Legislative Assembly of Saskatchewan
March 3, 1981

The Assembly met at 2 p.m.

Prayers

ROUTINE PROCEEDINGS

CONGRATULATIONS

Forthcoming Wedding of Prince Charles and Lady Diana Spencer

MR. ANDREW: — Mr. Speaker, I would ask the members of the Assembly to join with me in extending our congratulations to Prince Charles and Lady Diana Spencer on their forthcoming wedding in July to be held, I might add, at St. Paul's Cathedral.

HON. MEMBERS: — Hear, hear!

HON. MR. BLAKENEY: — Mr. Speaker, since we are all joining in belated congratulations, I will join members opposite in extending our best wishes to the Prince of Wales and Lady Diana Spencer. If I may remind all hon. members, Sunday of this week was St. David's Day, the day of the Prince of Wales, and I will add my felicitations to all people who are in any way associated with Wales on that happy occasion.

HON. MEMBERS: — Hear, hear!

QUESTIONS

Increase of Insurance Rates in Saskatchewan

MR. ROUSSEAU: — A question to the Minister of Industry and Commerce. Mr. Minister, the minister in charge of Saskatchewan Government Insurance recently announced that the massive increases in insurance rates in Saskatchewan have been caused by Saskatchewan's economic boom. Mr. Minister, I ask you, what economic boom is he talking about in light of today's announcement by Simpsons of the closing of their store affecting the employment of 470 people in the city of Regina?

HON. MR. VICKAR: — Mr. Speaker, I don't think one has anything to do with the other really. I think the hon. member is talking about apples and oranges here. The closing of Simpsons is related to a conglomerate which has purchased both Simpsons and The Bay and it was understandable at that time that one or the other of the stores would close. I don't think that has any relevance at all to what the hon. minister in charge of government insurance has stated.

MR. ROUSSEAU: — Mr. Speaker, a supplementary question. Mr. Minister, would you not consider the drop in retail sales in the province of Saskatchewan and in the city of Regina has a direct effect on the economy of that particular store?

HON. MR. VICKAR: — Mr. Speaker, no I will not because from the information we are getting from the people who own Simpsons, the store has been going downhill for a number of years. They had been losing money prior to the boom (so-called) which we have in Saskatchewan and they have contemplated a move of this nature for quite some

time.

Coupled with the cost of renovating their buildings and coupled with all of the other necessary expenses, which they would have in order to keep the store operating, and along with that the idea they would have two stores in one city, they feel it is necessary to consolidate their efforts in two different areas putting Simpsons in eastern Canada (where they belong) and Hudson's Bay in western Canada.

For the information of the hon. member, I might tell him that Simpsons in Regina is the only store which Simpson has west of the Lakehead.

MR. LANE: — I would like to direct a question to the minister responsible for the Cornwall Centre. The minister has just indicated that the closure of Simpsons has been in the plan for some time. When you initiated Cornwall Centre, did you have advance notice of the closure or did you take into account the likelihood of the closure of Simpsons?

HON. MR. SMISHEK: — Mr. Speaker, we are helping to develop Cornwall Centre. We are not closing any stores.

MR. LANE: — It is obvious, Mr. Speaker, by way of supplementary, that the existence of Cornwall Centre has had a dramatic impact and has led to the closure of the Simpsons store. Would the Premier be prepared to announce today the government's plans to assist those who were laid off because of this closure to find immediate employment in the province of Saskatchewan?

HON. MR. BLAKENEY: — I think my colleague, the Minister of Industry and Commerce has already addressed the problem, and I will ask him to reply.

HON. MR. VICKAR: — Yes, Mr. Speaker, the Simpsons people have graciously taken on themselves to look after all of their 270 employees. I have the schedule in front of me and I can give you a copy of the document, if you wish, outlining the procedure Simpsons is taking to take care of all of their people, both in the employment factor and in the early retirement, if they deem it necessary.

Coupled with that our department has already been in contact with some of the stores, particularly Eaton's, who are going into the Cornwall Centre, to see if they can alleviate that situation in taking on some of these employees. They are saying they will certainly look at it and lend a helping hand.

MR. LANE: — A supplementary to the minister. That is a rather surprising statement because Simpsons announced today that many of those worker's are being moved out of the province of Saskatchewan to other Simpsons stores across Canada. Would the minister not admit that it's a rather surprising statement by the government opposite that they would welcome and accept the fact that probably over 100 employees are going to be moved out of the province of Saskatchewan?

HON. MR. VICKAR: — No, Mr. Speaker, I will not. As a matter of fact there will only be about 20 of those move out, because of their managerial positions, to be located in other Simpsons stores.

