

*Canadian Constitution*

formula was advanced by the then minister of justice, Hon. Davie Fulton, on behalf of the government of that day and it was all but accepted, though there were some reservations on the part of Quebec and greater reservations on the part of Saskatchewan which in those days had a C.C.F. government.

Once before I said there would be entire agreement with the objective which the conference had in mind. I have had the opportunity of looking over the draft, and I am not going to make any extended observations at this time. When the matter comes before the house there will be discussion regarding certain sections, but in no way would I want to leave the implication that we, who advanced the process of agreement and the achievement of a formula so far, are now in any way holding back. At the same time changes have been made. There are changes in section 91 and section 92 which will require careful and considered examination between now and the time the resolution or address is brought before parliament.

The minister did not say so, but I take it that should the address be accepted it will go to the parliament at Westminster in order to bring about the repatriation of the constitution. This is a rhetorical question at the moment, but I ask whether thereafter it will not be necessary that the constitution as a whole, in so far as it is embodied in the British North America Act, be brought before this parliament.

Dealing with one or two sections, and I shall refer to them briefly, the communiqué that was issued yesterday contained the following sentence on page 2:

To provide for greater flexibility in the constitution, legislative powers may be delegated between the federal and provincial authorities under conditions specified in the formula.

I simply ask the question at this time, what will be the effect of the removal of section 91(1) and section 92(1)? Section 91(1) provides for amendments to the constitution in matters exclusively federal, with exceptions relating to language and the calling of parliament. Section 92(1) provides for amendments to the constitution of the provinces by the provincial legislatures. Thus these sections relate to amending powers of both the federal parliament and the provincial legislatures in matters within their legislative competence, and these have been excised.

Then there is another section that must be very carefully examined. That is the one authorizing Canada to make laws dealing with matters coming under subsections 6, 10,

13 and 16 of section 92, subject to the consent of each individual province. Those particular subsections deal with penitentiaries and local works and undertakings other than those under federal jurisdiction. They also deal with property and civil rights within a province, and generally all matters of a local and private nature within a province.

Under the draft the federal parliament will be permitted to legislate in certain enumerated fields hitherto exclusively under provincial jurisdiction, subject to the restrictions of consent by four provinces and the like; and incidentally the consent given may be subsequently revoked.

Then I am disappointed by the fact that no provision has been made for the incorporation of the bill of rights as an immediate amendment by agreement; because when the hon. gentlemen now sitting opposite were over here they used to press so strongly for a bill of rights which would be part of a constitutional amendment. At that time we could not bring it about because several of the provinces would not agree; but now that the excellent spirit of agreement to which reference has been made by the minister has been achieved, it strikes me as passing strange that a matter of such importance as the inclusion of a bill of rights could not have secured the necessary degree of agreement to have been incorporated among the changes.

Now I come to subsection 3 of the new section 94(A) which says that the legislature of a province may make laws in that province in relation to any matter coming within the legislative jurisdiction of the parliament of Canada. The restrictions set out are consent by parliament to the enactment by the provinces; enactment of a similar statute by the legislatures of at least three other provinces, with consent subject to being revoked at any time by either the federal government or the provinces as the case may be. This is something which will require very careful examination since provision is made for the right of provinces, within the limitations and within the limited scope of the provisos, to legislate in matters which are exclusively within the federal power. In effect, four provinces are empowered to legislate by agreement within the federal field on any matter provided that a parliamentary majority is secured. I ask this question. Is this not exactly what I raised in the house, by way of questions, and which was denied on September 4 as reported at page 7655 of *Hansard*; and on September 3, as will be found

[Mr. Diefenbaker.]