

### QUESTION PASSED AS ORDER FOR RETURN

**Mr. D. M. Collette (Parliamentary Secretary to President of the Privy Council):** Madam Speaker, if question No. 2,036 could be made an order for return, this return would be tabled immediately.

**Madam Speaker:** Is it the pleasure of the House that question No. 2,036 be deemed to have been made an order for return?

**Some hon. Members:** Agreed.

**Madam Speaker:** Agreed and tabled forthwith.

[Text]

#### 1981 CENSUS—HIRING PRACTICES

Question No. 2,036—**Mr. Dionne (Chicoutimi):**

1. What is the (a) name (b) classification (c) salary of each supervisory person in charge of the 1981 Census?

2. Is there a program for the hiring of the commissioners and, if so (a) who is in charge and to whom is the person responsible (b) how many will be hired in each province and at what salary?

3. What is the (a) language level (b) name (c) salary (d) classification of each census managerial employee?

4. Will the expenses incurred for the census be audited and, if so (a) who will be responsible (b) will the audit report be submitted to the Auditor General and, if so, on what date?

5. What is the (a) name (b) classification (c) salary (d) name of the immediate supervisor, of the person in charge of public relations for the census?

6. Were consultants hired and, if so (a) by whom (b) what is the (i) name (ii) reason for hiring (iii) salary (iv) additional benefit (v) qualification of each consultant?

7. Were advertising agencies hired and, if so (a) which agencies (b) how were they selected (c) what portion of the advertising budget will be allotted to (i) Quebec (ii) other areas of French-speaking Canada?

Return tabled.

[English]

**Mr. Collette:** I ask that the remaining questions be allowed to stand.

**Madam Speaker:** The remaining questions shall stand.

## GOVERNMENT ORDERS

[English]

### THE CONSTITUTION

#### RESOLUTION RESPECTING CONSTITUTION ACT, 1981

The House resumed debate on the motion of Mr. Chrétien, seconded by Mr. Roberts, for an Address to Her Majesty the Queen respecting the Constitution of Canada.

And on the amendment of Mr. Epp, seconded by Mr. Baker (Nepean-Carleton)—That the motion be amended in Schedule B of the proposed resolution be deleting clause 46, and by making all necessary changes to the Schedule consequential

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thereto; and on the notices of amendments of Messrs. Knowles, Baker (Nepean-Carleton) and Pinard.

**Hon. Michael Wilson (Etobicoke Centre):** Mr. Speaker, when I spoke yesterday I referred to the amendments to the resolution we had introduced on Tuesday evening and how they were directed at bringing this country together, not driving it apart as the current resolution seems to. I was discussing the unilateral action being taken by the government as well as some of the legal aspects, and why we believe substantively this is wrong. This afternoon I want to discuss the impact this action will have on the much broader political element and on the rest of the country.

Just before completing my remarks on the legal aspects, I shall refer to a statement made by former Prime Minister St. Laurent in 1949. In explaining an amendment to the Constitution which affected only the federal sphere, he said:

It has been felt that the amendment giving Parliament the power to amend its own Constitution—

He was speaking about its own powers. Mr. St. Laurent continued:

—was all we could attempt to do without agreement with the representatives of the ten Canadian provinces, and that we should do at once everything we had the right to do.

In other words, to do only those things we had the right to do within the sphere of our activity. It is clear that amendments of a federal-provincial nature require the agreement of both levels of government. The government has argued that the proposed charter of rights would not involve any transfer of powers between the federal and provincial authorities. It would place certain limitations on both federal and provincial governments and legislatures. In fact, it would remove powers from provincial legislatures without their consent, and here I am referring to education, minority language rights, civil rights, mobility rights and some elements in the area of justice.

If the provincial legislatures are sovereign legislatures within their own fields of jurisdiction, then the federal government is asking Britain to remove powers from those legislatures without their consent. I submit this is wrong. I would also point out that the amending formula, whether arrived at unanimously, the Victoria formula or the Vancouver formula, is also a matter of federal-provincial concern.

I might just digress here on this question of the Victoria formula. The government said quite recently that the Victoria formula is the one which is being put before us through the constitutional resolution. But the Victoria formula has been changed on two different occasions in two different ways, so it is not the Victoria formula which was agreed upon in 1971. The government has made the point that the provinces did agree at that time. They did, but it was agreement to a formula different from that which is before us today. That is the concern I am putting forward here. The resolution, either through referendum or deadline, imposes on the provinces an amending formula without their consent.

In the Liberal amendment which was put forward on Tuesday evening, we have the incongruous situation where we have

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to vote on one amendment, which includes the amending formula and the reference to the supremacy of God. This amendment is put forward by the same man who is complaining that the provinces are trying to bargain fish for rights. Now under the same amendment we have to make the distinction whether we are voting for this amending formula or for the supremacy of God. Members of this House should not be asked to vote on just one amendment, which is the case now.

• (1520)

**Mr. Evans:** There was unanimous agreement on that.

**Mr. Wilson:** I would like to address the point the hon. gentleman just raised. There was unanimous agreement, I agree. I am making the point that we are asked to vote on two matters which are totally unconnected. There is no linkage between them. It is important that in future we divide these two matters. Matters which have no linkage at all should be voted on separately so that members on both sides of the House—and I stress this—can express their point of view on each of the individual items separately.

It is for reasons relating to the division of powers that the Supreme Court of Canada must decide whether or not the resolution should be passed and submitted to the British parliament. It is for these reasons that I believe our party has performed a very valuable service to this country by forcing this government to acknowledge this discipline, since the precedent that will be established by the Supreme Court will be a historic one.

Let us not be bound only by the legal arguments and precedents. In a sense, these legal considerations are less important than the political considerations. The Prime Minister (Mr. Trudeau) has acknowledged that, but unfortunately he has failed to recognize the true significance of the political element under debate.

Let me again refer to the Premier of Ontario in 1931. He said "the confederation of the provinces of Canada" into the country of Canada "was brought about by the action of the provinces". We must not forget that. We must also not forget that the huge geographical mass that is Canada has developed important traditions and a history which are the foundation of the country we live in today. The action of the government in moving this resolution ignores that tradition. It disregards the history that shapes the attitudes and aspirations of many Canadians in distant parts of the country.

It is comforting to me as an Ontario member of Parliament, as I am sure it is to members opposite who are from the province of Quebec, to feel that our provinces will always have a veto over any future constitutional change. But it is also very degrading for those in other provinces for us to have this special status. It perpetuates in a very permanent and divisive way the sense of political power that has dominated this country for 114 years. It robs these other provinces of the possibility of achieving a more equitable balance in confederation.

It is not clear now what the impact will be, but over the next few years the impact is going to become very clear to us as we get further down the road in energy negotiations and negotiations regarding federal-provincial shared-cost programs such as medicare, higher education and pensions. If many provinces feel they were taken advantage of in this constitutional resolution, they are going to be that much more difficult to deal with when it comes to these very tough negotiations on energy and shared-cost programs. I can see where provinces such as Ontario and Quebec will suffer—not benefit—as a result of this constitutional reform because of the problems we will be facing when we get into those shared-cost negotiations.

I will try and illustrate what I have just said by a quote from Henry Kissinger's book "The White House Years". It is a reasonably long quotation, but I will read it because there is a lot of very sound thought in his words. I quote:

Resolutions conducted in the name of liberty more often than not refine new tools of authority. Academics may define human freedom by concepts of human rights; historians understand that freedom resides not only in legal structures but in the general acceptance of institutions and the ease of human relationships. A society not scourged by irreconcilable schisms can practice tolerance and respect human dignity even in the absence of legally defined rights. Tolerance is inherent in its structure. Britain has never had a written constitution; civil rights are guaranteed by tradition.

This is the important point:

But a nation driven by factions, in which the minority has no hope of ever becoming a majority, or in which some group knows it is perpetually outcast, will seem oppressive to some of its members, whatever the legal pretensions.

There is much wisdom in that paragraph and much for us to learn in Canada today. I draw from it the following lessons. First, it is essential for the Prime Minister and the government to move quickly to heal the wounds which have resulted from this debate. The west will feel permanently oppressed because of the unilateral action which has been taken here and the second class situation in which they have been placed. That applies to the east as well, but I think feelings are more strong in the west right now. The unilateral action lies not just in constitutional reform but in energy policy. That is going to be a festering sore until corrective action is taken by this government.

This problem has been reinforced by the nature of the amending formula, which now puts the government in a position where it can move in on the resources which are the heritage and foundation of the traditions of the western provinces. That is a very divisive element facing us head on today.

The second lesson is that the rights we have been talking about in this debate are the property of the people. Rights are given to governments, not the reverse. Governments invariably take rights away. We must be alert to this in the coming years as we better understand this charter of rights. There will be a temptation, since the charter has established certain rights in black and white in a statute book in Ottawa, to believe that we have a security blanket. We will feel that our rights are protected because they are written down somewhere, but that is wrong. The protection of our rights depends on the respect and tolerance of this society.

It also depends on the control of government by the citizens of this country. We must constantly be on guard against any intrusions on those rights in any sense. We need to have constant discipline and vigilance among ourselves to ensure that these rights are not taken away. That vigilance and discipline will be the only lasting discipline we can be assured of in this country. If we ignore these simple lessons, we do so at our own peril and at the peril of this country.

It is ironic that in the past the roadblock to constitutional reform has always been the inability of the provinces to agree, or the desire of the provinces to demand more than the federal government is prepared to give. The Prime Minister has made this point on a number of occasions. Now the provinces are ready to agree on historic matter, to patriate the Constitution with a flexible amending formula. This would provide a sound, flexible means for evolving the change which we in this House and this country know must come to the Constitution as it now stands.

• (1570)

Now the roadblock to consensus on constitutional reform is the very Prime Minister who has been so spiteful and derogatory about the position of the provinces in the past. The shoe is now on the other foot, but the difference is that he has the power to bull through this constitutional resolution without the consensus that is so necessary—unless the Supreme Court rules otherwise.

The dangers to our country are great. Let me close by quoting Edward Gibbon in 1788, from his masterpiece, "Decline and Fall of the Roman Empire":

The principles of a free Constitution are irrevocably lost when the legislative power is nominated by the executive.

I have just one more paragraph, Mr. Speaker, if you will bear with me.

We have a comparable situation in Canada today. The balances and checks to power in our country have traditionally been the official opposition and the provinces. Their power, which is nominated, is being taken over by the executive, the federal government, in this constitutional resolution through closure and unilateral action. We are in danger of losing the principles of a free Constitution before they have even been enacted.

**Some hon. Members:** Hear, hear!

**Hon. Allan J. MacEachen (Deputy Prime Minister and Minister of Finance):** Mr. Speaker, I rise with some diffidence to participate in this debate in view of the many excellent speeches we have heard, especially those by the Prime Minister (Mr. Trudeau) and the Minister of Justice (Mr. Chrétien), both of whom have expressed for so many of us the nature of the Canada we are trying to build through this resolution. I am pleased to have the opportunity to make some comments as the debate proceeds to a conclusion, at least of this particular stage of the constitutional resolution.

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The Concise Oxford Dictionary of Current English defines the word "canard" when used in English as meaning a false report or a hoax. Since this debate began last fall a number of canards have been perpetrated or concocted or, indeed, hatched, if one uses the French meaning of the word "canard". These canards are untruths which are uttered, repeated and then reshaped. Although untrue they take on an essence, a certain validity through constant repetition, an independent existence, so to speak, regardless of the truth which may not be found in the statements. It is surprising that even though this debate has lasted for months, the parliamentary joint committee has met, debate has proceeded in the House of Commons, and bushels of commentaries have been written, these canards still fly and find themselves repeated, even in the last days of the debate.

Let me give a number of illustrations. We hear it often, almost every day from the opposition and the press, that the Constitution Act is the personal obsession of the Prime Minister. As recently as Wednesday, yesterday, the *Toronto Globe and Mail* in an editorial said in a final sentence:

Canada cannot afford to have one man's views written in stone.

Yesterday during the question period the Leader of the Opposition (Mr. Clark), following a well established habit, when he was asking whether the Prime Minister would convene yet another federal-provincial conference, said "He can put his charter there". Then in another part of the question period he made a similar comment when he talked about "Canada having to live with the unilateral decision of one man".

The hon. member for Wellington-Dufferin-Simcoe (Mr. Beatty) objected to the distribution of the Prime Minister's speech in this debate to Canadians and suggested that taxpayers' money was being used "to promote the views of one man".

I can only wonder at the motivation for the constant repetition of this theme. I wonder, and the people of Canada must wonder, why it is that throughout the debate the fiction has been constantly repeated that the Constitution Act, this great enterprise which is engaging the attention of us all, is the obsession of one man. Why would *The Globe and Mail* write, knowing better, that "Canada cannot afford to have one man's views written in stone"?

This is not a new tactic, certainly not on the part of the official opposition. I sat in the House when a similar theme was struck at the time of the flag debate; they labelled the present Canadian flag as the "Pearson pennant". Like the flag, I believe the Constitution will become in the minds of Canadians a national symbol, not the Constitution of any one person, not the obsession of the Prime Minister.

Whatever the motivation, the constant repetition by members of the opposition that this great effort of Constitution writing is the obsession of one man, is the work of one man, is untrue and insulting. It is insulting, first of all, to members of this party, members of the House of Commons and the millions of Canadians who have asked our party to take this step we are now nourishing in this debate.

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I have only to look back at successive conventions of the Liberal Party of Canada to illustrate to members of this House and to Canadians that we have been at the forefront of constitutional reform. For example, here is a resolution from the 1970 convention:

The Canadian Constitution should be repatriated and a suitable amending formula incorporated into it.

This is from the 1973 convention:

The government act immediately to amend the Canadian Bill of Rights to ensure its supremacy over all federal legislation as it respects discrimination by reason of race, national origin, colour, religion or sex; and that measures be taken to have the said Bill of Rights entrenched in the BNA Act.

I just end on that note by quoting from the 1978 convention. There were then 22 resolutions put forward, ranging in sentiment from "that Canada remain a confederation" to recommendations for patriation, the insertion of essential rights and a charter of individual human rights, and recommendations for an amending formula and consultative mechanisms. So what the Prime Minister is doing, and what we are all doing, is carrying out the wish—certainly as expressed in our conventions for many years but particularly over the last ten years—to achieve the purposes which are contained in the proposed Constitution Act.

● (1540)

The repetition of this canard is not only insulting to me and to members of my party but also to most members of the New Democratic Party. It is insulting to the premier of Ontario. It is insulting to the Premier of New Brunswick. It is an insult to the groups of people who appeared before the joint House and Senate committee asking us for a charter and asking that their rights be additionally protected. This is not the obsession of the Prime Minister but a claim on the future of Canada, as they said before members of the joint committee.

I find it offensive to have this canard repeated because I know it to be untrue. I know the step-by-step decision-making process of this government since the breakdown of the constitutional conference in September. It certainly would have been wonderful, and much desired and applauded by all of us, if we had been able, in the series of conferences in the summer and climaxed in the fall, to reach an agreement with all the Premiers. We wanted to put it all together. It did not happen.

Then the question was what to do. There were various options which were open to the Government of Canada. They must have been obvious to members of the opposition. We discussed within our party and within our caucus these various options. We could, as the Premiers seem to have proposed—belatedly—have selected the option of patriation and an amending formula. That would be one option. We could have added to that option, for example, minority education rights in the provinces. That would have been an enriched option. Or we could have taken a further big step and included in the package the charter of human rights. It was not the Prime Minister who said in the cabinet or in the caucus, "I want my personal place in history; give it to me by including a full charter".

**Mr. Stevens:** How did he put it?

**Mr. MacEachen:** I will answer the hon. member for York-Peel (Mr. Stevens). It was the overwhelming force of the opinion in the cabinet, later supported overwhelmingly in the Liberal caucus—

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:**—that said to the Prime Minister: "This is a historic opportunity; let us not miss this opportunity; let us go first class".

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** I must say that I am proud of the Prime Minister. I am proud because he listened to the will of his own party as expressed in conventions, in the cabinet and in the Liberal caucus. He is now leading us and, unhappily and unfairly, taking the flak as the leader of the Liberal party in carrying out the wishes which have been expressed to him by members of his party.

**Mr. Stevens:** Poor Pierre.

**Mr. MacEachen:** I think members of the opposition in the Conservative party should have more respect for their own party and for the leader of their party in the province of Ontario, Mr. Davis. Is it his obsession? Is he lining up with the Liberal government because he believes what we are doing is the obsession of one man? Not at all. He is doing it because he believes it is necessary for the future of Canada. Let me quote Mr. Davis.

**Mr. Stevens:** Tell us about the bank rate.

**Mr. McDermid:** Tell us about Claude Ryan and his stand.

**Mr. Stevens:** How about the 17.4?

**Mr. MacEachen:** I find it very interesting that suddenly members of the Conservative opposition erupt. I must be cutting close to the bone. I must say that their bones are very exposed.

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** Last week the Premier of Ontario, the Hon. William Davis, commenting on the results of the meeting here in Ottawa of the other eight Premiers, said:

As a Canadian and as a Conservative, I believe that individual citizens must have basic protection from the unfair use of power by government, through means of an entrenched charter of rights.

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** Then he made what I thought was an even more important statement because it seems, in a sense, to clarify the difference between him and another group of Premiers, the group of eight. He said that the federal proposal protects fundamental freedoms "in a way that is basic to my view of this country". It is basic to our view of this country as



it enters the eighties that we must take steps to protect fundamental freedoms.

When the Prime Minister stands up tonight to vote in support of the resolution on the proposed Constitution Act, 1981, he will not be standing up in this House of Commons alone. He will be supported by all his Liberal supporters on this side of the House and by members of the New Democratic Party who freely have made up their minds. He will also be applauded by many millions of Canadians who are asking that this step be taken.

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** So much for that canard.

I want to mention another which has been developed in this debate, and it has been repeated so often that it has taken on a life of its own, namely, that a majority of Canadians are opposed to what we are doing in putting forward and advancing this resolution. Well, I do not find anyone knocking on the door of Parliament asking that we stop this process. I do not find anyone knocking on my door in my province asking that this government stop what it is doing.

Most polls which have been taken on this subject have been distorted. They have been unfairly interpreted to say that the views of the Canadian people represent opposition, when what they really do is express a preference most of us have and most of us share, namely, that it would be better if it were possible to make these advances with the consent of all the provinces. The people of Canada believe that, I believe that, the Minister of Justice believes that and so does the Prime Minister. But what one prefers is often not possible. Let us not continue to repeat the falsehood that the majority of the people of Canada are against what we are doing in this constitutional effort. I could quote so many polls, but this would take up a lot of time that is not available to me. I find it very interesting that recently the Premier of Ontario, who is a strong supporter—

• (1350)

**An hon. Member:** And a fellow traveller.

**Mr. MacEachen:** Someone opposite said that he is also a fellow traveller. He is a supporter of this package. He went to the polls explicit with the people of Canada about his support for the federal package, and he achieved a majority which had eluded him on two previous occasions.

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** I do not think hon. members opposite find that very unappetizing to swallow. Just yesterday we introduced into the House of Commons two new members of Parliament, both of whom are sitting on this side of the House, one from Ontario and the other from Prince Edward Island.

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** The people of those constituencies in two widely separated provinces had an opportunity to say "No; stop!" One can imagine that if we had lost those byelections

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the Leader of the Opposition would have said, "I now have a clear indication that what you are doing is wrong and unpopular".

Yesterday we received the results of the Gallup poll which was taken at the height of the hijacking of this Parliament, when members of the official opposition were doing everything possible to bring to the attention of the people of Canada that what we were doing was wrong and dishonourable and that we were breaking up the federation of Canada. On the very day that they were screaming out their questions of privilege in the House of Commons, the people responding to the polls were saying "We prefer the Grits. We prefer them more than we did in the last election."

**Some hon. Members:** Hear, hear!

**Mr. MacEachen:** I say let us not perpetuate the mythology that what we are doing is being opposed by the majority of the people of Canada.

I find it amazing that there is another canard being promulgated, and that is that the Parliament of Canada, by proceeding without the consent of the provinces, is establishing a new principle of confederation, or introducing a new principle into the Canadian federation. The Premiers are urging that nothing be done without their consent. It is not the Parliament of Canada or the Government of Canada which is attempting to build into our federation a new principle; it is the Premiers and their supporters who are now trying to create the view that the only way Canada can proceed is through some form of consent by the provinces.

