

The Constitution

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

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.