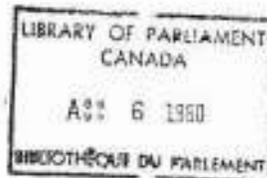


MEETING OF THE CONTINUING COMMITTEE
OF MINISTERS ON THE CONSTITUTION

Powers Over the Economy

Federal



Montreal, Quebec
July 8-11, 1980

July 4, 1980

POWERS OVER THE ECONOMY

A Framework for Discussion

The exercise of many of the legislative powers in the B.N.A. Act affects the economy directly or indirectly. Some do very specifically, for example, legislation in relation to "banking" and "currency and coinage" in s. 91 and in relation to "borrowing on the public credit of the province" in s. 92. The exercise of others often does so more indirectly, for example, legislation pursuant to such broader heads of jurisdiction as "the regulation of trade and commerce" in s. 91 and "property and civil rights" in s. 92. There are of course, in addition, the powers of taxation and the implicit general spending powers of both orders of government which are used for economic purposes.

For purposes of constitutional review, it might be useful to divide the item "Powers over the Economy" into five broad categories. These are first the maintenance of an economic union in Canada, second the redistribution of incomes among persons and regions, third the promotion and influencing of economic development, fourth the stabilization of the economy as a whole, and fifth the conduct of international economic relations. For the current stage of the constitutional review, it has been suggested that the maintenance of the Canadian economic union should be the focus of attention.

THE ECONOMIC UNION

The distribution of powers and other provisions of the B.N.A. Act were intended, among other things, to establish and maintain an economic union in Canada. An "economic union" means an area within which goods and services can be bought and sold between its various parts without being subject to customs duties or other barriers, and within which there are no legal or fiscal barriers to the movement of people or capital. The purpose of course is to create as big and as competitive a market as possible for our products and for the factors used in producing them. The bigger the market is, the more we can gain the advantages of large scale production, of specialization, of favourable locations and of competition, and therefore the more efficient our economy can be in meeting our own needs and in competing with others in export markets, and therefore the higher our standard of living can be. It is manifest from the terms of the B.N.A. Act itself, and from the history of its origins, that Canada was intended to be an economic union. Broadly speaking it is such a union now; but its maintenance is not adequately secured in the Constitution. Of course Canada is more than just an economic union, it is a country with more to bind it together than that, as is evident from what we do to help one another, about which more is said below.

One provision relevant to the creation of an economic union in Canada is section 121 of the B.N.A. Act. It prevents provinces from imposing customs duties on the products of other provinces. At the same time Parliament was given exclusive jurisdiction to establish a common external tariff by reason of its authority to raise money "by any mode or system of taxation". Another provision relevant to the creation of a Canadian economic union is s. 91 (2) which gives Parliament exclusive legislative jurisdiction over "the regulation of trade and commerce". This has been interpreted to mean essentially the regulation of interprovincial and international trade.

The fact that Parliament also has exclusive jurisdiction over currency, money and banking has helped to bring about an economic union with a single currency, an integrated banking system and in fact a good country-wide market in capital and credit, which is also closely integrated with the capital market of the United States. However, there are some aspects of the capital market that are subject to provincial jurisdiction, notably the issue of securities, the operation of trust and insurance companies and the laws governing most private pension plans. On the whole however, these provincial powers have not been used so far to restrict or divert seriously the free flow of capital between provinces. What has been more important in diverting capital flows from a purely market determined pattern has been fiscal action of one kind or another taken by both provincial and federal authorities, largely to encourage investment and economic growth in particular regions or areas.

As noted above, section 121 is the most explicit provision respecting the free flow of goods between provinces. It provides that: "All Articles of the Growth, Produce or Manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces". However, it has had very limited application, preventing only customs duties and not barriers created by the exercise of regulatory powers of governments or by the exercise of other fiscal powers. As such it creates a customs union rather than an economic union.

