony in matters of culture, although the availability of the "notwithstanding clause," by which jurisdictions can override Supreme Court decisions, casts a counter-doubt and seems to leave the provinces who use the clause unaffected by the national values embodied in the Charter. In any case, these recent developments do not undermine the historical arguments about the determinative influence of provincial autonomy in these matters or the central contribution of the provincial Crown in making that autonomy effective.

External constraints, which might have limited the exercise of local democracy in the provinces, ultimately proved ineffective. By the end of the nineteenth century the triumph of the provincial rights cause over John A. Macdonald's centralized federalism offered proof of this. Indeed, as Paul Romney, in his article on Ontario's political culture, has recently observed: "The disallowance controversy is a particularly strong demonstration of the way in which the ideology of responsible government worked in the early decades of Confederation to elevate provincial over dominion power."<sup>24</sup> Of course, disallowance (and reservation) were provided for in the *Constitution Act*, but the provincialists linked their exercise to the prerogative generally and succeeded in arguing that only a responsible ministry had the right to use such power.

23 See Edmund A. Auger, *In Search of Political Stability: A Comparative Study of New Brunswick and Northern Ireland* (Montreal: McGill-Queen's University Press, 1981).

24 Romney, "From the Rule of Law to Responsible Government," 116.

In consequence, disallowance and reservation came to be seen as arbitrary and irresponsible actions. More generally, the provincialists were able to use the prerogative powers in two ways. They both appropriated prerogative for their own use and decried prerogative acts as a flagrant violation of the Constitution when exercised by Ottawa. This has led, says Romney, to a juridical dualism in Canada: "legalism in relations between the [provincial] state and the individual and the entrenchment of constitutionalism in federal-provincial relations."<sup>25</sup>

The story of the triumph of provincial rights is the story of Ontario's Oliver Mowat who, more than any other provincial politician, is identified as the leader of the constitutional battle with Ottawa in the decades before 1896. The details of that battle are well told elsewhere, but in the present context it is worth noting that the provincialists' success arose out of their self-conscious exploitation of the logic and rhetoric of imperialism. The parallel between dominion-provincial and imperial-colonial relations was not lost on post-Confederation politicians, nor were the gains in status that might be theirs through an evocation of the imperial connection. This explains why, for example, British Columbian premiers like Richard McBride and William Bowser deliberately cultivated early in the century "a London-Ottawa-Victoria triangle," which would assure them a sympathetic ally in the British government when the province sought better financial terms.<sup>26</sup> But BC politicians were not alone in seeing provincial autonomy in the context of an imperial tradition, whose greatest contribution for a politician like James G. Gardiner, another western premier (and later federal cabinet minister), was to make federal government realizable through the promotion of institutions of local self-government.<sup>27</sup>

The claim that federalism permits unit governments to experiment with social and economic policy has been borne out in the Canadian provinces over many decades. Two prominent examples are Saskatchewan after 1944, when the socialist Co-operative Commonwealth Federation (CCF) came to power, and Quebec after 1960, first during the Liberal-led Quiet Revolution and later under the Parti Québécois. In both instances, parties came to power with articulated sets of policy objectives and with ministries composed of individuals of high competence led by strong and able premiers. While sharing some programmatic goals (economic development), these governments diverged

25 Ibid. The argument in this and the next paragraph was assisted by helpful comments of an anonymous JOURNAL assessor, whom the author would like to thank for clarifying his thoughts on the interrelationship of province, nation and empire.

26 Roman Hromnysky, "The Western Canadian Regional Governments and the Federal System, 1900-1930" (unpublished M.A. thesis, University of British Columbia, 1965), 187.

27 Saskatchewan Archives Board, Papers of the Rt. Hon. James G. Gardiner, Gardiner to W. H. Heffernan, March 25, 1939, 42777-8.

