

The Constitution

"I said if we opened the constitution, it would be a can of worms and we were going to have more trouble than is obvious to those who are sailing into it with light hearts.

"I said we had more important things to do."

Constitutional reform is not an issue that is important to the people, but is a "good whipping boy for a lot of the nationalists," he said.

The Prime Minister now claims that we have worked hard for 53 years to get our constitution back, but that is what he was actually saying in those days. This is also reflected in *Hansard* for January 26, 1970, at page 2812. The Prime Minister said, and I quote:

I, personally, went on record as saying that of all the urgent problems facing Canada, in my view the constitution had lowest priority.

Today for the third time in history he invokes closure in this Parliament to make sure we do not have an opportunity to look at this, and he tries to wrap himself in the flag of patriotism by saying that he has been on this beat, or that there has been an ongoing debate for 53 years. If there has been, he has been on the wrong side of it.

● (1740)

Let us leave the sorry spectacle of what has been happening in the last few days and go on to the real problems with the constitution. We are in a debate on the constitution, and while we are being asked to vote on the patriation resolution, this almost mundane term, in fact, connotes far more. The resolution with which Parliament has been presented is, in fact, a fundamental constitutional assertion. It proposes a new amending formula, seeks to entrench certain linguistic and economic rights, and sets out certain rules within which Parliament will operate.

All of this should mean that we have gathered here for a profound and thoughtful debate, and yet there is a pervasive rancour in the House and in the proceedings here. It is with unhappiness that I contrast the spirit in the land today with George Brown's assessment of the original confederation debates. As you will recall, George Brown was the Liberal opposite number of John A. Macdonald in those days. George Brown said:

Have we not then, Mr. Speaker, great cause of thankfulness that we have found a better way for the solution of our troubles than that which has entailed in other countries such deplorable results? And should not every one of us endeavour to rise to the magnitude of the occasion, and earnestly seek to deal with this question to the end, in the same candid and conciliatory spirit in which, so far, it has been discussed?

I wish that today's national debate also displayed such a candid and conciliatory spirit. Yesterday we had the example of this party putting its policy on the line in the form of a motion in an opposition day, that the constitution be patriated at once and that it be subject from then on only to Canadian amendments, made in Canada for Canadians.

Where does this national rancour that I mentioned come from? I believe that the answer to that question lies here in what the House is being asked to pass. Parliament is not being requested to participate in the formation of federal proposals, nor is it being asked to decide upon an agreement worked out between Ottawa and the provinces. It is being told, instead, to

confirm an individual's ultimatum. This has caused the unease here as well as the evident concern displayed by many of the provinces.

The document with which we have been presented is not the product of confederal deliberations. Rather, while dealing with the federal nature of Canada, its genesis is clearly the almost solitary deliberations of this Liberal Prime Minister.

This fact concerns me for several reasons. First, this unilateral action to impose, in addition to a new amendment procedure, a bundle of other major changes to the constitutional order of this country, is being undertaken without the assent of the provinces. On this matter I will quote my leader, the Leader of the Opposition (Mr. Clark), who succinctly summarized the situation in his initial response to these proposals when he said of the Prime Minister:

He imposes a double standard for changing the constitution. For those changes he wants, Ottawa will act alone. For the changes that others might seek later, he requires unanimous consent for at least two years and then an unknown formula.

This flies in the face of this country's legal and constitutional practice and, indeed, takes on aspects usually seen only in a unitary state, not in a federation. On this matter I should like to quote A. V. Dicey from his "An Introduction to the Study of the Law of the Constitution." It reads as follows:

The law of the constitution must be either legally immutable, or else capable of being changed only by some authority above and beyond the ordinary legislative bodies, whether federal or state legislatures, existing under the constitution—

It is, at any rate, certain that whenever the founders of a federal government hold the maintenance of a federal system to be of primary importance, supreme legislative power cannot be safely vested in any legislature acting under the constitution. For so to vest legislative sovereignty would be inconsistent with the aim of federalism, namely, the permanent division between the spheres of the national government and of the several states.

I should like to quote again the Prime Minister from the *Debates* in 1976 when he was speaking to the House about the patriation of the constitution. He said:

It is for these reasons that I have raised the possibility that Parliament might seek to have "patriation" accomplished without provincial consent if that consent seems impossible to achieve. Clearly it would be a last resort and clearly it should not be on a basis that could affect the distribution of powers or the position of the provinces.

That is exactly the opposite of what he is doing today. He went on to say:

It must not provide any means by which Parliament could act unilaterally in future in any area where it cannot do so today since that would erode the essence of our federal system.

That is from page 12687 of *Hansard* of April 9, 1976. Yet is not this the precise effect of the resolution before us: to affect profoundly the nature of Canadian government as the result of unilateral action of just such an ordinary legislative body?

My second major concern with the form in which the constitutional changes are proposed lies in the procedures of its proposed passage through this House. It seems that the House is to be denied the right to make any substantive amendments to the Prime Minister's proposals. While not wishing to dwell overly on the specific defects of this legislation, does not section 41, for example, deserve being debated and voted upon, considering that it entirely removes one province from the