

"AS I SEE IT, RENÉ ..." SAID SIR JOHN

DALE GIBSON

Perhaps it was a case of intellectual indigestion. A day and a half's discussions about Canada's constitutional future with a score of sophisticated constitutionalists would be enough to upset anybody's mental metabolism. Whatever the cause, as I sat contemplating the highlights of the constitutional symposium in the warm amber light of a single-malt scotch, I was visited by an extraordinary vision.

Across the room from me sat René Lévesque, in animated conversation with Sir John A. Macdonald. Both men seemed oblivious to my presence, though not to my bottle. They helped themselves liberally to the latter. It appeared that they'd been observing the same constitutional symposium from the vantage point of their present domicile (whether they'd been looking down or up on the proceedings was not clear), and they were now debating the topic of Canada's future themselves.

"As I see it, my dear Lévesque," said Sir John, "this alleged constitutional crisis is a tempest in a tea cup."

"On an eternal scale, Sir John, you may be right. By that measure, of course, even your own grand accomplishment of Canadian Confederation seems minor. (Macdonald winced.) On a more immediate scale, though, (Lévesque squinted to avoid a curl of smoke from the cigarette in the corner of his mouth) our former countrymen seem to have got themselves into a monumental fix."

"Oh tush!" the older man replied, "Canada's constitution is working perfectly well right now. You heard delegates from Québec admit that. In terms of getting things done on a day-to-day basis, the government of Québec is not experiencing significant difficulty. Those many informal arrangements they've worked out with the federal government over the years ensure that Québec has effective *de facto* control over most of the governmental sectors it needs to ensure the preservation and enhancement of what it calls its 'distinct society'".

Lévesque shook his head vigorously.

"There are still many matters that Québec considers to be federal intrusions into its constitutional autonomy", he said. "The use of the federal spending power in areas of provin-

cial jurisdiction, for example. And the fact that the Québec government and Québec laws are subject to the Canadian Charter of Rights and Freedoms."

"Granted," Macdonald acknowledged, "but those things can be worked out over time. Meanwhile, both federal and provincial governments are able to function quite effectively. It's nothing like the situation I faced in the early 1860's, when continuous political impasses made it next to impossible to get anything done. And on top of that, I had to face the constant threat of invasion from the United States. Now that was a real crisis!"

René Lévesque looked annoyed, but he took a deep draught of scotch and lit another cigarette before replying.

"Now look, Sir John. You were a practical politician — and a very subtle one at that. You know very well that voters don't know much, or care much, about the day-to-day operations of the governmental apparatus. What counts with voters is appearance, symbolism, regional pride: things they can debate over a beer; things that stir their emotions."

"I don't deny that."

"Those things — symbolic things — are what the present Canadian crisis is all about. In 1982, Québecers were forced into constitutional changes they didn't agree with: the Charter of Rights, an amending formula that allows constitutional changes to be made without Québec's consent, and so on. These things were agreed upon in the middle of the night by representatives of every government except Québec. They were decided — literally, and deliberately — while I and my colleagues slept."

Macdonald smiled a little crookedly.

"Yes", he remarked. "I recall watching that little double-cross by the Trudeau government, and wondering how Mr. Trudeau reconciled it with his vision of a 'Just Society'. But you cannot tell me with a straight face, my dear friend, that you would have agreed to the 1982 amendments even if you had been at

that all night meeting."

Lévêque smiled a little sheepishly and shrugged: "Be that as it may, we were not even given an opportunity to participate, and Québécois are still very angry about that insult."

"As I understand it", Sir John observed, "the Meech Lake Accord was intended to make amends for the insult."

"Yeah, and look what happened to that: it was rejected by the rest of the country! My province was repudiated once again. Well that's it! Québécois can only take so much! They now know it's true what I and the Parti Québécois tried to tell them: if they want to be treated with dignity, they must first assert their sovereignty. This they are about to do, and this is what has led to the present crisis. (Lévêque's face, always animated, twitched so vigorously that his cigarette waggled.) It's not a 'crisis' in Québec, by the way. Québécois are calm about what needs to be done — serene, in fact. It's the rest of Canada that is panicking."

Now it was Sir John's turn to pause. After refilling his glass from my diminishing supply, he watched the smoke spiral from his friend's cigarette for a moment or two, and then spoke reflectively.

"Yes. I suppose all those royal commissions and legislative inquiries and constitutional task forces that are chasing their respective tails all over the country are an indication of the panic. And academic symposia like this one we've been watching today."

He ran a hand through his grizzled hair.

"What do you think is going to happen, René?", he asked. "Separation?"

"I urgently hope so, Sir John. Not total separation, mind you — sovereignty association. After Québec's sovereignty has been recognized, I'm sure there will be bilateral negotiations, which I believe will result in some kind of future association — as the Allaire and Bélanger-Campeau reports contemplate."

