

## REFLECTIONS ON THE CANADIAN CONSTITUTION AFTER THE FIRST CENTURY\*

GERALD E. LE DAIN†

*Toronto*

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In so far as the constitution is to be blamed for the present crisis it is not so much because it has failed to work satisfactorily in a pragmatic way—indeed it has shown surprising powers of adaptation—but because it no longer gives expression and adequate scope for development to a meaningful national purpose or ideal. The concept of a *British* North America evolving slowly in the British fashion from colonial to independent status has never been replaced in our constitutional symbolism by an image that can attract and focus the energies of a modern North American people of ethnic diversity in the pursuit of a new ideal of national achievement. Specifically, we have not succeeded in the first hundred years in imparting a sufficient sense of reality to an ideal of national character and purpose with which French-speaking, as well as English-speaking Canadians, can identify in a manner which permits them full scope for self-realization. Is such an ideal possible, and if so, how should it be reflected in our constitutional arrangements? This, I believe, is the fundamental issue in the current constitutional debate. We are at a turning point when the question being asked with increasing insistence by French Canada is: Why should the French-speaking and English-speaking peoples of Canada continue to endure the difficulties and frustrations of trying to live together in close political association? Would we not derive as much mutual benefit from our bi-cultural character in a looser association that would permit us to pursue our respective purposes with more freedom and less waste of energy? This, I believe, is the question that French Canada is really asking with its suggestions for “special status” or associate statehood.

A new consensus concerning our national character and pur-

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†Gerald E. Le Dain, Q.C., Dean, Osgoode Hall School, Toronto.

pose is the necessary foundation for any meaningful consideration of constitutional ways and means. I think that consensus has to go not merely to the primary question of the proper relationship between the English-speaking and French-speaking peoples but to certain basic assumptions or principles of a general constitutional character which underly the democratic process in a federal state. These are the principle of majority rule, subject to certain agreed limitations for the protection of minority and individual rights; the necessary flexibility and capacity for adaptation to changing conditions which there must be in a federal constitution; and the necessary confidence and responsibility which must be given to an independent judiciary.

Is it possible to reach some new consensus on the proper relationship of the French Canadian people to the rest of Canada? French Canada is calling for "equality". What does this mean? It is both an individual and a collective claim. As an individual claim it is perhaps understandable enough: the French Canadian seeks equality of opportunity, and this necessarily and primarily implies for him, since he is committed by more than two centuries of struggle to the preservation of his language, the right to live and work in French without being handicapped. But there is also a collective claim on behalf of the French Canadian people. This is a claim for a certain political recognition by the rest of Canada. A political claim by the French Canadian people of Quebec to equal status with the rest of Canada is more difficult to comprehend. We must nevertheless try to understand the forces and reasons behind it.

I believe it is impossible to begin to understand the present constitutional tension in Canada unless one attempts to regard the problem of French Canadian cultural survival as it must appear to French Canadians. It is, first, necessary to accept the fact that it is too late for French Canada to renounce the struggle to preserve its language. It would have been easier for all of us had it chosen the path of assimilation but it did not do so, and it is understandable historically why it did not. A conquered people is bound, if it is given a chance, to cling to its language as part of its general instinct for self-preservation. It is quite a different thing for immigrants who enter a country voluntarily with the understanding that they will be obliged to learn another language. In the middle of the twentieth century French Canada finds itself irrevocably committed to attempting to work out its destiny in French. Yet it is a comparatively small community surrounded by a vast mass of

English-speaking North Americans with whom it is obliged to have daily intercourse in the English language. Is it any wonder that it is searching desperately, and in ways that may appear isolationist, to maximize its chances of cultural survival?

