United States Senate hearing on the Canada-United States boundary settlement treaty and its relation to fisheries' problems on the east coast. I may say that the statement has just been made available to me by the office of the Secretary of State for External Affairs.

The United States government is proceeding to ratify the boundary settlement treaty. The United States has abandoned the fisheries treaty to which it was originally linked as a package.

The United States government is in no doubt as to Canada's profound disappointment and regret at this unilateral abandonment of the fisheries treaty. We are particularly concerned for the conservation of the fisheries resource on Georges Bank. The President has said that he intends to institute a scallop-management plan for United States fishermen there. Given the disputed ownership of the resource, Canada would expect to be consulted on this plan before it is instituted.

United States government spokesmen have said in Senate hearings that an interim fisheries arrangement between Canada and the United States is not possible unitl a boundary line is drawn. This does not mean, however, that appropriate conservation measures cannot, and should not, be put into effect.

## FOREIGN AFFAIRS

LAW OF THE SEA CONFERENCE—FISHING PERMITS

**Hon. Raymond J. Perrault (Leader of the Government):** Honourable senators, I have a delayed answer to a question asked by Senator Williams on March 12 concerning the Law of the Sea Conference and fishing permits within Canada's 200-mile economic zone.

The 200-mile economic zone and the Law of the Sea Conference are totally separate issues.

The issuing of fishing permits is a bilateral matter between Canada and other individual nations, except in the case of the European Economic Community which we deal with as a unit. These permits are not issued except when there is a surplus of stock.

## THE CONSTITUTION

EFFECT OF PROPOSED CANADIAN CHARTER OF RIGHTS AND FREEDOMS ON LAW ENFORCEMENT

**Hon. Raymond J. Perrault (Leader of the Government):** Honourable senators, I have a delayed answer to a question asked by Senator Bosa on March 12, concerning the Charter of Rights and Freedoms and the article in the *Globe and Mail* on March 11 by one Roderick McLeod. Since this is a rather extensive reply and is of some importance, I would ask that it be incorporated in today's record of proceedings.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

[Senator Perrault.]

(*For text of reply, see Appendix "A", p. 2121.*)

● (1420)

## CANADA-UNITED STATES RELATIONS

EAST COAST FISHERIES AND MARITIME BOUNDARY TREATIES

**Hon. Jack Marshall:** I have a supplementary question to the delayed answer that the minister gave on the Canada-U.S. fisheries treaty. It is obvious that the right course to follow is to have a management plan in connection with scallops; but, evidently, according to the TV news, Nova Scotia draggers have already been apprehended for fishing undersized scallops, which means that someone has already taken the bulk of the catch. This is early in the season.

I would like to find out the extent of the crisis. It should be pointed out to the Minister of Fisheries and Oceans, and also to the Secretary of State for External Affairs, that they should demand of the American government that renegotiations take place as soon as possible.

**Hon. Raymond J. Perrault (Leader of the Government):** Honourable senators, I am sure that all honourable senators sympathize with the concerns expressed by Senator Marshall. Further information will be sought on the points raised by him.

## THE CONSTITUTION

MOTION FOR AN ADDRESS TO HER MAJESTY THE QUEEN—DEBATE CONTINUED

The Senate resumed from yesterday the debate on the motion of Senator Perrault that an Address be presented to Her Majesty the Queen respecting the Constitution of Canada.

**Hon. Peter Bosa:** Honourable senators, as I take part in the "second round" of the debate on the Constitution, I should like to join the many senators who have preceded me in congratulating the joint chairmen and all the members who served on the committee. I had the privilege of serving on it, as a substitute, for one sitting. The members of the committee have received much praise for their untiring work, and their report will be regarded as one of the most important reports in the history of the Canadian Parliament since Confederation.

In the "first round" of the debate, on October 28 last, I said that I was in general agreement with the principles of the resolution, but that I intended to criticize the government for not going far enough in some areas of the Charter of Rights. I was particularly concerned, among other things, about the absence of any reference to multiculturalism and a more concise definition of our native peoples. Both these concerns have been met in clauses 25 and 27 of the new and improved resolution.

● (1425)

Before I speak on the Charter of Rights, I would like to deal with some other aspects of constitutional reform, starting with the principle of "unanimous consent" or "*liberum veto,*" to put it in the language of my ancestors.

Constitutionally speaking, the rule of unanimous consent has been in disrepute since the eighteenth century. In the mid-seventeenth century, Poland made the so-called *liberum veto* an integral part of the Polish Constitution. The *liberum veto* was based on the assumption of the absolute political equality of every Polish gentleman, the corollary being that every measure introduced in the Polish Parliament had to be adopted unanimously. Consequently, if any single deputy believed that a measure already approved by the rest of the house might injure the interests of his constituents, he had the right to exclaim, "I disapprove," and the measure was defeated. Subsequently, the principle was extended further to allow the individual deputy to force the dissolution of Parliament and reconsideration by the following Parliament of all measures already agreed upon.

By the end of the seventeenth century, the *liberum veto* was being used so recklessly that all business was frequently brought to a standstill. The collapse of the Polish state in the eighteenth century is usually attributed by historians to the existence of the *liberum veto,* because this principle paralyzed constitutional change and left Poland unable to adapt to changing circumstances.

Some Canadians maintain that we should try again to reach a consensus by all eleven governments before any action is taken on the patriation of the Constitution. Can we afford to take as much time as the Swiss have taken for the adoption of their constitution? The Swiss considered and debated their constitution for 350 years before they approved it in 1848. To this day, there are some Swiss who believe they have been too hasty in adopting such an important document, but they did not have television in those days. We now live in the electronic age and Canadians believe the time has come to cut the umbilical cord.

After 113 years of nationhood, Canada still has not shaken off the last vestige of its early colonial status. Canada's key constitutional document, the British North America Act, can only be amended by an act of the Parliament of the United Kingdom.

While, by convention, the B.N.A. Act is amended only at the request of Canada, the fact that the Parliament of the United Kingdom still must ratify Canada's requests stands as an impediment to nationhood. Canadians from coast to coast are agreed that this last vestige of colonial status should end. Patriation of the Constitution is an important symbol of renewed federalism. Patriation of the B.N.A. Act means, in essence, empowering Canada, solely, to amend the act.

