

The Process of Constitutional Amendment for Canada

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I. Introduction.

In 1967, Canada completes her first century as a federal country under the *British North America Act*. Also, at this particular time, Canadians find themselves urgently considering and discussing whether or not important changes should now be made in our federal constitution, that constitution having served us so far almost without substantial amendment. The main pressure for change comes from claims for better constitutional recognition of the French fact in Canadian life, both within and beyond the boundaries of the Province of Quebec. Among other things, this raises questions of the methods of constitutional change in a federal country which accordingly now require our attention in Canada more than ever before. This paper expresses personal comment, opinion and analysis of the author concerning the central issues of method in constitutional change as they now confront us. Do we now bring the federal constitution home to Canada and, if so, on what terms as to domestic control of change or amendment?

It appeared quite recently that this question was settled. A complete set of domestic constitutional amending procedures was agreed upon at a Federal-Provincial Conference of the Prime Minister of Canada and the Premiers of the Provinces on October 14, 1964, as embodied in the text of a bill entitled "An Act to provide for the amendment in Canada of the Constitution of Canada." This was popularly known as the Fulton-Favreau Formula, being named for the two Federal Ministers of Justice primarily responsible for negotiating its final form. In February, 1965, a White Paper on "The Amendment of the Constitution of Canada" was issued under the auspices of the Honourable Guy Favreau, then Federal Minister of Justice.¹ This document set forth the history and present position respecting amendment, the story of the development of the Fulton-Favreau Formula and an analysis of the meaning of the Formula. Nevertheless second thoughts set in, primarily, but not only, in the

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¹ (1965) Queen's Printer, Ottawa, hereinafter cited as the White Paper. The full text of the Fulton-Favreau Bill or Formula is given in Appendix 3 starting at page 110.

Province of Quebec, and the final agreement of the Lesage Government and the Legislature of Quebec was not forthcoming as expected. Then in June of 1966 the Lesage Government was defeated by the National Union Party of Daniel Johnson, which had been explicitly opposing the Fulton-Favreau Formula. With the Johnson Government in power in Quebec, it is now clear that the whole problem of patriation and amendment of the Canadian Constitution is open for review once more.

In any event, the White Paper of 1965 is a full and careful historical document the text of which was accepted as accurate by the Federal and Provincial Governments before it was published. There is no point in recapitulating here what has been well covered in the White Paper. Accordingly, in what follows I assume a knowledge of the main elements of the White Paper and of the chief features of the proposed set of procedures for amendment known as the Fulton-Favreau Formula.

II. The Constitution and the Technical System of the Fulton-Favreau Formula.

About the first thing to be done if one is to consider methods of amending the constitution is simply to define the meaning of the category 'constitution' or 'constitutional law'. All law flows from or is part of the constitution, so that there is a sense in which all laws are constitutional laws, finding their legitimate ancestry proximately or remotely in what Professor Hans Kelsen called the Basic Norm.² Obviously one cannot subject all legal change to special amending procedures, so that more precise and discriminating definitions of the content of the 'constitution' are necessary. An excellent short definition is that of Sir Ivor Jennings,³ who said that the word 'constitution' in its more precise sense "means the document in which are set out the rules governing the composition, powers and methods of operation of the main institutions of government, and the general principles applicable to their relations to the citizens." His example was the Constitution of the Irish Republic. In Canada, we have to think in terms of many statutory documents and as well of appropriate parts of the historically received English common law concerning the Crown. Nevertheless, I suggest that the sort of things we consider to be peculiarly constitutional, whatever their respective forms, are those described by Sir Ivor Jennings. And, of course, not all these things need to be subjected to special legislative procedures.

² Hans Kelsen, *General Theory of Law and State* (1949) chapter X.

³ Sir W. Ivor Jennings, *The Law and the Constitution*, 5th edition (1959), p. 33.

The Fulton-Favreau Formula has to face this many-sided problem of definition, and does it very well. It employs the general phrase 'the Constitution of Canada', and then proceeds to give this further definition in two ways: by examples in Section 11 and by spelling out sub-divisions of constitutional matters in Sections 2 to 8. Section 11 reads as follows:

Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

- (a) the British North America Acts, 1867 to 1964;
- (b) the Manitoba Act, 1870;
- (c) the Parliament of Canada Act, 1875;
- (d) the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2;
- (e) the Alberta Act;
- (f) the Saskatchewan Act;
- (g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and
- (h) this Act.

