

REQUIEM FOR THE BNAA

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TEXT OF AN ADDRESS BY
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Although I have ^{boldly} entitled my address
"Requiem for the British North America Act", please
Don't conclude that I am part of a plot to destroy the
1867 Constitution. I cannot be held responsible for its
death, anymore than I can be held responsible for the
death of the Fulton-Favreau Formula -- even though I did
make nearly fifty speeches on the subject.

Let's just say that I hoped, by using that
rather blunt title, to make a breach in the wall of a
certain intellectual conformism which hides today's real
problems. Too often, we persist in analysing these pro-
blems with notions and ideas that were valid a century
ago, despite the fact everything has changed in Canada
and the world. The use of outdated words is fogging the
realities of new situations.

My aim in coming here is not to expound
complicated and scholarly theories, but to discuss a few
simple facts. Don't facts speak louder than words?

Why has the Fulton-Favreau Formula hit a dead end? Mainly because it was based on a theory which was totally contrary to facts and the actual state of public opinion, especially in Québec.

Last August, I told the 34th Couchiching Conference that this amending formula would never be accepted by the population of Québec. If Mr. Lesage had been better attuned to the pulse of his compatriots, if he had better perceived their deep aspirations, he would never have pledged Québec's acceptance of the formula in the secrecy of a Federal-Provincial Conference and even less in official documents. He would have realized that it was impossible to keep such a promise.

How can we blame our compatriots in Ontario and the other provinces for misunderstanding what goes on in Québec when Mr. Lesage himself made such a botch of this problem?

To my mind, he just committed another major error by writing Mr. Pearson that he had postponed indefinitely the presentation of the formula to the Legislature. Instead, he should have admitted publicly that Québec does not want it and will never want it.

In acting this way, he dangerously impedes the coming of the day when we must attack our constitutional problems from the ground up.

Must I remind you that the population of Québec was not alone in its rejection of the formula. At least three federal parties, the Conservative Party, the New Democratic Party and the Creditistes have denounced it, although their motives were not necessarily the same. But, as leader of an exclusively Québec party, it is first the state of public opinion in my province that I want to help you understand.

First, I think it is important to make a clear distinction between the constitution itself and the constitutional authority. I know many, who like myself, do not want to see the B.N.A. Act repatriated at all. These people feel it is obsolete. However, I have never met anyone in Québec who opposes repatriation of constitutional powers.

To the contrary, everyone feels it is completely normal and necessary that since Canada is a sovereign country, it shall have the power to amend its own constitution on its own initiative or adopt a new

one without seeking the approval of an outside power. On this matter, I feel we are in agreement with the authors of the Fulton-Favreau Formula.

If we take this for granted, another question remains unanswered: who will have authority over this constitutional power, which many quite rightly want to see repatriated, here in Canada? Will it go from London to the Federal Government, or from London to all the Canadian governments? We say no. In a free and democratic country, the only source of constitutional power is the sovereign people. It is the people ^{who} ~~which~~, in the final analysis, have the power to give themselves the political institutions which suit them. They are sovereign.

In fact, what is a constitution? It is a body of rules written or oral, which is above governments, meaning that governments must obey the constitution like any private citizen.

And what is true for all democratic countries is even more true for a federation like Canada because it is essential in federalism that powers be divided between two levels of government. It is then

natural that there be above those two levels of government, a written constitution which each must respect and which, ultimately, must be interpreted by the courts.

Therefore, the moment that we agree to repatriate the constitutional authority to Canada, it is the Canadian people who become the sole constitutional authority. That does not mean, of course, that the people will draft it themselves. Usually, that task is put in the hands of a Constituent Assembly, formed of members holding a special mandate from the electorate for that purpose, and who will work with the help of specialists in constitutional law. In a true democracy, it is essential that such a project, once completed, be submitted for final approval, and the most usual way is generally by referendum. After that, the new constitution is officially enacted in the name of the people.

This is how have come into being most modern constitutions. And for those who are inclined to believe that constitutions are less important today than in the past, I shall remind them that never, at any period of the world's history, have there been so many new constitutions written than since the end of the last World War.

In fact, this is the natural consequence of a phenomenon^N which all recognize -- the acceleration of history. Constitutions are made for people -- people are not made for constitutions -- and when situations change, it is necessary ^tthat constitutions change as well.

That is the reason why amending procedures have become so important. They are today one of the fundamental elements of any constitution. Because they can either simplify or complicate the adaptation of political structures to new realities. The people are, therefore, rightly opposed to the imposition of an amending formula which has been conceived without them and against them, in the secrecy of hotel rooms, in the backrooms of a political party, or even in the secrecy of a federal-provincial conference. The people want to take part ⁱⁿ ~~to~~ these discussions since it is their duty to make final decisions regarding constitutional matters.