in the emphasis given to others (social welfare in the case of Saskatchewan and cultural/political nationalism in the case of Quebec). This is not the place to examine the structure or operation of any provincial government but instead to note that heterogeneous objectives may be encompassed by and prosper within the set of constitutional relationships common to each province. More than that, provinces have been free to experiment with institutions to achieve their singular ends: Saskatchewan, for example, pioneering after 1944 in the machinery of central administrative management, and Quebec 20 years later in "instruments of economic emancipation."<sup>28</sup> Except for the office of lieutenant-governor, created by the *Constitution Act* (ss. 55 and 90) and alterable only by amendment to the Act, it is difficult to envision any change—addition or subtraction—to provincial institutions that cannot be made. The extinction of legislative councils (upper chambers) in the five provinces in which they originally existed would be one example. Indeed, it could be argued that an important theme of Canadian federal development has been the strengthening of provincial government machinery for the specific purpose of assisting the provinces in their struggle with the federal government. Theories of political modernization fail to explain the dynamism of a province like Saskatchewan after the Second World War and they fail to account for the timing of change in Quebec. The explanation lies elsewhere, in the partisanship that pervades Canadian politics, in the programmatic commitment of the parties in question and in the availability of an institution—the Crown—possessing unlimited potential for change. The Charter and "the legalization of politics" have put the sovereign legislature and its executive committee (that is, cabinet) at risk, for they pose a serious challenge to constitutional conventions and the prerogative power of the Crown, that part of the Constitution outside statute law and through which governments as advisers to the Crown have secured their own political empires.<sup>29</sup>

28 See Thomas H. McLeod, "Public Enterprise in Saskatchewan: the Development of Public Policy and Administrative Controls" (1958) and Albert W. Johnson, "Biography of a Government: Policy Formation in Saskatchewan, 1944-1961" (1963) both Ph.D. dissertations, Harvard University; Stephen Brooks and A. Brian Tanguay, "Quebec's Caisse de dépôt et placement: tool of nationalism?" *Canadian Public Administration* 28 (1985), 99-119.

29 See Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Wall and Thompson, 1989). In the Manitoba Language Rights Reference (1985), the Supreme Court of Canada temporarily validated unilingual laws it had unanimously found invalid. In response, one judge of the Manitoba Court of Appeal asserted: "I do not understand how the Supreme Court or any other court has a power to declare judicially valid or enforceable that which is judicially invalid. I do not understand . . . an usurpation by a court of the royal power" (114, footnote 1); see also 24-32 on constitutional convention and the Court.

## Empire and the Constitution

Canada's was the first federal system effected by the authority of the Imperial Parliament. That occurred in 1867, but contrary to the experience of later federal creations under the same auspices, Canada's relationship to Westminster did not end then but continued for another 115 years. The original *Constitution Act* provided for no indigenous amending formula and thus changes to it required subsequent legislative action by the Parliament in Great Britain. This dependent relationship persisted despite periodic if intense efforts for half a century after 1927 to devise a Canadian formula acceptable to Ottawa and the provinces. The anomaly of the oldest Dominion sharing with less advanced colonies the same constitutional status at Westminster, if only in this one matter, grew more stark after the passage in 1931 of the Statute of Westminster which recognized the full legislative autonomy of the Dominions. A domestic amending formula for matters not "assigned exclusively to the Legislatures of the provinces," itself secured by amendment to the *Constitution Act* in 1949 at the request of Ottawa and in the face of strong objection from Ontario and Quebec at lack of consultation, did nothing to resolve the more intractable problem.

The story of Canada's search for a domestic amending formula acceptable to all parties is complicated and subordinate to the subject of this analysis. It is cited to illustrate that Canada's relationship to an external authority was no vestigial anachronism, but of long duration and central significance. Several possible explanations (each capable of considerable expansion) might be suggested for the repeated failure to agree on this matter: either there was a persistent lack of agreement about the norms and standards essential to the maintenance of Canadian federalism, or the strength of the individual first ministers who conducted the negotiations (or the interests they promoted) was so great as to preclude agreement, or finding a formula for amendment was of relatively little importance to the participants. All have merit and the first two have been suggested before; the last is not meant to be facetious but to recall that, until constitutional discussions began 20 years ago, Canadians and their politicians seldom paid attention to the matter of constitutions or constitutionalism in the abstract. As late as the period 1980-1982 the British Parliament asserted its conclusive role in amending the *Constitution Act* (for one last time, since among other matters that amendment incorporated a domestic formula for subsequent amendments) by looking behind Ottawa's request to determine the degree of provincial support it enjoyed. That British MPs actually took their role seriously in this particular instance came as a shock to many Canadians, not least the federal government.<sup>30</sup>

30 United Kingdom, House of Commons Foreign Affairs Committee, *Report of... on the British North America Acts: The Role of Parliament* (London: Her Majesty's Stationery Office, 1981).