Patriation is a simple, straightforward measure, but the action has been frustrated by federal-provincial differences over the amending formula and other elements of constitutional change. The B.N.A. Act cannot sensibly be patriated until an amending formula is defined, for application once the power to amend rests solely with Canada.

There have been numerous attempts to patriate the B.N.A. Act, dating back to 1927. While federal-provincial accord was reached on patriation in 1971, on the basis of the so-called Victoria amending formula, Quebec subsequently refused to ratify the agreement. It refused, not because of the amending formula, but because it wanted exclusive control over social policy as a condition of patriation.

The provinces have tended to follow the example of Quebec, by looking upon patriation as their trump card. By holding out on patriation, they have endeavoured to win concessions to their points of view on other issues, such as resources and social policy. The September 1980 Constitution Conference of First Ministers is testimony to the difficulty of reaching an accord among eleven governments. The provincial governments gave tacit approval to a Quebec consensus or common front, which covered over the concerns of several provinces with an alternative amending formula—the so-called Vancouver formula with opting-out clauses in exchange for concessions amongst them in other areas, such as language rights.

The federal government could not accept the common front of premiers, packaged as it was by the Parti Québécois Government of Quebec, since so many unsatisfactory aspects surrounded each of the twelve items contained in their manoeuvre of a "last offer." The September 1980 Constitution Conference of First Ministers ended in failure. This failure was a bitter disappointment, especially in light of the exhaustive four-month round of intergovernmental discussions that had preceded the conference.

• (1430)

The Government of Canada felt it could not simply let the federal-provincial discussions end indecisively. The whole country had been challenged as never before by the Quebec-Canada unity debate. Throughout the country, but particularly in Quebec, Canadians were engaged in the question of how to renew federalism. Reports by the Task Force on Canadian Unity, the Canadian Bar Association,, the Quebec Liberal Party, the Government of British Columbia and many others offered foundations for "a future together". Were all these aspirations, this opportunity for all Canadians, to be lost by discord among 11 governments?

Quebecers have a special stake in constitutional reform. The Quebec referendum was fought on the grounds that sovereignty-association was a non-starter and that a renewed federal system can and will ensure the full expression of Quebec's society. Promises were made, not just by the federal government but by the premiers of the western provinces, Ontario, and the Atlantic provinces. There is an obligation on all of us to see that promises made are promises kept.

There is general consensus across Canada that constitutional changes should be made. Inevitably, there are differences on the substance of these changes, but there is also a great deal of harmony of thought.

The contentious issue is the process. Six provincial premiers are challenging the constitutionality of the federal government's constitutional initiatives. The Manitoba Court of Appeal has already ruled against the Government of Manitoba's reference. The joint address of the House of Commons and the Senate regarding the Constitution Act 1981 has been

found by the Manitoba court to be both legal and within constitutional convention.

The Leader of the Opposition, the Right Honourable Joe Clark, wants the joint resolution to be limited to simple patriation and an amending formula. He has argued that additional constitutional changes can be made in Canada, once the power to amend is lodged solely in Canada. Given the expectations generated during the unity debate, this would appear to be a faltering step towards the renewal of federalism. Further, his position ignores the difficulty of gaining agreement among 11 governments beset by competing interests.

The constitutional log jam needs to be broken. For this reason, the federal government has tabled a "people's package," a package that reaches out to Canadians and gives them basic rights and freedoms. The division of responsibilities and powers between the federal and provincial governments is left aside, to be pursued once the power to amend the B.N.A. Act has been patriated to Canada.

In its original form, the draft resolution sought to draw upon the consensus that had been registered in past federal-provincial discussions. Thus, the Victoria amending formula of 1971 was included in the resolution, as it had been agreed to earlier by all eleven governments. No other formula has ever received such broad support. Minority language education rights were expressed in the exact wording of the communiques issued by the ten provinces. Other aspects of the Charter of Rights reflected a compromise between what the federal government felt was just for Canadians and the legislative concerns of the provincial governments.

The process of debate on the original draft resolution has sought to reach all Canadians and to incorporate their views. After debate in the House of Commons and the Senate, the draft resolution was referred to a special joint committee of Parliament for exhaustive study and amendment. No official constitutional discussions have ever been conducted with the degree of openness and public participation enjoyed by that committee.

**Hon. Jacques Flynn (Leader of the Opposition):** Blah, blah, blah!

**Senator Bosa:** I beg your pardon, Senator Flynn?

**Senator Flynn:** I said, "Blah, blah, blah!"

**Senator Bosa:** Is what I say not correct, Senator Flynn?

**Senator Flynn:** No. Blah, blah, blah!

**Senator Bosa:** A lot of people have watched those proceedings and disagree with your expression.

**Senator Flynn:** Sure. I disagree with you; that's all.

**Senator Bosa:** In nationally televised proceedings, the committee heard the testimony and recommendations of witnesses from all parts of the country and from all walks of life. Ninety-seven groups of witnesses advised the committee, their testimony overwhelmingly supporting the principle of a patriation initiative that includes a Charter of Rights. Additionally, the committee received some 1,280 written submissions. The committee held 106 meetings over a four-month period and debated the resolution for 267 hours.

**Senator Flynn:** How many were opposed?

**Senator Bosa:** How many were opposed to what?

**Senator Flynn:** To the proposal.

**Senator Bosa:** There was consensus—

**Senator Flynn:** No!

**Senator Bosa:** —on the basic principles set out in the Charter of Rights. They met with the approval of the majority of those who made representations.

**Senator Flynn:** Just read the appendix.

**Senator Bosa:** The result is a considerably changed and improved resolution. Some 76 amendments were made to the original draft, many of which profoundly strengthen the position and dignity of the Canadian people.

The report of the committee is now being debated in the House of Commons and in the Senate. A critical crossroads has been reached in Canadian history. The time has arrived for a clear and unequivocal last request to the British Parliament to amend the BNA Act so as to give it a form shaped by Canadians for Canadians.

