

Pierre Elliott

TRUDEAU



FEDERALISM

and the

French Canadians

Finally, the Commissioners could write nothing more deadly than a narrow, provincial report concerned mainly with the valour of French Canadians who defend their 'language, faith, and rights' against a centralizing oppressor. Six men have it in their power to bring to an end the era in which Laurier could rightly say: 'French Canadians do not have opinions, they merely have emotions.' And in the eyes of future generations, Messrs. Tremblay, Minville, Parent, Arès, Rowat, and Guimont will have much to answer for.

we currently possess. And that is what Mr. Lamontagne attempted to do; whereas Mr. Filion, when he concludes that the financial crisis will be settled 'when each government looks after its own patch of garden', makes us think that he has spent longer in the company of André Le Notre than in that of John Maynard Keynes.

Cité Libre, October 1954. Translated
from the French by Joanne L'Heureux.

Federal Grants to Universities

... of Denmark.

HAMLET

SOMETHING is wrong somewhere. On the question of university grants, I find myself in disagreement with my friends and with people whose ideas I usually find congenial. On the other hand, I quite approve of some of the attitudes taken by Mr. Duplessis and the nationalists, with whom I am not in the habit of agreeing.

In an attempt to explain my position to both sides, I should like to make a few preliminary points.¹

A fundamental condition of representative democracy is a clear allocation of responsibilities: a citizen who disapproves of a policy, a law, a municipal by-law, or an educational system must know precisely whose work it is so that he can hold someone responsible for it at the next election.

For unitary states such as the United Kingdom, this condition is a relatively easy one to meet. Since Parliament has absolute sovereignty, *all* the country's laws emanate from it, and its members are answerable to the electorate not only for what they accomplish for the general welfare, but also for what they fail to achieve despite their complete legislative powers.

In a federal state such as Canada, the situation is more complex. The exercise of sovereignty is divided between a central government and ten regional governments which, taken together, constitute the *Canadian state*, and each of which must

¹I have already developed these ideas in another form, in the brief presented to the Tremblay Commission by the *Fédération des Unions Industrielles du Québec*. (March 10, 1954; see more particularly section IV.) But who reads briefs presented to royal commissions?

ensure a certain part of the general welfare. Since the same citizens vote in both federal and provincial elections, they must be able to determine readily which government is responsible for what; otherwise the democratic control of power becomes impossible.

Responsibility is delegated by the constitution itself: the government of a province must safeguard the common good of its people in all matters that relate to Section 92 (among others) of the British North America Act, and the central government has a similar responsibility for matters outlined in Section 91. But the corollary is that no government has the right to interfere with the administration of other governments in those areas *not within its own jurisdiction*.²

Thus a provincial government would go beyond its jurisdiction if it tried to meddle in foreign affairs (for example in the question of aid to underdeveloped countries), since this is clearly a matter under federal control. On the other hand, a provincial government with sufficient tax resources is answerable *only to its electorate*, never to the federal government, for the regulation and financing of education, and this would be true no matter how ruinous its policies.

From these principles it inevitably follows that the total resources available to the Canadian Treasury must be divided among the federal and provincial governments in such a way as to allow each government to look after its share of the common good *as it sees fit*. The implementation of this principle could be difficult for extremely poor countries; when tax revenue is not great enough to support both central and local governments, a question of priorities arises, as to whether the central good (e.g. foreign affairs) should take precedence over the local good (e.g. education). Fortunately, this question need not arise in Canada.

Consequently, if a government has at its disposal such a surplus of funds that it can undertake to support a part of the common good that *does not lie within its jurisdiction*, one may suspect that this government controls more than its share of taxation. The suspicion is not always warranted, of course. The

²This principle of federalism would seem to entail discussion of several other points, notably the right to disallowance. But as they do not enter into the present question, I shall not burden the reader with a show of my knowledge (?) of constitutional law.

government of Quebec may, for example, give funds to the University of Ottawa, claiming that this money does not come from taxation and that education in Quebec benefits directly from its use. Similarly, the federal government can use blocked funds in Europe for educational purposes on the grounds that these funds, by virtue of both origin and their use, are being used for the benefit of all Canadians in the field of international relations. It will then be up to the electorate – of Quebec in the first example, of Canada in the second – to judge whether or not each government has taken more than its share of taxation.

On the other hand, there are cases where the suspicion of encroachment is justified. If, for example, a province began to tax its electorate for the purpose of financing the Canadian army, giving as its excuse that Ottawa was too poor to protect us from the threat of Russian invasion; or if Ottawa regularly subsidized the construction of schools in all provinces on the pretext that the provinces did not pay sufficient attention to education, these governments would be attacking the very foundation of the federal system, which, as I have pointed out, does not give any government the right to meddle in the affairs of others.³ Here again, it is up to the voters to elect, at the federal level, a government that will do its duty as far as national defence is concerned, and, at the provincial level, men who will give education the priority it requires.

These principles having been posited – and accepted, I hope, since otherwise we would not agree even on the meaning of the word 'democracy' – I now wish to examine the arguments so many people use to justify their support of federal grants to universities.

1. THE ARGUMENT BASED ON THE POLICY OF EQUALIZATION

The political cohesion of a society depends on its desire to secure the essential minimum for *all* its members, regardless of their geographical situation. Consequently, if a province is too

³If this principle needed further support I would refer to the letter written to the *Montreal Gazette* (October 25, 1956) by the federal Minister of Justice, Mr. Garson, in which he notes his agreement with the Rowell-Sirois Report when it affirms 'the right of each province to decide the relative importance of expenditure on education and expenditure on other competing services. . . . Hence, we do not think that it would be wise or appropriate for the Dominion to make grants to the provinces ear-marked for the support of general education.'

poor to provide university services that approach the Canadian average, it has a right to federal grants. (See, for example, J. Perrault, *Vrai*, November 10, 1956.)