At the same time as they look out upon this menacing perspective of cultural encirclement French Canadians are profoundly dissatisfied with their relative position in the social and economic order. The French Canadian middle class does not feel that it has a proper share of power and influence, particularly in the world of business and finance. It certainly has a lot of political power in the province of Quebec, but its concentration on this kind of power has in some ways been a compensation for its lack of economic power. Perhaps it is putting it too strongly to characterize the present drive for self-determination as a search for power, but it is certainly a search for an enhanced sense of personal dignity. The French Canadian has been made to feel inferior. This is partly attributable to causes for which English-speaking Canada cannot honestly accept responsibility, but it is also attributable in significant measure to the formidable difficulty of trying to compete in another language and to an aspect of cultural prejudice—the unwillingness to entrust responsibility to a member of another cultural group on the general ground that one is not too sure about his outlook, judgment and reactions.

Now the response to this condition is to try to make of Quebec a cultural and economic citadel for the defense of French Canadian interests. What is sought is not merely a place which French Canadians can regard as their homeland but one which actively favours their development as a French-speaking people. For this reason Quebec seeks as much political or constitutional power as possible in order to influence conditions and events in such a manner as to open up an increasing measure of vocational opportunity for its people. The desire of Quebec for closer relations with other parts of the French speaking world springs from the need to give the French language and culture a modern, sustaining source of support and enrichment, particularly that which is required to make French a fully serviceable language in the world of technology and commerce.

The problem of Quebec leadership is to find the proper equilibrium between the status and power which Quebec requires to discharge these responsibilities to the French Canadian people and the effective relationship which it must maintain with the rest of Canada, and indeed North America, if it is not to destroy the very

basis of the material welfare which it seeks to distribute in more ample measure to its people. For one thing, I think, is clear: there can be no long term political stability in Quebec—no security for those who acquire new power and influence in a more autonomous Quebec—if the economic hopes of the people are deceived. The life of such leadership may be brilliant but it will be short.

A strong and vigorous Canada is essential to the economic welfare of Quebec. Moreover, I believe that the only hope for French Canadian cultural survival on the North American continent is that we persist with the effort to make Canada a truly bilingual country. French Canada cannot huddle self-protectively in Quebec and at the same time acquire the experience and perspective that is needed for the responsibility it seeks in the modern world. It must be able to move around in French in a larger North American setting. For all the cultural support which it understandably seeks from continental Europe, its destiny is North American. It desires a North American standard of life and for that it must adapt as effectively as possible to a North American way of life. Mobility is an important aspect of that life.

By the same token the rest of Canada needs Quebec. It needs her economically and it needs her for the cultural and intellectual stimulation she provides. A country needs challenge to realise its full potential. It needs some tough problems to wrestle with and ultimately solve. This is how it grows in skill and power and insight and richness of life. The bicultural tension in Canada is like the sand in the oyster. This is the answer to the question which was posed at the outset: Why should French-speaking and English-speaking Canadians continue to endure the frustrations and the difficulties of trying to live together in close political association? The answer is that they need each other, to preserve their identity and to realize their full potential as an independent people on the North American continent. The development of a truly bilingual society drawing from the rich heritage of the two great civilizations of the western world is the special destiny and enormously difficult task which history has committed to Canada. Success in this task will be its crowning achievement. We do not have the right to lay down this task, to turn aside from this challenge, after having lived with it for what in historical terms is really a comparatively short period of time. But we must work at it a good deal harder. We are only now beginning to tackle the problem in a serious way with provincial policies to provide education in the French language. This is the essential first step, for without it there is no possibility

of French Canadian mobility in Canada, which is the necessary condition both of French Canadian advancement in business and of the spread of bilingualism.

What we require now is a new declaration of our intent to make this a country in which a person can be at home anywhere in French as well as in English. Let us not involve ourselves in useless controversy over catch-phrases which raise a host of questions, ambiguities and anxieties. We should be able to find simple language expressive of our purpose to make this a truly bilingual country drawing on the cultural and intellectual resources of the French-speaking as well as the English-speaking world. How far this purpose should be reinforced by specific language guarantees in the constitution is a matter which requires careful consideration. We may expect the Royal Commission on Bilingualism and Biculturalism to come down with concrete proposals based on detailed study of social and demographic realities in Canada. These should serve as a basis for serious discussion. Let us make no mistake about it: the achievement of this purpose is going to take a long time. But I am convinced that if we can show signs of serious effort in the next few years in the key provinces of Quebec, Ontario, New Brunswick and Manitoba, not only in formal arrangements which will reflect the degree of our commitment, but in day-to-day effort on an individual basis, we shall have earned the moral right to ask French Canada to continue to struggle with the Canadian challenge.

