

*The Constitution*

members, especially opposite, who at the time said most emphatically that the flag now standing on your right, Mr. Speaker, would divide the country. Quite the contrary: today one can say to the Canadian people, and the whole population of two other countries, that this magnificent flag has decidedly brought us great national pride and pride of independence compared to what we felt before. Finally, in 1980, the Parliament of Canada adopted the national anthem. I hope and trust that in the near future we shall pass an act making July 1 Canada Day. So, patriation of the Constitution, that is, the fact of bringing it home, becomes the last step on the road to full independence. That is why, Mr. Speaker, this situation is very important.

I feel, therefore, that those few remarks can answer the question of why we should patriate our constitution. Now, to the next question: Why renew our Constitution? It is quite obvious that the situation in 1867 was entirely different from what it is today. The constitution of 1867 allowed the Canadian federation to flourish in peace and freedom; it promoted the growth of the population and the economy as well as social and cultural development in all parts of the country; but our needs have changed, Mr. Speaker. It no longer meets our aspirations, our needs; it must be thought out anew, reshaped and reworded in keeping with today's reality. It still contains, doubtless, several good points that could be rejuvenated and combined with new elements to form a truly Canadian document that meets current needs.

What are the faults and weaknesses in our Constitution? Our written constitution is, to a large extent, made up of British parliamentary laws. We have not yet managed to bring back those laws to Canada, nor to update them; they somehow still bear the stamp of a colonial past. A large part of our Constitution is scattered throughout a multiplicity of acts, several of which are quite unknown to the Canadian people. Those are two weaknesses in our Constitution. The distribution of powers between the federal Parliament and the provincial legislative assemblies, as written in the British North American Act of 1867, is neither as specific nor as functional as we might wish it to be. There is no bill of fundamental civic rights and freedoms in the Constitution, Mr. Speaker. Finally, the language rights are not sufficiently guaranteed and the amending formula is not properly defined in the constitution, and we must always appeal to the British Parliament to have some sections amended. All this is therefore evidence to all Canadians of the reasons why we must renew our Constitution and really break away from our colonial past.

Another important matter, in my opinion, is the repatriation procedure. What was the situation in the past to allow the repatriation of our Constitution? Was something done? Were there actions or meetings in order to achieve this? Mr. Speaker, for close to 54 years, Canadian political leaders have been looking for an amending formula without which repatriation would be nothing more than a symbolic gesture. What have

past positions been, Mr. Speaker? Is the present situation totally unprecedented or, if there have been previous attempts to bring about the unanimity which is said to be essential today, was our Constitution successfully repatriated and made a Canadian law through the various formulae that have been discussed, with the unanimity rule that many consider to be still valid today? There was of course the 1964 Fulton-Favreau formula which required unanimous consent for changes to some sections of the constitution, such as those dealing with power distribution.

Many other amendments could have been made with the consent of two-thirds of the provinces representing 50 per cent of the Canadian population. The Fulton-Favreau formula did not succeed in bringing about the required unanimity. We then had the amendment formula of the Victoria Charter in 1971 which required regional consent to amend the provisions of the Constitution, in other words, the assent of two Atlantic provinces, of Quebec and of Ontario, and of two Western provinces representing 50 per cent of the population of the region.

After the latest amendments introduced in the House, this formula is partly the one included in the resolution, Mr. Speaker, with some variations concerning the Atlantic provinces. The matters of 50 per cent of the population and the Western provinces are no longer mentioned. We also had what occurred in Toronto, in 1979, when the members of the standing committee of ministers on the Constitution asked that unanimous consent be required to change any amendment formula and any provision concerning provincial ownership of natural resources and provincial jurisdiction. For all other matters included in the Constitution, this formula required the consent of at least seven provincial legislative assemblies representing at least 85 per cent of the Canadian population. Finally, we had the Vancouver consensus which concerned a formula based on a proposal made by Alberta during the constitutional discussions of the summer of 1980. This proposal required the assent of Parliament and of the legislative assemblies of two-thirds of the provinces representing at least 50 per cent of the population. As for the questions related to the powers and the rights of a legislative assembly and the assets or properties of a province or its natural resources, the said province would have been able to opt out of an amendment which had not been approved by its own legislative assembly.

In spite of all this, Mr. Speaker, no agreement was reached. We have not been able to agree on patriation of our Constitution with an amending formula. There have been many exchanges and suggestions of giving certain powers to the provinces. For instance, there is the matter of family law. I am somewhat familiar with this issue as I was able to work in this field in my law practice. At first, we were told that there would be an agreement and that the provinces as a whole would agree to take over this field of jurisdiction. But once again, some of the provinces said: "We are not ready, we are