My answer to this argument is that I believe in equalization grants so long as they relate to that part of the general welfare that is under federal jurisdiction. But this argument is beside the point here. For equalization grants take the surplus from the wealthier provinces and redistribute it among the poorer; while at present federal grants are offered to universities in *all* provinces regardless of their respective wealth, and according to a single schedule of payment. In other words, the federal government collects funds from all ten provinces and redistributes them to all ten provinces, to finance a service that is not within its jurisdiction. This may be called centralization, but certainly not equalization.

2. THE ARGUMENT BASED ON MACRO-ECONOMIC STABILIZATION

'Taxation is one means of curbing inflation; . . . [consequently] there will be surpluses . . . which represent a portion of the national revenue which federal authorities are disposed to redistribute.' (G. Picard, *Le Devoir*, November 8, 1956)

I recognize that the function of stabilizing the economy belongs primarily to the federal government. But the anti-cyclical theory referred to by Mr. Picard in fact militates *against* university grants. For since 1951 (when the federal government first offered university grants), Canada has been undergoing a period of inflation; this means that the federal government should tend to *reduce its expenditure*, and use the surplus (for example) to diminish the national debt. Given the state of our economy, the federal grants are indefensible on these grounds, and have been since their inception.

3. THE ARGUMENT BASED ON JOINT JURISDICTION OVER THE UNIVERSITIES

'Are the provinces responsible for university education?' wonders Léon Dion, after an ingenious summary of the situation. And he answers: 'The university should not fall . . . under any sphere of influence, whatever it may be.' (*Le Devoir*, November 5, 1956)

Unless this answer is designed to lead us away from accepted theories of legal sovereignty into some kind of pluralistic

anarchy, it boils down, as I understand it, to the same position as that adopted by Maurice Blain: '[Must not] our universities, caught between two inexorable masters, . . . satisfy their economic needs by maintaining a constant balance of power between the federal and provincial levels?' (*Le Devoir*, November 2, 1956)

I am not saying, *a priori*, that education (at least university education) should never fall under concurrent federal jurisdiction: it might well be in the general interest for the central state to undertake immediately an enlargement of our cultural horizons, or to co-operate in the large-scale production of technicians to come to grips with our own underdeveloped state, our economic rivals, and our ideological enemies. But this needs to be proved. Above all, as a citizen I would require that such a revolutionary interpretation of our constitution be made the object of a conscious choice. I would demand that political parties take a clear stand on the matter, and make their reasons public, thus allowing the electorate to decide with full knowledge of the issues involved.

In a widely acclaimed article, Gilles Mercure wrote: 'The only condition needed to modify the constitution, either at once or gradually, is the existence of dynamic forces capable of winning public opinion to their side.' (*Le Devoir*, November 17, 1956) I agree completely, and certainly do not intend to be caught napping. However, these dynamic forces must be put into play openly and publicly before the sovereign people – and this the federal government could have done in the present case, either by requesting an amendment to the constitution, as it did for unemployment insurance and old age pensions; or even by having recourse to Section 92 (10) (c) of the constitution to maintain that the universities constitute a 'service . . . contributing to the general good of Canada'.

On the contrary, the federal government took great pains to make it clear that it did not wish to be responsible for universities at all. Mr. St. Laurent even devised the scheme of making the university grants via the National Conference of Canadian Universities in order to dispel the fear that there was any move toward an 'encroachment upon the provincial legislature's exclusive jurisdiction in the field of education'. (Speech at the University of Sherbrooke, October 17, 1956) And in another speech on November 12 of the same year, Mr. St. Laurent

reiterated that 'Provincial authorities have the exclusive right to legislate in matters of education. . . .'

Therefore, no argument based on a new federal jurisdiction over education could possibly be used at present to justify the grants.

4. THE ARGUMENT BASED ON FEDERAL COMPETENCE

'The federal state is the Canadian state: it is our state,' wrote Pierre Dansereau. (*Vrai*, November 3, 1956) Similarly, Gérard Picard declared: 'We must stop thinking of Ottawa as a foreign government.' (*loc. cit.*)

Again, I am in total agreement; but here, too, the argument itself misfires, as must be clear from my preliminary points and my answer to the previous argument. I cannot express it more concisely than F.-A. Angers: 'In general, the Canadian state is not the central government, but the central and the provincial governments taken together. . . . In matters of education the Canadian state is the provincial state, and none other.' (*Vrai*, November 10, 1956)

5. THE ARGUMENT OF ANCILLARY POWERS

Ancillary powers, as defined by our courts of law, are the right of a government possessing authority over a certain field to legislate as well on matters implicitly related to that field. Are we to understand that Mr. J. Perrault (*loc. cit.*) was referring to the theory of ancillary powers when he wrote: 'The federal government has the right to be concerned in education for these three constitutional reasons . . .'; or when he said that federal jurisdiction over international, military, and criminal affairs permits the central government to ensure that citizens 'obtain the knowledge and training to develop their personality', and so on?

In my opinion, it would be a mistake to believe that Mr. Perrault was referring to ancillary powers. Such an interpretation would be the very negation of federalism, since the central government could for the same reasons intervene in municipal affairs, the performing of marriages, the civil code, the administration of justice. Are these institutions not equally important for the prevention of 'juvenile delinquency' or of ignorance among military personnel, and for the development of our future 'cultural attachés'?