On a radio program the other evening the hon. member for Yorkton-Melville (Mr. Nystrom) talked about the double majority being the way to proceed. It may be his preference but he will not find much support in the precedents and the law of Canada. Yesterday the hon. member for Etobicoke-Centre (Mr. Wilson) repeated the same line. I refer both hon. members to the speech made by the Parliamentary Secretary to the President of the Treasury Board (Mr. Joyal), the co-chairman of the joint committee, who in my opinion gave one of the most lucid presentations that I have ever heard in the House of Commons. It is a model of clarity, information and analysis. He said:

Indeed, the Canadian Parliament is not required to consult the provinces and get their agreement before submitting a request to the British Parliament. The Chief Justice of the Manitoba Court of Appeal explained this quite well and substantiated it in an elaborate judgment given on February 3 last. In any case, long before this judgment was given, Canadian experts had already recognized this fact.

If hon. members want another authority, I refer them to a former prime minister of Canada, the late Right Hon. R. B. Bennett, who spoke in the House of Lords in 1946 and made a most revealing statement, the frankest exposition on this point that I have read. He said:

There has been a good deal of discussion about an amendment of the Constitution being a political measure.

He might have added to that if he had heard this debate. I continue the quotation. He said:

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Canada is the only one of the dominions in which a party majority can amend the Constitution. They cannot amend it directly, but they do it indirectly, because we have agreed that we will consent to pass any legislation that they may petition to have passed by this Parliament.

He is speaking there about the British parliament. Let us not have continued the repetition that we are creating a new principle by doing what we are doing. It is they who ask us to do otherwise who fly in the face of law and precedent, as the Parliamentary Secretary to the President of the Treasury Board said. But we will know more about that later on.

I have only a minute or two left, Mr. Speaker. I must say that I was somewhat taken, impressed, disappointed, whatever word you might wish to use, when I observed what happened at the meeting of the eight Premiers in Ottawa last week. I have respect for the Premiers; I know most of them. But I must say that my respect does not carry to the point of agreement with their points of view, and the Premiers in their conclusions of last Thursday revealed how deep the chasm is. They revealed how deep the division of opinion is between them and the majority of members of Parliament as to what the future of this country ought to be. If one wanted a clear signal that they have a somewhat different view of the future of the country and the society which ought to be built in our view, then just contemplate their conclusions of last Thursday.

The process that we have been going through has been not only contentious but enriching in many ways, certainly to me, as I have observed views being expressed on both sides of the House. I recall one particular incident when the Minister of Justice reported on the results of the joint committee of which the hon. member for Provencher (Mr. Epp) was a distinguished member. He told us about the results of the hearings of the committee, when representatives of Canadian women came forward and said that they wanted better protection in the Constitution. He told us about the aboriginal people, the Indian, the Inuit and the Metis who came forward. He told us about the handicapped and other ethnic groups who, as he said, are not part of the two main streams of our country. They all came forward and said that they wanted special recognition. They said "We want our rights and our place to be protected in the future". They were making their claim on their inheritance as Canadians. That was rather important.

Then the Minister of Justice in his report—and members opposite must remember what he said—stated that the charter makes specific reference to the multicultural nature of our society. Well, he was taking in all the groups and the committee took in all the groups, giving recognition to even poor Scots like myself; we were also included in that multicultural heritage. It seemed to me to be a rather magnificent demonstration of what was at work in the committee and what the House was doing.

● (1600)

I cannot forget reading the testimony given before the committee by the representatives of the National Association of Japanese Canadians. It was pretty touching and moving when they told us about their experiences for 70 years in

Canada about when they had to pay taxes without even the right to vote. They went on to say:

Surely some guarantee of human and civil rights is mandatory in the light of the experience of Japanese Canadians.

Members of the committee must have heard their voice when they said:

A charter of rights entrenched in the Constitution to prevent what we have gone through is the least that Canada can do to make amends for what has happened to us and to ensure that such injustices will never be repeated again.

Why do I use such references to illustrate the difference in the concept of what Canada ought to be between the Premiers and those of us on this side of the House? Why do I mention what the Minister of Justice said? I mention it because Premier Lyon and Premier Bennett told us that at their meeting, when they were trying to reach an accommodation, they did not even discuss the charter of human rights.

**Some hon. Members:** Hear, hear!

**Right Hon. Joe Clark (Leader of the Opposition):** Mr. Speaker, it is interesting to find the Deputy Prime Minister and Minister of Finance (Mr. MacEachen) involved in debate. He usually comes in when the government is in trouble. I have heard the Deputy Prime Minister speak very aggressively, very much on the offensive and very much on the defensive. I find it hard to recall a time when his speech was more lined with defensive comments than was the case in the remarks he made in the House today.

They have a great deal to be defensive about. We are meeting now at the end of one phase of this debate. I must say for my party that we enter this phase of the debate with some pride, because we have waged a fight which has kept this question Canadian. The plan of the Prime Minister (Mr. Trudeau) was to have this measure out of Canada by Christmas, to have it decided in Britain before Canadian courts could consider its legality and before Canadian opinion could consider its propriety.

As we all know, this Parliament or this institution exists to enact and improve good measures and to stop or delay bad measures. My party and I are proud of the work we have done in having Parliament delay and improve this resolution.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** It is very clear that this most basic Canadian question about our own Constitution remains in Canadian control today only because the Progressive Conservative party stood and fought in the House of Commons and in the country. We have not yet won the war to protect Canada's federal institutions, although we have made it possible for that war to be won, but we have demonstrated the strength of Canada's parliamentary institutions. The government used every available instrument, from media manipulation to dishonesty about our diplomatic exchanges, to bulldoze this measure through. This party, with no help at all from the New Democratic Party, proved that Parliament is strong enough to stop bad measures being forced down the throats of the people of Canada.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** There is one other aspect of this phase of the debate of which I am particularly proud. At a time when Quebec is questioning whether it can find a full future in Canada, the Progressive Conservative party, whose greatest strength is outside Quebec, defended and argued the cause of Quebec when its own elected members chose to be silent.

Quebecers have reason to question the wisdom of trusting the Liberals, but, more important, they have proof now that Canadians other than Quebecers, from Alberta, Ontario, Newfoundland and elsewhere in our Canadian family, share and are prepared to fight for the federal principles which are essential to the survival of Quebec and Canada. The Liberal party may betray Quebec, but Canada will not betray Quebec.

[*Translation*]

I deeply regret the discipline which the Liberal party has forced upon the elected members of Quebec who, unfortunately, do not speak on behalf of that province in this House. Only the Liberal member for Montmorency (Mr. Duclos) has had the courage to put the interests of his province ahead of the instructions of his party.

**Mr. Lalonde:** Shame!

**Mr. Clark:** The minister says shame. Indeed it is a shame for the members from the province of Quebec to abandon their electors just as the Liberal members have abandoned the electors of the province of Quebec.

What an ordeal for the people of Quebec who see the members they have sent to Ottawa to represent their interest, who see their own members remain silent or behave like sheep instead of rising against a measure which threatens the federal system, a system which is so important for Quebecers and for the province of Quebec. Is it not ironic that all members of the National Assembly decried this measure, that all the provincial parties denounced this measure? And yet the members who were sent to Ottawa to make sure that federalism would enable Quebec to grow within the Canadian family, those members do not utter a single word against a measure which undermines federalism, genuine federalism.

[*English*]

I recall that the Minister of Justice (Mr. Chrétien) used to entertain thoughts about going to the province of Quebec to win a provincial election. Well, he has done that; he and his Prime Minister, by pushing this measure through, have gone to the province of Quebec and have won an election. They won it for René Lévesque and against Claude Ryan.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** It is well for us to review what is at issue here. This resolution proposes bringing our Constitution home; that is a goal which everyone supports. It proposes a means to change the Constitution when it is at home, and everyone agrees that we need an amending formula, an amending

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process. It proposes a charter of rights, which all parties in Parliament support. Those are the goals.

But the issue is that the government has determined to pursue those goals in a way which ignores Canadian history, which abandons Canadian practice, which may violate Canadian law, and which very seriously threatens the future of a united Canada.

● (1610)

The Supreme Court of Canada will decide the narrow legal question, although it is worth noting that the Liberal government tried every trick in the book to keep that Canadian question from going before a Canadian court. The legal question is important and it is legitimate. My colleagues and I are pleased that the government failed in its attempt to deny Canadian courts the right to decide the Canadian legal question. However, the court is only part of the process. The court can tell us whether this resolution is legal according to past law and past practice; but only we in this Parliament can decide whether it is good law and good practice for the future of Canada.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** That is a decision for legislators, not for judges. The Supreme Court will decide whether the federal government now has the power unilaterally to change the Constitution in areas of direct provincial jurisdiction. Our decision in this Parliament is whether we want future federal governments to have that power, for that will be the effect of passing this resolution in its present form and through the present process.

The Parliament of Canada will be asserting, as the newest and strongest precedent for future courts, that we have the power exclusively and arbitrarily to change any parts of the Constitution we want to change. That is the underlying principle of this measure and of this process, and it rips the heart out of a federal system.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** That is not just my view. That is also the view of distinguished Canadian Liberals, who sit among other places in the Senate, where they exercise more freedom to speak their minds. I want to draw to the attention of the House and read into the record the comments, for example, of the former Liberal leader in the province of Ontario, Senator Andrew Thompson, who said on March 2, 1981:

Putting it bluntly and simply, my question is: are we keeping our word; are we breaking the rules by which we agreed to govern ourselves in the federation? No matter how noble and worthy the purpose of this resolution—and I believe that what we are trying to achieve is worthy—the end does not justify the means.

[*Translation*]

Here is what former Liberal minister the Hon. Jean-Paul Deschatelets had to say, and I quote:

This unilateral project goes against and negates everything in which I have believed, which I have supported and endorsed in all my years in Parliament. If it remains in its present form, I shall not be able to support it.

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In my opinion, this unilateral proposal threatens to break up, for all practical purposes, the balance of powers which has always existed between our two levels of government.

That is the opinion of a Liberal Senator, Mr. Deschatelets.

[*English*]

Then I quote the remarks made last month by Senator George McIlraith, who served with such distinction for so long in this House, including as House leader on the government side:

I have served in Parliament now for the past 41 years. During that time the governments have been headed by five Prime Ministers. I have been a Liberal all my adult life. All of the political leaders I noted earlier in my remarks were leaders I respected and admired. With the exception of Sir Wilfrid Laurier and the Honourable Hugh Guthrie—whom I merely met but could not say I knew—they were friends of mine. Were they all wrong? Were all the leaders of the Liberal party in the past three-quarters of a century totally wrong, or could it be that our present government is wrong in taking a diametrically opposed course of action to the one all those leaders thought necessary and proper? Could it be that the present government is wrong in this attempt to make these basic amendments to our Constitution unilaterally, with a bare majority in the federal Parliament?

I want patriation but I cannot acquiesce in the wrong and dangerous course we are being asked to follow in most of the proposed legislation before us. In the exercise of my responsibilities as a senator, I have no alternative but to vote against this resolution in its present form.

Thus spoke Senator McIlraith.

**Some hon. Members:** Hear, hear!

**Mr. Stevens:** A great Canadian!

**Mr. Clark:** The Prime Minister has not listened to the Liberals in the Senate. He has not listened to the member of Parliament for Montmorency-Orléans (Mr. Duclou). He has not listened to Claude Ryan. He has not listened to Gordon Gibson. He has not listened to the long list of others in his party who are offended by what he is saying and what he stands for. He has not listened to the elected premiers of the eight provincial governments who oppose his measure.

He rejected our proposal in the fall to bring the Constitution home with the Vancouver formula. He rejected our proposal to split the resolution and to send the charter to the provinces for consideration. Now he indicates that he will accept none of the amendments we proposed to improve the charter of rights and respect the federal nature of Canada.

Instead of treating the Constitution as though it belonged to the whole country, he has acted as though it is his alone, to change in ways that are his alone to choose.

**Some hon. Members:** Shame, shame!

**Mr. Clark:** The Liberal party lets him get away with it, as does the NDP, sitting complacently back while the constitutional measure which is one man's obsession is forced through this Parliament. I do not begrudge the Prime Minister his place in history, but I would like him to leave us a country to live in when he is gone.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** It is that country which his measure and his method deeply threaten. He has one more opportunity now to prove that his concern is for the country and that his motive is national and not merely narrow and personal.

[*Translation*]

The Prime Minister now has a chance to do his duty as a Canadian statesman. He has at least six weeks ahead of the Supreme Court ruling, six weeks in which to try to achieve a consensus. Once the Supreme Court decision is handed down and if the latter asserts the legality of the resolutions, at least as far as its format is concerned, the order of the House will provide the Prime Minister with two days of debate in the House, followed by speedy action in the Senate, and this will conclude the consideration of this proposal by Parliament. This time frame has been set, and we accept it. But it also allows the Prime Minister, without any delay whatsoever, to follow-up on the premiers' initiative.

In September, the ten premiers made him an offer. He failed to make a counterproposal. There are now eight premiers who are proposing a detailed amending formula. He does not have to accept it in toto. But we consider it a basis for serious round of discussions, in the same way that we consider the government resolution, including the charter of rights with the amendments we propose, as a basis for serious and reasonable discussions.

I maintain that the Prime Minister of Canada has the duty to call a meeting and the right to draw up its agenda. Why will he not call such a meeting? Why will he not respect the federal system? What is he afraid of? He has just been rejected by the people of Quebec. Is he afraid to face the Premier who has just served him a good thrashing? The Prime Minister of Canada should not be afraid of such a meeting. If it does not lead to any agreement, he could then follow up on his resolution unless the court finds it illegal. And if there is an agreement on the procedure to follow with respect to a charter of rights, an amending formula, and perhaps the application of Section 133 to Ontario, he and Canada as a whole will have gained enormously.

The Prime Minister should put aside his personal vanity and take advantage of this opportunity to gain so much for Canada. He has the absolute obligation to call a first ministers' conference.

[*English*]

We now have before us amendments from the three parties. I want to deal very briefly with the very skimpy amendments put forward by the Liberal party, by the government. Of course, they come in two batches: the official ones under the name of the President of the Privy Council (Mr. Pinard), and the unofficial Liberal amendments in the name of the New Democratic Party.

We want to congratulate the NDP on agreeing with our wording on equality for women in the amendment.



**Some hon. Members:** Hear, hear!

• (1820)

**Mr. Clark:** Of course, we shall be voting for that, even though it is tied to a so-called "aboriginal rights" clause which merely requires the provinces to approve amendments to aboriginal rights.

What of the official Liberal amendments? Because of our assistance and insistence, particularly that of the hon. member for Provencher, they are grudgingly putting the word "God" in the preamble to the charter. Not with the eloquent and inspiring wording from the Diefenbaker Bill of Rights, with accompanying references in that document, but not in this one, to "the dignity and worth of the human person and the position of the family in a society of free individuals and free institutions", but instead, words inserted as an afterthought. This is what I find especially reprehensible: they are saying we can have a little bit of God if we accept their amending formula.

They ask us to join them in making 70 per cent of the people of western Canada—the population of Alberta and B.C.—irrelevant so far as constitutional amendments are concerned.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** They want us to join them in making those provinces third class in exchange for a reference to God. There is a better way to reflect the supremacy of God in the Constitution of Canada, and that is to accept the amendments in the name of my colleague, the hon. member for Nepean-Carleton (Mr. Baker). That package respects both God and the federal system. That is the way we should proceed in the Canadian Parliament.

The amendments which we put forward give proper recognition to the sovereignty of God, the worth of the person and, which is very important, the position of the family in a society of free individuals. The government rejects that approach. It rejects enshrining the right of Canadians to enjoy property.

It wants to allow the courts to decide conscience questions for Canadians. It wants the courts to be free to bar Canadians from deciding laws on capital punishment and abortion. For months the government has talked about the tyranny of unanimity and has practised the tyranny of unilateral action. In the amendments we have put forward, we have offered them a reasonable definition of consensus which we would join with them in supporting, a definition which includes seven provinces representing at least half the people of Canada, acting in concert with the Parliament of Canada. But the government is not interested in that. It is not interested because it does not want a Constitution or a charter of rights that anybody but the Liberals write. It deliberately keeps the charter hostage to a divisive process. It is trying to trade off rights for an amending formula.

When the eight premiers met in Ottawa they all dropped their packages and their conditions. The Liberal government does not want to drop its conditions. A Quebec government

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finally agreed to patriation but the government says, "who cares?". The government wants its agenda in its way, in its time. We will have nothing to do with a process of that kind which is wrong. It is a process which is deeply wrong and is deeply divisive. This government's preference and guiding star is to proceed unilaterally. It rejects proposals which respect the history and nature of Canada.

The government invents new phrases to condemn the enduring reality of a diverse Canada. If "checkerboard" means that different standards apply at different times, at different places, that has always been the case in Canada. That, indeed, was the political principle that allowed medicare to begin in this country. The same principle allows Quebec to enjoy a different pension plan, allows Newfoundland to have a school system different from that of British Columbia, and Ontario a system different from that of Quebec. Some of those differences date from before confederation; others, such as the Newfoundland school system, were specific conditions of entry into confederation. Of course there are differences in Canada. That is our history. That is our nature. To condemn it is to condemn Canada.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** Indeed, one of the most alarming elements of this highly centralist Liberal position is the underlying assumption that difference is dangerous. The Fathers of Confederation believed the opposite when they wrote a Constitution which protected local identities. So did the British parliament well before confederation when it wrote laws which guaranteed the distinct identity of the French Canadian society in Quebec. So do those of us who today celebrate the excitement of multiculturalism, which is the incarnation of difference or respect for diversity, or those of us who cheerfully work to learn a second official language.

The Prime Minister and his colleagues like to suggest that they speak for Canada against the provinces. In fact, they speak for official Ottawa against Canada. The Prime Minister and the little clique that advises him will sometime learn, I hope, that there is a Canada beyond Ottawa, a Canada beyond official bilingualism, a Canada beyond a charter of rights. It is a Canada of diversity and emotion, of innovation and of proud identities. Those Canadians cannot all be shaped into the same mould. Mr. Speaker, they should not be, because were they so shaped they would lose the essence and value of this great and unique nation.

Our speeches are limited to 30 minutes in this debate, but there is one brief theme that I want to touch on because this has been one other common theme in our history. I refer to the need to have a national feeling that unites us. We know that laws are not enough to unite Canadians; there has to be a feeling of nationality. It is one of the most bitter of ironies that the means the Liberals have chosen with which to impose the centralist view has weakened the Canadian feeling of common nationality. A Constitution which should have been the source of Canadians coming together and growing proud together has instead become the source of division in this country. That is

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entirely the fault of the way in which the government has proceeded.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** When I hear the Prime Minister speak, as he does at length, and when I hear other members on the government side speak, one word recurs and that is the word "failure". The Prime Minister speaks of 54 years of failure in constitutional negotiations. He speaks of failure with the premiers. Mr. Speaker, the Prime Minister can find failure if he seeks it. The point that must be made is that we have also succeeded dramatically in this country. This has been a country of success when governments sought success. It has been a country of agreement when governments and leaders sought agreement.

We have faced much more complex questions in the past than some of the questions we face today regarding the Constitution. It was a far more complex matter for the Diefenbaker government to negotiate with the Sauvé government, a means by which federal funds could be made available to the province of Quebec. Yet that was done, overcoming decades of suspicion and reluctance, because there was a mutual will to make the federal system work.

It was far more complex to introduce and have accepted a system of medicare across the country, but that was done. And the Canada Pension Plan was accepted across the country because there was determination to seek agreement to go forward. Therefore, when the former government in Ottawa was prepared to seek agreement on a national energy policy, we were able to achieve agreement, something which has eluded this government for 22 months.

● (1630)

**Some hon. Members:** Hear, hear!

**Mr. McDermid:** The Prime Minister laughs. He has not been able to do it.

**Mr. Clark:** There is a secret to this. There is bound to be failure when a government ignores the nature of this country and runs counter to its nature. We have succeeded in Canada when we have respected the nature of Canada.

This proposal fundamentally attacks the basic federal nature of Canada. Even if it is upheld in the courts, it will create a legacy of bitterness and division.

**Mr. Trudeau:** What about the flag?

**Mr. Clark:** It is not necessary to go this way. We can bring our Constitution home. We can have a charter of rights. We can have an amending formula, and we can have it by agreement if we work within the Canadian tradition instead of abandoning it and if we follow the Canadian way to agreement.

I urge the government to accept those amendments and, just as importantly, to accept the federal spirit which inspires those amendments.

**Some hon. Members:** Hear, hear!

**Mr. Roland de Corneille (Eglinton-Lawrence):** Mr. Speaker, before I commence my remarks on the Constitution in general and on the amendments, I would like to say in immediate rebuttal to the Leader of the Opposition (Mr. Clark) that I was disappointed that he chose to denigrate and minimize the inclusion of an amendment to the Constitution by the government which calls for the inclusion of a reference to God. I did not think it was necessary for the Right Hon. Leader of the Opposition to try to turn this into a partisan, political issue.

