

**S**peech by Paul Gérin-Lajoie, Vice-President of the Québec Executive Council and Minister of Education, to the Members of the Montréal Consular Corps, Montréal, April 12, 1965.

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Without doubt, this is the first time that a member of the Quebec Government has been official host to the Montreal Consular Corps, the largest in all Canada.

I shall not try to conceal the personal pleasure which I feel. In my capacity as Vice-President of the Quebec Executive Council, I might add that I interpret the honour which you are conferring upon me, today, as a measure of your interest in the evolution of our federated state—the State of Quebec.

You constitute, in our area, a society of high distinction which assures among us the presence of friendly governments. Doubtless, you exercise your functions by virtue of the Federal Government's authorization; but, in certain respects, you are closer to the Quebec authorities than to those which have accredited you to act in your official capacity.

Actually, not only is the jurisdiction of a majority among you limited to districts which are entirely contained within Quebec territorial boundaries but, also, your jurisdiction has to do in a large measure with areas of responsibility falling strictly within the competence of our federated state.

According to the latest Vienna Convention (Article 5, paragraph b), consular functions consist in encouraging the development of commercial, economic, cultural and scientific relations between the state represented and the state of residence. Again, in the case of those of you who exercise your jurisdiction here, the state of residence is easily identified; it is Quebec.

Further, the same convention states that your functions entitle you, among other things, to act in the capacity of notary and registrar, to safeguard the interests of minors and the incapacitated, originating in the state you represent, and to transmit judicial and extrajudicial documents, or to execute rogatory commissions. Conversely, according to the convention, these offices can be discharged only to the extent that they are permissible under the laws and regulations of the state of residence.

Actually, a number of the most important aspects of your mandate in Canada apply to areas of strictly provincial competence and thus create between the governments of the federated states and yourselves, actual ties which our own Government, for its part, recognizes in entirety. As an example, I might refer to the existence, since 1961, of an Order-in-Council (No. 2012), which, by virtue of reciprocity, gives many privileges of a fiscal nature, such as exemptions from income taxes and succession duties, to career consuls stationed in Quebec.

Furthermore, Quebec itself possesses an embryonic foreign consular service in the persons of the delegates-general who represent it and exercise functions which are very often analogous to your own. In two cities—London and Paris—the Quebec delegates-general benefit in practice from the immunities and privileges which through law and custom are habitually extended to consular officials. It is thus the intention of our Government to propose, to the states concerned, a reciprocity of treatment similar to that, by virtue of the order-in-council to which I referred above, which is now enjoyed by career consuls exercising their functions in Quebec.

Quebec is not sovereign in all domains: it is a member of a federation. But, from a political point of view, it constitutes a state. It possesses all the characteristics of

a state: territory, population, autonomous government. Beyond this, it is the political expression of a people distinguished, in a number of ways, from the English-language communities inhabiting North America.

Quebec has its own vocation on this continent. As the most populous of French-language communities, outside France, French Canada belongs to a cultural universe having its axis in Europe and not in America. By virtue of this fact, Quebec is more than a simple, federated state among other federated states. It is the political instrument of a cultural group, distinct and unique in all of North America.

During the past few years, Quebec society has been transformed to a degree that, even yesterday, no one would have thought possible. Filled with a new spirit and superabundant energy, this society, predominantly French in language and culture, knows that from now on the realization of its own ends and aspirations lies within its reach.

On every side, Quebec is breaking out of its traditional structures and is on the march toward a destiny in keeping with its own individual characteristics. In every field of activity, the Quebecer has thrown himself furiously into action; he recognizes that the concept of a particular destiny pre-supposes the existence of material and constitutional means for the attainment of this destiny. This collective attainment of maturity that Quebec society is experiencing is paralleled by an individual maturity of its citizens. The Quebecer has assumed his responsibilities and has taken his fate within his own hands.

The economy, natural resources, education, community and social organization, have been the main fields of action of the new Quebec citizen. I shall note simply by way of landmarks the creation of the Departments of Education, of Natural Resources, and of Cultural Affairs, the

setting up of the General Finance Corporation, the nationalization of electricity, the approaching creation of a siderurgical complex, of a universal pension plan and its investment fund which will soon be a reality, along with the introduction of hospitalization insurance as a forerunner to a complete system of sickness insurance.