I don't know if it has been like this in most of Canada, but I must say that in Québec the Fulton-Favreau Formula has been widely discussed by the public. Mr. Lesage, who possesses -- and I am in a position to feel it -- a powerful propaganda machine, did everything he could ~~have~~ to make the people accept it. He was even

helped, particularly in the case of the University of Montreal's students, by his two best salesmen, René Lévesque and Pierre Laporte. If he finally backed down, it was because he understood that he could not get the people of Québec to accept the formula.

Why this unflinching opposition? It is very simple. Better informed than Mr. Lesage, the Laurendeau-Dunton Commission had previously noted in its preliminary report that it found no one in Québec in favor of the constitutional status quo. Being against the status quo, the population of Québec was bound to reject any amending formula which would perpetuate it. This would have been the formula's effect because Québec could not have obtained the amendments it seeks without the approval of at least seven other governments which are in a totally different situation.

In fact, -- and this is an important fact which no one must ever forget -- Québec assumes alone, toward the French cultural community, responsibilities which the ten other governments assume toward the English-canadian culture.

It has been said that the amending formula's rigidity was aimed at the preservation of acquired rights. But the Québec of today has more important preoccupations than preserving the past. The future is its greatest concern. As the homeland of a cultural community, Québec has wanted to keep the ways of constitutional evolution opened. And I for one believe that in acting that way, Québec has served the country as a whole.

Because, -- and this is another important fact that must be taken into consideration -- French-Canadians are not the only ones who reject the status quo.

You want it even less than we do and this is why the Federal Government, in response to the will of the English-Canadian majority, has intervened and continues to intervene in exclusively provincial jurisdictions. Sometimes it ^{has} used the method of constitutional amendments, but more often, it ^{has} used the less direct but very effective method of grants, joint programmes, agreements and arrangements which had the effect of casting the 1867 constitution aside.

For a long time in Québec, we have considered these extensions of Federal power as a violation of

the federative pact. But I must say that for the last few years, we have taken a more realistic view of such matters.

We realize that this continual centralization of powers takes place not only with the nine other provinces' consent, but at their request. *We are far from the time when* ~~It was not so long ago that~~ Ontario's prime minister, sir Oliver Mowatt, directed a movement for the defence of provincial autonomy and Nova Scotia threatened, as it did at the interprovincial conference of 1887, to withdraw from Confederation. All this is history. Why?

Because after a century of common existence in the Confederation framework, English-Canadians have become a more homogeneous nation, a nation on its way to unity. If in a general way, the English-speaking provinces want to maintain a certain autonomy, it is more for administrative efficiency than for cultural or national motives. They entrust Ottawa with the national destiny. The unification of the English-canadian nation *requires* ~~has led~~ the unification of political structures. ✓

And this is normal. For a long time, we opposed this movement, but not anymore, because we do not

feel like it, nor do we have the power to do so. For a long time, we stuck to the division of powers defined in the constitution of 1867 because it was the only way we had of preserving Québec's legislative and fiscal powers. Powers it needs in its role of guardian of a different culture. May be have we slowed down your movement, but we have never been able to stop it.

Do we have the right to impede that movement? Do we have the right to bind you by force to structures that you don't want anymore, and that were conceived a century ago for a Canada totally different from the one we live in? My answer is no! Even if, legally, we act according~~ly~~ to the constitution, I say we do not have the right to impede the normal evolution of the English-canadian nation.

There is no formula, no legal mechanism,
no constitution that can stand against the life of a
nation because a nation is a natural community. A nation has natural rights which supersede legal texts. And if the law contradicts human rights, we must change the law, not the men.

Such a spirit presides today in the evolution of international law. It is the honour of our era to have, for example in the United Nations Charter, recognized for every nation, even the smallest, the right to exist and even more important its right to self-determination, the right to be the master of its own destiny.

Has the recognition of that right been detrimental to the cause of peace and human brotherhood? Far from it. To associate with others, one has to be free to govern oneself. To go beyond nationalism, a nation must first live as a nation. World unity will not be achieved in spite of nations, but, as André Malraux said, it will be achieved from them and by them. The great human fraternity can only be based on respect for national liberties and legitimate aspirations.

So it must be for the Canadian fraternity. Because that right to self-determination that we concede to the English-Canadian nation, is a right that we want to see recognized ^{FOR} ~~to~~ the French-Canadian nation, which after four centuries of toil, of loyalty to its soul and ^{ITS ROOTS} ~~of rootedness~~ in this country, legitimately aspires to live and progress in accordance ^{WITH} ~~to~~ its own distinctive culture.

