

BOOK REVIEW

CONSTITUTIONAL ODYSSEY: CAN CANADIANS BE A SOVEREIGN PEOPLE? by Peter H. Russell; Toronto University Press; 240 pages; paperback. Reviewed by David Johnston.

Peter Russell traces Canada's constitutional history from Confederation to the recent Canada Round and the Charlottetown Accord. He begins by discussing the process of Confederation itself, the question of provincial rights and the evolution of Canada as an autonomous community. He then provides an account of the country's constitutional saga over the past 25 years. He proposes that the central question, which informs the whole book, is "Can Canadians become a sovereign people?"

In Russell's opinion, Canadians have gradually evolved from imperial sovereignty to popular sovereignty as their governing constitutional principle. Moreover, he argues that the vote on the Charlottetown Accord is the first time in the history of the country that the people of Canada have been asked to agree upon being constituted a sovereign people. He contrasts this with the formulation of the BNA Act, now known as the Constitution Act 1867, that legally created the Dominion of Canada and which had as its final custodian the imperial Parliament in London, not the Canadian people. The author believes that our negative response to the Accord indicates that we may fail as a people.

A pivotal factor in Canada's constitutional odyssey is that until now the country, perhaps unconsciously, has been following the political philosophy of Edmond Burke in its approach to constitution-making and constitutional change. Burke believed in an organic process, whereby rights and obligations grow out of social conventions and understandings that hold society together. The social contract, in this light, is not so much one between present-day individuals but between generations, with one generation passing on to the next the product of its collective wisdom.

Such a view contrasts sharply from that of John Locke, who argues that a legitimate government needs to respect a set conditions by which the current governed people consent to its authority. His political philosophy is based on the assumption that each individual is basically rational and has the capacity to discern fundamental political truths. Russell contends that a Burkean notion suits the British, with their long uninterrupted constitutional history, but that it no longer resonates well with contemporary Canadians. For Canadians to become a sovereign people, he argues, they need to re-establish the country by way of a Lockean social contract on a model similar to that which informs the American constitution.

But times are different and there are complexities today that did not exist during the signing of the American constitution. By the Canada Round it became clear

that the people's contract must accommodate at least four divergent aspirations: Quebec nationalism, aboriginal self-government, regionalism and Canadian nationalism. All were reflected in the constitutional proposals we were asked to vote on.

Russell does a remarkable job in clarifying what is at stake and providing a perspective on the country's constitutional trials and deliberations. Should the people of Canada have been capable of accepting the proposed asymmetrical federalism, according to Russell, they would have become a truly federal people with a country organised in a highly pragmatic political fashion. For various reasons we voted against it, one being that many voters felt the country would be "Locked" into an inflexible amending formula. In that sense, in my opinion, the people acted wisely. A pragmatic federalism by definition must allow, even encourage collective wisdom to be passed on from generation to generation.

For Canadians to embark on a purely Lockean model of social contract would be an error that can only create problems in the future. The fact that Canada has followed a Burkean approach since its inception may simply be a statement of the country's basic nature. Although there may well be a need for a Lockean style social contract between members of this generation of Canadians, it is surely preferable for it to be reconciled with a Burkean style contract, which allows for intelligent organic evolution. Although Russell does not seem to

appreciate this, his book can serve as an excellent catalyst for our so far ineffectual intellectuals to undertake a very necessary debate on the basic principles underlying this country. Only then can we properly forge a constitution.