

*The Constitution*

Finally, I would like to deal with the legal and political justification for the process we are undertaking. The official opposition and some provinces say they support patriation, an amending formula and entrenched rights, but are opposed to the resolution because they say we should not approach the British parliament without the necessary support of the provinces. I have not heard any consistency in the speeches given by the opposition as to what that necessary support should be. Do they mean unanimous agreement of all the provinces, do they mean a majority of the provinces, or a consensus among the provinces based on population?

Because we do not have the support of all the provincial governments at present does not mean we do not have legislative support in all provinces. If we look at those who will vote for the resolution in this House, judging from the speeches that have been given there is support for the resolution in all provinces of Canada. Nine members of the NDP from British Columbia support the resolution, three from Saskatchewan and five from Manitoba, along with two Liberals, I understand one Conservative from Alberta, and a wide-ranging number from Ontario, Quebec and the Atlantic provinces. In addition to the official support of the federal government, there are two provincial governments supporting the resolution, including Ontario, the largest province. I want to make it clear that this is not a unilateral act. With that kind of support you cannot call it unilateralism. It is at least a troika and at best a quartet, perhaps a four-party initiative. You may accuse us of not having a majority of the provinces but it certainly is not a unilateral act.

With respect to the legality of the resolution, I want to repeat what many others have said, that all that is required to amend the Canadian Constitution is a joint resolution of the House of Commons and Senate. It is true that on many occasions the federal government consulted with the provinces and tried to get their agreement, and that sometimes they did not proceed without that agreement; but this was never the law and never became the law through custom or precedent. That has recently been decided by the Manitoba Court of Appeal and it is now before the courts in Quebec and Newfoundland.

Since 1867 there have been approximately 25 amendments to the BNA Act. In four of those amendments provincial consent was neither sought nor given. In three others the majority of provinces agreed but there was some significant provincial opposition. In two others there was a minority of provinces supporting the federal government. As far as I can see, in only three principal amendments were all the provinces behind the federal government, so the record is a very mixed one. It is clear, however, that the only legal requirement is a joint address of the Senate and House of Commons.

Now, the question remains whether a political, not a legal, requirement has developed over the years, or some kind of constitutional convention which demands the agreement of the federal government plus a number of provinces—and I say “plus a number” because it is so vague. If such a political requirement has developed, what is it? Is it that we must have unanimous agreement of all provinces? Must we have a

majority or some kind of consensus? If the political requirement that might have developed is that we need the agreement of all provinces, I say that is unreasonable and wrong and should be discarded. Even if it is that we should have a majority of the provinces, it is wrong, unreasonable and should be discarded, because it would mean that a majority of the provinces from one part of the country could override the interests of another part of the country. For example, all the provinces east of Manitoba could get together and outvote, by their majority, the provinces of the west; or the provinces of the extremities could get together and pass an amendment against the wishes of Quebec. That is wrong.

● (1550)

Consequently, we have adopted an amending formula which appeared to be the best of all those proposed in recent years. One might say that what we are trying to do is revolutionary. It may not be a bloody revolution. It may not be a legal revolution. But, in a sense, it could be a political revolution. I say “in a sense” because it might be argued that we are going ahead with this resolution despite the fact that we do not have a consensus or agreement among all the provinces.

If that is the case, it does not bother me, Mr. Speaker. Revolutions, quiet and unquiet ones, have been necessary in the past to advance independence, national unity and the protection of human rights. It was necessary in the United States in the eighteenth century. It was necessary in the United Kingdom in the seventeenth century. It was necessary in France in the eighteenth century. History has judged many of these revolutions to be beneficial and necessary.

I will say, and I am willing to bet, that history will judge that the provisions of this resolution, even if they are deemed to be a revolution contrary to a developed custom, will have been beneficial and necessary for Canada and for the long-term good of the Canadian people. I believe that within a few years there will be unanimous agreement among our people that it was a good thing to do and it was important that it be done.

**Mr. Mark Rose (Mission-Port Moody):** Mr. Speaker, I, too, am proud to join with my colleagues and participate in this historic debate. I am also pleased and proud to support the joint resolution which is before us, although I must admit that I feel somewhat intimidated because of the immensity and complexity of the legal, political and social questions with which we are dealing.

I have never been much of a constitutional buff, Mr. Speaker. Constitutions are such difficult, abstract things that I doubt if debating them will ever become a national pastime. Despite efforts of the official opposition and the provinces to hype this matter up, I get as many letters complaining about poor postal service as I do about the so-called constitutional controversy. That is not to say that constitutional questions are unimportant. They are incredibly important.

My constitutional experiences, first here in this House, later in Room 200 and now back again in this chamber, have taught