

*The Constitution*

the Constitution will not by and of itself protect human rights and fundamental freedoms. I give him proof of that statement. What about the Japanese Americans who were the first to be interned? What protection did they have under the United States constitution with its entrenched charter of rights? They were the first to violate and take away the civil and human rights of the Japanese citizens of that country. Indeed, it was pressure from them which forced Canada to do the same thing.

My colleagues have talked about the constitution of the Soviet Union and the rights enshrined in it. I should like to give a better example. India is one of the few countries in the Commonwealth which has maintained the parliamentary system and entrenched a charter of rights. We can take a look at the record of civil rights and fundamental freedoms in India. At the present time it has suspended its constitutional rights for a year. We know what happened during the previous regime of Madam Gandhi when people had no fundamental rights or freedoms, notwithstanding the glowing terms of the entrenched rights contained in the constitution of India.

Then I look at the few countries in the Commonwealth which have not entrenched charters of rights and I find they have one significant thing in common. These are the countries which have the best record of protection of fundamental rights and freedoms of all the countries in the world. I will name them: the United Kingdom, Australia, New Zealand and Canada.

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

**Mr. McGrath:** I believe we will live to regret what we are doing here today. When the fathers of our country 113 years ago put together the present Constitution—in its written form, the British North America Act—they opted for the British tradition. As we know, there are two traditions for constitutions. There is the written tradition. For example, after a bloody civil war or a revolution, the Americans decided to sit down and write a constitution, as did the French. Then there is the British tradition where there is an evolution of a constitution based on the historic rights and privileges of a people as they develop and are transgressed. The ultimate protection of fundamental rights and freedoms is contained in the Parliament of the United Kingdom or up to the present day in the Parliament of Canada.

We are setting up in this country a parallel legislature because the Supreme Court of Canada, as it is faced with questions based on the charter of rights, will eventually have to legislate; we all know what happened and what is happening in the United States of America. I personally think that will be a regrettable day for Canada. But that is not the majority view and, in a democracy I prescribe to the majority view, and will reluctantly go along with the charter. I believe it is a better charter because of the deliberations of the committee. I do not want to suggest that because I participated in that committee, because we participated in that committee, or because we were successful in getting six or seven amendments. I do not want to suggest for a moment that in any way legitimizes the process. We were merely carrying out our responsibilities as legislators.

How often do we deal with bills in the House upon which there is fundamental disagreement? As parliamentarians what do we do? Do we wash our hands and merely walk away? That is not the tradition of Parliament. We must sit and try to make a bad bill into a better one. That was the attitude we took in the committee. We had to sit and try to make a bad charter into a better one. As a result, I believe we have a better charter of rights today.

● (1650)

The famous Kirby document has a number of things to say. What is interesting about the Kirby document is that it has consistently recommended the government's game plans. It said this:

The probability of an agreement is not high. Unilateral action is therefore a distinct possibility. In the event unilateral action becomes necessary, ministers should understand that the fight in Parliament and the country will be very, very rough. For, as Machiavelli said:

It is very interesting that the document should quote Machiavelli.

It should be borne in mind that there is nothing more difficult to arrange, more doubtful of success, and more dangerous to carry through than initiating changes in a state's constitution.

What we propose to do here today is deny the federal concept, the federal character of Canada. I hear hon. members asking what the ultimate resolution of this argument will be. One would say that that argument would lead you to separatism. I was one who fought against my province joining Canada. I would fight today against my province separating from Canada.

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

**Mr. McGrath:** I would fight equally hard for my province to maintain its political entity and its sovereignty within the federation we call Canada.

The Minister of the Environment (Mr. Roberts) in a good speech to the House yesterday said something which has been said before by other ministers. I quote:

I urge the House, as the only body that truly represents all Canadian citizens, to accept this resolution—imperfect as it may be in this or that detail, but in whole an imaginative and fair response to the challenges of our country.

The minister says, "as the only body that truly represents all Canadian citizens." What about the legislature of the province of Newfoundland, does it not represent Canadian citizens? What about the national assembly of the province of Quebec, does it not represent Canadian citizens? What about the assembly of the province of Alberta, does it not speak for Canadian citizens? What about British Columbia? The government has a role to play, but for it to suggest that this is the only legislative body in the country which can speak for Canadians as a whole is to adopt a unitary concept of Canada and deny *ipso facto* its federal nature. I regret that.

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