

*The Constitution*

person is free to do and to say what he likes provided he does not break the established rule of law. If his freedoms and rights are infringed, there are remedies in the courts. Under the British common law system, everything in general that is not specifically prohibited by law is lawful. Napoleonic law or codified systems of law such as in the U.S.S.R. work in the opposite fashion; everything that is not specifically mentioned is forbidden. We should be proud of our heritage and fine system which has worked so well, and be ever watchful of change for the sake of change. Why would anyone really want to change such a good system as ours?

● (2140)

We in Canada have followed the British system of government and it has served us well. A democratic society which respects the rule of law is the envy of people around the world. We have, as in Britain and Australia, a tradition of constitutional practice characterized by understanding, a sense of fair play, adherence to the rule of law, a vigilant opposition, a free press, public opinion and ultimate accountability through the free and secret ballot. To change such a workable and respected system for the sake of change and for the unknown requires proof that our system is not acceptable and assurance that we would be better off with another system. I do not feel such a case has been made by the present government for such unilateral change.

The Soviet Union has a written constitution which guarantees human rights. But all the rights and freedoms in that document are not worth the paper they are written on because the Soviets do not honour them. There is explicit and extensive abuse because of a one-party system and no free or secret ballot. I visited the Soviet Union and spoke to the common person there; believe me, I would not leave Canada with its unwritten constitution for the U.S.S.R. and its written constitution.

There is a vast difference between written rights and actual rights. In comparing constitutional practices in various countries, we see there is in practice little relationship between declarations of rights, written guarantees of rights and freedoms and the actual rights of citizens. Australia and Great Britain make no declarations, yet there are few infringements of rights, thanks to such checks as the government, the opposition, the judiciary, freedom of the press and the citizenry.

In contrast, countries such as the Soviet Union, Argentina, Brazil and Czechoslovakia have in their written constitutions general statements and specific guarantees of fundamental rights and liberties, but we hear reports that these countries do not respect them, and we hear of many abuses with little check on arbitrary executive power.

These comparisons indicate the inadequacy of written constitutional guarantees of human rights. Governments and citizens must respect what constitutes any constitution, written or unwritten, if it is to work. It seems clear that written constitutional guarantees alone are neither necessary nor sufficient to guarantee the exercise of fundamental human rights. Where rights already exist in practice, through traditions, conventions

and respect for the rule of law, writing them down may not be necessary. Where such rights only exist in theory, writing them down will not help.

We are one of the few countries in the world without a written constitution, yet we have rights and freedoms in Canada second to none. We have inherited our system from Great Britain, and it has served us well. Instead of all this talk about "Brit-bashing", we should take the time to remember from where our fine system of democratic government came. We have inherited a system that serves Canada as an independent nation well.

Any changes to such a fine system of government should be changes for the better. Changes imposed on partners in our federal system of government with which they strongly disagree would not seem to be changes for the better. Consensus in a federation is certainly necessary. I approve patriation of the BNA Act to Canada, but any changes to that act should be done in Canada by Canadians as partners in our system.

Our tradition and our workable and proven Constitution should not be unilaterally changed. Relations with our traditional ally, Great Britain, should not be unnecessarily strained when this is not necessary or desirable. The federal government should not forget that the union of the various provinces created Canada.

We do not need another country to change our laws for us. We do not need to create problems for Great Britain by the federal government trying to shift the heat across the ocean on an issue as important as the one created by the present government. This is not fair to anyone and should not be seen as a self-serving opening for the Prime Minister (Mr. Trudeau) and his government to drive in a wedge and weaken our strong relationship to both Great Britain and the monarchy.

The Statute of Westminster, 1931 recognized the autonomy of the various dominions and ended whatever discretionary right the British government still had to legislate on behalf of the dominions including Canada.

We are in favour of a charter of rights, but do not favour unilateral imposition of such a charter in the face of strong opposition from a majority of the provinces and of Canadians. This indicates a denial of Canada's federal nature, since the provinces are partners in the Canadian federation. Therefore, work remains to be done to create a true consensus on a charter of rights so that it is accepted rather than imposed.

The best protection of fundamental rights and freedoms commences with the concept that rights originate with individuals and are not conferred upon people by the government. For a charter of rights to be successful and to command respect, it should reflect this basic principle. When a suitable and acceptable charter of rights can be arrived at, I feel such a charter should have a preamble which recognizes the supremacy of God, the essential worth of the human person and the special importance of the family in our society. These fundamental values were in the Diefenbaker Bill of Rights. We as Canadians should ensure that such stable institutions which helped build a strong Canada are included for all to see. I also