

Statute of Westminster—out of 22 of those amendments has the unanimous agreement of the provinces been asked for and obtained. They were in relation to the Unemployment Insurance Act, 1940; the Old Age Pension, 1951; retirement age of provincial superior court judges, 1960; and the addition of supplementary benefits to old age pensions in 1964. As I say, if one includes the Statute of Westminster, 1931, that is another precedent of consultation.

However, in all the other cases, that extensive consultation agreement did not take place. In 1907 amendments requested by the Canadian Parliament were consented to by all the provinces but British Columbia. The British North America Act of 1930 which transferred resources to the four western provinces had the consent of only those four provinces. The British North America Act of 1949 confirmed the terms of the union between Newfoundland and Canada, and it had the consent of that province only. None of the other constitutional amendments in 1868, 1871, 1875, 1886, 1893, 1895, 1915, 1916, 1927, 1946, 1949, and 1950 involved the securing of provincial consent, unanimous or otherwise.

In view of the historical record, it is very difficult to contend that the precedent has been established that unanimous consent, or even substantial consensus, is a requirement for triggering the legal process which is clearly within the authority of the British parliament to enact. However, it was not on that issue which the Leader of the Opposition essentially concentrated his remarks. What he referred to again and again as the preponderant aspect of his speech was the amending formula which is contained in section 42 of the proposed resolution. This he describes, for instance, as something that “breaks that partnership” which is the essence of the federal system. He went on to say, according to *Hansard* at page 3291:

—the central government would have the authority to deprive unilaterally—

And I stress that he uses the word “unilaterally”.

—the provinces of their powers . . . because this authority would not be limited, this central government could, if it chose to, deprive the provinces of all their powers for all time.

On page 3292 of *Hansard*, the opposition leader is reported as saying that section 42 is the:

—greatest menace to rights . . . this provision allows rights to be removed by referendum, and any day when there is a fever in this land against a particular group of people, against a particular group of rights, this government, by the power it seeks in section 42, could invoke that power to have a national referendum—

And he says that the government could hold that referendum any day. Again, on page 3295 of *Hansard* the Leader of the Opposition is reported as having referred to:

—the power to amend unilaterally the constitution by way of a referendum and in so doing going over the governments and the legislatures of the provinces.

Unfortunately, in his description to the House of this section, the Leader of the Opposition is guilty of both sins of commission and sins of omission. First of all, it is not accurate to describe section 42 as one which permits the Government of Canada to act unilaterally. Section 42 does not permit the government to act alone.

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Section 42 requires co-operation or support in one of two ways, either by the participation and support of the provinces on the basis of the Victoria formula, or on the basis of the support of the people of Canada. It certainly does not enable the Government of Canada to act without either the support of the provinces or the people of Canada. Clearly in his remarks to the House, the opposition leader—and I do not suggest that it was intentionally, but inadvertently—mischaracterized what is said in section 42.

He is also guilty of sins of omission. He not only describes inaccurately the requirement for consultation and acceptance either by the provinces or the people of the country, but he describes a national referendum as if it alone were the key to triggering the support for an amendment if an appeal were made to the people of Canada. Not once in his remarks did the Leader of the Opposition touch upon the fact that what is required is not simply, if there is to be a referendum asking for constitutional change, a national majority of support, but a majority of support in each of the four major regions of the country. We are not talking, as some readers of his remarks might gather, of a situation in which two or three regions of the country could come together and impose their will over a fourth region of the country, where a majority across the country might impose its will on a regional majority. Section 42 describes a rather complicated referendum procedure which requires that there be strong regional support in every region of the country if there is to be the use of this mechanism.

The third thing I would say about section 42 is that it is not an extraordinary and unusual provision. Upon occasion members opposite have somehow described it as a tyrannous mechanism. I find it very puzzling that democratically elected politicians would regard an appeal to the people as some tyrannous mechanism. It is the kind of approach which we find, for instance, in the United States federation. There it is possible to get support for constitutional amendments, not simply through the support of state legislatures, but also through the provisions for conventions which can take place so that the people themselves may directly participate in having that kind of constitutional change result.

Mr. Dick: That is misleading.

Mr. Roberts: The purpose of section 42, on which the Leader of the Opposition spent so much time, is to arrive at a mechanism by which, if there is a deadlock between the views of the national government and the views of the provincial government about what constitutional changes might be required, there is a mechanism for resolving that deadlock.

No longer, after the House presents these proposed constitutional changes to the British government to put before the British parliament, will we be in a situation in which, in dire emergencies, the British parliament would bail us out. There must be some way to solve the continuing conflict between provincial and federal governments on constitutional change. Surely, in a democratic country, the best way to resolve that conflict is through some form of appeal to the people of the country.