In any case, Mr. Perrault himself affirmed even more strongly than Mr. St. Laurent that: 'Culture, education, and teaching on all levels are the exclusive prerogative of provincial governments.' This makes it clear that the 'ancillary powers' referred to in the above argument are not meant to be taken literally. It is not a question of 'legislating on' but of 'giving to'. And this is what I now wish to examine.

6. THE 'POWER OF THE PURSE' ARGUMENT

'There is nothing in the constitution to prevent the Canadian government from making gifts to any group or institution whatsoever. This is exactly what is happening in the case of university grants,' writes J. C. Falardeau (*Le Devoir*, October 23, 1956). And Mr. St. Laurent, in his speech of November 12, declared:

The federal government has the absolute right to use indirect taxation for any purpose, and the right to impose direct taxation provided that it is destined to increase Canada's Consolidated Revenue Fund. With the approval of Parliament, it can then use this money to make gifts or grants-in-aid to individuals, institutions, provincial governments, or even foreign governments. This is a royal prerogative which our constitution does not limit in any way.

Note that Mr. St. Laurent argues that *any* tax is allowed provided it is destined to increase the Consolidated Revenue Fund; and that *any* grant is allowed provided it is drawn from these funds. I am emphasizing this because it is this argument alone that I wish to refute in the following paragraphs. (The right to give money that does not come from taxation is an entirely different matter, and I shall deal with it later.)

To support his theory, Mr. St. Laurent quotes from a statement by Mr. Justice Duff, without indicating that the opinion was not accepted either by a majority of Justices of the Supreme Court or by the Privy Council. Mr. St. Laurent nevertheless clings to the resulting verdict, and quotes from Mr. Justice Kerwin and especially from Lord Atkin:

That the Dominion may impose taxation for the purpose of creating a fund for special purposes, and may apply that fund for making contributions in the public interest to individuals, corporations or public authorities, could not *as a general proposition* be denied.

But, as was noted by Mr. Duplessis (who, though he may

not read much, seems to remember everything!), Mr. St. Laurent was giving only part of the Privy Council's judgment. For Lord Atkin continued:

But assuming that the Dominion has collected by means of taxation a fund, it by no means follows that any legislation which disposes of it is necessarily within Dominion competence. It may still be legislation affecting the classes of subjects enumerated in s. 92, and, if so, would be *ultra vires*. In other words, Dominion legislation, *even though it deals with Dominion property*, may yet be so framed as to . . . encroach upon the classes of subjects which are reserved to Provincial competence. . . . [In such a case] the legislation will be invalid. To hold otherwise would afford the Dominion an easy passage into the Provincial domain. (1937 A.C. 367)

From this it follows that the fact of creating by means of taxation a federal fund for the purpose of making donations is not *in itself* ('as a general proposition') *ultra vires*. It becomes illegal, however, when the federal government disposes of these funds through legislation that encroaches upon provincial jurisdiction. But Lord Atkin does not tell us whether, in his opinion, a budgetary law would so encroach if it merely made grants (with certain conditions and in certain areas) to institutions that are under provincial jurisdiction; or whether encroachment occurs only when there is a specific attempt to legislate in these areas. It is, moreover, impossible to know whether his 'general proposition' is merely a tautology; or whether it is intended to authorize grants to institutions that are not under the exclusive control of either the federal or provincial governments; for example, relief funds for victims of disasters, etc.

These points should be referred to the Supreme Court for elucidation. In the meantime, we may gain some light on the subject by considering the university grants from the point of view of where the money comes from. Let us try to understand the concept of 'Dominion property' mentioned by the learned Lord Atkin. Is any tax levy permitted provided that it is destined to increase the Consolidated Revenue Fund, as St. Laurent claimed? Or, to borrow the terms used in another Privy Council decision, can the federal government add to the Consolidated Revenue Fund by means of taxation when the taxation is not 'confined to Dominion taxes *for Dominion purposes*'? (1924, A.C. 1004) The answer is no. This is made clear in the case of

direct taxation: the Canadian Parliament may 'impose a Dominion income tax *for Dominion purposes*'. (*loc. cit.*) When it comes to indirect taxation Mr. Justice Phillimore places his trust in the federal government, and considers it unnecessary to pronounce judgment on an issue unlikely to occur: 'the not very probable event of the Parliament of Canada desiring to raise money for *provincial purpose* by indirect taxation'. (*loc. cit.*) Consequently, if there is federal legislation to grant taxation money for provincial purposes, this legislation is illegal for the excellent reason that the federal government cannot by law have money in its coffers which it then claims should be used for provincial purposes. *Nemo dat quod non habet*. This is so clearly true that if in its next session the federal government decided to raise taxes on the understanding that the increase would be given to universities, there would be a general uproar among the electorate. It is one of the mysteries of life that a similar revolt does not occur when the Dominion does exactly the same thing by diverting the surplus from current taxation into the universities.

It remains the duty of each government to ensure that it does not collect taxes for that part of the public interest not within its jurisdiction. If the federal government has a surplus of funds large enough to give grants to all the universities, and if it cannot justify its action by claiming that it is an equalization measure (since it gives grants to *all* universities) or an anti-cyclical measure (since we are in an inflationary period), this government is plainly guilty of infringing the principle of the proportional division of fiscal resources that underlies any federal system: it has levied for education, which is not within its competence, funds that - had the matter been left to the provinces - might or might not have been used for universities, depending on the wishes of the provincial electorates and their respective governments.