Constitutional vestiges of empire lasted longest with the search for an amending formula. Thirty some years earlier, two other “umpires” (one executive, the other judicial) of what Douglas V. Verney has labelled “imperial federalism” had passed from the scene: the British Governor General and the Judicial Committee of the Privy Council (JCPC).<sup>31</sup> The Canadianization of the office of Governor General was of symbolic rather than practical importance, since the rarely exercised powers of the office remained unaffected by the change. Of much greater significance was the replacement of the JCPC by the Supreme Court of Canada as the court of last appeal; greater because judicial interpretation of constitutional matters would now remain totally in Canadian hands and because of the influence Canadians perceived the JCPC to have had on the development of Canadian federalism. It would be difficult to exaggerate the attention critics of the JCPC devoted to its opinions in the decade before the Second World War. Those opinions and Canada’s evolving autonomy within the Empire/Commonwealth provided the staple of most political science scholarship; Alan Cairns’s encyclopedic and revisionist article, “The Judicial Committee and Its Critics,” conveys the flavour of the literature and its immense quantity.<sup>32</sup> Again, the particular arguments of the dispute are beyond the boundary of this analysis. Nowhere, however, is the entanglement of empire and federalism more forcefully represented than in the concern expressed at the perceived influence of the JCPC on Canadian federalism: contraction of Parliament’s general power into an emergency power only, the discovery that matters relating to labour lay in provincial hands, the bifurcation of the treaty power (in marked contrast to the decision of the US Supreme Court in *Missouri v. Holland*), and more. Each opinion enhanced the scope for provincial action by limiting that of Parliament, with the result that the Canadian provinces grew fat in jurisdiction while they continued to be financially lean and thus ever more dependent for revenue upon exploitation of their natural resources.

The result was not inevitable; there was nothing about the structure and procedure of the JCPC that determined its opinions would be inherently decentralizing in their effect on Canada’s federation. Were it otherwise, there would be no meaning to the venerable question of why the JCPC had overturned the centralist intentions of the drafters of the *Constitution Act*, nor to the investigation of the philosophical beliefs of some of its members, such as Lord Haldane.<sup>33</sup> But if it was not inevitable—if, in other words, the Judicial Committee had followed the

31 Douglas V. Verney, *Three Civilizations, Two Cultures, One State: Canada's Political Traditions* (Durham, N.C.: Duke University Press, 1986), 151.

32 This JOURNAL 4 (1971), 301-45.

33 Jonathan Robinson, “Lord Haldane and the British North America Act,” *University of Toronto Law Journal* 20 (1970), 55-69.

path of the general power revealed in *Russell v. the Queen* (1882)<sup>34</sup>—what effect would this have had on the development of Canadian federalism? Although impossible to answer, it is not unrealistic to question whether the juridical influence would have been sufficient to check the centrifugal force of Canada's society and economy. Notwithstanding a very different sequence of opinions from the JCPC than that which appeared after *Russell*, the provincial imperative to self-government would have remained, and the Crown and its prerogative would have continued to offer provincial political executives a vital means of enhancing self-government. In short, the actions of the JCPC reinforced but did not initiate the direction of Canada's federal evolution.

The cumulative impact of the JCPC's opinions imposed a balance on Canadian federalism in the twentieth century that would have puzzled the framers of the *Constitution Act* who, in 1867, accepted the need for a high degree of centralization. Inevitably, in light of Canada's constitutional autonomy after the Statute of Westminster, 1931, and its increased international responsibilities during and after the Second World War, many Canadians (and particularly the central government) found this external judicial influence anachronistic. In the late 1940s, Canada abandoned "imperial federalism" by ending appeals to the JCPC and by other symbolic acts of nationalism. According to Douglas Verney, these moves disturbed the original equilibrium of Canadian federalism and gave rise in time to the search for a new internal consensus on the federal system, one which it can be argued continued into and beyond the Meech Lake debate. These postwar initiatives arose out of a confident nationalism but, paradoxically, they contributed to an enhanced and solidified status for the provinces. The authority of Canada's national government, from Confederation onwards, had rested in no pre-state arrangement or values (to the degree such existed, they were imperial in content), but in its success as a provider of goods and services. In the absence of foreign threats and military involvement, but in the face of strong cultural and geographic divisions, the federal government was pre-eminently a political creation. This was the chief reason for the perennial concern about the health of political parties and their organization. With its requirement to articulate in domestic terms the basis of the federal bargain, constitutional reform offered fewer gains to the national government, whose status vis-à-vis the provinces was secure within the imperial framework, than it did to the provinces, whose relationship to Ottawa had evolved in practice from one of hierarchy in the nineteenth century to one of equality in the twentieth. Constitutional reforms required that Parliament acknowledge limits on its power where none had been acknowledged before. This happened in 1949, when a limited domestic amending formula withdrew "certain