**Some hon. Members:** Shame!

**Mr. McDermid:** Don't be so hypocritical.

**Mr. de Corneille:** Therefore, I must set the record straight for the public. Also I want to set the record straight for *Hansard*. It is bothering members of the opposition at the present time to have this brought to their attention. Nonetheless, I must persist in pointing out that there is a reference to God in this Constitution, one which is being proposed by the Liberal government.

This is not the first time the Liberal government has had a decision to make concerning a reference to God. Only recently, as a matter of fact, in the new text of "O Canada" the government departed from tradition and asked through this hymn: "God keep our land glorious and free!" This party proposed those words. Those words were a departure from the traditional text of "O Canada".

Incidentally, the Leader of the Opposition speaks about reference to God in the Diefenbaker Bill of Rights. It is ironic that the original text of the Diefenbaker Bill of Rights had no reference to God. In fact, it was a Liberal member of this House at that time, the hon. member for Windsor, who proposed that these words be included in the Diefenbaker Bill of Rights, and that proposal was accepted by the opposition. That is how these words in the proposal from the Tories were accepted—because of a suggestion made by a Liberal member of Parliament. There was another effort on the part of the government to include God in the proposed Constitution. The suggestion was made at last September's conference when representatives of the federal and provincial governments met to discuss the future of the Constitution. The Liberal government proposed an amendment to include a reference to God in the preamble to the Constitution.

I suggest it would be better if we did not try to be pious or pretend that we are superior.

**Mr. Kilgour:** Sit down.

**Mr. de Corneille:** Rather, it would be better to say that it is desirable to include a reference to God, for which I hope all parties will vote. This is something which the Liberal party has stood for in the past, which it stands for at present and will continue to stand for in the future at all times.

As we debate the resolution on the Constitution, a true perspective would show that we are participating in one of the greatest events in Canadian history.

[Translation]

First, by patriating our Constitution with an amending formula and provisions for eventually holding a referendum, we will enhance our sense of identity as Canadians. Second, by including a charter of rights and freedoms, we will check whatever appears to our minds to be acts of injustice and inequity. Third, proclaiming our values is ideal in a document which will serve as an example for future generations and would constantly remind other nations of the kind of people that we are and of what we believe in.

[English]

First, I said that by patriating the Constitution we will deepen our sense of identity as Canadians. At a superficial glance, patriation may seem to be only symbolic, ceremonial, or psychological. It is all of these at least. But throughout this debate and the events which will follow, Canadians are becoming far more aware of their history and their identity than they have ever been, at least for a very long time. Some are surprised, if not amazed, at how recent has been our emergence into nationhood and how precariously our human rights have been protected in the past.

Second, I said that by the entrenchment of the charter of rights and freedoms we are moving to eliminate what are recognized by most Canadians as injustices and inequalities, old and new. As parliamentary governments throughout the world have become more and more habituated to operate by government regulations, rules, orders in council and similar instruments, it becomes increasingly urgent and important to protect the individual through an entrenched charter with the fundamental right to appeal to the courts for redress against arbitrary government violations of personal rights and freedoms. Further, the charter will protect every Canadian individual and minority from the tyranny of the majority, a fact which is of vital importance in a nation so constituted as ours. One wonders what there is about the orientation of the official opposition in this House that makes its members so strongly resistant to granting such a charter now. Some say they are for a charter, that it is a great idea, but that we cannot have it now; perhaps two years from now, perhaps some time later, but not now. Others say they are opposed outright to the charter. Some of their arguments against it are most imaginative, if not downright ingenious.

One such argument we have heard quite often from the opposition is that our Canadian charter will not protect anyone anyway. If there is a will to circumvent the charter, they argue, it will be circumvented. Some of these opposition members illustrate this idea by pointing to the Soviet bill of rights which, they state, is a marvellous document on paper but is continuously and flagrantly violated in practice. They are correct when they say that human rights in the Soviet Union are flagrantly violated over and over again. However, in the heat of their opposition against the Canadian charter, they

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do not tell us the whole story. They fail to explain that the Soviet bill of rights is a "marvellous document" only if one totally ignores the fact that it provides the Soviet authorities with huge loopholes. They are so big they can talk about human rights with tongue in cheek and crossed fingers.

● (1640)

For example, in the Soviet document there is written in on purpose a basic and fundamental escape hatch; it is the provision that these rights are given in accordance with the interests of the people and "in order to strengthen and develop the socialist system". In other words, one has no freedom unless one supports the Soviet government. The Soviet bill of rights is not a marvellous document because it is not a sound document; nor does the Soviet Union support a just interpretation of it. We should dismiss such opposition arguments against a Canadian charter as baseless.

A second alleged reason given by some of the members of the opposition for their resistance to the charter of rights is even less convincing. This was alluded to recently by the Minister of Finance (Mr. MacEachen). The opposition maintain that they cannot support it because it is the current, singular and peculiar obsession of our Prime Minister (Mr. Trudeau). Now that is an amazing, prejudiced reaction by which to decide the affairs of state, even if the observation were true, which it is not. First of all, the charter is no current whim of the Prime Minister. In 1967 when he was minister of justice he published a book entitled "A Canadian Charter of Human Rights". I need hardly remind members that that was some 14 years ago, hardly a recent whim.

Second, the charter is not an original idea or unique to him. The entrenchment of a charter has been advocated by Liberal, New Democratic and Tory leaders well before our present Prime Minister. The assurance of basic human rights and freedoms for all Canadians was of paramount importance to the late Right Hon. John G. Diefenbaker, and to that fine parliamentarian, Tommy Douglas. If we must talk of obsession, then let us say that it has been the obsession of Canadians since 1927, following the Imperial Conference when the matter was first raised. It was the obsession of the Right Hon. Louis St. Laurent. It was the obsession of the late Prime Minister Lester B. Pearson when he wrote in January 1968 these words:

As Canada enters into its second century of confederation, Canadians could take no more meaningful step than to entrench firmly in our constitution those fundamental rights and liberties which we possess and cherish. A Canadian charter of human rights would reflect and protect the high degree of freedom enjoyed by Canadians and the unique bilingual character of the country. I recommend to all Canadians the acceptance of a Canadian charter of human rights.

So it is not merely an obsession of our present Prime Minister. The charter has been a torch for the Liberal party and for many New Democratic and Tory leaders over the decades. Now it is borne proudly by the Liberal caucus, for with this torch of freedom, we hope to kindle the fires of justice and equality everywhere.



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We rejoice, as pointed out by the Minister of Finance in his recent speech, that the overwhelming majority of Canadians support the entrenchment of a charter of rights and freedoms in the Constitution. We rejoiced on March 25 last when leaders of 18 minority communities came to Ottawa armed with petitions and resolutions from their organizations. They called for the immediate entrenchment of a charter of rights and freedoms on behalf of two and a half million Canadians who belong to minority groups.

I am sure it will not lessen the stature of our Prime Minister that he is attacked for being obsessed with human rights. What seems to me really to underlie the major opposition to the entrenchment of the charter of rights and freedoms is a lack of urgency or sensitivity on the part of some members in recognizing the lack of protection of rights for so many people across this country, both now and in the past. The opposition fails to realize how dangerous it is to continue to rely on the comfortable majority to protect frustrated or disadvantaged minorities. The hon. members for Provencher (Mr. Epp) and Rosedale (Mr. Crombie) can lean back and philosophize from now until kingdom come about how all these rights are inalienable—that therefore, in theory, these rights already exist. But just try telling that to the aboriginal people of Canada, to women, to the handicapped, or to many of our unprotected minorities. There is too much of a laissez-faire approach which assures us that all will work out somehow, somewhere, some time, but not just now.

How can we ignore the fact so sagely observed by Dr. Walter Tarnopolsky that so far as the provinces are concerned, as of now, in 1981, although all ten have anti-discrimination statutes, only three provinces have bills of rights which cover political civil liberties, that is, fundamental human rights, and only one guarantees legal civil liberties. Tarnopolsky therefore concludes:

Considering that the fundamental principle of the parliamentary system of government which applies in Canada is that the legislatures are supreme within their jurisdiction, there is absolutely no constitutional limitations on seven of the provinces from restricting fundamental freedoms, and nine of them from restricting legal civil liberties.

If those who oppose the immediate entrenchment of the charter had their way, the result would be not only a prolongation of certain injustices and a delay in the establishment of linguistic and mobility rights, the rights of the aboriginal people and the handicapped; there would be one more serious consequence that is often overlooked. This is my third point, that our Constitution and our charter will proclaim our values and ideals as a nation. By this charter, we declare to all Canadians and to all people everywhere that not only are we a democratic society, but also that, by enshrining the sanctity and freedom of the individual, we entrench very sweeping limitations on the power of the state and reject any and all forms of totalitarianism. The Canadian charter is a declaration of justice and compassion which is probably unequalled on this earth.

It has been developed in its present form by first being drafted on the basis of the finest tradition of the Canadian heritage of the British common law and the French code, and

then by being perfected by passing through the refiner's fire of the testimony of Canadians who have fled from every form of oppression in every corner of the globe, and who have suggested, on the basis of their personal experiences, ways to advance still further the entire cause of human dignity. We underestimate the importance of this constitutional charter as a teacher to this and future generations.

• (1450)

Some reject the charter and would prefer to rely on public attitudes. They argue that you cannot legislate morality, that you cannot change bigotry by laws, that you have to wait for attitudinal change. That kind of mentality, which one hears often from the other side, is all too tragically reminiscent of the same point of view of the governors in the southern United States who stubbornly opposed federal civil rights legislation. They maintained that local popular acceptance was first required. They further claimed that federal civil rights legislation interfered with local states' rights.

Dr. Martin Luther King, as Gordon Fairweather has said, put the relationship between law and morality in stark terms when he said:

It may be true that law cannot make a man love me, but it can keep him from lynching me.

Dr. King went further in pointing out that the law is also an important teacher of values. The law transmits from age to age.

Why do hon. members of the opposition so underestimate the importance of the written law, the codified law, as a teacher and transmitter of values? Why do they shrink from wanting to put it down in black on white in the charter? The ten commandments are laws. It is true that they are not always obeyed. People still, unfortunately, kill, steal and bear false witness against their neighbours; but the ten commandments and other moral laws are values which were and are inculcated into the minds of people. Does law not teach and change values? Is not the bible itself a codified book of laws? In some circles, in fact, it is known as the "volume of the sacred law". When the Presbyterian moderator of the Church of Scotland presents the volume of the sacred law, the volume of the bible, to the monarch at a coronation, the moderator makes the presentation with these words:

Here is wisdom. This is the royal law.

These are the lively oracles of God.

I say to my hon. friends that law changes attitudes, and so do many of the laws we pass here, as will the charter of rights and freedoms, to the benefit of the aboriginal people, the handicapped and all others whom this charter has been designed to protect.

Moreover, I believe this charter to be so essential that it deserves not only passage in this House but special treatment thereafter as well. Presently as chairman of the northern pipelines committee I serve on a standing committee with a permanent frame of reference to monitor and watchdog the progress of the Alaska pipeline. Surely the rights and freedoms of Canadians are as important to Canadians as the pipeline. I



would advocate not only passage of the charter in this House, but also the establishment of an ongoing House of Commons standing committee as a watchdog to monitor and uphold the principles and values for which this charter stands.

Finally, I plead with all members of this House, I plead with all Canadians, to remember the oppressed people who are suffering brutal violation of their human rights throughout the world. I have always been convinced that the struggle for human rights throughout the world is indivisible. That is why ten years ago, as head of a Canadian national human rights organization, I presented a petition to the federal government signed by thousands of Canadians and calling on our country, both nationally and provincially, to endorse Canada's signature to and ratification of, the international human rights covenants of the United Nations.

We presented that petition on human rights day, 1971, to the Right Hon. Prime Minister, who immediately assured us of his readiness to give federal ratification. It took five more years before all the provinces concurred, before Canada in 1976 was at last able to speak out on behalf of the oppressed in many foreign lands. For the sake of those oppressed as well as our own sake, we cannot afford to wait again.

I plead that we remember that Canada has a great and central role to play in international human rights commissions and courts. I wonder if we realize that, when we speak up on behalf of victims of oppression in the Soviet Union and elsewhere, we are often taunted with the accusation in international courts of justice and commissions: "Where is your human rights legislation to guarantee protection for all Canadians? What about the rights of your aboriginal peoples? Why is your Constitution totally silent on human rights?" Let us be able to reply to these taunts resolutely: "We have entrenched in our Constitution all these rights. Our hands are clean; now wash yours."

**Mr. Edward Broadbent (Oshawa):** Mr. Speaker, just a few weeks ago during this historic debate on the establishment of a truly Canadian Constitution I indicated why we were supporting the measure now before the House. I indicated then that among the reasons, first and foremost was the following. The action the Parliament of Canada is now taking would lead to a truly Canadian Constitution, one that would be here in our own land. Contrary to what some people have been saying, not only in the House of Commons but from coast to coast, this would be a Constitution made for Canadians, by Canadians right here in the House of Commons.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** Secondly, the proposal before us contains a workable amending process, something this country has lacked throughout its history and which has led in fact to many of the divisions, both regional and within regions. We have lacked the process necessary to make needed constitutional change.

I say in passing that while the formula for amending the Constitution in this document is not perfect—indeed, if you look at the constitution of any federal state you will not find a

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perfect amending formula—it still remains a fact, as pointed out by members of my party and by others, that if the premiers in the next couple of years come up with a better formula, there is a process in this resolution by which a preferable formula can be selected by the people of Canada. That seems to me to be a very reasonable proposal indeed.

Thirdly, and very important to members of my party, this document we are debating contains a charter of human rights, something my party has been calling for throughout the land since the Regina manifesto. I am not going to dwell at length on the need for a charter of rights. I did that in my speech a few weeks ago, and it was again addressed very eloquently as a subject by two of my colleagues, among others, the hon. member for Burnaby (Mr. Robinson), who is our justice critic, and yesterday by the hon. member for Broadview-Greenwood (Mr. Rae).

• (1700)

We need a charter of human rights in a federal state which is diverse regionally and culturally. I repeat that we do not need to elaborate on the arguments; we have heard them already in the House and they cannot be ignored. Our country on the whole has had a proud history, but our country has also had moments of which none of us should be proud such as when we discriminated against the Japanese, against our native people, against the Chinese, and against women. With the accomplishment of the aims which are included in this charter and the fundamental rights which will be guaranteed, I hope we will never do that again in the future history of this country.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** Having said that, I want to note certain particular aspects of the charter which are of particular importance to my caucus colleagues. First among these that I want to stress are the rights which will be established in all provinces for francophone Canadians.

[*Translation*]

As an anglophone it is very important to me at this moment in our history to see that the people who belong to a culture other than mine have the same rights, and it is very important in the province of Ontario, I want to emphasize this, that all francophones enjoy the same rights as anglophones have in the province of Quebec.

[*English*]

With this resolution it would not be true to say that we will have achieved that goal. As all members in this House know, we will not have achieved the same rights for francophones in the province of Ontario as anglophones have in the province of Quebec, and that is something about which we should all be concerned with respect to future action.

In mentioning that I want, through this body, to address particular comments to the Premier of the province of Ontario. The Premier of the province of Ontario has moved in accepting minority linguistic rights in schools and has done so by sup-

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porting the measure which is before Parliament. These rights will be enjoyed by French-speaking Canadians in schools right across Canada. I say to the Premier of the province of Ontario that that is one important step, but before very long, if he has any sense of justice at all, he must do for all francophones in the province of Ontario what has long since been done for anglophones in the province of Quebec.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** My colleagues are also pleased that in this charter we find protection for those of us coming from outside North America originally who are neither English-speaking nor French-speaking by ancestry; that is, the group we usually include in the term "the ethnic community", which makes up more than one-third of our population. It is indeed fitting for a federal state like Canada to note particularly the contribution that group has made to the history of our country and to have a section entrenched in our Constitution with particular reference to them.

I am also pleased at the inclusion of the handicapped, and I am pleased, as are my colleagues who have fought so hard in recent years in two major campaigns at the national level for women's rights, that at long last with this charter, and especially with the amendments which will be voted on later tonight, equality, at least in terms of the law and in terms of fundamental rights, will be provided for Canadian women. I say "at long last"; we still have a long way to go.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** Finally, a particular group I want to mention is our native peoples. As is indeed true in the United States of America and in South America, we in this country have not been as generous to the original inhabitants of this country as have people outside this part of the planet to their original inhabitants. Let me put it more bluntly. We have all too often been cruel and indifferent and, indeed, at times murderous to the original inhabitants of this continent. At long last we will begin to redress a profound historical injustice by entrenching in the Constitution of Canada aboriginal and treaty rights.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** In that connection I want to say that I am pleased that the government has decided to support an amendment tonight which will entrench those rights with the same degree of legal solidity, if that is a proper term, as all the other fundamental rights which will be entrenched in the Constitution.

I must say in passing that I was disappointed to hear the comment of the Leader of the Opposition (Mr. Clark) earlier today in giving such grudging acceptance to this notion. I want to say that it was members of my party—other colleagues in my caucus—and of the government party as well who worked very hard at the committee level and in private to obtain these rights, and there was no movement at all at that time in terms of determination by members of the official opposition. I

resent their condescending attitude toward the important step we will be taking in voting for the entrenchment of aboriginal rights later on tonight.

I must also say that the Leader of the Opposition was somewhat disappointing when he said that he would support our amendment as it affects the equality of women too "because it was, after all, the wording which was selected by the Conservative party".

**Mr. Benjamin:** Hogwash.

**Mr. Broadbent:** If the Leader of the Opposition wants to be completely honest, he knows very well that the Conservative party had wording in an amendment in the Senate which was not nearly as effective as this wording, and it was only after this wording in the proposed amendment became public that the Conservative party carefully extracted it from some newspaper and included it among their own amendments. It is one thing to get up and say they are going to support something, whether it is women's rights, native rights or any other basic matter; but then to pass off in a rather cynical way that the idea was really their own is something I find just a little hypocritical and out of place in a debate as serious as this.

Since I last spoke in this debate there have been two developments on which I want to comment. One was the premiers' conference. I say—and I mean it when I say it—that when the premiers of the eight provinces who opposed the position taken by the Government of Canada and by my caucus got together, I hoped they would come together in Ottawa and present us with an amending formula which was better than the one we had thought was workable. I thought it would be better for Canada if the premiers came up with a formula which we could incorporate as an amendment to this resolution. Because if they had done that, then indeed it would have been accurate to say that the new Constitution that we will have—and I am confident we will have it—was not simply the result of parliamentary action but the result of serious, constructive participation by a majority of the provinces.

• (1710)

The premiers met, Mr. Speaker. Not only did they not come up with a better amending formula; they did not come up with anything that approached the notion of a charter of rights in any sense. Therefore, they failed on two important counts, since the essence of the resolution which is before us is to provide us with an independent Canadian constitution with an amending formula for the future, on the one hand, and, on the other hand, provide a charter of rights. The premiers failed to achieve an amending formula. They presented one which would create a patchwork or a checkerboard, whatever term one wishes to use, in which women would have rights in one province but not in another, in which native people would have rights in one part of Canada and not another.

I want to go on record as saying that my party does not object to an amending formula which, in some cases, could include, by agreement, opting out of special, non-fundamental rights areas. But how can anyone who seriously believes in the

notion of nationhood, who takes the concept of citizenship as a basic given right for a country, ever propose an amending formula, as the premiers did, which could result in Canadians having a different status of citizenship depending upon where they lived in our land? Our party can have nothing to do with such an idea.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** In having failed to deliver when they came here, the premiers have legitimized, as nothing else could, what we are now in the process of doing in debating and voting on this measure. I meant it when I said that I regretted it, but that is one of the ironic and unintended consequences of that meeting. The vast majority of premiers made it clear that they do not believe in a charter of rights. The same premiers are heading governments in provinces where the vast majority of citizens in every province wants a charter of rights; the evidence is overwhelmingly clear on that. We represent Canada just as much as the premiers, if I may say so, since we too come from all parts of Canada.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** If we want to take our responsibilities seriously and meet the needs and demands of the people of Canada who want a charter of rights, then I ask you, Mr. Speaker, what can we do? The premiers have come up with an amending formula which is unworkable in terms of a charter of rights, which they did not even discuss at their meeting. What they have done is exactly what some of us were saying last fall in explaining why Parliament had to act. What they have done is shown that only the Parliament of Canada can bring to the people of Canada the charter of rights which they need.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** Before I conclude my comments on the resolution, I would again like to deal briefly with what I can only regard as the hypocritical stand of the Conservative party on the amendment standing in the government's name. In the government's amendment there are two key points. One recognizes the concept of God in the Constitution; the second aspect would put the western provinces of Canada on exactly the same basis as the Atlantic provinces when it comes to the amending process.

