THE GROWTH OF GOVERNMENT ACTIVITIES SINCE CONFEDERATION

A STUDY PREPARED FOR THE

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

BY

J. A. CORRY

OTTAWA

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EDITORIAL FOREWORD

Professor J. A. Corry of the Department of Economics and Political Science at Queen's University was retained by the Royal Commission on Dominion-Provincial Relations to prepare a review of the growth of government activities since Confederation, analyzing the causes and nature of the development, and indicating current trends.

The method of presentation and any expressions of opinion are solely the responsibility of the author, and not of the Commission.

Professor Corry's study substantiates and illuminates the following passage from the Order in Council which created the Royal Commission on Dominion-Provincial Relations:

> "...as a result of economic and social developments since 1867, the Dominion and the provincial governments have found it necessary in the public interest to accept responsibilities of a character, and to extend governmental services to a degree, not foreseen at the time of Confederation."

The author shows that the growth of government activities in Canada since 1867 paralleled a similar extension in all other industrial countries, but that it was much more than a mere imitation of political or social fashions elsewhere; - that it was a development bound to accompany the transformation of simple farm and woodland economies into the complex, integrated and interdependent industrial society of modern Canada.

Professor Corry argues that in many cases the enhancement of government activity and the corresponding increase in the cost of government were inevitable if the personal security, largely based on family solidarity, of the simple economy was to be preserved in the new environment, and if the potential benefits available from collective action in a closely-knit society were

to be realized. The conquest of man over nature and the obstacles of distance and topography, the conservation of natural resources, the protection of man, his crops and his flocks, against diseases and pests, the distribution of the costs of social and physical distress, the protection of persons against complex and subtle forms of dishonesty possible in an intricate commercial world, all cried for a variety of knowledge and informed action which the individual was no longer able to supply. As a result, the state has become an instrument of social adjustment and control.

In the beginning, each of these developments in government intervention was undertaken as an experiment in adjustment to meet changing economic and social conditions. Some of them may now be regarded as having passed the experimental stage and proved their social value. Others are experimental and controversial, subject to revision or rejection in the light of their operation.

The study opens with an introductory section which outlines the method of approach and notes some of the outstanding characteristics of government activities in Canada. It also explains the reasons for the attendant growth of a great number of ad hoc administrative boards exercising not only administrative functions but legislative and judicial functions as well. It then discusses the question of whether a system of administrative courts to control administrative discretion might be preferable. The following sections discuss the growth of government regulation of various business activities, and the expansion of government responsibilities in the fields of public health and social services.

This study was substantially completed in August 1938, although a certain amount of revision has since been done, and it is based on legislation and developments up to, but not beyond, that time.

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THE GROWTH OF GOVERNMENT ACTIVITIES SINCE CONFEDERATION

I. INTRODUCTORY

The period since Confederation has seen a steadily accelerating increase in the activities of governments. We tend to think of this as an increase in absolute terms, eclipsing in range and intensity all previous state interference. This, of course, is quite unhistorical. In all ages prior to the nineteenth century, strong governments had interfered quite freely and generally, quite arbitrarily in every aspect of human affairs. Regarded in proper perspective, the retreat of the state from the overhead direction of human affairs was a brief interlude roughly coincident with the first half of the nineteenth century. The retreat was very marked in Britain. The rapid development of the United States during this period was pushed by private enterprise with governments giving encouragement but little direction and control. However, on the continent of Europe, state activity never went into the doldrums to anything like the extent it did in England and in the United States.

Therefore, when we speak about the increase in the functions of government, we must adopt as a base-line some point in this period. The high point in the influence of the doctrine of laissez faire and the low point in government intervention lies somewhere about 1850. Little, if any, distortion would be involved in selecting 1867 as the date. Since that time, there has been a considerable increase in the activities conducted by governments but it is an increase relative to the immediately preceding period and not relative to all past recorded history.

In 1867, Canada had not yet been swept into the full current of the Industrial Revolution which has so transformed the world. The progress of that movement elsewhere had led to a considerable though varying demand for the importation of food and raw materials. On the basis of this demand, the provinces had

built up an important export trade in timber and timber products, fish and agriculture produce - mainly wheat. Those who did not depend upon the extraction of these articles for their livelihood were mostly engaged in a pioneer agriculture. Most of the agricultural communities and, in many cases, families were still compelled, by force of circumstance, to practice a high degree of self-sufficiency. Roads were poor or non-existent and the railway expansion which was breaking this mode of life, had got properly under way only a decade before Confederation.

Small pioneer industries provided communities with the things which were beyond the ingenuity of the household. They employed local raw materials, little capital and very little highly skilled labour. Industries using imported raw materials or serving a wider market were so few as to be of small significance.

Almost all of the population of three and a half million people were to be found east of the Great Lakes. They lived in the river valleys and along the coasts of the Maritime Provinces, in the valley of the St. Lawrence and in the peninsula between Lake Ontario and Lake Huron. Montreal, the largest town, had a population of somewhat more than 100,000 and only eight other towns had a population of over 10,000. The vast majority of the people lived on farms or in villages and lumber camps.

The coming of the railways was promoting a more diversified economy within the separate provinces. But trade, and therefore interdependence, between the different provinces had been largely blocked by tariffs and lack of transportation facilities. The lack of transportation facilities, the scarcity of capital, and the absence of developed industrial techniques limited export trade to a few staple commodities.

Thus we did not have, at Confederation, any of the problems of a highly specialized and urban industrial economy. The principal problems of that day were not the difficulties of social adjustment in a complex society but rather the difficulties

of organizing a concerted attack upon nature.

It is not necessary to sketch the contemporary scene in order to realize the changes in economic and social structure which have come about in the last seventy years. It is enough to say that we have made a pretty convincing conquest of nature. In a comparatively few years of rapid industrial growth, we have managed to precipitate on ourselves most of the problems of urban industrialism. By moving eagerly into the full current of the Industrial Revolution, we have forsaken our pioneer self-sufficiency for economic interdependence. We have not only become interdependent among ourselves on a national scale; few countries in the world are more deeply committed to the international division of labour. As was inevitable in all the newer countries blessed with abundant natural resources, we have gone in for intense specialization without a corresponding increase in diversification.

Confederation came just when laissez faire was at the peak of its authority. Thereafter, it began rapidly to decline and the pendulum swung again towards more active intervention by the state in economic and social matters. The fundamental reasons are not far to seek. The free economy, which brought about such rapid development, was self-adjusting in a narrow sense. But it made no provision for the social adjustments which had to follow what appeared to the sufferers as its capricious action. The sufferers were many and when they secured the franchise, they laid these problems of social adjustment on the doorstep of the political authority. Governments have become largely occupied in experimenting with solutions for them.

This increase in the functions of government is common to all western countries but it has not always followed the same pattern of development. In those countries which got off to a slow start in the race for industrial expansion and the new countries recently opened for exploitation, the early emphasis was on state assistance to industry rather than on extensive regulation. There are special reasons for reliance on state

assistance in new countries.

One might hazard the view that Canadians have never had any fear of or prejudice against state action as such. Great numbers of them have always been able, thus far, to recall the origin of the state. Having seen it constructed and having watched it grow, they had that familiarity which at least dispels fear. An authority which gives away homesteads and timber limits is not likely to arouse contempt while its benevolence is worth cultivating. Thus the state has lacked the awe and mystery with which age and ceremonial surrounded it in older countries and it has never had the record of bad behaviour which made men fear it in England.

Furthermore, the opening up of a new country requires more than individual initiative; it requires highly organized co-operative effort to overcome natural obstacles. Private enterprise accumulates capital and organization too slowly for many tasks. The state is the only organization which can command the required capital and integrate co-operative effort on a large scale. Hence it is called upon to assume leadership in important and urgent development. The building of the Intercolonial and the long story of railway subsidies are sufficient illustrations. In a new country, the state is saddled with positive duties of helping people to help themselves. Even though its ultimate function is only that of a referee, it must turn in and help to build the playing field before the game can begin.

Thus it has been easy to get agreement on a considerable range of state action in the name of national development. It has covered government ownership of railways and telephones, protective tariffs, bounties and subsidies, the provision of technical and scientific services and the pushing of developmental work of various kinds. Laissez faire philosophy, as interpreted in this country, has never objected to the principle of state promotion of national development, however much opposition might

be aroused against particular expedients which were subsumed under it.

It should also be noted that the securing of state aid for industry is much easier in those political units where some single industry is dominant. When the great majority of people are engaged in growing wheat, it is easy to get agreement for a broad programme of state action. It must lend money to farmers, subsidize their schemes of co-operation, guarantee loans to the wheat pools and establish moratoria on farmers' debts. The inner logic of the demand for severe limitations on state action is that the diverse interests in society cannot agree on any broad programme and each interest fears a strong state which may be captured by other interests jockeying for advantage. When large areas are predominantly concerned with some single industry, that logic does not apply and it is relatively easy to get agreement that the state should help people to help themselves.

This kind of grandfatherly paternalism which distributes sweetmeats and is sparing of restraint has been a striking feature of Canadian government since Confederation. Subject to this qualification, laissez faire was long regarded as the appropriate political maxim. It received powerful confirmation in the everyday scene. The industrious and the thrifty thought they created the opportunity which carried them forward. The self-made men who have moulded Canada saw convincing proof of the maxim in their own success. This belief in a self-reliant individualism was strong enough to postpone any serious attempt at state regulation until the twentieth century and to prevent any significant development of social services other than education, until after the Great War.

It is true, of course, that the relatively late development of industrialism and faith in the constant renewal of opportunities in a new country retarded the demand for state intervention of this kind and the diffusion of responsibility incidental to federalism postponed its adoption even after a demand developed.

In the result, we lagged behind England in regulation of economic life and social services. While we have always made much bolder use of state assistance to industry, England went much further than we in providing services, particularly through municipal enterprise.

Both Dominion and provincial governments have shared in this increase of state activity. Apart altogether from the intensification of financial difficulties involved, that fact has complicated the relationship between them. The rapid development which followed Confederation has resulted in an integrated economic life across the whole Dominion. Local affairs have become intertwined with national affairs at many points and the public policy adopted towards economic matters in one province has repercussions in other provinces. The division of constitutional authority into ten separate spheres naturally puts difficulties in the way of governmental action, affecting our economic and social relationships, which stubbornly refuse to be compartmentalized. As a result, the different governments come across one another's paths in a way that was never expected at the time of Confederation. In devising and operating the makeshifts, which are needed to make effective many of the regulations now thought to be necessary, a high degree of co-operation is required and this, in turn, puts strain on the relations between the governments.(1)

The borderline of economic and political action has never attracted the close attention of Canadian historians and political scientists. From the point of view of research, the growth of the activities of governments is almost an untrodden field. It has been traversed occasionally by economists in tracing the growth of particular industries, such as railways or the grain trade. Thus there are very few secondary sources available for writing an account of this phenomenon. A vast amount of research into the growth of particular activities will have to be done before an accurate detailed account can be given.

(1) For an account of the way in which these strains manifest themselves, see J.A. Corry, Difficulties of Divided Jurisdiction.

Owing to the breadth of the field to be covered, the limitations of time imposed and the scattered nature of the primary sources, it has been necessary to limit this study almost entirely to an investigation of the Dominion and provincial statutes. In a narrow and formal sense, an accurate sketch can be drawn from these sources. Our constitution, inherited from England, ensures that the undertaking of any new activity by government shall be authorized by a statute enacted by the legislature. It is therefore possible to trace out the broad nature of new powers conferred upon the government and to fix the date on which they were assumed.

However, the limitations of a study based on these sources must be pointed out. Firstly, the statute rarely gives any clue to the immediate causes for its enactment. The discovery of these would require much additional investigation. The most that can be done is to estimate the long-run causes for a particular extension of government activity. Secondly, it is not possible to learn from a statute to what extent the powers granted under it have been or are being used. Information from other sources indicates that some of the regulatory and supervisory powers presently possessed by provincial governments are not being vigorously or even half-heartedly exercised. A realistic study of the impact of particular regulatory powers would perhaps indicate that there was, in fact, no state activity in that field. In such cases the statute in question represents no more than an aspiration of the society, or of certain interests within it, which has been strong enough to work its way to the statute book but no further. The statute itself does not say what substance there is in a particular activity.

Thirdly, the actual examination of the statutes has been limited in two ways. To some extent, reliance has been placed on the successive revisions of the Dominion and provincial statutes. In the case of all the more important and the more recent activities, the authorization has been traced back to its first appearance in the statutes. In some cases the search has not gone

beyond the revised statutes and the dates thus arrived at are only approximate.

Also, time did not permit of a complete examination of the statutes of all the provinces. For the purpose in hand, it seemed sufficient to take a sampling of provinces. British Columbia, Saskatchewan, Ontario, Quebec, and Nova Scotia were selected as being fairly representative of the different regions with their varying economic and social characteristics. Nova Scotia was selected from among the Maritime Provinces because the more frequent revisions of the statutes there made the desired information more accessible, while Saskatchewan was chosen from among the Prairie Provinces mainly because its statutes have been more recently revised than those of Alberta and Manitoba.

Inquiries respecting particular government activities were pushed into the statutes of the other four provinces and no significant variation from the pattern revealed by the representative province selected for that region were discovered. The fact is that a great similarity of development in most matters is shown for all the provinces examined. Despite the diversity of provincial interests, there has been a considerable likeness in the problems of economic and social adjustment which have forced themselves into the political arena. Because they shared a common cultural tradition, they tended to approach these problems in a similar manner. Innovations in government activity were frequently borrowed from the United States where the same peculiarly North American difficulties had been faced somewhat earlier. Sometimes quite novel devices were adopted. But once introduced from whatever source, the provinces and Dominion borrowed from one another. This is another reason for believing that no fundamental divergencies exist in those provinces which were not thoroughly studied.

One of the most important reasons for the increase in governmental activity has been the failure or, at least, the loss of belief in the efficacy, of the older method of social

regulation by general laws enforced by the ordinary courts. In one field after another, this kind of regulation has given way to regulation by the executive branch of government. The reasons for this decline are of first importance in any discussion of the increasing activities of governments. To a great extent, the government is taking a place which we have been accustomed to regard as properly belonging to Parliament and the courts. Consideration should be given to the matter here, even though the argument goes rather far afield.

John Locke expounded the philosophy of a limited government after the Revolution of 1688. The technique by which that philosophy was imposed upon political life was specially adapted for the purpose. Basically, it depended upon two things. First, it required that the power of law-making should be external to the government. Parliament which, at the time, was representative of those who wanted severe limits on government activity, met that need adequately. Thus, all laws required the sanction of Parliament. Secondly, it required that the final interpretation of the law should be lodged with some body external to thegovernment. For practical purposes, he who gives the ultimate declaration of meaning, sets the measure of the law. A government which is to be limited must not be permitted to interpret the laws it executes. Here the Common Law Courts, which had developed a tradition of tenderness for the rights of Englishmen and of hostility to the Crown, were trustworthy agents. As long as they could be staffed by judges who clung to the philosophy of limited government, the safeguards were complete.

A pretty comprehensive application of this technique was made in England in the eighteenth, and through much of the nineteenth, centuries. Along with the other British Colonies, we inherited it. Its rigorous application, however, depended directly upon close adherence to the philosophy of limited government. As long as the main object of law and government was to play the referee between conflicting interests and desires of individuals,

the system would work without serious modification. If the only important purpose of the state was to restrain individuals from doing certain anti-social things while they worked out their own self-sufficient lives, it was a highly successful system. The law could define fairly precisely the margins of undesirable conduct and the courts could mete out punishments which would have a deterrent effect. Even if it was necessary to arm officials, such as police officers and customs officials, with restraining power, the limits of their power could be sharply marked out and any over-stepping made subject to punishment. The "negative" state, which aids its citizens almost entirely by restraining them, needs no other methods.

The object of limited government is to maximize individual freedom. No doubt the most serious single threat to freedom comes from arbitrary governments exercising extensive powers. The supremacy of Parliament and the pervasive rule of law, embracing citizen and official alike, which constitute an effective check on governments, are not to be lightly relinquished[2] and their importance should not be lost sight of in the course of attempts to use the state as an instrument of social adjustment.

However, this system is bound to be subject to much qualification and revision if and when it becomes desirable for the state to assume many "positive" functions, in addition to the "negative" ones. In the following sections of this study, reasons are set forth for thinking that the undertaking of a wide variety of positive functions is inevitable in this more complex society. These reasons may or may not be convincing. For the moment, it is assumed that they are.

As soon as positive and concrete objectives of state action were established, government by Parliament and the judiciary began to work badly in these new sectors of state action. Parliament had always been able to discuss the rules of fair play intelligently. But when it attempted to prescribe the detailed steps to be taken to achieve a desired result in a complex and ill-understood

(2) See G.H. Hewart, The New Despotism.

environment, it floundered. The day to day strategy in such matters is a task for experts. It frequently requires revision when Parliament is not sitting. And even when Parliament is sitting, the manifold tasks, saddled on it by the general increase in government activity, prevent it from having the time to work out the technical detail of a policy. As a result, Parliament is more and more compelled to legislate in general terms, outlining the broad statement of policy, while it delegates the framing and enactment of rules and regulations to an administrative body concerned with enforcing the policy. Parliament may exercise close or loose control, or no control at all, over administrative performance of this function. It is being recognized that administrative rule-making has come to stay (3) and the debate is turning to the question of adequate means of control. (4)

The reasons why the executive encroaches on the courts in the interpretation and application of these positive measures are more complex. It must first be noted that most positive programmes, whether of governments or of individuals, require that someone should give his daily and undivided attention to their advancement. Thus government officials are charged with reaching the positive goals of public policy - the scheme must be administered. It is of the essence of successful activity in the everyday world that there should be continuous adjustment and revision of tactics in the light of continually changing situations. Neither Parliament nor anyone else can foresee all the possible obstacles in advance, and provide specific powers for meeting them. Thus, the official charged with advancing a positive programme must have considerable discretion or freedom from rules.

If the substance of the exercise of his discretion is to be subject to review by the ordinary courts, it is necessary

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(3) e.g. see Hewart, op. cit. pp. 76,85.

(4) See generally, The Report of the Committee on Ministers' Powers, (London, H.M. Stationery Office, 1932) Cmd. 4060; Willis, Parliamentary Powers of English Government Departments.

that the court be fully aware of the environment in which he works, the policy he seeks to enforce and not unsympathetic with its aims. In the nature of things, it will be only occasionally that the courts can meet all these requirements. It is not possible for a court, charged generally with law enforcement, to have expert knowledge in those various fields where officials exercise discretions. Moreover, it is extraordinarily difficult to get a true picture of that environment before the courts. They will always take judicial notice of notorious homely facts of which everyone is aware. They will hear evidence when the witness can swear to the testimony of his own senses. But a true picture of the complex social environment of today cannot be got on the record by either of these methods. Any description of it always relies heavily on heresay evidence, and contains a variety of inferences supplied by the logical rather than the sensory faculties. In many cases, the court cannot get a satisfactory picture of the social environment under the rules as to the admissibility of evidence.

Frequently, the court is equally in the dark as to the social policy of the legislature, which the official is trying to enforce. Generally speaking, the courts refuse to go beyond the words of the statute in a search for its meaning. The words themselves seldom give a sufficiently clear indication of the aim of complex legislation and logic-chopping over the details of the context may even give quite a misleading view of it. A very difficult question of law enforcement is thus raised. It is almost impossible for the draftsman to give an adequate translation of aim and purpose in the substantive provisions of involved legislation. At the same time, the refusal of the court to leave the four corners of the statute and embark on a search through vague materials for the precise purpose of the statute can readily be understood. It recoils from the idea of submitting individual rights to a process in which guesswork is involved.

However, experiments in social adjustment such as we are conducting in the present century, necessarily involve a good deal of guesswork and they are likely to continue. Individual rights must always compromise, somehow or another, with social expedience or be submerged. The court, because its principal function is the maintenance of order, on the basis of established social relationships, is bound to think largely in terms of a static social situation. It is not predisposed to look for disturbing and experimental aims on the part of the legislature and frequently it does not see the real purpose of the legislation.(5)

Finally, the courts are, by virtue of their function and their tradition, strongly conservative forces in the society. This is not at all to be deplored; both conservative and innovating forces are necessary. The official, charged with doing something about a social maladjustment, represents the innovating forces. If he is made directly subject to the control of the courts, there is grave danger, in many cases, that the objects aimed at will be frustrated. In the circumstances under consideration, the courts are not suitable bodies for deciding whether the decision of the official was right or wrong.

The result has been that, in most of the activities of government to be discussed in this study, an administrative authority has been provided to carry out the policy of the legislature. It is armed with discretionary power and frequently has a considerable power to adjudicate upon contentions between itself and members of the public. Sometimes, these administrative authorities are merely branches of particular government departments and sometimes they are formally, more or less, autonomous boards

(5) For a further discussion of this aspect of the subject, see Corry, Administrative Law and the Interpretation of Statutes, (1936), 1 Toronto Law Journal, 286. For a specific illustration of the difficulty, see Jennings, Courts & Administrative Law - The experience of English Housing Legislation, (1936) 49 Harvard Law Review, 426.

or commissions appointed by the government. The justification of such authorities is that they can bring expert knowledge of the particular activity to bear on their task. They understand the environment. As nominees of an executive, responsible to the legislature, they can be kept acquainted with the policy of the legislature and, generally speaking, they are sympathetic towards the policy.

Naturally, these qualifications involve certain weaknesses in other directions. They are likely to be so bent upon reaching the objectives in question that they will tend to weight the scales against the protesting individual who stands in the way. They do not always refrain from using their discretion in an arbitrary way. Therefore, the courts being, above all else, experts in the principles of fair play, are generally - and quite properly - given a limited power of review over the decisions of these administrative authorities. This review is not ordinarily for the purpose of saying whether the substance of the administrative decision is right or wrong but rather to make sure that the authority in question observes certain rules of fairness in the course of reaching its decision.(6) In addition, an appeal to the courts on questions of law is frequently given.

Generally speaking, administrative powers of this kind increase as they do because the society is demanding expert action which Parliament and the courts cannot supply. Other factors enter in particular cases. Sometimes, as for example, in the case of old age pensions, it is desired to provide a cheap method of deciding the claims of applicants. In workmen's compensation cases, a speedy as well as cheap method of deciding claims upon the fund is desired because few disabled workmen have reserves which enable them to withstand an expensive and lengthy course of litigation

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(6) The relation between the courts and these administrative bodies is discussed extensively in Dickinson, Administrative Justice and the Supremacy of Law. See also Landis, Administrative Policies and the Courts, (1938), 47 Yale Law Journal 519.

in the courts. Other supplementary reasons could be given, most of which arise out of the fact that the approach and procedure of the courts are not adapted to these situations.

As already pointed out, it would be a mistake to think that the growth of administrative discretion is not attended with serious dangers. These have been clearly pointed out from time to time.(7) Power in the hands of its possessors is easily confused with right. The individual is always at a disadvantage in contests with the state because of its immense resources and because of the various privileges and immunities which are still, without any sufficient justification, the prerogative of the Crown.(8) One of the most important problems, connected with the conduct of government today and in the immediate future, is to ensure that official discretion is restricted to those situations where it is necessary for the furtherance of the social policy in hand and that it is limited in such a way as to reduce the risks of abuse to a minimum.

In the result, we have, at present, a haphazard collection of ad hoc administrative bodies, exercising what are substantially judicial functions. These functions are not exercised according to any principle and the only uniformity of procedure which they observe is forced upon them by the power of the courts to review the fairness of their procedure. However, because this minimum of procedural requirements is not prescribed to them by their own constitutions, failure to observe it cannot be relied on as an invalidating circumstance in proceedings before the administrative agency itself but can only be attacked by a separate action in the courts. This contrasts strangely with the situation in the European countries, which are outside the tradition of the English

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(7) Hewart, op. cit.; Allen, Bureaucracy Triumphant; Report of the Committee on Ministers' Powers, op. cit.

(8) Allen, op. cit.; Robinson, Public Authorities and Legal Liability, Introductory Chapter by J. H. Morgan.

common law. These countries never espoused the full logic of the theory of limited government and modern representative governments there inherited substantial royal powers of dispensing justice through administrative agencies. This led easily to the establishment of permanent administrative courts, applying a uniform set of principles and dealing with all disputes between individual citizens and officials according to established rules of procedure.

This is probably a less expensive method of controlling or providing for the control of public administration, when it intervenes in the daily life of individuals as much as it does now. And, in France, at any rate, the administrative courts appear to strike a balance between the claims of public policy and the rights of individuals, which is, at least, comparable with that arrived at by our system.(9) It is possible that we could effect a substantial economy by rationalizing our system of administrative justice without losing any of the values which we rightly cherish.(10)

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(9) Robinson, op. cit., introductory chapter; Port, Administrative Law, c. VIII and at pp. 329-30; Allen, op. cit. at pp. 2-3.

(10) There is some constitutional difficulty over provincially appointed administrative bodies or tribunals of this type. Section 96 of the British North America Act provides that the judges of the Superior, District and County Courts shall be appointed by the Dominion. In a number of cases, the authority of provincial boards has been attacked on the ground that they were, in reality, Superior Courts and therefore invalidly constituted, e.g., see Tremblay v. Kowhanko, (1920) 51 D.L.R. 174; Attorney-General of Quebec v. Slanec, (1933) 2 D.L.R. 289; Re Toronto Railway Co. v. City of Toronto, (1919) 46 D.L.R. 547; Winnipeg Electric Railway Co. v. City of Winnipeg, 30 D.L.R. 159; Kerr v. Wiens, (1937) 2 D.L.R. 743. Thus far, no tribunal, which has mainly administrative duties, has been held to be a Superior Court. See Martineau v. City of Montreal, 1932 A.C. 113 and City of Toronto v. York Township, 1938 A.C. 415, as well as the first group of cases cited above. The courts have recognized that the bodies which have come before them are primarily administrative. The provincial courts have also said that the mere fact that such tribunals are charged with some judicial functions does not, of itself, transform them into Superior Courts and that there is no objection to their exercising judicial powers if these are necessarily incidental to the performance of their administrative functions. See Tremblay v. Kowhanko, City of Toronto v. York Township, (1937) 1 D.L.R. 175.

However, in City of Toronto v. York Township, recently before the Privy Council, their Lordships refrained from endorsing any of these statements. At the same time, they made statements which, taken literally, deny that provincially appointed boards are competent to exercise judicial functions. If these statements are an indication of the attitude likely to be taken by the Privy Council, far-reaching consequences for many provincial boards are involved.

That, however, raises many complex issues, such as the question how political institutions, which work admirably in the society which devised them, will work if transplanted to a different political and social environment. Such matters cannot be discussed here. All that can be said with certainty is that administrative agencies, which make decisions of a substantially judicial nature, affecting the rights of individuals, should be obliged to adopt a uniform code of procedure, designed to cover certain minimum requirements.

Two different methods are available for outlining the increase of state activity. One is to divide the time which has elapsed since Confederation into significant periods and then discuss the advance of state action in relation to the general

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(Footnote 10 cont'd)
In order to carry out the policies whose execution has been assigned to them by the provincial legislatures, almost all of them must make some determinations which are undeniably judicial in character. If all grants of such powers to them are ultra vires, the execution of many provincial legislative policies will be seriously hampered.

A possibility of further complication lies in the fact that there is considerable uncertainty as to what is a judicial function. An entirely different line of authorities in the English courts in recent years has been expanding the meaning of "judicial" action. See Rex v. The Electricity Commissioners, (1924) 1 K.B. 171: Rex v. London County Council (1931) 2 K.B. 215: Rex v. Minister of Health, (1929) 2 K.B. 98: (1931) A.C. 494: Rex v. Hendron Rural District Council, (1933) 2 K.B. 696. The broad result of these cases may be summed up by saying that any person or body which has a power to make decisions affecting the rights of individuals is bound to act judicially. Such an extended definition of judicial action covers a good deal of what has long been thought to be essentially administrative.

Of course, a distinction can be taken between maintaining a judicial temper in the course of any kind of activity and the performance of an essentially judicial function. See Shell Co. of Australia v. Federal Commissioner of Taxation, 1931 A.C. 283. Whether that distinction will be taken and if so at what point, is not clear. Perhaps the courts will never apply the reasoning of this separate line of authorities to an analysis of the nature of the powers of provincial boards. On the other hand, the courts do not look with favour on any considerable discretionary powers in the hands of administrative bodies and they may take advantage of any available precedents for restricting the grant of such powers. If the courts should impose severe restrictions in this way, it will become necessary to consider very carefully the place of administrative justice in the scheme of government.

situation in each period. The other is to isolate types of state intervention and then follow the development of each separately throughout. There is a great deal to be said for the first method as being the most illuminating. However, as already pointed out, the intensive research, which must precede an attempt to weave the story of growing state activity into the general history of our development, has not yet been done. Moreover, new types of state intervention seldom spring, fully armed, from the statute book at a particular moment. Frequently, there is a considerable period of trial and error in the search for an effective technique. And also, there continues to be a piecemeal adaptation to new problems and changing conditions. This makes it difficult and confusing to break the continuity of the story in order to deal with a particular period as a whole. Therefore, the latter method will be used in this discussion.

II. REGULATION OF MARKETING

The purchaser of goods in 1867 had to bear in mind the maxim caveat emptor and make his own judgments on the quality and soundness of the article. Cautious persons would insist upon a specific guarantee of quality. Even the incautious got some protection from the common law provisions as to merchantable quality and correspondence of the article with the description under which it was sold. By law or by special contract, a buyer might secure a right to proceed against a seller for failure to fulfil his obligation. However, such a right could only be enforced by litigation - a hazardous adventure in any case and not a practical course of action in the mass of the smaller trading transactions.

The nature of trade in 1867 was such that it did not seem unreasonable that buyers should be left to rely on their wits and general rules of law. Neighbourhood trade was the rule and the typical buyer-seller situation was on all fours with the horse trade. Neither one could monopolize the knowledge of market conditions to the disadvantage of the other. In the vast majority of transactions the parties met face to face with the article or, at least, a sample lying before them. Most commodities were of a simple kind and quality could easily be judged by the senses. Generally, this equality of bargaining position was supplemented by personal acquaintance between the parties - one knew whom to trust and whom to suspect. These informal controls are inherent in local exchange.

Of course, even at this time there was a considerable body of trade which did not conform to this simple pattern. Surpluses of staple products were marshalled for export where the lack of standard grades cut both demand and price. The nature

of the economy was changing rapidly. Production was increasing in quantity and diversity and thus demanding an extension of the area of exchange. The rapid development of railways and the growth of towns and cities made possible a greater volume of exports and the development of home markets which were no longer limited to the neighbourhood. As manufacturing grew, raw products had to be assembled for processing. Manufactured goods not only increased in variety but the application of science to industry resulted in a great number of products with respect to which the testimony of the senses was no longer a reliable guide to their nature and quality.

Two main problems emerged as a result of these revolutionary changes. In the first place, distant markets could only be reached by the interposition of middlemen with serious results for the old equality of bargaining position. It turned here to the disadvantage of the small producer of natural products. He had now to trust his produce to men whom he frequently did not know and who possessed, as against him, a monopoly of the knowledge of market conditions. One need not say that a significant proportion of middlemen are dishonest. The mere fact of their superior strategic position gives rise naturally to distrust and suspicion and consequently to pressure for recovery of approximate equality through government intervention.

When natural products are assembled for distribution in distant markets, the fact of wide disparities in quality and the lack of any accepted standards of quality involves wasteful and inefficient methods. There is a lumping of all the produce from a particular area to the detriment of the producer of the superior article. Sir Joseph Flavelle has given us a striking picture of the chaos which this practice produced in the butter

trade in the seventies.[1] It not only discourages the production of superior quality; it hampers trade in the product at every point because no one can be sure what he is buying and it depresses demand because consumers turn to other goods. In the economy which developed in the nineteenth century, reliable standards in the products which moved to distant markets became almost as important and necessary as an honest currency.