At the same time as we require a new determination to make Canada a truly bilingual country we have need of an open-minded and flexible attitude towards proposals for fundamental revision of our federal relationships, however startling they may appear at first sight. All our constitutional assumptions are being challenged. Indeed, we are living a dramatic and strenuous moment of mutual confrontation by what James Conant has called the "Two Modes of Thought"—the theoretical-deductive and the empirical-inductive. These two approaches reflect the genius of the French-speaking and English-speaking worlds, and their combination and interaction in this country is what constitutes the promise of an intellectual stature and richness that will make all the struggle worthwhile. The French-speaking community is now throwing out large and sweeping ideas deduced from general principles that are said to be implicit in modern experience with a variety of federal relationships. French Canada is trying to find a theoretical or ideal accommodation between what it conceives to be its own

constitutional requirements for self-determination and what it assumes that English-speaking Canada considers to be the minimum degree of central government power required for a viable federal state. Although English-speaking Canada has said comparatively little so far, I would judge that it is by no means indifferent, but is reacting warily out of the traditional distrust of theoretical constructs and ideal blueprints in the field of government—an area in which its reliance on the pragmatic approach must be conceded to have met with an impressive measure of success. A typical reaction might be expected to be somewhat as follows: Why replace what we are familiar with and have learned to operate fairly well by something new, unknown and untried which is bound to give rise to a whole host of problems and difficulties to take the place of those we think we have resolved? Any federal relationship or political association, however attenuated, will have its particular difficulties and frustrations and will require a spirit of compromise and accommodation if it is to have any chance of success. If we cannot continue to apply this spirit successfully to our present relationship why should we think that we will be able to apply it to another?

There is a lot of force and utility in this insight as a cautionary and realistic check upon an excessive reliance on verbal formulae for the solution of difficulties which are inherent in human relations, but it is an attitude which must not harden into an unreasoning resistance to change. There come times in the lives of men and nations when the dislocations and stresses produced by the changing flux of forces to which we are subject outrun our power of improvised and pragmatic response, and a new synthesis and integration are required. I believe we are in such a time as this in Canada. Our response can be one of fear or it can be one of exhilaration and release of our creative energy. Personally, I find it exhilarating. I think it should be a ground for satisfaction that the French Canadian people is at last affirming itself with a full bodied desire to assume adult responsibility in a modern society. This desire for responsibility is a desire for self-development and self-realization. It is a desire to learn by doing. Canada will in the long run be the richer for this development.

At the same time it is a necessary aspect of this adulthood that we accept certain principles or rules of the game which are essential to the effective operation of our democratic political arrangements in a world of increasing interdependence. The first is that while we may establish our democratic institutions by an act of

contract, we must entrust their operation to the democratic principle of majority decision, subject, of course, to such limitations upon the expression of majority rule as are necessary for the protection of the fundamental rights and interests of minorities, as well as individuals. It is not the moral superiority so much as the practical efficacy of this rule which makes its acceptance essential. What this means is that we must not design political relationships which are calculated to produce deadlock or at least serious inhibition of decision. The second principle is that a constitution must be an organic and flexible instrument capable of adaptation to changing social and economic conditions. We cannot settle constitutional issues once and for all. We can alter the guidelines, the broad framework, the general distribution of power but we must leave scope through a reasonable amendment process and other devices of constitutional flexibility for necessary adjustments from time to time. This is in the interests of all parties. No order of government with a positive rather than a negative approach to its responsibilities will benefit in the long run from a static or rigid constitutionalism. The third principle is closely related to the second, if indeed it is not a corollary of it: we must be prepared to accord the necessary respect and confidence to our judges in their indispensable task of interpreting and applying the constitution, not as the representatives or delegates of any political order, but as an independent judiciary considering the interests and welfare of the country as a whole.