The opposition contends that the proposed unilateral patriation by this government has created divisiveness in the country. First, this process of patriation is not unilateral. The government has the support of the federal NDP and that of the Premiers of New Brunswick and Ontario, Ontario being the most populous province in Canada. Moreover, both those premiers are Conservatives.

Secondly, the process of substantial constitutional change is perhaps the most divisive stage through which any nation must pass from time to time. Indeed, the lack of at least violent and even divisive debate over constitutional change is associated with authoritarian or totalitarian states, largely because it is realized that the regime will not respect the Constitution if it is not in its interest to do so. In democratic states, or states in the process of democratization, constitutional development is traditionally accompanied by strong, sometimes bitter, resistance. This resistance tends to be more determined in nations organized according to federal principles than in unitary states, because at least some of the constituent parts of the federation will oppose the proposed changes and provide a rallying point for other dissidents. Disruption, violence and civil strife are more likely to be the result of a persistent refusal to adjust a constitution to new realities than of the changes themselves.

Canada is virtually unique among modern and democratic nations, in that for more than 140 years she has consistently engaged in intense, even violent debate over constitutional issues and has kept disruption and public violence to an absolute minimum. Every step she has taken in her evolution from dependent colony to independent nation has been at least controversial and often attended by dissension. Her independent position in the British Empire, while it was still an empire,

the elimination of appeals to the British Privy Council, the legislation of a separate Canadian citizenship and the adoption of a distinctive Canadian flag are examples of controversy and dissension.

Many Canadians will remember the bitter and prolonged debate on the flag. As special assistant to the government house leader of the day, the late Honourable Guy Favreau, and later to the Honourable George McIlraith, although I was not on his staff, I had the opportunity to follow the debate from beginning to end. Let me recite some statistics about that debate. The debate began on June 15, 1964. On September 10 the subject matter was referred to a special committee. The special committee reported back to the house on October 29. The resolution was finally adopted on a closure motion on December 14, though it was actually December 15 at 2.13 a.m., exactly six months to the day from the day on which the debate began. In the course of the debate speeches were delivered as follows: the NDP, 19; Socreds, 33; Liberals, 38; and Conservatives, 197. Do honourable senators see any similarity between the flag debate and the Constitution debate?

All of these actions led to intense and acrimonious debate and dispute. Patriation, like the earlier steps, will seem completely natural, a "motherhood" issue, a couple of years after its adoption.

• (1440)

One does not have to look far to find examples of countries less fortunate in their constitutional development than Canada. Our next door neighbour, the United States, was born in revolution and civil war, because not all its citizens approved of the violent breach with Great Britain. The present Constitution of that country was approved only after a sometimes violent dispute over the entrenchment of a bill of rights. Incidentally, federalists opposed the bill as unnecessary, while supporters of states' rights demanded it as a fundamental curb to the power of the federal government. The issue of extending constitutional civil rights to African slaves was one cause of the terrible Civil War. The 1960s were marked not only by dissension over an amendment to ensure to blacks their civil rights, but also by widespread and sometimes violent demonstrations for and against the change. Even today, Americans are divided over the controversial Equal Rights Amendment.

So, it is not surprising if Canadians are also divided over the issue of entrenchment of a charter of rights, but it was not always so. Canadians will recall that at Victoria, in 1971, all governments were agreed to entrenching at least fundamental freedoms, democratic rights and certain guarantees for the use of the English and French languages. The charter before us now has been considerably improved. In addition to the fundamental freedoms, it assures the right to move freely across the country from one province to another, and to take up residence and pursue employment in any province. Citizens will be protected from discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex and physical or mental disability.

The charter recognizes and affirms the aboriginal and treaty rights of the aboriginal peoples of Canada, as outlined in clause 25.

The Canadian Consultative Council on Multiculturalism, of which I had the privilege of being chairman from 1976 to 1979, has made consistent and persistent representations to the government on behalf of the minorities of Canada. Let me quote just one sentence from the brief that, the Canadian Consultative Council on Multiculturalism presented to the Special Joint Committee on the Constitution, on December 18 last:

> To develop Canada as a bilingual and multicultural country in which all its citizens, male and female, young and old, native peoples and Metis, and all groups from every ethnic origin feel equally at home—

Clause 27 reads as follows:

> This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

I want to thank the Prime Minister and the members of the committee for having responded to the sensitivities and aspirations of a large segment of Canadian society. Canadians who have the vision to see the Canada of the future will rejoice at this significant event. It is an historical coincidence that it should be taking place on the tenth anniversary of the announcement in the House of Commons, on October 8, 1971, of the policy on multiculturalism by the Right Honourable Pierre Elliott Trudeau. That announcement has given millions of Canadians a feeling of really belonging to this country—the feeling that one is accepted for what one is and not for what others would like one to be. This policy on multiculturalism has strengthened national unity. The entrenchment of the policy in the Charter of Rights is a meaningful example of this government's commitment to creating cultural equality.

The last paragraph of the Canadian Consultative Council on Multiculturalism brief to the joint committee reads as follows:

> Culture is a dynamic aspect of our lives. It affects our perception of ourselves and of others. By creating greater appreciation of cultural values, multiculturalism serves as a strong and unifying force in this country. Multiculturalism is not merely a term synonymous with cultural pluralism or diversity, it is the joining together of all traditions which collectively express the reality called "Canada", joining together while still maintaining individuality and distinctiveness.

All party leaders supported the Prime Minister's announcement in the House of Commons, in 1971, of the policy of multiculturalism. The Honourable Robert L. Stanfield, the then Leader of the Official Opposition, told the House of Commons at the time:

> This declaration by the government of the principle of preserving and enhancing the many cultural traditions which exist within our country will be most welcome . . . What we want is justice for all Canadians and recognition of the cultural diversity of this country.

Since the policy of multiculturalism received all-party support at the time of its announcement, I urge the opposition not to vote against the constitutional package, because that might be interpreted by the minorities as meaning that the policy no longer has the full support of all parliamentarians.