Secondly, the increase in sophisticated products created another problem of marketing in the field of distribution. The quantity and variety of packaged goods offered to consumers multiplied. A plethora of products appeared, the quality of which could only be determined by complicated scientific tests. These found their way down the channels of distribution without dealers or consumers having any means of assurance about their quality. The informal controls which had operated in the neighbourhood market broke down here also. Their failure opened the way for frauds on the consumer, frequently combined with disastrous effects upon his health. This inevitable damper on a growing trade was injurious to everybody and the exploitation of the situation by dishonest manufacturers and dealers penalized the honest ones. This situation slowly created a demand for state intervention to facilitate trade and restore equality of bargaining position.

The measures of government intervention calculated to control these abuses in the distribution field will be considered first. The control of the adulteration of food has been a problem of urban society in all ages. Cities, both ancient and modern, have always had their inspectors for the enforcement of pure food laws.[2] The informal controls of the neighbourhood market will

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(1) Innis, The Dairy Industry in Canada, 1937, pp. 34-6.

(2) Muntz, Urban Sociology, pp. 430-1.

not work when a certain size and mobility of population are reached. It was not until the area of exchange was greatly extended that the matter began to require the intervention of central rather than local government. It is significant that the American states did not begin to enact pure food laws until 1847 and that federal pure food laws in the United States did not come until 1906, after a great expansion in inter-state commerce.(3) In Canada, the federal government intervened earlier. In 1874 an amendment to the Inland Revenue Act made it an offence to sell any adulterated article of food or drink with knowledge of its condition.(4) The definition of adulteration given therein indicates that the new provision was intended largely as a health measure. Inland Revenue officers were given power to take samples of intoxicating liquor for the purpose of determining their quality and, as if by an afterthought, they were authorized to take samples of food as well. Government analysts were to determine the quality of the samples as a preliminary aid to enforcement.

These provisions were consolidated in the Adulteration Act of 1884(5) which covered drugs and agricultural fertilizers as well as food. The Food and Drugs Act of 1920(6) supplanted this earlier act and extended its scope in two ways. It defined adulteration so as to include unreasonable variations from a

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(3) Ibid. pp. 431-2.

(4) Statutes of Canada, 1874, c.8, ss. 14-24.

(5) Statutes of Canada, 1885, c.67.

(6) Statutes of Canada, 1920, c.27.

standard of quality to be fixed by the Governor in Council.[7] It also contained detailed provisions against misbranding and false labelling. That is to say, the act was no longer merely a health measure. It was also designed to curb frauds in the sale of food and drugs through the technique of government inspection and analysis of samples.

As the number and complexity of products increased and the area of their distribution extended, Parliament went on making special provision for curbing frauds and ensuring some equality of bargaining position. An extension of the principle of the pure food laws was made in 1907 covering all meat and canned foods going into inter-provincial trade.[8] The meat packing and fruit and vegetable canning industries had by this time become of very considerable importance in Canada. In the previous year, the existence of shocking practices in the Chicago meat packing industry had been revealed. Congress had already acted to impose supervision on the industry. The Canadian Government introduced similar legislation, partly because an investigation had unearthed unsatisfactory conditions in the industry, partly because the alarm of the Canadian public was injuring the packing and canning industries and partly because it was deemed necessary in order to hold foreign markets.[9] It was quite clear that under factory conditions of production and the circumstance of widespread distribution, the only satisfactory regulation was to inspect the packing and canning process. Therefore government inspectors were put into all packing and canning establishments doing an inter-provincial or export business. Somewhat similar legislation

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(7) Ibid. ss. 14 ss. 1 (a)and s.3 (g).

(8) Statutes of Canada, 1906-7, c.27.

(9) House of Commons Debates, 1906-7, p.408 et seq.

respecting dairy products, live stock products, fresh fruits and vegetables, honey and maple syrup has been passed. It also provides protection for the consumer, but in large part, its purpose is to protect and encourage the producer and it will be dealt with under that heading.

Inspection of all petroleum and naptha sold in Canada was made compulsory in 1877 (10) and 1893 (11) respectively. The buyer of gas for domestic use cannot judge its quality and he cannot test of the accuracy of the meter. Thus a system of gas and gas meter inspection began as early as 1873. (12) A system of inspection of electric meters introduced in 1894 (13) testifies to the increasing consumption of electricity and the similar difficulty of testing the accuracy of the meter. Water meter inspection did not come until 1905 (14) because it was not until the turn of the century that the use of water meters supplanted the earlier custom of supplying water at a flat rate.

The fraudulent labelling of agricultural fertilizers was struck at by Parliament in 1884. (15) In 1886 all manufacturers and importers were required to send samples to the Minister of Agriculture and analysts and inspectors to enforce maintenance of quality and honesty of labelling were provided. (16) Registration under a specific number assigned by the Minister of Agriculture was made compulsory in 1909. (17) A similar structure

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(10) Statutes of Canada, 1877, c.14.

(11) Statutes of Canada, 1893, c.36.

(12) Statutes of Canada, 1873, c.48.

(13) Statutes of Canada, 1894, c.39.

(14) Statutes of Canada, 1905, c.48.

(15) Statutes of Canada, 1884, c.37.

(16) Statutes of Canada, 1886, c.67.

(17) Statutes of Canada, 1909, c.16.

of regulation providing for registration, honest marking, standards of quality with inspectors and analysts to enforce them, was set up for seeds in 1905 (18) and for commercial feeding stuffs in 1909. (19) By the beginning of the twentieth century the supply of seeds for various purposes had become a specialized trade. Misleading advertising was used to push the sale of seeds of inferior quality. Insufficiently cleaned seed was being distributed by dealers and noxious weeds were thus being spread over the country. Shortly after a considerable quantity of fall wheat had been distributed as spring wheat, Parliament enabled the government to take a measure of control over the marketing of seeds by dealers. (20) Similar abuses were being perpetrated by manufacturers of "stock foods", who mixed chaff, sawdust, moss, and other materials in their loudly touted products. (21) In the extended market, the undoubted right of a multitude of small purchasers to pursue their common law remedies in the courts was no cure for these abuses. The only effective means of control was by a system of registration, standards and inspectors to reach the difficulty at its source. And, of course, once the government invites people to rely on government standards in a commodity, it has a duty to see that they are enforced in the trades.

The above cases of government intervention to protect the consumer all came from the federal field. Similar conditions moved provincial legislatures to similar action in their field.

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(18) Statutes of Canada, 1905, c.41.

(19) Statutes of Canada, 1909, c.15.

(20) House of Commons Debates, 1905, pp.322-3.

(21) House of Commons Debates, 1909, p.5209.

The earliest attempt seems to have been to prevent the sending of skimmed, sour or tainted, or diseased milk to cheese and butter factories. Ontario[22] and Quebec[23] tried to prevent such practices by threat of penalty as early as 1868 and 1870 respectively. However it was not until the early years of the twentieth century that they provided for dairy inspectors with power to inspect farmers' premises.[24]

From the nineties to the twenties was a period of great increase in government intervention respecting the dairy industry. The subjection of cheese and butter factories to a system of licensing and inspection for the purpose of regulating quality of product and sanitary condition of plants, the establishment of grades of milk and cream (made feasible by the invention of the Babcock test), the requirement of dairy school certificates in order to qualify as tester, grader or "head maker" in a factory are the specific innovations of greatest importance. These provisions appear in this period in all the provinces examined. Of course, they were in part designed to protect consumers from frauds. They were also part of a programme for improving and increasing production for export markets. And they were hastened by a growing knowledge of the relation between public health and the food supply.

In fact, most of the early provincial interferences on behalf of the consumer were of the public health type. At Confederation, health was almost entirely a responsibility of local governments. But as the significance of the food supply became clearer and as the purchase of prepared foods displaced

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(22) Statutes of Ontario, 1868, c.33.

(23) Statutes of Quebec, 1870, c.30.

(24) See e.g. Statutes of Ontario, 1908, c.55; Statutes of Quebec, 1921, c.37; Statutes of British Columbia, 1920, c. 23.

home growing and/or processing, the provincial governments gradually moved to leadership and control over municipal regulations. That movement will be discussed elsewhere. What should be pointed out here is that the provincial governments continually increased the powers of the municipalities to test milk supplies, inspect the sanitary conditions of stables, and test cows for disease and at the same time it brought the activities of local officers under provincial supervision.(25) Similar powers respecting meat and slaughter houses went hand in hand with those respecting milk. Provincial action respecting bread and bakeshops begins about 1910, although Nova Scotia had entered the field as early as 1884.(26) Standards of weight and quality and specific markings were provided for and municipal licence and inspection subject to control by the provincial Board of Health were insisted on.(27)

Other provincial interventions for protection of consumers relate to what may be described as gadgets. In the twenties, Ontario, Saskatchewan and Quebec intervened to ensure certain standards of quality in lightning rod systems. The executive was given power to establish standards, provide inspection, and enforce compliance.(28) About the same time, British Columbia, Saskatchewan and Ontario established a system of inspection for the sale of electrical equipment. Provincial officials must be satisfied of its soundness before it can be sold in the province.(29)

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(25) See e.g. Statutes of Ontario, 1896, c.63; 1911, c.69.

(26) Revised Statutes of Nova Scotia, 1884, c.73.

(27) Statutes of Ontario, 1910, c.95; Statutes of Quebec, 1911, c.40; Statutes of Saskatchewan, 1924-25, c.31.

(28) Statutes of Ontario, 1921, c.84; Statutes of Saskatchewan, 1921-2, c.67; Statutes of Quebec, 1928, c.63.

(29) Statutes of British Columbia, 1922, c.23; Statutes of Saskatchewan, 1928-9, c.4; Revised Statutes of Ontario, 1937, c.62, s.87.

This last is an excellent example of a sophisticated article. The average purchaser is quite unable to judge as to its safety or durability. Of course, supervision in this case is not solely directed to prevention of fraud. Faulty electrical equipment is also dangerous to life and property. Therefore, these regulations have a police aspect as well. In this respect, they are similar in object to the wide power of administrative supervision over the manufacture and sale of explosives which the federal government possesses under the Explosives Act of 1914. Explosives can be a widespread threat to life and property and the contribution which scientific knowledge can make to safe manufacture and use of them justified government intervention to ensure that that knowledge was used.(30)

Another extension of government supervision for the protection of the consumer is to be found in the Coal Sales Acts of Alberta(31) and British Columbia.(32) These acts require that all collieries shall be registered and that coal shall only be sold under its registered name. They authorize the Lieutenant-Governor in Council to establish grades of coal and a system of inspection.

The difficulty of assembling the products of a large number of small producers in order to transport them to the distant market has already been pointed out. It bears most heavily on the small producers of primary products - in Canada, agricultural produce and fish. Government intervention in this field is designed mainly to assist them, though of course, it is also aimed at assuring quality to the consumer and at facilitating all dealing in such produce.

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(30) For the reasons for introducing legislation on explosives, see House of Commons Debates, 1914, pp.3587, 3861.

(31) Statutes of Alberta, 1923, c.31; 1925, c.21.

(32) Statutes of British Columbia, 1931, c.38.

The small unorganized producers of primary products know little or nothing about the conditions of market demand beyond their own community. They know that a better article should command a better price. But many of them lack the knowledge and initiative to improve quality in order to capture markets and where all produce, good and bad, from a particular area, is lumped together in the assembling process, there is little incentive to learn or to try. The failure to gain or to keep lucrative markets turns into resentment against the middleman and his superior strategic position in bargaining. Naturally, the latter always takes advantage of his superior position and sometimes he makes use of chaotic market conditions to defraud the producer.

The efforts of Canadian governments to deal with this situation have gone through at least three stages. The first stage from 1873 to 1900 coincides roughly with the long period of agricultural depression. In this period, governments restricted their efforts mainly to education and developmental work, trying to encourage and assist farmers to use better methods and to increase and improve production.(33) During this period, scientific agriculture made great strides in other parts of the world and it became clear that, in order to hold home markets and to capture export markets, it would be necessary not merely to improve quality generally but also to give specific assurances of quality and to put up the produce in an attractive form. In the period dating roughly from 1900 to the onset of the depression in 1930, this realization led to the introduction of government grades of quality, standard packages and a system of accurate marking in a variety of products. Compliance was enforced by a system of inspection by government officials. It was supplemented by a

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(33) Canada and its Provinces, Vol. IX, p.180.

variety of other compulsory measures, such as inspection of cheese and butter factories.

The Dominion led in this movement towards standards in natural products because of the importance of uniformity and its exclusive constitutional power to regulate export trade, where the need had first been felt. With the increasing importance of the home market and the necessity of giving the Canadian producer an even break in it, the Dominion sought to extend its grading systems to domestic trade. Interpretation of the constitution by the courts showed that its legitimate efforts in this respect were limited to inter-provincial trade.(34) This led to special legislation by many of the provinces in an attempt to validate the Dominion statutes and regulations for the purpose of controlling intra-provincial transactions.

During this period, of course, the governments continued and intensified their developmental work. They made little attempt directly to redress the balance of bargaining position between producer and middleman. Strict regulation of stock yards and the commission merchants operating therein was undertaken by the Dominion in 1917. After the investigations into the fruit trade under the Combines Investigation Act in 1926, some provinces introduced legislation imposing some added obligations on commission merchants.(35) This was merely a change in the law and not an increase in government activity. Encouragement was given by governments to producers' co-operatives in their effort to deal with the problem of the middleman. But the main emphasis in government activity in this period was on the establishment of standards to bonus the competent producer and facilitate marketing.

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(34) Rex v. Manitoba Grain Co. (1922), 2 W.W.R. 113; Rex v. Collins (1926) 4 D.L.R. 548.

(35) Statutes of British Columbia, 1926-7, c.54; Revised Statutes of Ontario, 1927, c.270.

The third stage began with the depression in the thirties. It has been marked by an attempt to go beyond the maintenance of reliable standards of quality in a free market in which the middleman dominates the channels of assembly and distribution. The dissatisfaction of British Columbia fruit and vegetable growers with the achievements of voluntary co-operation and the collapse of the wheat pools reinforced a growing demand that the state should organize and control the market for primary products. This demand was also strengthened greatly by the catastrophic fall in the price of primary products. The spectacle of sheltered industries and trades escaping the ravages of the depression as a result of tariff protection and other state aids made many producers of natural products determined to get under the umbrella also. A state which provides special privileges for particular groups has no effective answer to similar demands from other groups. The Natural Products Marketing Act of 1934 and the provincial legislation supplementary to it was the result.

An outline of the specific activities undertaken by governments in the second and third stages may now be given. A wide variety of natural products are now subject to compulsory grading and inspection for export and inter-provincial trade and in some products all domestic trade is covered by the regulations.

The provisions respecting inspection of meats and canned foods which were introduced in 1907 have already been mentioned. The Dominion Parliament made provision for compulsory grading and inspection of live-stock and live-stock products in 1917,[36] pickled fish in 1920[37] dairy products in 1921,[38]

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(36) Statutes of Canada, 1917, c.32.

(37) Statutes of Canada, 1920, c.48.

(38) Statutes of Canada, 1921, c.28.

root vegetables in 1922,[39] maple products in 1930,[40] honey in 1934,[41] and all vegetables in 1935.[42] Generally speaking, these provisions applied to inter-provincial and export trade and provided for standard grades, packages and marks with a system of inspection to enforce them. In some cases, they went further. The Live Stock and Live Stock Products Act of 1917 imposed government regulation on stock yards, and the commission merchants who deal in the stock yards. Inter-provincial traders in fruit, vegetables, honey and maple products must now secure a licence from the Minister of Agriculture in order to carry on business. Registration of sugar bushes and maple manufacturing plants is also provided for.

The most striking example of this kind of intervention is, of course, the regulation of the grain trade. The wheat farmer of Western Canada, when he came to market his product, was subject to all the disadvantages which beset primary producers in their relations with middlemen. Indeed, there were peculiar disadvantages as well owing to the virtual monopoly in local elevator facilities encouraged by the Canadian Pacific Railway. It is not necessary to recount the story of the farmers' grievances here.[43] The Manitoba Grain Act of 1900[44] set up a Commissioner with power to require grain dealers to take out licences to supervise the handling and storage of grain and to investigate all complaints respecting dockage, grade, weight, fraud and neglect. The public

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(39) Statutes of Canada, 1922, c.43.

(40) Statutes of Canada, 1930, c.30.

(41) Statutes of Canada, 1934, c.18.

(42) Statutes of Canada, 1935, c.62.

(43) For these, see generally, Patton, Grain Growers Co-operation in Western Canada.

(44) Statutes of Canada, 1900, c.39.

ility aspect of the terminal elevator business was also re-
ized. In 1912, a Board of Grain Commissioners with extensive
ers over the marketing of grain was established. The inspect-
service was extended beyond the determination of grades to
er binning, cleaning, storing, and shipping in terminal elevators.
car order-book system was imposed on the railways and the
ard was authorized to order an equitable distribution of freight
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s. Further revisions of the act in 1928 and 1930 have
l further extended the control of the Board of Grain Commissions
(46)
r the trade and attempted to overcome certain constitutional
(47)
jections taken by the courts.

In this period (1900 to 1930) the principal inter-
tions of the type now being considered which were launched in
provincial field had to do with the regulation of the dairy
ustry. By 1921, grades for milk and cream supplied to dairy
duct factories had been established in Ontario, Saskatchewan,
(48)
itish Columbia, Quebec, and Nova Scotia. Registration or
ensing of factories had become compulsory and provincial in-
ection had been established to enforce grading provisions and the
intenance of sanitary conditions in the factories. Head makers,
ders and testers were required to hold certificates from the
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partment of Agriculture.

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45. Statutes of Canada, 1912, c.27.

46. Statutes of Canada, 1925, c.33; 1930, c.5.

47. Rex v. Manitoba Grain Co. (1922) 2 W.W.R. 113; King v. Eastern Terminal Elevator, 1925, S.C.R. 434; Trimble v. Capling (1927) 1 D.L.R. 717.

48. Statutes of Ontario, 1916, c. 52; Statutes of Saskatchewan, 1919-20, c.46; Statutes of British Columbia, 1920, c.23; Statutes of Quebec, 1921, c.40; Statutes of Nova Scotia, 1921, c.45.

49. These regulations are scattered through a number of statutes which it would be too burdensome to quote here.

In the earlier period (1873-1900), the provinces had relied mainly on the supervision of unofficial dairy associations for the maintenance of standards. But as the applications of science to the dairy industry became more numerous and the competition for export markets more intense, the arguments for centralized government control with its permanent organization and its ready command of scientific knowledge became too strong to be ignored.(50) Hence, the establishment of dairy branches in the provincial Departments of Agriculture, a movement in which Ontario took the lead in 1910.(51)

Apart from the dairy industry, the provincial government activities in this period were mostly directed to attempts to cure the constitutional defects of the Dominion regulatory structures referred to above. Compulsory grading could not be extended to intra-provincial trade except by provincial legislation and many provinces sought to extend the Dominion regulations by supplementary legislation which would enable Dominion inspectors to impose Dominion grades upon intra-provincial trade.

This device for extending Dominion regulations into the provincial sphere was held ultra vires by the courts in 1935.(52) Since then a number of the provinces have enacted their own legislation providing for grades, packages and marks. Saskatchewan and Manitoba have enacted such legislation covering live-stock products.(53) New Brunswick passed comprehensive legislation for the grading of natural products in 1937.(54)

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(50) Innis, The Dairy Industry in Canada, p. 108.

(51) Ibid.

(52) See Rex v. Zaslavsky (1935) 3 D.L.R. 788, later followed by similar decisions in Alberta and Manitoba.

(53) Statutes of Manitoba, 1936, c.24; Saskatchewan, 1936, c.77.

(54) Statutes of New Brunswick, 1937, cc.52-53.

In 1935, Quebec made provision for the grading of agricultural products of all kinds.(55) An act of similar scope was enacted in Ontario in 1937 and, in the same year, British Columbia made provision for her own system of grading beef, fruit, vegetables, and honey.(56) It is understood that the provinces intend to enact Dominion grades by regulation under that legislation and appoint Dominion inspectors as their officials to enforce them.

Some products got special attention in some provinces. In 1933 Quebec provided for standards of quality in leaf tobacco and authorized inspectors to enforce the standards, to supervise processing, and to determine the "salubriousness of the premises" of the manufacturer.(57) In addition new legislation appeared respecting dairy products requiring licences from transporters of milk, bonds from distributors, and records and reports from cheese and butter manufacturers.(58) Nova Scotia passed similar legislation for the protection of dairy producers in the same year.(59) In 1935, Ontario provided for administrative supervision of the sale of grain with a view to preventing the spread of noxious weeds.(60)

A good many of these measures, which are typical of the government interventions in the period from 1900 to 1930, continued to appear in the present decade. But a definitely new

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(55) Statutes of Quebec, 1935, c.30.

(56) Statutes of Ontario, 1937, c.24; British Columbia, 1937,cc.4,23.

(57) Statutes of Quebec, 1933, c.27.

(58) Statutes of Quebec, 1933, c.24.

(59) Statutes of Nova Scotia, 1933, c.8.

(60) Statutes of Ontario, 1935, c.8.

departure in government regulation of marketing got under way in the early thirties. It was foreshadowed in British Columbia as early as 1927 by the Produce Marketing Act.(61) It might be described as compulsory producers co-operation for it provided that a decision of a 3/4 majority of the growers in an area should be binding on all. Such a majority could set up a committee with power to determine the time, quantity, place and price of marketing of the entire product in question. This committee was, in a sense, unofficial, because it was chosen by the growers and shippers from among themselves. It was official, in essence, because it wielded the coercive power of the state and thus proposed to make the state the architect of the market.

The British Columbia fruit and vegetable growers were disappointed at the results of voluntary co-operation. They felt that an exclusive marketing agency, mainly controlled by producers, could prevent the abuses of the middleman and that, by levelling off the flow to market, it could stabilize prices. Voluntary co-operation had failed to secure and maintain an exclusive marketing agency and they were determined to get it by state action. Similar in type was the Dairy Products Sales Adjustment Act in the same province in 1929. It was an attempt, by the use of state authority, to cartellize the dairy industry of the Fraser Valley and equalize returns as between producers, in so far as the disparities were due to the spread between the Vancouver price of fluid milk and the price paid by processors of milk products.(62)

The Saskatchewan legislation of 1931 providing for the compulsory pooling of all grain was similarly inspired.(63) However, all three of these experiments fell foul of the courts

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(61) Statutes of British Columbia, 1926-7, c.54.

(62) Ibid., 1929, c.20.

(63) Statutes of Saskatchewan, 1931, c.88.

before they had accumulated much experience.[64] The depression deepened with special hardships for primary producers and in 1934 the Dominion Natural Products Marketing Act was passed.[65] It was essentially similar in principle to the British Columbia act mentioned above and was in terms applicable to all of Canada, and to all kinds of natural products. It was clear that provincial legislation would be necessary to ensure the constitutionality of this comprehensive scheme of regulation and the provinces co-operated by enacting similar natural products marketing acts.[66]

Dominion and provincial marketing boards were to co-operate in determining the time and place at which and the agency through which natural products were to be marketed. They had power to determine the quantity and quality and manner of marketing which, of course, implies the power to fix prices. This is a revolutionary departure from the older types of marketing regulation which aimed at improving the operation of the free market. The Natural Products Marketing Acts sought to liquidate the free market and to establish channels of assembly and distribution under state control. Thus they are to be attributed in part to the deep dissatisfaction with the current operation of the free economy which swept the western world during the depression. They were the Canadian offspring of the economic planners. Whether the

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(64) Lawson v. Interior Tree and Vegetable Committee (1931), 2 D.L.R. 193; Lower Mainland Dairy Sales Adjustment Committee v. Crystal Dairies Ltd. (1933), 2 D.L.R. 82; Re Grain Marketing (1931) 2 W.W.R.

(65) Statutes of Canada, 1934, c.57.

(66) These provincial acts varied somewhat in form but they aimed at substantially the same results. See e.g., Statutes of British Columbia, 1934, c.38; Statutes of Saskatchewan, 1934, c.62; Statutes of Nova Scotia, 1934, c.58.

ambitious schemes which they outlined would have met with any measure of success if the Privy Council had not intervened is difficult to say. But any considerable degree of success would have led to the rapid cartellization of Canadian agriculture.

Another adventure in market regulation by the state made its appearance about the same time. This was the establishment of an administrative authority to regulate the marketing of fluid milk in urban centres. It is not possible to describe this intervention simply as a revolt against the free market, though, no doubt, that has been an element in the demand for regulation. Along with other primary producers, the milk producer shared a list of grievances against the middleman. However, there were other important considerations involved.

Milk has become one of the first necessities of life and therefore any interruption of the daily supply is regarded as a catastrophe. Plausible arguments can be made to show that the urban distribution of milk is almost as much a natural monopoly as the supply of gas and water. Therefore it has been claimed that the distribution of milk has become a public utility enterprise where competition does not supply adequate regulation and where state regulation in the form of the fixing of prices, enforcing standards of service, and restricting entrance into the business has become appropriate.

This argument received powerful support from the following factors. Urban demand for milk has led many producers to specialize in dairying and consequently their position is more exposed to fluctuations in returns. The necessity of establishing an adequate base for winter months causes large surpluses in summer which tend to upset the market. This tendency was aggravated in the depression by the entry of many small farmers into the market for the purpose of supplementing their dwindling cash returns. Chain groceries, assured of cheap supplies, began to break in on

the distributors, - even to the point of using milk as a "loss-leader". Distributors became alarmed and dissatisfied. In these unsettled conditions the threat of milk strikes and the complaints of dairymen that an uneconomic price would force them out of business alarmed the consumer. Thus a number of pressure groups became concerned to demand stability in the industry through government action.

In this case, the desired action had to be sought from the provincial governments. Of the provinces examined in this study, Ontario[67] and Quebec[68] provided for administrative boards with wide control over the milk industry in 1934. Saskatchewan followed suit in 1935[69] and Nova Scotia, having already provided for the licensing of distributors in 1934, proceeded to give the board power to arbitrate and settle disputes between different groups in the industry in 1937.[70] The other provinces mentioned above have gone considerably further than Nova Scotia. Quebec authorized the board to approve price agreements between producers and distributors and to enforce them as well as to fix prices on its own motion. In addition to this, the Ontario board has a discretionary power to refuse licences to distributors if it does not think the granting of a licence is in the public interest and a right to approve and enforce codes of fair business practices in the industry. The Saskatchewan Milk Control Board has even more comprehensive powers over the industry.

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(67) Statutes of Ontario, 1934, c.30.

(68) Statutes of Quebec, 1934, c.27.

(69) Statutes of Saskatchewan, 1935, c.58.

(70) Statutes of Nova Scotia, 1937, c.57.

This completes the list of the important interventions of government for the purpose of regulating marketing. The attempt to find substitutes for the old informal controls of the neighbourhood market has led to a great increase in governmental activity. In part, these devices have been designed to protect the consumer. On the whole, the main emphasis has been on protection and encouragement to the producer and the general improvement of trade; an attempt to cure some of the defects of the extended free market. In recent years, however, there has been a tendency to lose patience with such a limited objective. Thus the Natural Products Marketing Acts and the Milk Control Acts have tried to find a substitute for the free market in a state regulated market.

III. CONTROL OF AGRICULTURAL PESTS AND ANIMAL DISEASES.

A country which depends to a great extent upon agriculture for its prosperity must be specially concerned over things which threaten to lessen the quantity and quality of production. The ravages of noxious weeds, insect pests and animal and plant diseases have always caused serious loss to the individual farmer. By the time of Confederation, the community interest in meeting these menaces and the advantage of united attack upon them had become clear. But the community which realized its interest was a small one and united attack was mainly limited to local municipal regulation.

As long as the lack of facilities for communication limited trade and intercourse to the local community, municipal regulation corresponded to the realities of the situation. However, rapid improvements in transportation, already under way in 1867, made trade possible between many different areas and localities far distant from one another. With the greatly increased range of trade came a parallel extension of the range of noxious weeds, insect pests and the diseases of the plants and animals. Local responsibility for control of them ceased to be adequate. Localities might become infested or infected by the carelessness of people in distant areas and the exercise of municipal powers of control did not enable the victims to reach those who had caused the loss. That could only be done by central governments (provincial and/or Dominion) establishing and enforcing uniform regulation over the whole country.

By the eighties it had become clear that these menaces to agriculture had ceased to be merely local problems and had become provincial, if not national, in scope. About the same time, governments in Canada became concerned in promoting agricultural development and efficiency and this provided an added reason for vigorous attacks on these enemies of efficient agriculture.(1) Still more important, the growth of scientific knowledge gave central governments access to weapons for fighting them -

(1) Canada and its Provinces, Vol. IX, p. 180.

an access which was practically denied to municipal governments.

Since the middle of the nineteenth century, our scientific knowledge of these pests and diseases and of the effective means of controlling them has grown very rapidly. Much of this knowledge could not be used effectively unless operations were directed by experts. The small rural municipality does not know how to tap scientific resources and it cannot employ experts as economically as can the central government. Thus a powerful impetus to centralization was given in this field. The significance of this influence is confirmed by the fact that centralization has gone much further in connection with the struggle against insect pests and animal and plant diseases than in the case of noxious weeds. In the latter case, scientific control has not made such striking advances and generally speaking administration has remained with the municipalities, subject to some central supervision.

Both Dominion and province have legislative power over agriculture and, consequently, regulation has been provided for both on the provincial and the national level. Dominion intervention has laid its main, though not its entire, emphasis on preventing the introduction of pests and diseases from abroad and the spreading of them from one area to another. The Dominion has also attempted to control the trade in poisons used for fighting pests.

In 1865, the Province of Canada sought to provide against the importation and spreading of certain animal diseases. The legislation established a number of prohibitions and enabled the Governor in Council to order certain precautions to be taken.(2) It is significant of the temper of the period that the sole sanction for these regulations was the threat of a penalty to be exacted by judicial proceedings. This indirect method of enforcement, or government by judges, was gradually discarded. When the object is not primarily to punish individuals for wrongdoing but rather

(2) Statutes of Canada, 1865, c. 15.

to prevent socially undesirable conditions from arising, the judicial technique is of limited efficacy. Thus in 1869 inspectors with power to enter and inspect were provided for. They were authorized to demarcate infected areas and make orders for their effective isolation.(3) In 1879, inspectors got power to destroy infected animals and the Governor in Council was authorized to provide compensation to owners.(4) In 1885, the government got power to compel certain standards of sanitation in connection with transportation facilities for animals.(5) A gradual tightening of administrative control has continued up to the present time, designed to enable the government to act quickly and firmly to check these diseases.(6)

In 1898, Parliament enabled the government to prohibit the importation of nursery stock from any foreign country.(7) The object was to control the San Jose Scale which was a serious threat to fruit trees at that time. No administrative powers of enforcement were given in this act. But in 1910, it was replaced by provisions applicable to all destructive insects and plant diseases.(8) It enabled the Governor in Council to make regulations for treatment of outbreaks and the destruction of nursery stock, to fix conditions of compensation to owners and so on. Inspectors with wide powers were provided for and the Minister was authorized to take drastic steps on the basis of an inspector's report.

As the menace of insects and pests became more serious, the number of commercial poisons offered for their control also increased. The purchaser of these could not judge of their chemical content or of their efficacy. Often it was discovered that a particular poison was quite harmless. Others were found to

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(3) Statutes of Canada, 1869, c. 37.
(4) " " " 1879, c. 23.
(5) " " " 1885, c. 70.
(6) Revised Statutes of Canada, 1927, c. 6.
(7) Statutes of Canada, 1898, c. 23.
(8) " " " 1910, c. 31.

be more harmful to plants than to pests.[9] In 1927, Parliament provided regulation for this trade. All poisons offered for sale for use against agricultural pests must now be registered and their chemical content revealed. The Minister of Agriculture is authorized to appoint an analyst upon whose advice he may refuse registration to a particular poison. All packages must be labelled with full particulars about the contents. Inspectors, with power to enter and secure samples, are provided for as an aid to enforcement.[10]

The provinces have supplemented the devices outlined above. As is to be expected, the particular subject matter of regulation varies from province to province but the methods employed are strikingly similar. Particular attention will be given here to the efforts of Ontario to establish effective controls because they furnish a most striking illustration of the changing technique of regulation. Developments in the other four provinces examined in this study will be discussed only in so far as they vary from the Ontario pattern.