One question is whether section 121 should be extended and made more explicit in order to apply not only to "Articles" but also to services (e.g. the services of professional firms), to labour, and to capital and perhaps enterprises.

There is also the possibility of using the Charter of Rights to accomplish some part of this economic objective. In Section 8 of its Bill C-60 of 1978 the federal government proposed a right of mobility for every citizen of Canada that would contribute substantially to the strengthening of the common market for labour throughout Canada, and for professional services as well.

THE REDISTRIBUTION OF INCOME

A second broad category of purposes for which powers are used that affect the economy are those that involve the redistribution of income, both among regions and among individuals. Much of this redistribution is done by provinces within their own territory and often through their municipalities. Most of it now is done by Parliament. It has developed enormously over the fifty three years since the Old Age Pension Act of 1927, first under the compulsions of the depression, later under the post-war drive for social security and from the unconditional equalization grants that evolved out of the Tax Rental Agreements. The largest redistribution is made now by the Old Age Security Act, under which billions of dollars are transferred, but other major programs for persons include unemployment insurance, family allowances and social assistance under the Canada Assistance Plan. The largest redistribution among governments is the system of equalization grants, but there are other very large payments under Established Programs Financing, which have carried on, with less conditions attached, the support for health services and post-secondary education that were instituted in the fifties and sixties. At present there is in addition to these well established programs a very large redistribution involved in the program of oil import compensation payments which subsidizes consumers in Eastern Canada.

As regards constitutional powers, most of these large programs are carried on under the general spending power of Parliament. Old Age pensions are paid pursuant to section 94A of the B.N.A. Act, inserted originally in 1951. Unemployment Insurance is operated under heading 2A of Section 91, inserted in 1940 after earlier legislation had been held ultra vires.

These redistribution programs have made an enormous difference in the well being of the poor throughout Canada, and in the ability of the five Eastern Provinces and Manitoba and Saskatchewan to provide public services. They have underpinned the economies of the Atlantic Provinces in particular. The cost of these programs - the source of the income redistributed - has fallen on all Canadian taxpayers, in proportion to their federal taxes. On balance, in regional terms, it has transferred very large amounts from federal taxpayers in Ontario, B.C. and Alberta to those living in the other less favoured provinces and to their provincial governments.

ECONOMIC DEVELOPMENT

A third very broad category of purposes for which powers are used is economic development. Historically this began with immigration and settlement, transportation facilities and tariff measures. These were carried out by the federal government which had specific constitutional authority to deal with those matters. Later the provinces became more important, as roads replaced railways and as the society became urbanized and industrialized. During the twenties Ottawa was relatively quiescent, while governments in Ontario, Quebec and B.C. and other provinces too were more dynamic. The depression upset all that. Late in the thirties federal fiscal policy changed, more active programs of development began and then the war brought a new dynamism and confidence in Ottawa, which carried over to the 1950's, largely affecting the private sector through government support and legislation. By the sixties the provinces had recovered the initiative and secured the revenues to use their constitutional powers and their resources to lead in the provision of infrastructure and other action to promote economic development. Governments became increasingly concerned about the disparities in economic opportunities and the response was various federal and provincial programs to assist development in areas of slow growth. The programs of the Department of Regional Economic Development are one such response.

Since economic development itself encompasses so many processes and aspects it is hard to describe briefly the various types of measures used to promote it and the constitutional powers and responsibilities of the two orders of government in relation to it. Fundamentally, the provinces, with the ownership and management of public lands and resources, the control of education, including vocational education, the all embracing local and regional powers under "property and civil rights" and the jurisdiction over labour relations in most of industry and commerce, probably have more powers to promote and direct economic development than have the federal authorities. The latter of course have control over external trade policy, and monetary conditions both of which influence development, and traditionally federal governments have spent much more money on research and technological development and innovation than have the provinces. Both levels of government have been heavily involved in providing transportation facilities on which much expansion has depended.

