Let me get back to the Constitution. After having disposed of those matters which are of direct concern to Yukoners, I want to deal with these proposals in a national way. We have been dragged, all of us, into a great constitutional crisis because of the intransigence of one man. It is doubly dangerous and doubly deplorable that that man should be the Prime Minister of Canada.

Before going into the nature and causes of the crisis, let us look at the nature of the country which is being subjected to this divisive impact of the Prime Minister's obsession with rewriting the Constitution in this fashion.

Canada is a confederation; it is not a unitary state. That is to say, there is a central government having certain powers allotted to it in the Constitution as it now stands, and there are provincial governments which in turn have power over other matters. That is clearly understood and has been clearly understood since the Constitution was devised in 1867.

The Constitution did not spring full blown into being. It was the result of protracted study by elected representatives over a protracted period of time. Prior to being passed in the form of an act in the British Parliament, it received the approval of the legislatures of the provinces which became the first members of this federal state, this partnership. Those which joined later did it in the full awareness of the terms on which they entered.

I suggest it is ridiculous to treat the Constitution as a scrap of paper representing a British act of parliament. Macdonald himself in the constitutional debates of that day referred to the BNA Act as a treaty. Certainly it was an agreement among duly constituted governments, each having its own elected legislature, as to the form and shape that the future nation of Canada should take.

At no time was it contemplated that in the future nation the central government would have the power solely and of itself to amend or change the original articles of confederation. Had that been the case, it is quite obvious that lower Canada, which was to become the province of Quebec, would never have become a partner to confederation.

The Constitution of 1867 was in no way imposed upon Canada by Britain. It was a device, an instrument, created by Canada. The work of Macdonald, Cartier, McGee, Brown, Tupper, Tilley and other Fathers of Confederation was passed into law by the parliament at Westminster because that was the only method by which colonies could assume the mantle of nationhood.

The tragedy of our time is that the Prime Minister and his party are now in a position of attempting to divest Canada of national status and return it to the status of a client state of the parliament at Westminster. To hear the Prime Minister's vague and bombastic threats of independence or of following the example of Smith of Rhodesia is to show up the falsity of his position in its true colours.

Canada has been an independent nation since 1931 when the Statute of Westminster established that Britain could no longer make laws affecting this nation. That statute and that departure simply placed the capstone on what actually existed at that time. It was merely statutory recognition of what already was the de facto situation.

At the request of the provinces, it was decided that changes to the Constitution would continue to be ratified by Westminster and that parliament would retain its function as the custodian, the trustee, and nothing more, of the BNA Act. I want to emphasize that the provinces were consulted on the constitutional implications of the Statute of Westminster. They made recommendations, and those recommendations were adhered to even though they meant a radically different approach to the constitutional content of that statute.

● (1220)

It is quite clear on examining the precedents that the provinces were regularly consulted when changes were contemplated in those matters falling within their provincial jurisdiction. This was done by Mr. St. Laurent in bringing in old age pensions, it was done by Mr. King in implementing the unemployment insurance provisions, which were the brain child of the previous Bennett government, and it was done in many more cases, I believe eight in all.

It is all very well to say, as Judge Freedman did, that consultation was not necessary. What is important is that those changes, the carrying out of these changes, was on the basis of consultation, and those charged with the carrying out of these changes did consult. They felt at the time that consultation ought to be the process in which they engaged, and they did do just that. Certainly the frequency and directness of such consultations very distinctly implied the growth and recognition of constitutional convention in these matters.

It is not my intention to enter a legalistic treatise on the growth of the constitutional convention. Anyone who is interested can read Jennings and others on the subject; Dicey is another very comprehensive publication. Suffice it to say that on almost every occasion, indeed, on every important occasion when the interests and jurisdictions of the provinces were involved, there was invariably consultation at that point. That point was made with some force by Senator Maurice Lamontagne, with a good deal more precision than I, before the special joint committee.

These are political matters, they are constitutional matters. Canada is not some newly emerging nation whose Constitution is determined by sections or clauses put down on paper in the inner reaches of the ruling class, in the bowels of the Langevin Building. Our Constitution came from the people of Canada. It came from elected members of the provincial legislatures. It was thrashed out, debated, argued over, and what went to England in the last analysis represented a consensus of the most advanced political and constitutional thinking in this nation. Canada was not given birth by a piece of paper; Canada already existed in the hearts and minds of its people. The Constitution was simply a baptismal certificate, as it were.

Macdonald made it very plain that his chief aim was to conciliate the various provincial and sectional interests and devise what he thought was a compromise, a Constitution that would be acceptable. That was a major consideration.