defined classes of matters from [Parliament's] competence,"<sup>35</sup> and again, in 1982, when Parliament relinquished additional power to the provinces with the patriation of the *Constitution Act* (for example, limited indirect taxation). Constitutional debate has roused the judiciary as arbiter of the respective orders of government and thus restrained Parliament in the exercise of its previously broad powers over constitutional change (for example, the reference cases of 1979 and 1981, in which the Supreme Court advised that Parliament might not act without provincial participation when reforming the composition of the Senate or patriating the *Constitution Act*).<sup>36</sup>

Although it took decades of debate for the constitution to be severed from its imperial source, its transplantation in Canadian soil is proving to be almost as protracted, and for the same reasons. The provinces flourished under imperial suzerainty. In the absence of normative reasons for the national state in 1867 and in the absence of agreement on normative ends today, the provinces possess a historic legitimacy which the federal government finds difficult to counter effectively. Monarchical institutions in the provinces made decentralization a practicable alternative in the face of weak federalist community standards.

### Empire and Society

Although it is impossible to state with certainty, it is reasonable to believe that the imperial influence on Canadian federalism would have disappeared long before it did had the British influence on Canadian society not persisted for so long. It is impossible to give an exact date when that societal influence ceased, but by 1960 it had evaporated. Paradoxically, the sources of that influence, its pervasiveness, the course of its evolution and then disappearance have never been fully examined in the published literature. Carl Berger's work, *The Sense of Power: Studies in the Ideas of Canadian Imperialism, 1867-1914*,<sup>37</sup> has no counterpart for the next half-century. The Royal Commission on Bilingualism and Biculturalism, whose terms of reference spoke of "two founding peoples" (that is, Canadians of British and French origins) but who eventually produced a volume devoted to *The Cultural Contribution of the Other Ethnic Groups* (1970), made no comparable study of the British influence in Canada.

This is unfortunate, for it is impossible to know without study what lies behind the façade of British institutions and practices that remain evident in Canadian life. To what extent is the façade a mask disguising

35 F. R. Scott, "The British North America (no. 2) Act," in Scott, *Essays*, 205.

36 Senate Reference, I (1979) 102 D.L.R. (3d); Constitution of Canada Reference, I (1981) 125 D.L.R. (3d).

37 Carl Berger, *The Sense of Power: Studies in the Ideas of Canadian Imperialism, 1867-1914* (Toronto: University of Toronto Press, 1970).

distinctively Canadian phenomena? This question is particularly pertinent in the study of political institutions, such as legislatures, where traditions die hard but where symbols may have an elusive meaning. In a recent paper on the National Assembly of Quebec, Louis Massicotte has noted the utility of such imprecision:

Il est vrai que l'inspiration britannique fut très forte dans l'aménagement du fonctionnement de l'Assemblée québécoise. La procédure, la terminologie, le décorum, les coutumes, jusqu'à il y a à peine vingt ans, trahissaient aisément leurs origines. Dans cet emprunt entraient souvent, paradoxalement, une volonté de revalorisation du gouvernement du Québec. La transposition de cérémonies solennelles soulignait l'importance de l'ordre provincial de gouvernement, sa volonté d'être plus qu'un gros conseil municipal. Bien des rites qui suscitèrent l'hilarité à compter des années 60 trouvaient leur source dans le souci d'affirmer le statu de l'ordre provincial de gouvernement.<sup>38</sup>

British roots ran deep in all legislatures and jurisdictions, as Stephen Leacock observed half a century ago: "The government and its parties, liberalism and conservatism, all that was British till the United Farmers' idea came from the States, and Social Credit from Scotland."<sup>39</sup>

In this regard, and until as recently as 25 years ago, the legislatures reflected the dominant values of the society at large. No biography or reminiscence of Canadian life failed to remark on the British fact. To some degree the distinctive traditions of French-speaking Canadians set them apart, though not as far as might be presumed. For the rest, the appeal to King and Empire (the last depicted on maps and in patriotic songs as stretching from palm to pine), persisted notwithstanding expressions of Canadian national sentiment during and following the world wars. The composition of Canada's population explained the strength of the sentiment. At only one census after 1911 did the immigrant proportion of Canada's population fall below 15 per cent of the total population, while at every census since Confederation, until 1971, in excess of 34 per cent of that immigrant population was classified as British. However, by 1981 the proportion of British immigrants in Canada had dropped to 15.5 per cent of the total immigrant population. Rephrased, today one in six of Canada's immigrant population is British in origin, compared to one in three 30 years ago.