This seems to suggest the Jennings concept of the word 'constitution', the examples giving some precision of definition without restriction to the sort of thing exemplified.

In addition, as indicated, Sections 2 to 8 of the Formula spell out more precisely defined sub-divisions of things constitutional, including, it should be noted, the separate constitutions of the respective provinces. In this way different types of constitutional change are assigned to different amending procedures, as deemed appropriate. For example, amendments affecting "the powers of a province to make laws" would require a statute of the Parliament of Canada and the concurrence of the legislatures of all the provinces.⁴ Thus a requirement for unanimity would be imposed respecting the whole of the federal distribution of legislative powers. On the other hand, a statute of the Parliament of Canada having the concurrence of "the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada" was thought to be enough to effect change in "the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada."⁵ Then, as a final example, when it came to amending the constitution of a province, "except as regards the office of Lieutenant-Governor", the Formula provides that a simple statute of the provincial legislature concerned would be effective (as indeed it has been since 1867).⁶ Thus, for different sub-divisions of constitutional

⁴ Sections 1 and 2 of the Fulton-Favreau Formula.

⁵ Sections 1, 5 and 6(g) of the Fulton-Favreau Formula.

⁶ Section 7 of the Fulton-Favreau Formula.

matters we go all the way from extraordinary and rigid to ordinary and flexible processes of change in the proposals made.

The main point to be grasped here is that the technical scheme of Part I of the Fulton-Favreau Formula is very ingenious and very good. Discriminating between different types of constitutional matters for purposes of assigning them to different modes of amendment in some way much like this is essential for any complete scheme of constitutional amendment. Moreover, the careful reader of the Formula will note that this is done there in such a way as to indicate the priorities between the several clauses in Part I in the event of overlapping of the concepts they contain. The realities and difficulties of later interpretation have been carefully kept in mind. In any event, to continue with the main point, there will always be some things so basic and so much the concern of all that only unanimity is appropriate to effect change. Also there will always be some other things less basic but still very important and affecting all, so that something like the rule of two-thirds and fifty percent is appropriate as an extraordinary process for change. And of course there will be still other constitutional matters that are appropriate for change within a single province simply by a statute of that province, or at the federal level by a simple statute of Parliament. These then are examples of discriminations made in Part I of the Formula, and, as a matter of technical system and good drafting, a scheme with this multiplicity of discriminations seems almost inevitable. It seems to arise almost necessarily out of the history of our constitutional life in Canada. As the White Paper shows, this range of distinctions has been developed in the course of several official constitutional enquiries and conferences over a long period of years.⁷

It must be remembered of course that no draftsman can ever make everything in a complex procedural statute absolutely clear. Not everything is clear about the interpretation of the Fulton-Favreau Formula, as some critics of it have shown.⁸ But every draftsman

⁷ The White Paper, chapters II & III.

⁸ Not all these arguments are convincing. For example, Section 2 of the Formula says that "No law... affecting any provision of the Constitution of Canada relating to... the powers of a legislature of a province to make laws... shall come into force unless it is concurred in by the legislatures of all the provinces". It has been argued that this means provincial legislative powers cannot be reduced without the unanimous concurrence of the provincial legislatures with the statute of Parliament concerned, whereas if provincial powers were being increased (and *ipso facto* federal powers reduced) this could be done by the concurrence with Parliament of the legislatures of only two-thirds of the provinces having at least fifty per cent of the country's population. The key word here is 'affecting', and I can see no reason for restricting the meaning of 'affecting' to 'reducing'. The

reaches the point in such cases where the resolution of residual uncertainties is best left to be worked out by interpretation in the courts, and, in my view, so far as technical clarity is concerned, that point has pretty well been reached in the 1964 Formula.

