

Canada's Constitutional Situation

Some Personal thoughts about Canada's current constitutional situation.

(The following is from a representation by the author made to a parliamentary committee On A Renewed Canada, Dec. 1991)

Our ability to communicate, at best, is somewhat suspect; this despite all our fantastic communication technologies and our supposed better use of language. The truth is that when someone speaks, or writes, I cannot be sure that what I hear and understand is what the speaker is really trying to convey. This is especially true in emotive areas of discourse.

Also, it is well known that ten different people listening or viewing the same thing will, in all probability, have ten different interpretations of what they have experienced. This is exacerbated when the amount of information being conveyed is large.

Finally, when one is inundated with information as opinions and facts that cannot possibly be absorbed because of their quantity, one's built-in filters kick in. These filters are based on one's experiences and biases and they selectively choose what one hears and how it is deciphered. It is understandable.

Another reason for being pessimistic is that I strongly feel that radical changes are in order, changes that could sweep aside many of the long entrenched mechanisms and processes that have held sway over us all for so long. I will return to this. However, my years in the bureaucracy have impressed upon me one fundamental truism. There exists no person, and by extension, no institution anywhere that is willing to either self-destruct or radically modify itself, no matter that such action would be undeniably for the common good. This, I am afraid is part of the human condition.

In light of my rather cynical and pessimistic outlook, one might well ask what is my reason for putting forth my views. The answer is I strongly feel that anything I can do to preserve Canada is worthwhile. I do not know whether my words and ideas, in any measure, will contribute anything of value but they are the only things I have.

I am not a flag waving Canadian patriot. I appreciate, as Samuel Johnson did, "that patriotism is the last refuge of a scoundrel." I am not proud to be a Canadian. It was no achievement of mine. I am lucky to be a Canadian and I want to remain lucky. I feel that we live in the best country in the world and it is in my and our self-interest to do everything possible to preserve it.

I, as all of us, was not born with any more merit than any of the millions of starving, exploited, sick, and without hope humans living in some underdeveloped, tyrannical country. Our problems, are downright trivial compared to theirs. I often wonder why all the fuss and bother about our so called difficulties in light of the life and death issues facing so many in the world.

Yet we have problems, problems that are important to us and problems that we must face and resolve. These problems, which are most often the subject of public debate and or discussion and which are often expressed by terms such as: distinct society;

official bilingualism; multiculturalism; aboriginal rights; women's rights; minority rights; the charter of rights; the notwithstanding clause; the decentralization of power; property rights; social rights; environmental or ecological rights; the senate; etc.; are really symptoms of deeper problems that are rooted in history, a history that is not unique to Canada but to many other countries as well. I will return to this central idea of my presentation shortly. I would like to state, however, that the current climate in Canada affords us a singular opportunity to deal with these root problems in a pioneering fashion, well ahead of any other country.

Because I labelled most of the contemporary issues in the public eye as symptoms, does not mean that they should be ignored. In medical practice there are symptoms, such as a high fever, that if not dealt with, can kill. Thus for the short term it is often necessary to deal with symptoms, but for the long term, dealing solely with symptoms does next to nothing to remedy the basic problem.

Much as already been written and stated by others much wiser than I about most of the above-mentioned issues. Therefore I do not intend to deal with them in any specific fashion. There are some general beliefs I strongly feel should not be abrogated when these issues are being resolved. However I would respond in exactly the same manner Bertrand Russell once did when asked whether he was ready to die for his beliefs. He said, "Of course I am not willing to die for my beliefs. They might be wrong." Despite that, here are some of my more relevant beliefs.

1. I guess I could be called a civil libertarian. I firmly believe that individuals in any society should have as much freedom and power over their lives as possible and feasible always keeping in mind that the hungry, poor, sick and uneducated have very little power or freedom. Having said that, clearly, an individual must cede some of his or her power to family, community, place of work, municipality, province and country, however this should be done in a voluntary fashion and that those institutions holding any power granted to them collectively by the citizens should always be held accountable. This is the essence of a liberal democracy. The more power any institution has, the greater its potential for harmful and damaging acts. I do not trust any individual or any establishment that has power. In Canada, it appears that the repository of most of this power is the federal government. I tend to agree with H.L. Menken when he said, "Every decent person is ashamed of the government they live under."

Potentially, the greatest enemy of the people is government. I do not trust governments. I would prefer a more equitable distribution of power even if that meant some form of decentralization of our governmental apparatus. I favor a bottoms up approach instead of a top down approach to government. I favor national as opposed to federal policies.

2. Despite my belief in providing more power to the people by some form of decentralization no-one should be allowed to back off from any part of the Charter of Rights. There should be no provision in the constitution that provides even the remotest possibility of any government trampling on the basic rights of the citizenry. In keeping with this principle, I strongly urge that the notwithstanding clause be repealed.

