CHAPTER I

COMPENSATION FOR THE ADVERSE EFFECTS OF FEDERAL POLICIES

In our public hearings the incidence of various federal policies on certain provinces and regions was discussed at length. In particular it was argued that the customs tariff bore with exceptional severity on the four Western Provinces and on the Maritime Provinces;\(^1\) that the federal monetary policy after 1931 had seriously injured the Prairie region;\(^2\) that the freight rate structure (indirectly the responsibility of the Dominion Parliament) discriminated against the Western Provinces and, especially, Alberta;\(^3\) that the Maritime Provinces were not enjoying the benefits of the freight rates or of railway management promised at the time of the construction of the Intercolonial railway;\(^4\) that the Dominion corporation income tax prejudiced industry in Ontario;\(^5\) and that Dominion personal income and corporation income taxes injured the fiscal interests of the Governments of Ontario and British Columbia.\(^6\) In part these complaints were no doubt due to misapprehension of the nature of the Commission's inquiry, and were based on the opinion that the Commission could make recommendations on federal policy. Some complaints were intended merely as an explanation of the unsatisfactory fiscal condition of the province concerned. But the inference of some of these representations was that the Dominion was accountable to the province for the adverse effects of federal policies suffered by the people of the province and the province was entitled either to compensatory policies to remedy the situation, or failing such policies, to damages payable to the provincial government.

On several occasions Chief Justice Rowell, the first Chairman of the Commission, stated clearly that the Commission was not concerned with any federal policy as such, and that it could only take account of any federal policy if it could be shown that that policy had prejudiced the financial position of the province.\(^7\) On reconsideration of the matter we think that this is the proper position for us to take. Our general financial recommendations, which provide for federal assistance to a province in relation to its fiscal need, indirectly, by assessing the taxable capacity of the people of the province, take account of the incidence of all federal policies, and provide for adjustments which will continue to take account of effects of federal policies in the future. If our recommendations in this respect are adopted, claims for compensation to a province for adverse effects of federal policies will lose much of their force. If these recommendations are not implemented it is probable that such claims will recur with increasing frequency in Dominion-provincial relations. For this reason, and because claims of this nature raise fundamental issues about the nature of the Canadian federal system, we think that the whole question of the accountability of the Dominion to the provinces for federal policies demands careful examination here.

In all states, whether unitary or federal, national policies are largely the result of compromise between conflicting views and interests. The benefits of policy rarely, if ever, are distributed evenly over the whole nation. Most, if not all, policies benefit some individuals or groups more than others, and very often some areas or regions more than others. Even within a unitary state policies which prejudice interests of groups or regions may lead to serious political difficulties. But we know of no state which, except in instances where private property is actually appropriated for public purposes, follows the practice of paying damages directly to groups or regions or communities or individuals which suffer adversely from national policies. Compensatory policies are, indeed, often adopted to assist

---

\(^{1}\) Ex. 230, Brief of Edmonton Chamber of Commerce, p. 27; Ex. 172, Brief of B.C., Pt. VI; Ex. 4, Brief of Man., Pt. IV; Ex. 357, Brief of N.B., pp. 40-51; Ex. 144, Brief of N.S., pp. 80-94; Ex. 101, Brief of P.E.I., p. 10; Ex. 34, Brief of Sask., pp. 223-232; Ex. 421, 424, 427 (Ev. pp. 10,277-702) supp. statements of Hon. John Braden, Dr. Jacob Viner and Hon. S. Garson on behalf of Manitoba.


\(^{3}\) Brief of Edmonton Chamber of Commerce, pp. 23-35; Brief of Sask., pp. 203-33; Ex. 172, Brief of B.C., pp. 294 ff.

\(^{4}\) Ex. 306, Brief of Transportation Commission of the Maritime Board of Trade. See discussion in Chapter "Claims Concerning Trade Through Maritime Ports."

\(^{5}\) Brief of Ont., Pt. II, p. 62.


\(^{7}\) E.g., Ev. pp. 1232-33; p. 4489.
groups or regions adversely affected by other policies. In the modern world where economic nationalism is predominant this practice is characteristic of most states. It has frequently been followed by Canada. For example, the Maritime Freight Rates Act of 1927, in order to compensate the Maritime Provinces for the additional mileage of the Intercolonial railway due to military considerations, provides for a differential of twenty per cent on freight rates on freight originating in, or going to, these provinces. Again, fixed prices for wheat have been supported on occasion on the ground that they compensated the Western Provinces for their burdens under the tariff. But compensatory policies on behalf of groups or regions are quite a different matter from the payment of damages for the adverse effects of policy. Again, it is one thing for a state to provide compensatory policies on the grounds of expediency, but it is quite another matter to hold that it is under obligation to do so.