Ontario enacted legislation for the control of Canada thistle in 1866 and black knot in 1879.[11] The first acts merely required owners to cut weeds and eradicate black knot and yellows on pain of penalty. Municipalities were authorized to appoint inspectors whose sole function was to notify owners to act. In 1884 municipal inspectors were given powers to require owners to perform the necessary tree surgery and cutting of weeds. On failure of the owner to comply, the inspector might enter for the sole purpose of cutting weeds on land not sown to crop.[12] In all other cases he could do no more than take action to impose the statutory penalty. In 1893 special legislation for the control of yellows and black knot, then ravaging fruit trees, was passed. It imposed a statutory duty on the owner to destroy trees afflicted with it. Where he failed to obey the order of an inspector, pro-

(9) House of Commons Debates, 1926-7, pp. 1773-4, 2135.
(10) Statutes of Canada, 1927, c. 40.
(11) Revised Statutes of Ontario, 1877, c. 188; Statutes of Ontario, 1879, c. 33; 1881, c. 28.
(12) Statutes of Ontario, 1884, c. 37.

vision was made for a municipal board of fruit tree inspection. The decision of the board was final as to the obligation to destroy a particular tree. But even then, failure to obey the order of the board merely subjected the owner to a fine.(13) The reluctance of the legislature to give administrative officials power to enter and destroy private property and their reliance upon municipal administration and initiative are extremely clear.

In 1910, however, the principle of centralized administrative control was accepted. In new legislation respecting diseased fruit trees in that year, the Minister of Agriculture was authorized to appoint provincial inspectors and to make regulations controlling all inspectors. On the report of two separate inspectors he was empowered to order and enforce the destruction of whole orchards.(14) In 1912, the Minister got the power to approve or disapprove of the appointment of municipal inspectors and provincial inspectors were given authority to supervise them.(15) In 1914, the Lieutenant-Governor in Council was authorized to appoint a provincial entomologist and nurseries were forbidden to distribute plants and trees until they got a certificate from him.(16) And the executive was given power to extend the terms of the act to other diseases and pests not specifically mentioned in the act.

The development clearly indicates how slowly municipal and amateur regulation gave way to centralized and expert control and how reluctant the legislature was to sanction administrative interference with individual property and conduct. A similar hesitating development can be traced in almost every new type of government regulation introduced before the Great War.

Legislation designed to control noxious weeds has not yet resulted in the same degree of centralization. Administration has

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(13) Statutes of Ontario, 1893, c. 42.
(14) " " " 1910, c. 99.
(15) " " " 1912, c. 69.
(16) " " " 1914, c. 18.

remained in the hands of the municipal authorities. Appointment of these has become compulsory, however, and the Minister is authorized to appoint inspectors where local bodies fail to do their duty.(17) However, the weed menace has become increasingly serious in recent years and in 1935, a significant further step was taken. Provision was made for the appointment of district weed inspectors who are central officials.(18) They have power to supervise municipal officials and to enter and destroy weeds wherever a municipality fails to do so.

Ontario provided for municipal enforcement of provisions for destroying the barberry bush in 1900(19) and it adopted the same technique for controlling the corn-borer in 1925.(20) Both these matters are now swept into the control of the central government by the broad terms of the Plant Diseases Act of 1937.(21) Legislative provision for the destruction of foul brood among bees began in 1890.(22) Unofficial but compulsory enforcement was contemplated by provision that the Provincial Beekeepers' Association should appoint inspectors with power to enter and destroy diseased bees. By 1914, these had been superseded by provincial inspectors(23) and by 1927 the government had got power to impose quarantine, to require certificates for importation of bees and the registration of all beekeepers.(24) Beekeepers are required to keep records and make periodic reports to the Department of Agriculture.

The British Columbia developments in this field have been similar to those of Ontario. The control of noxious weeds and plant and bee diseases has come to rely on a wide power of regulation in the hands of the government and on a corps of inspectors with power to enter and enforce the regulations.(25) At first, the right of the government to enter and disinfect or destroy orchards

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(17) Revised Statutes of Ontario, 1927, c. 309.
(18) Statutes of Ontario, 1935, c. 49.
(19) " " " 1900, c. 48.
(20) " " " 1925, c. 74.
(21) " " " 1937, c. 57.
(22) " " " 1890, c. 66.
(23) Revised Statutes of Ontario, 1914, c. 258.
(24) " " " " 1927, c. 314.
(25) Revised Statutes of British Columbia, 1936, cc.11, 217, 306.

against the owner's wish depended upon securing an order from a court of summary jurisdiction.(26) The Plant Protection Act of 1935 provides that these things may be done on the order of the Minister of Agriculture.(27) While Ontario made special provision for the corn-borer, British Columbia provided special machinery for controlling the codling moth(28) and the grasshopper.(29) The chief difference seems to be that British Columbia at an early date provided her own administrative machinery for the control of certain contagious animal diseases(30) while Ontario has never found it necessary to supplement the Dominion regulations on this subject.

Saskatchewan uses the same methods for the control of bee diseases(31) but has not established any comprehensive control over plant and animal diseases. The control of gophers and grasshoppers is a municipal responsibility, supplemented by central assistance and supervision.(32) The same is true of noxious weeds where the powers of municipal inspectors have recently been extended to cover control over the disposal of screenings and the cleaning of threshing machines.(33)

Quebec provided for administrative control of bee diseases in 1908.(34) What many will regard as the zenith of bureaucratic meddling was reached in 1935 when the right to sell or exchange queen bees became subject to the securing of a certificate of health from the Minister of Agriculture.(35) Regulation of plant and animal diseases date from 1914(36) and 1935(37) respectively. Nova Scotia has the usual provisions for central administrative control of the diseases of plants and bees.(38)

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(26) Statutes of British Columbia, 1915, c. 2, s. 139.
(27) Ibid., 1935, c. 57.
(28) " 1922, c. 10.
(29) " 1930, c. 22.
(30) " 1891, c. 6. See now Revised Statutes of British Columbia, 1936, c. 51.
(31) Statutes of Saskatchewan, 1924, c. 32.
(32) Statutes of Saskatchewan, 1934-5, c. 30, ss. 187-90.
(33) Revised Statutes of Saskatchewan, 1930, c. 163.
(34) Statutes of Quebec, 1908, c. 26.
(35) " " " 1935, c. 32.
(36) " " " 1914, c. 17.
(37) " " " 1935, c. 31.
(38) Statutes of Nova Scotia, 1896, c.8; 1898, c.24; 1916, c.6. See now Revised Statutes of Nova Scotia, 1923, c. 64, ss. 99-117.

In 1933, the Apple Maggot Control Act gave to an administrative board sweeping powers for the purpose of ridding the province of this pest.(39)

The protection and development of agriculture made necessary a concerted attack on these pests and diseases. The better the means of transportation and communication, the more of a menace these things become. As the older destructive agencies are brought under control, new ones threaten to come in from abroad. When they gain a foothold, a combination of scientific study and vigorous action is necessary to wipe them out or, at least, to bring them under control. The manner in which the legislature moved gradually and reluctantly to set up administrative leadership and control indicates that when the menace reaches a certain magnitude it is the only effective method of combatting it.

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(39) Statutes of Nova Scotia, 1933, c. 11.

IV LABOUR REGULATION

The Industrial Revolution created a new pattern of human relationships among those engaged in industrial production. The machine required many hands for its tending and, at the same time, it demanded unified direction of this co-operative effort in production if the advantages of the new inventions were to be fully exploited. In response to these two requirements, the few who were able to command the necessary capital secured the ownership of the machines and workshops while large numbers of workers abandoned agriculture and handicrafts to tend the machines in the factory. The factory system, where the many submit their labour to the direction of a few in return for wages, provided a pattern of organization through which the promise of the machine to multiply production has been realized. But the employer-employee relationship which this involved created many problems which we have, as yet, only begun to solve.

Most of the difficulties of this relationship arose out of one prominent feature of it. The employer in determining the lines of productive effort decided, among other things, how much labour he would employ and when he would employ it. In other words, labour in general became a commodity, as some labour had always been, to be bought and sold, its price subject to the law of supply and demand. In the nature of things, a vague resentment on the part of the worker grew out of this situation, He objected to his labour being placed in the same category as machines and raw materials. The demand for labour fluctuated as did the demand for other producers' commodities. In a period of relative scarcity of labour, the workers enjoyed higher wages and relative prosperity. But when the labour supply outran the demand, wages fell and generally some proportion of the working population suffered from unemployment.

In the latter event, the situation bore with special severity on the workers. For the great majority of them

the national income was never great enough to provide a generous standard of living. Almost continually harried by poverty, they were decidedly unequal in bargaining power to the employer, who owned the instruments of production and could generally afford to wait. Low wages and periods of unemployment meant chronic distress among the working population.

However, it came to be realized that it was not only the workers who suffered from the unregulated labour contract. Workers, broken in health or morale, or, in fear of these disasters, are not efficient. The employer and the public generally had an interest in securing a living wage for the efficient worker and in securing his health against factory hazards.

Two main methods have been used in attempts to improve th position of the employee. First, by collective bargaining through trade unions, workers have sought to redress the balance of bargaining position. Secondly, governments have been called upon to intervene and impose certain minimum standards for their benefit. Organized workers brought pressure to bear upon legislatures for this kind of remedial legislation. This pressure was supplemented by a recognition of the public interest in the health and independence of industrial workers. And, of course, when trade unions gained sufficient strength to engage in prolonged struggles with employers, the public interest in industrial peace in certain vital industries became too clear to be ignored.

The present study deals only with governmental intervention in the relations of employers and employees. In countries where the free economy has been maintained, this intervention has taken three principal forms. Firstly, it has sought to regulate the physical hazards of employment and to place strict limitations on the employment of women and children. Secondly, it has attempted to enforce a minimum

wage and maximum hours of labour. Thirdly, it has tried to mediate in industrial warfare.

The development in Canada has followed these lines, lagging somewhat behind the countries which were more rapidly industrialized. Regulations of the first type began to appear in the eighties but governments did not become deeply committed to intervention until the twentieth century. The difficulties of industrial organization did not become acute until that time and what is more important, labour was not sufficiently well organized to apply insistent pressure on the legislatures before that time. Most of the regulation has dealt with the labour contract or the use which the employer makes of his property and therefore falls within provincial jurisdiction. Though varying in detail from province to province, there is a consistent pattern of development throughout.

The first important measure appeared in Nova Scotia in the early seventies, when a Mines Regulation Act was passed, limiting the employment of children and providing for safety precautions.(1) English experience was drawn upon and government inspection to enforce observance was supplied from the beginning. The pressure of organized labour was of prime importance in the securing of this measure as also in the case of the Ontario Factories Act, established in 1884.(2) Quebec followed with a Factories Act in 1885,(3) Nova Scotia in 1901,(4) Saskatchewan in 1909,(5) and British Columbia in 1908.(6) The Nova Scotia Act for protection of workers in mines was

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(1) Revised Statutes of Nova Scotia, 1873, c.10. For much earlier legislation which was never enforced, see Statutes of Upper Canada, 1837, c.18.

(2) Statutes of Ontario, 1884, c.39; See also Logan, Trade-Union Organization in Canada, pp. 71,96.

(3) Statutes of Quebec, 1885, c. 32.

(4) Statutes of Nova Scotia, 1901, c. 1.

(5) Statutes of Saskatchewan, 1909, c.10.

(6) Statutes of British Columbia, 1908, c.15.

followed in Ontario in 1890,[7] Quebec in 1892,[8] in the North West Territories by 1896.[9] British Columbia had such legislation on the statute book as early as 1877.[10]

Broadly speaking, the factories and mines legislation deals with three different matters. Firstly, it imposes special limitations on the employment of women and children. The employment of children below a certain age and the employment of women and children at certain tasks is forbidden. Maximum working hours for women and children are fixed. As time has gone on, amendments in most of the provinces have progressively raised the age limit for employment of children and lowered the maximum working hours.

Secondly, this body of legislation contained numerous provisions respecting sanitation. These vary with the kind of establishment; naturally the most stringent rules are applied in places where food is prepared. For example, bake-shop employees must be free from disease and sleeping quarters on the premises are prohibited.[11] The sanitation rules have grown more precise and stringent with the advances in scientific knowledge and sanitary technique.

Thirdly, it contained a body of regulations for securing the physical safety of employees. These provide for such diverse things as guards around machinery, precautions in the use of electricity and adequate fire escapes. None of these rules respecting factories and mines were left to the ordinary process of law enforcement. Provincial inspectors were authorized to enter and inspect premises. Employers were obliged to keep records of the women and children employed and to notify inspectors of accidents.

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(7) Statutes of Ontario, 1890, c.10.
(8) Statutes of Quebec, 1892, c.20.
(9) Consolidated Ordinance, 1898, c.16.
(10) Statutes of British Columbia, 1877, c.15; 1897, c.27.
(11) Statutes of Ontario, 1897, c.51.

Commercial as well as industrial establishments increased in size and in the number of employees. While shops engaged in trade could scarcely duplicate the physical hazards of industrial work, nevertheless the workers in these shops were rarely organized and rarely able to bring any collective pressure on the employer for the improvement of working conditions. Thus the Factories Acts were rapidly followed in Ontario and British Columbia by the Shop Acts. Ontario provided for municipal inspection in 1888.(12) By 1897 this had become provincial ihspection.(13) British Columbia began with municipal inspection in 1900 and has continued with it up to the present time.(14) Quebec provided for the bringing of shops within the system of factory regulation in 1934.(15) Nova Scotia and Saskatchewan, where large commercial establishments are rare, have not established shop regulation. Generally speaking, the Shop Acts deal with the same matters as the Factory Acts, regulating the employment of women and children and providing for minimum standards of sanitation and safety.

All the provinces examined in this study have provided for periodic inspection of steam boilers and provincial examinations and certificates for the operators of them.(16) Ontario, Saskatchewan and Quebec have testified to the importance of the construction trade by providing for the regulation and inspection of the scaffolding and hoists used in building.(17) Because of the relatively untechnical nature of the regulations and the superiority of local knowledge, municipal inspection has never given way to provincial inspection in this particular activity.

(12) Statutes of Ontario, 1888, c.33.
(13) Statutes of Ontario, 1897, c.51.
(14) Statutes of British Columbia, 1900, c.34. See now Revised Statutes of British Columbia, 1936, c.261.
(15) Statutes of Quebec, 1934, c.55.
(16) Statutes of British Columbia, 1899, c.10; Statutes of Saskatchewan, 1906, c.15; Statutes of Ontario, 1913, c.61; Quebec, 1894, c.30; Statutes of Nova Scotia, 1914, c.2.
(17) Statutes of Ontario, 1911, c.71; Statutes of Saskatchewan, 1912, c.18; Statutes of Quebec, 1921, c.76.

Provisions of the type discussed above will, if properly enforced, reduce the risk of injury to which the employee is exposed. It will not secure him from injury which may be due to his own fault or to the carelessness of the employer or of a fellow-employee. The implications of individualism were so built into the legal framework of the employer-employee relationship in the early nineteenth century as almost to preclude the employee from recovering damages against his employer even where the injury was due to the carelessness of the employer or another employee.

The reasoning was somewhat as follows. The employer offers work under what are clearly hazardous conditions. An employee who continues to work under these conditions must have judged it advantageous, from his own point of view, to accept the risk. Thus the older legal doctrine that he who accepts a risk must bear the consequences was read into the employer-employee relationship.

At the same time, the common law liability of the master for the torts of his servants was read out of the industrial field and the employer was relieved of liability where the injury resulting from the carelessness of one of his employees fell on another employee. This latter development, which emerged suddenly in the case of Priestley v. Fowler[18] in 1837, is open to a Marxian interpretation but it can equally be attributed to individualistic assumptions. The liability of the master for the torts of his servants involved the principle of liability without fault and as long as

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(18) (1837) 3M. & W. 1.

industrial accidents were looked at in moral terms rather than as a cost of production, it was impossible to say that the master was any more at fault than the injured servant. The latter had legal recourse against his negligent fellow and the fact that the remedy was worthless in the circumstances was no fault of the employer.

Denied a right of compensation for injury due to the negligence of others,[19] it was clear that he could have no recourse in the case of a pure accident or in case of his own carelessness, regardless of whether his carelessness was due to fatigue or the speeding up of operations. The logic of individualism forced industrial accidents into the categories of fault, even though they fitted badly in many cases.

Of course, the degree of the physical hazards of employment in a particular industry always affected its costs of production. If an employment was dangerous, it generally commanded a higher wage than was paid for similar work under safe conditions. Thus, in an indirect way, industrial accident was always a cost of production. But as long as the insurance principle and technique was lacking, the extra wages paid to the working staff as a whole did not protect the occasional worker who suffered injury. The extra wage which he himself got over a period of time did not compensate or protect him in case of a serious injury.

Thus the enforcement of factory legislation by no means completely remedied the situation for the employee. This had been realized in England by 1880 when the Employers Liability Act removed the employer's defence of common employment in a number of industries.[20] This legislation was copied in Ontario in 1886 and in British Columbia in 1891.[21] The British Columbia legislation

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(19) This is an oversimplification of the legal position and exaggerates the immunity of the employer in strict legal terms. But for the practical results, as distinct from the theoretical position, the statement is approximately correct.

(20) Statutes of Ontario, 1886, c.28.

(21) Statutes of British Columbia, 1891, c.10.

went further, providing that the mere fact of continuance in the same employ after he became aware of dangerous conditions should not, of itself, be deemed to be a voluntary assumption of the risk. This provision found its way into other provincial enactments,(22) modifying the application of the maxim, volenti non fit injuria.

In 1902, British Columbia went still further and provided that workmen in certain industries should be entitled to compensation from their employers in every case except where the injury was due to the serious neglect or misconduct of the workman himself.(23) A scale of compensation was set up, provisions made for arbitrating claims where the parties were able to agree to arbitration.(24) Saskatchewan established similar legislation in 1911 but excluded agricultural operations from its terms.

This type of legislation extended the workman's rights to compensation tremendously. Its plain tendency was to place the burden of industrial accidents on the employer who, in turn, naturally treated it as a cost of production. But it still left the employee in the position where he might be compelled to carry on an unequal and exhausting legal struggle in order to secure the amount to which he was entitled. Also, it left the employer to decide whether he should himself carry the risks involved or whether he should spread them still further by insurance.

There were strong arguments for socializing the risks still further and for protecting the employee against insolvent employers and the perils of litigation over contested claims. This latter danger was a considerable one because an employer naturally felt driven to fight to the highest court any decision which broadened the interpretation of the statute and thus extended his liability.

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(22) Statutes of Manitoba, 1893, c.39; Statutes of Nova Scotia, 1900, c.1.

(23) Statutes of British Columbia, 1902, c.74.

(24) Statutes of Saskatchewan, 1911, c.9.

The step suggested by these considerations was taken by Ontario in 1914.[25] The Workmen's Compensation (Accident Fund) Act of that year provided for the establishment of a Workmen's Compensation Board and the maintenance, under its control, of an accident fund. The industries which were brought within the scope of the act were to be classified by the board and employers were obliged to contribute to the fund in accordance with the determinations of the board. Workmen were entitled to compensation out of the fund except in cases where their injury was due to their own gross misconduct. The amount of compensation was to be fixed by the board in accordance with certain standards set out in the act. The claim upon the fund became a matter of administrative determination rather than of judicial decision. In 1917 this distinction was emphasized by an amendment to the act, introducing what may be called the "cynical layman's clause". "The decision of the board shall be on the real merits and justice of the case and it shall not be bound to follow strict legal precedent."[26] This clause has since found its way into most of the provincial acts.

Nova Scotia set up similar machinery in 1915[27] and British Columbia in 1916.[28] Quebec followed in 1926[29] with an act which did not come into force until 1928 and Saskatchewan established its Workmen's Compensation Board in 1929.[30] These statutes vary from one another in detail. But they are all essentially designed to accomplish the same end, namely, to use a governmental agency to spread the losses arising from industrial accident over the industry as a whole and to ensure

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(25) Statutes of Ontario, 1914, c. 25.

(26) Ibid., 1917, c. 34.

(27) Statutes of Nova Scotia, 1915, c. 1.

(28) Statutes of British Columbia, 1916, c. 77.

(29) Statutes of Quebec, 1926, c. 32.

(30) Statutes of Saskatchewan, 1929, c. 73.

that the amount of additional costs which a hazardous industry always has to bear are rationally distributed so as to compensate those who really suffer from the dangers of the particular employment. It is not, therefore, important to consider their minor differences. Some of the auxiliary and supplementary functions which have been transferred to some or all of the Workmen's Compensation Boards may be pointed out.

In most provinces, certain industrial diseases have been brought within the scope of the acts.(31) In addition the board has, in most cases, been given preventive powers.(32) These may operate directly or indirectly. They operate directly when the board is given power to inspect premises and order the adoption of particular safety devices for the prevention of accident or disease. They operate indirectly through the powers of the boards to reclassify industries and individual plants according to hazard as revealed by the records of accidents and impose heavier contributions to the accident fund accordingly. In British Columbia, the board is authorized to conduct research and propaganda directed towards reducing the toll of accident and disease, after the manner of the insurance companies.(33)

In most provinces the injured workman is made, in some respects, a ward of the board. The same applies to his dependents when he is killed rather than injured. The award is not regarded as something to which the workman has an absolute right to apply as he pleases; it is encumbered by the social purpose of restoring him as a useful member of society. Hence supervision by the board of the medical care

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(31) e.g., see Statutes of Quebec, 1931, c.100; Revised Statutes of Ontario, 1937, c.204; Revised Statutes of British Columbia, 1936, c.312.
(32) e.g., see Revised Statutes of British Columbia, 1936, c.312.
(33) Ibid.

of the injured person, instalment payments to prevent dissipation of the sum awarded, special treatment to avoid permanent disability and additional expenditures where it is thought necessary in order to rehabilitate the workman. And in case of the death, the board may use its discretion in allotting the compensation among the dependents.

This paternalism goes even further. Apart altogether from securing the recovery of the workman, the board may, in most provinces, divert payments to the dependents if they are satisfied that he is liable to use the money otherwise than for their maintenance, e.g., for gambling.(34) Similarly, it may be diverted from the widow of a deceased workman for failure to maintain the children. Furthermore, in several provinces, it may withhold payments from the widow, regardless of the existence or maintenance of children, if the board is satisfied that she is engaged in prostitution or is living with another man as his wife without benefit of clergy.(35) There is here a definite intervention in the field of morals.

These additional activities of the Workmen's Compensation Boards may be regarded by some as a modern version of the Arab and the camel. A bureaucracy, once established with a little power, will always desire and find reasons for its own aggrandizement. It would be hard to deny that there is not some truth in this, for similar illustration can be drawn from many fields. It seems, however, that there are two other important and perhaps dominant factors to be taken account of.

Firstly, whenever any body is set up to attempt a rational solution of a social problem, it is quickly discovered that the problem cannot be isolated. Its causes are found to

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(34) Revised Statutes of British Columbia, 1936, c.312, s.76.

(35) e.g. see Statutes of Quebec, 1931, c.100; Revised Statutes of Ontario, 1937, c.204, s.47.

lie in other problems which logically should be tackled first. No doubt a careful investigation into industrial accident and disease would show that they are due in part to the health conditions of the worker outside the factory, in part to his education and training, and in part to his inheritance. So health, education and eugenics are swept into the purview of the Workmen's Compensation Board. The logical connection is there and it is not merely a vision in the mind of a bureaucrat. Once that is realized, it becomes a matter, not of finding a solution of the whole problem in all its complexity, but of recognizing that objectives must be limited and that somewhere a more or less arbitrary line must be drawn. The limiting of the objectives must come from the policy-makers rather than the bureaucrats.

Secondly, when compensation is paid out of a social fund and is not merely a transfer from the pockets of one individual to another, the payments can scarcely escape the impress of the dominant social morality. It seems safe to guess that public opinion would not tolerate the payment of compensation funds for the enjoyment of immoral widows. Collectivism, even in its milder forms, subordinates the individual to a more rigid social control.

The wage contract seldom includes stipulations respecting the physical conditions under which work is to be done. Thus factory regulation is not so obviously a regulation of the contract between employer and employee. On the other hand, any intervention by government upon rates of wages and hours of work is an undeniable encroachment upon the principle of free contract. This may be a partial explanation of why attempts to fix minimum wages lagged behind factory regulation. Equally, if not more, significant is the fact that organized labour was divided upon the wisdom of fixing minimum wages. The highly organized groups felt less need for such regulation and they were afraid that a fixed minimum might tend to

become a maximum. At any rate the attempt to fix minimum wages did not begin until the close of the Great War.

Whatever may be the merits of the economic case against the fixing of minimum wages, a number of circumstances conspired to ripen public opinion for its introduction. The employment of women in trade and industry was greatly accelerated by the War, thus expanding the low-wage unorganized group who were ill able to bargain advantageously for themselves. The numbers who were entirely dependent for a livelihood upon the wage which their labour would bring, increased steadily. That is to say, the back-log of independence, supplied by the conditions of rural life and the solidarity of the family, began to fail us in the face of greater urbanization, greater mobility of labour and the consequent weakening of family ties. The tragic plight of those who are unable to live on their own earnings became more acute. A much greater proportion of these were now found living under crowded urban conditions. The growing interest in public health and social problems and greater knowledge of the conditions which determine these things, revealed the part played by inadequate income in ill health and social delinquency. In addition, there was a growing belief that competition based upon sweated labour was unfair competition as well as an anti-social practice and that public authority should be used to equalize conditions for those employers who strove to pay a living wage.

At a considerably earlier date, the Dominion and provincial governments had recognized the anti-social character of disastrously low wages, and the inability of the workers to remedy this by their own bargaining power. This recognition took the form of the establishment of certain standards of wages and hours on government contracts and works aided by public money. This policy was inaugurated for the Dominion government by a resolution of the House of Commons in 1900 and its present content is set forth in the Fair Wages and

Hours of Labour Act of 1935.[36] The same policy began to be adopted in the provinces in 1906[37] and by 1914 most of the provinces had accepted it in a more or less extended form.

The regulations adopted under this policy vary in detail and in scope. Sometimes, they provided for the payment of current wages, sometimes fair wages, and sometimes a minimum wage with maximum hours. At first they were limited in scope to government contracts and government aided works. They have been gradually extended. Some provinces require the policy to be applied to municipal public works[38] and some extended it to employers who are exploiting natural resources under licence from the Crown.[39] The clear tendency is for governments to extend it to all undertakings on which they can bring their direct authority to bear. And, of course, there is, in every case, provision for inspection and supervision by government officials to see that the regulations are complied with.

The earliest minimum wage legislation was limited in its application to women. This fact indicates that the increasing employment of women in trade and industry gave the first impetus to this type of regulation. British Columbia led the movement in 1918.[40] Quebec and Saskatchewan enacted legislation in 1919[41] and Ontario and Nova Scotia in 1920,[42] although the Quebec and Nova Scotia legislation did not come into force until 1925 and 1930 respectively. By 1930 all the provinces except Prince Edward Island and New Brunswick had provided for minimum wages for women.[43]

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(36) Statutes of Canada, 1935, c.39.
(37) e.g. see Statutes of Ontario, 1906, c.30, s. 225; Statutes of Saskatchewan, 1906, c.30, s. 150; Statutes of Nova Scotia, 1906, c. 16, s.2; Statutes of British Columbia, 1906, c.32, s. 318.
(38) e.g. see Statutes of British Columbia, 1906, c.32, s.318.
(39) Statutes of Nova Scotia, 1906, c.16, s.2; P.C. 2367, Dec. 3, 1929.
(40) Statutes of British Columbia, 1918, c.56.
(41) Statutes of Quebec, 1919, c.11; Statutes of Saskatchewan, 1919, c.84.
(42) Statutes of Ontario, 1920, c. 87; Statutes of Nova Scotia, 1920, c.11.
(43) For full details respecting minimum wage legislation see Study by A.E. Grauer on Labour Legislation, ch.3.

At this time, organized labour was willing to support an experiment in the case of women workers but was not prepared to push a programme which included males.

The British Columbia legislation was extended to males in 1925,[44] due to the fact that the pressure of cheap oriental labour was threatening the wage standard for white workers in some trades. In the other provinces, it was not until after the depression had revealed shocking conditions that the legislation was similarly extended.[45] The extension has not yet been made in Nova Scotia. Originally, in most cases, the scope of the legislation was limited to certain industrial occupations and to urban zones of a certain size. In most provinces, it now covers all industrial and commercial employment of any importance. Farm labourers and domestics are the most significant groups excepted from its operation.

The legislation itself did not attempt to fix a minimum wage but delegated that function to an executive body. Minimum Wage Boards were authorized to fix standards of minimum wages in different zones and employments. The authority of the boards was extended from time to time to enable them to close the loopholes which were discovered in the course of administration.

For example, they were authorized in the western provinces to establish maximum hours of work, and in the eastern provinces, to fix the hours to which the wage applied; in all provinces, to fix rates for overtime and part-time work, limit the number of apprentices and learners in any establishment, and grant licences for the employment of physically handicapped workers at lower rates.[46] Employers were required to keep records and furnish

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(44) Statutes of British Columbia, 1925, c.32.
(45) e.g. see Statutes of Saskatchewan, 1934, c.55; Statutes of Ontario, 1937, c.43; Statutes of Quebec, 1937, c.50.
(46) e.g. see Revised Statutes of British Columbia, 1936, c.190, s.6.

statements to the boards which were given wide powers of supervision and inspection.

Minimum wage legislation is a limitation on free contract and it introduces an element of rigidity into the costs of production. However, it must be remembered that the individual who does not secure a living wage becomes a social charge. Looked at from this angle, minimum wage legislation is a social decision that no industry is entitled to survive if it cannot meet its real costs of production. (This does not necessarily mean that aged and physically handicapped workers should not be employed at lower rates.) It can therefore be legitimately argued that such legislation is not so much an encroachment upon freedom of contract as one of the many limitations which public policy will always impose upon it. Beyond the minimum, it leaves the parties free to make their own bargains about wages.

However, state intervention has not stopped at this point. In the last few years, a marked tendency to enlarge the dictates of public policy has developed. The earlier policy of fixing fair wages for government contracts is being extended to private industry. The movement began with the Arcand Act in Quebec in 1934,(47) embodying the principle of legal extension of collective agreements voluntarily reached by trade unions and employers over the entire industry in question. In Ontario, Nova Scotia, Saskatchewan and Alberta, recent legislation provides that, after representatives of employers and employees in an industry have agreed upon a schedule of wages and hours at a conference called for that purpose, the government may extend the operation of the schedule throughout the entire industry. There are important differences in these two types of legislation. They are alike in that both enable public authority, in certain circumstances, to make agreements or schedules concerning wages and hours binding upon employers and employees who have never agreed to their terms.

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(47) Statutes of Quebec, 1934, c. 56.

The immediate reasons for such legislation are fairly clear. Where, as is often the case, a labour agreement between a trade union and one or more employers does not cover the entire industry in the area in question, it is frequently found that firms, which are not parties to the agreement, maintain lower wage scales and thus secure a decisive advantage in the market. In a time of severe competition, a particular employer who is a party to the agreement, may repudiate it in order to secure such an advantage. Employees may acquiesce rather than take the risk of unemployment. In any case, the continuance of the agreement and the scale of wages is imperilled.(48) In such circumstances, it seems desirable to the employees and to those employers, who wish to maintain their wage scales and harmony in their relations with their employees, to invoke public authority for the elimination of "unfair" competition. In particular, they wish to transform a morally binding agreement(49) into a legally enforceable one and then to have it made applicable to the industry as a whole. The severity of the recent depression made such action seem highly desirable to labour groups at least. Their desire to mitigate cruel conditions coincided with a wave of public concern over the revelations of the Price Spreads' inquiry.