Until mid-twentieth century Canadian loyalties remained diffuse, and if not deterritorialized, then at least partially so. Internal harmony was achieved through an external appeal. The change in attitude came as

38 Louis Massicotte, "L'Assemblée Nationale du Québec: La Synthèse Réussie de la Culture Française et du Parlementarisme Britannique," paper presented to Conference on the Parliamentary Tradition in Canada, Quebec City, 1987, 9-10.

39 Stephen Leacock, *My Discovery of the West: A Discussion of East and West in Canada* (Boston: Hale, Cushman and Flint, 1937), 162. Two decades later, J. A. Laponce noted that "only two minor terms . . . have come from the United States: Progressive and Democrat" ("Canadian Party Labels: An Essay in Semantics and Anthropology," this JOURNAL 2 [1969], 149.

much from Britain's own loss of imperial direction after 1945 as it did from any specific Canadian action. The Commonwealth offered no substitute for the emotional ties that underlay Canada's relationship with the mother country, while Britain gradually saw its economic future as lying with Europe. In the same period Canada's economic ties with the United States, especially in the form of US investment in Canada, increased markedly. As opposed to a transcontinental economy with overseas markets (grain, for example) that was horizontal and integrative, provincial resource development expanded to serve US markets, thus turning Canada's economy into a series of vertical and non-integrative sub-economies. Because the impact and benefits of foreign investment tended to be provincially specific, they reinforced through economics the political autonomy the provinces already enjoyed.

Later federal initiatives in the form of pan-Canadian policies, aimed at blunting the rise of Quebec nationalism (for example, language policy and the Charter) or at deflecting criticism of those initiatives (for example, multicultural policies) have yet to offer an alternative set of national norms to that once provided by imperial loyalty). The opposite, it could be argued, has occurred with federal bilingualism's contribution to a rise in provincial unilingual sentiment (for example, Manitoba in 1985, Saskatchewan, Alberta and Quebec in 1988). Formerly, an immigration policy that preferred British (or at least northern European) settlers had complemented the country's imperial cultural norms and thus fortified national cohesion. Today, a different policy strengthens provincial distinctiveness in two ways: either through specific agreements between Ottawa and individual provinces on the numbers and source of immigrants encouraged to settle in a province or, more forcefully, through the gravitational pull of ethnically heterogeneous immigrants to a few large cities. According to the 1986 Census, over one-half of Canada's current immigrant population resides in Ontario, the majority in metropolitan Toronto. One-quarter of Ontario's population of nine million people is composed of immigrants; less than 2 per cent of Newfoundland's population is foreign-born.

Demographic change is not unique to Canada, although Canada is unusual in the large percentage of its population born outside its boundaries. What is striking is the change in the origins of its immigrants and the contrasting effect this alteration has had on Canadian society: formerly, immigration reinforced the historic imperial traditions of the country; in the last two decades and in conformity with national policies, it has diluted these traditions, though with a differential impact on the 10 provinces.

## Conclusion

The historian George W. Brown once spoke of the “paradox Canadians took for granted,” which is that “Canada gained self-government and an empire because she was herself part of an empire.”<sup>40</sup> If this was an accurate assertion in 1944 when he made the comment, no new evidence has come to light since then to refute it. In Canada, neither independence nor the West was won; each was given, if not freely, then after only a modicum of pressure or compensation. Imperial calculations determined the pace of Canadian political evolution just as they did the expansion of territory. And because Canadians never severed their ties with Britain, they never found it crucial to define themselves in a way which rendered them distinct from the mother country. On the contrary, and notwithstanding the adoption of a federal system of government in 1867, in the realm of politics they took as their model British forms and practices. For example, rather than rejecting the monarchy, colonial leaders once in control of the legislature seized the Crown’s prerogatives so as to centralize power in the hands of the political executive. In fact they went further, because those limitations on the executive’s power in Britain—the Lords and the King—which continued to be exerted in the nineteenth century, did not exist in Canada where upper chambers and governors had no independent authority.<sup>41</sup>

Arguably, however, those same institutions that provided balance to the British Constitution also helped unite British society. After Confederation, and as Canada grew into a transcontinental state, new instruments of national cohesion had to be created. Although useful in a country divided by language and religion, the Crown’s appeal was insufficient for this purpose. Instead, the federal government with its development policies and the two national parties with their prominent leaders filled the void, although never satisfactorily or permanently. Canada’s identity continued to elude those who perennially sought it.