**Hon. Richard A. Donahoe:** Honourable senators, I rise to intervene at what has come to be a rather advanced stage in this debate. I hasten to say that, had my intervention come earlier, the kind of speech I would have addressed to the house would have been very different from the one I propose to make this afternoon. After hearing Senator Lamontagne's laboured argument about constitutional matters, I felt that I should rise and respond. But time went on. Senator Thompson rose and, with wit, charm, knowledge and evident research, demolished the proposition advanced by Senator Lamontagne. It was done better and more completely than I could have done it, and it was from a source more telling than me.

**Senator Frith:** "Some chicken! Some neck!"

**Senator Donahoe:** At a later stage in the debate, I heard Senator Connolly give a very learned address. He made a great appeal that we should support the resolution before us. Before I had taken the opportunity to analyze fully what he had said, I thought he had made a very strong, convincing speech. A day or two later, the old veteran of this house rose to his feet and, starting at the very beginning with the nature and the makeup of the proposition that we are now considering, he destroyed, without question, the entire proposition that Senator Connolly had worked so hard to establish.

Early in the debate I was encouraged when Senator Cook took the floor, because he was able to provide the authentic voice of Newfoundland, a voice which indicated that, whatever the relationship of the other provinces to Canada, Newfoundland came in under circumstances peculiar unto itself. So it was refreshing and reviving to hear Senator Cook take the position he took.

A little later in the debate, when I began to ponder what we would hear from the province of Quebec, Senator Deschatelets took the floor. From Senator Deschatelets we heard the answer, the reaction and the expression of belief which I thought would have risen naturally and quickly to the lips of every Quebecer in this house.

Only a day or two ago we heard Senator Manning. If anyone can say that he is not an authentic voice of the west, I would like to hear him say it; because Senator Manning's authenticity seems to me to be self-evident. We listened to his position on this subject and to his analysis of the proposition before us, and we came to the conclusion that the government that prepared the proposition could have had no conception of the feelings in that great western part of our country. Having said that, I want to make one or two further passing references to other speeches which were made in this debate.

There is the speech made by Senator Olson. I do not know whether one should dignify it by calling it a speech. It was a sort of tirade he made in an effort to indicate that those people who did not share his views were in some way lesser Canadi-

[Senator Bosa.]

ans. He spoke, as Senator Bosa did this afternoon, about the flag debate. I will not spend a great deal of time on that. All I wish to say to both those gentlemen and to all honourable senators is that, if people cannot understand the distinction between a debate about the flag that this country should possess and a debate about the fundamental, vital building of the Constitution which is to govern and control the growth and development of this country for generations to come, it seems to me that it would be a waste of time to try to make them understand. The distinction is between a symbol and an essential; there can be no doubt about that.

• (1450)

Enough of what other people have had to say. Perhaps you would like to know what I am going to say on my own behalf. I would like to begin by saying that, so far during the course of this debate, almost everyone who has risen to participate has felt it necessary to make reference to the work of the joint committee of the Senate and the House of Commons, whose report is now under consideration.

I was not an original member of that committee but, during the course of its deliberations, I sat as a replacement member on several occasions. I can attest, as others have, to the attention and expertise which the members of that committee brought to their task. I endorse all the complimentary things that have been said about the participation of the members of this house in the work done by that committee, especially by those senators who were originally named to the committee and, perhaps more particularly, the contribution of senators from this side of the house.

I did not, however, rejoice at the result of the committee's deliberations as reflected in the report under consideration. It may be said that this committee was writing a new Constitution for Canada. If that is so, one must be struck by the difference between the procedures followed in this instance and those followed by the great men who formed and framed Canada's first Constitution. I say this notwithstanding what Senator Guay said the other night, because I thought that his remarks with respect to the procedures which were followed in the formation of the first Constitution of Canada missed the boat as completely as it could have been missed.

In 1864, the leaders of Prince Edward Island, New Brunswick and Nova Scotia met in Charlottetown to consider a maritime union. To the west of them, in Upper and Lower Canada, an experimental union was already in existence, which was not working particularly well, since it too frequently resulted in a state of deadlock. However, Sir John A. Macdonald, a practical politician, upon learning of the maritime meeting, believed that he saw in it two possibilities. First, he saw an opportunity to involve the maritime provinces in a union with Upper and Lower Canada, thereby making his own union a more workable one. Second, he saw, with the vision of the great statesman that he was, that such a union could mark the beginning of a great nation which would extend from sea to sea. Post haste, together with his colleagues and his opponents, he arranged to charter a steamer and proceed to Prince Edward Island, where his suggestion was put forward to those

who were considering the lesser project. To this day, those in Prince Edward Island are proud to say that the chamber in which the delegation met is the cradle of Confederation.

All I want to say is that the child rocked in that cradle was a natural child, the result of a natural process; but the child that will be rocked in the cradle of this new Confederation will be the product of a violent Caesarean birth.

**Senator Frith:** Shame!

**Senator Flynn:** So it will!

**Senator Donahoe:** Having discussed the proposition of Sir John A. Macdonald, the delegation moved from Charlottetown to Halifax, where they discussed the matter further. Finally, in Quebec a series of resolutions was prepared and agreed to, and these became the basis of the British North America Act. Those resolutions were further considered and refined in some detail in London.

Three years after the process began, when there had been the fullest opportunity for consideration, reflection and discussion, the propositions were placed in the hands of the British government, along with the request that the act, which came to be known as the British North America Act, be passed. The resolutions upon which that act was based were the result of long, careful consideration. The delegation followed a procedure which allowed for opposing points of view to be considered and adapted one to the other in order to arrive at an acceptable solution.

In the process no one, neither Sir John A. Macdonald nor anyone else, produced a set, preconceived, rigid format which the Constitution should ultimately take. What was introduced into the discussions was an idea. The form in which that idea was to emerge was to be determined by the free exchange of opinion and the adoption of a rational mode of operation which gave full play to the views and opinions of all.