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(48) Marsh, the Arcand Act, (1936) 2 Canadian Journal of Economics and Political Science, pp. 405, et seq., where the Quebec Statute is discussed at length.

(49) Collective labour agreements are not enforceable at common law. See Margaret Mackintosh, Legislation concerning Collective Labour Agreements. (1936) 14 Canadian Bar Review, pp. 97, 220.

The Arcand Act authorized the Lieutenant-Governor in Council to extend a collective agreement upon petition of any association of employers or employees if it appeared that the agreement had "acquired a preponderant significance and importance for establishing the conditions of labour in a trade or industry". Such an extended agreement was to be legally binding for the duration of the agreement but only within the region for which it had first been adopted. Only wage and hour provisions were to be extended. The work of supervision necessary to enforcement was to be performed by a joint committee of employers and employees, armed with public authority for that purpose.(50)

The Ontario Industrial Standards Act was enacted in 1935.(51) It authorized the Minister of Labour, on petition from representatives of employers or employees, to convene a conference of employers and employees for discussing wages and hours and labour conditions generally. If the conference succeeded in reaching an agreement on these matters and the Minister was satisfied that the parties agreeing were sufficiently representative of employers and employees, the Lieutenant-Governor might then declare it binding on the entire industry for a period of one year in the zone for which the conference was called. The enforcement of the act was given over to the Minimum Wage Board with the assistance of industrial standard officers. In effect, the government was given a wide power to standardize labour conditions throughout the province.

The Ontario act was copied in Alberta in 1935.(52) Nova Scotia followed in 1936, limiting its applications to certain

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(50) Marsh, op.cit. p.405.

(51) Statutes of Ontario, 1935, c.28.

(52) Statutes of Alberta, 1935, c.47.

industries in a specified area.[53] However, in 1936, the Ontario act was amended to meet difficulties raised by decisions in the courts.[54] The Alberta and Nova Scotia legislation still stands as originally enacted but the act passed by Saskatchewan in 1937 is a copy of the Ontario act as amended in 1936.[55]

In 1937, the Arcand Act was repealed and a broadly similar act substituted.[56] The principal change, from the point of view of the present discussion, is to expand considerably the powers of the government in extending agreements.[57] A Fair Wage Act was also passed.[58] It is applicable to all employees, who have not, cannot or will not avail themselves of the act just mentioned above. A Fair Wage Board is provided with power, under certain conditions, to fix fair wages and working hours for these groups of employees. The board is directed to work through conciliation committees, trying, wherever possible to reach an agreement between the parties concerned. Finally, the statute repeals the Quebec Minimum Wage Law of 1920.

The immediate causes of this type of legislation have been discussed above. It is a matter of conjecture how far it depends upon something deeper than empirical inspiration. The

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(53) Statutes of Nova Scotia, 1936, c.3.

(54) Statutes of Ontario, 1936, c.29.

(55) Statutes of Saskatchewan, 1937, c.90.

(56) Statutes of Quebec, 1937, c.49.

(57) Ibid, c.49, ss.2, 11. This Act has been amended in the 1938 session of the Quebec Legislature. The amendment gives the government power to "amend," without any consultation of the parties to the agreement, any labour agreement which has already been extended. This latest development indicates rather forcefully the tendency of the type of labour legislation under discussion. A government with power to extend labour agreements is likely to get impatient over the difficulty with which any desirable voluntary revision of an existing agreement is reached by labour and capital. It is therefore tempted to cut the process short by authoritative decision and is likely to take upon itself the task of saying both what is just and expedient in industrial relationships.

(58) Ibid., c.50.

current disillusionment with the free economy has been very far-reaching and many people have become impatient over the ceaseless haggling of employers and employees and the continued victimizing of unorganized wage earners. They believe that the state, by imposing a Roman peace on industry, will nourish a deeper social unity. Employers and employees will then settle their difficulties without disrupting economic life and public authority will intervene decisively in aid of the weak. That is to say, an element of corporatism lurks in this kind of legislation but it is difficult to know how much support is consciously given it on that ground. It is equally difficult to know how far employers incline to favour such legislation as a check to the growth of militant trade unionism. No doubt they would regard it as an unpleasant choice but they might feel that government officials would be more amenable to reason than raw trade union officials who do not know what to demand nor when to compromise. Because the tendency of this kind of legislation has not yet been fully analyzed and its implications have not been fully explored, it is at present controversial and there is no broad measure of agreement on its wisdom.

Of course, the question of the relation of the state to industrial strife is not a new one in this decade. As soon as trade union organization reacned a point where it could challenge employers, strikes and lockouts became an ever present possibility. Any widespread cessation of productive work is a matter of public concern. Public interest in this matter has continually deepened with the advance of the modern economy. Increasing specialization has increased our interdependence and multiplied the number of industries whose interruption is a grave threat to economic and social welfare. At the same time, industrial struggle, like modern warfare, has extended its front. Trade unions representing most, if not all, employees in a given industry confront employers' associations similarly representative and when negotiation

breaks down, the greater part of the industry, and not merely a few units, may be tied up. If the industry is one of strategic importance, an extended deadlock is serious. A state, which does not provide for compulsory arbitration, is at least obliged to attempt mediation and conciliation.

Canadian effort, up until the present decade, has been almost entirely devoted to mediation and conciliation. Nova Scotia provided for compulsory arbitration of mine disputes in 1890,(59) but the procedure was seldom, if ever used. Later acts were all of the mediatory type.

The trade union movement began to make steady headway in Canada in the eighties.(60) Provincial concern over industrial disputes began with the Nova Scotia acts just mentioned. Statutes providing for mediation followed in British Columbia in 1893,(61) Ontario in 1894,(62) in Quebec in 1901,(63) and Nova Scotia adopted the conciliation method in 1903.(64) No wide application was made of any of this legislation.

The increasing strength of trade unions, coupled with economic recovery at the end of the century, resulted in serious labour difficulties. The existing provincial legislation was never vigorously enforced and the Dominion Parliament passed the Conciliation Act in 1900,(65) enabling government officials to mediate at the request of the parties. In 1906, the country got an object lesson in the seriousness of widespread strikes when the Alberta coal strikes threatened a coal famine in Western Canada. This experience was the immediate occasion of the famous Industrial Disputes Investigation Act of 1907.(66)

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(59) Statutes of Nova Scotia, 1890, c.7.
(60) Logan, Trade Union Organization in Canada, Ch.II.
(61) Statutes of British Columbia, 1893, c.21; 1894, c.23.
(62) Statutes of Ontario, 1894, c.42. An earlier abortive act had been passed in 1873. See Statutes of Ontario,1873,c.26.
(63) Statutes of Quebec, 1901, c.31; 1909, c.32.
(64) Statutes of Nova Scotia, 1903, c.37.
(65) Statutes of Canada, 1900, c.24.
(66) Statutes of Canada, 1907,c.20.A similar act applicable to railway labour disputes only had been enacted four years earlier. See Statutes of Canada, 1903,c.55. No industry in Canada is quite so vital as that of transportation.

This act was applicable to the vital mining, transportation and public utility industries. It gave to the government compulsory powers of investigation and forbade strikes and lockouts until after reference of the dispute to a board of investigation. The findings of the board were not binding on the parties: publicity rather than compulsion was relied on as a sanction.

Similar legislation, applicable to public utility, and sometimes to other industries, providing for investigation and conciliation by government officials, was passed by some of the provinces. Ontario conferred such powers on the Railway and Municipal Board in 1906 and 1913.(67) Quebec provided for such machinery in 1921,(68) Nova Scotia in 1925,(69) and Alberta in 1926.(70) However, the bulk of the work of investigation and conciliation gravitated into the hands of Dominion officials. When the Snider Case(71) in 1925 held that Dominion authority under the Industrial Disputes Investigation Act was limited to those industries over which the Dominion had undoubted general legislative power, the provinces, preferrring that the Dominion should continue its work in the field, passed legislation which sought to legalize Dominion intervention in substantially its former broader terms.(72) Indeed, the Alberta and Nova Scotia acts last referred to, were enacted to fill the gap created by the Snider Case. When the expedient of "enabling legislation"(73) was discovered, Nova Scotia repealed her act and Alberta amended hers to confine

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(67) Statutes of Ontario, 1906, c. 31; 1913, c. 37.

(68) Statutes of Quebec, 1921, c. 46.

(69) Statutes of Nova Scotia, 1925, c. 1.

(70) Statutes of Alberta, 1926, c. 53.

(71) Toronto Electric Commissioners v. Snider, 1925 A. C. 396.

(72) e. g. see Statutes of Nova Scotia, 1926, c. 5; Statutes of Alberta, 1928, c. 42.

(73) For an explanation of this device, see J. A. Corry, The Difficulties of Divided Jurisdiction, ch. 2.

its operation to disputes which did not come within the provisions of the combined Dominiom and provincial enabling legislation.(74)

The tendency until very recently was for the provinces to rely upon the Dominion machinery wherever it could be made applicable and to confine their efforts to conciliation outside that area. However, in 1937 British Columbia repealed her enabling legislation and provided machinery of her own for the investigation of industrial disputes.(75) The Industrial Standards Acts, if vigorously applied and enforced, will presumably reduce greatly the area in which the Dominion legislation, as extended by provincial enabling legislation, operates and throw a correspondingly heavier burden on provincial administration in its attempt to secure and extend collective agreements and to compel employers and employees to abide by them. And the Quebec Fair Wage Act of 1937 contemplates a considerable extension of provincial conciliation services.

The total effort at labour regulation has meant a great increase in the activities of Canadian governments. Government officials frame and enforce factory, shop and mine regulations. Workmen's Compensation Boards transform industrial accident and disease into one of the costs of production and spread its incidence over industry as a whole. They supervise the rehabilitation of injured workmen and the adoption of safety devices. Minimum Wage Boards fix schedules of minimum wages in great variety and detail. They establish various supplementary regulations and carry out inspections for the purpose of enforcing compliance. Fair wage officers establish and enforce fair wages on government comtracts and in private industry in some provinces. Government officials promote conferences for the purpose of

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(74) Statutes of Nova Scotia, 1926, c. 5; Statutes of Alberta, 1928, c. 42.

(75) Statutes of British Columbia, 1937, c. 31.

securing collective labour agreements and supervise their enforcement. Governments extend their good offices for the mediation of disputes and, in vital industries, they insist upon investigation and strenuous effort at settlement before a strike or lockout can be called.

V. THE EXPANSION OF SOCIAL SERVICES

The term "social services" is an expression lacking in definiteness. As used here, it covers several kinds of state assistance to individuals. First, it covers such things as unemployment and poor relief, old age pensions and mothers' allowances, where the public purse supports direct money payments to certain classes of persons in acute need. Secondly, it also includes specific services made available through government officials, either to the public as a whole, as in the case of education and general health services, or to particular groups, as in the case of employment exchanges or health insurance. The manner and extent of contribution to the maintenance of these services, made by those who enjoy the benefits, will vary according to public policy and the nature of the service. Contribution in some form is always desirable, but there is no need to complicate a discussion of the underlying causes of this development by entering into that aspect of it.

Nor will the nature and extent of particular services be considered here in any detail. A separate study dealing with them has been prepared.(1) Education is an accepted and widely understood public service and emphasis here will be limited to the increase of more specialized kinds of education. State provision for public health is a mixture of regulation and service and will be considered in some detail in a separate section.(2) The main purpose of the present section is to outline some broad considerations which have dictated the expansion of the more controversial of the social services.

Discussion of this subject is frequently in terms of the decline of self-reliance and growing dependence on the state.

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(1) See A. E. Grauer, Public Assistance and Social Insurance.

(2) See Section VI of this study.

The latter is certainly a very sinister aspect of some of our present methods of relieving distress. However, speaking in those terms tends to obscure a consideration which is basic to the whole discussion. It seems to imply a golden age in the past when the individual stood by himself in sovereign self-reliance. Although unusual individuals may have come close to doing so, generally speaking, it is a fanciful idea. The individual has never been able to stand as an individual except when he was underpinned by various social supports. The strong North American belief to the contrary is due to the fact that we have generalized from two isolated and limited phenomena. One is the individualism which has marked the more outward aspects of economic life in the last hundred and fifty years. The other is the much-quoted self-reliance of the North American pioneer.

The individual is only able to stand as a member of a group, without which he could not be an individual. Elementary discussion of the nature of society or reference to the social history of any age makes that clear. To take only the examples of self-reliance mentioned above - the pioneer history of North America is more a record of the solidarity of the family than it is of individual self-reliance.(3) The members of the self-sufficient family worked together as an economic unit in the struggle to push back the forest. Their earnings were thus pooled in such a fashion as to defy separation. The misfortunes which overtook particular members, such as disease, injury and old age, were spread over the family as a whole. A good deal of this spirit of solidarity still lingers in rural communities in spite of the complete change in the nature of agricultural economy. And, of course, what was true of pioneer North America was equally true

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(3) What we have described as individual self-reliance was really a remarkable resourcefulness, bred of the constant struggle against natural obstacles. Being directed at natural obstacles and not at the exploitation of people, there was no need to subordinate it to social control and it flourished extraordinarily.

of peasant agriculture in Europe. To a lesser extent, it was also true of the handicrafts worker in that stage of development. The family was the economic and social unit which provided the individual with security.

The Industrial Revolution brought the workers to the factories in the towns. The family ceased to be an economic unit and it thus lost much of its capacity to cushion the misfortunes of its members. It was weakened as a social unit by giving a separate wage to each working member of it. The increasing mobility of the worker and the many distractions of the wider social intercourse afforded by urban living further weakened family ties. Both the will and the capacity of the family to afford security to its members declined. However, while capacity declined in direct proportion to the shift from rural to urban living, the cultural lag, which makes social patterns more durable than their causes, slowed the pace of change in the mores of the family. At any rate, the permanent significance of the change did not become marked until the twentieth century.

Even assuming an adequate wage and the absence of unforeseeable disasters, there are many who have not the foresight and fortitude to secure their own independence. Particularly powerful solvents of these qualities are presently at work.(4) Thus when the individual in distress is unable to rely on the family for support, assistance is naturally sought from a larger group. This is a fact of vital importance in any discussion of state assumption of social services of the first type mentioned above. When the argument is framed in terms of individual self-reliance versus dependence on the state, it is frequently forgotten that the supports which bolstered the individual in an older order are failing and are not likely to be renewed.

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(4) See pp. 77-80 post.

Something should also be said generally about the extension of those specific services, rendered by public servants and officials, of the second type mentioned above. Extension of services of this kind is mainly due to two things. One is the paramount social importance of maintaining certain minima in such things as health and education - things which particular families and communities left to themselves might neglect. Neglect of these standards, of course, is always likely to involve higher costs to the taxpayer through increase in disease and a lowering of efficiency. The other is the discovery that, by making social provision for some services, it is possible for the individual to get a much better service in return for his contribution than if he spent the same amount individually. Not only does it enable improved services to be secured but it also makes possible the extension of the service to lower income levels which were previously denied it. Education was once taken care of by the family and later by private enterprise. In both circumstances, it was denied to the great mass of people who could neither employ governesses nor send their children to private schools. The same considerations apply to health insurance and other services. The dollar goes further when spent socially than when spent individually. The inevitable standardization of mass production is, of course, involved but the real question is whether it is better to have that than nothing at all. In respect to many services, the answer is clear.

The reasons for the extension of such services as unemployment and poor relief and pensions of different kinds may now be considered further. Mass unemployment, while not an entirely new phenomenon in the twentieth century, has acquired a new significance, due to more violent fluctuations in the business cycle and the accelerating pace of technological change. The increasing size of the industrial unit, through the complexity of its financial structure and organization, leads to greater rigidity

in the economy. A number of factors contribute to this rigidity which slows up the rate of adjustment to business fluctuations and thus postpones the taking up of the slack in employment. The seasonal character of much Canadian industry is an added complication here. Various indications point to the conclusion that widespread unemployment is a natural feature of our economy in its present stage of development.

The average worker faces the prospect of recurrent unemployment. The fact that he is paid intermittently interferes with his budgeting to meet such mischances. Normally, he does not make provision for these things and his plight, in urban conditions, is a pitiable one. The open frontier, which always provided an escape for some up until the Great War, has been closed. Increasingly, the worker has lost his former links with rural life and he is no longer able to take shelter from the economic storm at the family homestead.

In addition to periodic unemployment due to business fluctuations, the pace of technological change brings about repeated dislocations and this intensifies the problem of unemployment. At the same time, local communities are very unequally equipped to meet these increased burdens of public assistance for the unemployed. It therefore seems certain that unemployment relief has become a permanent concern of senior governments. It also means that preferences in employment will go to younger men and that workers will find their way to the industrial scrapheap at an earlier age. The worker, already subjected to periodic unemployment, is to be given a still shorter working life in which to save for his old age. At the same time, science increases longevity. The result is and will be increasing old age dependence. This is vastly more serious in urban than in rural surroundings. The family is both less able and less willing to undertake the care of the aged under crowded urban conditions.

The perils of indigence, unemployment and old age,

combined with the failure of the family as a provider of security, create a problem too great for haphazard private charity. The choice becomes one of starvation or public assistance. The lament of the moralists about the decline of personal responsibility does not indicate a practicable alternative. Its wide currency, however, requires that something be said about it.

To a considerable extent, personal responsibility has always been a middle class ideal preached to the poor rather than a discipline imposed by the poor on themselves. The failure of the practice among the poor to coincide with the ideal was obscured by the fact that the habits of the poor were not closely studied. This assertion does not go the length of saying that personal responsibility among the poor of fifty or a hundred years ago was a myth. It did exist and was of real significance but we exaggerate it in retrospect because our knowledge is largely ~~gathered from those who pulled themselves up by thrift and self-~~ denial.

Of course, a serious decline in the practice of thrift has taken place. Its decline seems to be closely associated with economic and social changes. In a simpler society, calculations could be made for providing security by the virtue of thrift with much more assurance than is possible today. It was easy to persuade the farmer to save for the building up of an enterprise which grew under his hand. In urban conditions, the simplest comparable kind of saving is home ownership. However, when labour is required, at its peril, to possess mobility, it argues against the possession of immovables. The simpler forms of saving are not attractive and savings are tempted into more speculative ventures where they are frequently lost. Indeed, the experience of many is that acquiring an equity in a house is also a hazardous speculation. Thus, saving of any serious nature is severely discouraged. One can get some idea of the magnitude of the psychological effect by recalling how many supposedly

"safe investments" were cracked open by the last depression.

At the same time, an increasing proportion of our population live in urban centres, where all sorts of attractive gadgets and diversions are always on display. The daily contact with these things multiplies wants and, combined with the blandishments of modern advertising, it breaks down sales resistance. People become so much less able to sacrifice the enjoyment of today for the security of tomorrow. The greater thriftiness of rural and village folk is, to a considerable extent, explained by the lack of temptations.

Devices like the press, radio and moving pictures which explain to one-half of the world how the other half lives have made the poor acutely aware of invidious contrasts. The standards of consumption set by the highly successful or fortunate few inevitably tend to become the desirable social standards which all pursue. Apart altogether from the class bitterness which this newly discovered consciousness of deprivations promotes among the less favoured, it makes for the constant erosion of frugality.

It may be added that the mass production industries depend, to a great extent, for their prosperity on their ability to tap the lower income levels. Therefore, there is enormous pressure applied, through advertising and devices like instalment selling, to put these articles in the hands of the many. When all these things are considered, it is clear that a great modification of the thrifty virtues was inevitable.

Those who suffer from insecurity have learned the advantages to be gained from political pressure and better means of communication have made it easier to organize for that purpose. Most of those actually unemployed or in want are massed in large urban centres. They are news for the newspapers and the whole country is made acutely aware of their plight and widespread human sympathies support their claims for assistance. This is a significant change from a time when the unfortunate were more

widely scattered and their sufferings were less widely known. Furthermore, the society now has a capacity to act in alleviation of their sufferings which it did not possess when an economic surplus and transportation facilities were lacking. The whole question of social security has become a political one which governments cannot ignore.

The responsibilities which Canadian governments have thus far assumed may be briefly outlined. With the exception of the Maritime Provinces, Canada[5] has never made specific provision for the care of the poor, comparable to the English poor laws. Municipalities in the other provinces were authorized to provide poor relief but it is a neat question whether any legal responsibility was thereby imposed.[6] Municipalities did supplement private charity and provincial governments came to the aid of municipalities in times of stress. The Dominion government has always denied responsibility and it came to the financial assistance of the provincial and local authorities for the first time in the post-war distress of 1921-22.

Want arising from unemployment was realized to be subject to different considerations than those applicable to indigence. But no distinction was made in the haphazard assistance provided by governments before 1930. In that year, the Dominion acknowledged a de facto responsibility for providing financial assistance to the relief of victims of unemployment and drought where these were of unexampled severity,[7] and has continued to do so in the succeeding Relief Acts up to the present time. In 1935, the Dominion Parliament enacted a measure designed to establish a national system of unemployment insurance.[8] The Privy Council

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(5) e.g. see Revised Statutes of Nova Scotia, 1923, c. 59.

(6) Cassidy, Unemployment and Relief in Ontario, 1929-32, pp.77-9.

(7) Statutes of Canada, 1930, (2nd Session) c. 1.

(8) Ibid., 1935, c. 38.

declared this scheme unconstitutional in 1937,[9] whereupon the Dominion requested the provinces to give their consent to an enabling amendment of the British North America Act. Unanimous consent has not been obtained and there the matter rests at the present time. Meanwhile, some of the provinces continued to use the federal grants for unemployment relief indiscriminately for the relief of indigence as well and it was not until 1938 that the Dominion government began to insist upon the segregation of the employable from the unemployable in order that ultimately its contribution might be limited to the relief of the former group.[10]

Until the federal grant for old age pensions was made available in 1927[11] the care of the aged who were in want was left to private charity and municipal provision. In most of the provinces, the municipalities or the counties maintained "houses of refuge" for destitute aged persons.[12] Old age pensions were discussed continuously from 1907 but the provinces were reluctant to embark upon such a costly programme. In 1927, Parliament authorized federal assumption of 50% of the cost of old age pension schemes, established by the provinces.[13] The Western Provinces and Ontario[14] rapidly took advantage of this legislation and provided systems of old age pensions. The Maritimes followed after the Dominion raised its contribution from 50 to 75%, and in 1936, Quebec

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(9) Attorney-General for Canada v. Attorney-General for Ontario, 1937, A.C. 355.

(10) e.g. see The Relief Agreement between the Dominion and the Province of Nova Scotia for 1938, par. 4.

(11) Statutes of Canada, 1927, c. 35.

(12) e.g. in Ontario, counties, cities and towns had been authorized to establish houses of refuge by 1877. See Revised Statutes of Ontario, 1877, c. 174, s. 436. Before 1927 this became compulsory. See Revised Statutes of Ontario, 1927, c. 348, s.1. Provincial aid to these institutions was provided for in 1890. See Statutes of Ontario, 1890, c. 78. See also Revised Statutes of British Columbia, 1911, c. 170, s. 186, and Statutes of British Columbia, 1935, c. 66, where the Lieutenant-Governor is authorized to establis a provincial home for the aged.

(13) Statutes of British Columbia, 1926-27, c. 50; Manitoba, 1928, c. 44; Saskatchewan, 1928, c. 75; Alberta, 1929, c. 24.

(14) Statutes of Ontario, 1929, c.73.

adopted the scheme.[15]

In the rural environment, the mother and children generally managed to carry on the work of the farm and provide for their security somehow after the death or disablement of the father. Under urban conditions, a similar disaster leaves the family quite helpless. This seems to be the basic reason for mothers' allowances provided by public funds. Thus, it seems curious that the first mothers' allowances were provided by the Prairie Provinces, the least urbanized part of Canada. However, a close examination will show that the Prairie Provinces have been in the van with respect to most extensions of social services. The high degree of economic specialization and the isolation of the prairie farm have no doubt been factors in the drive for spreading risks over the wider group. Also the tone of western society has been largely set by individualists who were in revolt against the bleaker aspects of individualistic doctrine and practice and, up until the thirties, at any rate, they had no difficulty in reconciling equalitarianism with unrestricted freedom of opportunity for individuals.

At any rate, Manitoba made provision for mothers' allowances in 1916. Saskatchewan and Alberta followed in the succeeding years.[16] Ontario and British Columbia made similar provision in 1920 and Nova Scotia followed in 1930.[17] Generally speaking, these acts provide assistance to mothers with children when the husband is dead or permanently disabled by disease, accident or insanity. In some provinces, it has been extended to cases where need arises through paternal delinquency such as

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(15) Statutes of Quebec, 1936, c.1.

(16) Statutes of Manitoba, 1916, c. 69; Saskatchewan, 1917 (2nd Session) c. 68; Alberta, 1919, c.6.

(17) Statutes of Ontario, 1920, c. 89; Statutes of British Columbia, 1920, c. 61; Statutes of Nova Scotia, 1930, c. 4.

desertion or detention in prison.[18][19]

During the War, assistance was given to the dependents of soldiers in active service. The Dominion has provided pensions for disabled soldiers on the principle that relief against disabilities incurred on behalf of the society should be borne by the society as a whole.[20] In addition, it has been recognized that the rigours of war service would lead to the premature ageing of the men who bore the brunt of it. Accordingly in 1930, the War Veterans Allowance Act provided for allowances in special circumstances to former soldiers who had reached the age of sixty years.[21] Finally, in 1937 amendments to the Old Age Pensions Act provided for federal assistance to those provinces which are prepared to provide public assistance to needy blind persons over forty years of age.[22]

The total cost of this public assistance, granted on various grounds, is one of the largest items in our public expenditures. It is sometimes forgotten that this cost is not entirely made up of payments to pensioners. Large additions to administrative machinery have been necessary. In each case, a separate administrative authority has been set up to make regulations governing the grant and to give speedy determination of the claims of particular persons for assistance without significant cost to the applicant. The ordinary courts are not suitable bodies for such tasks and greatly increased administrative activity has been the result.

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(18) Statutes of British Columbia, 1920, c. 61; Statutes of Alberta, 1936, c. 38; Statutes of Ontario, 1921, c. 79.

(19) Statutes of British Columbia, 1920, c. 61; Statutes of Saskatchewan, 1927, c. 60.

(20) See Revised Statutes of Canada, 1927, c. 157.

(21) Statutes of Canada, 1930, c. 48. Amendments in 1936 lower the age in certain circumstances to fifty-five. See Statutes of Canada, 1936, c.48.

(22) Statutes of Canada, 1937, c.13.

The activities of governments in providing services of the second type mentioned at the beginning of this section will now be outlined. Education will be briefly sketched first. About the time of Confederation, the provision of free elementary schools by municipalities was made compulsory. Grants by the central governments to schools already provided by the local authorities began somewhat earlier and, as is usual, these grants were rapidly followed by central supervision. The period since Confederation has seen a steady increase in central grants and a corresponding extension of central control. The provincial governments lay down uniform standards of curricula and teachers' qualifications, provide training schools for teachers, and enforce the maintenance of standards through inspection. In 1876, Ontario replaced its earlier improvisations by a Department of Education with a staff of experts and a responsible Minister at its head and most of the other provinces have since given similar prominence to the public interest in a uniform standard of elementary education.(23)

The early secondary schools were religious or private institutions. Some assistance was given these by central governments before Confederation but free secondary education with central assistance and supervision did not come until after 1870. The early colleges devoted to higher education were founded by religious denominations. In Eastern Canada, they have remained free of public control but receive substantial grants from the provincial governments. In Western Canada, a desire to escape denominational dissension and rivalry and to push provision for higher education more rapidly than was possible under private auspices, led to a public monopoly. University education was placed under the control of provincial institutions almost entirely supported by public funds.(24)

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(23) See Encyclopedia of Canada, Vol. II, pp. 265-70.

(24) Ibid., pp. 270-9.

The elementary education system, at the time it was established, was primarily designed to secure a literate population. Secondary education, originating in academies for the sons of the well-to-do, followed the lines of development already marked out, after it came under public control, and laid its main emphasis on preparation for the professions. But commercial and industrial activity became of compelling importance in the later days of the nineteenth century, demanding a wide variety of clerical and mechanical skill. A desire to develop industries already established, to promote diversity of enterprise, and to meet foreign competition both at home and abroad, pointed to the need of a high technical efficiency. In the modern diversified economy, constantly compelled to make speedy adjustment to change, the importance of ready adaptation of workers to new tasks, as well as present technical competence, is difficult to exaggerate.

The urgent social interest involved justifies public action to persuade individuals to pursue opportunities not otherwise available to them. The apprentice system in the older trades did not provide the skills made necessary by the development of electricity and the internal combustion engine - to mention only two of many. Private enterprise in clerical training did not provide the quality or range of skills desired. Thus a movement grew to give a more practical twist to public education and to offer training in special skills at public expense.

Nova Scotia led the way in 1888 by establishing night schools for minors and again in 1907 by imposing central supervision over all technical education in the province. Public technical schools were established in Quebec and Ontario about the turn of the century and provincial assistance and supervision were established before another decade elapsed. The other provinces followed slowly but were hampered by financial difficulties. The Royal Commission on Industrial Training and Technical Education

appointed in 1910 recommended federal aid to the provinces. The War intervened and postponed action until 1919 when the Technical Education Act provided for annual grants for a period of ten years. This led to a great expansion of facilities for technical education in all the provinces.(25)

In many trades, which are recruited by a system of apprenticeship, the system has faltered under modern conditions. The more impersonal character of the relationships in large scale industry interferes with the quality of training given. During the lay-off which accompanies depression, training in some trades almost entirely ceases. In the result, there is a shortage of skilled labour when industrial activity revives. Ontario in 1928, and British Columbia in 1935, moved to establish government supervision of the apprenticeship system in a number of trades.(26) The object of these acts is to promote the establishment of a permanent system of training in the particular trades concerned. Inspectors are provided for with power to supervise apprenticeship and, among other things, to require apprentices to attend classes in technical schools at the employer's expense.

The importance of agriculture in the Canadian economy need not be dwelt on here. One of the first concerns of all Canadian governments since Confederation has been to increase its efficiency. From the first, it has been clear that the only effective way to do this was to devise more efficient methods and persuade the farmer to adopt them - a problem of combining research and education. As the world market grew in importance and world competition became keener and as the beneficial applications of science to agriculture multiplied, the governments intensified

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(25) See Vocational Education, (1928) Bulletin No. 28, Department of Labour, Ottawa; Encyclopedia of Canada, Vol. II, pp. 279-281.

(26) Statutes of Ontario, 1928, c. 25; British Columbia, 1935, c.3.

their efforts. All governments, provincial and Dominion, have established Departments of Agriculture. Ontario provided for the first provincial agriculture college in 1874 and has since been followed by most of the other provinces. The Dominion and some of the provinces maintain experimental farms and stations.(27)

The detail of this immense effort on behalf of agriculture cannot be considered here. It should be said however, that one of the most difficult parts of the programme is to win over the conservatively-minded farmer to new methods. That has meant a heavy concentration and large expenditures on field demonstrations and extension work, the maintenance of field workers and the fostering of many kinds of agricultural societies, dedicated to the improvement of agriculture. In addition to its own programme, pushed forward by its Department of Agriculture and its experimental farms, the Dominion government made annual grants in aid of agricultural instruction in the provinces between 1913 and 1924.(28)

A social service of great importance is the public employment office. In a simpler society, where the available employment was almost entirely local, the man and the job were easily brought together by the gossip of the neighborhood. When the neighborhood became a great industrial city, gossip ceased to provide an effective labour exchange. With the growth of so many specialized occupations, the need of searching out the right man for the right job became acute. The modern economy demands mobility of labour over a wide area but cannot get it unless it can tell the man about the distant job. A clearing house for information about workers and jobs becomes vital to its proper functioning. And the necessity is greater in a country like Canada which has a high proportion of seasonal employment.

