

# Constitutional Advice for the United States From a Canadian Perspective



by Conrad Black

On Sept. 14 I gave a speech in Washington for Hillsdale College, the prestigious Midwestern American conservative university that has a campus in Washington. I was asked to give constitutional advice to the United States from a Canadian perspective. The following are excerpts from that address.

You undoubtedly expect me to denounce the woke and excessive political correctness of Canada that have caused such mirth and alarm with some American commentators. I will do that, but you will appreciate that Canadians are appalled by your media's presentation of your great cities as shooting galleries infested with pitiful, homeless drug addicts, where

pillaging is almost a legalized form of wealth redistribution. You have totalitarian rates of success in criminal convictions, though robbery and assault are often no longer crimes, and half the country thinks it is perfectly in order to indict the leader of the opposition at the beginning of a presidential election campaign on dubious grounds.

Canada is officially half French because it had to begin as a French colony, otherwise it would have been integrated into the American colonies of the British Empire. It ultimately had to cease to be French because the strategic division between France and England was that France had an invincible army and Britain rarely needed an army, but was able to maintain the world's largest navy for 400 years and took what it wanted all over the world. For an independent country ever to arise in the northern half of this continent, the transition of Canada from the French to the British had to occur as the Americans ceased to be British. Again, otherwise Canada would have been swept up in the American Revolution.

Canada was only able to resist the American revolutionaries, and again in the war of 1812, because the British had promised the French Canadians protection of the French language, the Roman Catholic religion (which was discriminated against in England), and French civil law, in exchange for French-Canadian loyalty to the British crown. Both sides kept these promises, and they led to Jefferson's outrageous claim in the Declaration of Independence that King George III was trying to propagate popery in the American colonies.

At the end of the Civil War, the United States had a number of legitimate grievances against the British, and the tension was sufficient that the 2.5 million Canadians clustered along the northern U.S. border confederated in self-defence. The only basis upon which such a country could be put together was one that acknowledged the equal rights of the English- and French-speaking communities and left very substantial powers in the hands of the constituent provinces.

Where the Americans fought their way to independence with a self-armed citizen army and sponsored by France, Canada was born of Britain with no violence and with the inoffensive constitutional objectives of "peace, order, and good government." The United States has always had a unique sense of showmanship and of the spectacle, from the Declaration of Independence to the Super Bowl, from Jefferson to Trump. Canada, as historian W.L. Morton has remarked, is a country "strong only in moderation and governable only by compromise."

The Americans seized independence in what was essentially a tax squabble, but was packaged up by Jefferson, Thomas Paine, and others as the birth of human freedom. In fact, Americans had no more freedom after the Revolutionary War than before, nor more than contemporary English, Swiss, Dutch, or Scandinavians had, but they did have their own government founded on the heroic assertion of "life, liberty, and the pursuit of happiness," the ultimate meritocracy.

Combining the English and French legal systems in Canada has admitted the French theory that collective rights enjoy priority over individual rights, which the government of Quebec has interpreted as justifying several acts of restraint against the use and teaching of the English language—outrageous trespasses on freedom of expression and educational rights. This has also enabled human rights tribunals to attempt to curb freedom of speech where any group, including contemporary gender minorities, may claim to be offended.

To frustrate the Quebec separatists, Prime Minister Pierre Elliott Trudeau more than 40 years ago patriated the amendment of the Canadian Constitution from Britain and added a Charter of Rights and Freedoms that is full of grandiloquent French assurances of liberty. But it can be vacated by the federal or provincial governments in specific matters. This has both diluted its effectiveness and enabled judges to interpret it as they wish, regardless of common-law precedent.

My principal suggestion to you is to enforce the Bill of Rights. The fifth, sixth, and eighth amendment guarantees of a grand jury as assurance against capricious prosecution, of due process, of no seizures of property without just compensation, of prompt justice, an impartial jury, access to counsel—which has been judicially interpreted as counsel of choice, and reasonable bail, have all been put to the shredder.

America's plea-bargain system allows prosecutors to extort and suborn evidence by threatening witnesses with prosecution unless they produce useful evidence, and giving them promises of non-prosecution for perjury if they do. This is an absolute mockery of due process. Grand juries meet secretly and are rubber-stamps for the prosecutors. Justice drags on interminably. The prosecutors poison the jury pool by outrageous and defamatory remarks garrulously poured out to the media, and media lynchings are frequent. Bail is often nonsensically high. The federal criminal justice system enjoys a totalitarian 98 percent conviction rate, 95 percent of those cases without trial, so lopsided is the advantage to the prosecutors. Prosecutors have the last word before juries; in all other civilized places the defence speaks last.

These are some of the reasons why the United States has 5 percent of the world's population and 25 percent of its incarcerated people. Its criminal justice system constitutes a potentially mortal assault on life, liberty, and happiness. The Constitution did not create these problems; the violation of the Constitution permits them. In Canada, prosecutors do not have unlimited immunity. Instead of the farce of grand juries, judges conduct serious hearings to see if there are adequate grounds to prosecute. The criminal conviction rate is about 60 percent in Canada; the innocent have a chance. No judges or prosecutors are elected. Making these political offices is a terrible mistake—it is the last stop before consulting the mobs in the manner of Pontius Pilate.

An inordinate share of your GDP is in ridiculous litigation

that would be considered in Canada to be frivolous or vexatious and not justiciable. It is not productive work, adds no value to anything, and retards useful activity in almost every field. My last suggestion is that the federal writ must run throughout the land. Sanctuary cities are an outrage. They are virtue-signalling hypocrisy, as the mayor of New York has effectively just admitted. Municipal officials who defy federal law should be prosecuted.

It is one of the ironies of our times that the world chiefly owes its gratitude to the United States for the tremendous spread of democracy and of the free-market economy, but that the United States is not now one of the world's best-functioning democracies. This is not because of any failings of the Constitution, only of its judicial interpretation in certain areas.

My response to your gracious invitation is that if you can elevate adequate numbers of jurists to defend the Constitution, it will continue to serve you well for a very long time.

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