Compare that procedure to the one which surrounds the formation of the joint committee which has presented this report to us. To begin with, the basic material of which this report is comprised sprang full-blown from the mind of Pierre Elliott Trudeau. It was advanced as being the most desirable way in which the Constitution of Canada could be written. The provinces were denied any right to an input into the form which the future Constitution should take. The position taken with respect to the proposal was that its illegalities should be accepted on the authority of those who proposed it, and that it should not be referred to the supreme judicial authority of the country for the determination of its legality. This has been done according to a brief and rigid timetable. The provinces have been excluded from the discussion of the proposals and, to a very great extent, the House of Commons has been precluded from carrying on full, free and open discussion. Through the invocation of closure the matter was referred to a committee.

I know that it will continue to be argued, as it has already been, that many amendments came about as a result of the operations of that committee. Indeed, we have heard it argued in this chamber this afternoon. However, I would point out that of all these amendments, the great bulk were put forward by the administration, through the Minister of Justice, and were, in effect, dictated to just the same degree as the original provisions had been. I am not prepared to admit now, and I will never be prepared to agree, that the procedure followed in this instance is the appropriate method to amend the Constitution of this Confederation, which has served Canadians so well.

● (1500)

I have heard Sir John A. Macdonald quoted in this house as having said that the form of government which evolved from the procedure which I began this address by describing was not the form which he would have preferred had he been able to dictate, alone, the form which this future nation should take. He would have made it, not a Confederation but a strong, unitary state. Obviously, in the process of negotiation, and in the effort to create a union, he was obliged to retreat from the position he might have preferred and was obliged to accept the position which brought about the kind of country that was formed in 1867. Honourable senators, would that Pierre Elliott Trudeau were able to display the same degree of respect for the opinions of others and the same willingness to arrive at a reasonable compromise in his effort to rewrite the Constitution that was written in those days, so long ago.

I have followed, with the closest interest, the discussion which has thus far taken place in the Senate. Many thoughtful, learned and scholarly addresses have been made, reflecting a great depth of research. Some of them have come from this side of the house and others have come from the opposite side, as I have already indicated. Much of the argument emanating from the other side of the house has been directed in an attempt to prove that the course of action being followed by the government is a legal one. None of those who took this line of argument has tried to give us reasons to make us understand why we should accept his rulings as to legality and be denied a ruling by the Supreme Court of Canada.

Much of the argument has been directed towards the desirability of, and justification for, entrenching a Charter of Rights and Freedoms in our Constitution because we, on this side, have not been heard to give unreserved approval to this method of procedure. Strenuous efforts have been made to picture us as being persons opposed to assuring the rights of the people.

I wish to assert now, with all the vigour at my command, that I and my colleagues yield to no man in our respect for, and our devotion to, the human rights which are vested in the Canadian people under our Constitution. We may differ from our friends opposite in our view as to the best method for ensuring the enjoyment of those rights, but we differ not one iota in our belief that these rights are part of our Canadian heritage and are the birthright of all Canadians and must remain so.

Much oratory and many thousands of words have been expended here, and in other places, by those who would attempt to justify the unilateral proceeding to Westminster to seek, not—I have no hesitation in saying—true amendment of

our Constitution but, in effect, a rewriting of our Constitution, which means that the Constitution we have enjoyed, the nature of our country and the nature of our federation will, to all intents and purposes, have been destroyed once these changes are made.

No one—I repeat, no one—has been able to give a satisfactory explanation of why it is wrong for a member of the House of Commons or of the Senate of Canada to have a free and unfettered opportunity to effect the shaping of the future Constitution of this country, while a member of the British House of Commons—who certainly is not likely to have been born in Canada, who may never have even seen Canada and who, throughout his lifetime, may have no interest whatever in the internal workings of the Government of Canada or of the welfare and wellbeing of the people of Canada—should sit in Parliament at Westminster and have the final and deciding say as to the form the Constitution of this country shall take for the time to come.

**Some Hon. Senators:** Hear, hear.

**Senator Donahoe:** We have been told that a constitutional convention is not a constitutional convention; that a confederation is not a confederation; that the constitutional rights which we were all brought up and taught to believe are ours are, in fact, in the words of Senator Deschatelets, only an illusion. I am asked to reach the conclusion that all of the constitutional propositions taught to me in my law school days are invalid, those propositions which I heard supported and advanced during the experience I shared with Senator Connolly of attendance at constitutional conferences during the '60s. By the way, when Lester Pearson was Prime Minister, Senator Connolly never espoused the point of view he has advanced in this debate. I was, reluctantly, being drawn to the conclusion that no credence should be given to the constitutional views of Keith, Dicey, or Dawson and all the others, whose writings were once advanced to me as being the distilled essence of constitutional wisdom.

At that point, I was fortunate enough to turn to that great old classic, *Alice in Wonderland*, by Lewis Carroll. In an effort to seek relaxation from the mental strain to which I had been subjected in endeavouring to follow this constitutional debate, I took the opportunity to renew my acquaintace with Alice. In the description of the table conversation at the Mad Hatter's tea party, I found the same attitude towards the use of words that was causing me so much mystification in attempting to follow the arguments of my honourable friends opposite.

Let me read to you a brief extract. After Alice had said to the Hatter that he should learn not to make personal remarks, because it was very rude, the Hatter opened his eyes very wide. But all he said was:

> "Why is a raven like a writing-desk?"
>
> "Come, we shall have some fun now!" thought Alice.
>
> "I'm glad they've begun asking riddles—I believe I can guess that," she added aloud.

[Senator Donahoe.]

> "Do you mean that you think you can find out the answer to it?" said the March Hare.
>
> "Exactly so," said Alice.
>
> "Then you should say what you mean," the March Hare went on.
>
> "I do, " Alice hastily replied; "at least—at least I mean what I say—that's the same thing, you know."
>
> "Not the same thing a bit!" said the Hatter. "Why, you might just as well say that 'I see what I eat' is the same thing as 'I eat what I see'!"
>
> "You might just as well say," added the March Hare, "that 'I like what I get' is the same thing as 'I get what I like'!"
>
> "You might just as well say," added the Dormouse, who seemed to be talking in his sleep, "that 'I breathe when I sleep' is the same thing as 'I sleep when I breathe'!"
>
> "It is the same thing with you," said the Hatter; and here the conversation dropped, and the party sat silent for a minute, while Alice thought over all she could remember about ravens and writing-desks, which wasn't much.