Private enterprise, which developed marvellous facilities for bringing buyers and sellers of commodities together, did not overlook the opportunities of the labour market. However, the

(27) Canada Year Book, 1930, pp. 191-203.
(28) Statutes of Canada, 1913, c. 5.

private employment office has always been marked by grave abuses. These are largely due to the fact that the interest of the employment exchange does not run with that of the worker. The exchange thrives on labour turnover and has no interest in placing workers in permanent employment. This, added to the fact that the worker is always in the weaker bargaining position, has made the private employment agency something of a racket. In Canada, its unsatisfactory record included the exploitation of the particularly helpless immigrant worker. Furthermore, no employment office can perform its full service unless it is co-ordinated with all other employment agencies within the area of the labour market so as to ensure the widest possible range of relevant information. For these reasons, a public monopoly of the employment office business is preferable to an attempt at public regulation of private enterprise.

Public employment bureaux serving farming districts were operated as early as 1904. During the period of heavy immigration from 1906 to 1914, the Dominion employed special agents to assist in placing farm workers and domestic servants. Ontario began a similar practice in a few industrial centres in 1907. Quebec, in 1910, was the first province to make comprehensive plans for a provincial system. Apart from these, private employment agencies held the field.

In 1913, an era of rapid expansion came to an end and the fact that Ontario, British Columbia and the Dominion all embarked on extensive inquiries into the labour situation in 1914 shows that governments were aware of an oversupply of labour. The War turned the surplus temporarily into a deficiency. However, attempts at effective industrial mobilization confirmed, from another point of view, the need for a comprehensive employment service. The coming demobolization of overseas troops provided an added argument, if more was required. Ontario made legislative provision for a system of employment offices in 1916 and the Western Provinces followed between 1917 and 1919. At the same time, most provinces made

provision for gradual or summary liquidation of private employment agencies.

The Dominion government was faced with the re-establishment of the soldiers in civil life. It was also realized that the provincial systems would require co-ordination in the national interest. Accordingly the Employment Office Co-ordination Act was passed in 1918. It authorized the Minister of Labour to assist in the organization and co-ordination of employment offices, to foster uniformity of methods, and to provide clearing houses for exchange of information and to compile labour statistics. In addition, Parliament authorized an annual grant to the provinces to aid in the establishment and maintenance of public employment offices. Under this stimulus, a nation-wide public employment service has been developed.(29)

There are a number of other social services of either minor or declining importance maintained by Canadian governments. By the Soldiers' Civil Re-establishment Act, the Dominion Parliament authorized a system of vocational training and other assistance in order to hasten the absorption of soldiers into civil life at the close of the War.(30) The Soldiers' Settlement Act provided special assistance to soldiers who chose to take up farming.(31) The Dominion and a number of provinces make loans to farmers on the security of their farms at low rates of interest.(32) Most of the provinces have established an administrative authority to encourage and supervise private philanthropy and municipal enterprise in their efforts to take care of neglected and abandoned children.(33) Some

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(29) On the whole question of employment service in Canada, see Bryce M. Stewart, The Employment Service of Canada, 27 Queen's Quarterly, pp. 37-61; Industrial Relations Counsellors, Inc.; Administration of Public Employment Offices and Unemployment Insurance, pp. 20-8.

(30) Statutes of Canada, 1918, c. 42.

(31) Statutes of Canada, 1919, c. 71.

(32) e.g. see Statutes of Canada, 1927, c. 42; Saskatchewan, 1917, c. 25; Alberta, 1917, c.10; Ontario, 1921, c. 32.

(33) e.g. see Statutes of Ontario, 1893, c. 45; Saskatchewan, 1908, c. 31; British Columbia, 1910, c. 5; Nova Scotia, 1917, c.2.

provinces have appointed government officials who are specially charged with supervising the estates and protecting the interests of infant children and lunatics.(34)

Other services of a minor character could be added to the list. Naturally, the wisdom of public provision of a particular service or of the particular methods employed may be open to question. Life itself is an experiment and gropings for solutions cannot hope to be uniformly successful. The only alternative to a continued groping is an authoritarian regime which denies the experimental character of the process. The final justification of the free, as against the authoritarian system, is that it makes room for progress through experiment over the whole area of human activity. But all progress means change and while economic change pays large dividends to the society as a whole, it inevitably inflicts severe hardship upon particular individuals and communities. Much of this hardship can no longer be attributed to the fault of the sufferers as it is brought about by incalculable forces beyond their control. In a society as complex as that of the twentieth century, it is a social cost of freedom and the argument that, as far as possible, the burden should follow the benefit, is irresistible.

This explains why, in the short period of our national existence, functions which were performed originally by the family, have become of concern, first to municipal, then to provincial and finally to the Dominion governments. Our national growth has brought to us, as a whole, great material benefits. However, as we diversified our industrial pursuits, as we shifted our emphasis from one kind of industry to another and as we became more and more dependent on a widely fluctuating world demand for our staple products, the costs of that growth have been very unevenly distributed. As this development went on, there has been a tendency to spread many of these costs over a wider and wider group. In the last twenty-five years, we have been spreading them progressively over the community as a whole.

(34) See Revised Statutes of Saskatchewan, 1930, cc.192,198 (infants and mental incompetents); Revised Statutes of British Columbia, 1937, c. 207 (infants).

VI PUBLIC HEALTH

Government intervention for the protection of public health is not a new kind of activity. Health legislation can be traced back to the Quarantine Act of Lower Canada in 1794 requiring incoming vessels to submit to quarantine in order to prevent the introduction of pestilential diseases from abroad.(1) Local boards of health were authorized and provided with compulsory powers for inspection and cleansing of premises in Upper Canada in 1833, following an outbreak of cholera.(2) In the case of malignant diseases in crowded areas, they were authorized to move occupants of premises while disinfection measures were being taken. In 1849, on another outbreak of cholera, an act was passed by the Province of Canada providing for the establishment of a central board of health. It was to be brought into operation by proclamation of the Governor in the event of the outbreak of a "formidable epidemic". It gave a considerable range of coercive power to the central board for cleansing of streets and houses and removal of nuisances but only for the limited purpose of combatting an existing epidemic. In such circumstances, local authorities could be required to appoint local boards of health.(3) These powers were used only during the serious epidemics of cholera in 1849 and 1866.

At the time of Confederation, the value of preventive measures was only dimly perceived. It required further scientific research as to the role of the microbe and the means of fighting him, combined with a campaign of public education, to demonstrate the immense importance of preventive measures. The efforts of central governments were limited to attempts to prevent the introduction of malignant diseases from abroad and to localize them after their appearance. Public opinion would go no

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(1) (1929) 20 Canadian Public Health Journal, p. 114-5.
(2) Ibid., p. 141.
(3) Statutes of Canada, 1849, c. 8.

further than allow an appeal for central intervention in times of serious epidemic. Indeed there was strong opposition to the legislation of 1849 on the ground that it was unjust to burden the general public with the cost of assistance to purely local misfortune.(4) The health problem was regarded as an essentially local matter.

Ignorance about the causes of disease made it easier so to regard it. Furthermore, the significance of the limited means of communication existing at the time must not be forgotten. The natural obstacles to widespread mingling of people assisted greatly in the control of infectious disease and lent force to the argument that health was a local problem. Since that time, our modern system of transportation has come into existenee, and the increase in range, quantity and velocity of human circulation is quite incalculable. It is only the growth of scientific knowledge of the causes of disease and the methods of control and prevention combined with the increasingly vigorous use of this knowledge by governments, which has made the modern mobility of populations socially tolerable.

However, at the time of Confederation, health was considered a local problem and, except on a few special and minor points, it did not engage the attention of the framers of the British North America Act. As a result, Dominion power in the field is very limited and general health jurisdiction, as a matter of local and private nature, fell to the provinces. No doubt, an epidemic may reach such proportions as to justify Dominion intervention under the general clause relating to peace, order and good government. The Dominion did re-enact the main provisions of the 1849 legislation of the Province of Canada respecting "formidable epidemics" in its first Quarantine

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(4) (1929) Canadian Public Health Journal, p. 140.

Act of 1868 but dropped them a few years later.[5] The enduring provisions of the Quarantine Act set up administrative control of health precautions to be observed by vessels entering Canadian ports and by travellers entering by land. A system of inspection was provided in aid of enforcement. This was supplemented by machinery for the medical examination and exclusion of immigrants whose state of health makes them undesirable as prospective citizens.[6]

Apart from these measures, there was no further Dominion legislation of importance until 1899 when the Public Works Health Act was passed. This act enabled the Governor-General in Council to make regulations for preserving health and fighting disease in connection with the construction and operation of all public works of Canada and all such works and undertakings as railways and canals which fall within the legislative competence of Parliament.[7]

The use of unsuitable curative measures has almost as injurious effects on public health as complete neglect. The trade in patent medicines plays upon deep-seated weaknesses of human beings and deceives the credulous who are vastly more in number than the merely ignorant. In the unregulated trade, many of these are acutely injurious to health. The buyer has no means of testing their content and as a result, the odium attaching to the harmful product spreads to the merely harmless and the useful preparations. In 1908, when several provinces were contemplating some regulation of the trade, Parliament passed the Patent Medicine Act. It required the registration of all patent medicines and a confession of their content to the administrative authority charged with enforcement.[8] The usual apparatus of analysts and officers to procure samples for analysis was set up. All packages were required to be

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(5) Statutes of Canada, 1868, c.63, as amended by Ibid.,1872,c.27.
(6) Statutes of Canada, 1869, c. 10.
(7) Ibid., 1899, c.30.
(8) Ibid., 1908, c. 56.

labelled with registration number and name and address of the manufacturer and the use of certain ingredients was prohibited.

The Opium and Narcotic Drugs Act of the same year provided severe penalties for unauthorized distribution of these dangerous drugs.(9) In 1919, the manufacturers of patent medicines(10) and in 1920, manufacturers of and dealers in narcotic drugs(11) were required to secure a licence from the Minister.

The Adulteration Act of 1884, expanded into the Food and Drugs Act of 1920, and the Meat and Canned Foods Act of 1907 discussed in another section of this study.(12) They were designed for the protection of health as well as for the curbing of fraud and are an important part of the Dominion activities in this field. The Dominion also maintains marine hospitals for the care of sick and injured seamen. It exercises general health jurisdiction over the national parks and the territories which are outside provincial jurisdiction.(13)

A Dominion Department of Health was established in 1919 to administer, subject to one or two exceptions, the legislation outlined above.(14) It was charged with the conduct of research and the promotion of public education on health matters. In addition, it was to co-operate with the provinces in co-ordinating public health work throughout the country. Its establishment with these objectives is a recognition of two important things. First, health problems are so similar everywhere that the overhead costs of a vigorous attack upon them can be reduced by the pooling of effort in many matters. Secondly, owing to the direct

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9) Ibid., 1908, c. 50.
10) Ibid., 1919, c. 66.
11) Ibid., 1920, c. 31.
12) See Section II, Regulation of Marketing.
13) Canada Year Book, 1937, p. 983.
14) Statutes of Canada, 1919, c. 24.

bearing of health on economic efficiency and the extreme mobility of the population in the twentieth century, there is a national interest in the state of health in every community. The War brought both the problems of public health and the possibility of dealing with them very forcibly to the public mind.(15)

This recognition of the interest of central governments in public health went forward rapidly as between the provincial governments and the municipalities in the last quarter of the nineteenth century. The allocation of responsibility at the time of Confederation has been pointed out above. With the exception of serious epidemics, public health was a local matter. The Municipal Act of 1859, relating to Upper Canada, gave municipalities power to make by-laws for the maintenance of health, abating of nuisances, prevention of pollution of water-supply, destroying of tainted food, banning of slaughter houses and the providing of drainage and sewers. These powers were merely enabling and did not ensure comprehensive health measures. Members of municipal councils were ex officio health officers but they were authorized and not required to act.(16)

Under the division of powers at Confederation, public health remained a matter of a local and private nature and the Ontario Health Act of 1873 substamtially re-enacted the health legislation of the Province of Canada.(17) In the absence of an actual or threatened epidemic, the central authority had practically no functions to perform. Under normal conditions, everything depended on the initiative of the local authorities. They had no permanent organization for health purposes and there were no minimum standards to which they had to conform.

The beginning of a movement in this direction came with the Public Health Act of 1884. It provided for a permanent Provincial Board of Health and for the compulsory organization of

(15) See p. 104, post.
(16) Statutes of Canada, 1859, c. 54.
(17) Statutes of Ontario, 1873, c. 43.

local boards of health. The local boards were authorized to appoint medical health officers and sanitary inspectors.(18) A serious epidemic of smallpox broke out in Montreal and Quebec in the following year, resulting in 7,000 deaths. Ontario carried through a rapid organization under the act of 1884 and kept the deaths through smallpox in that year down to 18.(19)

After this demonstration of the values of an organized attack, Quebec enacted similar legislation in 1886 and the other provinces rapidly followed.(20) The evolution through further provincial supervision and assistance to municipalities to direct central organization of various health services can be sufficiently illustrated by following the case of Ontario. The act of 1884 extended existing municipal powers to abate nuisances, destroy unsound food, and supervise waterworks and sewage disposal. Powers for the control of contagious disease were also extended and provision was made for disinfecting the houses of the poor at public expense.

In the same act, there is to be found the first illustration of a principle which has since expanded central authority again and again in this field. Local authorities were required to submit their plans for water supply and sewage disposal for the approval of the provincial board and it was authorized to lay down general rules respecting the construction of such facilities. Only a few great cities can command the scientific medical and engineering services which are available to central governments. Smaller municipalities would be crippled by the overhead cost. Frequently also, they are ignorant of the aid which science offers and sometimes they are so rooted in the ancient ways that they fail to use it even after it is brought to their attention. Thus, as the body of tested scientific knowledge relating to public health has grown with great rapidity, the role played by the centre has grown correspondingly.

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(18) Ibid., 1884, c. 38.
(19) (1929) 20 Canadian Public Health Journal, p. 141.
(20) Ibid.

In 1895, the centre extended further its supervision of the construction and operation of local waterworks and sewers.(21) In 1911, the appointment of medical health officers and sanitary inspectors by municipalities was made compulsory.(22) In 1912, the province was divided into health districts with a district officer of health in charge of each one. Provincial inspectors were provided for and the Provincial Board of Health was given increased powers of inquiry into and inspection of local health efforts. The Provincial Board was authorized to make regulations for the destruction of buildings unfit for human habitation and the medical health officer was given power to close dwellings, which in his opinion, were so unfit.(23) In 1927, the Provincial Board of Health was superseded by a Department of Health with a responsible Minister at its head.(24)

During this period, there was a steady increase in the power of the municipality to spend public funds for the maintenance of health conditions which individuals could not afford to maintain themselves. For example, the cost of cleaning and disinfecting premises, of medical attention for the indigent, and medical and dental services in the schools, became charges on the municipality. And at the same time, the province pushed forward a system of health services in the unorganized territory which lacked municipal institutions.

Ontario seems to have provided the model which the other provinces adopted and the pattern of development is essentially similar. There are, of course, variations in detail. Many of the other provinces preceded Ontario in establishing a full-fledged Department of Health. Some have increased the regulatory powers of the central authority in certain directions more than others. For example, Manitoba and British Columbia have authorized their central authorities to license plumbers, to supervise health conditions in work-camps, and to regulate the construction of tenement houses.(25) Others push authority further

(21) Statutes of Ontario, 1895, c. 49.
(22) Ibid., 1911, c.67.
(23) Ibid., 1912, c. 58.
(24) Ibid., 1927, c. 73.
(25) Statutes of British Columbia, 1904, c.23; 1911, c.19; Statutes of Manitoba, 1911, c.44; 1915, c.56.

in other directions.

The most striking and perhaps most important of recent development has been the movement towards the county health unit. The social services bear most heavily on sparsely populated areas, and health services in rural areas and smaller towns and cities have always been inferior to those maintained by large urban centres. The gap has grown wider as the latter took advantage of scientific knowledge and expert personnel. Statistics tend to show that rural health, which was once superior to urban health, is no longer so. The part-time medical health officer and sanitary inspectors cannot give as effective a service. It has been seen that there is great possibility of improvement in grouping a number of municipalities into a larger health unit. Overhead costs are reduced and, with the financial assistance of the central government, the maintenance of a full-time health service becomes possible.

Central assistance always involves some kind of central control. Furthermore, maintenance of municipal responsibility in such health units involves the creation of a joint authority, which always lacks vigour in administration. Accordingly, when provision for the first of these full-time units in Canada was made by Quebec in 1926, the provincial government reserved the right to appoint and control the medical health officer, who was to have charge of the unit.(26) British Columbia,(27) Manitoba,(28) Saskatchewan,(29) and Alberta(30) have since adopted the full-time health unit plan and have made progress in putting it into operation. In each case, the provincial government contributes to the cost, appoints or approves the appointment of the medical

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(26) Statutes of Quebec, 1926, c.54; 1928, c.68; 1933, c.74.
(27) Statutes of British Columbia, 1936, c.21. Experiments with health units had been going on in British Columbia for several years before this date.
(28) Statutes of Manitoba, 1929, c.41.
(29) Statutes of Saskatchewan, 1928, c.71.
(30) Statutes of Alberta, 1937, c.91.

health officer in charge and supervises his activities.

A study, based primarily on the statutes, reveals the range of coercive powers and the steady increase of central control through the establishment of minimum standards and inspection to ensure their observance. It cannot do justice to the manifold activities which the provinces and the municipalities have undertaken. The full scope of public health activities is the subject of a study by Dr. A. E. Grauer. This study limits itself to the discussion of general trends. Much of the service aspect of public health work is not reflected in the statutes. However, some reference to the service aspect must be made to indicate what private health now owes to public care.

Provincial financial assistance is given to various municipal activities. The central authority reaches out its hand in many other ways. Public health nurses inspect schools, make home visits and conduct home-nursing classes. They pay special attention to maternal and child welfare. Diagnostic clinics aid in the discovery and labelling of diseases. Bureaux of sanitary engineering conduct research and education. Free distribution of vaccines and serums is provided. Laboratory analysis of a wide variety of noxious specimens is offered. Statistics are collected and studied and a constant campaign of education is carried on by means of demonstrations, exhibits, bulletins and other methods. The list could be continued.(31)

Apart from general health work, the provinces have made special attacks on particular diseases. The post-war alarm over venereal disease led in 1919 to a Dominion grant to the provinces in aid of efforts to control the disease.(32) This grant was renewed each year up until 1931. In order to earn the grant, the provinces were required to establish clinics, competently staffed. They

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(31) A summary of the public health activities of both Dominion and provincial governments will be found in the Canada Year Book, 1937, pp. 981-988. For a more extended report on the Province of Saskatchewan, see (1928) 19 Canadian Public Health Journal, pp. 255-60.
(32) Statutes of Canada, 1919, c.76, vote no. 522.

were obliged to provide hospital accommodation and free treatment and to launch a programme of diagnosis and education. Under this stimulus, legislation was enacted in most provinces providing for compulsory notification, compulsory examination of suspects and compulsory treatment of infected persons.(33) When the Dominion grant was withdrawn in 1931, provincial efforts were consequently diminished to a considerable extent.

Tuberculosis has also been singled out for special attack. Of the five provinces specially examined here, British Columbia, Saskatchewan, Ontario, and Nova Scotia have established provincial sanatoria for treatment of the disease.(34) The province controls the administration and meets the cost of treatment given to indigent patients. Saskatchewan and Alberta give free treatment to all, the costs being met out of general taxation.(35) Quebec has not established provincial sanatoria but is making special efforts to fight the disease. Dispensaries and travelling clinics have been established. Attempts are made to place urban children, who are threatened with the disease, in the care of families in the country and the province bears the cost of transfer.(36) The province also makes grants to the various sanatoria.

A similar programme for cancer was launched in Saskatchewan in 1930 by the appointment of a Cancer Commission. Diagnostic and treatment clinics have been established and provision is made for the treatment of all victims - indigent patients to be a charge on the municipality.(37)

Insanity is coming to be treated as a disease and the provinces have largely taken over from private enterprise the task of isolating the insane and have thrown resources into securing medical and psychiatric treatment of mental disease. All the provinces specially considered in this study except Quebec, have provincially owned and managed mental hospitals,(38) as they

(33) e.g. see Statutes of British Columbia, 1919, c.38; Statutes of Ontario, 1918, c.42; Statutes of Saskatchewan, 1918-19, c.13.
(34) Statutes of British Columbia, 1921, c.67; Statutes of Saskatchewan, 1910-11, c.10; Statutes of Nova Scotia, 1917, c.7.
(35) Statutes of Saskatchewan, 1928-29, c.61; Statutes of Alberta, 1936, c.50.
(36) Statutes of Quebec, 1924, c.21; 1930, c.83.
(37) Statutes of Saskatchewan, 1930, c.64.
(38) Statutes of British Columbia, 1897, c.17; Statutes of Saskatchewan, 1921-22, c.75; Revised Statutes of Ontario, 1877, c.220; Statutes of Nova Scotia, 1921, c.7.

have come to be called. The treatment of indigents is primarily a charge on the municipality but, in most cases, the provincial government contributes. In addition, Quebec has provided for subsidies to existing institutions. These subsidies are conditional on the institution submitting to some measure of government control and supervision. The province has the statutory right to appoint the medical superintendent in these institutions. He controls the medical services and reports to the Provincial Secretary.(39) The cost of maintenance of indigents is shared by the province. Finally, in all these provinces, private insane asylums are subject to government supervision and inspection, even though they receive no grant.(40)

Provincial aid to or establishment of institutions for persons suffering from other afflictions is also found. Nova Scotia and Saskatchewan have made legislative provision for supervising and sharing the cost of training and care of mental defectives.(41) British Columbia has established a home for persons suffering from incurable disease.(42) Ontario makes special provision for the care of epileptics and offers assistance to cities of over 100,000 population which set up psychiatric hospitals.(43)

The burden of providing hospital care for patients who are unable to pay the cost of treatment is too great for the general hospitals in many municipalities to bear. The problem which arises in all the social services is found here also. It is precisely those municipalities with the most slender resources upon whom the heaviest load of charity treatment falls. At the same time, hospitalization has become a service which, it is

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(39) Revised Statutes of Quebec, 1909, c. 4.
(40) Revised Statutes of British Columbia, 1924, c. 158, s. 6; Revised Statutes of Ontario, 1914, c. 296.
(41) Statutes of Nova Scotia, 1921, c. 8; Statutes of Saskatchewan, 1930, c. 71.
(42) Statutes of British Columbia, 1922, c. 60.
(43) Revised Statutes of Ontario, 1937, c. 392, s. 56; Ibid., c. 393.

deemed, should be available to all - not only for the sake of the patient himself but for the sake of his family and the public at large. Under the conditions of urban crowding, home-nursing is less practicable than in earlier times. Also the modern hospital, with its range of specialized services, can give the patient attention which he cannot secure under the most favourable home-nursing conditions. This problem has been met in the usual way - the central government makes grants to the general hospitals. These are generally on a per patient per day basis: With this aid comes supervision. Hospitals receiving aid may not reject charity patients. They are generally required to make returns, to submit to inspection by provincial health officials.(44) In the feudal period, cities and guilds purchased immunities with grants of money. This process seems to have been reversed in the twentieth century.

Individualistic society has made great progress in socializing risks by insurance. One of the most serious risks facing the individual is illness and the insurance principle has been applied to it in many countries, being made compulsory for the wage earning groups. Besides spreading risks, its contributory features involve a method of individual saving for emergencies. State and employer contributions swell the fund. Combined with the fact that the fund can secure competent medical services more economically, this device means that a better medical service is provided for the participating group as a whole at a much smaller total cost than would be possible under conditions of rugged individualism. This is of immense importance in the low income groups and it is at least plausible to argue that the prospects of greatly improved health conditions in this group make public contributions to such health insurance schemes a sound investment.

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(44) Revised Statutes of British Columbia, 1924, c. 106, s.5; Revised Statutes of Saskatchewan, 1920, c.212; Revised Statutes of Nova Scotia, 1923, c.54; Revised Statutes of Ontario, 1937, c.390.

Although it was introduced in England as long ago as 1911, it has seemed to carry social provision for health further than we were prepared to go until the present decade. Its implications for the medical profession are, of course, debatable and the coolness of the profession towards it has contributed to the postponement of experiment. However, Alberta in 1935 (45) and British Columbia in 1936 (46) enacted health insurance acts. Both provide for a health insurance commission to administer the fund which is to be built up from compulsory contributions of wage-earners and employers. The main difference between the two schemes is that the former contemplates piecemeal adoption by districts, after a majority of those concerned in the district have voted in favour of its application while the latter is to have province-wide operation on proclamation by the Lieutenant-Governor in Council. As yet, neither of these schemes have gone into operation. Whether they will be brought into operation and whether similar schemes will be adopted in other provinces, belongs to the sphere of prophecy. A full treatment of the problem of health insurance will be found in Dr. Grauer's study on public health activities.

However, the trend of the last 75 years should be clear from what has been said in this section. It has moved constantly towards the making of wider social provision for public health - the spreading of the risks of disease over the society as a whole. It is true, of course, that this movement has got some drive from purely humanitarian impulses. But more calculating reasons have carried great weight. The development of the modern specialized economy has resulted in widely unequal capacity of different local communities to meet the burden of social services demanded. At the same time, it has been realized that the ill-health of some, in an urban and highly mobile society, is a menace to the health of all. Disease reduces the efficiency of the society, a truth which the discovery of the C[3] army during the War has driven home in a most forceful manner.

(45) Statutes of Alberta, 1935, c. 49.
(46) Statutes of British Columbia, 1936, c.23.

The War had another very significant influence on public health development. The fact that, for the first time in history, vast armies were kept almost entirely free of serious disease, demonstrated the effectiveness of preventive medicine. It dawned upon us that a high degree of public health can be secured and the C^3 proportion of the population greatly diminished at a price. The public, as a whole, are becoming increasingly willing that that price should be included in the overhead costs of government. At the moment, the tendency is to make the province the financial and administrative unit for this purpose. The movement towards increased participation of the provincial governments in health activities is due, in considerable measure, to the unequal capacity of the municipalities to carry the burden. In so far as unequal capacity to maintain health, and other services manifests itself as between different provinces, the logic of the development discussed has at times led to the spreading of some of these costs over the country as a whole and points to the increasing participation of the Dominion government in health and other similar services. Thus far, however, the participation of the Dominion government has consisted almost entirely in giving a lead and temporary assistance to the provinces in meeting their health problems.

VII CONTROL OF INCORPORATIONS AND THE SALE OF SECURITIES.

Under a free economic system, the individual is allowed to draw from the national income, in competition with others, as large a share as his talents and a variety of fortuitous circumstances enable him to take. He is also permitted to make his own determination as to how much of it he will save and in what way his savings will be invested. That is to say, the function of providing capital is decentralized and dispersed among many people.

The logical counterpart of individualism on the saving side would be complete individualism on the investing side - each individual employing and managing his savings in some enterprise of his own. During the last century, the relative importance of isolated individual enterprise has rapidly decreased. This is due largely to the advance of industrial technique. The use of machinery and the economies of large scale production have required great accumulations of capital for the operation of a single unit of production - accumulations which were far beyond the resources of any one or even a few individuals to supply. And even where one individual could supply the vast sum required, it was generally imprudent to venture so large a sum in a single enterprise. Thus it is imperative for our present mode of production, to reassemble for investment the saved portions of the incomes which have been dispersed.

The most important device for this purpose is the joint stock company in which a large number of investors entrust their savings to the management of a few individuals. These companies are constantly growing in numbers, in the size of their operations and the complexity of their financial structure. As economic opportunities become more difficult to calculate and as the corporate device flowers in all its intricacy, it becomes more and more difficult for the average investor to assess the merits of the alternative ventures which solicit his funds. At the very time when he is compelled more and more to seek out corporate securities as an investment, he becomes less able, by his own efforts, to amass the information necessary for an appraisal. With

respect to the complicated financial structure of the giant corporation, he would not always have the ability to appraise, even if he had the information.

Having selected his investment with as much care as possible, his difficulties are by no means over. He has put his property into the hands of other individuals for them to manage and that always puts him at the mercy of those he trusts. It has always been found necessary to fix such individuals with special duties and obligations. But it is not possible to take the easy road of equating the position of the company director with that of a trustee, because the object of the joint stock company is not security but an adventure fraught with more or less peril. Controls of a somewhat different nature must be devised.

The last fifty years have seen constant experiment with means of controlling the use of the corporate device. Regulation, as far as the Dominion is concerned, has had three main objectives. The first has been to secure the disclosure of material information to prospective investors at the time of incorporation or issue of securities. The second has been to secure to shareholders the right to full and accurate information respecting the affairs of the company and the right through meetings, whether special or general, to get action on the basis of that information. The third has been to provide some protection to creditors through the providing of information and the forbidding of the grosser kinds of raids on the capital of the company. A fourth objective appears to be emerging, if one can judge by recent legislation. It is to impose some limitations on the classes of shares and on the use made of voting rights and other privileges which are both mystifying to the public and useful as instruments of manipulation. An examination of the development of company legislation in the provinces shows a concentration on the same objectives. But, of course, the provinces did not proceed uniformly nor at the same pace as the Dominion.

A great deal of this regulation has been instituted merely

by a change in the law, leaving enforcement to the courts. For example - the stringent liability of directors for untrue statements in the prospectus was established by an alteration in the law of tort. In such cases, no additional functions are saddled on the executive branch of government and there is no increase of government activity as the term is used here. The discussion which follows, therefore, will touch only those points where an increase of administrative authority has been established in the effort to protect investors and others dealing with joint stock companies.

A grant of incorporation must be sought from an executive officer - the Secretary of State in the Dominion, the Provincial Secretary or a Registrar of Joint Stock Companies, as the case may be, in the provinces. Normally, he has no power to refuse an application which is satisfactory on its face; his duty is limited to the ministerial one of seeing that formal requisites are met. At the time of Confederation, this was his sole function. Since then, he has got power to require the filing of a wide variety of information both before and after incorporation. This information is not in aid of wide inquisitorial powers which he possesses over the company. The object is to make certain important information available to those who are interested in the affairs of the company. In addition, he has acquired limited powers of intervention in special circumstances.

A sufficient indication of the nature of these additions to administrative powers and duties can be gathered from an outline of the more important ones given to the Secretary of State respecting Dominion companies. The first Dominion Companies Act of 1869[1] is silent on matters of this kind. This act was recast in 1877. Any contract providing for the issue of shares for a consideration other than cash was required to be filed with the Secretary of State.[2] Any increase or decrease of capital by the

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(1) Statutes of Canada, 1869, c. 13.
(2) Statutes of Canada, 1877, c. 43, s.83.

company became subject to his being satisfied of its expediency and bona fides.(3)

In 1902 the directors were required, if requested by him, to file a summary setting out the share capital position of the company.(4) In 1917 an annual summary became compulsory and its required content was much expanded.(5) Any company offering shares to the public was required to file a prospectus or a statement in lieu of a prospectus, containing certain information, with the Secretary of State.(6) At the same time, companies were required to make returns to him containing particulars of the securities given by them to secure borrowings and he was required to keep a register of corporate mortgages and charges.(7)

Where the company failed to appoint an auditor to conduct an annual audit, he was empowered to do so and to ensure the auditor of a full access to the books of the company. Furthermore, the Secretary of State got power, at his discretion, to appoint an inspector of the company's affairs on the application of what he deemed to be a sufficient minority of the shareholders.(8) It is worth noting that this latter power had previously been invested in a court.(9) Here again administrative discretion has ousted judicial authority.

Later amendments have expanded the variety of information which must be contained in the prospectus and various returns which must be filed.(10) A development, similar to that outlined above, can be traced in the provincial legislation respecting companies.(11)

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(3) Ibid., c. 43, s. 23.