**Mr. Kilgour:** Second class!

**Mr. Broadbent:** On the one hand the Conservative party has talked about unity, about the Canadian way and how it is important that we should co-operate. On the other hand they have been going all across our land stirring up discontent, turning one region of Canada against the other.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** I want to be honest about this, Mr. Speaker, specifically when it comes to the question of the prairie

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provinces. The Progressive Conservative Party of Canada has been running ads in the newspapers of the prairie provinces telling the citizens in those provinces that they are citizens in a third rate province.

**Mr. Kilgour:** Second rate.

**Mr. Broadbent:** Some ads have said second rate and some have said third rate.

Why are they doing this? They have said the prairie provinces have less powers than Prince Edward Island. Well, this very amendment will ensure to the prairie provinces that they have exactly the same powers as Prince Edward Island.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** If the Tories were not the hypocrites that they are in this process, then they would be voting for this amendment tonight.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** Not content with stirring up regional discontent in the prairies, which they have been doing for the last several months, they are now deeply concerned because we have an amendment which puts the prairie provinces on an equal basis with Atlantic Canada.

**Some hon. Members:** Oh, oh!

**Mr. Broadbent:** The Tories are getting a little excited. I listened with care to the Leader of the Opposition. I would like the Tories to listen now to what I have to say.

**Some hon. Members:** Oh, oh!

**Mr. Deputy Speaker:** Order, please. The hon. member for Oshawa (Mr. Broadbent) has the floor.

**Mr. Fulton:** Quiet down, you half-baked dinosaurs!

**Mr. Broadbent:** I apologize to all the dinosaurs for that comment!

I was just saying that, not being content with stirring up regional conflicts on the prairies, which I frankly find despicable—they now have an amendment to remove that grievance—they have moved farther west. They are now saying that Alberta and British Columbia are being discriminated against.

**Mr. Kilgour:** It is true!

**Mr. Broadbent:** I predict that when this resolution is finally voted on, as it will be, and accepted by the people of Canada, Canadians will see the Tories for the hypocrites they have been.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** As I suggested a minute ago, we are now near the end of this important process. I am confident about the Supreme Court's final decision. I am confident that the

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divisiveness which has occurred during this debate with regard to our Constitution and our charter of rights, which is probably the best in the world, will soon be replaced by unity. I am confident, having said that, that this Parliament will have acted with historical foresight which will benefit future generations of Canadians.

Before I conclude, I want to say that while we have tried to do what was done in the 1860s, when people representing different political parties put aside some of their partisan differences and put up with silly, mindless abuse of the sort we have heard in this debate—since some parties happen to want to co-operate to build a better Canada—

**Mr. Kilgour:** Cross the floor, Ed.

**Mr. Broadbent:** There is the intellectual level of the Conservative party being demonstrated right now.

**Some hon. Members:** Hear, hear!

**Mr. Broadbent:** I say to the hon. member that if Sir John A. Macdonald had had the same attitude the hon. member has, then Canada would not exist today.

**Some hon. Members:** Hear, hear!

● (1720)

**Mr. Broadbent:** I have no regrets at all in saying that my party has worked very hard to improve a charter of rights and an amending formula to aid in the process of bringing home the Constitution from Great Britain to our land where it belongs. Equally I have no hesitancy in saying that surely some credit must be given to the Government of Canada. Also I do not hesitate to say that two parties were playing an important, historical role.

I conclude by noting that while we have worked in tough-minded co-operation to build the Constitution of Canada, there are important matters to which we must turn our attention. I refer to matters such as housing, energy, jobs for Canadians, pensions and declining family incomes—in short, matters which affect the economic well-being of Canadians—which this Parliament must now start to address in a serious way. I want Canadians to know that we have accomplished much together in developing the Constitution, but in the days and weeks ahead the Government of Canada can expect the New Democratic Party to be fighting as strongly as it ever has in the past to improve the economic well-being of our people from coast to coast.

**Some hon. Members:** Hear, hear!

**Mr. Gary F. McCauley (Parliamentary Secretary to Minister of Consumer and Corporate Affairs and Postmaster General):** Mr. Speaker, it is an honour to speak following the statesman-like address of the hon. Leader of the New Democratic Party (Mr. Broadbent). I congratulate him for his vision of what this country is all about; it is one that we on this side of the House share.

Canada in the 1980s is still a nation of young pioneers struggling to create a nation. Thankfully our country has always been blessed with statesmen who had vision, a vision of what Canada could be economically. I speak of those with the foresight to create railways to carry us to prosperity. Those trains carried to the north and to the west pioneers who bent their backs breaking the land, and the words "Dominion from sea to sea" rang true. We had statesmen with a vision of what our society should be—compassionate and egalitarian. Since all Canadians in every region contribute to the growth of our country, we should all benefit from that growth. Progressive legislators brought in pensions, family allowances and regional equalization payments. Curiously enough, they were all Liberals.

Our society is not founded on the theme of survival of the fittest; it is founded on equality, compassion and recognition of past contributions to the nation. We have achieved much and we have grown much in economic and social terms, but in political terms we are still, as the poet, Earl Birney, put it:

... a high school lard  
 dead-set in adolescence;  
 loud treble laughs and sudden fits,  
 bright cheeks, the gangling presence.  
 This boy is wonderful at sports  
 and physically quite healthy;  
 he's taken to church on Sunday still  
 and keeps his prudence stealthy.  
 He doesn't like books, except about bears,  
 collects new coins and model planes,  
 and never refuses a dare.  
 His uncle spoils him with candy, of course,  
 yet shouts him down when he talks at table.  
 You will note he's got some of his French mother's looks,  
 though he's not so witty and no more stable.  
 He's really much more like his father and yet  
 if you say so he'll pull a great face.  
 He wants to be different from everyone else  
 and daydreams of winning the global race.  
 Parents unmarried and living abroad,  
 relatives keen to bag the estate,  
 schizophrenia not excluded,  
 will he learn to grow up before it's too late?

Will he learn to grow up before it is too late? That is the essential question, and now is the time to answer it. It is time for us to grow up and leave behind our political adolescence, the "gangling presence". It is time to bring our Constitution home.

No longer will our birth certificate lie in a parent's purse; it will be in our own hip pockets. With it will be a charter of rights that testifies to our concern for the well-being of all Canadians, not just the ones who can make it on their own. We will guarantee the rights of the disadvantaged, the minorities and people in the poorer regions of Canada.

There is opposition to this initiative. How does one explain it? How does one explain the antics of the premiers, the gang of eight? How does one account for the position of the official



opposition? In answer to the first question concerning the premiers, let me simply quote Michael Valpy of *The Vancouver Sun*, who wrote:

The only conclusion to come to is that (the premiers) are a somewhat mediocre bunch whose meeting last week will be remembered as one of the funny curiosities of Canadian history—like the Canadian Army's 1920 battle plan to attack America.

What about the Tories? What about Her Majesty's loyal opposition? I want to be careful and charitable in answering these questions. First, we must look at the nature of our parliamentary system. There is an old British dictum that it is the duty of the opposition to oppose everything, support nothing, and defeat the government as often as possible. That is the system. If we on this side of the House were to stand in our places and say that two and two are four, hon. members opposite would find some reason to disagree.

I firmly believe that that fact of parliamentary life is behind much of the opposition to this constitutional proposal. Much of the overblown rhetoric, the nitpicking objections and the Chicken Little cries that the sky will fall if we go forward are rooted in the Tories' determination to oppose everything and support nothing.

We had a prime example of a Chicken Little speech in the speech of the Right Hon. Leader of the Opposition (Mr. Clark) a few moments ago. Even his Chicken Little speeches are wearing thin like watered-down chicken-noodle soup. I noticed that only half his colleagues were present in the House to listen to his speech; that was not very many.

**Mr. Taylor:** There are only 12 listening to you.

**Mr. McCauley:** I hear the hon. member opposite. Let me tell him that I do not happen to be the leader of my party.

**Mr. Taylor:** Thank goodness.

**Mr. McCauley:** Also I was interested in the Right Hon. Leader of the Opposition clothing himself as *fidei defensor*, or defender of the faith. The hon. member for Eglinton-Lawrence (Mr. de Corneille) pointed out the hypocrisy of his statements about the inclusion of God in the Constitution, so I will not repeat him. But I feel a great deal of sympathy for the Leader of the Official Opposition. At his best he is a decent man and a good man, but when faced with the question of how to bolster his position as leader of a very fractious party, he chose to do so by nitpicking away at this constitutional initiative. It was not, I fear, because he believed in his heart of hearts that there was anything basically wrong with it, but because he had to appear strong at a time when those in his party were ready to pounce on any sign of weakness.

● (1730)

So it is because of the nature of our parliamentary system and the peculiar circumstances of the Leader of the Official Opposition (Mr. Clark), that an attack was mounted, an attack having really nothing to do with the merits of the case, in my opinion. How else, then, does one explain the Tory amendments? At face value, most of them make little sense at

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all. Nothing in this charter affects the authority of Parliament to legislate in respect to abortion and capital punishment. Why just abortion and capital punishment? Why not the handicapped? Why not aboriginal peoples? Why not the kitchen sink? Why not? Because this amendment is simply a crass appeal to special interest groups, an attempt to win brownie points on moral issues.

On property rights, the Conservatives have been calling for the charter to include the right to property. At the same time, they are trying to present themselves as the protectors of the provinces. Yet it was at the request of the provinces that a guarantee of the right to property was left out of the charter. The provinces say inclusion of this right would put all laws on zoning and land neutralization in jeopardy.

Prince Edward Island has argued movingly against guarantees of property rights. Islanders have had the sad experience of watching their prime agricultural and recreational land bought up by non-Islanders. So they passed laws limiting non-resident ownership of property, laws they fear will be ruled unconstitutional if property rights are enshrined in the charter.

So not only does the Conservative amendment on property rights go against the wishes of the provinces, but it is also meaningless. The Tories know Canadians will have the same guarantees of property rights under the new Constitution as under the BNA Act. Property ownership will be subject to the laws of the land, as always.

On the amending formula, the Minister of Justice (Mr. Chrétien) eloquently demonstrated in this House yesterday that the Conservative proposals just will not wash.

I want to say a few words now about the charter of rights, in my opinion, the *sine qua non* of this initiative, hailed by many as the best charter of rights in the world. Without a charter of rights, the only protection for minorities is the good will of the majority, which is often lacking: just ask Canadians of Chinese descent, or Japanese, French Canadians, or English-speaking Canadians. Or take, for example, our native people. They are not power brokers. Governments could ignore their concerns with little political backlash in their non-native constituencies. But when we are at our best, deep in our hearts we know that our native peoples have been pushed aside for too long, that their plight must be our concern. So we have recognized their contributions to Canada and their rights in the Constitution.

It may be, Mr. Speaker, that you and I and the majority of people in our ridings will not need to call on the charter of rights to defend us from some arbitrary action; but maybe we will. Maybe it will protect us, at some point in time, from unreasonable search and seizure. Upon arrest, the police will have to inform us of our right to legal counsel, something they have no obligation to do now. We will have to be informed why we have been arrested, and be released if detention is determined to be unlawful.

Some people are concerned that ensuring such rights means weakening our laws, that the charter will aid offenders in eluding the long arm of the law. Those people forget that a

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fundamental principle of our justice system is that everyone is innocent until proven guilty. Sometimes such fundamental principles are violated. I cite an example from my own province of New Brunswick. Section 33 of the fish and wildlife act deals with night hunting laws. It is worded in such a way that the onus of proof is shifted from the accuser to the accused. That is a basic perversion of our system of justice!

The prosecution has only to say that a certain person committed a crime, a certain offence at a certain place, at a certain time. No evidence is required to support the charge. A citizen is accused, and then the burden of proof is on him. If he cannot prove the charge false, the case is won by the Crown by default. A private citizen may lay the information and, upon successful conviction, collect half the fine for his trouble. Such informers may never have to appear in court or be known by any person outside the ministry of natural resources. In other words, they are secret witnesses.

Surely such a law is in direct contravention of the proposed charter of rights, because the charter is designed to protect our rights and to ensure that everyone is assumed innocent until proven guilty. It will ensure that all of us have certain inalienable rights which can only be taken away through a fair trial by just laws.

One would expect western Canadians in particular to support the charter for its guarantees of civil rights. The west, in large part, was settled by people from eastern European countries who fled the arbitrary and oppressive actions of totalitarian governments. If anyone knows the value of a charter of rights, westerners do.

Opponents say that the charter of rights is unnecessary and our present system of common law is good enough. They figure a charter of rights is an instrument of a republican type of government, foreign to our parliamentary system. But other members of the Commonwealth have bills of rights: India, for example, and the United Kingdom itself which has the Magna Carta, a bill of rights, and an act of settlement. Britain also helped draft the European convention of human rights and is subject to adjudication by the European court of human rights.

Other critics fear the courts will use the charter to declare legislation unconstitutional. They say it would be usurping Parliament's supremacy to have judges rather than legislatures deciding what is law and what is not.

First of all, the courts can already declare legislation *ultra vires*, in conflict with our present Constitution, the BNA Act. Since Canada is a federal state, the Constitution is the immutable law of the land and the courts must become the interpreters of the Constitution.

In the experience of other countries like the United States, courts rarely find legislation unconstitutional. That is because most legislators keep in mind their obligations under the charter of rights when drafting laws, the same way as now they keep in mind the limitations the BNA Act places on their powers.

The charter reflects the opinions of a vast cross-section of Canadians, past and present, as opposed to common law which tends to reflect only the opinions of those in the law profession.

The charter expresses the will of the people because it has had input from all segments of society, as has the entire constitutional resolution. It is arrant nonsense to claim, as does the Right Hon. Leader of the Opposition, that it is the work of one man, the Prime Minister (Mr. Trudeau).

Let me refer to what has happened in this whole debate. The proposed resolution debated in the House of Commons from October 6 to October 23. Seventy-four members spoke, of whom 33 were Liberals, 32 were Progressive Conservatives, and nine New Democrats. In the Senate, 34 speakers spoke on the resolution from October 14 to November 3, of whom 17 were Liberals, 15 Progressive Conservatives, and two Independents. Then the proposed resolution was referred to the special joint committee composed of 25 members of whom 15 were MPs and 10 senators. There were 15 members from the Liberal party, eight members from the Progressive Conservative party, and two members of the New Democratic Party.

In all, 170 senators and MPs served on the committee. From the House, 119 members served at one time or another. There were 50 Liberals, 43 PCs, and 26 New Democrats. From the Senate, 51 members participated, of whom 32 were from the Liberal party, and 19 from the Progressive Conservative party. The committee held 106 meetings on 56 sitting days, for a total of 267 sitting hours. Of the total number of hours, 176.5 hours were spent with witnesses, and 90.5 hours in clause-by-clause analysis.

As of February 2, 1981, 914 individuals and 294 groups had sent letters, telegrams and briefs to the committee. Of those who expressed the wish to appear before the committee, three special witnesses, 93 groups or associations and five expert witnesses attended.

Phase 3 of the debate commenced in the House on February 17. As of March 23, when the proceedings were interrupted by the hijacking of Parliament, 109 members had spoken, 35 Liberals, 58 PCs, and 16 NDPs. In the Senate to March 26, 36 speakers had been heard: 23 were Liberals, 12 PCs, and one independent.

● (1740)

Let us not be taken in by the silly argument that this constitutional initiative is the work of one man.

As I said at the beginning of my remarks, the time has come for Canadians to grow up, to move forward, to change. Change is part and parcel of our federal system. As Senator Maurice Lamontagne said: "One of the characteristics of federalism is that it obliges countries which adopt it to rethink their constitutional situation constantly and redefine intergovernmental relations in the light of their experience and development." Constitutional discussion will not end with this patriation package. It will continue as a constant process of rejuvenation.

We need to constantly encourage fresh, new ideas on how Canada should grow. Bob Dylan, that symbol of youth in the 1960s, said it best: "He not busy being born, is busy dying."

This constitutional resolution is the product of Canada's historical development, the end result of years of discussion and developing ideas. We are changing, and will continue to change in the future.

Society evolves. If it is alive, it evolves. We cannot write into the Constitution now all the social problems and possible solutions. We can only begin, recognizing that public attitudes will change, as they have in the past.

For example, people in New Brunswick have said they cannot believe that a Conservative premier would back bilingualism in the province. But that has happened. The times are a-changing. Canadians are becoming more sensitive to the aspirations, the hopes and dreams of other Canadians.

I am very disappointed that Ontario did not see fit to adopt institutional bilingualism but I can foresee it coming to Ontario some day, as it has officially come to New Brunswick.

This constitutional resolution before us with the amendments we will adopt this evening, is just and equitable. It is a blueprint for the future of this great land, founded on our past traditions and keeping in mind the kind of nation we want our children and grandchildren to inherit. Will we harness the momentum behind all these constitutional discussions and finally bring our nation to adulthood? Or will we simply let it wash by and drift off into the backwaters of history? Will we grow up? Or will we forever be gangling adolescents?

At the very beginning of his incredible, courageous cross-Canada odyssey, Terry Fox said, "Anything is possible... Dreams are made if people only try."

If people would only try! Let us realize some dreams for Canada, in Canada. Let us make some dreams come true—the dreams of Terry Fox and other handicapped persons, and the dreams of hundreds of thousands of Canadians for a fully independent and sovereign country with the rights and freedoms of all, guaranteed for all.

Some hon. Members: Hear, hear!

\* \* \*

#### MESSAGE FROM THE SENATE

**Mr. Deputy Speaker:** Order, please. I have the honour to inform the House that a message has been received from the Senate informing this House that the Senate has passed Bill C-42, an act to establish the Canada Post Corporation, to repeal the Post Office Act and other related acts and to make related amendments to other acts without amendments.

**Mr. Knowles:** Did they mail that to us?

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##### RESOLUTION RESPECTING CONSTITUTION ACT, 1981

The House resumed debate on the motion of Mr. Chrétien, seconded by Mr. Roberts, for an Address to Her Majesty the Queen respecting the Constitution of Canada.

And on the amendment of Mr. Epp, seconded by Mr. Baker (Nepean-Carleton)—That the motion be amended in Schedule B of the proposed resolution by deleting Clause 46, and by making all necessary changes to the schedule consequential thereto; and on the notices of amendments of Messrs. Knowles, Baker (Nepean-Carleton) and Pinard.

**Mr. Stan Schellenberger (Wetaskiwin):** Mr. Speaker, I hope you do not become so wrapped up in my remarks that you miss Black Rod pounding on the door!

I have one comment on the remarks of the hon. member who just spoke about dreams. His dreams may well be our nightmares. I have twice been prevented from speaking by closure or near closure. When one feels so strongly about an issue such as the Constitution, it is difficult to find that one may not have a chance to speak and that there are others who will not either because of the process by which this resolution is being put through the House. We fought for a change in that process and I am proud of the successes we have had. We won the right for Canadians to see members participate in the deliberations of the committee. We fought for time and were successful in having time granted to enable a number of members to speak before the committee, for provinces to deal with amending formulas, and so forth. As well, we fought for and won time for the Supreme Court to rule on the resolution.

If we had not fought for these things, this debate would not be taking place now and a number of members who are attempting to represent their constituents in this House, would not have had a chance to speak. Some will still not have that chance.

Even though we have opposed this process from the beginning, we are still caught up in it because of the majority that sits opposite. We were forced to deal with the resolution in committee and we were forced to move certain amendments in an attempt to improve the process.

As I see it, the process is the problem and I want to deal with that in a number of ways. The first problem is the unilateral action in bringing the Constitution home versus doing it by consensus. I think a consensus could have been reached and it would have made this a unifying process for Canada instead of one that may well engender disunity. The aboriginal peoples of this land who put a great deal of faith in the amendments that we were going to move in the House and in committee in order to protect their rights were forced to deal with the question within a matter of days and have been deceived by the process. They are now opposing that which has been proposed in the NDP amendment.

Many eloquent speeches have been made by my colleagues about the amending formula which is so offensive to the regions of this country. The premiers have proposed a formula



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and a formula is proposed in our amendment which would be much more fair to the regions. But now we have a number of classes of provinces. Every time we have to face this amending formula in the west and the maritimes, we will remember this process.

The Constitution of our nation should be amended in such a way as to provide protection for those who are considered weaker. We in the west are only considered weaker in the sense that we have less population than other provinces. That is the manner in which we have grown and in which we have entered this federation which we call Canada. The amending formula produces strong provinces, Ontario and Quebec, and it gives them a veto. It produces provinces which have much less protection, the regions, the prairies, B.C. and the maritime provinces. Now we are faced with an amendment, an amendment which requires three provinces in western Canada to defeat an amendment and only two provinces to pass an amendment. I see the time coming when an attempt will be made by this government not so much to remove the resources of western Canada as to search for funds. An attempt will be made to take away the wealth of the area and to distribute it by an amending formula as we find it necessary to meet certain demands in this country. That is when we in western Canada will remember the amending formula and the process by which it was imposed upon us.

