

Book Reviews — Revue des Livres

FEDERALISM AND THE FRENCH CANADIANS,

By P. E. Trudeau; (Macmillan of Canada: Toronto), 1968; 212 pp.

This book is a collection of nine essays which were first published between 1954 and 1967. Apart from its intellectual merit, the work's importance to all Canadians lies in its being the product of their most influential public figure. Because of this fact alone, members of the legal profession should be familiar with it. But even when viewing it strictly on intellectual merit, lawyers should not assume that its importance to them is diminished because of their familiarity with constitutional law, for this book does not deal with constitutional problems in the manner to which they are accustomed. Most lawyers consider constitutional law to be nothing more than an exercise in statutory interpretation—Pierre Elliott Trudeau takes one out of this parochialism and into the area of politics, providing a picture of the real substance from which constitutional law is fashioned. Viewed as a whole, a simple task because of their consistency of thought, these essays deal with the utility of the federal system, with particular reference to this system's suitability for the Canadian situation. More specifically, they are a rejoinder to those who suggest that French Canada's interests are not served by a continuation of the present Canadian state. The thrust of these very readable essays is that if French Canadians wish to preserve those attributes which now distinguish them from other Canadians, the existing Canadian constitutional arrangement is an admirable shield.

At the outset, it must be emphasized that Trudeau approves of this protective urge on the part of his fellow French Canadians. He says:

"If, in my opinion, the nation were of purely negative value I would not be at such pains to discredit a movement that promises to lead the French-Canadian nation to its ruin.

The nation is, in fact the guardian of certain very positive qualities: a cultural heritage, common traditions, a community awareness, historical continuity, a set of mores; all of which, at this juncture of history, go to make a man what he is. Certainly these qualities are . . . more instinctive and primitive than intelligent and civilized, more self-centered and impulsive than generous and reasonable. They belong to a transitional period in world history. But they are a reality of our time, probably useful, and in any event considered indispensable by all national communities.

. . . [T]here is not much to be gained in brushing them aside on the ground that the nation of French Canadians will some day fade from view and that Canada itself will undoubtedly not exist forever . . .

. . . The problem we must face squarely is this: without back-sliding to the ridiculous and reactionary idea of national sovereignty, how can we protect our French-Canadian national qualities?"¹

Trudeau contends that federalism has often preserved national groups in a world in which economic and strategic factors are of paramount importance to mere physical survival. Surely national groups would prefer to exercise exclusive control over their affairs in order to ensure their own perpetuation, but the factors mentioned above usually militate against this preference. In many cases the solution is the union of national groups in a fashion which reserves to each the power over its cultural affairs and delegates to a newly created central authority the responsibility for the economic and strategic welfare of the union members. This type of union, federalism, is a necessary consequence of the desire for, and substitute for the fact of, national self-determination. It is "a product of reason in politics. It was born of a decision by pragmatic politicians to face facts as they are, particularly the fact of the heterogeneity of the world's population."² But like any compact, an agreement to federate may become, or appear to have become, dated. A national group may decide that its preservation would be better ensured by its withdrawal from the federal state. Since it was nationalism which caused the creation of the federal state, this same force might at any time tear it apart. According to Trudeau, "the only way out of the dilemma is to render what is logically defensible [i.e. withdrawal from the federal state] actually undesirable. The advantage to the minority group of staying integrated in the whole must on balance be greater than the gain to be reaped from separating."³ These essays seek to prove that a move towards separation by French Canada would not only be undesirable but would probably be culturally suicidal.

As Trudeau points out, historical factors render his aims much more difficult to achieve. Not only relations between English and French Canadians, but Quebec's internal history as well, have blinded French Canadians to the advantages they can obtain from Canada. "By the terms of the existing Canadian constitution, that of 1867, French Canadians have all the powers they need to make Quebec a political society affording due respect for nationalist aspirations and at the same time giving unprecedented scope for human potential in the broadest sense."⁴ The problem is that successive provincial governments have refused to use the powers given them and have then blamed the constitution and the central government for Quebec's plight. While the central government deserves some share of the blame (because of its English Canadian bias and its willingness to expand its jurisdiction into the vacuum created by Quebec's inertia) the constitution, Trudeau

