

*Human Rights*

because we believe that the Canadian bill of rights should be an act of the Canadian parliament.

**Mr. Hellyer:** Just like the Judges Act.

**Mr. Fulton:** It is inescapable from a study of the complete arguments made by the opposition that they would prefer to see the Canadian bill of rights enacted in London rather than in Ottawa.

**Mr. Pickersgill:** That is not true.

**Some hon. Members:** Shame.

**Mr. Fulton:** It is true, because they have suggested that the bill of rights should take the form of a comprehensive enactment covering rights and freedoms within the federal and provincial spheres of jurisdiction.

**Mr. Pickersgill:** Just as the Prime Minister did in 1948.

**Mr. Fulton:** Such an enactment would in that case have to be by way of amendment to the British North America Act. Under the present circumstances such an amendment as this can only be achieved by an address passed by this parliament praying that the United Kingdom parliament will further amend the statute which they first enacted. By the nature of their arguments hon. members opposite have thus established that they would prefer to see it done by a bill of the United Kingdom parliament rather than by a bill or statute of the Canadian parliament.

**Mr. Pickersgill:** Where is that stated?

**Mr. Fulton:** It is to be remembered that not only would our Canadian bill of rights be thus a British statute, but it could also be repealed or amended in exactly the same way as that in which it was first brought into being. This means a single stage debate on the resolution for the presentation of an address, instead of the three stages of debate necessary to the enactment of a Canadian statute, as we are asking parliament to do.

If, therefore, hon. members of the opposition are prepared to accept the position that a Canadian bill of rights should be enacted by the British parliament, which we are not prepared to accept, the fact remains that even such a process would not achieve as they claim, the objective of making the bill of rights sacrosanct in the sense of precluding hasty, ill-conceived or prejudiced amendments. The provisions would not be entrenched—indeed they would hardly be planted—because they could be altered or uprooted by a single stage debate in this house.

It may be that having recognized the false position into which they have thus betrayed themselves by asking for a British enactment of a Canadian bill of rights, hon. members

of the opposition may seek to extricate themselves by suggesting an alternative. They may say, "Oh, no, we do not really want a bill of rights that covers provincial as well as federal fields. Let us have one confined to the federal field exclusively, in which case you can enact it by amendment of the British North America Act under the provisions of section 91(1)". That would be a simple enactment by the Canadian parliament.

**Mr. Martin (Essex East):** Hear, hear.

**Mr. Fulton:** This, of course, would be impossible if their suggestion that the bill of rights should cover other than the federal field were followed. Mr. Speaker, by confining it to the federal field as we are doing, it is true that we could then enact it by way of an amendment to section 91. However, they then fail in their argument that they want a provision which will be inviolate and entrenched, because all they would be doing by following that method, notwithstanding their fervid and sonorous criticisms, would be the very thing they have criticized us for doing, namely passing a mere statute of the Canadian parliament.

Therefore it becomes quite obvious, Mr. Speaker, whatever way you look at it, first that the proposal now before the house, being a statute of this house enacting a bill of rights, will become a part of the Canadian constitution. Second, it will be just as difficult of subsequent amendment as an amendment under section 91 of the B.N.A. Act. Third, as against the other proposal of the opposition, the main criticism that it should cover both federal and provincial fields, there is the inestimable advantage that we are enacting a Canadian bill of rights by an act of the Canadian parliament instead of by an act of the United Kingdom parliament.

**Mr. Martin (Essex East):** Why was that not done?

**Mr. Fulton:** Another argument of hon. members of the opposition is that there has been no consultation with the provinces; that we failed to do that and to produce, instead of a bill confined exclusively to the federal sphere, a bill which would affect both federal and provincial spheres of jurisdiction.

There are two answers to this. The first is that it is the responsibility of the dominion government to deal first with matters under its own authority, and the indications are clear that it would not be possible to get early agreement with the provinces for an amendment of the nature suggested.