• (1750)

We have been forced to move various amendments. The speaker before me spoke about the many groups and organizations which have come to this House to attempt to tell members of Parliament about the problems they see in this resolution regarding property rights. I ask that hon. member whether he has ever had his property expropriated. He should talk to my neighbours and to me. I know the feeling. It is not a very nice feeling when you are in that position. I suggest this government should tell all Canadians that their property cannot be expropriated unless the due process of law is observed and proper compensation is made. That is not the case in many provinces of Canada. That is why that amendment is so important.

Amendments to include the supremacy of God, equal rights regarding men and women and the right to legislate as far as capital punishment and abortion are concerned have been moved. These are important amendments. But what do we face? Again, we face the problem of process. We are now forced to vote on an omnibus amendment.

Even the Prime Minister (Mr. Trudeau) asked how he could deal with this resolution when he had to trade off offshore rights versus human rights. He has put us in the same position tonight when we vote on these amendments. We shall have to trade off rights for native people, which I suggest are anaemic, versus equal rights for men and women; or the amending formula, which we find offensive to certain parts of this country, versus the supremacy of God. We support the inclusion of the supremacy of God. But who is going to be the Solomon tonight? Who is going to do the dividing in half?

Perhaps some hon. members will remember the story in the Bible of a baby being brought before Solomon. Two women were claiming it. Solomon declared that the baby should be cut in half. The baby's mother objected and asked for the baby to be given to the other person. Although Solomon was able to rule on that point, how do we rule tonight? How do I vote tonight when I agree with half of the amendment and disagree with the other half? It is impossible. We are again put in a certain position by a process which is wrong from the start.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** I represent a riding in the province of Alberta. There is great disapproval for this resolution and the process by which we are imposing it. My constituents, my premier, the other parties in the province of Alberta, many provincial parties and governments in western Canada and the other seven premiers who oppose this resolution are doing so because they feel strongly about it. They are doing so in the only place they can, through the courts. They are doing so also through public opinion. If you believe the Gallup polls, the majority oppose the process of unilateral action. The feeling is so strong that it is not just a feeling of alienation any more, it is a genuine discussion of western separation. We are faced with the imposition of an amending formula which, in the future, may attack us in such a manner that we will not be able to accept it. When I speak on the issue, I do so as an Albertan representing Albertans, but I also speak on the issue as a Canadian representing Canadians. The two do not have to be in opposition to one another.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** In this entire constitutional debate, the greatest concern has been the process. Instead of the government and the people sitting down together to draft a new Constitution, a new document for this country with which Parliament can deal, we are left with the option of amending a package written by a few people in government and thrust upon this nation.

There are other ways. My leader has mentioned that when you seek unanimity, when you seek the right to deal with something and you seek that out, you can find it. That was proved by the late Right Hon. Mr. Diefenbaker.

I notice, Mr. Speaker, that you have also heard the traditional knock on the door.

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## THE ROYAL ASSENT

[*Translation*]

A message was delivered by the Gentleman Usher of the Black Rod as follows:



Mr. Speaker, the Honourable the Deputy Governor General desires the immediate attendance of this honourable House in the chamber of the honourable the Senate.

Accordingly, Mr. Deputy Speaker with the House went up to the Senate chamber.

And being returned:

**Mr. Deputy Speaker:** I have the honour to inform the House that when the House went up to the Senate chamber, the Deputy Governor General had been pleased to give, in Her Majesty's name, the Royal Assent to the following bills:

Bill C-42, an act to establish the Canada Post Corporation, to repeal the Post Office Act and other related Acts and to make related amendments to other acts—Chapter 54;

Bill C-64, an act to amend the Auditor General Act—Chapter 55;

Bill S-17, an act to implement conventions between Canada and New Zealand and Canada and Australia for the avoidance of double taxation with respect to income tax—Chapter 56.

It being six o'clock, I do now leave the chair until eight o'clock this evening.

At six o'clock, the House took recess.

#### AFTER RECESS

The House resumed at 8 p.m.

### GOVERNMENT ORDERS

[English]

#### THE CONSTITUTION

##### RESOLUTION RESPECTING CONSTITUTION ACT, 1981

The House resumed debate on the motion of Mr. Chrétien, seconded by Mr. Roberts, for an Address to Her Majesty the Queen respecting the Constitution of Canada.

And on the amendment of Mr. Epp, seconded by Mr. Baker (Nepean-Carleton)—That the motion be amended in Schedule B of the proposed resolution by deleting clause 46, and by making all necessary changes to the Schedule consequential thereto; and on the notices of amendments of Messrs. Knowles, Baker (Nepean-Carleton) and Pinard.

**Mr. Stan Schellenberger (Wetaskiwin):** Mr. Speaker, before the dinner hour I was mentioning how we in my constituency and in western Canada particularly disagreed with the process. I suggested that if the Prime Minister wished to get agreement, it was possible. I pointed out how in the time of the Right Hon. John Diefenbaker there was agreement in respect of financing of education, under the Right Hon. Mr. Pearson there was agreement on medicare, and under the Right Hon. Joe Clark we were able to come to an agreement

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on energy. It is too bad that for this nation we were not able to sign that agreement.

We constantly hear in the Prime Minister's argument about 54 years of failure. Let me refer to a little research I had carried out in respect of the last 54 years, and whether those 54 years could be considered a failure in terms of amendment to the Constitution.

In western Canada we certainly would not consider as a failure the conference in 1927, the start of the 54 years of which the Prime Minister speaks, because that was when we were first given legitimate rights to our resources. We spent some 62 days from 1927 to the present time at first ministers' conferences attempting to deal with amendments to the Constitution. From 1927 to 1931 we spent ten days dealing with the very important issue of returning resources to the provinces of Alberta, Saskatchewan and Manitoba. That was a most important issue to us and an issue about which we are still concerned today.

In 1934 we spent three days altering the Criminal Code so that the province of Quebec could conduct lotteries. That was very important, I am sure, at the time. In 1941, two days were spent dealing with the Raoul Sirois report. I could go on and on. The next conference was in 1950 and dealt with old age security, tax agreements and the amending formula. In 1964, some 14 years later, we dealt with the 100th anniversary of the conference in Charlottetown and attempted to bring about a repatriation formula and an amending formula for the BNA Act. Again in 1968, when the present Prime Minister took over and began his attempt to deal with a number of issues including provincial control of social services, income support payments, unemployment insurance, workmen's compensation, retirement income and on and on, all of which were put before the first ministers of this nation, agreements were found when agreement was sought.

Surely the underlying point to this whole process is that ten to 14 years passed between each conference; premiers changed, prime ministers changed, attitudes in this country changed as society progressed, so how can one say that in the last 54 years we have met with failure in amending the Constitution when many amendments were sought and accepted?

In modern days we have failed under the Prime Minister, and I suggest the reason is that instead of putting issues before the premiers, an issue such as patriation alone, an amending formula alone, offshore rights or resources, the Prime Minister has always put the whole bag of tricks on the table. It is very difficult for premiers not to do their utmost to protect their interests. That is what they are elected to do. Again I must say, we find the problem is in respect of the process.

Surely if the Prime Minister wished to find an agreement, he could have put patriation on the table with an acceptable amending formula. In that way, I suggest, agreement could have been found. We could then have dealt at other conferences with the other issues until we reached substantive agreement, and then brought the resolution before the House.

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There is another way of approaching this, and other countries have used it. We even used this method at the time Newfoundland came into confederation. I refer to the constituent convention or the constituent assembly. There are various ways of doing this. Some countries elect their constituent assemblies and some appoint them. Surely that is the way to bring the Constitution into being in a unified manner.

I used Newfoundland as one example. Let me give some others. Many of us do not realize that the United States has used the constituent assembly. India, Norway, New Zealand and Australia are all mentioned in this document put out so professionally by our library. All of those countries used that process.

There is another process which is used in separate states of the United States called the town hall meeting process. This involves putting an issue before the people of the state. We could do the same here in Canada. We could put the issue of patriation or the charter of rights before the communities of our country. They could discuss the issues and the areas with which they want to deal and what they would like printed in the Constitution. Each community or each town hall would elect two or three people to attend a provincial town hall conference where all these suggestions could be brought forward and hashed out in committees until they came to an agreement on what they wanted to present to a national assembly. Each provincial assembly would elect two or three people to attend that national assembly. In this way the people of this nation would feel they had a part in amending our Constitution or bringing it home. They would feel they had some input and this would be a unifying process. Perhaps they would even be able to accept some things that under this process today may not be acceptable to some regions.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** During those conventions minority groups could present their opinions. At the same time the provinces through their first ministers could be discussing the issues. We could meld the two results and come up with an acceptable process, an acceptable amending formula, and an acceptable charter of rights for this country of Canada.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** I do not have much time left, but I want to spend some of it talking about our aboriginal people.

• (20/0)

We had before us a process which, I believe, caught a group of people unawares and not knowing exactly how they wanted to entrench their important rights in this Constitution. Upon taking a second look and upon seeing the amendment put forward by the New Democratic Party, which was supposed to solve all their problems, native groups feel they have been deceived by the process.

I would like to take members of Parliament through a little history of how aboriginal people have come today to the point where they feel that their rights have to be entrenched in the

Constitution for protection. Up until the 1960s they did not even have the right to vote. When this Prime Minister was elected, he said there were no such things as aboriginal rights, and the minister at the time, the present Minister of Justice (Mr. Chrétien), brought forward a white paper which said that the aboriginal people, or native people of this land, should be assimilated. Of course, they objected to that. The strength of that objection came in a court case, the Nishga court case. The judges ruled three for and three against, but the fact was that there was a ruling recognizing the term "aboriginal claim".

So the government had to accept that there was such a thing as an aboriginal interest. What did the government do? It decided to fund the Indians through political organizations in order to deal with the term "aboriginal interest".

Then there was the first modern land claim. When the government of Quebec wanted to build a power dam, aboriginal interests had to be dealt with. The matter went to the court, and the court ruled in favour of proceeding with the power dam. The first modern proceedings on a land claim extinguished aboriginal rights, and anyone who has sat in this House in the last number of weeks realizes just how far that land claim went because it has not been recognized by this government. It is no wonder that the native people feel they have to have their rights entrenched in the Constitution.

The process continued. Amendments had to be made in the committee to deal with aboriginal interests. I believe hon. members and native groups of this country sat down and made an honest attempt to put into the Constitution words which would protect aboriginal interests, but because of the time limits and the legal language in which these amendments had to be written into this Constitution in the couple of hours available, I would like to tell hon. members exactly what is in them and what are some of the concerns I have which I know are shared by the native people of this land.

The first concern is with respect to why clause 25 is written in the negative. Clause 27 dealing with multicultural heritage is worded positively as follows:

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

The wording with respect to aboriginal people is in the negative. It's provision reads in part:

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty—

Subclause (a) says that this includes the Royal Proclamation. I want hon. members to know what the Royal Proclamation says. The Royal Proclamation dates back to 1763. It set up the colonial governments of Quebec, East and West Florida and the Islands of Grenada, St. Vincent and Tobago. However, the important statement in the Royal Proclamation is the following:

—possession of such parts of our Dominion and territories as, not having been ceded to or purchased by us, are reserved to them or any of them as their hunting grounds—

We all realize that we do not have to have a deed to land to hunt on it. If I were an aboriginal person wanting ownership of land, I would be very concerned about my rights as written in

the Royal Proclamation, but what the Royal Proclamation does is to show that the British Crown recognized that there was such a thing as an aboriginal interest.

Then in subclause (b) there is reference to rights or freedoms that may be acquired by aboriginal peoples of Canada by way of land claims settlement. I just stated that it is no wonder that there are some doubts about this clause when we look at the modern settlement of James Bay in which aboriginal interests were supposedly extinguished. The Government of Canada was to provide various catch-up provisions with respect to housing, education, health care and so forth, because, as we heard in committee and in this House, of the plight of the native people there resulting from the government not implementing the spirit of that agreement. It is no wonder there is some doubt about that clause.

We then come to Part II. Clause 33(1) states:

The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

That is a positive statement in this Constitution, but I know that status Indians are very concerned about clause 33(2), which includes in the definition of an aboriginal person, all Indian, Inuit and Metis peoples of Canada. In effect, we are now using the term "native people".

The concern which is being expressed as to do with status Indians who need to catch up in society to become equal in their way of life to most of us in the southern part of this nation. The concern is whether the budget set aside to assist those people will now have to be shared by another 700,000 people.

The clause which causes the native people of this country much concern is clause 35. I realize that the Prime Minister could not put into the Constitution something which was not defined, so he put in a clause which sets up the procedure to define an aboriginal right. An aboriginal right will now be defined by the first ministers of the provinces, the Prime Minister and those people whom he, as Prime Minister, will invite to participate in discussions.

**Mr. Manly:** You left it in your amendment.

**Mr. Schellenberger:** For the first time the definition will be arrived at with the participation of the provinces of this country, so the New Democratic Party said it would assist by moving an amendment to solve that problem. Members of the New Democratic Party said that rather than dealing with one province, we will now deal with the whole amending formula; we will deal with all six provinces. The provinces have an interest in defining an aboriginal claim in a very narrow way because it means land within their boundaries, it means money. So rather than having one province deal with it, there will now be a gang of provinces. One can mess things up, but I know what a gang can do, and I can understand why the status Indians of this nation and the Native Council of Canada now oppose the amendment which the NDP is proposing. They asked to have a meeting with the leader. He refused to have a meeting with them to discuss this very important point, so we have lost that support.

### *The Constitution*

**Mr. Manly:** Mr. Speaker, would the hon. member permit a question?

**The Acting Speaker (Mr. Ethier):** The hon. member for Wetaskiwin (Mr. Schellenberger) has been asked if he would permit a question.

**Mr. Schellenberger:** I have very limited time because of closure supported by the NDP, and I would like to continue my remarks. If there is some time left after my remarks, I would be happy to entertain a question.

Before my time runs out I want to come to a point which is very important to western Canada. As we face this amending formula and as we face the National Energy Program, many people in western Canada are asking whether their members of Parliament have the ability to represent them in this chamber because we are consistently being outvoted by the majority in the provinces of Ontario and Quebec. When our country was set up, the regions of this nation were to be protected by the Senate. The wise men of the nation were to protect our regions and our provinces. We know the history of that, particularly when one Prime Minister is in power for a long time. As a result, when a budget which has disparate effects on our regions is presented, or when a resolution such as the one we are debating is presented, the regions again are manipulated and outvoted. The Senate, which is supposed to protect them, is not doing so.

I must say that there are certain senators—and our leader has referred to them—who are attempting to protect the regions and the provinces, but again the majority is against us.

• (2020)

After we face this Constitution and push through the National Energy Program, in my opinion we must have a change in our institutions, particularly the Senate if we are to keep this nation together. I believe the Senate should be elected. It should have the power to stop certain of these bills which affect our regions, so that we in western Canada will have some protection against the majority populations in the centre, when we are faced with this kind of situation in the maritimes and western Canada.

**Some hon. Members:** Hear, hear!

**Mr. Schellenberger:** If we had started with this type of process, I think between the change in our institutions such as the Supreme Court, the CRTC, the Senate, and the town hall constituents assembly, we would have a great deal more unity in this nation.

**The Acting Speaker (Mr. Ethier):** I regret to interrupt the hon. gentleman but the time allotted to him has expired.

**Mr. Stanley Hudecki (Hamilton West):** Thank you, Mr. Speaker, for giving me the opportunity of making this first address, my maiden speech, during this important debate.

**Some hon. Members:** Hear, hear!



*The Constitution*

**Mr. Hudecki:** The sense of dignity I feel at this moment is solely imparted by the people of Hamilton West whom I represent. Hamilton West is a very special riding. It is a community of people distinguished for breaking new ground and setting high standards of achievement. On the industrial scene, tradesmen and managers from this riding who worked for Stelco and Dofasco, Canadian companies, have given other industrial nations in the world a lesson at making steel at a profit.

It was amidst our industrial heartland that the Association of Canadian Clubs was born. This national society is dedicated to fostering an interest in public affairs and cultivating an attachment to Canadian institutions. These are not our only claims to pre-eminence. In 1957, our representative for Hamilton West, the Hon. Ellen Fairclough, became Canada's first woman cabinet minister.

**Some hon. Members:** Hear, hear!

**Mr. Hudecki:** A decade later the voters of Hamilton West elected the first black person as a member of Parliament, the Hon. Lincoln Alexander.

The riding of Hamilton West is distinguished not only for its outstanding individuals but also for fuelling the growing sense of western pride. In 1935, the Winnipeg Blue Bombers challenged the Hamilton Tiger Cats for the Grey Cup. In allowing its first victory that year in Hamilton, we easterners established a trend which shows no sign of letting up. In the riding of Hamilton West we have situated the Canadian Football Hall of Fame which immortalizes football heroes from every corner of the country.

As a Hamiltonian, however, I take more heart in other achievements. In 1949, McMaster University established the first isotope laboratory in Canada. A decade later, the Right Hon. John Diefenbaker officiated at the start-up of McMaster's full-size research reactor, the first of its kind in the British empire. In Hamilton West we have the Canadian Centre for Occupational Health and Safety, providing information and advisory services to the working people of Canada.

Having briefly cited some of our local milestones, it is now important that I address myself to the constitutional debate. These are momentous days of national renewal, days in which we are redefining our common destiny as well as reaffirming our sense of national purpose. The task of constitutional renewal has been long and difficult. We hear that the process is divisive, that actions have been unilateral, that governments are self-interested and that people are misinformed.

In this atmosphere of apparent turmoil, it might be well that we remind ourselves of certain fundamental realities. The first is that although we are in the process of change, we are changing within the well-established guidelines of tradition and stability—the parliamentary process itself. This institution, of which we are all a part, has endured the test by its very design. It is a design for which we can be thankful. Within this time honoured framework change can take place, but it takes place slowly and with much discussion and compromise. Like a large seagoing vessel, the ship of state will creak and give with

the changing weather and tides, but it must stay afloat. Parliament, acting as the centre of wide-ranging and diverse experiences of a vast nation, must also creak and give with the tides, but it must also endure.

As politicians from all parts of the country, we are often criticized for thinking only as far as the next election. But in this constitutional debate, we have been asked to take part in a process that has far-reaching and long-ranging consequences. In this endeavour, the members of this House have not avoided the responsibility of seeing that the needs of all are duly represented. This, after all, is our duty.

But now the subject of our deliberations has reached the point of decision. In this constitutional debate, we aspire to articulate the beliefs and ideals of the Canadian people; but we must not lose sight of the fact that we do so within the dynamic system of parliamentary democracy with its built-in checks and balances, framed by the judiciary and intergovernmental relationships and under the scrutiny of the people who, after all, are the final arbiters of all our decisions.

We Canadians have come of age. We have served notice that we no longer need a foreign power to act as a steward for our Constitution. For that reason, the Constitution will be patriated—about that there is no question. The constitutional package, with its appended charter of rights and amending formula, is essentially the draft resolution of a special joint committee of Parliament and the Senate, articulating the position and the aspirations of the Canadian people, after interviewing 97 groups and reviewing 1,280 written submissions. The proposed resolution has evolved through a process of enlightened compromise. The spirit of the document is praiseworthy. The style could be improved, but to do so we would have to commission poets to help lawyers and academics draft more ringing phrases to match its elevated intent.

● (2030)

At this stage, the government is criticized for acting unilaterally in bringing this proposed resolution to Parliament. The act of unilateralism has been described as uncivilized, divisive and undemocratic. This is a justifiable criticism, but it could be explained and attributed to the process. The conventional approach has been to seek the unanimous consent of all provinces. Historically, this has been ineffective because it has been practically impossible to reach unanimous agreement with the provincial governments on any issue. Even in the past week eight premiers could not convince Ontario and New Brunswick to accept an amending formula which required the agreement of seven provinces, representing 50 per cent of the Canadian population, with opting out privileges by a two-thirds majority of the legislature. To date the provincial input into this process is limited by the tyranny of unanimity; in the future this problem will be remedied.

For a period of two years, after patriation, the unanimous consent formula will remain in place and a search will be made for a less restrictive formula.

The federal government is proposing that future constitutional amendments be made on the basis of the so-called

Victoria formula which would allow change to the amendments with the approval of Ontario, Quebec, two Atlantic provinces and two western provinces without opting-out privileges. If the permanent amending formula is finally reached, then annual federal-provincial conferences will take place in which the provinces, using the accepted formula, will finally make their contribution in adjustments to the Constitution to meet the particular needs of their provinces.