Nevertheless, in praising the system and technique of the drafting of Part I of the Fulton-Favreau Formula, I am not necessarily upholding the substance of what the Formula does in every respect. I would agree in principle, for example, that too many constitutional matters are under the rule of unanimity and too few under the more flexible rule of consent by two-thirds of the provinces comprising fifty per cent of the country's population. Whether one should accept the present proposed Formula in spite of this imperfection, because there is some greater good to be served by so doing, is a question to be discussed in Part III of this essay. The point now to be made is that, if we do decide to change the substance of what Part I of the Formula proposes, we should not throw out the technical baby with the substantial bath water. Those who say that Part I of the Fulton-Favreau Formula is an unnecessarily complex piece of drafting seem not to have understood that the complications genuinely reflect the difficulties of the problems being confronted. The meaning of the category 'constitutional law' is very complex and wide-ranging as a matter of systematic definition, hence any comprehensive scheme of amendment must have an appropriate range of distinctions linked to different procedures, if in this respect the law of the constitution is to meet the needs of the country. In other words, a scheme that differs in important ways in substance from Part I of the Fulton-Favreau Formula is likely still to be just as complex in form. Indeed, if the new draftsman is as wise as the old one, the form will be much the same.

Earlier I stated the view that the Fulton-Favreau Formula puts too many constitutional matters under the rule of unanimity but that perhaps this imperfection should be accepted if some greater good can be served thereby. This relates to bringing the Canadian Constitution home, the subject of the next part of this essay.

natural meaning of the word 'affecting' is 'making any change'. The corresponding word in the official French version is 'touchant', and the same comment applies. Personally I think the Formula is clear to the effect that, whether one is increasing federal legislative powers at the expense of the provinces, or increasing provincial legislative powers at the expense of the federal authority, there is only one way to do it. The rule of unanimity in Section 2 of the Formula must be followed. Either way you are 'affecting' provincial legislative powers. In any event, there may be re-arrangement of powers between the federal and provincial levels of government that could not easily be classified as increases for one or reductions for the other.

III. The Present Position respecting Amendment of the Constitution of Canada: How to Bring the Constitution Home.

The important part of our constitution respecting current issues of amendment and patriation is given in certain critical sections of the *B.N.A. Acts*.⁹ The problems involved may be adequately considered if discussion here is confined to two types of constitutional matters; (1) the distribution of legislative powers between the Parliament of Canada and the legislatures of the provinces, and (2) some elements of the structure or composition of the Parliament of Canada. In these respects the old supremacy of the Imperial Parliament at Westminster has been formally preserved by Section 7 of the *Statute of Westminster, 1931*,¹⁰ though the same statute declared the abolition of that supremacy in all other respects for Canada. And even regarding the reserved matters of amendment, the preamble to the *Statute of Westminster* and the declarations by Imperial Conferences to which it refers plainly imply that complete autonomy was to be Canada's for the asking, if and when the various governments of federated Canada could agree among themselves on the necessary domestic procedures for such amendments. There has not yet been agreement, so we must ask — What is the present position?

After reviewing the procedures leading to amendments of the *B.N.A. Act* in the period 1867-1964, the White Paper summarizes the basic constitutional position in four propositions which may be briefly expressed as follows.¹¹

(1) Although an Act of the United Kingdom Parliament is necessary to amend the *B.N.A. Act*, "such action is taken only upon formal request from Canada. No Act of the United Kingdom Parliament affecting Canada is therefore passed unless it is requested and consented to by Canada. Conversely, every amendment requested by Canada in the past has been enacted."

(2) The request must take the form of a joint address of the Canadian House of Commons and Senate to the Crown praying that the appropriate measure be laid before the Parliament of the United Kingdom.

(3) "[T]he Canadian Parliament will not request an amendment directly affecting federal-provincial relationships without prior consultation and agreement with the provinces."

⁹ See the White Paper, Appendix 1, starting at page 54 for 'A Consolidation of The British North America Acts, 1867 to 1964'.

¹⁰ 22 George V, Chapter 4 (U.K.).

¹¹ The White Paper, pp. 15-16.

(4) “[N]o amendment to Canada’s Constitution will be made by the British Parliament merely upon the request of a Canadian province.” The British Government will not move the British Parliament to act except on a request originating with the Federal Government of Canada.

Such is the existing method of constitutional amendment for matters still specially entrenched in the *B.N.A. Acts*. Thus we see that our present basic law of amendment has been made by long-standing official precedent, custom and practice modifying the constitutional law of the old British Empire in the manner just indicated. Anyone who doubts the validity and force of such custom, convention and practice should read again the preamble to the *Statute of Westminster, 1931*, which makes it clear that even that statute purports to be declaratory of a basic ‘constitutional position’ already ‘estab’ished’ by other means than statute — e.g. the agreed declarations or conventions of Imperial Conferences.

