

Danger in the chains of freedom



By Barbara Amiel

In one of those pronouncements dear to the heart of the aristocracy, British peer Lord Morris summed up the debate that sent Canada's constitution home. "Good always comes out of evil," said Lord Morris. "Never before has there been closer friendship between Canada and this country." This happy moment, which confirmed for many of us the view that the motto of Britain's House of Lords ought to be *obscurum per obscurius*, was marred by the appearance of a solitary Canadian in the public gallery who proceeded to throw a copy of the international covenant of human rights onto the chamber floor. The gentleman was later identified as an expatriate Canadian actor, which may explain his attack of choler—though God knows what his protest was about.

Still, many Canadians share a similar anger for a variety of reasons. Pleasant though it is to see our constitution come home, the condition in which it has been returned makes the whole event something of a Pyrrhic victory. It is, to be blunt, an occasion that requires pallbearers rather than flag-wavers. The constitution itself, of course, is barely changed, with the exception of an amending formula and the enactment of the charter of rights and freedoms. But it is this very charter with its 34 provisions that, ironically, poses the most serious threat to our freedoms.

Traditionally there have been two approaches to constitutional law. One approach is to say that liberty is absolute, all-embracing and any attempt to write down human rights and freedoms diminishes them. If certain rights are specifically granted to people in a constitution, then any rights not listed appear not to have been granted. This was the approach of such thinkers as the great English constitutional lawyer A.V. Dicey. Try and capture liberty on paper, argued Dicey, and you'll limit it. Simply elect representatives and Parliament will be supreme—the voice of the people.

But this idea grew out of a time when the role of Parliament was clear-cut. In the clash between absolute monarchs and the people, Parliament had emerged as the people's voice. And when Dicey wrote in the 19th century—the great age of classical liberalism—it was assumed that Parliament also had certain limitations of common sense. That inspired Bagehot's dictum that "Parliament is supreme, but even Par-

liament cannot declare a man a woman."

Alas, times have changed. Not only can Parliament declare a man a woman, but our Parliament has done just that with its declaration of the *sameness* of men and women. Initially, of course, the charter simply had a general non-discriminatory clause in which sex was included. This was not enough for those who would make Bagehot's worst fears come true by denying the sexes their inherent differences. In this area I was amused recently to find myself in a television debate listening to the Ontario Status of Women Council chairperson passionately affirm that there was *no* difference in upper body strength between men and women. ("It's only a question of fitness," she kept repeating.)

But as the age of classical liberalism passed, giving way to the professional

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bureaucrats and excesses of the 20th century, the appeal of a *written* constitution grew. One hundred years after Dicey's time we live in an entirely different world. The spirit of classical liberalism is quite dead and Parliament is quite ready and willing to sell out fundamental rights to the state, from freedom of opinion to sovereignty over one's affairs. Indeed, by now, instead of being on the people's side against monarch or state, Parliament seems to have *become* the state. If one were to take a referendum on any of the issues of our day, from foreign aid, capital punishment, immigration policies, human rights legislation and so on, the results would contradict the actions of Parliament.

Now is the time; society *needs* a constitution—unlike the liberal times of Dicey. A good start might have been a document that confirmed the individual's inalienable and unlimited right to individual liberty, property and full sovereignty in all decisions affecting himself and his immediate family, limited only by a similar right of others to act in the same way. But here is the irony. In the days when it was possible to

write a liberal constitution it was not necessary. Now, when it is needed, it is no longer possible to write it.

The reason is simple. We live in an illiberal age. The people who have drafted our new charter are imbued with this spirit and have entrenched fundamentally illiberal ideas in it—such as affirmative action, which is simply a euphemism for group privileges. *At the same time they have failed to protect such fundamentally liberal ideas as a person's right to property—without which there is no freedom.*

The result is horrifying. We have entrenched in our constitution the idea that certain groups are more equal than others before the law. This allows any pressure group to capture the attention of the government of the day and introduce either a half-baked social experiment or a profoundly illiberal notion for a seeming social advantage.

What can one say after the recent decision of the Saskatchewan Human Rights Commission, which, when faced with the complaint of a disabled person that a movie theatre only provided room for wheelchairs in the front row, ordered the theatre owner to provide preferable locations? Next week, it may be a human right to have subtitled movies dubbed in the language of choice for people unable to read English. It is beyond parody.

At the same time the authors of the charter have pointedly exempted such things as the family and property rights from protection. The minute property rights are conspicuously overlooked, the most fundamental plank in the structure of individual liberty is removed. The enjoyment of property provides the only tangible basis for an individual to arrange his life independently of the whims of the state. This is true for rich and poor alike. Property rights are probably least important for the intellectuals, professionals and civil-servant classes who may own a lot of "property" in terms of intellectual skills. Property rights are most important for those who, lacking great accomplishments of skill or education, can only rely on the house, land, restaurant or little workshop they may have acquired through hard work and prudence to guarantee the independence of their existence.

Without the right to enjoyment of one's own property, liberty becomes an abstract concept or a handout from on high to be granted or taken away at the whim of the state. And that is what we are supposed to celebrate?