The fact that Quebec is not raising enough tax revenue to meet its educational needs is entirely beside the point. The mere fact that a government does not exploit its full share of the fiscal field does not mean that it no longer has the right to do so. Otherwise each government would always have to tax to the maximum in order to retain its prerogatives, a situation the taxpayers would never tolerate. As the Province of Ontario declared (despite the fact that it supported the validity of the

federal law for unemployment insurance): 'It is *not* conceded that the Dominion may tax everything everywhere and that the provinces are left solely with what is left.' (1937 A.C. 361)

Unsupported by the highest judicial authorities,⁴ condemned by the theory of federal tax systems, Mr. St. Laurent attempts to use the idea of customary practice (from what he calls the 'already distant past') to justify his university grants. In his talk of November 12 to the National Conference on Higher Education, he cites as precedents the grants-in-aid made to universities by the federal departments of agriculture, fisheries, and so on, for *specific purposes*. There is no precedent here. In these areas the federal government has (concurrent) constitutional jurisdiction: so that there can be no question of denying its right to give grants, or even to legislate in these areas, any more than in the establishing of military colleges.

The Prime Minister also pleads that the grants 'arise from a national cultural policy', citing as precedents the establishment of a National Museum, the Public Archives, the C.B.C., etc. This illogical reasoning is unforgivable. It is recognized (sometimes as a result of judicial decisions) that the federal government can legislate on these institutions; no one therefore could contest the fact that the federal government can also give them funds. However, according to Mr. St. Laurent himself, the federal government *cannot* legislate on universities. And so his right to give them grants does not relate to anything.

In any case an argument based on precedent is worthless as far as constitutional rights are concerned. Otherwise, Mr. Duplessis's acceptance of grants in 1951-2 could be used against him now. But no precedent can stand against a written constitution. This is why the Lemieux Law, adopted by the federal government in 1907, was ruled *ultra vires* by the Privy Council in 1925, although it had been accepted by the provinces for eighteen years.

Mr. St. Laurent then attempts to compare the grants with the right of 'individuals and private industry' to make donations to universities although they cannot legislate upon them. This is begging the question. For individuals and industries can only give donations *within the limits of the law*. (For example, the

⁴I had not meant this phrase literally, but I realize that it is true, even in its literal sense! In the Privy Council decisions I have quoted above, Mr. St. Laurent was counsel for the losing party.

Civil Code, Article 1265, prohibits certain donations between married people.) Similarly, our governments may give donations only within the limits of the constitution; and it is precisely these limits, stemming from the theory of federalism and defined by the Privy Council, that must be respected.

But apparently Mr. St. Laurent wants to deny the very existence of these limits. His reasoning amounts to saying that the fact of making donations belongs, by its very nature, to that part of the general welfare under both federal and provincial jurisdiction. And to strengthen his argument, Mr. St. Laurent in effect claims that 'Provincial legislatures also possess the same royal prerogative', which consists in the right to make grants *without set limits* from moneys raised by taxation. With all due respect, therein lies the error. It is certain that making donations (the power of the purse) is a prerogative of the Crown; and the exercise of that prerogative creates no problems in a unitary state. But in a federal country the situation is entirely different: the question is *who* may exercise *what* prerogative. It is obvious, for example, that a province may not appoint ambassadors, even though this is a royal prerogative. It is therefore always necessary to refer to the constitution.

According to the constitution, however, each of the federal and provincial governments is sovereign in its own sphere. 'Within these limits [of Section 92] the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion. . . .' (1883-4, 9 A.C. 132) Consequently, the various governments must exercise their prerogative of making grants from tax revenues only within their area of jurisdiction. Probably both Ottawa and Quebec may make grants-in-aid of this kind to individuals, or to organizations such as the Red Cross, since there is always some aspect of their function by which they fall under federal jurisdiction (e.g. war and peace), and another by which they fall under provincial jurisdiction (e.g. works of charity). But universities are in an entirely different category, since, according to Mr. St. Laurent, they fall *exclusively* under provincial jurisdiction.

Let us carry the reasoning to its absurd conclusion. If under the royal prerogative provinces have the power to make unlimited donations, it must follow that the very fact of giving, irrespective of its aim or recipient, constitutes a purpose that

provinces are justified in pursuing; donating funds is a 'provincial purpose' in the sense of Section 92 (2 and 9) of the constitution. This section, which allows the provinces to levy direct taxation *for provincial purposes*, must therefore authorize provinces to collect taxes in order to finance (for example) the postal system, military service, federal civil service, penitentiaries, and the Department of External Affairs. When this point has been reached, the two largest provinces have only to combine and take complete control over direct taxation for the central government to be reduced to the point of bankruptcy and impotence and for the constitution to be totally destroyed.

Mr. St. Laurent's theory is, as has been shown, the direct negation of federalism: it can only lead to anarchy.

In the meantime, we may well ask why the federal government does so little, so late. Since it has the right to give as it wishes – since giving is a *Dominion purpose* (in the sense defined by Lord Phillimore) – how can one explain the fact that, from a budget of five billion dollars and a surplus of hundreds of millions, it can only find a mere sixteen million for the universities? Since the National Research Council's function is to develop scientific research in Canada, how is it that the federal government has only spent twenty-five million for this purpose in the last forty years? Since the federal government wants to be responsible for a national program of health, why has it only spent four million in the last eight years?

Come now, gentlemen, a mere sixteen million for the universities you claim to consider so important – surely you are joking? And since your power of giving is unlimited, why not provide a few grants for the provincial civil servants, who are so badly paid? On their side, provincial governments could offer a bonus to federal civil servants who could demonstrate that they were bilingual. And so everyone would meddle in the affairs of others; citizens who were discontented with their provincial government would go to Ottawa to find solutions, and vice versa.