In any event, the result is that, in critical respects, amendment of the Canadian Constitution in the matters indicated consists in some steps that must be taken in Canada followed by others that must be taken in the United Kingdom. While the latter are purely formal now, nevertheless they represent a respect in which the Canadian Constitution is not now and never has been at home. Bringing it home then means to make into law a set of amending procedures that can be carried out in Canada entirely by Canadian governments, legislative bodies, or electorates, acting severally or in combinations of some kind. If we are to have legitimate as distinct from revolutionary change, then the present method of amendment focussed on London should be followed one last time to institute a new domestic method for amendment focussed on Canada. Rules made by custom and convention seem already to have done as much as they can do to bring the Canadian Constitution home to Canada. What we now need is to acquire at one stroke a complete and precise set of domestic procedures for amending the Canadian Constitution. The slow and piece-meal development characteristic of custom and precedent as law-making processes is not now appropriate for this task. The only proper and legitimate way to obtain the complex scheme needed in one operation at the moment of our own choosing is by a statute of the United Kingdom Parliament enacted in response to the existing request and consent rules as the last statute for Canada of that Parliament. This would in effect repeal Section 7 of the *Statute of Westminster* and make Canadian legislative autonomy formally complete in the last area where up to this point it has been formally reserved. This is what successive Federal Governments at Ottawa

have attempted to do by agreement with the provinces. This is what the Pearson Government has attempted to do with the Fulton-Favreau Formula. It should be noted that Section 10 of the Formula, the so-called renunciation clause (from the point of view of the Parliament of the United Kingdom), would terminate for all purposes the request and consent procedure as a means of putting British statutes into force in Canada.

This brings me to my basic point about the merit of the Fulton-Favreau Formula *as a means of bringing the constitution home*. It is true that the Formula is rigid in that it applies the rule of unanimity to the whole range of the distribution of legislative powers between Parliament and the provincial legislatures. Nevertheless, we are under the rule of unanimity now in this respect by virtue of the existing request and consent rules. All we have to do to bring the constitution home is to substitute a domestic rule of unanimity for one focussed on London. If we are stuck with the rule of unanimity anyway for the present, and apparently we are, why not do this? It is embarrassing for the British and humiliating for Canadians to maintain any longer these obsolete and incongruous formal steps of requesting the British Parliament to act for us. Accordingly, my view is that we should use the Fulton-Favreau Formula as a means of bringing the constitution home. Then later, under the Formula, if we can get unanimous agreement, we can modify the scope of the Formula's rule of unanimity and place more matters under the rule permitting change by the concurrence with Parliament of at least two-thirds of the provinces comprising at least fifty per cent of the country's population.

The opponents of the Fulton-Favreau Formula as a means of bringing the constitution home make strange companions. On the one hand is a group who favour stronger powers at the centre for Parliament and who fear that the rule of unanimity would prevent this being brought about by amendment now or in the future even though the need for it was very great. On the other hand is a group, particularly strong in the Province of Quebec, who want greater powers assigned to the provinces, or at least to the Province of Quebec, and who fear that the rule of unanimity would prevent such changes by amendment now or in the future. But, the point is that we are under the rule of unanimity anyway, and neither of these groups is worse off if the requirement is embodied in a domestic procedure rather than in one that takes us to London.

With all due respect to both groups of opponents of the Fulton-Favreau Formula, it does seem that some of them must be harbouring the hope that there might be circumstances in which they could

persuade the British Government and Parliament to amend the Constitution of Canada respecting the distribution of legislative powers in disregard of the convention requiring unanimous consent of the provinces before the Canadian Parliament requests such an amendment. I do not think the present convention permits the British Government and British Parliament to override any provincial dissent in this type of constitutional matter. In the face of any provincial dissent, I think the present convention requires that the British Government and Parliament do nothing, simply regarding the request from the Canadian Parliament in these circumstances as improper, that is as unconstitutional or illegal. It would be an intolerable reversion to colonial status to suggest that the British Government or Parliament could be or should be involved in any substantial way in decision-making as to whether or not to modify the federal distribution of legislative powers in Canada. If they were asked to override provincial dissents in this type of matter, they would be substantially involved. To repeat, we should use the Fulton-Favreau Formula *as the means to bring the constitution home*. Once we have it home on these terms, the Formula itself contains the procedures whereby its own undue rigidity could be modified if Canadians themselves could reach the point where the Parliament of Canada and the legislatures of the provinces were agreed about how to do it. If we cannot reach that point, we are going to have to rest upon the status quo anyway.

