

The Constitution

credence to the argument that so long as the word "parliament" is used in the constitution, there you have the bill of rights—the bill of rights that is 1,000 years old.

The argument that somehow there is a split between entrenchment and common law is an artificial one. First of all, we find in the British North America Act the ancient rights arising throughout the centuries of common law. Second, when we wanted to deal with rights which were peculiar to the Canadian experience, we spelled them out in specific sections. We entrenched those as well.

Let me give some examples. Section 133 writes into the constitution language rights with respect to the French and English. Section 92(12) and section 93 deal with religious rights. Section 92(13) deals with property and civil rights. The civil code in Quebec is protected through exclusion by section 94. Democratic rights are also found in the British North America Act as is representation by population which is guaranteed by section 51. An independent judiciary is guaranteed by section 99. An annual session of parliament is guaranteed by section 20.

I cite those elements because it bothers me that somehow we have tried to divide ourselves on the question of whether we support the common law or support the courts, and entrenchment of rights into the constitution. The tradition of this country is that we do both and both are clearly important to us. The reason is that the principle of the protection of rights is always rooted in two important considerations: the first is equity and the second is security.

In the British North America Act we find the ancient language of the Quebec Act of 1774. At that time people talked about property and civil rights. That act is now 206 years of age but it guarantees freedom of religion, legal rights and property and civil rights. The same language was used in 1867 as was used in 1774. I emphasize those historical facts, Mr. Speaker, because they are a cut above the argument that what we are doing is making the constitution ours and making it work with some silly slogan.

The fifth and final principle is the principle of consent and consensus. Those who read the literature regarding the confederation debates and the whole process of confederation are struck by the fact that it was a process of people trying to organize something together in terms of the relationships between governments. They started off with more than 130 resolutions, reduced that number to 106 and then to 72. Finally, it was put into law. In the whole process, from Quebec to Charlottetown to London, they tried to find out not what divided them, but what they could agree on. That is very important because they were not only agreeing on the resolutions that went into the British North America Act; they were creating a unique political style and a unique political tradition, that is, the Canadian tradition.

We are the only country in the whole of North and South America, that did not experience a violent break with its past. We are the only country in North and South America in which there was no revolution to create a constitution under which we could live together. The tools of the Canadian constitution

were not guns, not lines drawn on a map, not division; the tools were toleration, civility and compromise. That gave us consensus, Mr. Speaker.

Some hon. Members: Hear, hear!

Mr. Crombie: The fundamental operating principle of this country is exactly that.

There have been many changes since 1867 but those five principles are bedrock. They are: first, the principle of national union; second, the principle of security of provincial powers; third, the principle of the parliamentary system; fourth, the principle of the protection of rights, and fifth, the principle of consent and consensus.

No constitutional change should pass this House that does not accord with those principles.

Some hon. Members: Hear, hear!

Mr. Crombie: I challenge anyone in this House, or indeed anyone who is interested in constitutional change, to say that those principles are not the principles that govern this country. They are the principles that govern this country. Let us measure them against the resolution from the government. First, let us get the question of patriation out of the road. There is no one in this country—other people have said it—who does not want to have the constitution brought back home. If hon. members would take a look at the book called "Constitutions of Nations," I borrowed from the Cabbagetown library, they will see that Canada does not appear in it. All kinds of other countries are mentioned. Here is Cyprus, for instance. But nothing on Canada. There is not a Canadian alive who does not want the constitution back home. The government in its resolution has capitalized on that feeling. What it has done is to give the impression that all it is about is bringing the constitution back home. But that is not what the government is about. Mr. Speaker, the people of Rosedale riding, and, increasingly, the people of Toronto are beginning to catch on to the game. They know there are far more serious things happening than simply bringing the constitution back home.

● (1640)

First, this resolution offends the second principle of the protection of the security of provincial powers. If one looks at the amending formula—and by the way, there are a number of options to choose from; there is one which provides an opportunity for every province to agree. If the government really wants to patriate the constitution, it can, and it knows it. But one would almost swear the proposal that has been used was designed to create division and discord. I tell hon. members to look at it. First, as I say, it offends the principle of the security of provincial powers because it is imposed. That is not the spirit of 1867. It is not agreed to by anybody, except one. It is imposed. That is the first reason we do not like the amending formula.

Second, it creates two classes of provinces in this country. Not one any more, but two. Most of all it affects the west. For