The question arises whether the situation is different in a federal state from that in a unitary state, and whether the provinces (or states) in a federal union are entitled either to compensatory policies or monetary damages for losses occasioned by their people from federal policies. The claim that the provinces are so entitled appears to rest on the assumption that the Dominion is the agent of the provinces, responsible to them for the effects of federal policy, rather than directly to the people of Canada. But the Dominion cannot in any sense be deemed the agent of the provinces. The provinces did not create the Dominion nor delegate to it their powers. It is true that prior to 1867 the representatives of three colonies (Nova Scotia, New Brunswick and Canada) met together and drew up terms of union which formed the basis of the British North America Act. But the colonies were not sovereign states, and could not of themselves create the new entity, the Dominion of Canada. The Imperial Parliament alone could do this, and it is significant that the act of creation destroyed one of the colonies whose representatives had participated in drawing up the basis of union and created out of it the two provinces of Ontario and Quebec. Nor have the courts ever held that the powers of the Parliament of Canada have been delegated to it, either by the provinces or by the Imperial Parliament. Within its own field of jurisdiction it is as sovereign as the Imperial Parliament itself or as are the various provincial legislatures within their proper field.

The essential difference between a federal and a unitary state is the division of power in a federation between central and local units of government, and hence a division of responsibility. Within its field of jurisdiction each unit is autonomous. But the central authority and the local authority are not two independent states, rather they act for the same people in different capacities. It cannot be said that the Parliament of Canada when it legislates within its field of power is legislating for the people of Canada exclusive of the people of Saskatchewan or of Manitoba or of any other province, even if all the representatives of the people of the province dissent. Rather, it acts for the whole nation, and for the exercise of its discretion it is responsible to the people of all Canada, including the people of every province. It may formulate policies which benefit more the people of some provinces than of others, or injure the people of some provinces while benefiting those of others, or restrict economic opportunities of the people of some provinces while enlarging economic opportunities of the people of other provinces, but this is entirely within the field of discretion entrusted to it by the British North America Act. And for such actions only the people who elected the Parliament of Canada, namely the people of all Canada, can hold it to account.

If the logic of constitutional theory is not sufficient to negative the assumption that the Dominion is accountable to the provinces for federal policies, the practical difficulties of making this assumption a working principle of Dominion-provincial relations are nevertheless insurmountable. The survey of the economic and financial history of Canada given in Book I of this Report indicates the complexity and inter-relation of federal policies. Transportation policies and the tariff have acted and reacted upon one another since Confederation, the effects of one cannot be completely isolated from the effects of the other. Monetary policy after 1931 was intimately related to earlier developmental policies which had laid Canada under a heavy burden of external debt, and its effects cannot be considered in isolation from the effects of these earlier policies, or indeed apart from the effects of tariff and transportation policies. Nor can the effects of taxation under the customs tariff be considered without reference to the effects of the sales tax or other federal taxes. Indeed, federal policy, though unplanned as a whole, has developed into a highly complex web, no thread of which can be completely disentangled from the others. The incidence of any one policy
cannot be properly measured alone for the reason that it is affected by the incidence of every other policy. A province or region, for example, which suffers from some items in the tariff may benefit from others, or even if it suffers from the tariff as a whole, it may benefit from other policies such as fixed prices, or special freight rates, or developmental policies at federal expense, or external trade policies. Any fair system of accounting would have to include gains and losses from all federal policies not only at any given time, but for the whole period since federation. And even if the tangled skein of federal policy over seventy years could be unravelled, losses and gains could, in many cases, only be estimated by examining the alternative policies which might have been followed. No estimate based on so many "might-have-beens" of Canadian history could be reliable. There is, indeed, no possibility that a province could draw up a reasonably accurate account of losses and gains from membership in federation.8

It is, of course, of the essence of democracy that any individual, or group, or the people of any part of Canada, is fully entitled to seek to change public policy through political means. Those who seek to change public policy are fully entitled to make use of all legitimate means, including existing organizations, or the formation of new political organizations, to effect the desired change. It is inevitable that the people of a province should on occasion be assisted or represented by the government of their province in seeking to effect a change in federal policy. It is one thing for a provincial government in the interests of its people to seek to effect a change in federal policy, but it is quite another thing to hold that the Dominion is liable in damages to the provincial government for the effects of federal policy upon the people of the province. It is equally unsound to hold that a province is entitled as of right to remedial policies to make good adverse effects of other federal policies on its economy. It would, indeed, be quite as logical to hold that the province is liable in damages to the Dominion for the adverse effects of provincial policy on the interests of the nation, or that it should adopt remedial policies to compensate the Dominion for losses from other provincial policies.