We may turn now to another point that should be made concerning the merit of the Fulton-Favreau Formula. So far, the argument has proceeded in relation to amendments or proposed amendments to the federal distribution of legislative powers. But there is another important type of amendment that has figured in federal-provincial relations. I refer to the composition of Parliament as an institution — as our central legislative body. For example an amendment of the *B.N.A. Act* was required to re-adjust representation in the House of Commons, that is to change the system whereby each province was given its quota of members in proportion to its population.¹² Between 1867 and 1949, such amendments were secured by an Act of the British Parliament in response to a joint address from the Canadian Parliament. As the convention developed in this class of matter, provincial consents were not necessary and the provinces were not consulted. In effect, then, a Federal Government at Ottawa could obtain this type of amendment by its own decisions alone. In 1949, without consulting the provinces, the Federal Government moved the

¹² The White Paper, p. 13, items (8) and (9).

Parliament of Canada to request an amendment of the *B.N.A. Act* which provided in effect that, in all cases appropriate for use of the joint address procedure without provincial consent, changes in the Constitution of Canada could be made by an ordinary statute of the Parliament of Canada. The British Parliament passed the amendment as requested,¹³ and a new class (1) of Section 91 of the *B.N.A. Act* was thereby enacted. It states that the legislative authority of the Parliament of Canada includes:

The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

An example of the use of this new power occurred in 1952 when the Parliament of Canada enacted a statute providing a new section 51 of the *B.N.A. Act* respecting the provincial quotas by population for members in the House of Commons.¹⁴ More than one provincial government had protested that the 1949 amendment went too far and that the provinces did have a real interest in the composition of the House of Commons and matters of like nature. Hence the provinces contended that the power of change should not rest with the Canadian Parliament alone. Prime Minister St. Laurent promised that, if the federal and provincial governments could agree on over-all domestic amending procedures, federal powers in this respect could be re-written somewhat in an effort to meet the objections.¹⁵ This was actually accomplished some years later in the Fulton-Favreau Formula produced by the Federal-Provincial Conferences of 1964. Section 12 of Part II of the Formula would repeal class (1) of Section 91 of the *B.N.A. Act*, as enacted in 1949, and substitute for it Section 6 of Part I of the Formula. The latter section waters down very considerably the powers given the Parliament of Canada in 1949. For example, a change in "the principles of proportionate

¹³ See footnote (9).

¹⁴ The *B.N.A. Act, 1952*, R.S.C. 1952, c. 304.

¹⁵ The White Paper, p. 25.

representation of the provinces in the House of Commons" would require under the Formula a statute of the Parliament of Canada followed by the concurrence of at least two-thirds of the provinces having at least fifty per cent of the population of the country. As stated earlier, the 1949 statutory powers of the Canadian Parliament were essentially the same as those the Canadian Parliament had between 1867 and 1949 by virtue of joint addresses not requiring consultation with the provinces. The substance of power and decision-making did not change in 1949, only the form of its exercise. Hence Section 6 of the 1964 Formula does embody a reduction of federal power in relation to 1867 and 1949. It represents a major concession by the Federal Government to the provinces, no doubt in an effort to win their agreement to the over-all Formula. The Federal Government gets little credit for this from anyone, when in fact it deserves a great deal of credit for seeking to meet provincial complaints in this reasonable way.

Strangely enough though, Section 9 of Part I of the 1964 Formula seems designed to obscure what is really happening in this respect. Section 9 says:

Nothing in this Part diminishes any power of the Parliament of Canada or of the legislature of a province, existing at the coming into force of this Act, to make laws in relation to any matter.

This is technically true of Part I of the Formula, but is not true of the over-all effect of the Formula as soon as one reads Section 12, the first section of Part. II. (Section 12 repeals class (1) of Section 91 of the *B.N.A. Act* as enacted in 1949.) The White Paper carefully refrains from explaining that the combined effect of Sections 6 and 12 of the Formula is to negate section 9 of the Formula in this respect. Perhaps section 9 of the Formula is an attempt to placate the more extreme partisans of strong central power. If so, it doesn't quite come off. Anyway, Section 9 should simply be dropped from the Formula and Section 12 should be included in Part I where it belongs.

