

*The Constitution*

Mr. Speaker, if only one or two provinces were opposing this proposal, we could at least argue over the legitimacy of the federal government's action. However, it is a fact that eight out of the ten provinces, representing a majority of Canadians, have publicly expressed their opposition to the federal proposal, and six of them are even protesting before the courts the constitutional legality of this resolution. Therefore, it is unfortunate that the government should resort to such an arbitrary process, especially in view of the fact, Mr. Speaker, that they cannot plead an election mandate, since the constitutional issue was noticeably overlooked during the last federal campaign, nor the referendum debate in Quebec, during which the issue of a unilateral patriation or the entrenchment of a charter of rights and freedoms was never mentioned, but rather a renewal of federalism designed to bring about a sharing of constitutional powers that would be more beneficial to Quebec.

Mr. Speaker, what should we conclude from all of this if not that this proposed resolution is both politically illegitimate and constitutionally very questionable? It is politically illegitimate because eight out of the ten provinces of Canada are opposed to it and the federal government was never given any specific mandate to that purpose, and constitutionally very questionable from a legal point of view, because it is contrary to the rule of unanimity which could be required to amend the sharing of the legislative powers or any other federating element of the Constitution of 1867, and especially because it goes against Section 91.1 of the British North American Act, which does not permit the federal Parliament, as stated in the opinion which the Supreme Court of Canada gave in 1980 concerning our Senate, and I quote:

—to amend in any way the provisions of Sections 91 and 92 concerning the distribution of legislative powers between the Canadian Parliament and the provincial legislatures.

Mr. Speaker, the proposed resolution being clearly questionable, to say the least, from a legal point of view, and its constitutionality running the very serious risk of being rejected by the Canadian courts, it is easily understood why the government will not only petition the British Parliament to transfer to the Canadian authorities the power to amend the Constitution, but will also insist that this foreign Parliament amend this same Constitution by entrenching into it a charter of rights and freedoms in spite of the opposition of a large majority of provinces. If it is true that it is legally necessary to forward an address to the British Parliament to obtain the patriation of our Constitution, it is not so in the case of the charter of rights and freedoms which does not need to be adopted by the parliament in London and which could simply be enacted as a Canadian statute.

What benefit is there in having the Charter of Rights and Freedoms included in the resolution which we will ask the British Parliament to adopt by way of a bill? What we should know, Mr. Speaker, is that in this way the government is

actually asking the parliament of Westminster to legalize something which could be illegal from the start and which could have been declared unconstitutional by our Canadian courts had the government not resorted to such an exceptional measure as having a bill passed by the British parliament.

● (1640)

In other words, Mr. Speaker, in acting as it does, the federal government is placing itself beyond the reach of Canadian court intervention and can, strictly speaking, plead unquestionable legality, since an act of the parliament in London, passed pursuant to the Statute of Westminster, could hardly be challenged in our courts. Appearing on January 8 last before the Special Joint Committee on the Constitution of Canada, the distinguished constitutional expert from Laval University, Mr. Gil Rémillard, whose opinion has indeed been used by some in support of the federal government view, summing up the matter of the legality of the proposed resolution, stated, and I quote:

In conclusion, it therefore seems to us that the Trudeau resolution could be declared illegal by our courts. That illegality could, however, become legal through the legislative intervention of the British parliament.

And he added this, which is of great interest, and I quote him once more:

However, the federative elements of that British act could be denied application to the provinces if the latter were to reject them.

Mr. Speaker, what is one to conclude from all that, if not that our political leaders, in their search for solutions to the problems of our society, tend to favour unduly and almost exclusively the legal aspect of things, with the ensuing danger of misleading us and locking us up in a perpetual deadlock? For in all probability, if the federal government persists in proceeding as it has until now by invoking, and rightly so, Mr. Speaker, the strict legality of the process, we will see for many years to come a federal-provincial legal guerrilla to which the governments will have to devote the better part of their energy at the expense of the solution of the social and economic problems of the Canadian people.

It is inevitable, of course, that the provinces should in turn also resort to legalism to oppose the application of that British act in its federative elements, and that they should also be, legally speaking, on firm ground, according to Professor Rémillard. Our political leaders would do well to ponder over this thought of the Soviet dissident Solzhenitsyn who in 1978 wrote in his book "The Decline of Courage," and I quote:

A society that is set on the rule of law without aiming at something higher makes little use of the highest faculties of man. The rule of law in itself is too cold and too formal an instrument to exercise a beneficial influence on society. When life is wholly permeated with legal decision, an atmosphere of moral mediocrity is then created which stifles the best inspirations of man. And in the face of the trying times ahead of us legal crutches will be of no avail to make people stand upright.

Mr. Speaker, it is a rather subtle move on the part of the present government to change the nature of our federal system