The promotion and support of economic development in areas where it does not occur normally as a result of market forces involves of course some conflict between the objective of an effective economic union and the objective of reducing regional disparities in incomes and opportunities. While both levels of government share responsibilities in resolving this conflict of objectives, the problem is probably more sharply posed to the federal authorities who are responsible to the people of all regions and areas and must account to many of those on whom they levy taxes to support, disproportionately, the development of other areas. Moreover the federal government is the one primarily concerned for the country's balance of international payments and the external value of its currency, both of which depend on the competitive strength of Canadian industry which is affected by the diversion of development away from locations to which market forces would lead it.

ECONOMIC STABILITY

The fourth general purpose for which powers to affect the economy are required is to maintain economic stability. This includes notably maintaining a satisfactory degree of employment for our growing labour force, while avoiding intolerable or cumulative levels of inflation. This task has become much more difficult in the past dozen years than it used to be, not only in Canada but throughout the Western world. It requires the judicious use of fiscal measures and of monetary policy, along with other supporting programs to deal with labour market and industrial problems that inhibit the effective matching of production to aggregate demand. It is necessary to have regard as well to international markets and the constraints imposed by our balance of international payments.

The federal authorities have the principal constitutional powers, and the corresponding responsibility, for influencing the economy as a whole to achieve these broad objectives of economic stability. However, the provinces also have some powers that can be used to supplement the federal actions. Some of these provincial powers are important in carrying out the supporting programs in the labour market and industrial fields. In addition however, the larger provinces now have such substantial expenditures and revenues that they and their associated public utility corporations can by their fiscal policies have an important influence on the provincial economy and collectively on the Canadian economy as a whole. Moreover provinces and their corporate entities now have more of the type of capital expenditures that can be accelerated or retarded to offset cycles in the private sector than the Government of Canada. The White Paper on Employment and Income of 1945 had envisaged the use of capital expenditures for economic management. Because of the importance of the provinces in fiscal policy, cooperative arrangements have been made between Provincial and federal Ministers of Finance for regular consultations and shared analysis to make parallel policies possible, although that has not always been achieved.

Inflationary forces are by now so firmly and widely entrenched in the Canadian economy and in the economies of the main countries with which we trade that the fiscal and monetary measures to restrain inflation at times seem so costly in terms of their effects on production and employment that the question arises whether these basic policy instruments and the structural policies to support them should be accompanied for a period by legal controls over the rising levels of prices and incomes. The constitutional powers of Parliament, however, to judge from the mixed decisions of the Supreme Court in the Anti-Inflation Act reference, apparently only extend to enacting such controls if the situation reaches a recognizable emergency. Perhaps this is a good thing as it forces governments and others to face the fundamental issues involved in inflation. If however inflation resists determined efforts to contain it by the normal processes, the issue will again arise whether some cooperative action by both federal and provincial authorities can control it or whether Parliament has the powers in the circumstances, or should have, to introduce the controls necessary to deal with a worsening situation.

INTERNATIONAL ECONOMIC RELATIONS

The fifth field in which powers to affect the economy are necessary is that of international economic relations. Canada's economy is very dependent upon and affected by both trade and international capital flows. Since both the regulation of international trade and the setting of tariffs are exclusively in the jurisdiction of Parliament there is no doubt that there is extensive federal responsibility and powers in the trade field. The situation is similar in regard to international currency and financial transactions. Parliament has never lacked the power to legislate in regard to the currency and its value and use, or on international transactions between Canadian residents and others.

The provincial governments have of course had interests in international trade and investment, particularly in attracting investment to the province. These have normally been met either with the help of the regular Canadian diplomatic channels or through direct discussion with the businesses or industries concerned. In some cases permanent offices have been established in other countries to further these commercial interests. Legislative powers relating to international trade and transactions have not been required, except the normal powers for the government concerned to enter into financial transactions.