(4) Ibid., 1902, c. 15, s. 89

(5) Ibid., 1917, c. 25, s. 13.

(6) Ibid., c. 25, s. 7.

(7) Ibid., c. 25, s. 9.

(8) Ibid., c. 25, s.11.

(9) Ibid., 1902, c.15, s. 79.

(10) See Statutes of Canada, 1934, c.33; as amended by 1935, c.55.

(11) e.g. see The Companies Information Act, Statutes of Ontario, 1928, c. 53; Statutes of Quebec, 1930, c. 87.

It differs somewhat in detail and generally - though not always - moves more slowly to experiment than that of the Dominion.

In addition to incorporating and exercising some supervision over their own companies, the provinces require that all "extra-provincial" companies carrying on business in the province must register or secure a licence.(12) These provisions are revenue rather than regulatory measures and need not be discussed here. It is, however, important to point out that these provisions generally impose upon companies incorporated in a foreign country or in another province much the same obligations with respect to prospectus and annual returns as apply to locally incorporated companies.(13)

From time to time there have been attempts by the Dominion and the provinces to get uniformity in companies' legislation. In the past these efforts have not met with success. Marked progress with an ambitious programme of uniform legislation is being made at the present time by a committee set up by the Secretary of State following a resolution unanimously adopted by the Dominion-Provincial Conference of December, 1935. This work has proceeded under the assumption that the present division of jurisdiction over company law will continue, and its objects are to draft a uniform companies act which might be adopted by the Dominion Parliament and the provincial legislatures and to provide for greater uniformity and simplicity in administration. Thus it has been proposed to establish a central bureau at Ottawa which will facilitate exchange of information between security commissioners. A certification of investigation by one security commissioner could then be accepted by commissioners in other provinces, thereby eliminating duplication of administrative effort and expense as well as delay. Similarly a greater degree of uniformity in company returns is sought.

(12) e.g. see Revised Statutes of British Columbia, 1936, c. 42, ss. 178-203. The provisions in the other provinces are broadly similar.

(13) See Note (11) above.

The rapid economic development of the first decade of this century produced a heavy crop of ill-starred corporate ventures. This gave rise to a demand that more drastic measures should be taken to curb the fraudulent and grossly optimistic flotations of corporate securities. The incorporation acts provided little more than a degree of publicity. From 1912 on, several provinces resorted to administrative control of the sale of shares and other securities.(14) These acts forbade any person or company to offer the securities of any company for sale in the province until a licence or certificate had been secured. Before a licence would be issued, detailed particulars of the company's project and financial position were required to be filed with the Public Utility Commission, the Local Government Board, or some other executive body. If that body found the company to be solvent, its internal structure and proposed enterprise "to provide for a fair, just and equitable plan for the transaction of business...", it would then issue a certificate to the company and a licence to its agents or salesmen. Otherwise, a certificate would be refused and under certain circumstances, a certificate already issued, could be cancelled.

The constitutionality of this legislation, in so far as it applied to Dominion companies, was challenged in the courts and found to be ultra vires.(15) Thus the province was denied control over a Dominion company seeking to sell its shares in the province. At the same time, it was fairly clear that, once the shares of a Dominion company had been sold outright by the company, Dominion legislation, which sought to control the resale of those shares to the public by a broker or investment house, would be equally unconstitutional. As it was becoming increasingly the normal practice for companies to sell large blocks of their

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(14) e.g. see Statutes of Manitoba, 1912, c. 75; Statutes of Saskatchewan, 1914, c. 18; Statutes of Alberta, 1916, c. 8; Statutes of Quebec, 1924, c. 64.

(15) Lukey v. Ruthenian Farmers Elevator Co., 1924, S.C.R. 56; Attorney-General of Manitoba v. Attorney-General of Canada, 1929, A.C. 260.

securities outright to brokers and investment houses, another method of control was sought out.

This challenge to legal ingenuity brought forth the Security Frauds Prevention Acts, the principle of which has successfully withstood the scrutiny of the Privy Council.(16) The germ of the idea on which these acts are based is to be found in a Nova Scotia statute of 1924, providing for the registration of brokers.(17) This act was never put in force but the principle of it was amplified and expanded in the Ontario act of 1928.(18) The Ontario legislation has since been copied by the other provinces.(19)

In substance, this legislation forbids anyone to carry on the business of trading in securities unless he is registered under the act. In some provinces, a special security frauds commission, in others, the Attorney-General, is charged with administration and enforcement. Every applicant for registration must furnish such bond as the authority requires, the bond to be forfeited if the broker is found to have committed a "fraudulent act", as defined by the legislation.

The authority can refuse an application for registration on any grounds which it thinks sufficient. It is given a wide power to investigate any allegation that a "fraudulent act" has been or is about to be committed. This phrase is so defined as to cover almost all the devices by which fraudulent stock promotions are foisted on the public as well as some of the more objectionable practices in which some brokers engage on their own

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(16) Mayland and Mercury Oils Ltd. v. Lymburn and Frawley (1932) 1. W. W. R. 578.

(17) Statutes of Nova Scotia, 1924, c. 12.

(18) Statutes of Ontario, 1928, c. 34.

(19) e. g. see Statutes of Nova Scotia, 1930, c. 3; Statutes of British Columbia, 1930, c. 64; Statutes of Quebec, 1930, c. 88; Statutes of Saskatchewan, 1930, c. 74.

account.

Upon being satisfied of the commission of a "fraudulent act" or its imminence, the authority may suspend the registration of the offending broker, reveal the scheme to the public and secure an injunction against further trading by the culprit. Some specific brokers' practices such as selling against customers' orders are forbidden. Those provinces, where stock exchanges exist, have made the stock exchanges responsible for securing an annual audit of the financial position of brokers trading on the exchange.(20) In the other provinces, the authority charged with administration of the act, is empowered to secure an annual audit of brokers' books.(21)

The Security Frauds Prevention Acts have a two-fold purpose. They provide for the regulation of brokers and the revelations of the early days of the depression showed that regulation of some kind was needed. Their main object, however, is to put a curb on the fraudulent flotation of securities. How far the wide powers which they give will enable a government to discourage enterprise which it merely thinks unwise is difficult to say. However, it is clear that a government which rules to say that certain enterprises are unwise as distinct from fraudulent is both stifling the experimental procedure by which we make progress and preparing itself to direct and to guarantee economic development. A public policy, which is committed to the system of free enterprise, must err, if at all, on the side of liberality.

The state cannot safely go further than to check actual fraud, require full publicity and insist upon an intelligible and reasonable corporate structure without acquiring some direct responsibility for the success of the venture.

(20) Ontario, Quebec, and British Columbia. As to Ontario, see Statutes of Ontario, 1930, c. 39.

(21) Nova Scotia and Saskatchewan. As to the latter, see Statutes of Saskatchewan, 1931, c.76.

VIII - REGULATION OF INSURANCE, TRUST AND LOAN COMPANIES

The regulation of insurance, trust and loan companies is a case of the regulation of business and, therefore, might be considered under that general heading.[1] However, certain peculiar considerations apply to these businesses just as to public utility enterprises and it seems preferable to treat them separately.

Insurance performs an immensely important function in an individualistic society. Where individuals are given the advantages of personal freedom, they must, to a great extent, assume the burden of possible misjudgments or misfortunes. Naturally, everyone is anxious to evade or, at least, to spread these risks. Life insurance spreads the risks of mere living as well as those involved in the assumption of social obligations. It has also become the least unpopular method of practising thrift and therefore of great importance. In the same way, insurance is used more and more widely to cover business risks. It would be difficult to estimate how far it has aided economic development. Many risks, which would otherwise have daunted private enterprise and paralysed development have been taken care of by insurance.

In Canada, the development of insurance has taken place almost entirely since Confederation. Fire and marine insurance were recognized businesses before that time but they were on a very small scale. The phenomenal growth of life insurance did not come until after Confederation. There does not appear to have been any regulation of life insurance prior to that date and such regulation as there was of other forms of insurance was of a very simple nature.[2]

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(1) See Section XI of this Study.

(2) See Statutes of Canada, 1860, c. 33.

Regulation of the insurance, trust and loan businesses has been of three distinct types. In the first place, governments have always imposed special conditions upon the grants of corporate privileges to persons entering this field. Special statutes governing the incorporation of insurance, trust and loan companies have been enacted by the Dominion and by most of the provinces. Secondly, insurance, in particular, is what may be called a sophisticated commodity. The ordinary purchaser does not understand the significance of many of the provisions which the company, a specialist in these matters, has introduced into the contract. This means an inequality of bargaining position where the maxim, caveat emptor, loses its validity. Consequently, there has been regulation of the terms and incidents of the contract. The constitution allots such matters to the provinces and each province has established a variety of conditions and a number of incidents to be implied in every insurance contract.(3) This has been entirely regulation by law, enforcement being left to private initiative in the ordinary courts.

The third type of regulation has been concerned with trying to secure the solvency of insurance companies through public supervision. Those seeking the protection of insurance are rarely able of their own efforts, to judge of the financial strength and probity of the insurers. These vital matters are hidden in an unseen environment at which they can only guess. Furthermore, the contract of life insurance, by its very nature, puts the insured at an additional grave disadvantage. He is obliged to perform his part of the contract now, while the insurer postpones his performance for, perhaps, fifty years. For aught the insured knows or can do, the insurer may abandon its present business caution and become insolvent long before the fifty years elapse.

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(3) e.g. see Revised Statutes of Ontario, 1937, c. 256, Parts III to IX inclusive.

This explains the insistence that the state should intervene and add its weight to the integrity, caution and wisdom of the insurer so that the insurer will still be in existence and able to perform when his obligation matures.

Similar, though not such overwhelming considerations apply to trust and loan companies. Both are entrusted with the care and investment of the funds of others, amounting to many times their capital and the arguments which led to the regulation of banking sufficed to bring them under government supervision.

Governments have been given a considerable measure of control over the operations of these three kinds of companies. Generally speaking, it consists in requiring a special licence, to be granted only on certain conditions, a deposit of a considerable sum and a careful limiting of the type of the security in which they may invest their own funds or the funds entrusted to their care. In addition, they are required to make annual returns, to throw their books and records open to inspection by government officials. They are, at all times, subject to the cancellation of their licences, if their solvency is deemed to be imperilled by the officials who make these investigations.

This type of regulation appears to have begun in 1860[4] when foreign fire insurance companies were required to secure a licence in order to carry on business in the Province of Canada. On the assumption that it had power to regulate insurance, the Dominion Parliament repealed this early act in 1868 and provided that all insurance companies must secure a licence from the Minister of Finance.[5] Provincial companies doing business solely in their home province were excepted and never since has the Dominion tried to regulate them. The licence was conditional on a deposit and the possession, by foreign companies, of a

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(4) See note (2) above.

(5) Statutes of Canada, 1868, c.48.

certain amount of unimpaired capital. All companies were required to file annual statements with the Minister of Finance, who, in turn, was obliged to lay them before Parliament. That is to say, legislative rather than administrative supervision was contemplated.

Administrative supervision came in 1875 when the appointment of a Superintendent of Insurance was authorized "for the efficient administration of the insurance business".(6) His main duty was to examine the companies' statements as to their affairs, investigate fully their financial position where he thought necessary and report serious situations to the Minister of Finance who might take steps to cancel a company's licence. In the same year the control of the Superintendent was extended over life insurance companies.(7)

By 1906, a list of authorized investments for insurance companies had been established and investment in foreign securities had been brought under control.(8) In 1917, as a result of a Privy Council decision,(9) the Dominion relinquished its claim to supervise provincially incorporated companies but continued and extended its provisions with respect to Dominion and foreign companies.(10) An examination of the Revised Statutes of 1927 shows a further consolidation of control. If at any time, a company's Canadian liabilities exceed its assets locally situate in Canada, its licence may be withdrawn if the deficiency is not made good. The Superintendent is authorized to appraise assets which he thinks are overvalued and he can require Canadian companies to dispose of unauthorized investments. Life companies are required to maintain a

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(6) Ibid., 1875, c.20.

(7) Ibid., 1875, c.21.

(8) Statutes of Canada, 1906, c.34.

(9) Attorney-General of Canada v. Attorney-General of Alberta (1916) 26 D.L.R. 288.

(10) Statutes of Canada, 1917, c.29, ss. 2(d), 4.

reserve for unmatured obligations and the Superintendent is given considerable powers in connection therewith.(11)

These interventions are all obviously aimed at safeguarding the solvency of insurance companies. Therefore, when the Privy Council decided in 1932 that the Dominion had no power to regulate insurance companies under the headings of "aliens" and "regulation of trade and commerce",(12) Parliament merely shifted its ground to "bankruptcy and insolvency" and based substantially the same structure of regulation on this new foundation.(13) Of course, the question whether much of this regulation of highly solvent companies can be supported as legislation on bankruptcy and insolvency has not yet been judicially considered.

Dominion regulation of trust and loan companies began in 1914.(14) Except for the requirement that British loan companies must secure a licence from the Secretary of State,(15) the Dominion has limited its intervention to companies with Dominion charters. The number of companies securing Dominion charters and thus making regulation of them by the province more difficult persuaded the Dominion to establish uniform regulation.(16) In 1914, such companies were required to make annual returns and became subject to inspection by government officials. Trust companies were limited to a list of authorized investments.

In 1920, the supervision of these companies was handed over to the Superintendent of Insurance and they became subject to substantially the same scrutiny of their financial position as already endured by insurance companies.(17) In 1922, loan

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(11) Revised Statutes of Canada, 1927, c.101.

(12) Attorney-General for Quebec v. Attorney-General for Canada, 1932, A.C. 41.

(13) Statutes of Canada, 1934, cc.27, 36,45.

(14) Ibid., cc. 40, 55.

(15) See Revised Statutes of Canada, 1927, c. 28, ss.99-105.

(16) House of Commons Debates, 1914, pp. 1125-30.

(17) Statutes of Canada, 1920, cc.14, 21.

companies were limited in their choice of investments[18] and the Superintendent was given power to require disposal of unauthorized investments and to appraise overvalued real property of any trust or loan company.[19] Finally, in 1927, these companies were required to take out an annual licence which the Minister of Finance might refuse on certain grounds.[20]

Provincial regulation of insurance companies began with the small provincial companies which the Dominion never attempted to touch. The case of Ontario which has been the main competitor with the Dominion in the insurance field may be sketched here. In 1876, the legislature first intervened and required all insurance companies without a Dominion licence to secure one from the Provincial Treasurer. A deposit was required and powers of inspection were given. Each company's annual report was to be laid before the legislature and provision was made for application to a court for a winding-up order against any company which was financially unsound.[21]

This combination of legislative and judicial control is an excellent example of the Whig ideal of government which still dominates our theory but not our practice. This field, like so many others, came more and more to demand expert and continuous supervision. Accordingly, by 1887, provision had been made for an Inspector of Insurance upon whose report the Provincial Secretary was authorized to suspend and cancel licences.[22] By 1914, a Department of Insurance with a Superintendent had been provided for and the Dominion structure of regulation closely copied.[23]

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(18) Ibid., 1922, c. 31.

(19) Ibid., 1922, cc. 31, 51.

(20) Ibid., 1927, cc. 61, 72.

(21) Statutes of Ontario, 1876, c. 23.

(22) See Revised Statutes of Ontario, 1887, c. 167.

(23) See Revised Statutes of Ontario, 1914, c. 183.

When doubts began to be thrown on the validity of the Dominion regulation of insurance companies, the province extended its licensing provisions to all companies. It provided, however, that licences should issue as a matter of course to Dominion licencees.(24) In addition, the province has come to exact licences from all insurance agents, brokers, adjusters and underwriters agencies.(25) Generally speaking, these licensing provisions are as much revenue as they are regulatory devices.

In 1897, Ontario began to regulate the financial affairs of trust and loan companies.(26) Taking into account the legislation of later years, the pattern established is essentially similar to that of the Dominion in the same field; annual licences and reports, a list of authorized investments, inspection and cancellation of licence on adverse report of the inspector, etc.(27)

Of the other four provinces specially studied, British Columbia,(28) Saskatchewan,(29) and Quebec(30) have provided for a substantially similar structure of regulation, though none of them entered the field as early as Ontario. British Columbia did not provide for the administrative control of loan companies until 1927(31) and Saskatchewan left both trust and loan companies free of any close and continuous regulation until 1936.(32) As if making up for lost time, her new legislation provided, in addition, for extensive control of investment companies on similar lines. Quebec, while providing for the licensing of loan companies, has

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(24) Statutes of Ontario, 1924, c. 50, s. 25 (7)

(25) See Revised Statutes of Ontario, 1927, c. 222.

(26) Statutes of Ontario, 1897, cc.37, 38.

(27) See Revised Statutes of Ontario, 1937, c. 257.

(28) Statutes of British Columbia, 1911, cc. 9,26; 1913, c. 33; 1914, c. 13; see now Revised Statutes of British Columbia, 1937 cc. 45, 133.

(29) Statutes of Saskatchewan, 1913, c. 37; 1915, c.15; see now Revised Statutes of Saskatchewan, 1930, c.101.

(30) Revised Statutes of Quebec, 1925, cc.243; 248.

(31) Statutes of British Columbia, 1927, c.62.

(32) Statutes of Saskatchewan, 1936, c.31.

taken no substantial power of regulation.[33] Nova Scotia stands outside this pattern as far as the regulation of insurance is concerned. In 1918, she gave up the attempt to regulate insurance and provided that all companies doing business in the province must hold a Dominion licence.[34]

The nature of the insurance, trust and loan businesses is such that some public supervision is necessary. This supervision has been mainly directed at trying to maintain the solvency of the companies engaged in the business. The state does not guarantee that they shall remain solvent but rather seeks to prevent insolvency arising from practices which long experience has shown to be dangerous. Thus they are made subject to licence, compelled to maintain certain reserves and limited to certain types of investment. Frequent reports and periodic inspection are provided for in order to ensure the observance of these regulations.

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(33) Revised Statutes of Quebec, c. 252.

(34) Statutes of Nova Scotia, 1918, c. 15. Provincial regulation of trust and loan companies, similar to that found in Ontario, is provided for. See Revised Statutes of Nova Scotia, 1923, cc. 181, 182.

IX RAILWAYS, HIGHWAYS AND PUBLIC UTILITIES.

Before the coming of the railways, the maintenance of trunk roads was dictated by military and political considerations. These main roads were therefore a matter of anxious concern for the governments in the different colonies. Some were constructed by the governments with these considerations in mind. Others were built by turnpike trusts with the aid and encouragement of the governments. Local roads were of minor importance in the scheme of things and were left to the initiative of the localities which used them.(1) When extensive railway development began about 1850, it diverted the attention of governments from the highways. Railways promised an immensely better means of rapid communication between distant parts of the country. They also promised to open up the country for an economic development which would have been quite impossible under the older methods of transportation.

Thus, by the time of Confederation, roads had receded to the status of local works and undertakings. Their principal function was to furnish systems of local communication and to act as feeders to the rapidly developing railway system. Central governments displayed little more than a mild interest in them until the beginning of the twentieth century. On the other hand, they continued their policy of encouraging the building of railways with loans and subsidies.

Although complaints about excessive railway rates began as early as 1860, any concern which this may have caused was completely overshadowed by the desire to push construction as rapidly as possible. In so far as regulation was considered to be a problem, two answers suggested themselves. The first was that competition between lines would be a sufficient

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(1) Canada and its Provinces, Vol. X. pp. 359-65.

regulator. The second showed some distrust of this laissez-faire belief by putting in railway charters a provision that dividends should not exceed a certain percentage on the capital stock.[2] The figure was generally placed about 15%[3] and as long as this optimistic mood prevailed there was no opportunity to test the effectiveness of the limitation. The Railway Act of 1859 did provide that the tolls fixed by the company were subject to the approval of the Governor in Council[4] but this clause appears to have remained a dead letter. Apart from this provision and a few others enabling government inspectors to secure adequate safety precautions in the operation of the road, the act is a general clauses act, respecting the incidents of incorporation, and the procedure to be followed in incorporating companies.

Complaints about excessive rates continued to grow. The abuses which had marked the free conduct of the railway business in other parts of the world appeared also in Canada. Discrimination between different localities and between different individuals became common. These were hidden from view by secret rebates and drawbacks of various kinds. Roads enjoying a monopolistic position failed to maintain reasonable accommodation.[5] And when extensive amalgamations in the eighties began to reveal the logic of monopoly which is inherent in the nature of transportation enterprises the public faith in competition as a regulator faltered and the

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(2) Ibid., Vol. X. pp. 469-70.

(3) e.g. See Consolidated Statutes of Canada, 1859, c.66, s. 118.

(4) Ibid., s. 28.

(5) See Report of the Royal Commission on Railways, 1888,(2nd Session) Sessional Papers of Canada 8 A.

demand for regulation became insistent.[6] Legislative regulation had been tried in the United States but had failed because no authority had been provided to enforce the law.[7] England had experimented with judicial control by placing a discretionary power in the hands of the judges. This device had been abandoned because railway regulations presented highly technical questions which required the attention of experts.[8] In both cases, reliance had come to be placed upon an administrative commission, appointed by the government but not under its direct control in its daily work.

A Royal Commission was appointed in 1886. It reported that more stringent regulation was desirable and declared itself in favour of an administrative authority, though not quite convinced of the advisability of an irresponsible commission.[9] Accordingly, the Railway Act of 1888 conferred on the Railway Committee of the Privy Council the power to regulate rates and to decide disputes which arose respecting them. In addition railways were required to maintain reasonable facilities and to abstain from discrimination between persons and localities and from unjust preferences. The Railway Committee was given power to decide disputes respecting these matters - to give concrete meaning to these general expressions in particular cases. It was also given a limited power to make regulations respecting maintenance and operation of railways.[10]

This body proved to be unsatisfactory. Its personnel kept shifting with political fortunes and it made a political

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(6) Canada and its Provinces, Vol.X, p.470.

(7) Mosher and Crawford, Public Utility Regulation, p.16

(8) Robson, Justice and Administrative Law, pp.92-101.

(9) Report of the Royal Commission on Railways 1888, op.cit.

(10) Statutes of Canada, 1888, c.29, ss.11, 223-40.

approach to technical questions. Agitation continued until another investigation was undertaken at the turn of the century. As a result of its recommendations, the Board of Railway Commissioners, formally independent of political control, was set up in 1904.(11) This body inherited all the powers of the Railway Committee and it acquired - then and at subsequent dates - a great many more as well.(12) The Board has power to hear and determine any application alleging the failure of a railway company to carry out any of its statutory obligations - a wide judicial authority over disputes arising out of railway operation. A very extensive power of making rules and regulations for the construction, operation and management of railways has been conferred upon it. Furthermore, farm, highway and railway crossings, junctions, spurs, bridges, wharves, tunnels, telegraph and telephone lines constructed by a railway company must have its approval. The railway must provide traffic accommodation in accordance with its orders, made on the report of its inspectors, and the Board may prevent the opening or procure the closing of a line which is not so constructed as to reduce the dangers of operation to a level which it thinks reasonable.

An adequate sketch of this comprehensive administrative control of railways cannot be given in a few words. Its extent can only be fully realized by perusal of the Railway Act(13) and the proceedings of the Board. It applies, not only to railways which cross provincial boundaries into other provinces or into the United States but also to all other railways which have been declared by Parliament to be for the general advantage of Canada. The comprehensive declaration in the Railway Act of 1883(14) and the fact of widespread absorption of provincial lines into the two great national systems have left very few railways outside its control. Its powers also extend to inter-provincial telephone and telegraph companies

(11) Statutes of Canada, 1903, c.58.
(12) Revised Statutes of Canada, 1906, c.37.
(13) See new Revised Statutes of Canada, 1927, c.170.
(14) Statutes of Canada, 1883, c.24, s.6.

whose tolls and facilities for service are subject to the approval of the Board.

In addition to those wide regulatory powers possessed by its creature, the Dominion government exercises other regulatory powers over transportation facilities. Since Confederation the Dominion has exercised powers of inspection over steamboats.(15) These powers have been expanded from time to time partly for the protection of passengers and property and partly for the safety of seamen employed upon the vessels. The Canada Shipping Act of 1934 reveals the extent of the supervision.(16) In 1919, the Dominion government was given wide powers to regulate air transportation. The Governor General in Council was authorized to prescribe routes, construct and maintain aerodromes. Provision was also made for licensing, regulating and inspecting all pilots, aircraft and aerodromes.(17)

In the Transport Act of 1938, the Board of Railway Commissioners became the Board of Transport Commissioners with greatly extended powers. Subject to certain wide exceptions, entry into the business of transporting goods or passengers by air or by water is made to depend upon the securing of a licence from the Board. The principal exceptions cover water-borne transport of goods in bulk and the coastal shipping of the Maritime Provinces and British Columbia. Generally speaking, the licence is not to issue unless the Board is satisfied that public convenience and necessity require such transport service. Every licence is subject to control by the Board, similar to that exercised by it over the railways under the Railway Act. In particular, tolls are made subject to the approval of the Board. Licencees are forbidden to give undue preferences or to exercise unjust discrimination and are required to avoid unreasonable delay and to provide reasonable facilities. The substantial determination of disputes which may arise respecting these

(15) Ibid., 1868, c.65.
(16) Ibid., 1934, c.44.
(17) Ibid., 1919, c.11.

provisions is in the hands of the Board.

When the federal government came into existence, it found itself committed to the building of the Intercolonial Railway by pre-Confederation bargains. This road was built and operated as a government enterprise. The manner in which it was expanded to the gigantic proportions of the Canadian National Railways need not be discussed here. The excessive optimism of politicians and entrepreneurs contrived to make it easy for the Canadian people to realize their desire for public ownership of railways. However, in a vast but sparsely settled country, dependent for national existence upon an extended transportation system as is Canada, it is very doubtful whether there was any hope of escape from public ownership of railways. Public regulation was inevitable and it was bound to be used to promote the public interest even at the expense of the railways. The public interest demanded cheap transportation which is scarcely economically feasible in Canada. Vital industries which cease to pay are not abandoned; they become a public service.

While the maintenance of public harbours is not a new activity of governments, it has made added demands upon governments since Confederation. In the larger harbours, the older method of administration by a local harbour master under the loose supervision of a central department soon gave way to management by a harbour commission composed of local persons but directly supervised by the Department of Marine. This system in turn became unsatisfactory. Local pressures interfered with administration in the national interest. Extremely heavy costs of maintenance and operation were due, among other things, to competition between neighbouring harbours for business. Sir Alexander Gibb was appointed by the Dominion government in 1931 to investigate the situation and he reported in favour of unified central management of the larger and more important harbours.(18) Accordingly, in

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(18) House of Commons Debates, 1936, pp.1262-3.

1936 the management and control of seven of the largest harbours was placed under a National Harbours Board.[19] A central authority which can tap the best of technical and scientific competence in aid of administration is better equipped for the job. Naturally, remote control gives rise to some counterbalancing disadvantages. For example, it is charged that the national board does not show the vigour and resourcefulness which the local commissions displayed in trying to divert traffic away from American ports.

Many railways were first developed as enterprises of purely provincial or local interest and this brought the provinces into the field of railway regulation. In fact the first Dominion act was modelled on an earlier statute of the Province of Canada. However, as provincial and local railways were absorbed into the inter-provincial systems, provincial regulation became of diminishing importance and has now almost reached the vanishing point. An examination of the railway legislation in the five provinces specially considered in this study shows that control has followed the Dominion pattern closely in type and in scope. Administrative control over rates and service was first given to a Railway Committee of the Executive Council. British Columbia, Nova Scotia and Saskatchewan never shifted this control to other hands.[20] Ontario established the Railway and Municipal Board for this and other purposes in 1906.[21] Quebec set up the Public Service Commission in 1909.[22] But the chief function of these and

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(19) Statutes of Canada, 1936, c.42.

(20) See Revised Statutes of Nova Scotia, 1923, c.180;
Revised Statutes of Saskatchewan, 1930, c.25;
Revised Statutes of British Columbia, 1936, c.240.

(21) Statutes of Ontario, 1906, c.31.

(22) Statutes of Quebec, 1909, c.16, s.23.

similar bodies later established in the other provinces has been to regulate public utilities other than railways. Their activities in this field will be outlined later.(23)

It has already been pointed out that the interest of the central government had been diverted from trunk roads to railways before Confederation. The provincial trunk roads fell into disrepair and the provinces tended to shift responsibility for them to county and municipal management. A similar fate gradually overtook the toll roads because the companies were unable to maintain them as traffic declined. Broadly speaking in the period from Confederation to 1900, the responsibility for the construction and maintenance of roads fell to the counties and the municipalities.(24)

This allocation of responsibility did not promote the rapid development of a system of good roads but it was a tolerable policy until the last decade of the nineteenth century. Naturally, the standards maintained by the municipalities varied greatly according to the terrain, density of population, taxable capacity and the ingenuity shown in getting results from statute labour. However, as long as traffic was casual and almost entirely local, it could be assumed that local facilities would keep pace with what were thought to be local needs.

This condition was a transient one which passed rapidly. As urban centres developed, they drew into their orbit large areas comprising a number of municipalities. As communities grew, communication links between them gained in importance. Thus the roads in a municipality came to concern many people who did not live within it. The farmers' interests expanded with his markets and an improved system of roads was demanded

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(23) pp. 134-138, post.

(24) (1938) 51 Engineering and Contract Record, p.88.

on grounds of economic efficiency and a vigorous community life.

Good Roads Associations began to be formed in the nineties. It was easy for them to show the waste and inefficiency which attended the statute labour system. The first fruits of the activities of these associations is to be found in the Highways Improvement Act of 1901 in Ontario, providing for assistance to the counties in improving their roads.(25)

When governments began to think about the roads of the province as a whole, the need for special emphasis on heavily travelled market roads and a system of feeders, supplementary to them, made clear the advantages of central planning of the highway system. After the motor vehicle had linked local roads to a provincial or wider system, the logic of such a step became irresistible.

Other factors prevented this central responsibility for the highways system from being merely a scheme of financial aid to and supervision of the local authorities. Perhaps the most serious defect of local enterprise had been its lack of knowledge of the scientific principles of road construction. Roads which would meet the needs of the motor vehicle involved reliance upon engineering knowledge and techniques not available to the municipality. At the same time, the development of massive labour-saving road machinery drew the construction and maintenance of roads into the hands of larger units. The methods of large scale enterprise became applicable to the construction and maintenance of highways. Provincial departments of highways supplanted in a large degree the unco-ordinated and amateur methods of the municipalities.

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(25) Cambridge History of the British Empire Vol.VI. p.581.

Of course, the wisdom of the colossal expenditures on highways in the last twenty years may be open to the gravest doubt. The plunging of so much of our resources into magnificent highways and the construction of hundred-miles-an-hour vehicles while a large percentage of the population live in slums and second-hand cars, will have to search far for its social justification. However, when ingenuity took the direction of developing cheap motor cars instead of exploring, for example, the possibilities of cheap and attractive housing, the highway frenzy became almost inevitable.

The motor car brought with it other extensions of the activities of government. In the first place it introduced serious problems of public order. The hazards of reckless driving pointed to the licensing of drivers and vehicles. The facilities which it put into the hands of the criminally minded is amply illustrated by the liquor smuggling phase of our history. The need for a system of easy and accurate identification of these swift and anonymous machines accounts largely for the elaborate requirements of registration. These include licensing of dealers and garage proprietors and the filing by them of complete and accurate records of their activities. Secondly, when the use of motor vehicles for transporting passengers and freight for hire was introduced on a large scale, most of the arguments which lead to the regulation of public utilities became applicable to them.