Mr. St. Laurent's party would then have managed to demolish the two most fundamental principles of our constitution, the first being that 'no provincial Legislature could use its special powers as an indirect means of destroying powers given by the parliament of Canada' (1921–2 A.C. 91); the second that 'the Parliament of Canada could not exercise its powers of taxation so as to destroy the capacity of officials lawfully appointed by

the province'. (1924 A.C. 1006) Universities would have to be in desperate need, to subscribe to the theories of federalism proposed by Mr. St. Laurent!

7. THE ARGUMENT OF NEED

'We cannot afford to wait,' writes Pierre Dansereau, 'the need is too urgent.' Doctor Robillard adds: 'Does a starving man consider the colour of the hand offering him bread?' (*Vrai*, November 3, 1956) This is basically Vianney Décarie's argument as well: the safeguarding of French-Canadian culture requires that the grants be accepted by universities 'whose desperate needs stare everyone in the face'. (*Le Devoir*, November 24) And finally this comment from Mgr. Lussier: 'The universities of Quebec . . . are in very great need of assistance.' (*Le Devoir*, November 15)

I must admit this is a moving argument. Who am I to pass judgment on a starving man? What standards could I use? Someone dying of hunger is justified in seizing whatever food he can find, regardless of the laws governing property. Similarly, the refinements of political or constitutional science may seem entirely irrelevant when a dying culture suddenly finds itself faced with the very thing that may save it.

In answer, allow me to distinguish between men and culture. I give sincere praise to men who have made a career of teaching – at what cost only God and their families know – in a society that has constantly shown them contempt and, very often, hostility. I can well understand their favourable reaction to a patron who suddenly begins to show some regard for higher education. But when we come right down to it, we are not dealing with a case of *literal* starvation. For unless I am mistaken, Professors Angers, Minville, and Brunet, who are opposed to the grants, are no better off than anyone else in the teaching profession.

We must therefore be dealing with a case of 'dying culture'. But shouldn't we rather speak of suicide? From a judicial point of view, education is strictly the responsibility of the Quebec government; from a democratic point of view, this government is entirely the responsibility of that valiant people filled with true patriot's love and standing on guard forever by the great waters of the St. Lawrence, tra-la, tra-la. Which is to say that if teaching is scorned and intelligence humiliated in our noble

province, the fault lies very specifically with those who live in it. Under the circumstances, the very thing we must *not* do is run and beg Ottawa to alleviate our famine by giving us a bit of our own tax money. Once again we would be avoiding our duty as citizens of a (provincial) state responsible for education. There is a kind of unconscious but specious paternalism in the attitude of our intelligentsia, for it wants to save French-Canadian culture – and yet it does not see that the necessity for this operation must be convincingly demonstrated to the people, whose culture it is and on whom provincial elections depend.

Two and a half years ago, some local labour unions were wondering whether they should request the federal government to disallow two harmful bills, 19 and 20. These bills meant something worse than starvation: they meant the end of some unions, among them the admirable Alliance des professeurs de Montréal. After serious consideration, the unions decided against this action: they decided not to request Ottawa to repeal laws passed by Quebec deputies, as Ottawa is allowed to do by the constitution. In true democratic fashion, the trade unionists realized that the solution was a political one and lay in their power to achieve, by electing deputies and a government that would be less anti-union. All other procedures would simply mean shuffling the problem around and postponing the day when people finally took their destiny into their own hands.

I wonder whether intellectuals in general, and academics in particular, have a similar consciousness of their responsibilities, as well as the courage to face up to them. Mme Françoise Lavigne explained that the reason intellectuals do not become involved in necessary political reforms is that they are too disgusted with a society that either ignores or despises them. (*Le Devoir*, November 23, 1956) But had trade unionists shown such reticence, they would long ago have lost all freedom.

Take up the cudgels, for goodness' sake! If our culture is in such pressing danger that you feel justified in bypassing the constitution, why not begin by ignoring the law: go on strike, refuse to pay your taxes, or, better still, demand that the federal government grant a tax reduction applicable solely to university professors. (We shall soon see whether Mr. St. Laurent cares so much for culture that he would be prepared to confront the rest of the taxpayers with this kind of preferential budget legislation! Yet it would be entirely constitutional.) To state one's

position is at least a first step, and to my mind this explains the surprising report from six professors of social science who finally cracked their faculty's ideological monolith. (*Le Devoir*, November 29) Now is the time to act, to write articles, to go on the hustings, to engage in political action. If the opposition parties are not suitable, there is always the Rassemblement.

For democracy has its logic, and freedom its requirements. An increasing number of academics are beginning to understand this, and I admire them for it. But it must be recognized that this is a recent, and still a rather uncertain phenomenon. I do not think I am far wrong in saying that, for quite a number of years now, the trade unions, and the C.C.L. in particular, have, through their briefs to the government and their work in trade schools, done more than professors⁵ to impress on public opinion the urgency of problems relating to all levels of education.

Moreover, I feel that even in their wise judgments, our intellectuals tend to introduce too many prudent elements. Last September, at the meeting of the Institute of Public Affairs dealing with education, for example, there was not a single speaker who had not firmly adopted self-imposed limitations from the very beginning. No one came down unequivocally for free tuition at all levels, and for salaries for students. No one proposed the appointment of laymen as university presidents. No one proposed to break the clerical monopoly over secondary education. And (despite the report in *Notre Temps*) no one even proposed a ministry of education.

Unless I am mistaken, it was left to someone like Roger Duhamel (who does not exactly have a reputation for being *avant-garde*) to make the point that the title of Monseigneur did not necessarily carry a teacher's certificate with it. It was left to a nationalist like Michel Brunet to write that 'the first reform needed . . . is the immediate establishment of a true

⁵Mr. Esdras Minville is of the same opinion: 'It is proper to inquire what the universities have done to enlighten the government and to encourage it to set up a comprehensive educational policy.' (*Le Devoir*, November 19) It is a good question. . . . But in point of fact, has Mr. Minville himself not been the director of a school and the dean of a faculty for many years now? His answer is: 'Our institutions of learning have until now wrapped themselves in the most complete silence, as if they were indifferent to the functioning of everyday life.' He also deplores 'the absence of political thought in this province'. How is it then that the dean's faculty still has no department of political science?