MR. ROUSSEAU: — In light of the answer you gave about the 270 being looked after, did you not, Mr. Minister, read the release by Simpsons where it indicates first of all that

there are 470 and not 270 affected, and secondly, as an example, 185 who Simpsons will seek diligently to assist. They are not offering positions, they are offering to assist these employees. They are not placing them anywhere else. How can you stand up and say that they are placing all of these people in other jobs?

HON. MR. VICKAR: — Mr. Speaker, I don't know what press release the hon. member is reading from but I have it in front of me and it says 270 people.

MR. ROUSSEAU: — Mr. Speaker, just as a supplementary, I will advise the minister that I will send him a copy of this release, where there are an extra 200 part-time employees also affected.

Job Losses in Saskatchewan

MR. ANDREW: — A question to the minister. In view of your statement with regard to the business boom, and with regard to the fact that employees are not being required to move out of the province of Saskatchewan, could you tell me if it is a sign of economic boom, and could you tell me if, in fact, the people are staying in the province of Saskatchewan when we see 75 people laid off in the city of Estevan because of the energy problems, when 104 people are laid off in Swift Current, or the district of Swift Current? Mr. Minister, could you tell those people, and tell the people of Meadow Lake who lost 150 jobs, and the people of Kindersley who have lost another 200 jobs where that . . .

MR. SPEAKER: — Order! I'll take the next question.

Public Hearings for Uranium Refinery in Saskatchewan

MR. PREBBLE: — A question to the Minister of the Environment. As the minister will know, there has been an announcement that a site to the north of Prince Albert may receive consideration as a possible site for a uranium refinery in Saskatchewan. I wonder if the minister could give his assurance to the House that public hearings will be held on any proposal for a uranium refinery anywhere in Saskatchewan before a decision is made on the refinery being located in Saskatchewan?

HON. MR. BOWERMAN: — Mr. Speaker, if there is a proponent that comes under the direction of The Department of the Environment Act which governs the environmental impact assessments, then under the provincial jurisdiction, that proponent will be required to follow the necessary legislation. However, in speaking about Eldorado, I would suspect that the same provisions will follow as in the case of Warman. The public hearing process was undertaken by the federal government and any proposal such as the refinery in any other area of the province of Saskatchewan, regardless of the specific site, would be required to meet those undertakings as they did in Warman.

MR. PREBBLE: — A supplementary, Mr. Speaker,. Eldorado, as a Crown corporation can be exempted from the public hearing process. My question is whether the minister could give the House assurance that in the event the federal government doesn't require public hearings to be undertaken into the Eldorado proposal, the provincial government will require those public hearings?

HON. MR. BOWERMAN: — Mr. Speaker, I'd have no hesitation in suggesting that if the federal public hearing process did not apply, or the corporation, Eldorado, was excluded from that public hearing process, there would be no hesitation, at least on my

part, to recommend that the legislation which we have for environmental impact assessments govern that situation if permissible. The public of Saskatchewan can be assured that a venture of that kind anywhere other than in the situation as has been reported to the public at Warman, would be similarly governed in any other part of Saskatchewan.

MR. ANDREW: — Supplementary to the minister of economic development. Can the minister enlighten this Assembly as to whether or not there are current plans by Eldorado Nuclear to build a refinery in Saskatoon, Prince Albert or any other place in Saskatchewan? As I understand it, the talk in Ottawa is that the building of that refinery is finished and we will not see it for probably 10 years in this province.

HON. MR. COWLEY: — Well, Mr. Speaker, I can't respond on behalf of Eldorado. Discussions are being carried on with Eldorado. We have indicated our desire to see a refinery in the province. Eldorado is reconsidering its position with respect to site location and I expect it will make an announcement in due course.

Economic Boom Versus Poverty Level in Saskatchewan

MR. TAYLOR: — A question to the Minister of Social services regarding the supposed economic boom. Mr. Minister, this morning on the Harasen line the federal Minister of Health and Welfare, Monique "begin, stated that in Saskatchewan there are approximately 150,000 people, or 15 per cent of the population, living below the poverty line, whereas the national average is 12 per cent. Will you explain that to this Assembly and square that statement with the economic boom that the minister of SGI has been talking about?

HON. MR. LINGENFELTER: — Mr. Speaker, I would like to make a quick answer to that. I met with Monique Begin this morning for a couple of hours. She assured me that in terms of social assistance, the FIP (family income plan) and the SIP (Saskatchewan Income Plan) were among the best in Canada. We are working in very close relationship with Monique Begin to bring about a better social system here in Saskatchewan.