The development of the activities of central governments with respect to highways and highway traffic can be sufficiently illustrated by reference to the case of Nova Scotia. Until the beginning of the twentieth century, the direct responsibility of the provincial government was limited to "the charge and maintenance of the great roads ".(26) Authority for provincial assistance to

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(26) Revised Statutes of Nova Scotia, 1884, c.44.

municipalities also existed on the statute book. Any grants that were made were supplements to statute labour and municipal supervisors decided upon the work to be done, the method of doing it and the adequacy of performance.[27] The traffic laws of the day consisted merely of the rule of the road and provisions regulating the width of vehicles.[28]

There were attempts to provide informal checks on the quality of road work done by contract under the supervision of municipal officers. If two justices of the peace certified that the work was not properly one, the municipal council was bound to investigate and decide what deduction, if any, should be made from the contract price.[29] Some statutory standards of road maintenance were introduced in 1900. However, provincial standards always seem to call, sooner or later, for provincial inspection and in 1907 a Provincial Road Commissioner and provincial inspectors with considerable power were provided for.[30] This led in 1917 to the Public Highways Act establishing a Provincial Highways Board to take over the duties of Road Commissioner. It was given a wide power to make regulations, conduct research into highway methods, plan a provincial highway system, set up standards of construction and maintenance and to take over the control of road machinery. It was also authorized to appoint a superintendent of highways in each municipality and to direct and control his activities. Municipalities were required to get the approval of the Board before embarking on any permanent improvements.[31]

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(27) Ibid., c.46.

(28) Ibid.,c.48.

(29) Ibid.,c.46 s.11.

(30) Statutes of Nova Scotia, 1907, c.2.

(31) Statutes of Nova Scotia, 1917, c.3.

In 1920, the municipalities were required to secure plans and specifications from the Board before they could proceed and the Board was given powers to make regulations respecting highway traffic.(32) Finally, a Department of Highways under a responsible Minister was established in 1926 and provision was made for the appointment of a Chief Engineer to be attached to the Department.(33)

Meanwhile, the motor car had appeared. In 1907, a system of licensing and registration was introduced along with a few simple traffic regulations.(34) In 1914, the registration of chauffeurs was required(35) and in 1918, the registration of dealers.(36) In 1919 regulation of the load of vehicles was introduced and various provisions were made about width of tires and width of vehicles.(37) A steady stream of amendments to the Motor Vehicles Act poured out in the twenties and led to a consolidation of the Act in 1932. Dealers are now licensed and required to keep records. Garages have been caught up in the meshes of records and licences. For example, they must notify the Department of any substitution of engine blocks which they may make on any vehicle. A system of inspection to enforce compliance is provided. A provincial traffic authority is set up to manage and supervise highway signs and signals and power is given to the Minister to cancel permits and to

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(32) Ibid., 1920, c.47.

(33) Ibid., 1926, c.31

(34) Ibid., 1907, c.44.

(35) Ibid., 1914, c.43, s.29.

(36) Ibid., 1918, c.12, s.6.

(37) Ibid., 1919, c.1.

suspend or revoke licences.[38]

In 1923, the Motor Carrier Act was enacted. It gives to the Board of Commissioners of Public Utilities power to regulate all motor carriers operating for hire. It fixes schedules of rates and classifications, makes regulations for securing safety and good service to the public and requires a uniform system of accounts and the filing of annual reports. No one is permitted to operate a motor vehicle for hire without a certificate from the Board. The certificate may be refused for cause as also it may be suspended or cancelled. The Board may assess special taxes on motor carriers and it requires them to furnish a bond to cover damage to persons or property through accident.[39] In 1927 the Minister of Highways was authorized to appoint inspectors to enforce the provisions of the act.[40]

The pattern of development respecting highways and highway traffic is so similar in the other four provinces examined that there is no need to refer to them separately. The problem was essentially the same in all provinces and the response varies only in minor detail.[41] The only serious qualification on this is that the nature of the early municipal responsibility varied considerably from province to province, and that central control advanced at varying rates. A Department of Highways was provided for in Ontario in 1915, Quebec in 1913, Saskatchewan in 1917.[42] There do not appear to be any significant differences in the nature and scope of central regulation of and responsibility for highway development.

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(38) Ibid., 1932, c.6.

(39) Ibid., 1923, c.1.

(40) Ibid., 1927, c.27.

(41) For the outline of the development in Ontario, see Cambridge History of the British Empire, Vol. VI, pp.581-4.

(42) Statutes of Ontario, 1915, c.17; Statutes of Quebec, 1913, c.34; Statutes of Saskatchewan, 1917. c.7.

The group of industries which are called public utilities supply services which are essential to the modern way of life and at the same time they have, for a variety of reasons, an inherent tendency towards monopoly. The whole case for freedom of economic enterprise from state control is that competition supplies more efficient and rational regulation. Where competition fails to work as a regulator in an industry of serious importance, one of two things must be done in the public interest. Either public authority must intervene to prevent unfair advantage being taken of a monopoly position or public ownership and management must succeed private enterprise.

As already pointed out, we were not quick to realize that the immense initial capital cost of railway enterprise would be an effective deterrent to competition. Certain other factors postponed still further our discovery of the need for regulation in the other public utility industries. With the exception of the telegraph, those which are founded upon electricity, did not come into general use until late in the nineteenth century. Furthermore the supply of gas, water, electricity and tramway transportation are essentially urban enterprises and any serious need for regulation had to await a considerable urban development. Consequently public utility regulation did not become a live issue in Canada until the dawn of the twentieth century. By that time the administrative commission had justified itself as an instrument for controlling public utilities. Accordingly when the provinces moved into the field of regulation they established bodies similar to the Board of Railway Commissioners. Nova Scotia established the Board of Public Utility Commissioners in 1909.(43)

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(43) Statutes of Nova Scotia, 1909, c.1.

It took over the powers which had already been conferred on the Governor in Council to regulate telephone and electric light and power rates.(44) By 1913 it had been given wide powers over the rates charged and the services offered by heat, light, water, power and telephone companies. It was given power to value the property of public utility companies for the purpose of finding a rate-base and it could require them to keep suitable accounts and to furnish reports as required. No service could be abandoned without consent of the Board.(45) By 1923, this control had been extended to tramways and the legislature had ruled that public utilities were to be limited to an 8% return on the fair value of their assets. Where an area was already served by a public utility, the consent of the Board became a necessary condition to the establishment of a new competing service in the area.(46)

In 1906, Ontario set up the Railway and Municipal Board with extensive powers of a similar nature over steam and electric railways, telephones and telegraph, water, gas, electric light and power industries.(47) It now includes power to establish an examination system for selecting motormen for street railway and to mediate in labour disputes in the industries under its control.(48) Some of its functions respecting the control of electric light and power services have since been transferred to the Hydro Electric Power Commission.

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(44) Ibid., 1903, c.33; 1907, c.40.

(45) Ibid., 1913, c.1.

(46) Revised Statutes of Nova Scotia, 1923, c.128.

(47) Statutes of Ontario, 1906, c.31.

(48) Revised Statutes of Ontario, 1937, c.60.

The Public Service Commission was provided for in Quebec in 1909[49] with power to regulate rates and service offered by transportation, telephone and telegraph, heat, light and power companies. By 1925, water and sewage companies had been added to the list and supervisory power extended to control of equipment appliances and safety devices of public utility companies.[50] In 1935, provision was made for subjecting the establishment of gasoline stations to the approval of the Commission.[51] In the same year, provision was made for the establishment of a separate Electricity Commission to control electric light and power companies.[52]

In British Columbia, control over the tolls charged and some aspects of the service offered by tramway, telephone and telegraph companies is in the hands of the Minister of Railways.[53] The supply of water for irrigation purposes is a service of the public utility type and British Columbia has established a Water Board with extensive powers to regulate the uses of water, including the supply of it to cities and towns. In addition the Water Board is given power to regulate the tolls and service of electric light and power companies.[54] It may place valuations on their property in order to reach a basis for fixing a just rate and it may order extensions and improvements of service.

Saskatchewan came later into the field of regulation of public utilities because most of her important public utilities were either under Dominion control or publicly owned. However, in the late twenties, when private power interests began

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(49) Statutes of Quebec, 1909, c.15.
(50) Revised Statutes of Quebec, 1925, c.17.
(51) Statutes of Quebec, 1935, c.13.
(52) Ibid.,1935,c.24.See also 1936,c.12 where provision is made for abolition of the Public Service Commission,presumably in favour of the Quebec Electricity Commission.
(53) See Revised Statutes of British Columbia, 1936, c.241, ss.257-61, 283. Control of the tolls of rural telephone companies is in the hands of the Minister of Public Works, Ibid.,1937, c.284.
(54) Ibid., c.305, ss.139-157, 324.

buying municipally-owned power plants, the Lieutenant-Governor was authorized to control the rates of public utility companies.[55] Municipalities were forbidden to sell their public utilities or give a franchise to a private corporation without consent of the Board.[56] Since 1936, no pipe lines for gas or petroleum can be laid in the province without its consent.[57]

Thus, in the provinces specially considered here, legislative provision has been made in the last thirty years for a comprehensive administrative control of public utilities. The extent to which these powers are used varies widely and it appears that they are not vigorously enforced everywhere in Western Canada. In the meantime, the advance of public ownership has reduced greatly the area over which public control is needed and the threat of expropriation by public authority is always an informal control upon the activities of the private monopoly.

The large adventure in public ownership, embarked on by the Dominion in acquiring the Canadian National Railways has already been mentioned. Since 1932, the Dominion has been making steady progress towards establishing a public monopoly in radio broadcasting.[58] Early in this century, the Prairie Provinces acquired or established provincial telephone systems.[59] These provincial enterprises were mainly prompted by a desire to hasten the development of telephonic communication in the newly opened prairie and to diffuse it more widely among a scattered population than would have been possible if the service had been

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(55) Statutes of Saskatchewan, 1928-9, c.10.

(56) Ibid.,1930, c.13.

(57) Ibid.,1936, c.32.

(58) Statutes of Canada, 1932, c.51.

(59) Statutes of Manitoba, 1906, c.89; Saskatchewan, 1908, c.5; Alberta, 1908, c.14.

provided by private enterprise..

In the other provinces, departures from private ownership of telephones have been limited to municipal enterprise. "Gas and water socialism" has made great headway in all provinces in water, gas, electric light and power and tramway enterprises. A few municipal waterworks had been established in Ontario prior to 1882.(60) In that year, special statutory powers were given to municipalities, enabling them to acquire existing waterworks or to construct new ones of their own.(61) Similar powers to acquire or build gas and electric power plants were given in the following year.(62) By 1933, all but 90 out of 585 waterworks in the country were publicly owned. Half the enterprises for supplying manufactured gas were municipally owned. In the supply of natural gas, on the other hand, the hazards of the business have made it unsuitable for public ownership and it has remained almost entirely in private hands. In 1931, 21 out of 59 electric railways in Canada were owned by municipalities. In 1932, 464 municipalities either generated or bought electric power for distribution.(63)

There has been a vast increase in municipal ownership since the beginning of the century. During the same period some of the provinces have gone into the business of generating and/ or distributing electricity at wholesale and retail. The earliest and most impressive venture of this kind is, of course, the Ontario Hydro. The Hydro Electric Power Commission was established in 1906 as a wholesale distributor of power and in 1917 it entered the generating field. Nova Scotia(64) and Manitoba(65) followed in 1919

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(60) Canada and its Provinces, Vol. XVIII, p.475.

(61) Statutes of Ontario, 1882, c.25.

(62) Ibid.,1883, c.21.

(63) See Hankin and MacDermot, Recovery by Control, 1933, ch.5.

(64) Statutes of Nova Scotia, 1919, c.6; 1928, c.3.

(65) Statutes of Manitoba, 1919, c.30.

establishing power commissions for the generation and distribution of electricity. The New Brunswick Electric Power Commission was established in 1920 (66) and the Saskatchewan Power Commission in 1929 (67) for the same purpose. In 1937 Quebec made provision for setting up a "National Electricity Syndicate", the proposed purpose of which is to assure "state competition" in the generation and distribution of electricity. (68)

The underlying reasons for this development may be pointed out. In Ontario, it was pushed forward mainly by a wave of enthusiasm for public ownership. Certain additional factors operated in all provinces but more strongly in the later entries into the field. When a method of transmitting electric energy over high tension wires for considerable distances without serious loss was discovered, the small local generating plant became technically antiquated. An immense competitive advantage accrued to the large central station which could combine domestic and industrial demand and reduce overhead costs by mastering the "peak-load" problem. (69) If municipal enterprise in the electric utilities was to be saved from the super-power systems of private companies, a similar combination had to be effected. The only effective way of achieving that was by the provincial governments rationalizing the municipal systems. That involved the entry of the provincial governments into the business of generation and wholesale distribution of electrical energy.

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(66) Statutes of New Brunswick, 1920, c.53.

(67) Statutes of Saskatchewan, 1928-9, c.3.

(68) Statutes of Quebec, 1937, c.24.

(69) For a discussion of the "peak-load" problem see Hankin and MacDermot, op.cit., pp.91-3.

An extensive system of public ownership in public utilities raises a variety of problems. For example, the publicly-owned utilities, taken as a whole, enjoy a very considerable exemption from taxation. Thus, where they compete with privately-owned utilities, they have, in this respect, at least, an undue competitive advantage. Where, as in the case of most municipal utilities, they have a monopoly of the particular field, exemption from taxation means that a correspondingly greater burden of local taxes has to be shouldered by other industries and persons. If, as governments are insisting more and more,[70] private industry should carry its real costs of production, the same should hold true, in general, in publicly-owned utilities. In almost every field of government intervention, the policies adopted have effects and implications which have not yet been fully analyzed.

Some of the provincial power commissions are armed with powers of regulation as well as the power to carry on business. For example, the Ontario Commission is authorized to make and enforce regulations respecting the construction and operation of municipal distributing systems. It may regulate the rates charged by any distributor who buys his power from the commission.[71] No electric utility company can construct, alter or operate an enterprise in Saskatchewan without the consent of the Power Commission. It also has a wide power of regulating and inspecting the plant and services of private companies.[72] These sweeping powers were given by the legislature in order to forestall the movement of large

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(70) e.g., see p. 59 supra.

(71) See Revised Statutes of Ontario, 1937, c.62, s.86.

(72) Statutes of Saskatchewan, 1928-9, c.3.

private utility companies into the province at the end of the twenties.

Transportation, communication, water, light, heat and power services are vital to the economic and social structure which has been built in Canada since Confederation. Because of the inherently monopolistic features of these services, public regulation has reached out to each of them as they became of significant importance. Wisely or unwisely, great sectors of these enterprises have been swept into public ownership. Thus the control of these vital services has meant a tremendous increase in the activities of governments.

A very significant recent movement has been the tendency to expand the concept of a public utility. As pointed out above, motor vehicles carrying passengers or freight for hire have been subjected to the public utility type of regulation in most of the provinces. Similar regulation has been imposed on the distribution of milk and gasoline. The extent of this regulation and the reasons for its emergence are discussed in other sections of this study.(73)

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(73) See Section II, Regulation of Marketing, and Section XI, Regulation of Business.

X CONSERVATION

It is the function of the state to safeguard the common interests of the society. These common interests require that the available natural resources should be employed economically in terms of their present use. They also require that, as far as is reasonably possible, the resources should be used in such a way as to ensure permanently an adequate industrial establishment. The state, because it is the most permanent of social organizations concerned with material interests and has the broadest command of means, is the appropriate agent.

A society will not move to conserve that which seems inexhaustible but only those things of which there is a present or prospective scarcity. The North American pioneer saw no reason for the conservation of natural resources. At the same time, he was compelled to conserve labour and capital, which were scarce. Accordingly, a combination of these factors for the sake of a maximum return dictated a prodigal use of natural resources. Under these conditions, what we have come to call ruthless exploitation was inevitable. Indeed, it was not exploitation at that time, it was the most economical use that could be made of the total available resources, including labour and capital.

However, when the ratio of resources to labour and capital changed, the combination of productive factors was bound to change also. As the resources were whittled away, the population increased and capital accumulated. The older methods became wasteful and it became clear to the reflective that they would have to be revised radically if the resources were to remain adequate for the support of a larger population and if industry was to be placed on a permanent basis. Naturally, the rooted habits of exploitation and the attitudes appropriate to them carried over in such a way as to endanger seriously, if not actually to destroy, some valuable resources. For

example, we have gone on talking about our boundless natural resources and acting as if they were so, long after the approximate limits of them were determined and known.

This explains why we did not adopt conservation measures at an earlier date and why many of our wasteful habits have not yet been curbed. Faced with the consequences, as we are, the waste now seems appalling. Timber stands were destroyed on lands that are useless for any other purpose with no provision for their restoration. Fires, which to a great extent could have been prevented by reasonable caution, have destroyed far more timber than we have cut. The forest cover has been torn away at the headwaters of the rivers, making them destructive torrents at one time and dry beds at another. Agricultural soil in certain areas was needlessly exposed to erosion and it was exhausted by ceaseless cropping. Streams were polluted, destroying their amenities along with the fish that lived in them. Fisheries were depleted and the oyster-beds almost completely denuded. Various valuable forms of wild life were slaughtered and driven from their habitats until some species became entirely extinct.

Some conservation measures were introduced in the nineteenth century but they were poorly enforced in the prevailing mood of public opinion. Here and there voices were raised against the continuance of thoughtless exploitation but little heed was paid by governments or by the exploiters. But a body of public opinion grew steadily as concrete evidence of depletion piled up. Organized agitation began about the beginning of the twentieth century. For example, the Canadian Forestry Association, which takes a wide interest in almost every aspect of conservation, was first formed in 1900. Meanwhile, the United States had discovered the limits of its resources and President Roosevelt gave a great impetus to conservation measures by calling a conference of Governors of the States in 1908. A National Conservation Commission

grew out of that meeting and President Roosevelt later invited Canadian and Mexican representatives to a conference in 1909. As a result the Canadian Commission of Conservation was established in 1909 and began its work in the following year.(1)

The Commission was charged with making an inventory of the natural resources of the country. It was required to study the question of waste and consider measures for conservation and better utilization of resources. It was required to make its discoveries available to the public and to frame recommendations for more careful husbandry of resources. The Commission carried on extensive work between 1910 and 1920(2) but it was disbanded in 1921 and its work distributed among various government departments.(3)

When conservation began to be studied, it was seen to call for four different kinds of action. First, it was necessary to impose and enforce limits upon exploitation. This involved the use of coercive power and was therefore exclusively a state function. Secondly, artificial methods of restoration were urgently needed, for example, reforestation and fish hatcheries. This activity fell largely to governments because such enterprises can rarely attract capital and they have a very limited appeal to philanthropy. Although it is true that some of the most distinguished conservation work is done under private auspices, the main burden, nevertheless, falls upon governments.

Thirdly, it was discovered that no programme of governmental action could be launched or maintained without a vigorous campaign of public education. Private agencies played a larger part in this work but governments also entered into it. The drive for conservation is closely connected with government

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(1) Statutes of Canada, 1909, c.27, and see Report of the Commission of Conservation, 1910, p.5.
(2) See the annual reports of the Commission, 1910-19.
(3) Statutes of Canada, 1921, c.23.

assistance to agricultural and technical education, discussed in another section of this study.[4] Fourthly and perhaps most important, the will to conserve and the exercise of public power to enforce that will, are likely to be misdirected and largely futile in the absence of exact knowledge of what to do. The time for closed seasons and the place for sanctuaries for wild life cannot be determined without close study of the life and habits of the creatures in question. Artificial incubation and other method of restoration can only be successful when based on adequate research. The control of parasitic destruction involves scientific study. It is highly important to know how far man's uninstructed activity has upset the natural balance which nature maintains in the animal kingdom and thus has brought about additional evils. In fact, the question of this natural balance is a basic study of great difficulty in all groping for adequate conservation measures.[5]

Thus scientific research forms an immense part of any programme of conservation. Here again private and state action are intertwined. Governments give financial aid to private research and government agencies conduct research projects of their own.

It should be added that, as the programme developed, it was found, as with most government activities, that it overflowed into other fields of activity. It linked up with agricultural research and education. Conservation of natural resources involved the conservation of human resources and led into public health and housing. The regulation of the flow of streams could not be separated from the problem of the destruction of man-made resources by floods, and the study of fire losses showed that fire had just as bad a record in the destruction of buildings as in that of forests.

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(4) See Section V of this Study.

(5) See Commission of Conservation, Report of a Committee on Fish, Birds and Game, 1916, pp. 81-90.

This led to movements for regulation of building construction and the beginning of town-planning schemes. Conservation measures were not limited to natural resources.

The conservation movement as it has developed in Canada is a combination of government enterprise and public-spirited private initiative. It has come to cover a very wide range of activities. An accurate and revealing account of the participation of Dominion and provincial governments cannot be constructed from the statutes and the other sources are of a most scattered nature. In the following outline of Dominion and provincial activities, no attempt is made at an exhaustive account of conservation measures. What follows is merely a summary of the salient points in the development.

The earliest conservation measures in Canada were those applicable to fisheries. A federal Department of Marine and Fisheries was established at Confederation for the regulation of the fisheries which were then thought to be entirely under Dominion control. The Fisheries Act of 1868 provided for a substantial amount of regulation and authorized the appointment of fisheries officers with powers to enforce the legislation.(6) Enforcement was not vigorous in the early years and effective regulation was hampered because of a failure to bring scientific knowledge to bear on the problem. It was not until 1892 that the Dominion appointed a Fisheries Commissioner with a scientific training.(7) Since that time, the knowledge of effective means has constantly improved, the need for stricter control has become clearer and Dominion regulations have been much better adapted to the need.(8)

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(6) Statutes of Canada, 1868, c.60.

(7) Annual Report of the Commission of Conservation, 1913, pp.87-98.

(8) See Statutes of Canada, 1932, c.42.

In the meantime, the Dominion lost, through constitutional interpretation, the power to administer and enforce its own regulations over the inland fisheries. The provinces had been much dissatisfied with Dominion administration, which was thought to be wooden and unresponsive to local conditions and needs.(9) Accordingly, when they secured a restrictive interpretation of Dominion powers, they began to move into the field. Not only were they entitled to manage the enforcement of the Dominion regulations respecting inland fisheries but provincial proprietorship of these fisheries enabled them to establish a variety of regulations of their own.(10) These have grown progressively stricter and enforcement has been more vigorously pushed through administrative officers since the beginning of the twentieth century.(11)

Neither the Dominion nor the provinces have been satisfied to rest with restrictions upon the taking of fish. Artificial methods of replenishment have been undertaken. The Dominion has established hatcheries, special retaining ponds and egg collection stations. A number of provinces also supply the same service. Furthermore, since 1892, the Dominion has established a number of biological stations for the scientific study of the problems of fish life and the fishing industry.(12) The Biological Board was appointed in 1912 to supervise the work of these stations and to conduct research generally in connection with allied subjects.(13)

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(9) Canada and its Provinces, Vol. XXII, pp.449-55.
(10) See Statutes of Quebec, 1883, c.8; Ontario, 1885, cc9; British Columbia, 1901, c.25.
(11) See Revised Statutes of Quebec, 1925, c.83; Ontario, 1937, c.353; British Columbia, 1936, c.101.
(12) 1937, Canada Year Book, pp.321-3.
(13) Statutes of Canada, 1912, c.6.

Generally speaking, the Dominion and the provinces have followed a policy of refusing to alienate Crown lands to timber operators ever since Confederation. This statement is subject to some qualification in respect of the Maritime Provinces.(14) Timber operators, cutting timber on Crown lands, were required to secure licences upon which conditions might be imposed.(15) The conditions of the licences have become progressively more restrictive and more recently they have been aimed at securing a wiser timber-cutting policy. Provision has been made for inspection by government officials to secure their observance.(16)

The conditions imposed on the earlier timber licences made no sufficient provision for dealing with brush on cut-over lands. It remained a fire menance which destroyed the young growth and swept on to ravage mature forests. Careless timber operations, combined with the thoughtlessness of settlers and campers, made Canadian forest fire losses colossal. The first effort to meet this situation dates from 1885 when Ontario appointed the first fire rangers.(17) Quebec followed sometime later(18) and British Columbia appointed its first fire rangers in 1910.(19) Since that time increasing care and emphasis has been placed on protection of the forests from fires. Special regulations were imposed upon railway companies in 1912 and enforced by the Board of Railway Commissioners.(20) Steady improvements in the techniques of forest fire control, such as the use of the aeroplane, have made efforts increasingly effective.

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(14) 1937 Canada Year Book, p.290.
(15) e.g. see Revised Statutes of Quebec, 1888, art. 1309; Revised Statutes of Ontario, 1877, c.26.
(16) e.g. see Statutes of Ontario, 1928, c.15; 1936, c.22.
(17) Canada and its Provinces, Vol. XVIII, p.594.
(18) Ibid., Vol. XVI, p.549.
(19) Ibid., Vol. XXII, pp.496-8.
(20) Statutes of Canada, 1912, c.22.

The next logical step after fire protection is a study of other factors affecting preservation of the forests, such as the ravages of insects. Early in the century, Quebec established a provincial forestry service as a bureau of research and exploration.(21) The other provinces with large forest interests have since followed suit. This has led, in turn, to extensive research and to reforestation projects.

Several objects are served by the establishment of forest reserves. Areas of forest are preserved from exploitation, a sanctuary for wild life is established and the sources of rivers are kept under forest cover. The first reserve of this type was set aside in 1887 when the Banff National Park was established. Ontario followed with the Algonquin Park in 1893 and Quebec with the Laurentides Park in 1895. Since that time, both provinces and Dominion have set aside vast areas as forest reserves and provincial and national parks(22) and have provided extensive administrative services for their maintenance and protection.

As long as the Dominion retained control of the natural resources in the Prairie Provinces it had considerable timber lands under its control. Its policy, with respect to leasing and fire protection, followed a similar evolution to that of the provinces.(23) The Dominion also developed a forest service for the purpose of investigation into forestry matters. Forestry stations were established at various points and nurseries, assisting tree planting and reforestation programmes, were established. Since 1930 when the resources were returned to the provinces, the Dominion forestry service has devoted itself almost entirely to research.(24)

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(21) Canada and its Provinces, Vol. XVI, p.550.
(22) For the present extent of these see 1937, Canada Year Book, p.288.
(23) Statutes of Canada, 1883, c.17, ss.46-52.
(24) 1937 Canada Year Book, pp.290-7.

Losses by fire are by no means limited to forests. Buildings are always exposed to fire hazards and this is greatly aggravated in urban conditions where wooden buildings predominate, as they do in many parts of Canada. Municipal provision of varying strictness existed for prevention of fire hazard. But the wave of concern over these matters which developed in the early years of this century led to provincial regulation of fire hazards. Most of the provinces between 1913 and 1923 provided for the appointment of Provincial Fire Marshals.(25) They were authorized to enter any premises and require the removal of fire hazards and the maintenance of fire prevention measures of a certain standard. The object was to ensure a minimum of precautions against loss by fire. In most of the provinces these acts were supplemented by further legislation for the regulation of electrical installations providing for inspection of them and sometimes for the licencing of persons engaged in the business of installations.(26)

One of the purposes served by forest reserves and national parks is to provide sanctuaries for wild life and in most of these areas, hunting is prohibited. Legislation providing for closed seasons on certain birds and animals antedates Confederation. But no administrative provision was made in the earlier years for the enforcement of such legislation. By 1888, Ontario had authorized local authorities to appoint game wardens.(27) By 1897, provision had been made for the appointment of a Provincial Board of Fish and Game Commissioners and a number of game wardens with wide powers to enter and search.(28) Quebec(29) and Nova Scotia(30) made

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(25) See Statutes of Quebec, 1913, c.38; Ontario, 1914, c.41; Nova Scotia, 1919, c.30; Saskatchewan, 1916, c.17; British Columbia, 1921, (2nd. Sess.) c.15.
(26) See Statutes of British Columbia, 1922, c.23.
(27) Revised Statutes of Ontario, 1887, c.221.
(28) Ibid., 1897, c.287.
(29) Revised Statutes of Quebec, 1888, art. 1396-1420.
(30) Revised Statutes of Nova Scotia, 1884, c.76.

provision for appointment of provincial enforcement officers somewhat earlier but on the whole, no serious attempt at conservation of wild life occurred before the nineties. That period was marked by Dominion action for the protection of wild birds and animals in the North West Territories. From that time forward, game officers have been granted wider powers and restrictions have increased. For example, the Migratory Birds Convention Act between Canada and the United States ensured extended protection to birds.(31) The provinces amended their legislation to conform to the convention and they co-operate in enforcement. In addition, most of the provinces have set aside special areas as sanctuaries for wild life.

The serious regulation of water resources is, in the main, of fairly recent date. The Dominion provided for regulation of the use of water on Dominion lands for irrigation purposes in 1894.(32) British Columbia, from an early date, made use of water power for mining and irrigation purposes and therefore, moved to comprehensive central control as early as 1897.(33) But long distance transmission of electric power did not become important until the twentieth century. When the possibilities of hydro-electric power development opened up, the safe-guarding of the flow of water gained new significance. In 1910, Quebec provided for a Streams Commission to conserve and to regulate and facilitate the use of running water in the province.(34) Similar legislation followed in Nova Scotia in 1914(35) and in Ontario in 1916.(36) The Dominion Water Power Act was passed in 1919 covering the use of water on Dominion lands.(37) When the Prairie Provinces

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(31) Statutes of Canada, 1917, c.18.
(32) Ibid., 1894, c.30.
(33) See Statutes of British Columbia, 1897, c.45.
(34) Statutes of Quebec, 1910, c.5.
(35) Statutes of Nova Scotia, 1914, c.8.
(36) Statutes of Ontario, 1916, c.21.
(37) Statutes of Canada, 1919, c.19.

took over their natural resources they enacted similar measures for control.(38) In each case an administrative authority is authorized to make regulations governing the use of the water, and to supervise and enforce compliance with the regulations.

These principal conservation activities have been barely sketched. Their full significance can only be seen when the full story is told in detail. In addition, there are many other conservation activities of governments which have not been touched at all.(39) For example, both Ontario and Alberta(40) have created administrative agencies for the conservation of gas resources. The ravages of drought and unwise farming methods in the Prairie Provinces have led the Dominion and provincial governments to the adoption of a large programme designed to restore dry areas to useful purposes.(41) There are many others of lesser importance.

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(38) e.g. see Statutes of Saskatchewan, 1931, c.8.
(39) Statutes of Ontario, 1921, c.17.
(40) Statutes of Alberta, 1932, c.6.
(41) Statutes of Canada, 1935, c.23.

XI - REGULATION OF BUSINESS

In almost every section of this study, activities of governments, which have the effect of regulating economic activity - or business -, have been discussed. These insinuations of public authority into the economic sphere have been classified and dealt with under separate headings because it was felt that, with one or two possible exceptions of recent date, they are not primarily directed at the regulation of business.(1) They are designed rather (it is believed) at fixing the conditions upon which or modifying the social environment in which private enterprise is to be permitted to conduct its operations. These interferences of government, for the most part, are not aimed at taking the vital core of economic decision away from those immediately involved. In so far as that decision is modified as a result of these interpositions of public authority, it is incidental to the main purpose of setting the boundaries of socially permissible practice. Of course, there is no exact logical disjunction corresponding to this distinction. It is useful for practical purposes, however, because it enables one to throw emphasis on what seem to be the different reasons for intervention in different situations.

This explains why various cases of what is, in the result, regulation of business have been dealt with under separate headings. It must not be assumed, however, that this section is to deal specifically with the other type of intervention, where government imposes its fiat upon the core rather than on the periphery of economic decision. That is not the case. It would be more nearly correct to say that this section is a catch-all for those activities of governments which do not fit into any

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(1) Naturally, the cases where public ownership has ousted private enterprise are instances of complete state regulation of business.

of the other categories set up. It might better have been labelled a miscellany but for the fact that three of the activities to be discussed here are so important and so pervasive in their effects upon business that the title chosen seems to be justified. Apart from these three, the others are of a miscellaneous character. But, with one or two exceptions to be noted, none of them differ in type from the interventions discussed in other sections. Generally speaking, they are designed to set the conditions in which economic activity is to be carried on.