Further on, in the description of the trial of the Knave of Hearts for having stolen the Queen's tarts, I found a sentence or two which seemed to me to describe exactly the technique being employed by the government of this country in order to advance its constitutional proposal. I quote them as follows:

> "Let the jury consider their verdict"—the King said, for the twentieth time that day.
>
> "No, No!"—said the Queen. "Sentence first, verdict afterward."
>
> "Stuff and nonsense!" said Alice loudly.—"The idea of having the sentence first!"
>
> "Hold your tongue"—said the Queen, turning purple.
>
> "I won't!" said Alice.
>
> "Off with her head!"—the Queen shouted at the top of her voice. Nobody moved.

Do you think that my quotation from *Alice in Wonderland* is a little far-fetched, a little silly? Perhaps you do. I should give you some illustrations of why I feel that it is apropos the debate that is going on at present.

On February 23 this year, the Deputy Prime Minister and Minister of Finance, Mr. Allan MacEachen, made a speech in Nova Scotia and is reported to have said that the provinces are "attempting to alter federalism." This, in face of the fact of what is going on in the country. This, in face of the Trudeau-Chrétien effort to put one point of view forward, cause it to become the law of the land, and to override and ignore the rights of the provinces in this Confederation and to deny them any say as to what the ultimate result should be.

In case you have any doubt that Mr. MacEachen was talking through his hat, let me quote a further part of his speech in which he was attempting to say that the constitutional proposals were not solely the idea of Mr. Trudeau. He said:

> That is not so, it is the will of the Liberal Party, the Cabinet, the caucus and the people that is expressed in the patriation package . . . and not the will of one man.

That the will of one man is endorsed by the Liberal Party, by the cabinet, by the caucus, I am afraid that I must reluctantly agree; but that the people endorse it—I do not agree and I do not believe that such is the case, and I do not think that anyone who is at all in tune with the feeling of the country today believes it either.

Everyone knows that the Liberal Party sold its soul, not once but twice, to have Pierre Trudeau at its head. When the Liberal Party, or the Liberal cabinet, or the Liberal caucus speaks, they may be heard through different voices, but in this matter the words and thoughts advanced are those of only one man: Pierre Elliott Trudeau.

● (1510)

**Senator Flynn:** Right.

**Senator Donahoe:** In still another part of his speech, Mr. MacEachen says:

> This country is more than 10 provinces . . . it is not a community of communities . . . the Government of Canada is not an agent of the provinces.

Whoever said it was?

**Senator Thériault:** Joe Clark.

**Senator Donahoe:** No, he didn't. I will come to that. If the Government of Canada is not an agent of the provinces, still less are the provinces the creation of the Government of Canada. Municipal governments, great and important as some of them are, are the creation of the provincial governments; but the provincial governments themselves bear in no sense the same relationship to Canada as the municipalities bear to the provinces, although I very much fear that that is the way in which Mr. MacEachen conceives the relationship.

If honourable senators think that the *Alice in Wonderland* comparison is far-fetched and ridiculous, let me quote a few words from a speech made by the Minister of Labour, Gerald Regan, as they are reported in the Halifax *Chronicle-Herald* of March 3, 1981:

> "Because as a government we moved to end 50 years of deadlock on patriation [Mr. Clark] contended that we have given up on the federal system. He [Mr. Clark] argued that we should not have done that, that the federal system has not failed, that we should meet and listen to the premiers disagree among themselves for another 50 years or longer to achieve unanimity" . . .
>
> "What the opposition leader [Mr. Clark] does not understand," Mr. Regan said, "is that the federal system has not failed. It is unanimity which has failed."

Well, if for the time being unanimity is part of the federal system—and I believe it to be, because that is exactly what Mr. Trudeau says it is; he says it is inconvenient for him; he says he won't put up with it; he says he can't stand it; he says he can't have his own way because of unanimity, but he recognizes that unanimity is there as a part of our system—then the proper way to describe the whole thing would be not that unanimity has failed but that the Minister of Labour's powers of reasoning have failed; and just to prove that they have, I will give honourable senators one further quotation from the minister's remarks:

> "Clearly Mr. Clark has the wrong vision of Canada'', he [Mr. Regan] said. "No other federal nation in the world expects or requires unanimity in order to achieve change, and neither does Canada."

Perhaps I could agree with him if he were prepared to say: "And neither should Canada"; but surely he must admit that Canada, in its present state, does require unanimity. It is exactly because Mr. Trudeau has been unable to achieve unanimity that he says he will disregard the necessity for it and will proceed on a unilateral course to rewrite our Constitution.

Speaking of the failure of unanimity, I say that in 1980 that failure was not a true failure but a contrived one. Arbitrary deadlines were imposed, and then conditions were inserted into the federal proposal which, by their very nature and their mode of presentation, ensured that it would be impossible to secure consent for them.

In a speech in this house before those dominion-provincial meetings were held—I am old-fashioned; I keep saying "dominion-provincial"—

**Some Hon. Senators:** Hear, hear.

**Senator Donahoe:** I am glad that I have approval, in some quarters, at least—Senator Murray spoke and indicated that to him the arrangements had all the appearances of a setup designed to invite failure, thereby providing an excuse for the unilateral action which the Prime Minister had said he was prepared to take if unanimity was not forthcoming by his self-imposed deadlines.

Senator Murray's remarks at the time were the cause of some resentment on the opposite side of this chamber; but when the meetings were held, when the Kirby documents were made public, when the government took the course of action, in the penultimate stage of which we are now engaged, it then became abundantly clear that Senator Murray's assessment and suspicions were not mere figments of his imagination but were, in fact, the cold, distasteful truth.