The goal of the present government is to have strong provincial legislatures to look after and supervise the needs of their particular regions but to have strong national government to speak for the nation.

I personally will always accept the right of a provincial government to exercise jurisdiction in regional matters, but I cannot agree to the country being run by a weak association of premiers. To accept anything less in the way of a central government is to betray an appalling lack of understanding of the new world order.

The world is entering the post-industrial phase, characterized by the emergence of assertive super states, global cartels and powerful multinational corporations. If Canada is to play its rightful role in the new economic scheme, it requires a strong federal system. It is folly to believe that a loose association of provinces can compete in this league. We must have a strong, wholesome government to design a national economic strategy and to meet the exigencies of the nation. We need a unified country if we are to have a significant and respected voice in world affairs.

There is some concern by the official opposition about the reliance of a people's referendum on constitutional change. The proposed amending formula contains the surest device which any democratic government can employ to resolve a deadlock. The majority of Canadians were pleased with the clear results of the most recent referendum. Once the Constitution is patriated, there will be no one to turn to in the event of an unresolved dispute between governments, except the people of Canada who elected both levels of government. The use of referenda instituted by the federal government or by the people of Canada is an appropriate vehicle to break a logjam in federal-provincial indecision. The referendum approach must always be used cautiously and prudently. The rules of implementation must be diligently followed in a non-partisan manner. Members opposite and dissenting premiers look at the referenda proposal suspiciously, as if it were a precursor to the imposition of a unitarian form of government. Such an inference is entirely without foundation.

One example which illustrates the historic division of powers and the critical role of a central government is the development of our health care service in Canada. As a medical doctor, the front line experience of practicing the art and science of surgery for some 30 years has given me a distinct perspective. I have seen the triumph of strong parliamentary democracy and federalism in the way the majority of Canadian citizens, medical institutions and governments have co-operated over the decades to establish a publicly financed health care system throughout the dominion.

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In 1968, the national medical system was born with significant input from the medical profession and hospital services and provincial legislatures. The major co-ordinating effort or the driving force, however, came from the Pearson government which, through its initiative and funding, made the project possible. It was a strong, caring national government motivated by the needs of the people, applying the principle of equalization which made the project possible. An effective, strong central federal presence was necessary. There was no willingness on the part of the provinces to accept medicare, as the Hon. Leader of the Opposition (Mr. Clark) said this afternoon.

A recent health service review, headed by special commissioner Justice Emmett Hall, indicated that our Canadian health care system is, by world standards, one of the very best in existence today. Besides maintaining the vitality of the nation, it has the additional function of preserving the right of all citizens to enjoy unimpeded mobility throughout the dominion, a right which is often overlooked in the constitution of other democratic states. Whenever a resident moves from one point to another, he or she is assured of medical care in Canada. The national interest was served by a strong federal government. This system will be seriously at risk, if provinces are given opting out privileges in the constitutional proposals under the amending formula put forth by the eight premiers and our Conservative colleagues. I might make the observation that it is also at risk if physicians are not allowed to continue opting out privileges. The evolution of our health care system was not a historical accident; it was a culmination of a national priority.

#### ● (2049)

The Canadian Medical Association was established in Quebec the same year as the British North America Act. While the terms of the act gave the province jurisdiction over health and education, doctors at that time crossed provincial boundaries in order to advance nationwide standards for medical certification.

There is a historical note which I would like to add. Parliament in that era was blessed with a much higher ratio of medical doctors to other professions and trades in the House. A staunch Cumberland Conservative member, Sir Charles Tupper, was the first president of the Canadian Medical Association. In recalling the past, I trust that he will be remembered more for that moment than for the fleeting distinction of having served as a prime minister of Canada in a Conservative government, which was in power for an even shorter period than the recent Conservative regime.

In 1920, again under the umbrella of the federal government, the Royal College of Physicians and Surgeons was founded and charged with the mandate to oversee education of medical specialties and to stimulate research in medicare on a national basis.

This challenge has nurtured and supported advances in the art and science of medicine. Let me list the names of a few Canadian medical pioneers and their discoveries: Wilder Pen-

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field, an innovator in the field of brain surgery; Hans Selye and his studies of stress; Gordon Murray, Bill Bigelow and Bill Mustard, pathfinders in heart surgery; and Fred Banting and Charles Best who continued the refinement of the application of insulin in diabetes.

To date, the tradition of accomplishment continues into the future as advances in the field of health and health care will be made hand in hand with knowledgeable health care workers and doctors and an informed, caring, effective, national government which is ever mindful of the needs of the public.

This brings me to a personal note. I readily accept the recently proposed amendment by the Liberals, and I am satisfied with the wording of the proposed preamble in the Constitution which states: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law".

**Some hon. Members:** Hear, hear!

**Mr. Hudecki:** In the 1978 version of the constitutional package proposed by this government, the preamble included the following statement: "The people of Canada proudly claim that we are and shall be with the help of God a free and self-governing people".

In the new version of our national anthem, "Oh Canada", we have added the sentence "God keep our land glorious and free". We Liberals have always acknowledged the existence of God and have shown respect for the dignity and worth of the human person.

**Some hon. Members:** Hear, hear!

**Mr. Hudecki:** We have a deep awareness of the spiritual and moral values, and we identify with the important role of family life in the fabric of our nation. It is right and just that God's help be invoked in light of the ominous advance into our society of inhuman technology.

Before concluding, I must add my voice of anguish and sorrow to that of many members on both sides of the House on the subject of the flagrant abuse of our abortion laws. There is no question that the abuse is continuing and escalating so that nearly 65,000 innocent lives each year are destroyed, for the most part, for the sake of convenience. I do not accept the legal dictum that the act of birth is a dividing line between being a human and not being one. Life is a continuing process, and a new individual's existence begins at conception when it acquires a distinctive genetic pattern, making it a unique human being. It requires only time and nutrition to attain full human development.

The constitutional debate is not the forum to probe, examine or review existing abortion laws. This is a matter for Parliament, and should be and must be further debated in Parliament. I have sought and received assurance from the Minister of Justice (Mr. Chrétien), as recorded in *Hansard*, that the right to debate this fundamentally important social issue of abortion will remain in Parliament and will not be locked in the Constitution. Parliament must retain the unqualified right

to amend existing provisions of the Criminal Code of Canada pertaining to abortion.

I close on a philosophical note. The debate of the constitutional proposals is approaching the last lap. It has evoked intense emotional responses from members of Parliament on both sides of the House. It has strained the goodwill and forbearance of many to a breaking point. Our legal fraternity has been drained of interpretations and opinions related to constitutional matters.

There is every expectation that the Constitution of Canada with a Canadian charter of rights and freedoms is about to emerge. It will define islands of discrimination, intolerance, injustice, real and perceived, and prejudices and biases in our society. This legal document cannot redress the wrongs of the past. It cannot undo the trials and frustrations of our ancestors, but it can, however, chart a course for a better future with better recognition of minority rights.

To have truly accomplished this lofty ideal, the Constitution will require an adjustment of our attitudes in our society. There must be a more receptive understanding of and empathy for the problems of the handicapped, the unborn, our native people, new Canadians, the poor, the aged and the underprivileged; and we must be prepared to meet and to react to the special needs of these human beings.

Therein will lie the success or failure of these magnificent debates, of the impressive manifestation of our parliamentary democracy in action, rather than in the eventual proclamation of these ideals in law.

I turn my thoughts now to the many contributors to this unbelievably complex constitutional package. These people gave generously of their skills and talents to prepare this document which will hopefully give us a more united and a more cohesive nation. I can think of no more apt quotation to describe their Herculean effort than the words of Hippocrates in his assessment of the art of medicine in his time which are as follows: "Life is short and the art long, the occasion fleeting, experience fallacious and judgment difficult." I myself feel that they faced this task with the spirit and the devotion of Louis Pasteur when he said, "Blessed is he who carried with him a God, an ideal of beauty, and who obeys it, for therein be the springs of great thought and great action; they all reflect light from the infinite."

• (3059)

**Mr. Alex Patterson (Fraser Valley East):** Mr. Speaker, I am very happy for the opportunity to participate in this important debate this evening. If we cast our minds back over the past few weeks, we will remember that debates were closed off on a number of occasions which made it impossible for some hon. members to participate. Once again, we have come to the point where the debate is going to be shut off and a number of hon. members will not be able to participate.

I want to discuss a great many issues tonight but because of the shortage of time I will just have to make references to them in the main. The order in which I deal with them does not indicate any range of importance.



I want to start by saying that there is no nation in the world where citizens have more rights, than in Canada. Some of the statements made by members on the other side of the House in this debate have been truly remarkable. To hear some of them, one would think that there are no civil or human rights in force today. In fact, the implication is that possibly we are living in a state similar to that of Uganda. A great many people feel that the approach we are taking these days will, in some respects, jeopardize many of the rights that Canadians already enjoy.

First of all, tonight I should like to challenge the whole concept of judicial supremacy in the area of human rights. The government is telling Canadians that they do not have any rights whatsoever at the present time, and then it lists some of them, saying that it is going to guarantee those rights!

The problem with that approach is that it says that governments are the guarantors of rights. That is not so at all. The people grant rights to governments. There is no one in any government, let alone the present government, who is wise enough, intelligent enough, or bright enough to list all the rights that Canadians possess today.

**Some hon. Members:** Hear, hear!

**Mr. Patterson:** The charter that has been placed before us certainly does not in any way meet the needs, the challenge of Canadians, or do for them what its promoters claim it will do. I think this brings into focus the main problem with charters of rights. They mislead people. They misrepresent facts. The Prime Minister (Mr. Trudeau) has travelled across the country with the Minister of Justice (Mr. Chrétien) and others, telling Canadians that they do not have any rights and that they are going to give them to us. They set themselves up as being able to change the whole situation and bring to the people of Canada a pride and an achievement and a declaration of rights such as they never had before.

In order to clarify one point, I should like to say that no matter what the charter of rights contains, it will not solve all the problems to which reference has been made in this debate. I refer again to countries that have charters of rights. I know some hon. members who spoke today took exception to this and I am sorry that I shall not have time to reply to them. As one illustration, we all realize that Japanese Canadians were treated in an unjust fashion during the years of World War II. Some people maintain that if there had been a charter of rights, it would not have happened. But, Mr. Speaker, the United States had a charter of rights and essentially the same thing happened there as in Canada. A charter of rights is absolutely no guarantee that the rights of the people will be assured just because they are written down on paper.

Another thing that should be emphasized is the importance of the supremacy of Parliament. I am not convinced that we would be doing the people of Canada a service by asking the courts of the nation to be legislators. I am not convinced that they should be asked to take on a function that has been performed well by the representatives of the people in Canada's Parliament and the provincial legislatures, or that giving

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that function to a group of persons in the Supreme Court, however wise and well-versed in the law they may be, is a good thing. Courts deal with laws. I believe that is the way things should remain.

A well known person has stated that the best guarantee of human rights is a vigilant legislature and the existence of a citizen body that is conscious that rights do matter and is willing, if need be, to fight for those rights. The person who wrote that was Harold Laski, author of "Parliamentary Government in England" in the year 1938.

I have serious reservations about trying to protect human rights by a charter such as that before us today. In the first place, the charter does not adequately protect the Indians of our nation. I think the Indian people were hoodwinked into the idea that certain clauses in the Constitution would guarantee the protection of their rights. When they had had an opportunity to look it over, they came to the conclusion that this was not so. I do not think many organizations of Indian people, if any, support the government's package, as far as their rights are concerned. Mr. George Manuel, the president of the union of B.C. Indian Chiefs, stated as follows:

The constitutional resolution is unacceptable to us. It does not offer any prospect that lands and rights, which have already been taken from us, will be restored. It gives us no role in any future amendment process in which our residual rights may be at stake. The result is a "dead-end" Constitution in so far as our rights are concerned.

As things stand now, we are faced with a resolution to support that particular reference in the package, when, all the time, the Indians are opposed to it. We also have a statement to the effect that the National Indian Brotherhood, which initially accepted this with open arms, turned against it and said that they were not going to support it when they found out what it was all about.

The second area of deficiency in this charter of rights is the protection of the unborn. I was very happy to hear the hon. member for Hamilton West (Mr. Hudecki), who preceded me in this debate, refer to this.

I have in my possession a legal opinion on the effect this charter will have on the abortion law. It contradicts what my hon. friend said a few moments ago. In short, this opinion says that the abortion law and the Criminal Code will be unconstitutional. Abortion would be available on demand and, what is more, if Parliament tried to enact either a new statute or an amendment to an existing law permitting the unborn the right to life and to assert such a right before birth, such a law would be declared unconstitutional.

That is an impressive legal opinion expressed by the Toronto law firm of Stephens, French & McKeown. It is well thought out and carefully reasoned. It claims that this charter will not respect the life of the unborn; indeed, it will permit abortion on demand. The law will then be beyond the reach of Parliament. The only way to change it will be through a constitutional amendment which will probably never take place.

This is a serious weakness in this proposition. I believe that the unborn should have rights and should be protected by law in this country.

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**Some hon. Members:** Hear, hear!

**Mr. Patterson:** There is another matter which is of great concern, Mr. Speaker, and that is the potential harmful imbalance between individual and collective rights. This has to include religion and rights. In a brief sent by telegram to the Prime Minister, the Roman Catholic bishops of British Columbia and the Yukon said that while Section 2 of this charter guarantees the religious rights of the individual, it says nothing about the rights of the church.

• (2100)

If individuals are to have the opportunity of functioning and participating in the activities of the church, then some responsibilities are attached.

I shall just give one illustration in passing. For instance, when a church-related school or college are looking for teachers, it is necessary for the institution to advertise in Canada. No one from abroad can be accepted if there is someone in Canada who is qualified to fulfil that responsibility. This does not take into account that many church organizations and related organizations have a certain declared statement of faith and belief. There is no protection and no recognition as far as the law is concerned at the present time. The problem can be expressed in this way. If there is a position open and the institution wishes to engage a professor or someone from another church-related organization, they must advertise in Canada. No provision is made whatever for the particular doctrinal positions of the organization or their statement of faith.

I am very glad to say that as far as I am concerned, my representations to the Minister of Employment and Immigration (Mr. Axworthy) and to his officials have been very cordial. They have been very co-operative. They recognize that some attention must be paid to this facet if the doctrinal integrity of the church is to be maintained. I have had a good response from the officials in this connection. However, situations change, ministers and officials change and there is no guarantee this state of affairs will continue. This places church organizations in a very difficult position.

I want to speak now about property rights. One of the most astounding omissions from this charter is the omission of property rights. It has been a basic premise of social philosophy that all human beings have a fundamental right to property. Some theorists have put property rights in the category of "natural rights", those rights that accrue to man by virtue of his humanity. Indeed, the existence of a human being is contingent on his ability to claim things as his own. In the most primitive sense, this is food and shelter. I think that is reasonable. If you ask a farmer whether he appreciates land ownership, what do you think he would say? What about asking a fisherman whether he believes in the ownership of property? I am sure we will hear say yes, I want my boat. And so it goes. Property covers a wide range of issues.

**Some hon. Members:** Hear, hear!

**Mr. Patterson:** Therefore, to limit this provision is narrow thinking because it can cover anything a certain individual or a certain administration will want to read into it.

Property covers a multitude of rights, set out in "Social Principles and the Democratic State," at page 156, written by Benn and Peters. There is no way that I could possibly list all the property rights that we should have guaranteed. If certain ones are guaranteed, it means others are not accepted or not recognized. As a result, we can see the problems we are facing in all these different areas. The point is that the exercise of property rights is an integral part of the existence of all human beings. I believe property rights should be incorporated and not traded off for support from some other individuals and groups which have perhaps a rather twisted idea of what property rights involve and what they actually mean.

Another reason given by the Liberals for not including property rights is that some of the provinces were against it.

**Mr. McCauley:** All of them.

**Mr. Patterson:** This is nothing short of being hypocritical. Eight of the provinces are against this whole measure and yet the Prime Minister is proceeding with it. The measure is totally abhorrent to the concept of federalism. Yet the Prime Minister uses the excuse that he will not include property rights because a couple of the provinces are against the measure. I think this is inconsistent and dishonest. Property rights should be included in the resolution. As far as I am concerned, the whole thing is a mess. We are, however, trying to do something to improve it because it may eventually become the law of the country. We are trying to make the best of a very bad and sorry mess.

The latest representation I had concerning this issue came in the form of a telegram from the mayor of one of the districts in my constituency. I will not take the time to read it into the record. He was representing a great many who believe that property rights should be included in this resolution.

Reference has been made to the supremacy of God. I am very happy to see that the Liberals have consented, yielded and decided to include a reference to the supremacy of God. They have done it in a very casual way, sort of just tilting their hat to God and saying, "we are just mentioning your name". This is not worthy of the situation. It is far less than what is included in the Bill of Rights, now the law of Canada, proposed by the late Prime Minister of Canada, the Right Hon. John Diefenbaker. It reads, in part:

The Parliament of Canada, affirming that the Canadian nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

I want to deal briefly now with the matter of federalism. The Liberals, especially the Prime Minister and the Minister of Justice are fond of saying that this Parliament is the place that speaks for all of Canada.

**An hon. Member:** Right on.

**Mr. Patterson:** Someone said "Right on." I believe that it is, in a certain way which I will explain in a moment. There is another factor ignored by the Liberals, conveniently so because it would undermine the position of the Liberal party. That factor is that the provinces also speak for all Canadians.

**Some hon. Members:** Hear, hear!

**An hon. Member:** Nonsense.

**Mr. Patterson:** Canada is a federal state. It is made up of ten provinces of equal constitutional power and status. As Dawson states in "The Government of Canada", at page 82:

The powers of the provinces are as full and as complete as those of the dominion within the areas allotted by the BNA Act and both dominion and provincial legislatures may delegate their authority to other bodies of their own creation but not to each other.

The problem with the proposal before us is that it takes from the provinces and gives to a federally appointed court certain matters which are within the exclusive jurisdiction of the provinces. What is worse, it is being done without the consent of the provinces.

• (2110)

We talk about property rights, educational rights and all these other things. At the present time they are under the jurisdiction of the provincial governments. Therefore I say that all the provincial governments speak on behalf of all Canadians within their jurisdictional rights and the federal government speaks on federal rights. I see an hon. member shaking his head. That is the problem with the Liberals; they are trying to centre everything in Ottawa.

I remember when the Prime Minister was minister of justice. He made the statement that he looked upon his role as minister of justice as charting the course of society for the future. I believe that we have to pay attention to that fact. It is a position that is denied and rejected by this whole package. It is breaking down the system of government we have in Canada where federal and provincial representatives deal with their own jurisdictional responsibilities.

I want to go on to the formula proposed and presented for our consideration in the matter of amending the Constitution. I believe, of course, we should not be dealing with this here at this time. We should be dealing with the patriation of the Constitution with an amending formula. However, as far as the rest is concerned, it should await the bringing back to Canada of our Constitution. That is the proposal we have made. It is the only reasonable and sensible one. The reason it is not being done is that the Prime Minister knows he would have great difficulty in getting some of his pet propositions through his Canadian Parliament.

The Prime Minister wishes to enshrine forever the inequality of provinces. We in western Canada are prohibited forever from sharing as equal partners in our federation. This is totally unacceptable to those in British Columbia and, as my friend from Wetaskiwin pointed out, in the province of Alberta as well. The proposed amending formula will discriminate pro-

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foundly against British Columbia because we find in the provinces of Alberta and British Columbia—British Columbia has 40 per cent of the population—their combined population is fully 70 per cent of the western population.

What this amending formula would do is to permit two western provinces containing 30 per cent of the population to bring about constitutional change that would be contrary to the interests of the other 70 per cent. This is unfair, unreasonable and discriminatory as far as British Columbia is concerned. The population projections for the year 2001 show that British Columbia will have 45 per cent of the population of the provinces of Western Canada. We find here the possibility of 77 per cent of the western population being dominated by 23 per cent of the population.

Further to this particular issue, we find the federal proposal is put forth in the form of a proposal to transfer the ownership of natural gas to the federal government. For approval, Manitoba and Saskatchewan, two provinces, would need to have only 16 per cent of the population in order to approve that proposition. Rejection would require three provinces. This is all up against the other proposition that the provinces of Ontario and Quebec have a veto. Each has a veto over the whole thing.

That shows the position in which British Columbia can be placed if a proposal is advanced by the federal government regarding the transfer of natural gas, for example. British Columbia will not accept that. If you think that alienation is growing in the west, you might as well understand why. Alienation in the west, if this goes through, will see a change into something far more dangerous than just a resentment or an alienation and a feeling that British Columbia is not wanted here, that all that counts is central Canada. That is not acceptable.