Ministry of Education.' (In *Alerte*, a bulletin of the Saint-Jean-Baptiste Society, October 1956, p. 232. The entire article has great value, and is very courageous – since it is, alas, the fashion to praise the 'courage' of people who are simply thinking for themselves.)

With regard to the grants, it was left to the Ligue d'action nationale to reveal the central government's hypocrisy in giving taxation money to the universities (which is forbidden by the constitution) while refusing to help minority schools (which it is obliged to do by the constitution). (*Le Devoir*, November 19) It was left to Father Arès to point out that 'the debate over the universities is no more than an episode in a conflict between Quebec and Ottawa that has been going on for the past ten years, with the issue at stake being the future of the Canadian federal system.' (*Relations*, December 1956) Before crying: 'truism!' everyone had better examine his thoughts to make sure he has not adopted two contradictory positions on the questions of grants and provincial tax deductibility. After all, if the tax deductibility formula was a good one three years ago, why does it not remain a fair solution for taxpayers of provinces wishing to refuse the university grants?

Decidedly, the nationalists will surprise me in the end! For the moment, however, I must in all loyalty make it clear that I am not in agreement with the motives that lead most of them to reject the university grants. They still seem to believe that Ottawa has a deep, dark plot against their faith, language, and rights. They are against this, because they have always been against everything: against old age pensions, unemployment insurance, family allowances, fiscal agreements, medicare, the National Film Board, C.B.C. radio and television – in short, against what they call 'English, Protestant money'.

The federal government is still preparing (and has been since 1919!) a medicare program; when it is completed, you will see nationalists protesting that it should really come under provincial jurisdiction. You might think that in the meantime they would clamour for rapid provincial action to prevent terrible cases of deprivation. But do they? Not a bit of it: they claim that health is not the business of the state at all, but of 'intermediary bodies'.

Why, then, are they so disgruntled about university grants? Mr. St. Laurent offers them a corporate solution, for the

National Conference of Canadian Universities, which is to administer the grants, is nothing more than their 'intermediate body'. The truth is that they are disgruntled because they are against state intervention in any field: in education, social security, family welfare, economic stability, natural resources, private enterprise, housing, health, and all the rest. They believe that they are against socialism: but at a time when the only acceptable control over a heavily industrialized society is a strong, democratic government, they are simply against progress and reforms.

St. Augustine taught that education is a function of the state and as such is the responsibility of the people as a whole. But this is beside the point in French Canada where, for historical reasons admirably summed up by Professor Brunet (*loc. cit.*), teaching has become the private property of the clergy, and their exclusive responsibility. After 1867 this state of affairs had no reason to continue, since the provincial government – composed of a large majority of Roman Catholic French Canadians – became constitutionally responsible for education. At this point, the Church could have stopped filling a temporary need and rendered unto Caesar the rights and obligations belonging to education – especially since, as it happened, the democratic state was also, in the nature of things, Roman Catholic.

Nevertheless the clergy, forgetting as always that the Church is also composed of laymen, preferred to keep education as their own private inheritance. They preferred to negotiate their parsimonious subsidies behind closed doors, rather than let the needs of education be discussed in the Legislative Assembly.

The result? Citizens lost interest in the subject, and politicians never had to give it a thought, except in terms of their campaign funds. . . . Now for the past few years (to be precise, since the Sulpician Fathers were ruined by the 'crash' of the Detroit tram company) financial difficulties have seriously affected the quality of the education dispensed by the clergy. With increasing frequency, they have had to go on secret pilgrimages to the politicians, as a result of which the latter have become rather high-handed. Thus we see a Quebec bishop accepting without protest the humiliation of appearing in public accounts as a . . . supplier!⁶

⁶See *The Public Accounts of the Province of Quebec*, among others, for the period ending March 31, 1952, p. 47.

That is why the clergy – falling victim to the secret anti-democratic practices which they themselves originated – are now beginning to demand a magic formula: statutory grants! To which Mr. Duplessis is perfectly right in answering, 'All grants are based on statute.' (*Le Devoir*, November 21, 1956) This simply goes to show once more how confused and incompetent our discussions of political problems can be.

In the last analysis everyone knows that what the clergy want (and here I do not wish to question the integrity or generosity of their administration, but merely its democratic character) is to receive, regularly and automatically, nice fat sums from the state for use in 'their' institutions of learning. What they do *not* want is to let Parliament have any say in how this taxpayers' money is spent. In the circumstances, it is not surprising that the Quebec hierarchy was hesitant in the matter of university grants, and half tempted to accept them. True, the grants would come from an 'English and Protestant' state, but on the other hand what a bargain: the federal government offering funds on a simple, automatic, per-capita basis, with no strings attached, while at the same time recognizing that it lacks the constitutional competence to legislate on the money's subsequent use!

Is this not the context in which one should read the remarks of Mgr. Lussier, a rector who has elsewhere been admirable in his defence of academic freedom?