MR. BERNTSON: — In his capacity as Minister of Social Services, he has very close to his heart the plight of the lower income people. I wonder then how he squares the fact that now in this month of tax paying, those with taxable income of $1,800 in Saskatchewan will pay $105.10 as opposed to those in B.C., zero; Manitoba, $1.80; Alberta, zero; Ontario, zero and taxable income of $3,000 in Saskatchewan, $212; B.C., $176; Alberta, zero; Ontario, $176. I know the Minister of Finance is going to tell me that there is $160 right off the bottom. The fact is that this is the tax schedule and even with the $160 off the bottom in Saskatchewan, we're losing. Can you square that for the lower income people in Saskatchewan?

HON. MR. LINGENFELTER: — Mr. Speaker, I would like to make a quick comment on that. I think we have to make the comparison of the health premiums that exist in Ontario where there is more revenue created from the health premiums with the Conservative government than there is from their natural resources. So we have to look at the total comparison when we are doing a comparison of that sort. As well, we have to look at FIP and the many other social programs here in Saskatchewan that don't exist in the Conservative counterparts including Alberta and Ontario.

Farm Cost Reduction Program

MR. GARNER: — Mr. Speaker, my question today is to the Minister of Revenue, Supply and Services. Mr. Minister, your news release dated January 30, 1981 states that there will be no program for the 1981 crop year, meaning a farm cost reduction program. I remember in January you personally stated that we are in boom times, a boom economy. How can you justify to the people of Saskatchewan a cut in a program of this nature in light of the fact that fuel prices are rising? How can you justify this to the farmers and ranchers of Saskatchewan when on one hand you are saying we've got a boom economy and on the other hand that the money isn't there? How do you justify this, Mr. Minister?

HON. MR. ROBBINS: — When the farm cost reduction program went into effect, Mr. Speaker, there were very low quotas and prices of grain were very low. That's not true today. The prices of grains have risen very substantially and the fact remains that when we first put in the farm cost reduction program we were accused it was because we were coming up to an election. Now we are removing it and coming up to an election. What's your reply to that one?

MR. GARNER: — I'll answer the questions after the next provincial election. Mr. Minister, you stated also in the same news release that the farmers must have fuel. Agricultural production costs have gone up 600 per cent in the last 10 years. A net farm income was the lowest in Canada last year. How can you say that the farmers must have fuel on one hand and then they must keep absorbing all of their high costs alone? How can you say to them with this boom economy that we are going to alternative sources of energy?

HON. MR. ROBBINS: — Mr. Speaker, the estimated costs for 1980 of the farm cost reduction is $16 million. We admit that input costs are going up, but don't get the idea that the farm economy doesn't get some beneficence (if you want to use the term) from this government. Farmers in this province will save $24 million this year on purple fuels that they use in their tractors and their equipment and trucks. They will pay no tax on farm machinery, fertilizers, etc., and will save themselves another $45 million. You'd better keep those things in mind as well.

MR. BIRKBECK: — Yes, the replies by the minister have prompted a supplementary question. The minister in his news release, to which the member for Wilkie refers, states that subsidies do not address the fundamental problems of energy supply and the province has no choice but to turn its attention to long term availability of fuel for farmers. Mr. Minister, there are two forms of subsidy that the farmers benefit from or at least did benefit from: one, the farm cost reduction program which was a benefit of $25 million; two, the tax exemption which resulted in a $22 million benefit to the Saskatchewan farmer. Mr. Speaker, the minister has chosen to eliminate the greater of the two subsidies, even though he says in a statement that he believes subsidies are not the answer.

MR. SPEAKER: — Order, order. The member asked for a supplementary. I want to hear the supplementary.

MR. BIRKBECK: — I was right in the middle of asking the question, Mr. Speaker. I ask the minister, very simply, how does the elimination of one of those two subsidies contribute to the long-term availability of farm fuel for farmers, which you seem to be so

bent on?

HON. MR. ROBBINS: — Mr. Speaker, the government's program will be announced in due course. But, the fact remains that the member gives out incorrect information . . . (inaudible interjection) . . .

Mr. Speaker, if the hon. member for Moosomin was a graduate from the school of common sense, he would get a degree in asininity, with great distinction.

SOME HON. MEMBERS: — Hear, hear!

HON. MR. ROBBINS: — If he would read the release, he would realize that the cost in one years is $16 million, whereas the savings in terms of utilization of purple fuel is $22 million. The difference is $6 million, and the farm economy is ahead that much.

MR. GARNER: — Mr. Speaker, your implemented this program in 1978, just prior to the last provincial election. You reimplemented this program just as election bait and that is all it was. My question is: is it now not becoming a policy of this government that higher costs of fuel are going to have to be absorbed by everyone and that this government will do nothing to help them out today?