At the same time, by virtue of its energy and enthusiasm, Quebec has greatly changed the Canadian political balance. For example, since 1960, numerous inter-provincial conferences and federal-provincial conferences have played a major role in the evolution of the balance of power; these have given Quebec an occasion to prove that the goals, the aspirations and the priorities which it has set do not always necessarily coincide with the goals, the aspirations and the priorities of other regions in our country.

I would like to refer to an example which touches you very closely. At Paris, a little more than a month ago, I signed an agreement on educational matters with representatives of the Government of the French Republic. Since that time, this agreement has been the subject of great interest and numerous commentators have professed astonishment at the "precedent" which it represented in matters diplomatic and constitutional. Actually, this event specifically demonstrated Quebec's determination to take its rightful place in the contemporary world and to provide, in external as well as internal affairs, all the means necessary for the realization of the aspirations of the society for which it stands.

This sudden ebullition in Quebec, this impulse toward the future, this awakening of collective conscience—outside observers have called it "the quiet revolution." A revolution less quiet than its name; above all, a revolution in comportment and, by this token, a profound and irreversible revolution.

Should this social revolution necessarily be paralleled by a revolution in the constitutional field? It has become evident that the division of tasks, established during the last century between the federal and the federated states, is no longer satisfactory, at least for Quebec. It has also become evident that the people of Quebec feel hemmed in by century old constitutional limitations, the interpretation of which often lags behind the facts.

As you know, a Quebec parliamentary commission is currently engaged in a study of the new needs of our federated state and will bring in recommendations to the Legislature with reference to constitutional amendments which it deems indispensable to the growth and development of Quebec's society. Already, there are areas in this subject on which unanimity seems to be emerging.

It must not be thought, however, that any evolution is impossible until such time as the necessary constitutional changes have been determined. Careful note should be taken that the constitution which Canada was given in 1867—and which has been tested on numerous occasions in the courts since that time—assigns to Canadian provinces the status of states fully and absolutely sovereign in certain definite domains.

In support of my thesis, I shall cite the following extract from a judgment by the Privy Council handed down in 1883:

*"These (the provinces) are in no way the delegates of the Imperial Parliament, nor do they act by virtue of any mandate received from the latter. In decreeing that Ontario had a right to a legislature and that it rested with its legislative assembly to adopt the laws for the province and for provincial purposes relative to the subjects*

*mentioned in Article 92, the British North American Act conferred upon it not such, powers as might be proper for it to exercise by delegation, or as agent of the Imperial Parliament, but as complete and broad an authority, within the limits prescribed by Article 92, as the Imperial Parliament in the fullness of its attributes, possessed and had the power to confer. Within the limits of the above-named subjects, the local legislature exercises a sovereign power and possesses the same authority as the Imperial Parliament or the Dominion Parliament would have under analogous circumstances..."\**

In other words, the surging activity manifested by the State of Quebec during the past five years in areas untouched up to that time, should not in any way seem revolutionary from a constitutional point of view.

Actually, Quebec is only using the powers which it possesses. I would go as far as to say that Quebec is only beginning to make full use of the powers which it possesses. The fact that it has neglected to use these powers in the past, does not mean that they have ceased to exist. In all the domains which are completely or partially within its competence, Quebec plans to play a direct role, in keeping with its individual characteristics and the full measure of its rights.

The present governmental action derogates, perhaps, from habit, but there is no derogation in a constitutional sense. It represents rather the emergence of a new state of mind—I should say, rather, the new expression of a state of mind and of a desire for liberty which, in a latent state, has not ceased to exist during the last two hundred years.

\* *Hodge v. The Queen*, (1883) 9 A.C. 117. Cited in French in O'Connor, *Senate Report*—1939.

I mentioned a short time ago the surprise caused by the signing of an agreement on education between France and Quebec. This agreement is completely in keeping with the established constitutional order. Actually, the Canadian Federal Government is in a unique position with regard to international law. If it possesses an incontestable right to deal with foreign powers, the implementation of agreements which it may conclude concerning matters under provincial jurisdiction lies beyond its legislative competence. This was the decision, nearly thirty years ago, in a judgment handed down by the judicial committee of the Privy Council, a judgment which has never been set aside.