To recapitulate then, I am in favour of enactment of the Fulton-Favreau Formula now as the best means to bring the Constitution of Canada home. I am not opposed to considerable change in the substance of the Formula either now or later, as I have indicated, provided the necessary unanimous consent can be obtained now or later. Nevertheless, there is no prejudice to anyone in using the Formula as it stands as the means to bring the constitution home. This is clearly the best way, but it is not perhaps the only way in theory. Theoretically the device of a special constituent assembly could be used to bring the constitution home, and this will now be briefly examined.

A constituent assembly, as I understand it, would be an extraordinary representative body set up by the constitution and itself authorized to change the constitution by meeting prescribed conditions as to procedure and voting. Those who advocate such an assembly usually have in mind re-writing the Constitution of Canada in a major way. No doubt such a body could in theory be instituted for Canada if it were authorized by a statute of the British Parliament passed in response to a joint address of the Parliament of Canada in which all the provinces had concurred. This would be the only legitimate or constitutional way such an extraordinary body could be set up in Canada. If this were to be done, there would have to be prior federal-provincial agreement on a wide range of things. A number of questions would have to be answered about membership of the proposed constituent assembly, about how it was to proceed and what it could do. The following list of such questions is suggestive.

- (1) Who would select and accredit delegates?
- (2) Who would instruct delegates — what discretion would they have?
- (3) What kind of a majority would be required to pass or adopt a proposed new constitutional clause at the assembly?
- (4) Who would be bound by the passing of a clause in the assembly sessions?
- (5) What ratifications, if any, would be required for clauses passed in the assembly sessions?
- (6) Would a dissenting minority be bound by majority votes or majority ratifications?

Simply listing these problems means to me that a constituent assembly is simply not a practical possibility at this time. Nor would it be desirable if it were practical. We do not need a major re-writing of the Canadian Constitution at all. The existing constitution, as developed by judicial precedent and official practice, has served Canadians well for one hundred years and does not need wholesale change to continue to serve us well. On the other hand we must always be ready to study the need for certain particular changes by amendment here and there to meet the needs of new conditions. If a proper case for such change can be made in some specific respect, then we should give that change effect through the operation of a permanent and completely Canadian amending procedure like the Fulton-Favreau Formula — a procedure that arises naturally out of our history and traditions, and which uses our existing legislative and executive institutions of government. Public debate and discussion can take place in legislative and parliamentary sessions, before parliamentary

committees, and in other ways congenial to our great inheritance of English parliamentary institutions and responsible government. There are for instance many types of conferences that could be held on constitutional issues. *These would not of course be constituent assemblies*, but rather gatherings designed to inform, to educate, to advise or to make recommendations. They would be concerned with helping to form public opinion and to reach significant consensus among officials and citizens about specific items of desirable constitutional change. I agree with what the Prime Minister of Ontario, the Honourable Mr. Robarts, said recently on this subject in a public address to a group of business men in Montreal:¹⁶

It also is time in our country that we sat down and examined, apart from the fiscal problems which have dominated discussions in recent years, some of the constitutional difficulties that arise from time to time. I have suggested a series of conferences at which we could meet together to discover and discuss areas of agreement and disagreement, of accommodation and of compromise, Province to Province. We would discuss not only constitutional questions but would explore the cultural and social problems of our changing world. I believe that much can be done to relieve the stresses and strains which have affected Canada without necessarily changing the *British North America Act*. If it is found that some sections should be changed, then let us change them; where no change is either desirable or necessary, let us leave it unaltered. I see no need for a new Constitution, only the possibility of some adjustments to a Constitution that can readily be amended to serve us well in the future.

I believe this pragmatic approach is the right one, and indeed the only practical one. This is the way to maintain a proper balance from time to time between constitutional stability and constitutional change, taking due account of the need for central power on the one hand and provincial autonomy on the other. So far as these adjustments call for specific constitutional amendments from time to time, we should be able to look to purely Canadian procedures appropriate for the purpose.

¹⁶ "Remarks by The Honourable John Robarts, Prime Minister of Ontario, To The Advertising And Sales Executives' Club of Montreal, Montreal, Wednesday, November 23rd, 1966." (Mimeographed text as released by the office of the Prime Minister of Ontario).