In thus holding that the Dominion in the exercise of its functions is not responsible to the provinces we do not mean to suggest that it should, in developing or continuing a federal policy, disregard the interests of a provincial government or of the people of a province. Even in a unitary state it is the part of wisdom for a government to have due regard for discontent of classes or regions arising from the incidence of national policy. It is the more so in a federal state where the people have two fields in which to exercise their control of government. A sense of their inability to influence federal policy directly may easily divert the electors to use the provincial field to organize their discontent with federal policy, and thus a policy, constitutionally within the discretion of the federal Parliament and presumably designed in the national interest, may become the occasion for serious friction between the Dominion and a province, and may thus tend to weaken the bonds of national unity rather than to strengthen them. The necessity of carefully estimating the consequences, both economic and political, of federal policy is an obvious lesson to be drawn from the survey of economic and financial developments since 1867 contained in Book I of this Report.

Another conclusion to be drawn from Book I of this Report is that federal policies considered as a whole have tended to benefit certain regions more than others. These tendencies have undoubtedly affected the financial position of every province, and of some provinces more than others.9 It is theoretically possible that federal policy might so weaken the financial position of a province as to make it difficult, if not impossible, for it to perform its functions on standards reasonably comparable with those of other provinces. In such an event we think that it is in the national interest for the Dominion to come to the assistance of the province thus adversely affected. The constitution lays upon the province responsibilities in the field of government which, if they cannot be fulfilled by the province, remain unfulfilled, since the Dominion

8 In fairness to certain provinces it should be stated that this was the ground on which, either in original or later statements to the Commission, they criticized federal policies. The Hon. John Bracken, Premier of Manitoba, in final hearings before the Commission stated (Ev. p. 16546): "In connection with the discussion on monetary policy let me add that we have no thought of presenting a bill for damages to the Dominion for monetary losses sustained by the western provinces in consequence of federal monetary policy. We present the monetary brief only as one of the many factors which account for the economic stress to which the western provinces have been subjected, and which therefore serves to explain in part why these provinces now stand in need of a readjustment of their fiscal relations to the Dominion." For similar statement by Hon. A. L. Macdonald, Premier of N.B., see Ev. pp. 3858-59 and 4005. For further discussion see Ev. pp. 7755-56.

9 Dr. Carrothers, economic adviser for B.C., in reply to a question whether it was possible for a province to set up a balance sheet of losses and gains against the Dominion, replied (Ev. p. 5204): "I think the practical difficulties involved would be almost insurmountable. The difficulty would be to segregate what is purely a provincial matter from what is a matter for the province as part of the Dominion." See also discussion of this point in the Ont. hearings, Ev. pp. 7755-56.
cannot undertake provincial functions. Moreover, the inability of a province to provide services on standards reasonably comparable with those of other provinces is bound to give rise to discontent and so to impair national unity. It is, therefore, in the national interest that the province should be able to carry the responsibilities of government entrusted to it by the British North America Act and amendments. But it cannot be held that hitherto the Dominion has been under any recognized constitutional obligation to enable a province to perform its functions.

But even when federal policy tends to impoverish a provincial area, its effect on provincial finance is at best remote and indirect, and only small in comparison to the total effect on the people of the province. The provincial government is rendered poorer, if at all, only to the extent that the capacity of its people to pay provincial (including municipal) taxes is impaired. A province and its municipalities normally take only a small proportion of the income of their people in taxation. A reduction in the total income of the people of a province may make more difficult, but not necessarily impossible, the collection of normal tax revenues by the province and its municipalities. Yet, even if the reduction in the income of the people of a province should be so great that the collection of normal tax revenues became impossible, the injury to the fiscal position of the province would be only the loss in tax revenues plus possible additional expenditures due to such matters as relief, and not the loss in the total income of its people. The issue is not the liability of the Dominion to a province for the adverse effects of federal policy, but the ability of the province to perform its functions under the federal system. The measure of assistance which should be forthcoming from the Dominion is not, therefore, the net damages from federal policies, but the fiscal need of the province arising from any cause.

Admittedly, provincial fiscal need has not hitherto been expressly recognized as a principle of federal assistance to the provinces, but we think that it should be. Our recommendations for adjustment and emergency grants are based on this principle. They aim to place every province in a financial position to perform the functions entrusted to it by the British North America Act (with the exception of relief of employables which we have recommended should be the direct responsibility of the Dominion). In particular they aim to make possible for every province social and educational services on Canadian standards, and developmental services on the standards set by the province in the “peak” years, 1928-31—ends which, if achieved, should alleviate the adverse effects of federal policy on the people of any region or province. The method adopted is that of measuring provincial fiscal need, rather than the impractical method of assessing the adverse effects of federal policies.

10 See Sect. B, Ch. V.