At a time when the Government of Quebec is fully aware of its responsibility for the realization of the particular destiny of Quebec society, it has no desire to abandon to the Federal Government the power of implementing agreements in matters falling under provincial competence. Furthermore, it is fully aware of the fact that there is an element of absurdity in the existing constitutional situation.

Why should the state which puts an agreement into execution be unable to negotiate and sign it? Is an agreement not concluded with the essential purpose of putting it into application, and should those who will have to implement it not have the right to work out the conditions in advance?

In the matter of international competence, the Canadian Constitution is silent. With the exception of Article 132, which has become a dead letter since the Statute of Westminster, in 1931, there is nothing which says that international relations are solely under the jurisdiction of the federal state. Therefore, it is not by virtue of written law, but rather by repeated practice over the past forty years, that the

Federal Government has assumed an exclusive role with regard to relations with foreign countries.

There was a time when Ottawa's exclusive exercise of international powers was scarcely prejudicial to the interests of the federated states, inasmuch as the field of international relations was fairly well defined.

But, in our day, this is no longer so. Interstate relations now touch every aspect of social life. This is why, in a federation such as Canada, it is now necessary for those member groups, who wish to do so, to participate actively and directly in the preparation of international agreements with which they are immediately concerned.

I repeat that there is no reason why the right to implement an international agreement should be dissociated from the right to conclude this agreement. This is a case of two essential steps in the one, single operation. Nor is it admissible, any longer, for the federal state to exert a kind of supervision and adventitious control over Quebec's international relations.

Parallel to the full exercise of a limited "jus tractatum" claimed by Quebec, there is equally the right to participate in the activity of certain international organizations of a non-political character.

A large number of interstate organizations have been founded for the sole purpose of bringing about a solution, by international cooperation, of problems which up to now have been purely local in nature.

Further, the multiplication of exchange of all kinds between countries has necessitated the direct or indirect intervention of the modern state so that these exchanges may be made basic elements of progress of understanding and of peace between

peoples. In many fields which have now assumed international importance, Quebec wishes to play a direct role in keeping with its true countenance.

Along with all contemporary societies, the countenance of Quebec is changing at an ever-increasing pace. Not only is it unthinkable, but it is impossible to halt or retard the rhythm of this transformation. It is therefore our institutions which must evolve in keeping with this new countenance of our society.

Certainly, within the existing constitutional framework, there are possibilities for the improvement of some of our institutions which have given us suitable service to the degree that we have known how to use them suitably. On the other hand, there are others which will require extensive changes, to say nothing of a general revision of the constitution itself.

At present, there is talk of the repatriation of this constitution. It is obvious that such repatriation could in no manner be considered as a finishing point, as an outcome desirable in itself. In a long term political view, such repatriation would constitute a starting point, the first step in a process of modernization of which the need is becoming ever-increasingly apparent—of a modernization which should take place in Canada by means of entirely Canadian instruments.

The Quebec parliamentary constitutional committee has, since its creation, been concerned with the necessity for revising the constitution in such areas as that of the status of the Lieutenant Governor and of the Supreme Court with

regard to civil and constitutional law, along with the field of linguistic rights, of banks and economic affairs, of radio and television, of international competence and any number of other subjects. The list of areas in which changes are necessary is far from being complete. Above all this, it is not only in the division of powers that a revision is necessary; it is at least equally so in the spirit and structure of our institutions.

On the other hand, while this search for renewed constitutional forms is going on, the people of Quebec and its Government—this I reaffirm—are quite determined to use existing constitutional machinery, fully and unremittingly, to assure the development of Quebec according to the cultural and social objectives which it has set for itself.

As you have doubtless sensed, Gentlemen, I have not discussed these problems with you with a view to asking you to participate in their solution. I have spoken of them only to show you the great importance which they have, and which they will have to an ever-increasing degree, in the evolution of the country and of the federated state where you are stationed. Above all, I have spoken to you of them so that you may see the spirit in which Quebec faces the future and how it intends to represent and fully serve a people which possesses a growing consciousness of its own cultural and social identity and is manifesting a steadily-strengthening will to follow its own destiny within the world of today.

Source: Press release, Department of Education, Quebec, April 12, 1965.