

The Constitution

All of my colleagues in the House, and I include those who do not happen to belong to the party to which I belong, do not have that right or privilege. Accordingly, I am very specially privileged indeed. Some of them have brought it upon themselves. Looking at the scant numbers of government members in the House, I can see that perhaps it is not important to them to bother to attend here to address this matter in the way most members in my party wish to do. There are 21 Liberal members in the House today to deal with this issue.

One of the most essential factors with which I am confronted as I look at this resolution is that according to the government this is not the forum where issues of a primary nature concerning all Canadians should be dealt with. It is to be somewhere else, and I wonder where that other place is. Is it to be in London, to which city the government has dispatched two of its ministers to make proposals concerning what the constitution of Canada should be? I would have thought it should have been here, and I would have thought that members of the House who had anything to say on this essential issue would want such an opportunity. Unfortunately, however, we are to be greatly disappointed.

Let us then go to the issue that confronts us with respect to the resolution before the House which gave rise to closure, and let us immediately dismiss some of the irrelevancies that have been raised. It is very clear that the party to which I belong has a firm and fixed view that the Constitution of Canada should be patriated. We also believe there should be a formula for amendments in the future. That formula has been described as "seven out of ten." I will not go beyond that, other than to mention that indeed there is no doubt that members of this party believe fundamentally in a bill of rights. It was a former prime minister from this party who introduced Canada's Bill of Rights which still stands. It may well be that there should be an amendment to that Bill of Rights changing section 2 so as to give the bill as it currently stands primacy over general laws in Canada. But we are dealing with something that is substantially different and upon which closure has been brought, that is, the concept that the charter of rights and freedoms which will affect all Canadians should be placed beyond the control of the House of Commons.

Today we heard a statement from the hon. member for Nepean-Carleton (Mr. Baker) which might initially have stunned some of the members. It was to the effect that should this resolution be passed, the Supreme Court of Canada, the highest court in the land, will no longer be that. What fundamental difference does that make to me as a member of Parliament? Am I indeed robbed of some great right? True, that would happen, but it does not concern me. The fact that this will no longer be the high court of justice for Canada is not as significant as the effect it would have upon the democratic process in Canada, because what we are doing here will destroy democracy.

Some hon. Members: Oh, oh!

Mr. Gamble: The hon. member who has never looked at the resolution laughs. That does not surprise me. What we have

here is a proposition which will place in the hands of the Supreme Court of Canada—not the one that is here today that we all know, but the one that will be there 100 years from now and whose members we do not recognize because they have not yet been appointed—the right to determine the laws of Canada and legislate those laws because the process of legal interpretation includes legislation.

For a perfect example of that process we need only look to our southern neighbour where the laws passed in a constitutional form have been changed over the years as a result of judicial interpretation. The natural result of that, they say, is that there has been progress. The court has made those changes necessarily. But the fact is, there is a danger in adopting the process they have adopted to our situation without the safeguards they enjoy. There is not a judge of the Supreme Court of the United States who is not appointed without the sanction and approval, after due scrutiny, of the Congress of the U.S. There is no provision for such scrutiny in this resolution. In the United States, lower court judges are elected by the people. The people, directly or indirectly, control the administration of justice. Our system, simply put, is that one man, the Attorney General of Canada, will make the appointments. Whom does he appoint? We do not know, but I will tell you what the people do not know—that once appointed, no one can ever get rid of them. The people can get rid of my friends across the way, they can get rid of me, they can get rid of all of us, but they cannot get rid of the judges, and it is the judges who will legislate in Canada if this resolution is passed. The public should be made aware of it, but the government members opposite do not bother. They talk about the rights of the minorities. I heard the comment of the Solicitor General (Mr. Kaplan). He is in the House tonight. "The minorities must be protected," he said. That is true, but so must the majority. Who is protecting the democratic process? Who is speaking for the system that has evolved and from which we derive our right to be here and from which the people derive their right to get rid of us? No one does, because it does not concern them. That is the fundamental problem which the Liberal government does not address because it is something they do not want the public to know, and the sooner they can get this matter before the committee where it can be whisked away in the dark, the better they will like it.

Having commented upon the one fundamental problem which exists with regard to the concept of the resolution, let us now take the lid off the general garbage can and look at the trash that is contained therein. We are told by speaker after speaker for the government that, as a consequence of the adoption of this resolution, Canadians will be able to move from one part of Canada to the other, find residence and seek gainful employment. We have heard this evening from an hon. member on the government benches that he is aware of a piece of legislation of an obnoxious nature in the province of Quebec which precludes construction workers from the province of Ontario taking jobs in Quebec on construction projects, contracts which have been won by Ontario construction firms. Section 6 is held up as an answer to the problem and as a