"You know," Macdonald said with a frown, "I think you are under-estimating the ease with which those arrangements could be made. The high degree of informal devolution — *de facto*

autonomy — that Québec has experienced in recent years has been the result, in part, at least, of a certain political imperative. Because there was no alternative, politicians at both levels had to find ways to make the *status quo* work. And they did. That political imperative will disappear if Québec becomes sovereign. There simply may not be sufficient political will left among federal politicians — or those from the other provinces — to forge a new relationship with an independent Québec. The possibility of northern North American unity having disappeared, Canadian politicians might see much greater advantage on concentrating their efforts on unifying the remaining parts, or (God forbid) on union with the United States, than on exploring new forms of association with Québec."

"That," said Lévêque with another shrug, "is admittedly a danger. There is also a danger, I can't deny, that the voters of Québec might lose their nerve again, as they did in the 1980 referendum, and vote to remain as a part of Canada."

"You think that is possible?"

"I certainly hope it doesn't occur, but I've always been a realist, Sir John — like yourself — and I recognize that it would still be possible for the federalists, if they made the right moves, to persuade Québécois to stay. Fear of the unknown is a powerful force for stability, and skilful politicians could exploit the uncertainties about Québec's ability to survive, culturally and economically, on its own."

"But what about that sense of ruptured pride you spoke about a moment ago? Anger breeds courage."

"Quite so, Sir John. If there is to be a *rap-prochement*, the federalists will have to remove or soften that anger. This they can do, I believe, with a new set of proposals, if they are generous enough."

"Along the lines of the Meech Lake Accord, but broader?"

"Much broader," Lévêque agreed.

"What could be added to the Meech proposal that would overcome Québec's anger and yet be acceptable in the rest of the country?"

Lévêque scratched his nose with the bottom of his glass.

"There are many possibilities. What would be essential, whatever the other details might be, would be a willingness by the rest of Canada to accept a distinct constitutional status for Québec — to agree that Québec must have certain powers or rights that other provinces do not have. Unless the federalists are willing to agree openly to that approach I don't think they'll be able to stop sovereignty association, since many of the things that Québec needs or wants would not be suitable for other provinces."

"There would be mountainous opposition to that approach in the rest of Canada," Macdonald objected. "As we heard at the constitutional symposium, the notion of 'asymmetrical federalism' is very unpopular."

"Now really, Sir John," blurted Lévêque, more than a little testily. "Canadian federalism has been asymmetrical from the beginning; you designed it that way! Look at the constitutional protections for separate denominational schools, for instance. They're different in almost every province. And the language protections ..."

It was now the old man's turn to be annoyed.

"I didn't say that I would object to that solution. I've been a pragmatist much too long to worry about a mere lack of symmetry. My point, my dear fellow, was that the voters outside Québec, who don't know anything about the misshapen constitution that already exists, would consider any new special concessions to Québec as a sell-out, and resist them at all costs."

"Perhaps they will — I hope they will," Lévêque grinned. "If so, sovereignty association will be assured, since English Canada must accept either this kind of 'sell-out' or a pull-out of Québec from the country."

Sir John nodded.

"That's really the point isn't it?" he asked, "Canadians outside Québec must understand — and soon — that there is a hard choice to be made. Either the seriousness of Québec's demands must be recognized and responded to in ways that will perhaps not be appropriate for

other provinces, or Québec will cease to be a province altogether."

"That may be true, Sir John", said a new voice, a rather scholarly one, from a dark corner of the room. "But it cannot be phrased in that way."

The other men turned in surprise, and were joined by a magisterial figure whom I recognized as former Chief Justice of Canada Bora Laskin. With a toss of his leonine mane, Laskin continued.

"If Canadians are asked to choose between a sell-out and a pull-out they will unquestionably opt for the latter. What is needed, in my estimation, is a massive pedagogical exercise aimed at educating non-Québecers to accept that asymmetrical federalism is not evil, but that it could, on the contrary, be a positive boon, both directly and instrumentally."

Lévêque smiled.

"Do you really think that the ordinary anglophone voter — watching television with a beer-can in his hand — would be persuaded by that kind of message? You were a great judge, my friend, but with great respect (as you lawyers are always saying) you would have been an even better judge if you had used less ponderous language."

An irked frown passed across the face of the Chief Justice, swiftly followed by a generous smile.

"Anyone who could persuade voters to take an expression like 'sovereignty association' seriously is clearly my master in that department. We do seem to agree, though, that Canada can't be kept whole much longer unless non-Québecers can be persuaded that a Canadian Québec will have to be a Québec which is more constitutionally distinctive, at least in the formal sense, than it now is. What are you fellows drinking, by the way?"

The remains of my scotch splashed into the newcomer's glass. He swirled it, inhaled appreciatively, sipped, smiled, and continued:

"In the long run, you know, it is probably fortuitous that things have reached this impasse."