As an aside, I would like to add, and with all due respect to any minority group in Canada, that I firmly maintain that no language

or culture is worth preserving if legislated coercion is required to achieve this. I do not believe that such draconian measures are necessary to preserve the French language and French-Canadian culture in Canada. I am firmly in favor of doing just about anything to preserve French Canada, short of coercion.

3. Again despite my belief that as many decisions as possible should be made at local and regional levels, if we are to have a country, there must be some glue that binds the country together. At the very least, there must be some national institutions that would assist in defining our country and how we are different from others and more importantly some national standards in areas such as education, the environment, safety, health, welfare, etc.

I consider the nub of the problem can be illustrated by posing the following question. What would a constitution of a developed country look like if it were being written for the first time in the here and now, instead of in a past time which was very different and in just about any way one can conceive of, much simpler? For example:

- I wonder if Americans would still include the right to bear arms.
- I wonder if some means of proportional representation to ensure that all identifiable groups have a voice in the halls of power, even to the extent of mandating a balance of representation of some sort between the sexes.
- I wonder if limiting the terms of elected representatives would be considered.
- I wonder if we would have a senate as currently assembled.
- I wonder, in light of Canada's current demographic makeup and geography, how many provinces and what sort of electoral map we would have.
- I wonder, in light of a much more informed and enlightened population, what mechanisms would be put in place to ensure that our elected officials are kept continuously accountable. Would there be an impeachment mechanism?
- I wonder if there would be built into the constitution provisions concerned with the environment, the ecology and the rights of fauna and flora.
- I wonder if there would be an attempt to more clearly enunciate the relative powers of management and labour so that a greater measure of responsible equity is apportioned.
- I wonder if corporate entities would continue to be treated before the law similarly to individuals.
- I wonder, in light of the revolutionary changes that have taken place in our economy, if a constitution could be structured to introduce a greater degree of economic stability and protection for us all.
- Finally, and perhaps most importantly, I wonder how the fantastic impacts of science and technology on our world and in our country, and the resultant changes of all types, (social, ethical, economic, industrial, intellectual, etc.), that are occurring at ever accelerating rates with all the attendant problems would be

dealt with. For example, much has been written about the need to overcome the interface problems between science and law. These problems are numerous and critical.

These are just a small sample of the problems that would have to be faced if a constitution were being written for the first time now. I do not pretend to have the answers. I do know that these and many others need to be considered now. The fact that our constitution is hopelessly outdated is, to me, the root problem facing any writers of a revised constitution.

To conclude, I would like to briefly address two problem areas and proffer some suggestions as to how they could be resolved. First, it was not that long ago that labour served two major economic functions. The first was its key role in producing wealth and the second was its much more contentious role in distributing it. It is becoming apparent that a major effect of many of the new technologies is to create more capital intensive industries to the detriment of those that were and are labour intensive. This is having a deleterious effect on how wealth is being distributed.

The economic disparities in our society appear to be growing through no fault of working people. I suggest that the role of government in stimulating economic growth, on the one hand, and more equitably distributing it should be embedded in a new constitution after much study and discussion.

The second has to do with how to make our government more accessible.

Responsible democratic government is the result of participation by a responsible and responsive citizenry. Until recent times the rate at which governments made decisions kept pace with the number of issues that arose between elections. Their number was reasonable and they were relatively simple compared to the complexity, range and depth of contemporary problems. If, in the past, government decisions did not reflect the collective views of the electorate across the country, the next election could and usually provided change.

Today, the number of diverse, critical and complicated issues that arise between elections is beyond the ken of most governments, especially those whose constitutional ways and means were formulated in a much simpler time. It is no longer acceptable for governments to make unilateral decisions in the time period between elections without being held accountable during that period and without on-going input from the citizenry. What is needed is a mechanism which provides pertinent information to the people at large, which allows them means of making their views known and which obliges their elected representatives to explain their views, intentions and voting records.

Such a mechanism could be labelled, "Electorate Assembly." It would be formed at the riding level through the offices of the MP. It would consist of non-partisan volunteers who would serve for a period of eight to nine months on a one term basis only. They could be selected by lottery.

Their principal function would be to continuously challenge and advise the MP. They would apprise themselves of upcoming issues through information provided by the MP's office, including the MP's voting record on each bill. Through discussions, consultations with resource experts, reflection, they would then strive to keep

the MP in touch with the will of the population he or she represents. One possible beneficial effect might be to reduce the partisan and somewhat destructive nature of our current political squabbles.

This idea of "Electorate Assemblies" arose in discussions with a small group of people in Ottawa who were trying to promote "conversations" between people across the country with an endeavor they had appropriately labelled "Conversations Canada."

Electorate Assemblies and Conversation Canada are ideas worth exploring because they are ideas whose time have come. They will work, if collectively, Canadians decide they wish to shape their destinies by making democracy really work.

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