We suffer at the moment from seeming to be political. . . . The first responsibility for education lies with the parents. . . . The ultimate aims of education are not left to the judgment of the individual. . . . The Church, in matters of religious instruction or the safeguarding of religion, is absolutely the only competent authority. In other matters the Church still maintains its competence to the extent that it considers them related to the previous aims. . . . This philosophy of education recognizes the state's jurisdiction in certain areas; but with regard to the responsibility of parents, it only allows the state a supplementary and assisting role. With regard to the Church, a state composed of a majority of Catholic citizens must facilitate the accomplishment of the Church's mission. (*Le Devoir*, November 15)

I must confess that I find it hard to see what the state is left with or what it can do, except hand out the money blindly. In the circumstances there is no reason why it should give very

much, nor can one expect taxpayers to finance institutions that are persistently declared to be none of their concern.⁷ The 'Church' will continue to 'fill in' for other authorities, and education at all levels will gradually die of starvation.

Obviously, I do not accept 'official' Quebec attitudes toward education. But I also reject the arguments – especially Mr. St. Laurent's – in favour of federal grants to universities.

There still remains an aspect of the 'power of the purse' argument that no one has mentioned and that I have not yet examined. I have argued that it would be detrimental to our federal system to permit either the central or the provincial governments to donate money *received from their taxpayers* outside the area of their own jurisdiction.⁸ The fact remains, however, that these governments may have in their possession money *that does not come from taxation*: funds from the public domain, from war debts, profit from Crown companies, operational earnings from the Bank of Canada, and so on. Of course, no theory of federalism can prevent a government from donating these funds as it sees fit. This wealth is, in a certain sense, the government's private property, since the act of acquiring it did not specifically diminish the share of taxable revenue that belongs to other governments. Nor does it infringe the autonomy of these other governments and cannot therefore be considered an interference in their affairs.

Thus the way in which these funds are acquired would never constitute encroachment. As for the way in which they are spent, only the electors of the donor government are qualified to judge whether or not they were put to good use. The electors of the recipient governments need only decide whether or not their governments were wise to accept. The principles of federation are not called into question.

However, it must be pointed out that in practice a govern-

⁷They are so little their concern, apparently, that the Board of Governors of the University of Montreal (which includes several laymen, as Mr. Perrault would point out) does not feel obliged to inform the public about the use made of tens of millions of dollars subscribed by the public a few years ago.

⁸It is in fact against this very point that Mr. Duplessis has given his only serious argument. On October 19, 1956, he declared: 'When the federal government levies *taxes* . . . for purposes within provincial jurisdiction, it goes beyond its proper field of action and its particular field of taxation.'

ment's 'private' wealth cannot be distinguished from funds raised by taxation once it has gone into the Consolidated Revenue Fund. This makes it impossible, in practice, to know what money may be used without limitations for grants, and what money may not. Even if it were possible to know, it would matter very little in the case of a government that, through socialization or the intermediary of Crown companies, filled its coffers with an endless supply of 'private' funds. For then it could make limitless donations.

And so, in three short paragraphs we have managed to get round my long and elaborate argument against Mr. St. Laurent's theory. It appears that a government *can* make grants as it wishes – even in areas for which other governments are responsible – provided it uses its own funds, and does not take the money from the taxpayers of other levels of governments. If there are any readers who have had the patience to follow me to this point, they may well feel like asking, 'And where does all this get us?'

But it does get us somewhere. For we have discovered that even the most scrupulous refutation of every argument put forward in favour of the grants still leaves *one* reason for permitting the federal government to give and the provinces to receive university grants. This ultimate reason is the touchstone of the entire system. If one tries to refute it, one completely paralyses the modern state. If, on the other hand, one exaggerates its scope, one destroys the very notion of a federal system.

In fact, on the one hand, how can either the central or the provincial governments be prevented from having 'private' money in their coffers? To do so, the most basic concepts of liberalism would have to be practised; private enterprise would have to take over the handling of the mail, firemen, highway systems, Hydro, the Liquor Commission, the Bank of Canada, and so on. And even then there would still be operations relating to the public domain: sale of natural resources, maritime fisheries, etc. Then again, how can the various levels of government be prevented from making donations as they see fit from their 'private' funds without also denying the Christian duties of pity and mutual aid?

But if, on the other hand, any government, federal or provincial, decided to abuse its constitutional right to give 'private'

funds outside its jurisdiction, it would certainly cause the ruin of both taxpayers and the federal system. In their determination to finance their excesses with 'private' money rather than taxation funds, such governments would in fact engage themselves in a program of complete state control, each government trying to enrich itself at the expense of others in order to prevent others from doing the same at its expense. It would be small consolation for citizens to find themselves 'scalped' as consumers rather than as taxpayers!

Clearly, it is impossible to make a rigorous and adequate division of the total wealth available to the sovereign state between the federal government and the provinces. It is the same country that is governed by the central authority and the ten provinces. The same taxpayers are solicited by the two levels of government; the same consumers depend upon them. Consequently, any attempt to arrange the 'spheres of influence' – or the taxpayer's wallet – into water-tight compartments only leads to absurdity. An excess of logic in one direction leads to meaningless isolationism and to the spiritual wilderness within which our self-styled nationalists wish to immure us; in the opposite direction it leads to an exaggerated, totalitarian centralization that spells death to both culture and democracy. Such logic can only result either in separatism, or in a unitary state; and the stages in its progression are financial strangulation, repeated disallowance by Ottawa of provincial laws, civil war.

It would therefore be futile to avoid one's responsibilities and leave the solution of these problems entirely to the courts. There are areas in which even the courts cannot provide enlightenment: no matter how clear one's rights, the federal system must ultimately rest upon a basis of collaboration. Tensions must be creative; otherwise our country will be destroyed. To avoid this possibility, we must pass beyond the limits of logic and law: we must at all costs enter the field of moral judgment and good will.