"How so?" asked Sir John Macdonald.

"Well," said Laskin, "the impasse creates an occasion for Canadians to examine and to agree upon essentials — to reach some consensus on the values they collectively cherish ..."

"Values?" asked Lévêque, somewhat dubiously.

"Basic values," the Chief Justice replied, "What the country is all about, what Canadians consider important: democracy, tolerance, the parliamentary system, the marriage of French and English traditions, the unique status of the aboriginal population, multiculturalism, and so on. Once agreement has been reached about those basics, they can be entrenched in the Constitution as a kind of foundation, and the rest of the document will grow logically from them."

"Rubbish!" lisped a new voice from the shadows, "You always were too much the academic, Bora!"

A smiling man wearing a bow-tie emerged from the corner of the room: unmistakably Lester Pearson. In his hand was what appeared to be my auxiliary bottle of extra-old Glen Morangie. He must have brought it from the kitchen. I'd been saving it for a special occasion; but I suppose this was one.

The Chief Justice made room on the sofa for the genial new arrival before addressing him in a tone of mock injury.

"What does my once having been an academic have to do with my views about Canada's future?"

"You professors," said Pearson with a twinkle, "think that constitutions should be built like cathedrals according to some grand over-arching design. Politicians know that they're much more like shanty-towns, thrown up in haste to meet pressing needs, and patched or added to as more immediate demands arise."

"Perhaps you're right about politicians," Laskin responded, "but any constituent assembly that's convened to formulate a new constitution for Canada will be bound to include many delegates who are not politicians. They're the ones most likely to demand a statement of fundamental values."

Lester Pearson smiled sadly. "Constituent assembly? You should know better than that, Bora old man. Surely you don't think that any government — federal or provincial — is going to relinquish control over the shape of Canada's future constitution to a yabber of amateurs. At most, they might call upon token representatives of various community groups to offer 'advice', or to rubber-stamp the final product. Frankly, though, I'm not even sure about that; I think a referendum is the most likely device for achieving democratic approval for that which will have been hammered out in what used to be smoky rooms until the clean-air folks took over. Fundamental values will find their way into the Constitution, if at all, as decorative flourishes in meaningless preambles and the like."

"Like the bright coloured paint on low-cost shanties," Lévêque chuckled.

When Macdonald also nodded in agreement, Chief Justice Laskin threw up his hands in good-natured surrender.

"All right, all right" he said "let's take the pragmatic approach, then — the shanty-town approach. Let's see if we can at least agree about which shanties need to be renovated in order to prevent either a conflagration or a mass population exodus."

"That's the spirit," cried Sir John, recharging their glasses all round. His voice was beginning to thicken. "Let's see. One of the first essentials seems to be the matter we were discussing when you came along, Chief Justice: an open acknowledgement by the rest of Canada that Québec really is distinct, and requires certain new constitutional provisions that may be inappropriate for other provinces."

"Such as the right to veto future constitutional changes", suggested Lévêque.

"Not every change, surely?" asked Pearson with a frown, "surely just those amendments having special significance for Québec: those which would affect the preservation or enhancement of the franco-Québec culture. Could these items not be listed, and subjected to a special amendment process? Or perhaps it would be better to entrench a general principle that Québec may veto amendments that would affect its cultural distinctiveness?"

René Lévesque looked wary: "Maybe it would be possible to find words to limit Québec's veto power, but it would not be easy, since almost everything has cultural significance: certainly education, radio and television, but also such matters as family allowances, the federal spending power, and certainly the Charter. It would be much simpler just to let Québec go rather than try to concoct some complicated veto provision like that."

Pearson spoke up: "Perhaps not. Let's assume for the sake of discussion that the lawyers will be able to come up with suitable language if the politicians can agree on what they want. If we were still in charge of things I suspect that we'd be able to reach agreement."

"But we've been mellowed by our current situation, Pearson," said Sir John with a leer. "Just look at our friend Lévesque here, for example. Can you picture him calmly discussing with his political opponents the ways in which sovereignty association might be avoided if he were still terrestrially rooted? (He had trouble articulating 'terrestrially'). Death brings a perspective rarely attained by those who are in the throes of active politics."

Pearson disagreed: "You were born mellow, Sir John — you and René. (The latter smiled innocently.) In any case, you were both very pragmatic politicians, as was I — and as the political leaders of today still are. You don't have to be dead to recognize the virtues of compromise. If we can find a *via media* among ourselves, I'm confident that terrestrial politicians could do so as well."

"But can we?" asked the Chief Justice.

Pearson nodded. "Perhaps so. We seem already to be agreed that avoiding Québec separation will require both a recognition of its distinctiveness and some form of at least partial constitutional veto for Québec. What other matters do we consider to be *sine qua non* to reconciliation?"