Speaking of truth, it is not truth to say that there have been constant and unremitting efforts to secure agreement on a policy of patriation with an amending formula for more than 50 years, as the Prime Minister and so many of his supporters have endeavoured to say and would like the people of Canada to believe. Nearly all of the earlier meetings that were held with respect to the amendment of the Constitution directed their attention to ways and means of dividing the allocated powers under sections 91 and 92.

Senator Deschatelets made a thoughtful and helpful contribution to this debate. He is reported, at page 1963 of Senate *Hansard* for March 5, 1981 as saying:

> Everyone is free to interpret events as he or she sees fit. As far as I am concerned, it is only in 1960 or 1961 that

we discussed in committee, for the first time at the parliamentary level, the problem of patriation, of an amending formula, and a charter of rights, and in a way which, I must admit, was most superficial.

Later, on the same page, he said:

> It is in 1964, if I remember right, when my late colleague the Honourable Guy Favreau became Minister of Justice, that the patriation proposal, with an amending formula, was officially put forward. That formula became known as the "Fulton-Favreau Formula".
>
> That was in 1964-65, still far away from any acute constitutional crisis, even though the process of constitutional change was not only slow but painful. In the following years confrontation became more frequent. But I do not believe—

It is Senator Deschatelets speaking, not I.

> —that even today there can be any reference to any emergency threatening the security of the state, because otherwise the support of the people would be obvious. And this is not the case now.

We are told that the urgency in connection with this constitutional package arises from the fact that the province of Quebec, in the course of Mr. Lévesque's referendum, was promised by Mr. Trudeau that there would come out of their voting for the federal system a renewal of that system.

May I go on record, here and now, as saying that if Mr. Trudeau had been honest with the people of Quebec, and had disclosed to them the nature of the renewal which he proposed to advance, then the result of the referendum might have been very different indeed, because the changes he now proposes to the shape of our Constitution do violence to all those things in our Constitution which have had the greatest significance over the years for the people of the province of Quebec—

**Some Hon. Senators:** Hear, hear.

**Senator Donahoe:** —and the machinery is being set in place to deprive them of some of their most cherished rights.

To return to Mr. Regan, let me tell honourable senators that as he proceeds in his attempt to downgrade the qualities and abilities of Mr. Clark as Prime Minister, he succeeds fully in showing that the true relationship between federal Canada and the provinces of Canada, that was created by the British North America Act, is beyond his understanding, just as fully and as much as it is beyond the understanding of the Minister of Finance.

● (1520)

Speaking of Mr. Clark, there are those who would say, and have said, that he was wrong on Jerusalem and, for that reason, he was not fit to be Prime Minister of Canada. May I simply say that if I were given the choice between a Prime Minister who was right on Jerusalem and wrong on Canada, and one who was wrong on Jerusalem and right on Canada, I would much prefer the second to the first.

**Some Hon. Senators:** Hear, hear.

[Senator Donahoe.]

**Hon. Royce Frith (Deputy Leader of the Government):** And at least 60 per cent agree with you.

**Senator Donahoe:** Honourable senators, I was much impressed with the quality and tone of the splendid address delivered to us the other day by Senator Connolly. At page 2041 of *Hansard* of March 12, we find these comments:

> I begin by saying that every independent country worthy of the name should control its own destiny. To do that it becomes imperative for it to control its basic law, its constitution, and to control it completely. From its constitution flow the principles that establish a country's government, its society, its economy, and its external relations. Therefore, it alone can determine the appropriate extent of constitutional change needed to meet its own emerging circumstances.

These are noble sentiments, nobly expressed. There is not a senator in this house who cannot or will not endorse and support them. But, surely, in order for them to have the meaning and construction which Senator Connolly goes on to give to them, it is necessary to remember that he is justifying and approving the placing of our constitutional needs before the Parliament at Westminster. It is necessary, to understand the meaning of what he has said, to interpret the word "country," because his opening words were "every independent country worthy of the name". I submit that in order to make the arguments which Senator Connolly proceeded to make, he has to construe the word "country" in his own speech as meaning Canada without its provinces.

Surely, this country should have the right to amend its own Constitution. Equally surely, this country is more than the federal government alone, because the federal government exists only because those original partners in Confederation were prepared to yield a portion of their sovereignty to create it. Some portion of it, however, they retained, and, in their respective jurisdictions and fields, the provinces are as sovereign as the federal government is in its field.

It has always been argued and suggested that we, on this side of the house, in some way are opposed to having a strong central government. Not so. We Nova Scotians, in particular, recognized that a strong central government was essential if the confederation was to be a great nation, and we have never wavered in that belief. However, we do not believe that to have a strong central government it is necessary to eliminate or emasculate the provincial governments so as to render them mere adjuncts to the federal chariot.

May I ask honourable senators to remember that as we participate in this debate we are functioning as the upper house of a bicameral parliament? Since I have no doubt that everyone will agree that that is a self-evident proposition, I would ask honourable senators to consider why there is a Senate. Having reflected upon that question, I would ask them to consider one further question: Why are we sitting here as members of that Senate?

My answer to the first question—as to why there is a Senate at all—is very simple and straightforward. I believe there is a

Senate because without it Canada could not have been brought into being in 1867. The provinces, and particularly the smaller ones, were apprehensive that their claims, their position and their interests might be overwhelmed in an elective House of Commons where they would be such a small numerical proportion. They conceived the Senate as a place in which their hopes and aspirations could be brought forward before a deliberative and legislative body in which it was guaranteed that their representation would never fall below a certain level and in which, in proportion to the entire membership, their representation would always be capable of making itself heard and felt in unmistakable terms.

I am convinced that, without the insertion of the device of the Senate in our constitutional framework, there never could have been a Canada, because I cannot conceive the provincial representatives of that day agreeing to a Constitution which did not have in it what they conceived to be the safeguards for their rights and position which they believed were assured by the creation of the Senate.

As reported in Senate *Hansard* of April 17, 1980, at page 62, in the course of his splendid address on the nature and function of the Senate, Senator Connolly said:

> Most of the schemes for Senate reform have centred around the idea that this house should have a higher profile in the area of regional representation. With that we can agree.

He went on to say:

> However, that view must be balanced against the representation which the regions of this country have in the House of Commons, in the cabinet, in the provincial legislatures, and at the federal-provincial conference.