2. P. 195.

3. P. 192.

4. P. 180.

argues, does not. "All I ask of our ruling classes is that they stop being so preoccupied with the hypothetical powers an independent Quebec might have, and start using the powers the real Quebec does have a bit more often and a bit more wisely."⁵

But can the present federal agreement solve all of Quebec's and Canada's problems? Trudeau agrees it cannot, and suggests some amendments thereto, among which are the guarantee of equality of language rights for both English and French Canadians, the reformation of the Senate so that it will actually represent provincial interests and the creation of a constitutional court free from either federal or provincial prejudice. He apparently believes that an amended constitution together with an educational program would solve all our problems.

There are, however, problems inherent in federalism which the author does not emphasize sufficiently. Federalism necessarily involves the division of legislative power between two levels of government, and as the mere inclusion in this book of an essay on federal grants to universities indicates, this division can never be clear-cut. Uncertainty as to which level of government has jurisdiction within a certain sphere may often impede the enactment of important legislation, to the detriment of the federal state's national groups *qua* citizens. An example is Canada's failure to implement the provisions of the United Nations' Declaration of Human Rights. At the same time this division means that in certain areas there exists concurrent jurisdiction, which allows one level of government to pursue policies which may deleteriously affect the actions of the other level. An obvious example is to be found in the area of fiscal policy. While a unitary state would not face these difficulties, Trudeau suggests that "most of the reforms that could come about through greater centralization could also follow from patient and painstaking co-operation between federal and provincial governments."⁶; but this prediction is unrealistic, given Trudeau's conception of federalism as a necessary evil for national groups bent upon their own perpetuation. This conception implies that in a conflict French Canadian national interests would prevail over those of the (larger) state, because the central government is to be viewed by French Canadians merely as an instrument which has been created to serve their national interests indirectly. No amount of good will could alter French Canada's first loyalty, which is to herself. Central governments of federal states based upon national groups must continually contend with this problem, which should perhaps have led Trudeau to infer

5. P. 44.

6. P. 148.

that only federal states based upon territorial groups without reference to their national composition can succeed in the long run.

This is the difficulty which he faces. He treats the desire for the perpetuation of French Canadian national identity as a *chose donée*, and more importantly, as valuable; he then argues that co-operative federalism is the best method of fulfilling this desire; but, he ignores the fact that a federal state based on national groups cannot, by virtue of its very *raison d'être*, be truly co-operative. While it may be the best vehicle for preserving the French Canadian national character, federalism must by its nature preclude any advance beyond itself to a supranational culture, a state of affairs which Trudeau professes to desire in the long run.

One might even question Trudeau's belief in the present value of national differences. Those benefits which he believes the nation to foster could, I suggest, be obtained elsewhere. He derides those who would brush aside national characters on the grounds that they will not exist forever. I do not suggest ignoring them, but rather concentrating on them to ascertain their similarities in order to build a supranational culture upon them. If, as Trudeau says, the idea of national sovereignty is reactionary, is the idea of nationalism not the same fault in slightly smaller measure?

In the preface to this collection, written in August of 1967, Trudeau says:

"The best ideologies, having arisen at specific times to combat specific abuses, become the worst if they survive the needs which gave them birth."⁷

It appears to me that Trudeau, in advancing his thesis, is guilty of his own indictment. He has accepted the belief of those to whom he refers as "counter-revolutionaries" in the value of national differences and has chosen to ignore the formulation of a plan to eradicate these differences. In the result, one may legitimately ask whether Trudeau himself is not an accomplice to *la nouvelle trahison des clercs* which he so strongly condemns.

LESLIE KATZ*

FOUR RECORDERS OF RUPERT'S LAND,¹

By Roy St. George Stubbs; (Peguis: Winnipeg), 1967; 192 pp.

ROY ST. GEORGE STUBBS—An Overview of his Legal Writing to Date

I must confess at the outset that this critique of Four Recorders is but a pretext to review and comment upon in general Mr. Stubbs' count-

7. P. xxii.

* Of the Manitoba Bar.

1. Hereinafter referred to as "Four Recorders."