Lévesque spoke up: "As I said before, the Charter is a serious problem. Many Québécois see the federal Charter as an invitation to the courts to destroy the French culture in the name of individual rights. For them that's unacceptable."

"It is not a federal Charter!" objected Chief Justice Laskin. "It's an all-Canadian Charter, applicable to the governments and laws of all provinces, as well as to federal laws and authorities."

"I understand that," said Lévesque, "but the fact remains that some of Québec's language laws were struck down by the Courts because of the Canadian Charter, and many Québécois are angry about that. The Charter has to go!"

"Just a second," offered Lester Pearson, somewhat sibilantly. "I understand that governments can opt out of most Charter provisions, but not those related to language. So perhaps our problem could be solved by simply extending the opt-out feature of the Charter to apply to language rights in the same way that it now applies to other rights."

The Chief Justice looked troubled.

"I'd hate to see that," he said. "The Charter is so important a bastion of individual freedom."

"Bora," said Pearson, with a trace of impatience, "most parts of the Charter can already be opted out of. Besides, I thought you agreed a few minutes ago that we are not trying to erect grand edifices here; we're just trying to find short-term ways of staving off constitutional calamity."

Turning to the others, he asked: "What else would be needed?"

Lévesque listed several: greater Québec control over electronic communications; formalization of Québec's jurisdiction over immigration and of the various other *de facto* forms of governmental devolution to Québec that now exist; a rejection of the federal spending power in certain areas of provincial jurisdiction; and perhaps the abolition of Québec's constitutional obligation to be bilingual.

"Is that all?" asked Laskin with more than a trace of sarcasm.

"Probably not," Lévesque replied, ignoring the Chief Justice's tone, "There are many other things that might also be demanded. It all depends on how anxious the Québec and federal governments are to reach a deal, and how far their respective electorates will allow them to go. If I were still in charge of the

Québec government I'd demand very much, since I'd personally prefer to see a clean break anyway. I fear, though, that the present Québec government is afraid of a clean break. So I think that a deal may be possible. I don't know how many concessions it will take, since I can't read the mind of Robert Bourassa. What I can predict is that there will not be a deal unless the rest of the country is willing to recognize some kind of special constitutional status for Québec. Without that, Parizeau and his Parti-Québécois friends — my friends — will win!"

Lester Pearson, looking more serious than he had until now, remarked that there was another reason why the separatist forces might be victorious:

"The exasperation factor: everybody's wish to get on with other things. The economy is stumbling, health care is dilapidated, unemployment is scandalous, environmental problems cry out for attention, and politicians continue to fixate on constitutional questions. It seems to me that voters both inside and outside Québec may soon be in a mood to grasp at whatever constitutional solution is closest at hand in order to free their political leaders to move on to what they consider more pertinent questions. And the easiest constitutional solution in the short run would be outright separation for Québec. If that happened, I doubt that there would be much political will outside Québec to talk about some new form of association for many years to come."

Sir John A. Macdonald, who had been quietly attentive during most of the foregoing discussion, cleared his throat and asked:

"Aren't we forgetting something else, too? (His diction was quite thick with whiskey by now, but his thoughts were clear enough.) Even if the politicians somehow overcome this exasperation factor and arrive at a consensus about constitutional revisions that would avoid separation, they might not be able to sell the proposal to the electorate. Don't forget that the politicians already agreed amongst themselves on a package of practical amendments like these in their Meech Lake Accord. But the Meech Accord died. And its death was attributable in part to its failure to deal with certain extraneous matters — aboriginal rights, for example. Is it not likely that any new agreement would again be derailed by some new

Elijah Harper?"

"Yes, indeed," Pearson agreed, "unless the package includes something that will satisfy those interests. Current public opinion seems to support the demand of native groups for explicit constitutional recognition of the right of aboriginal self-government, so I would expect that to be a part of any new agreement, even though it will probably be restricted to a some vague declaration, rather than a precise legal devolution of governmental authority."

"And even though," added Laskin acidly, "there is no logical linkage between the Québec question and the aboriginal question!"

"Now, now, Mr. Chief Justice," said Sir John, "life is not entirely a product of logic. Politics is not logical, but it can produce happy results. (He stood, somewhat unsteadily, and reached once more for the bottle.) Scotch whiskey is not logical, either, but it ... oops!"

He accidentally knocked over the whiskey bottle, which disgorged its remaining contents into René Lévesque's lap.

"Son-of-a-Meech!" Lévesque muttered, as the others collapsed in laughter.

And suddenly I was alone. On the table before me were two empty bottles, one on its side. From the carpet rose the reek of wasted malt nectar. "Could I have drunk all that myself?" I wondered. It wasn't altogether clear just how much "all that" was, since it was difficult to judge how much had been spilled. I certainly felt rather light-headed, but constitutional reform is rather dizzying stuff, after all.

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