

*Point of Order—Mr. H. Gray*

traditions and practices of the House, a free vote is something decided upon by each Party and its Leader with respect to how they as a group will deal with the question. It is not something to be decided upon by the order of the Prime Minister (Mr. Mulroney), or by a vote in the House. It is a matter of the individual decision of each Party and its Leader.

I submit that, by tabling the motion that I have quoted in part, the Government is not only breaching the rules and the practices of this House, but it is also breaching the fundamental privileges of the House as an institution, and the privileges of all its Members.

It is a result of the far-reaching implications of this matter that I gave notice that I intended to raise it at the first opportunity today rather than at some later point. We are dealing here with the type of matter that is so important that it is dealt with first at the very beginning of our rules in Standing Order 1, which states:

In all cases not provided for hereinafter, or by other Order of the House, procedural questions shall be decided by the Speaker or Chairman, whose decisions shall be based on the usages, forms, customs and precedents of the House of Commons of Canada and on parliamentary tradition in Canada and other jurisdictions, so far as they may be applicable to the House.

With your permission, Mr. Speaker, I do wish to say a word about the definition of privilege. As we know, Erskine May's classic definition is:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

Let me also quote Redlich who asserts:

The particular privileges of the Commons having been defined as: "The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords".

In presenting its Notice of Motion, the Government is not merely attempting to put before the House a motion that is not procedurally acceptable, it is also insinuating a process that is completely foreign to and obnoxious to the practices, usages, and privileges of the House as built up and defined over centuries in both Canada and other parliamentary democracies. In light of Standing Order 1, I say that what the Government is doing is both contrary to the privileges of the House and to the Standing Orders themselves. In its Notice of Motion and in its partisan zeal and arrogance, the Government is attempting to use its overwhelming majority to limit the debating rights of Members of the House, while at the same time proposing to lessen the role of the House by asking it to pass upon unclear propositions which the Government itself defines and insists be the only ones to be voted on by this House.

Another Parliamentary authority cites an old parliamentary maxim which I submit is appropriate to this case, and I quote:

That nothing tended more to throw power into the hands of Administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules—That the forms of proceedings, as instituted by our ancestors, operated as a check and control on the actions of Ministers; and that they were, in many instances, a shelter and protection to the minority, against the attempts of power.

It is bad enough that in its motion the Government attempts to limit the opportunities of Members to take part in this debate before the debate even begins, and before there is any indication that the debate would go on in a manner that Members may decide is undue or excessively lengthy. What is most repugnant about what the Government is attempting to do is that it is attempting, in an uncalled for and unprecedented manner, to limit the right of Members to offer amendments. Erskine May clearly defines the purpose of amendments as follows:

The object of an amendment may be either to modify a question in such a way as to increase its acceptability, or to present to the House a different proposition as an alternative to the original question.

In contrast to every known parliamentary practice, the Government seeks to limit Members from placing before the House any other alternatives for consideration than the ones put forward in the Government's own motion or, even more contrary to parliamentary practice, to prevent Members from offering amendments that would seek to clarify what, in the minds of some Members and perhaps even many people in the general public, are the rather vague motion and amendments that the Government is claiming defines all the options on this issue of abortion.

It is true that, in recent years, the House of Commons has found it necessary from time to time to temporarily modify its procedures to accommodate certain debates and to provide for the orderly consideration of alternatives. The debate that has just begun on the amendments to the Constitution are a good example. The special order governing that debate was first adopted by unanimous consent of all the Members. Second, and most important, it specifically safeguarded the rights of all Members to offer what they considered to be appropriate amendments.

In this case, that is not what the Government proposed to do. It now proposes to use its majority to force upon the House a procedure that completely prohibits other Members from offering any amendments that they consider appropriate, and thereby inhibits the House from exercising its right and responsibility to attempt to pronounce itself clearly on an important public issue.

As we can see from the government's motion, on this issue the Government is seeking to force upon the House three options which many may consider to be limited and ill-defined, and to claim that somehow this will result in a free and constructive decision by Members. In the process it attempts to stifle free debate and to eliminate the kinds of choices that Members had in the past in this House been called upon to make and have been willing to make. It seeks, unilaterally, to limit free speech while claiming to do the opposite.