

*The Constitution*

I ask hon. members not to jump too hastily. Do not let our imaginations run too far ahead on this. Let us also remember that the foremost authority on the federal notion, K. C. Wheare of Oxford, in his *Federal Government* defined the federal principle in the following manner: "By the federal principle, I mean the method of dividing powers so that the general and regional governments are each within its sphere co-ordinate and independent".

Canada was indeed created by the provinces—in the final analysis by all the provinces. In the document whereby this creation was consummated, the BNA Act, the powers, jurisdictions and areas of operation of the two orders of government of Canada on the one hand and of the provinces on the other were set forth in relatively clear terms, implicit in which was the notion that each order of government generally speaking would be sovereign in the area assigned to it, give or take a joint jurisdiction.

Following this logic, I think it should be abundantly obvious that any changes in powers, jurisdictions or areas of operation, particularly of the creating provinces, should not occur without the concurrence of those provinces. The resolution before us, however, is barely consistent with that sort of logic because it proposes a contrary form of procedure: that which was created by the BNA Act, namely the central government, now proposes without consultation to set in entrenching concrete limitations on the freedom within which its creators, the provinces, may act. It has bypassed its creators and purports to legislate on their behalf affecting property, civil rights and education.

Do you know what I call that, Mr. Speaker? I call it constitutional cannibalism. The creature has turned on its creator to dismember it, to consume it piece by piece. This is a serious change in the structure of Canada and, Mr. Speaker, Westminster is being asked not only to make the change, but to condone it. Have we no shame in this country? Are we unable to stand on our own feet and write our own constitution? This disposition of the government to bypass the provinces in areas of clearly provincial jurisdiction emerges again in the amending formula set forth in section 42, because here we see enunciated the principle that the amendments to the constitution may, in certain circumstances, be effected through referenda thereby bypassing again constituted provincial authorities. This is again a serious change in the federal nature of Canada and one which gives rise to the deepest misgivings. The basic constitutional nature of our country is being altered without consulting the provinces and, therefore, without the agreement of the provinces; and Westminster is being asked to condone this change.

If I may move briefly to section 44, again dealing with an amending procedure, I suggest that here, too, we find a proposal which upon acceptance would alter Canada fundamentally in that it would change the nature of our parliamentary institutions. Section 44 provides, in certain circumstances, that the House of Commons' views will prevail whether the Senate is prepared to go along or not. Westminster is being asked to put its stamp of approval on this change too. It is clear to me, therefore, and I hope it is becoming clearer to

others, that this resolution contains not just the one Trojan horse mentioned by my leader when he spoke on Monday last, but two. One, and a double one at that—it must be a dromedary—a potential threat to the federal nature of our country, and two, a potential threat to the parliamentary institutions of this country.

● (2120)

In relation to the second of these, the threat to the Senate, I draw the attention of the House to a citation from the Supreme Court in the reference to it in 1978 on this very issue as it arose out of Bill C-60. Eight justices examining this matter held the view, and I quote:

The fundamental character of the Senate cannot be altered by unilateral action by the Parliament of Canada.

That is in the final paragraph of their judgment. What is Parliament doing if it proceeds along the course it is now following? It is asking Westminster to do that which unilateral action by this Parliament is unable to do. I think that is absolutely disgraceful. I am ashamed.

This is where the whole deal becomes very, very sneaky and tricky, despite what we hear. Our friends in the government will say this is not being done by the Parliament of Canada, it is the parliament of the U.K. that is being asked to do it. To that, I think the reply should be a second reading from that ruling, just a little bit earlier in the same paragraph, and I invite hon. members to read the whole judgment. The assembled judges said:

The character of the Senate was determined by the British parliament in response to the proposals submitted by the three provinces in order to meet the requirements of the proposed federal system.

Now we see one order of government proposing that this fundamental character be altered unilaterally by another parliament. I say we have a travesty of law, a shameful travesty because this government is unwilling and unable to proceed by an agreed formula toward effecting all these changes. The Vancouver consensus would make it so simple. It could get these changes done with that formula. I do not like these implications at all.

I am fearful first of all that any constitution for this country built along these lines will inevitably create deeper divisiveness than now exists. God knows, and I seldom use that word in public unless I mean it deeply, God knows how deep those divisions are right now. I am sure the government does not. The government is completely unaware of how deep they have made the divisiveness. I suppose the line is somewhere about Lake of the Woods. From there on they say, "Get rid of that government, get them out." I have had little notes sent to me saying, "Get them out, Don, before they destroy us."

That is divisiveness. I do not like to be able to repeat that, but that is the feeling in the west. It is high time those people over there got wind of it. Apparently the leader in the Senate is unable to get the message across. He probably does not even tell them because he is scared.

We have looked at patriation and have found it a travesty. We have looked at the charter of rights and found it to be an