In 1879, the policy of a protective tariff followed by previous governments, was broadened into a national policy. It has since been followed consistently by all governments, though with varying vigour. While particular tariffs have been raised and lowered, extended and restricted, there has been no general reversal of direction. The policy of protecting home industries from effective foreign competition is a national policy.

In 1879, the maintenance of protection could scarcely have been called an activity of government in the sense in which the term is used here. Tariffs were established by Parliament and they were enforced by the government subject to the final scrutiny of the courts. The government was required to carry out the law as declared and interpreted by other authorities. This position was not seriously qualified by the establishment of the Board of Customs in 1888 (2) and the extension of its power in 1904. (3) The Board was given no more than a quasi-judicial power to give authoritative interpretation of the tariff legislation, thus making possible the speedy adjudication of disputes between importers and customs officials, which are desirable to all concerned. Parliament remained in full control of the tariff policy, which was very definitely marked out in the legislation.

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(2) Statutes of Canada, 1888, c.14, s.3.

(3) Ibid., 1904, c.10, s.4.

However, in recent years, there has been a steady increase of executive discretion in tariff-making. Instead of Parliament giving tariff protection from year to year, the executive has been authorized, in certain special circumstances, to give it from day to day. In substance, this amounts to a policy of insulating particular groups from all the serious shocks of foreign competition. This growth has been outlined in the brief presented by the Province of Manitoba.(4) and it need not be referred to here. It has not been seriously checked since its inception. Both political parties have railed against it while in opposition(5) but neither of them have made any substantial renunciation of these powers while in office.

The point to be noted is that, through the exercise of these discretions and through the investigations made by the Tariff Board,(6) the government of the day, rather than Parliament, has come to play the dominant role in tariff-making. How far this development is due to a design to give more complete protection to particular industries is controversial. No doubt certain quite independent factors have contributed greatly to the growing importance of the executive in tariff-making. The rapidity of modern means of communication and transportation makes the impact of competition from abroad felt much more quickly. Modern industry, with its greater rigidities, is probably more sensitive to severe foreign competition. At the same time, mass production technique gave birth to the practice of dumping. This practice and the fluctuation of currencies, following the breakdown of the gold standard, made some kinds of foreign competition particularly devastating. All these factors argue for a more flexible tariff. In order to give the same kind of protection which Parliament itself was able to give in the nineteenth century, it is now

(4) Manitoba's Case, Part IV, pp. 1-17.

(5) e.g., see House of Commons Debates, 1922 p. 3414, (Rt. Hon. Arthur Meighen); Ibid. 1930 (special session) pp. 214, 217, 219, (Rt. Hon. Mackenzie King).

(6) See Statutes of Canada, 1931, c.55.

necessary to give wide powers to the executive. Nevertheless, the sentiment of economic nationalism has grown continually stronger and, once a degree of tariff-making power was given to the executive, it can scarcely escape being used for more comprehensive protection of powerful groups. The fortunate industries tend to approximate to the position of wards of the government.

The question as to what tariffs, if any, should be maintained is a controversial one and involves complex issues of policy. There can be little doubt, however, about some of the results which flow from a vigorous tariff policy once it is adopted. It enables those who benefit from the tariff to take long advantages of their protected position and thus leads to further state activity to prevent the abuse of such privileges or to protect those whose position is weakened by their existence. Furthermore, in a democratic society, it leads to a demand by unsheltered groups for counterbalancing privileges of various kinds. The producers of natural products demand a stabilized home market and this involves the creation of more government agencies such as marketing boards.(7) And a government which makes day to day adjustments in its tariff for the benefit of particular groups has no satisfactory answer by way of refusal to make to such a demand.

Our experience illustrates this very well. Tariffs have, on occasion, fostered monopoly practices, either through unification of financial control in an industry or through combinations of independent producers to divide the market, limit output and maintain or raise prices. This tendency asserted itself in the first decade following the adoption of the National Policy.(8) The first legislative measure to take cognizance of it was passed in 1889. The bill, as introduced, purported to attach criminal consequences to certain

(7) See Section II of this Study.

(8) See Ball, Canadian Anti-Trust Legislation, pp. 3-6.

agreements in restraint of trade which would have been merely void and unenforceable at Common Law. Opposition to the measure, while not strong enough to keep it off the statute book, did succeed in so altering its form as to make it ridiculous.(9) So it remained until 1900 when it was amended and put in its present form.(10) It makes certain combinations to limit supply and maintain or raise prices a criminal offence, punishable with fine and imprisonment.

This was the orthodox method of the nineteenth century for curbing anti-social practices. The sanctions of the criminal law were imposed and private initiative was relied upon to set the enforcement machinery in motion. This technique, which worked satisfactorily in a simple and predominantly rural society, has serious defects in a complex industrial and urban environment. For example, in the case under consideration, the evidence necessary to launch and carry through a prosecution was not to be found lying loose on the surface of affairs nor by the careful sifting of neighbourhood gossip. It was generally hidden in the archives of corporations and business associations. Hence private prosecutors were at a great disadvantage, on the grounds of the inaccessibility and the expense of collecting evidence. The technique of the ordinary courts was ill-adapted to the conduct of economic investigation. Furthermore, the law was necessarily framed in broad general terms and there was great reluctance to set it in motion against business men who could always say plausibly - and generally quite truthfully - that their intentions were of a most innocent nature. Vigorous enforcement would have made criminals of many men who were popular heroes of the period. A criminal law, in advance of the dominant morality of the time, is likely to be ineffective.

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(9) Statutes of Canada, 1889, c.41.

(10) Canadian Criminal Code, ss. 496-8.

The tendency towards combination among producers, sheltered by the tariff, continued unabated. Between the beginning of the century and the outbreak of the War, a great number of mergers took place. Trade associations were active. The rising price level was attributed to these activities and the demand for effective regulation grew stronger. Several other expedients were tried for that purpose. In 1897, an amendment to the Customs Tariff Act provided, that, on the initiative of the Governor in Council, a judicial investigation might be made into allegations that an injurious combine existed. If such was found to exist, the Governor in Council, if he was satisfied that its operations had been facilitated by a tariff, might reduce or remove the tariff on the articles in question.(11) In 1904 an amendment was made to the Excise Act for a similar purpose. It provided that licencees under the act, who indulged in unreasonable restraints of trade, might suffer forfeiture of their licences at the hand of the Minister.(12)

These devices were not effective. The only investigation ever carried through under the amendment to the Customs Tariff Act was launched and carried through by the powerful Canadian Press Association. The Combines Investigation Act of 1910 was a more ambitious effort. Investigations into injurious combines were to be conducted by an administrative board appointed by the Minister of Labour. However, the launching of the investigation and the carrying of it through certain complicated preliminary steps was thrown on private individuals. Experience showed that this was not calculated to get results. The method of investigation adopted was a great improvement. The legislation did not attach any penalty to the past activities of the combine but merely

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(11) Statutes of Canada, 1897, c.16, s.18.

(12) Ibid., 1904, c.17.

provided a penalty for failure to obey a "desist" order.[13] In spite of these changes, the only investigation ever made under the act was the one made into the tying clauses of the contracts of the United Shoe Machinery Company in 1911.

The War intervened and the distractions of the struggle and the steps taken under the War Measures Act to regulate business made the Combines Investigation Act a dead letter. The impetus of war-time psychology and methods of control was carried over into the Board of Commerce Act and the Combines and Fair Prices Act of 1919.[14] These acts repealed the 1910 act. The Board of Commerce was set up as a permanent body to investigate and control combines and to maintain fair prices. War-time inflation brought about steeply rising prices. During its short career, the Board was mainly interested in trying to fix prices. Both of these acts of 1919 were declared ultra vires by the Privy Council in 1922.[15]

The Combines Investigation Act of 1923 built upon earlier experience. It attempted to define an injurious combine and made participation in such an agreement a criminal offence. A permanent official, the Registrar, was charged with the administration of the act. Most important, it provided that all investigations into alleged combines should be made by the Registrar or by ad hoc commissioners. The Registrar was authorized to make investigations on his own motion or at the request of the Minister. Private persons were invited to lay complaints before the Registrar but they were not required to build up a case or to

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(13) Ibid., 1910, c.9.

(14) Ibid., 1919, cc. 37,45.

(15) Re Board of Commerce Act, (1922) 1 A.C. 191.

involve themselves in expense. Finally, the power of the administrative authority was limited to making the investigation. The penalty could only be imposed by taking criminal proceedings in a court.(16) The purpose of the investigation was to bring publicity into play as a deterrent and to secure the evidence necessary for a successful prosecution.(17)

The more recent developments in combines legislation have not resulted in any radical overhauling of this act and they need not be considered here.(18) The number of investigations which have been carried through since its adoption in 1923 indicate that, whatever may be its shortcomings, it is vastly more effective than any of the previous efforts. The adoption of administrative methods of inquiry is an excellent illustration of how the more complicated tasks of control tend to fall to the executive, which is so much more flexible and adaptable than the courts. It also shows the tendency of a tariff to multiply those tasks. When privileges are maintained by public policy there is bound to be a demand for a public policy that will prevent their abuse.

A recent development of government intervention in the provinces seems to be chargeable, in part, to the tariff, although the revenue motive is also of considerable importance. In 1934, Nova Scotia brought the distribution of gasoline under the control of the Board of Public Utilities Commissioners. All distributors are obliged to secure a licence. The Board may refuse to grant a licence if the public convenience does not require it. The legislation declares that reasonable and just

(16) Statutes of Canada, 1923, c.9.

(17) In this discussion of the means of controlling combines, reliance has been placed on Ball, Canadian Anti-Trust Legislation, and on an unpublished manuscript by Dr. L.G. Reynolds of Harvard University.

(18) It should be pointed out that the Dominion Trade and Industry Commission Act (Statutes of Canada, 1935, c. 59) enabled the Commission to approve agreements between producers in an industry which were directed at the elimination of "wasteful or demoralizing competition" even though these agreements limited output and controlled prices. It was therefore a considerable modification of the principle of the Combines Act of 1923. However, this portion of the Act was held by the Privy Council in 1937 to be ultra vires the Dominion Parliament. See Re Dominion Trade and Industry Commission, (1937) 1 D.L.R. 702.

prices must be maintained and the Board is authorized to suspend licences for failure to comply with the act.[19] Similar legislation was enacted in Alberta in 1936 and in British Columbia in 1937.[20]

Consolidations often appear in protected industries. When two or three large units secure a dominating position in any industry, it leads to imperfect competition in the industry. The suspicion, that this has happened in the oil refining industry and has led to excessive prices and too numerous distributive outlets, is widely held. Even though no illegal combine exists, imperfect competition is likely to lead to rigid prices. When competition is eliminated from the field of price, it tends to reappear in the field of service. Handsome margins make it possible for competitors to offer additional attractions in the way of service - a gas station on everybody's doorstep. This leads the public to think that distribution is unnecessarily costly and therefore inefficient and thus it leads to government regulation. The public utility type of control, as adopted in Nova Scotia and Alberta, is likely to be imposed on any industry where tariff protection leads to imperfect competition.

The spectacle of sheltered groups, enjoying protection from the ravages of severe competition and depression, is a factor of some importance in the demand by less fortunate groups that the state should afford similar protection to them. It has been suggested that this was an important influence behind the Natural Products Marketing Acts. It seems equally likely that it was a factor in the Alberta legislation which has become known as "the little N.R.A."

The Alberta Trade and Industry Act of 1934 contemplated

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(19) Statutes of Nova Scotia, 1934, c. 2.

(20) Statutes of Alberta, 1936, c.68; British Columbia, 1937, c.8. This latter act in British Columbia covers both coal and petroleum products and contemplates comprehensive regulation of the two industries by a Board. The Board's powers include the making of regulations governing the industry, the fixing of prices and the revocation of licences for failure to obey the regulations.

systematic registration and licensing of industry. It provided that, when a majority, in number or importance, of those engaged in a trade or industry in the province agreed upon a code for the industry it might be extended to the whole industry and enforced by governmental authority. Among other things, the codes were to regulate prices and establish fair trade practices. The government was authorized to formulate and enforce a code in industries where a majority agreement was found not to be possible.(21) Trade and industry throughout the province was to be stabilized and controlled by governmental authority.

It is problematical how far this legislation is due to the cause suggested above. The fact that the codes were to regulate business practices as well as prices rather indicates that it was inspired in part, by dissatisfaction with a competitive economy as such - a dissatisfaction which was widespread in the depths of the depression. In part, no doubt, it was an imitation of the ambitious programme of business regulation which was then being tried in the United States. The fact that no substantial progress has been made to put it into operation perhaps suggests that the last mentioned factor was an important one.

Somewhat similar but much less comprehensive legislation was enacted in British Columbia in 1937. It proposes to stabilize retail trade by making a mark-up of at least 5% on food products compulsory on all retailers and by empowering producers and wholesalers of any commodity to fix retail selling prices to which retailers must conform. This act does not provide for a compulsory cartellization of industry as did the Alberta act. The only sanction imposed is a penalty recoverable from offending retailers in the courts.(22) However, the problem of policing price-fixing schemes of this kind is a large one and any attempt to make it work is likely to lead to a reliance upon governmental authority.

(21) Ibid., 1934, c.33; 1936, c. 66.

(22) Statutes of British Columbia, 1937, cc.9, 51.

There is a third pervasive kind of control exercised by government in Canada over business. This is the influence exercised over the volume of credit through the operations of the Bank of Canada. This control is not the less important and decisive because it is exercised by persuasive rather than coercive means. The Bank of Canada was first established as a private institution in 1934, though linked to the federal government through its power to control the appointment of the Governor and Deputy Governors.(23) In the present year, it has been brought completely under public ownership and control.(24)

The importance of the functions of a central bank, such as the Bank of Canada and the reason why some kind of public control of its actions are necessary can be quickly stated. The economy which has developed in Canada since Confederation is one which depends for its functioning on commercial credit. Business activity can only be maintained at the level we have come to regard as normal if business men are able to command and employ the funds of others as well as their own. The short-term loans which determine the day to day tempo of business must, in most cases, be secured from the commercial banks.

The commercial bank, in making loans to the most solvent of business men, must make a cautious calculation about the proportion of its total loans to its total cash reserves in order that it may always be able to meet sudden demands for cash. As far as the banks themselves are concerned, therefore, the volume of credit available to business depends, in part, upon the banker's guess about immediate business prospects and, in part, upon the amount of cash or legal tender in his hands, a factor over which he has no real control. The volume of credit determines the level of economic activity and ultimately the price level in the country.

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(23) Statutes of Canada, 1934, c.43.

(24) Ibid., 1936, c.22; 1938, c.42.

If the cautious bankers become alarmed about the future or if, for any reason, a withdrawal of gold from the country restricts the credit base, business activity declines. The reverse is equally true. Bankers' optimism, combined with an ample credit base, will mean an inflation of credit and a business boom. The banks occupy a position of immense strategic importance in the economic life of the country and restriction and extension of credit through the banking system has a profound effect on the economic welfare of everyone.

The central bank, through powers vested in it by public authority, is able to control the credit base upon which the bankers rear our structure of commercial credit and to influence the bankers' moods of elation and alarm. It is able, therefore, to influence, indirectly but nevertheless powerfully, the conduct of every business in the country. Its power to do these things is derived from public authority; its influence must be exercised, if at all, with public ends in view. For these reasons there inevitably develops a demand for public control of a central bank in some form or other. When a government secures full ownership of a central bank, it is in a position to exercise a comprehensive influence on the whole economy.

The tariff, the investigation of combines and the central bank are the three means by which the federal government can exercise control over the whole field of Canadian business. The other instances of control of business to be discussed here are of a miscellaneous character, affecting particular trades and businesses and exercised for reasons peculiar to each case. As already pointed out, they are discussed in this section because they do not fit into any of the other categories.

With the exception of Prince Edward Island, which prohibits the liquor trade entirely, the provinces have made the distribution of spirituous liquors a public monopoly. To describe the liquor trade as a public utility would rouse vigorous - and

justifiable - protest in many quarters. It owes its status as a public monopoly, partly to the immense difficulties of trying to regulate private trade in the commodity and partly to the fact that this formed a tolerable compromise with the powerful prohibition forces when the reaction against complete suppression of the trade developed. At Confederation, the trade was regulated, if at all, by the local authorities.(25) Dissatisfaction with this system - or lack of system - brought about a change as early as 1876 in Ontario.(26) Commissioners appointed by the central authorities were given power to regulate the trade. Vendors were required to secure licences which the Commissioners might withhold or revoke for cause and a provincial system of inspection for enforcement was set up. Most of the other provinces later adopted a similar scheme of central supervision.(27)

This system was far from satisfactory, particularly because of a growing sentiment in favour of complete suppression of the trade. This sentiment was strong enough to put through the Canada Temperance Act in 1878, which gave localities the option of forbidding the traffic entirely and many areas voted themselves "dry" under its provisions. The War afforded a variety of arguments, convincing to widely differing groups of people, in favour of complete prohibition and by 1919, prohibition had swept over the whole Dominion. The impossibility of enforcement gave rise to evils at least comparable with those of the regulated trade and a reaction set in in 1921 when British Columbia and Quebec reversed their judgment on prohibition. They established a government agency and vested in it the sole right to distribute spirituous liquors. By 1930, all the provinces except Prince Edward Island had taken the same step. A limited amount of private enterprise in the sale

(25) Canada and its Provinces, Vol. XVII, p. 207.

(26) Statutes of Ontario, 1876, c.26.

(27) e.g. see Revised Statutes of Saskatchewan, 1909, c.130; Revised Statutes of Manitoba, 1913, c. 113; Statutes of British Columbia, 1910, c.30.

of beer and wines under strict supervision is now permitted in most provinces.(28)

The maintenance of any monopoly requires policing. Accordingly, the provinces have been obliged to provide a system of supervision and inspection. Opinions differ about its effectiveness but it is at least a considerable addition to the activities of governments. It is also necessary to supervise the manufacturers. Brewers and distillers, in addition to a federal licence under the Excise Act, must secure licences from the Provincial Liquor Control Board. The Board can refuse or revoke a licence for cause and may require them to make returns and submit to inspection.(29) The Boards may - and sometimes do - conduct their business in such a way as to impose restrictions on inter-provincial trade.

Farming in Canada in the twentieth century has become, to a great extent, a highly specialized business adventure. Therefore it has become exposed to the hazards of economic fluctuations which afflict other businesses as well as to those which have always been peculiar to itself. Bankruptcy proceedings provide the business man with an escape from the intolerable burdens brought on by misjudgment or unforeseen calamities. Bankruptcy law and technique were developed to meet the needs of traders and they are neither legally nor practically applicable(30) to farmers. Thus, when the débâcle of the early thirties submerged large numbers of farmers under a burden of debt they were unable to meet, a serious problem of social adjustment was raised.

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(28) Encyclopedia of Canada, Vol. IV, p. 87.

(29) e.g. see Revised Statutes of Ontario, 1937, c. 294, ss.46-54; Revised Statutes of Saskatchewan, 1930, c. 232, ss. 68-71; Statutes of Nova Scotia, 1930, c. 2, ss. 45-55; Revised Statutes of British Columbia, 1936, c. 160, ss. 67, 123.

(30) The terms of the Bankruptcy Act do not apply to farmers. See Revised Statutes of Canada, 1927, c. 11, s. 7.

It was particularly serious in the Prairie Provinces. A complete moratorium on agricultural debt was not desirable or politically feasible. It was felt that any measure of relief, which might be enforced by public authority, should go only to those who were acutely in need of it and who could also show that their distress was due to drought and/or the unprecedented collapse of prices. If such a policy was to be carried out, it was necessary to devise some method of selecting those in whose favour legal process was to be temporarily suspended. It was impossible to define in advance precisely what circumstances should entitle particular persons to consideration and therefore there were no rules of the kind which the ordinary courts are suited to apply. In addition, the task called for informal investigation and judgment based upon expert knowledge of agriculture and intuitive grasp of particular situations. It was also desired to provide an inexpensive procedure and a service of mediation between debtor and creditor in the hope of promoting permanent settlements.

As a result of these considerations, the conduct of this policy of adjustment was not entrusted to the ordinary courts. Instead, Debt Adjustment Boards, agencies of the governments involved, were created. Thenceforth, the right of the creditor to hale a farmer-debtor into court depended upon his being able to secure a certificate from the Board. And the Boards bent their efforts toward securing voluntary adjustments between debtor and creditor.(31) As the depression deepened and drought conditions grew worse, the distress spread to most other classes in the western community. (To some extent, the debt adjustment policy of the governments may have contributed to this).

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(31) Statutes of Alberta, 1931, c.57; Saskatchewan, 1931, c.59; Manitoba, 1931, c.7.

The authority of the Debt Adjustment Boards was extended until legal process for the collection of any debt from a resident of the provinces became entirely dependent upon the permission of these bodies.(32)

The constitutional power of the provinces did not enable them to put through a general legislative scaling-down of debts because most of the debt was owed to creditors outside the province.(33) Bankruptcy legislation could only be enacted by Parliament. By 1934, however, it was clear that temporary moratoria would not provide a solution for agricultural indebtedness in the Dominion. Federal bankruptcy legislation was not applicable to farmers and, in any event, the extension of its provisions to them would not have solved the problem. It was of primary public interest to keep these great numbers of embarrassed farmers on their farms and to give them an opportunity to recover when conditions improved.(34) The desirable thing seemed to be a compromise which scaled down the debt to reasonable amounts.

If such a policy was to be applied, then, in fairness to both debtor and creditor, the terms of the compulsory settlement had somehow to be related to the prospective capacity of the debtor to pull himself out of his difficulties and the probable productivity of the farm. The question of choice of technique was essentially similar to the one faced by the Western Provinces in 1931, which has been discussed. The federal Parliament chose a similar method and provided for the establishment of administrative authorities to apply the policy instead of using the bankruptcy courts.

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(32) See Statutes of Alberta, 1937, c.9; Saskatchewan, 1934-5, c. 88; Manitoba, 1933, c.9.

(33) See Royal Bank of Canada v. The King, (1913) 9 D.L.R. 337; Credit Foncier v. Ross, (1937) 3 D.L.R. 365.

(34) House of Commons Debates, 1934, pp. 3637 et seq.

The Farmers' Creditors Arrangement Act of 1934 provided for Boards of Review in the different provinces. They were to attempt to mediate between the farmer and his creditors and to reach an agreed reduction of the debt. Failing this, the Board was authorized to formulate and approve an arrangement binding on all parties without their consent. In doing this, it was to take into consideration the prospective capacity of the debtor to pay and the productivity of the farm.(35) This is the type of thing which the ordinary courts are quite unsuited to perform.

There are varied opinions about the wisdom of these measures. It may be argued that the policy of debt adjustment pursued by the Western Provinces was carried much too far. For present purposes, that is not highly significant. The point of real importance is this. Modern society, by its very nature, is subject, at intervals, to widespread economic and social dislocation We are not content to wait for adjustments to work out slowly and painfully by themselves. We try to mitigate distress and hasten adjustment by the use of public authority. The cases just considered seem to show that, very frequently, the end desired cannot be reached by a mere change in the law to be enforced by the ordinary courts. It requires the use of a more flexible instrument which can take account of the special peculiarities of each separate case. That means the use of the executive arm and an increase in the activities of government. It may be that we have not enough intelligence and wisdom to restrict ourselves to a reasonable use of administrative agencies in such matters. At present, there is no indication that doubt on this point will prevent us from trying.

The provinces maintain a variety of controls over a number of kinds of businesses by means of licences. The municipalities, of course, require licences from almost every

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(35) Statutes of Canada, 1934, c. 53.

kind of business. But normally the municipality is not given a legal power to discriminate between applicants or to refuse licences on their own discretion. On the other hand, it seems highly probable that the province has the constitutional power to make the conduct of any business subject to licence and that it may refuse, suspend or revoke such licences at will as long as it does not interfere with inter-provincial trade or some other head of Dominion jurisdiction. This power has been called into operation in respect of a number of businesses. Certain regulations are imposed upon the operations of persons engaged in them and the power to suspend the licence is used as a means of enforcement. No attempt is made to discuss every case of provincial licence required in the five provinces considered. The more important and striking ones only are dealt with.

All five of the provinces considered make regulations governing, and impose licence requirements on, theatres and motion picture palaces.(36) One purpose is to maintain a censorship of the stage and screen. The other main purpose is to secure the maintenance of a minimum of safety precautions in case of fire. Most of the provinces subject hotels and other public buildings(37) to similar scrutiny on grounds of protection of the public against fire.(38) Powers of inspection are given for enforcement purposes. Most of them require licences from private detectives and collections agencies(39) and real estate brokers.(40) Most of them require licences from the vendors of fuel-oil but, except for those provinces which(41)

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(36) Revised Statutes of Nova Scotia, 1923, c. 162; Revised Statutes of Quebec, 1925, c. 173-4; Revised Statutes of Ontario, 1937 c.319; Revised Statutes of British Columbia, 1936, c. 196; Revised Statutes of Saskatchewan, 1930, c.225.

(37) e.g. see Revised Statutes of Nova Scotia, 1923, c.164; Revised Statutes of Quebec, 1925, c.183; Revised Statutes of Ontario, 1937, c. 320.

(38) e.g. see Revised Statutes of Quebec, 1925, c. 176.

(39) e.g. see Revised Statutes of Nova Scotia, 1923, c.44; Revised Statutes of Ontario, 1937, c. 245; Revised Statutes of Saskatchewan, 1930, c. 185; Revised Statutes of British Columbia, 1936, c. 156.

(40) Revised Statutes of Nova Scotia, 1923, c. 126; Revised Statutes of Ontario,1937,c.249; Revised Statutes of Saskatchewan, 1930, c.185; Revised Statutes of British Columbia,1936,c.155.

(41) e.g. see Revised Statutes of Ontario, 1937, c.247; Revised Statutes of British Columbia, 1936, c. 157.

have established public utility control of this industry, the chief purpose seems to be to facilitate the collection of the gasoline tax levied by the provinces.(42) Some require licences from hawkers and peddlers and travelling shows,(43) others demand them from trade schools(44) and transient photographers.(45) Even barbers(46) and book-agents(47) do not escape in some provinces.(48) And within the last year British Columbia and Saskatchewan moved to impose licence requirements on "closing-out-sales".(49) In this latter case, the object is to prevent the pouring of bankrupt stock, collected from great distances, into a single town where a closing out sale may be conducted for months by non-residents of the town to the great detriment of the trade of the local merchants.(50) Accordingly, the period for which the closing-out sale may continue is limited; lists of merchandise to be sold must be furnished to the government with a statement that only regular stock-in-trade is to be sold.

In most of these statutes, there are provisions requiring periodic reports and returns. In those cases where the persons regulated are entrusted with the funds of others, a bond, guaranteeing proper disposition of those funds, must be deposited. In every case, the licences may be withheld or revoked for what the executive regards as misconduct.

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(42) e.g. see Statutes of Saskatchewan, 1936, c.14; Revised Statutes of Ontario, 1937, c.332; Revised Statutes of British Columbia, 1936, c. 278.

(43) Revised Statutes of Saskatchewan, 1930; c. 182; Revised Statutes of Quebec, 1925, c.25.

(44) Revised Statutes of Saskatchewan, 1930, c.44; Revised Statutes of Ontario, 1937, c.293.

(45) Revised Statutes of British Columbia, 1936, c. 288; Statutes of Ontario, 1938, c.43.

(46) Statutes of Nova Scotia, 1937, c.9.

(47) e.g. see Revised Statutes of British Columbia, 1936, cc.21,113.

(48) e.g. see Revised Statutes of Saskatchewan, 1930, c.187.

(49) Statutes of British Columbia, 1937, c.7.

(50) Statutes of Saskatchewan, 1938, c.44.

The reasons for imposing control on these different kinds of business are various and, in some cases, obvious at first glance. Generally, it is one of two basic reasons. It may be that the business renders a service of a complex nature to persons who, because of ignorance or necessitous condition or some other reason, are placed in an inferior bargaining position with respect to it. Or it may be because the informal controls, which operated on enterprising persons with little sense of social responsibility through the local knowledge of everybody about everything in the rural or village neighbourhood, have broken down under the modern conditions of extreme mobility and urban life.

The control and censorship of motion pictures is naturally a peculiar case. The modern state, which maintains some kind of control over most of the agencies of education, was not likely to forget the motion picture. Most of the others are covered by the reasons mentioned. The casual patron of a theatre, hotel, or other public building has no way of knowing whether it is a fire-trap. Nor can the random customer of the barber and hairdresser know whether the complicated machinery which is now essential to that trade will be competently handled. The business of the pawnbroker, the collection agency, the private detective and the trade school can easily become a "racket" under urban conditions. To a greater or less extent, no doubt, the regulation of pawnbrokers, private detectives and travelling shows (51) is a police measure. And perhaps the main drive behind the regulation of book agents, hawkers and peddlers and transient photographers is irritation at the way they "take in" the credulous.

Subject to certain broad limitations, the province permits the learned professions to restrict entrance to the practice of their craft, to impose professional qualifications and to discipline or suspend offending members. The professions

(51) See Revised Statutes of Ontario, 1937, c.244; Statutes of Quebec, 1931-2, c.22.

are cartellized because professional ethics, based upon accepted principles, tested by experience and fortified by tradition, are at least as powerful a control as open competition would be and because a special training and a special scrutiny of qualifications are necessary to protect the public who have no choice but to trust the professional man. The task of control is entrusted to an elected council of the particular profession.

Because of the development of new "mysteries" or the application of scientific knowledge to old trades, a twilight zone has appeared between business and the older professions. This area tends to grow but, at present, the optometrists, the embalmers and the different kinds of drugless practitioners are the principal groups concerned. A special body of knowledge is required for successful pursuit of these callings and some instructed scrutiny of qualifications is required to protect the public. At the same time, there is, as yet, no firmly established body of professional ethics and few universally accepted principles upon which such a body of ethics could be based. As a result, the state has inserted its authority between these quasi-professions and their clients. Sometimes a government agency is placed directly in control and sometimes a professional association is set up for the purpose of regulation under the strict supervision of the government.(52)

These authorities, whether government agencies or merely government controlled, regulate training schools, establish standards of competence and conduct examinations for entrance to practice. They issue licences, prescribe the detail of professional conduct, hear complaints, enforce discipline and cancel licences. Most of the five provinces examined maintain

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(52) e.g. compare Revised Statutes of Ontario, 1937, c.229 with Revised Statutes of British Columbia, 1936, c.204.(Provisions relating to drugless practitioners).

a control of this kind over embalmers,(53) optometrists(54) and drugless practitioners.(55)

The matters discussed in this section illustrate the sweep of the activities of modern governments. As our economic life has become more highly integrated and interdependent, it has become both possible and to some extent necessary for governments to exercise far-reaching control over business as a whole, as through tariffs and central banking. It is natural that this should occur, although intervention at one point is likely to lead to further intervention at other points. When a trade which is subject to serious abuse in private hands is one which cannot be eradicated or dispensed with, as in the case of the liquor trade, government is called upon to conduct it. When the sudden impoverishment of a large section of the population occurs, major social adjustments become necessary and governments are given wide powers to expedite the adjustment. Whenever, in our complex environment, a particular trade is not being sufficiently regulated by the informal controls of custom and neighbourhood knowledge, the government is authorized to license and regulate it. The state has thus become a social instrument for the achievement of a wide variety of purposes.

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(53) Revised Statutes of Ontario, 1937, c.242; Revised Statutes of Nova Scotia, 1923, c. 127; Revised Statutes of Saskatchewan, 1930, c.177. The case of the embalmers is also an excellent illustration of the break-down of the old neighbourhood controls in urban environments.

(54) Revised Statutes of Ontario, 1937, c.246; Revised Statutes of British Columbia, 1936, c.209; Revised Statutes of Saskatchewan, 1930, c.178.

(55) Revised Statutes of British Columbia, 1936, cc.37, 38, 204; Revised Statutes of Ontario, 1937, c.229; Revised Statutes of Saskatchewan, 1930, c.179.