Unfortunately, the 1867 constitution, or the use we made of it, has become a hindrance to the normal evolution of the English-canadian nation; it has become an even greater hindrance to the normal evolution of the French-canadian nation. Each time that you agree ^{among} ~~between~~ yourselves to entrust Ottawa with more power in education, ^{al} cultural or social welfare fields, you contribute, at the same time, to depriving Québec of legislative powers it absolutely must have to fulfill its duty, as the principal homeland of a nation.

Or course, there is the opting out formula, but this device, even if it is necessary under the circumstances, leaves us with a mere ~~theoretical~~ ^{theoretical} freedom since it forces us, if we want to receive fiscal compensation, to reproduce in our own laws, the norms, conditions and priorities adopted by Ottawa to meet the majority's needs. As a consequence, even in fields more closely related to cultural life, we are governed more and more by Ottawa where we form a minority and less and less by Québec, where we form a majority. In other words, we have fewer means to guarantee our existence as a nation of French culture and language.

You could answer that Ottawa is not an enemy government and that we are represented in it by ministers and M.P.s. But, I remind you that up to the middle of the 19th century, you were a minority in this country. But, because you were already becoming a nation, you insisted on the right of self-government according ~~to~~ your aspirations and your particular culture. In 1791, when you were still a minority in this Colony, you asked for and obtained separation of Lower and Upper Canada with a distinctive government for each. In 1840, you demanded and obtained equal representation in the United-Canada Parliament, even if you were still a minority.

In other words, while you were a minority, you wanted, through constitutional arrangements, to be invested with rights at least equal to those of the majority. And rightly so. In a country composed of two national communities, the constitution is the necessary tool of equality.

But what is the situation today? Let's take a close look at the facts. For all practical reasons, the canadian constitution no longer exists because it has been re-arranged constantly, year after year, in the

secrecy of federal-provincial conferences. And, at these conferences, the French community has only one vote -- that of Québec.

Therefore, you must understand our concern. The guarantees given to us in 1867, because of our particular status, are no ~~more~~ ^{longer} valid. There is no ~~more~~ ^{longer any} constitutional stability, hence, no instrument of equality. All that remains is the conflict of two very unequal powers.

To maintain or obtain powers that Québec needs, we are forced to oppose centralization which is the natural path for English-Speaking provinces. And to express themselves as a nation though a strong, central government, English-Canadians are forced to oppose Québec's search for autonomy, which is its natural path.

All this springs from an obsolete constitution, which has become a straitjacket for both groups. And what is more, it tends to divide them instead of uniting them. It tends to make opponents when it should make allies. All these energies are wasted by both groups in lengthy conferences, to make arrangements unsatisfactory to all and which must be reconsidered again and again, don't you think that they could be used for more stirring

tasks such as the economic growth of Canada? That is why I said earlier that we must reconsider Canada's constitutional problem in its totality. Let the old constitution die in London since it satisfies no one and let's make the Canadian people the true constituent authority.

But, in order to avoid falling into the same trap, let us recognize from the beginning that the Canadian people is not homogeneous. Let's recognize the fact that it is composed of two linguistic and cultural communities. Let us recognize the fact that these two nations are not separated, not enemies, but so different that it is impossible to melt them down together in the same pot and pour them into the same constitutional mold.

Neither of these nations is solely characterized by the language it speaks, or its way of expressing itself, but also by its ^{"FAÇON D'ÊTRE"}~~means of expressing itself~~ ^{BY DISTINCTIVE}~~and distinguish~~ traits which are deeply embedded in its collective conscience.

Each one is animated by a common collective instinct, a common will to live and grow which no political impediment can break because these forces are natural.

The day we accept this fundamental dualism once and for all, it will be much easier to modify our political institutions. Together, we will be able to elaborate a new constitution which will be the instrument, not of a new separation, but, of a new equality and, thus, of a new alliance.

A constitution which will allow our two communities to team up towards a common purpose instead of leaving them in the perpetual and sterile tug-of-war position.

A constitution that will guarantee the personal rights of each Canadian citizen, through a charter of human rights, embodied in both the federal and provincial constitutions.

A constitution that will also guarantee both the rights of the English minority in Québec and the rights of the French minority in the other provinces.

A constitution that will allow both nations to develop to a full degree, according to the particularities of their respective cultures, while favouring togetherness within a common political framework in the pursuit of a common purpose.

This is a task we must undertake if we want to avoid a dislocation which inevitably will occur as a consequence of the opposing forces artificially locked into the constitutional status quo, a dislocation which would be obviously detrimental to both communities.

I am not saying that this will be an easy task: but I know of no challenge which would be more inspiring ^{more stimulating} and more creative.