The Prime Minister has the view that whatever he does, even if it means the destruction of our country, is justified if he can obtain his own peculiar view of Canada. He stated on one occasion, "I came to Ottawa to save Quebec, someone else will have to save the west". Perhaps it will take God himself to do that.

Look at this Constitution. It shows what contempt the Prime Minister has for western Canada. No wonder he is not getting any members from there.

We feel that through negotiations in the spirit of fair play, we could solve these historic problems in a way that would permit British Columbia to be a full and equal partner in confederation. However, I warn the Prime Minister and the Minister of Justice that if they proceed on this dangerous course, British Columbians will not tolerate it. We do not want to be a region of second-class citizens behind the perpetual veto of Ontario and Quebec. We do not want to become third-class citizens behind Manitoba and Saskatchewan.

British Columbia did not come into confederation to become subservient to the rest of Canada in any way. We have to remember that British Columbia did not come into confederation when it was first established; it came in later. It came in



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with an understanding that certain guidelines would be maintained and certain situations would continue. If the government is going to tear those things away, destroy them and say we are not going to get them, that it will not be held accountable and responsible for what was said in the terms of union, British Columbia will feel very angry about it. No one in their right senses could question why.

I appreciate the fact that I only have another one or two moments. I just want to emphasize once again the unfairness of the whole situation. This package which we are faced with today is a hopeless package. It is a miserable mess. Members opposite ask why then are we trying to improve it. As I said before, it is unlikely that it will ever pass, but if it happens to pass, we want it to be improved so that it will be less despicable and dishonourable than it is at the present time. That is why we are moving amendments. We trust the government will accept the amendments moved by this party and do something to at least solve the problem, heal the breach and make western Canada feel that somehow they are receiving co-operation, that they will at least be listened to and, hopefully, there will be some redress to the problems and injustices they have been facing over the last many years.

• (2120)

**Mr. Robert Bockstael (Parliamentary Secretary to Minister of Transport):** Mr. Speaker, it is a great pleasure for me to be given this opportunity to take part in this historic debate on these important amendments. The constitutional question as it has evolved since last June has taught Canadians a great deal about their country. In the last year Canadians have come to know the difficulties of being governed in a country as geographically, culturally, politically and economically diverse as ours. The experience Canadians have shared this past year has proven that consensus and compromise is difficult to achieve within our national setting.

However, we have succeeded in reaching consensus and approval on many fronts. Opinion polls published over the last few months, and especially yesterday, have revealed that Canadians approve of what we are doing.

**Some hon. Members:** Hear, hear!

**Mr. Bockstael:** The premiers of Ontario and New Brunswick agree with us as did a majority of the groups and individuals who appeared before the special joint committee. The federal New Democratic Party has supported our resolution. The provincial courts in Manitoba and Quebec have rendered a decision to the effect that what we were doing was in fact constitutionally binding.

**Some hon. Members:** Hear, hear!

**Mr. Bockstael:** Eight premiers have disagreed with our actions. The Premier of Manitoba has steadfastly opposed the entrenchment of a charter of rights. The Premier of Quebec has said he would not agree with the entrenchment of minority rights. In spite of Premier Lévesque's and Premier Lyon's

partnership stand, latest reports indicate that some premiers now see the wisdom of accepting the charter of rights.

It is rather ironic that at the time of the referendum in Quebec last May, several provincial premiers openly opposed Premier Lévesque in his attempt to break up this country. These same premiers have today aligned themselves with the Premier of Quebec in opposing the entrenchment of a charter of rights and freedoms for Canadians, a charter which is fundamental to national unity.

Premier Lyon of Manitoba has, over the last few months, been the chief spokesman for all the dissenting premiers who have advocated an opting out approach to confederation, which to me is no different than Premier Lévesque's unswerving drive toward sovereignty-association.

A poll conducted by the Canada West Foundation revealed that Manitobans by a wide majority are in favour of a bill of rights. In fact, 73 per cent of those surveyed indicated they were in support of this federal initiative. I am a Manitoban and I want a charter of rights and freedoms. The hon. member for Provencher (Mr. Epp) is also a Manitoban and he as well is on record as favouring a charter of rights and freedoms. Premier Sterling Lyon of Manitoba has said time and time again that he would never accept a charter of rights and freedoms. It is evident that Premier Lyon does not speak for me, he does not speak for the member for Provencher, and he does not speak for the interests of the majority of Manitobans who want a charter of rights and freedoms entrenched in the Constitution.

**Some hon. Members:** Hear, hear!

**Mr. Bockstael:** In 1949, the noted constitutional expert, Frank R. Scott, wrote:

There is no freedom save under a system of laws safeguarded by a Constitution, and the prime function of governments under a democracy, while keeping themselves within their constitutional framework, is to protect and advance the fundamental freedoms and human rights of every individual by all legislative measures that seem appropriate.

Professor Scott also had the following to say about the federal government's responsibility in assuring these rights and freedoms for Canadian citizens:

Under our system of government the responsibility for national decisions on matters of policy rests on Parliament and on the cabinet which is answerable to Parliament. If a program in defence of fundamental freedoms is to be undertaken then Parliament must make the decision.

The proposed Canada Act will provide all Canadians once and for all their fundamental freedoms, their democratic rights, mobility rights and equal rights for the handicapped, among others. The amendments being proposed by the New Democratic Party will assure equal rights for both men and women and will give to our native population the assurance that their aboriginal rights will only be amended under the prescribed rules of the Constitution.

As a member of the special joint committee on the Constitution I can give a first-hand account of the events which took place from November to February 13. I would like to relate that on January 30 the Minister of Justice (Mr. Chrétien)

announced that he was to incorporate aboriginal rights in the constitutional resolution. Everyone was going around patting himself on the back claiming the amendment proposed was his idea, trying to take credit for it. I would remind you, Sir, that it was the Liberal Party which introduced that amendment.

At the time the hon. member for Nunatsiak (Mr. Itinuar) said he had to thank the Prime Minister of Canada for agreeing to include that in the Constitution. I must acknowledge the native wisdom of our Indian friend, the hon. member for Nunatsiak, who so rightfully asserted, while everyone was proposing we should celebrate, that he would not celebrate until the Constitution was officially brought back here to Canada. His attitude was vindicated the very next morning by the events that followed.

The chief spokesman for the Official Opposition explained that now that the committee has approved the first three chapters of the resolution, now that we have all agreed that Canada has to have its own Constitution, that the Constitution should be patriated, it goes without saying that the Constitution must have an amending formula because it cannot be brought back without such an amending formula otherwise we will have to go back to Britain for amendment. He said they agreed with the charter of rights; he had just finished agreeing on aboriginal rights, but then he said it was time to split the resolution, time to call a halt to the whole process and refer the matter back to the premiers of the provinces for their consideration. This was just another stalling tactic of the opposition, a technique to invoke opting out, an opportunity to resort to some kind of a veto which would rescind everything we have done and postpone indefinitely patriation of the Constitution and a charter of rights for which the people of Canada are waiting.

Let me review the amendments introduced by the hon. Minister of Justice. You must be well aware that it was a Liberal amendment which placed a reference to God in the 1960 Diefenbaker bill of rights.

**Some hon. Members:** Hear, hear!

• (2130)

**Mr. Bockstael:** When Canada adopted its national anthem last July, we ensured that the official text included the line "God keep our land glorious and free".

**Some hon. Members:** Hear, hear!

**Mr. Baker (Nepean-Carleton):** Parliament did that.

**Mr. Bockstael:** In our earliest negotiations with the provinces we proposed a preamble which recognized the authority of God, but regrettably some premiers would not accept such a preamble to our Constitution. For my part, let me confirm how pleased I am that the resolution in its final form on which we are about to vote acknowledges the supremacy of God and the rule of law.

At the special joint committee hearings, we were delighted to see adopted the so-called Henderson amendment for the

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Atlantic provinces. It stipulated that the approval of two Atlantic provinces, regardless of their size or the number of their citizens, would be sufficient to authorize amendments to the Constitution. To even things up with the Atlantic provinces, a second Liberal amendment will do the same thing for the western provinces. With this new amendment any two western provinces, regardless of their population, will have the power to approve amendments to the Constitution.

Last August in Dauphin, Manitoba, Premier Lyon said that any amending formula should protect all provinces not having as large a population as Ontario, Quebec or British Columbia. I am sure tonight this amendment will please Manitobans and will be welcome news to all western Canadians, for what it means in effect is that there are no more second-class provinces under the Constitution of Canada.

**Some hon. Members:** Hear, hear!

**Some hon. Members:** Oh, oh!

**Mr. Munro (Esquimalt-Saanich):** Can't you count?

**Mr. Bockstael:** The third set of amendments we are to consider is the catch-all omnibus amendment proposed by the Progressive Conservatives. While it may appear to them to have merit, we have to note that it only establishes a situation in which "you can't have one without the other".

Personally, I was disappointed that the right to life of the unborn was not entrenched in the Constitution, but I must point out that the proposed opposition clause which states "Nothing in this charter affects the authority of Parliament to legislate in respect of abortion and capital punishment" is absolutely superfluous, for it changes absolutely nothing.

We have been assured by the Minister of Justice that through the Constitution the government retains implicitly the right to formulate laws under the Criminal Code to regulate abortions and such related legal matters.

Turning to more positive aspects of the charter, our Canadian charter will seek to preserve and enhance the multicultural heritage of Canadians.

**Mr. Fleming:** Hear, hear!

**Mr. Bockstael:** I am ever grateful and I thank God for the privilege of having been born in Canada and of enjoying equality with all my fellow Canadians. In addition, I enjoy an ethnic background which broadens my horizons. I truthfully feel I am as anglophone as the majority of hon. members opposite, I am as francophone as every member on this side of the House, but first and foremost I am a Canadian.

**Some hon. Members:** Hear, hear!

**Mr. Bockstael:** I respect and uphold the bilingual and bicultural reality of this country. I am a fully integrated Canadian.

*The Constitution**[Translation]*

Mr. Speaker, my colleagues appreciate the fact that I am equally fluent in French and English, for I feel wholly immersed in both cultures.

From the early days of confederation the province of Quebec has acknowledged the right to English education for its minorities, Protestant as well as Catholic.

Manitoba was called to order by the Supreme Court and asked to honour the letter and the spirit of the Manitoba Act of 1870 and, of course, it has to abide by that act.

The Charter of Rights and Freedoms which we propose to enshrine in the Constitution will give the French and English minorities, wherever they may be, the right to education in the institutions of the linguistic minority, financed with public funds, when the number of children warrants.

I recall once again that the premier of Manitoba has always spoken against enshrining the educational rights of the official minorities. What we are doing now is to make sure that the linguistic minorities will have access to education in their mother tongue, whether they are Francophones outside Quebec or Anglophones inside Quebec.

Mr. Speaker, I want to dispel the false notion that our charter is not made in Canada. Opposition members have kept repeating that it is not a constitution made in Canada. I would suggest to those hon. members that a great many years have prepared us for that constitution. Ever since Quebec's referendum last spring we have joined the provinces in our quest for a Canadian constitution and, since last October, all the members on both sides of this House and the members of the Senate have been pondering over the Canadian constitution made here in Canada.

*[English]*

During the first phase of our debate, 74 members of Parliament and 34 senators were given the chance to speak out on the resolution. In phase two of the debate we opened the floor to the Canadian public. The committee held 106 meetings in the course of 56 days for a total of 267 sitting hours. We listened to 95 groups and five expert witnesses who came before the committee and we received letters from 914 individuals and 294 groups. Many of the recommendations these groups and individuals made were extremely helpful in our efforts to bring further amendments to the resolution on a Constitution made in Canada.

In this third phase of the debate, well over 100 members and senators have spoken on the resolution. It is evident, therefore, that we are not proceeding unilaterally to patriate the Constitution. We have given to all Canadians the opportunity to take part in this process.

**Some hon. Members:** Hear, hear!

**An hon. Member:** Horsefeathers.

**Mr. Bockstael:** I remind this House that from the beginning the Official Opposition has attempted to stall the process. The Official Opposition said it would do anything to slow down the process. Then members of the Official Opposition insisted that we needed public participation. We had to have television, so we gave them television. We had to listen to the public. We had to allow representations to be made. We had to hold public hearings. We had to have consultations so that there would be input by the citizens of Canada. We did this. It is really the asides one hears at such meetings which count. Members of the Official Opposition said, "We would keep you here until next Christmas if we could". The point is that they were not interested in giving Canada its Constitution. They preferred to retard and to withhold from the Canadian people a Constitution and a charter of rights.

● (2140)

I would like to contrast this with the premiers of the provinces. Who do they speak for? I gave the example of Premier Lyon a few moments ago. Who have the premiers consulted with? Talk about unilateral action! Look at the dissenting premiers who do not approach anyone, who do not consult with any of their electorate but who come forward and say that they are the spokesmen for the people of their province.

**Some hon. Members:** Hear, hear!

**Mr. Bockstael:** Time after time we heard the opposition say "Why do you not go back to those premiers one more time?" For what purpose? I can recall the comments, reported in the media, of the hon. member for Provencher (Mr. Epp) and the hon. member for Rosedale (Mr. Crombie), who were attending the leadership convention at the Chateau Laurier in Ottawa and who felt sure that Premier Lyon would be amenable to a charter of rights. A few days later in Winnipeg I heard Premier Lyon say "I speak for myself. The hon. members of the federal Conservative party do not speak for me and I will not approve a charter of rights."

How can they ask us to go back to the premiers who do not want such a thing, who want to withhold those rights from the Canadian people?

**Mr. Taylor:** Do you want unity in the country?

**Some hon. Members:** Oh, oh!

**Mr. Bockstael:** Mr. Speaker, once and for all we should let the Canadian people know that it is a myth that this unilateral action is not unilateral. It is the participatory action of the elected people of this country who represent all of Canada.

**Some hon. Members:** Hear, hear!

**Mr. Bockstael:** That includes the territories, not the private domain of each of the premiers who want to trade off rights for their privileges and resources.



**Mr. Taylor:** How many do you have in Saskatchewan, Alberta and British Columbia?

**Mr. Bockstael:** We have worked assiduously over a period of months to achieve what we have accomplished. We have improved the charter. We have improved the Constitution. It is now ready to be voted on and terminated tonight. But we have acquiesced to the demands of the opposition. They have said that legality is the question. They have said to take it to the Supreme Court. Thus, the resolution will be referred to the Supreme Court, and when it comes back we will deal with it expeditiously. We will send it for the seal of approval, which is no different than what we do here every day of the year. In this House we enact laws. We send those laws to the Senate where they are concurred in. Then the representative of the Queen, the Governor General, gives royal assent to it. All we are doing, once we have approved it here, is to perform our duties as parliamentarians. We are sending this resolution to England for that final royal assent, and hereafter we will be able to deal with our own policies, our own Constitution, our own rights in this country, by Canadians for Canadians.

**Some hon. Members:** Hear, hear!

**Mr. Bruce Halliday (Oxford):** Mr. Speaker, I realize that my time is short—

**Some hon. Members:** Hear, hear!

**Mr. Halliday:** I think I would be remiss if I did not say one thing, that is, that the pathetic scene we have just witnessed in this House now where, after a speech which was full of so much tripe, delivered by the hon. member for St. Boniface (Mr. Bockstael)—

**Some hon. Members:** Hear, hear!

[Translation]

**The Acting Speaker (Mr. Blaker):** Order, please. It being 9:45 p.m., it is my duty to interrupt the proceedings and put forthwith every question necessary to dispose of the amendments, pursuant to the provisions of the order made on Wednesday, April 8, 1981.

[English]

The question is on the amendment standing in the name of the hon. member for Provencher (Mr. Epp).

Is it the pleasure of the House to adopt the said amendment?

**Some hon. Members:** Agreed.

**Some hon. Members:** No.

**The Acting Speaker (Mr. Blaker):** All those in favour will please say yea.

**Some hon. Members:** Yea.

**The Acting Speaker (Mr. Blaker):** All those opposed will please say nay.

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**Some hon. Members:** Nay.

**The Acting Speaker (Mr. Blaker):** In my opinion the nays have it.

*And more than five members having risen:*

**The Acting Speaker (Mr. Blaker):** Call in the members.

The House divided on the amendment (Mr. Epp) which was negated on the following division:

• (2215)

### (Division No. 57)

#### YEAS

#### Members

Ande	Gilchrist	McKnight
Anguish	Greenaway	McLean
Baker	Gurbie	McMillan
(Napan-Charleton)	Gustafson	Miggs
Beatty	Halliday	Munn
Blenkarn	Hamilton	(Esquimaux-Saanich)
Boley	(O's Appelle-Moose	Muris
Bradley	Mountain)	Nel
Cardiff	Hamilton	Nickerson
Carney (Miss)	(Swift Current-Maple	Nowlan
Clark	Creek)	Nystrom
(Yellowhead)	Hargrave	Oberle
Clarke	Hawkes	Paprocki
(Vancouver Quadra)	Hess	Parsons
Coates	Hwydebo	Reid
Cook	Huntington	(St. Catharines)
Cooper	Jarvis	Robison
Corbett	Jelinek	(Barnaby)
Crombie	Kemping	Roche
Crosby	Kilgour	Schellenberger
(Halifax West)	King	Scott
Dastzer	Korchinski	(Hamilton-Wentworth)
Darling	Kushner	Scott
de Jong	Lambert	(Victoria-Haliburton)
Dick	Lewis	Shields
Dreadle	MacDonald	Siddons
Deven	(Miss)	Speyer
Elli	MacKay	Sorens
Elzinga	Malone	Stewart
Epp	Mayer	Taylor
Feenell	Mazankowski	Thacker
Forrester	McCain	Thomson
Frasier	McCain	Towers
Fretz	McDermid	Vankoughnet
Friesen	McGrath	Werman
Gamble	McKenzie	Wilson
Gau	McKinnon	Wise
		Wright—98

#### NAYS

#### Members

Allmond	Bouy	Carriveau
Akhuac	Brenn	Congreve
Appolloni	Broadbent	Côté (Mrs.)
(Mrs.)	Bujold	Cousins
Atworthy	Burghardt	Collin
Bechard	Bussières	Cyr
Baker	Cocca	Daudin
(Gander-Twillingate)	Campbell	Dawson
Beauchamp-Niquet	(Carleton)	Dean
(Mrs.)	Campbell	De Bani
Bégin (Miss)	(Miss)	de Corneille
Benjamin	(South West Nova)	Demers
Berger	Campbell	Dewar
Blackburn	(LaSalle)	Desmarais
Blakie	Chénier	Dingwall
Blain	Chiffelin	Dion
Blaker	Collette	Dionne
Bloomfield	Comin	(Chicoutimi)
Bockstael	Corbin	

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Messrs.

Diosne	Killess (Mrs.)	Olivier
(Northumberland- Miramichi)	Knowles	Orlikow
Dubois	Kristiansen	Ostigay
Duclos	Lachance	Ouellet
Dupont	Lajoie	Parent
Dupras	Lakode	Parker
Duquet	Lamontagne	Pelletier
Erola (Mrs.)	Landers	Perrin
Ethier	Lang	Pepin
Evans	Laniel	Peterson
Ferguson	Lapierre	Pinsard
Fisher	Lapointe	Portelance
Fleming	(Charlevoix)	Rac
Flin	Lapointe	Reges
Foster	(Beauce)	Reid
Fox	LeBlanc	(Kenora-Rainy River)
Francis	Lefebvre	Ris
Frith	Lewycky	Roberts
Fulton	Loizeau	Robinson
Garant	Lordale	(Etobicoke-Lakeshore)
Gauthier	Lumley	Rompley
Gendron	MacBein	Rooney
Ginaiel	MacEachen	Ross
Gingras	MacGugan	Rossi
Goed	MacKasey	Roy
Gray	MacLaren	Sergeant
Guilbault	MacLellan	Seward
Hareau	Malpart	Schroder
Henderson	Maltais	Simmons
Herbert	Manly	Skelly
Hervieux-Payette	Marona	Smith
(Mrs.)	Massé	Sidbery
Hopkins	Masters	Tardif
Hudocki	McCasley	Tessier
Irwin	McRae	Tobin
Isabelle	Miller	Toussaint
Itinuar	Mitchell	Trudeau
Jewett (Miss)	(Mrs.)	Turner
Johnston	Munn	Velette
Joyal	(Hamilton East)	Watson
Kaplan	Murphy	Weatherhead
Keeper	Nicholson	Whelan
Kelly	(Miss)	Yanakis
	Ogle	Young—170.