The provinces were the true beneficiaries of imperialism, for although Canada’s federation was conceived as a highly centralized form of government, the provinces inherited cohesive societies that pre-dated Confederation and monarchical forms of government to give those societies institutional expression. Unlike the nation, the provinces have never suffered an identity crisis. Strong provincial leaders in command of autonomous instruments of power, and aided by the local unity that derives from periodic conflict with the federal government, have repeatedly demonstrated an initiative and resourcefulness in the pursuit

40 George W. Brown, “Canada in the Making,” *Canadian Historical Association Report* (1944), 14.

41 See Mark Sproule-Jones, “The Enduring Colony? Political Institutions and Political Science in Canada,” *Publius* 14 (1984) 93-108.

of politics and values which their counterparts in Ottawa could only envy. Provincial, not federal, governments have been the experimenters in health and welfare policies and in economic development enterprises. The end of empire and the confirmation of national autonomy did not alter this characteristic of Canadian federalism; in the last 30 years federal cultural and economic policies have reinforced provincial distinctiveness.

But, one might ask, why did decentralized federalism not occur in Australia, the other parliamentary, federal Dominion subject to imperial influences similar to those in Canada? No short reply is possible, although any answer must acknowledge the interaction of institutions, albeit comparable to Canada's, with a colonial experience substantially different. It was an experience which, because of traditions of "centralized paternalism," "collectivism," the predominance of "a mother community" (New South Wales) and a sense of geographic unity and uniqueness—"a continent for a nation, and a nation for a continent"—gave rise to "a nascent sentiment of Australian nationality" even before 1901.<sup>42</sup> In this respect, Australia's experience paralleled that of the United States where, Samuel Beer says, "the federalism [of the Founding Fathers] presuppose[d] their nationalism."<sup>43</sup> But, again, in this respect, the experiences of Australia and the United States are in contrast to those of Canada, where nation-building represents a triumph of imagination over geography and where always there is the need to distinguish the northern half of the continent from North America's dominant power, the United States.

When the United States broke away from the British Empire, it turned its back on imperialism, defined itself as distinct and consciously set itself on a separate course of development. Canada did none of these. When the United States re-entered world politics, and then when it became a super-power with imperial-like responsibilities, its external obligations reinforced a constitutional arrangement of power which for domestic reasons had elevated the central government over the states. The effect of imperialism in Canada was to blunt the original domestic accord in favour of a strong national government, a development imperialism's decline has not altered. Because Canada was never the centre of the empire of which it was a part, the effect of empire was centrifugal, dispersing power and then reinforcing that dispersal. This was not the experience of the United States.

Convergence in United States and Canadian experience, which might be assumed to occur through sharing the federal principle, is fictitious. No explanatory insight comes from knowing that both

42 Alexander Brady, *Democracy in the Dominions: A Comparative Study of Institutions* (3rd ed.; Toronto: University of Toronto Press, 1958), 133, 150.

43 Beer, "Federalism, Nationalism and Democracy in America," 12.

countries are federations. A survey of the federal literature in the two countries confirms a contrast in approaches to the study of the subject. In the United States, as one scholar has written, "American federalism can be thought of as involving a continuum between . . . two positions [state-focussed and nation-focussed] with the movement along the continuum strongly influenced by ideological changes."<sup>44</sup> By contrast, in Canada federalism is viewed as an instrument to achieve normative ends. Federalism matters in Canada because choices have yet to be made about the purposes it is to serve. Until this question is resolved, discussion over means to accomplish ends, which to an outsider at least appears to be the force that drives federal debate in the United States, remains of secondary importance. That Canada was part of an empire and is still a monarchy helps explain the country's current condition and this contrast with its neighbour.

44 Richard P. Nathan, "The Role of the States in American Federalism," paper presented to the annual meeting of the American Political Science Association, 1987, 17.