To sum up, we may say that it is permissible to make moderate donations even outside one's own jurisdiction. But the nature of the donation must be such that its recipient does not have grounds to suspect that charity is being given to him out of his own pocket. And how can this suspicion be avoided in Canada, when the central government takes such a large proportion of the tax revenue and makes such regular, organized grants outside its own jurisdiction?

There remain only a few practical conclusions to be drawn from this long argument.

THE FEDERAL GOVERNMENT

In offering grants to universities, the federal government could have made a gesture of mutual assistance that would have been constitutionally acceptable.

Instead, it made the mistake of linking its gesture with a conception of the fiscal system that is incompatible with harmonious federalism. It will be recalled how unjust, from the point of view of provincial autonomy, were the results of the first set of fiscal agreements. And it is certain that the federal authorities have not yet shown such regard for the provinces as to make them unmindful of the classical warning *Timeo Danaos et dona ferentes*. It is insulting to the provinces to be offered gifts from what Mr. St. Laurent tells them is their own taxpayers' money. It is fatal for the principles of representative democracy.

Even if the federal government now claimed that the money used for the grants was 'private', its excess of wealth would still be inadmissible in a federal system where the deprivation of provinces and municipalities is precisely the result of federal fiscal concepts.

The federal government must therefore contrive to change its fiscal practices so that provinces and municipalities have at their disposal sufficient tax revenue to allow them to fulfil their obligations.

Until this is done, we shall be justified in suspecting that the federal government's gifts are marred by improper motives, and in remembering it at election time.

THE UNIVERSITIES

Universities could have accepted the grants if they had first managed to make Mr. St. Laurent modify the concepts underlying them.⁹

University teachers and administrators are also voters, and influential ones at that. Had they understood the problem more clearly, they could have benefited from the grants and at the

⁹Mgr. Lussier's argument in favour of using the grants only for 'capital expenditure' seems to be a commendable attempt to qualify the donor's 'absolute power'. (*Le Devoir*, November 15, 1956) What a pity that he should have chosen an argument so constitutionally specious!

same time made the federal government accept more sensible views on federal tax systems.

Mr. Duplessis would then have been forced by his own autonomist logic to pass a law preventing universities from accepting federal donations. Discussion of such a law in the Legislature would have meant that Liberals could not have had recourse to the evasive tactics they used on November 20. The voters would have taken a further step toward maturity, and the universities toward a sense of responsibility.

However, it now seems quite certain that secret negotiations have convinced all Quebec universities to reject the grants. This is not in itself fatal, for, by virtue of a clause whose astuteness I cannot help admiring, grants not claimed are not lost: they are to accumulate until one day the very magnitude of the sum offered will force the Quebec electorate to weigh the full strength of a rapacious centralization against merely verbal autonomist policies.

On the other hand, all is lost if universities indulge in secret diplomacy and *combinazione*, as they have already begun to do. The people will be slightly more ignorant of the needs of education, universities will find themselves in new bondage, and the politicians of Ottawa and Quebec will continue to play football with the constitution.

Now is the time, therefore, for people to see what stuff academics, rectors, and chancellors are made of: let them *publicly* challenge the Union Nationale government to set up and put into effect, within the next three years, a plan allowing universities to assume, untroubled by political manoeuvring, their cultural, scientific, and financial obligations. If Mr. Duplessis will not accept the challenge or the time limit, they should set to work to oust him from power. Let them say the same kind of thing to Mr. St. Laurent about his economic policies, and use the same threat of sanctions.

They will not earn our respect in any other way.

THE PROVINCIAL GOVERNMENT

It is not the government's policy of autonomy that we condemn, but the purely negative and narrowly partisan aspect of this policy. Let Mr. Duplessis establish an administration as efficient and honest as the federal government, and we shall then consider the rivalry to be a fair one. Let him give the universities,

and indeed the entire school system, the means of fulfilling their role. Let him give so generously in this field that the federal grants will seem insignificant, and therefore acceptable. Let him reply to federal attitudes on tax sharing and the grants with constructive alternatives instead of refusals. Let him be so competent and so full of good will as to put the federal government on the defensive in these matters; he can be as fanciful as he likes provided he achieves results.¹⁰

Alas, this is mere wishful thinking. Mr. Duplessis believes that we have the cleverest people, the best system of education, and the best government in the world. And the greatest provincial premier since Confederation.

¹⁰In *Vrai*, December 11, 1954, I suggested to Duplessis a technique to prevent the province from registering a loss every time it refuses to accept federal generosity (university grants, financing for the Trans-Canada Highway, and so on).

Cité Libre, February 1957. Translated from the French by Joanne L'Heureux.

Some Obstacles to Democracy in Quebec

HISTORICALLY, French Canadians have not really believed in democracy for themselves; and English Canadians have not really wanted it for others. Such are the foundations upon which our two ethnic groups have absurdly pretended to be building democratic forms of government. No wonder the ensuing structure has turned out to be rather flimsy.

The purpose of the present essay is to re-examine some of the unstated premises from which much of our political thinking and behaviour is derived, and to suggest that there exists an urgent need for a critical appraisal of democracy in Canada. No amount of inter-group back-slapping or political *bonne-entente* will change the fact that democracy will continue to be thwarted in Canada so long as one-third of the people hardly believe in it – and that because to no small extent the remaining two-thirds provide them with ample grounds for distrusting it.

I

French Canadians are perhaps the only people in the world who 'enjoy' democracy without having had to fight for it. Before 1763 they had known only an authoritarian rule, implicitly founded on a belief in the divine right of kingship. The people were subjects of an autocratic monarch and were governed by administrators responsible only to him. Their church was also authoritarian, their seigneurial system was quasi-feudal, and even on a strictly local plane the farmers and townsfolk had