

pressuring and stirring us into joining with the Americans in their fight for complete freedom from England. The French colonials, the "colons", refused to join the revolutionary movement, even though France was at that very time openly supporting the rebellious colonies. There has never been a Quebec disloyalty or a failing by Quebecers to this day.

After 17 years under the Quebec Act of 1774 we saw the birth of Upper Canada and Lower Canada, under the Constitutional Act. We became two independent Canadas each, however, under a governor who retained dictatorial powers. The then members of Parliament had only the right to suggest certain laws. At about this time history notes a succession of French constitutions all violently questioned, debated and tried by the people of France who were now constantly speaking of liberty, equality and justice. Then came Napoleon in 1799 with his string of victories in Europe.

May I say here in passing that it has always struck me strangely that the French government, at this very time, was "ridding itself" at a ridiculous price of its interests in the Louisiana and Florida territories.

Thus, in the few years before the birth of Confederation we saw the trying of four constitutions, the secession of the American colonies, an American invasion, the successive declarations of independence of American Latin countries and the abolition of slavery in the south, all of which, as I mentioned before, left their marks on our political thinking. Every nation in which we had an interest was either at war, in revolution, or striving for total independence.

There were basic changes everywhere that invited Canadians to make their own claims. In this light, the troubles of 1838 should scandalize no one. In any event, these troubles could have been avoided by a more practical approach to an earlier, truer and more democratic Canadian Constitution that would have recognized Canada as an associated country rather than as a colony. The political and tactical thinkers of those days made, in my view, costly policy mistakes that are not yet fully rectified. The economic crises of 1815, 1816, 1825, 1836-39, which had created unrest and dissatisfaction, had also left their marks on us.

When the troubles of 1838 became serious, the British Parliament suspended the Constitution of Canada on February 10, 1838. This was to lead to the Union Act of 1840. It created the independence of Upper Canada and the independence of Lower Canada. The legislative union which provided concessions of a federal character towards the French Canadian minority, as it was known, was now to spontaneously function as a federal union. The experience of the union in Canada, which at the beginning was to be unitarian but which later revealed itself as a dual régime requiring a dosage of federalism, made it more easily possible to divide the competences when the preliminary discussions on Confederation took place.

We then came to our present Constitution. It is very far from perfect, but it was then recognized as reasonable. This I would have personally debated if I had been there. It had some flexibility; it did not conflict

[Hon. Mr. Desrousseaux.]

with individual rights; it took into account the principles and conditions of the treaties that had been made before its enactment; it recognized the presence of the problems caused by the two founding nations; it divided quite equitably, at that time, the powers and fields of activities, even though these were to overlap in too many instances and create the foundation for some of our deep griefs. I honestly believe it should have been more generally democratic, and this could have been at no cost, as the loyalty of the Quebecers had been tested and the loyalty of the others could be assured without doubt.

[Translation.]

The Canadian Constitution was primarily and to a large extent based on the 72 resolutions drafted in Quebec City in 1864 by the Fathers of Confederation. It provided for the federal union of the three provinces making up British North America, Canada, which included Ontario and Quebec, New Brunswick and Nova Scotia. Section 146 of the act provided for the admission in the Union of the Crown colonies of Prince Edward Island and Newfoundland on the Atlantic coast and of the united colony of British Columbia on the Pacific coast as well as the vast territory of the Hudson Bay Company in the northwest purchased by Canada for £300,000. Nevertheless, our Constitution thus brings together the responsible government system under a cabinet inherited from England and a Canadian adaptation of federalism as it had been practised in the United States for 80 years—the whole under the aegis of our monarchy. In addition to the original act, in accordance with the English concept, there is another part that some consider as more important and which appears, through historic development, under the form of well-established customs and conventions found in the unwritten provisions of the Constitution. The French concept of law does not accept the inclusion of customs in the Constitution. As for conventions, French requirements are that they should always be legally acceptable in order to be added by consent with enough value to bind constitutionally. Thus, there is definitely a basic divergence in the way we see our Constitution, the practices and conventions related to it and on which it is fundamental to agree as soon as possible. To some, the Constitution represents only a restrictive statement of basic laws and rules used to govern Canada. They say it is not comprehensive. Some do not consider it as a satisfying constitutional document. In its widest sense, we consider that the Constitution includes other laws of the United Kingdom such as the Statute of Westminster of 1931 and orders in council, for instance, those which sought to accept various provinces and territories into Confederation.

Contrary to written constitutions of other countries, the British North America Act does not contain any wide provisions on human rights. Even then, it was a shortcoming that was not recognized. The act nevertheless grants a precise constitutional protection regarding the use of the French and English languages and some special guarantees concerning denominational schools covered by treaties at the time of the conquest. I think we should now make greater provision regarding human rights especially to meet the requirements of the French conception of what a constitution should be.