I take "regional" to mean "provincial" and, like Senator Connolly, I agree that the Senate is not the sole spokesman for the provinces, and that there has to be balanced against such a view the voice the provinces have in the cabinet, in the provincial legislatures and at the federal-provincial conference. But when we find ourselves in a situation where the cabinet is prepared to approve a position which, in effect, means that the provinces have no rights in the matter of the Constitution, where the views of the provincial legislatures are ignored, and where the federal-provincial conference, having spoken out in clear and unequivocal terms as to its opposition to the federal proposal, is totally ignored and brushed to one side, and a unilateral course of action, such as the one being followed here, is adopted, in such circumstances I should have thought that Senator Connolly would agree with me that at that point—at that point, if ever—the need for the Senate to accept its responsibility with respect to representation of the provinces and of the provinces' rights should have become pressing and paramount. But, to my dismay, he chose instead to follow the party line. He had a good precedent for his course of action in the person of the senator in this house who rose in this debate to state his position on the government's proposal. He indicated that he found procedures being followed repugnant and distasteful, so repugnant and distasteful that he made it clear that the whole procedure created a bad odour in his nostrils. Then, having said that and having asserted his independence from direction or pressure, he indicated with a true demonstration of independence and spirit that he was proposing to hold his nose and vote for the whole mess.

Why are we here in the Senate? In my view, we are here for the express purpose of defending the provinces from improper incursions into their position and field of authority by the federal authority. Mr. Trudeau has no belief in value of the Senate. He would abolish it at a moment's notice, if he could have his own way in the matter.

Throughout the years, opponents of the Senate have criticized it on a variety of grounds: because it is not elective; because it is too readily acquiescent to the wishes of the other house; and because it serves no useful purpose. Now here, in the Year of our Lord 1981, we have before us a perfect opportunity—a golden opportunity—for the Senate to demonstrate that it has meaning and purpose. If it fails to accept the position that it is honour-bound to preserve the character and quality of this nation, then I say that Mr. Trudeau is right: the Senate is useless; the Senate deserves to be abolished; and we, who sit in it, have been recreant to the trust imposed upon us by those who framed and formed the confederation which has served as a vehicle to bring this country to its present point of greatness.

• (1530)

I have been uplifted and inspired by the evidence of adherence to high principle demonstrated by those members on the other side who have risen to say that they propose to vote against this proposal. All of them have been lifelong supporters of the government party; all of them have supported the party loyally. It is patently obvious that to oppose it now causes each of them considerable personal anguish; but reason and justice have prevailed in their minds, and conviction and conscience have brought them to the position they have adopted. I commend them and applaud them, and pray that their valiant example may be infectious and that others on that side may be similarly moved.

In the course of the work of the joint committee, there emerged two amendments to clause 44 of the original proposal to which I must refer. This clause, in its original form, was as follows:

> An amendment to the Constitution of Canada may be made by proclamation under subsection 41(1) or section 43 without a resolution of the Senate authorizing the issue of the proclamation if, within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing those ninety days.

This clause does not appear in the amended form of the proposal: It has gone; it has disappeared. It did not, however, simply drop out of sight; it went by gradual stages. Some time

after the committee began to function, a proposition was advanced by the government which was essentially the same as the original clause 44, but they thought it might be appropriate to say that, instead of waiting only 90 days, they might wait twice as long: they decided that they might wait 180 days, after which period the voice of this chamber would no longer be heard in the land, or, having been heard, it could be totally disregarded and they could then proceed.

In the draft that is before us now, that proposal too has disappeared. It has gone, and gone completely. That clause, as originally proposed, would have given a 90-day suspensive veto to the Senate in place of the co-equal legislative position it now holds with the House of Commons. Suddenly, the Minister of Justice announced that he would agree to the suspensive veto being increased to 180 days, and then, still later, he announced that he was prepared to accept the status quo and leave the Senate with full power to reject any legislation which it thinks proper to reject.

This was hailed as a great concession to the Senate—nay, it was hailed as a great concession to those senators who were alledged to oppose the government proposal; and certainly the news media described it as a bribe to win back the support of the dissidents.

Now, I do not know if such a group ever existed, nor do I know what prompted Mr. Chrétien to backtrack on his original position, but I do know that if there is, among us, any senator so base as to allow this so-called concession to influence his opinion on the acceptability of the package, then he deserves to remain in the Senate long enough to see Mr. Trudeau succeed in abolishing it; and I can tell him that, on that occasion, Mr. Trudeau will have my full support and my vote.

Honourable senators, I love Canada. I love my native province of Nova Scotia. I believe our Confederation has justified its existence and has allowed us to grow towards greatness through the years since 1867.

I do not believe that our Constitution is incapable of improvement. I do believe that, faced with a fresh division of powers in 1981, adjustments are required in the allocation of those powers to conform to developments unknown and unforeseen in 1867. But I believe passionately that those changes should be made in Canada, by Canadians, with the participation of all components of our nation—the federal government, the provincial governments, and the people of Canada. Only on such a foundation can we build a strong and enduring union for the future.

I beg of you to join me in rejecting the proposal before us, for the sake of our beloved Canada.

On motion of Senator Petten, for Senator Croll, debate adjourned.

## THE ESTIMATES

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (C) PRESENTED AND PRINTED AS APPENDIX

Leave having been given to revert to reports of Committees:

**Hon. Douglas D. Everett:** Honourable senators, I have the honour to present the report of the Standing Senate Committee on National Finance, on supplementary estimates (C) laid before Parliament for the fiscal year ending March 31, 1981, and ask that it be printed as an appendix to the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of this day and form part of the permanent records of this house.

**The Hon. the Speaker:** It is agreed, honourable senators?

**Hon. Senators:** Agreed.

(*For text of report, see Appendix "B", p. 2124.*)

**Senator Everett** moved that the report be placed on the Orders of the Day for consideration on Wednesday, March 25, 1981.

Motion agreed to.

The Senate adjourned until Tuesday, March 24, 1981, at 8 p.m.