

*The Constitution*

more than the sum of its parts and the first principle was national unity.

I emphasize that it was a national union organized by Canadians. One of the things which bothered me about the advertising of my old friend, the Minister of State for Multiculturalism, was the assumption that somehow the confederation and constitution under which we have lived all these years was made by somebody other than Canadians. It not only offends me because it is wrong, but because it is not helpful. Most people do not understand their own history and if that history is distorted, then it hurts the chance of people understanding what the changes will mean to them.

In fact, there were only two changes to the constitution suggested by the British Parliament at the time. One dealt with the Senate and the other dealt with the name of Canada. The Fathers of Confederation wanted to call it the kingdom of Canada and the British felt that this would upset the Americans so they settled on "dominion".

The second principle is, in a sense, almost the reverse of the first because it dealt with an entirely different reality of Canada. Not only were we building a new nationality, but we were also making sure that the old allegiances were maintained and nurtured. That is why in section 92 of the British North America Act all the exclusive powers of the provinces are listed. The second principle is security of provincial powers. It is important that we recognize why the Fathers of Confederation went to that trouble. The regions and provinces in Canada have their own particular role to play. It is the sense of identity which is brought to the people living in those regions. I remember reading an essay some years ago by Northrop Frye who was looking at the mandate for the Canadian Broadcasting Corporation at the time. The CBC is charged with the responsibility of maintaining programs in order to further the unity and identity of Canada. Frye pointed out that for the most part unity and identity in Canada are different things, that unity, obviously, means central but identity is most often local.

Indeed, when it comes to the arts, culture, writing music, writing poetry or expression, there is something "vegetable" about it as Frye said. It needs a local environment in which to grow. That does not only apply to Canada. There are no "American writers"; there are writers from New England, writers from the south, writers from Manhattan and southern California. If one goes to Britain, the writers are either from South Wales or from some other section. Imagination about the kind of culture in which we live is rooted in the locality. Attention to the difference between these two principles is fundamental.

The third principle deals with parliamentary government. The preamble says we intend to organize in Canada a constitution similar in principle to that of the United Kingdom. People in those days knew what they meant when they said "united kingdom". If one looks at a book called "The Constitutions of Nations"—which, by the way, I picked up at the Cabbagetown library, one does not find Canada in there.

● (1630)

Under the heading "Constitutions of Nations", in the reference to the United Kingdom we find: Magna Carta, 1215; The Petition of Right, 1627; Bill of Rights, 1688; The Act of Settlement, 1700; Acts of Union, 1707; Parliament Act, 1911; Supreme Court of Judicature Act, 1925; and Statute of Westminster, 1931.

A number of others are also mentioned. When people at that time talked about the third principle, that being the parliamentary system or parliamentary government, they knew they were talking about self-government, free institutions and the Crown. That is what it meant to them.

Most important of all, what it meant to them concerned the common law. The best definition of what it meant to them that I know of is given by Dicey. He said that with the British, and indeed, with the British parliamentary system, the law of the constitution, the rules which in foreign countries naturally become part of the constitutional code, are not the source, but are the consequence of rights of individuals as defined and enforced by the courts.

What Dicey was saying—and it is very important—is that in the common law the constitution is not the source of rights; the constitution, in fact, is a consequence of those rights already existing. That means they cannot be taken away. We do not have to be beholden to a federal government to give us rights.

**Some hon. Members:** Hear, hear!

**Mr. Crombie:** The source of those rights is more than 1,000 years old; the source of those rights is something that can be recorded in a constitution. It galls me, Mr. Speaker, to hear people say that somehow a government is giving rights to the people. Governments do not do that; rights belong to people and they can either be protected or not protected. That is the significant difference.

The fourth principle has to do with the protection of rights. A moment ago I spoke of the way the common law was dealt with and the role it played in the parliamentary system. There has been a lot of discussion about whether it is better to have entrenched rights or common law rights. Personally I favour common law rights. Someone once said the choice is between judges and politicians, but someone wiser asked: which judge, which politician? There are some politicians that I would trust and others that I would not. I think it is important to recognize that in Canada we did not settle solely for the British system of common law, nor did we adopt only the civil code in the tradition of what was then the province of Quebec. In the old Canadian way, we used both.

The fourth principle, the principle of the protection of rights is done in two ways in this country, Mr. Speaker. First of all, it is done through the common law. The rights of Canadians in the common law are also entrenched, if you like, in the constitution—in the British North America Act itself.

I am not a lawyer, Mr. Speaker, but I would refer you to the Supreme Court Reports 1938 where a case involving the courts in Alberta is reported. In a statement, Chief Justice Duff gives