● (2220)

*[Translation]*

**Madam Speaker:** The question now is on the amendment by Mr. Knowles, seconded by Mr. Itinuar:

That the proposed *Constitution Act, 1981* be amended by

(a) adding immediately after line 40 on page 9 the following section:

"28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.";

(b) renumbering the subsequent clauses accordingly;

(c) adding to clause 54 immediately after line 20 on page 20 the following paragraph:

"(c) the rights of the aboriginal peoples of Canada set out in Part II;" and

(d) relettering paragraphs (c) to (h) of clause 54 as paragraphs (d) to (i).

*[English]*

Is it the pleasure of the House to adopt the said amendment?

**Some hon. Members:** Agreed.

**Some hon. Members:** No.

**Madam Speaker:** All those in favour of the amendment will please say yea.

**Some hon. Members:** Yea.

**Madam Speaker:** All those opposed will please say nay.

**Some hon. Members:** Nay.

**Madam Speaker:** In my opinion the yeas have it.

*And more than five members having risen:*

**Madam Speaker:** Shall we dispense with the ringing of the bells?

**Some hon. Members:** Agreed.

The House divided on the amendment (Mr. Knowles) which was agreed to on the following division.

● (2225)

*(Division No. 58)*

YEAS

Messrs.

Allard	Cogrove	Gendron
Althouse	Côté (Mrs.)	Gilchrist
André	Cosentino	Ginaiel
Anguish	Crombie	Gingras
Appolloni	Crosby	Goed
(Mrs.)	(Halifax West)	Gray
Azworthy	Cullen	Guilbault
Bachand	Cyr	Gurbin
Baker	Darimon	Gustafson
(Gander-Twillingate)	Darling	Haldiday
Baker	Daudin	Hamilton
(Nepean-Carleton)	Dawson	(Qu'Appelle-Moose Mountain)
Beatty	Deane	Hamilton
Beauchamp-Niquet	De Baer	(Swift Current-Maple Creek)
(Mrs.)	de Cornelle	Hargrave
Blain (Miss)	de Jong	Harquail
Benjamin	Demers	Hawkins
Berger	Desiger	Hees
Blackburn	Demerain	Henderson
Blakie	Dick	Herbert
Blais	Dingwall	Hervieux-Payette
Blaker	Dinsdale	(Mrs.)
Blenkarn	Dion	Hopkins
Bloomfield	Diosne	Hovdebo
Bockstaele	(Chicoutimi)	Hudocki
Bailey	Diosne	Hustington
Bow	(Northumberland- Miramichi)	Irwin
Bradley	Down	Isabelle
Braun	Dubois	Itinuar
Broadbent	Duclos	Jarvis
Bujold	Dupont	Jelinek
Burghard	Dupras	Jewett (Miss)
Bustires	Duquet	Johnston
Caccia	Elin	Joyal
Campbell	Eltinge	Kaplan
(Cardigan)	Epp	Keeper
Campbell	Erola (Mrs.)	Kelly
(Miss)	Ethier	Kemping
(South West Nova)	Evans	Kilgour
Campbell	Fennell	Killess (Mrs.)
(LaSalle)	Ferguson	King
Cardiff	Fisher	Knowles
Carney (Miss)	Fleming	Kristiansen
Chabrier	Flin	Kushner
Chelton	Forrestall	Lachance
Clark	Foster	Lajoie
(Yellowhead)	Fox	Lalonde
Clarke	Francis	Lambert
(Vancouver Quadra)	Fraser	Lamontagne
Cotter	Fritz	Landers
Collette	Frisien	Lang
Coventry	Frith	Laniel
Cook	Fulton	Lapierre
Cooper	Garant	Lapointe
Corbett	Gass	(Charlevoix)
Corbin	Gauthier	
Correia		

Memes

Lapointe (Beaure)	Memo (Esquimaux-Sanguich)	Rose
LeBlanc	Memo (Hamilton East)	Ross
Lefebvre	Murphy	Roy
Lewis	Murta	Sargeant
Lawycky	Neil	Seward
Luttrell	Nicholson	Schillerberger
Lundale	(Mits)	Schroder
Lynny	Nickerson	Scott
MacBain	Nowlan	(Hamilton-Westworth)
MacDonald (Mrs)	Nystrom	Scott (Victoria-Haliburton)
MacFadden	Ogle	Shields
MacGibbon	Oliver	Sheldon
Mackasey	Orlikow	Simmons
MacKay	Ostiguy	Skelly
MacLaren	Ouellet	Smith
MacLellan	Paprocki	Speyer
Malpart	Parent	Stevens
Malone	Pariser	Stewart
Mabain	Patterson	Stullery
Maxly	Pelletier	Tardif
Marcosa	Pezzar	Taylor
Masé	Pepic	Tessier
Masters	Peterse	Thacker
Mayer	Pizand	Thomson
Mazankowski	Prentiss	Tobis
McCain	Rac	Toussignant
McCauley	Regan	Towers
McCaish	Reid (St. Catharines)	Trudeau
McDermid	Reid (Kenora-Rainy River)	Turner
McGrath	Ris	Vankoughnet
McKenzie	Roberts	Veillette
McKinnon	Robinson	Watson
McKnight	(Barnaby)	Weatherhead
McLean	Robinson (Etobicoke-Lakeshore)	Wenzon
McMillan	Roche	Whelan
McLar	Rompkey	Wilson
Miller	Rooney	Wise
Mitchell		Wright
(Mrs.)		Yanakis
Moges		Young
		Yarbo—265

NAYS:

Memo.  
NIL

● (2230)

[Translation]

**Madam Speaker:** I therefore declare the amendment carried.

Amendment (Mr. Knowles) agreed to.

**Madam Speaker:** The question is therefore on the amendment of the hon. member for Nepean-Carleton (Mr. Baker), seconded by Mr. Clark:

That Motion Number 36 in the name of the Minister of Justice, be amended as follows:

- (a) by deleting Clause 1 of Part I and substituting the following therefor:
  - "1. Affirming that
    - (a) the Canadian nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free individuals and free institutions, and
    - (b) individuals and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law,
 the *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."
- (b) by deleting Clause 7 of Part I and substituting the following therefor:
  - "7. Everyone has the right to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

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- (c) by adding after Clause 27 of Part I the following new Clause:
  - "28. Notwithstanding anything in this Charter, the rights and freedoms set out in it are guaranteed equally to male and female persons."
- (d) by adding after new Clause 28 of Part I the following new Clause:
  - "29. Nothing in this Charter affects the authority of Parliament to legislate in respect of abortion and capital punishment."
- (e) by deleting Clause 35 of Part IV and substituting the following therefor:
  - "35. (1) No later than two months after the coming into force of this Act, the Prime Minister of Canada and the first ministers of the provinces shall constitute a permanent conference to be designated the "Constitutional Conference of Canada" hereinafter referred to as the "Conference".
  - (2) The conference shall examine all Canadian constitutional laws and propose amendments necessary for the development of the Canadian federation.
  - (3) A conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.
  - (4) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.
  - (5) The conference shall meet at least twice each year.
  - (6) The conference shall be assisted by the Continuing Committee of Ministers on the Constitution."
- (f) by deleting Part V.
- (g) by deleting Clause 45 of Part VI and substituting the following therefor:
  - "45. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by
    - (a) resolutions of the Senate and House of Commons; and
    - (b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have in the aggregate, according to the then latest decennial census, at least fifty per cent of the population of all the provinces.
  - (2) Any amendment made under subsection (1) derogating from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a vote of a majority of the members of each of the Senate, of the House of Commons, and of the requisite number of legislative assemblies.
  - (3) Any amendment made under subsection (1) derogating from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall not have effect, financially or otherwise, in and for any province whose legislative assembly has expressed its dissent thereto by resolution supported by a majority of the members prior to the issue of the proclamation, provided, however, that the legislative assembly, by resolution supported by a majority of the members, may subsequently withdraw its dissent and approve the amendment.
  - (4) The provisions of subsections (2) and (3) do not apply to the *Canadian Charter of Rights and Freedoms*."

● (2235)

- (h) by adding after Clause 48 of Part VI the following new Clause:
  - "49. An amendment to the Constitution of Canada may be made by proclamation under section 45 or section 47, as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolu-



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sion and if, at any time after the expiration of those one hundred and eighty days, the House of Commons again passes the resolution."

- (i) by deleting clause 49 of Part VI and substituting the following therefor:

"49. (1) The procedures for amendment prescribed by subsection 45(1) and section 47 may be initiated by either the Senate or House of Commons or by the legislative assembly of a province.

(2) A resolution authorizing an amendment made for the purposes of this Part may be revoked at any time before the issue of a proclamation."

(3) A resolution of dissent made for the purposes of this Part may be revoked at any time before or after the issue of a proclamation."

- (j) by deleting clause 54 of Part VI and substituting the following therefor:

"54. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with the procedure prescribed by section 45(1):

(a) *The Canadian Charter of Rights and Freedoms;*

(b) the commitments relating to equalization and regional disparities set out in section 34;

(c) the powers of the Senate;

(d) the number of members by which a province is entitled to be represented in the Senate;

(e) the method of selecting Senators and the residence qualifications of Senators; and

(f) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada."

- (k) by adding after clause 54 of Part VI the following new Clause:

"55. An amendment to the Constitution of Canada in relation to the following matters may be made only by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and by the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) The right of a province to a number of members in the House of Commons not less than the numbers of Senators representing the province; and

(c) any of the provisions of this Part." and

- (l) by deleting clause 63 of Part VIII and substituting the following therefor:

"63. (1) This Act, or any provision thereof, shall come into force on a day or days to be fixed by proclamation to be issued by the Governor General under the Great Seal of Canada where so authorized no later than July 1, 1983 by resolutions of the legislative assemblies of at least two-thirds of the provinces that have in the aggregate, according to the then latest decennial census, a population of at least fifty per cent of all the provinces.

(2) A resolution made for the purposes of this section may be revoked before the issue of a proclamation authorized by it."

The House divided on the amendment (Mr. Baker (Nepean-Carleton)) which was negatived on the following division:

• (2240)

### (Division No. 59)

#### YEAS

#### MEANS

Andre  
Baker  
(Nepean-Carleton)  
Beatty  
Bleakart  
Bosley

Bradley  
Cardiff  
Carney (Miss)  
Clark  
(Yellowhead)

Clarke  
(Vanover Quadra)  
Coates  
Cook  
Cooper  
Corbett

Crombie  
Crosby  
(Halifax West)  
Dostzer  
Darling  
Dick  
Dinudale  
Dunn  
Elli  
Elzings  
Epp  
Fennell  
Forestell  
Fraser  
Freir  
Friesen  
Gamble  
Gass  
Gilchrist  
Greenaway  
Gubin  
Gustafson  
Halliday  
Hartibon  
(Qu'Appelle-Moose  
Mountain)  
Hamilton  
(Swift Current-Maple  
Creek)  
Hargrave

MEANS  
Hawkes  
Hein  
Huntington  
Jarvis  
Jelinek  
Kemping  
Kilgour  
King  
Korchinski  
Kulster  
Lambert  
Lewis  
MacDonald  
(Miss)  
MacKay  
Malone  
Mayer  
Mazankowski  
McCain  
McCask  
McDermid  
McGrath  
McKenzie  
McKinson  
McKnight  
McLennan  
McMillan  
Mitges  
Musro  
(Esquimalt-Saanich)

Maria  
Neil  
Nickerson  
Nowlan  
Oberle  
Papronki  
Patterson  
Reid  
(St. Catharines)  
Roche  
Schellenberger  
Scott  
(Hamilton-Wentworth)  
Scott  
(Victoria-Haliburton)  
Shields  
Siddon  
Speyer  
Sorens  
Stewart  
Taylor  
Thacker  
Thomson  
Towers  
VanKoughnet  
Wentman  
Wilson  
Wise  
Wright—93

#### NAYS

#### MEANS

Allmand  
Althouse  
Anguish  
Appolloni  
(Mrs.)  
Acorahy  
Bachard  
Baker  
(Gawler-Twillingate)  
Beauchamp-Niquet  
(Mrs.)  
Bégin (Miss)  
Benjamin  
Berger  
Blackburn  
Blakie  
Blair  
Blaker  
Bloomfield  
Bockstall  
Bossy  
Brau  
Braudern  
Bujold  
Burghardt  
Busines  
Caccia  
Campbell  
(Cardigan)  
Campbell  
(Miss)  
(South West Nova)  
Campbell  
(LaSalle)  
Chénier  
Chétien  
Collette  
Comtois  
Corbin  
Corvina  
Cogrove  
Côté (Mrs.)  
Cousineau  
Cullen  
Cyr

Daedin  
Dawson  
Deans  
De Bost  
de Corneille  
de Jong  
Dennis  
Deniger  
Demaria  
Dingwall  
Dow  
Dunne  
(Chicoutimi)  
Dunne  
(Northumberland-  
Miramichi)  
Dubois  
Duclos  
Dupont  
Dupont  
Dupras  
Dupret  
Eras (Mrs.)  
Eskier  
Evans  
Ferguson  
Fisher  
Fleming  
Fitz  
Foster  
Fox  
Francis  
Frith  
Fulton  
Garant  
Gauthier  
Gendron  
Gimel  
Gingras  
Goard  
Gray  
Guilhaud  
Harquail  
Henderson  
Herbert  
Hervieux-Peyette  
(Mrs.)

Hopkins  
Hurdébo  
Hudocki  
Irwin  
Isabelle  
Itinour  
Jewett (Miss)  
Johnson  
Joyal  
Kaplan  
Keeper  
Kelly  
Killess (Mrs.)  
Kowles  
Kristianen  
Lachance  
Laprie  
Lalonde  
Lamontagne  
Lauders  
Lang  
Lantel  
Lapierre  
Lapointe  
(Charlevoix)  
Lapeente  
(Beauce)  
LeBlanc  
Lefebvre  
Lewycky  
Loudle  
Loudale  
Lunsley  
MacBain  
MacEwen  
MacGuigan  
MacKasey  
MacLaren  
MacLellan  
Malgou  
Maltin  
Manly  
Marotte  
Massé  
Matters  
McCauley  
McRae

Messrs.

Milner	Peterson	Savard
Mitchell	Pinard	Schroder
(Mrs.)	Portelance	Simmons
Munro	Rac	Skelly
(Hamilton East)	Regis	Smith
Murphy	Reid	Stollery
Nicholson	(Kenora-Rainy River)	Tardif
(Miss)	Ris	Tessier
Nystrom	Roberts	Tobin
Ogle	Robinson	Toussaint
Oliver	(Bernaby)	Trudeau
Orlikow	Robinson	Turner
Ottiguy	(Etobicoke-Lakeshore)	Veillette
Ouellet	Rompkey	Watson
Parent	Rooney	Weatherhead
Parker	Rose	Whelan
Pelletier	Rossi	Yanakis
Penner	Roy	Young—175
Pipin	Sargeant	

Amendment (Mr. Baker (Nepean-Carleton)) negatived.

**Madam Speaker:** The question is on the motion by Mr. Pinard, seconded by Mr. Chrétien:

That the proposed Constitution Act, 1981 be amended

(a) by adding immediately after the heading "CANADIAN CHARTER OF RIGHTS AND FREEDOMS" on page 3, the following:

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:"

(b) by striking out in clause 11 of the French version, line 36 on page 5 and substituting the following:

"déclaré coupable et puni;"

(c) by striking out subclause 33(1) of the French version at lines 27 to 29 on page 10 and substituting the following:

"33. (1) Les droits, ancestraux ou issus de traités, des peuples autochtones du Canada sont, par les présentes, confirmés."

(d) by striking out in subclause 45(1), lines 20 to 24 on page 16 and substituting the following:

"Incs."

Is it the pleasure of the House to adopt the said amendment?

**Some hon. Members:** Agreed.

**Some hon. Members:** No.

**Madam Speaker:** In my opinion, the yeas have it.

Call in the members and we shall dispense with the ringing of the bell.

The House divided on the motion (Mr. Pinard), which was agreed to on the following division:

• (2245)

(Division No. 60)

YEAS  
Messrs.

Allmond	Bloomfield	Collette
Althouse	Bockstaeel	Conson
Anguish	Bosy	Corbin
Appelton	Brexa	Cornivas
(Mrs.)	Broadbent	Cogrove
Asworthy	Bujold	Côté (Mrs.)
Buchand	Burghardt	Cosentino
Baker	Bussières	Cullen
(Gander-Twillingate)	Caccia	Cyr
Bauchamp-Niquet	Campbell	Daudin
(Mrs.)	(Cardigan)	Dawson
Bigo (Miss)	Campbell	Deans
Benjamin	(Miss)	De Bané
Berger	(South West Nova)	de Jong
Barkham	Campbell	Demers
Baskin	(LaSalle)	Desjar
Biss	Chénier	Desmarais
Baker	Christien	

The Constitution

Messrs.

Diagwall	Kaplan	Olivier
Dine	Keper	Orlikow
Dionne	Kelly	Ottiguy
(Chicoutimi)	Kilens (Mrs.)	Ouellet
Dionne	Knowles	Parent
(Northumberland- Miramichi)	Lachance	Parker
Dubois	Lajoie	Pelletier
Duclos	Lalonde	Penner
Dupont	Lamontagne	Pipin
Dupras	Landers	Peterson
Duquet	Lang	Pinard
Erola (Mrs.)	Laxtel	Portelance
Ethier	Lapierre	Rac
Evan	Lapointe	Regan
Forgues	(Charlevoix)	Reid
Fisher	Lapointe	(Kenora-Rainy River)
Fleming	(Beauve)	Ris
Flin	LeBlanc	Roberts
Foster	Leclerc	Robinson
Fox	Lewycky	(Etobicoke-Lakeshore)
Francis	Loiselle	Rompkey
Frieh	Lonsdale	Rooney
Fulton	Lumley	Rose
Garant	MacBain	Rossi
Gauthier	MacEachen	Roy
Geodrou	MacGuigan	Sargeant
Givoni	MacLaren	Savard
Gingras	MacLellan	Schroder
Guind	Malpart	Simmons
Gray	Maltin	Skelly
Gauthault	Marcoux	Smith
Hargrave	Masé	Stollery
Henderson	Mason	Tardif
Herbert	McCaulley	Tessier
Hervieu-Payette	McRae	Tobin
(Mrs.)	Miller	Toussaint
Hopkins	Mitchell	Trudeau
Hovdeba	(Mrs.)	Turner
Hudocki	Munro	Veillette
Irwin	(Hamilton East)	Watson
Isabelle	Murphy	Weatherhead
Itinvar	Nicholson	Whelan
Jewett (Miss)	(Miss)	Yanakis
Jokstone	Nystrom	Young
Joyal	Ogle	Yurko—173

NAYS  
Messrs.

Andre	Greenaway	McLean
Baker	Gurbin	McMillan
(Nepean-Carleton)	Gustafson	Migné
Beatty	Halliday	Munro
Blankens	Hamilton	(Esquimaux-Saanich)
Bailey	(Qu'Appelle-Moose Moentain)	Marta
Bradley	Hamilton	Neil
Cardiff	(Swift Current-Maple Creek)	Nickerson
Carney (Miss)	Hargrave	Nowlan
Clark	Hawkes	Oberle
(Yellowhead)	Hess	Papronki
Clarke	Hastington	Patterson
(Vancouver Quadra)	Jurvis	Reid
Coates	Jelinek	(St. Catharines)
Cook	Kemping	Robinson
Cooper	Kilgour	(Burnaby)
Corbett	King	Ruche
Crombie	Korchinski	Schellenberger
Crosby	Kushner	Scott
(Halifax West)	Lambert	(Hamilton-Wentworth)
Dastner	Lewis	Scott
Darling	MacDonald	(Victoria-Haliburton)
Dick	(Miss)	Shields
Dinsdale	MacKay	Siddon
Dunn	Malone	Speyer
Elli	Mayer	Stevens
Elzinga	Mazankowski	Stewart
Epp	McCain	Taylor
Fennell	McCaub	Thacker
Forrestall	McDermid	Thomas
Fraser	McGrath	Towers
Freta	McKenzie	Vankoughnet
Friesen	McKinnon	Weeman
Gamble	McKnight	Wilson
Gao		Wise
Gilchrist		Wright—94

• (2250)

**Madam Speaker:** I declare the motion carried.

*The Constitution*

[English]

I would like to wish all hon. members a well-earned holiday. As is customary before we break, I would like to invite hon. members to room 16 for a drink, where apart from sharing in the good cheer, they will have occasion to meet some of the Speakers of the Commonwealth countries who are also invited to meet some of the members.

It being ten o'clock and pursuant to order made Thursday, April 9, 1981, this House stands adjourned until Tuesday, May 12, 1981, at two o'clock p.m., pursuant to Standing Order 2(1).

At 10.50 p.m. the House adjourned until Tuesday, May 12, 1981 at 2 p.m.

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