HON. MR. ROBBINS: — Mr. Speaker, I don't know how the member for Wilkie can say that nothing is done for the farm economy when their estimated saving is $24 million this year in terms of purple fuel alone with no tax being paid on it.

Purple Gas for Three-Axle Farm Trucks

MR. SWAN: — A question to the Minister of Agriculture. I have a letter from one of my constituents that was addressed to the Minister of Revenue, Supply and Services. It deals with three-axle farm trucks. I have been in contact with the minister and he has replied to the constituent, so I am not bringing in a new subject, but I want a different approach to it. My question is: are you aware of the concern in the agricultural industry of the high input costs that we are now facing, and the need for farmers to haul over longer distances? Therefore, I see a need for this change to come about to provide purple gas for three-axle farm trucks. They are not luxury trucks; they are not work trucks, trucks that are needed. I want the support of the Minister of Agriculture to move in this direction.

HON. MR. MacMURCHY: — Mr. Speaker, in response to the hon. member for Rosetown-Elrose, we are aware of the issue of F-licences for three-axle trucks. It has been brought to our attention by a number of farm organizations. We have responded to those farm organizations saying our position is that we will not, at this time, extend F-licences to three-axle trucks. I think the hon. member makes an argument that it is necessary because of the longer distances the farmers are going to be faced with in hauling grain to the country elevator system. I had thought, Mr. Speaker, that we had won the branch line issue in this province and that we are, in fact, going to retain most of the branch lines that the people of Saskatchewan felt it necessary to retain at least until the year 2,000, and that the pressure that was forthcoming for extending this service to three-axle trucks is not as large a pressure as it was prior to establishing the grain-handling network.

MR. SWAN: — Supplementary to the minister. I don't know whether you are aware, Mr. Minister, but out in my constituency a number of elevators have closed. There has been a consolidation of the grain-handling industry. Are you aware, Mr. Minister that many

farmers indeed are hauling a considerable distance? The reason they are requesting this move to purple gas for three-axle trucks is to offset some of that additional costs and also to save energy. This government has supposedly said that we have to save energy. Well, you can haul more grain to market by using larger trucks. That's one of the reasons why the people have moved in that direction.

So I would ask you again, Mr. Minister are you willing to move as a government to provide the right for them to use farm fuels in three-axle trucks? I don't think you have to go to farm plates, you can just authorize farm people to use that fuel, even on an R-plate, which is a restricted licence.

HON. MR. MacMURCHY: — Mr. Speaker, I don't think that in the option that the hon. member put forward in his last comments, it is sufficient to say that it should be granted to the R-licences, because the R-licences are used extensively by farmers who work off the farm. They are used for their work operation rather than their farming operation. I think that what the hon. member is asking the government to consider is providing the F-licence and therefore the use of tax-free fuel to the tandem truck or the three-axle truck, a large number of which are starting to appear in the farm community.

I have indicated to the hon. member that we are aware of the requests that are coming forward, both from farmers and from farm organizations. I suppose I can say to the hon. member that the policy of the government with respect to three-axle trucks will be announced in due course, but I don't expect to see it as part of the budget which will come down on Thursday.

MR. SWAN: — Mr. Minister, I think you have sort of missed the thrust of my question. I am looking for the support of the Minister of Agriculture. If you will take that to cabinet and argue in favor of it, we might a chance to get it. Can I get that support? That's my question.

HON. MR. MacMURCHY: — Mr. Speaker, it may be that the position of the Conservative opposition, as they view government and as they operate in government in other provinces, is that ministers should take a position different from the government position. We simply don't agree with that and we don't do that and therefore I indicate to the hon. member opposite what the government position is, and I support that position.

SOME HON. MEMBERS: — Hear, hear!

Amendments to the Meewasin Valley Authority Act re Corman Park

MR. ANDREW: — Question to the Attorney General. Can the Attorney General advise this Assembly, and perhaps through this Assembly the residents of Corman Park whether or not the Government of Saskatchewan, in the very near future, will be bringing in amendments to The Meewasin Valley Authority Act excluding the R.M. of Corman Park from that authority, in line with the overwhelming vote of the residents of the R.M. of Corman Park on November 5, 1980?

HON. MR. ROMANOW: — Mr. Speaker, I know the Conservative Party's position of doing away with the Meewasin Valley Authority and the preservation of the river bank. It's a well-know position in the province of Saskatchewan and certainly well-known in the city of Saskatoon. The question of the legislation, however, will be announced in due course when it is tabled in the House.

MR. ANDREW: — Mr. Speaker, in view of the position of the Attorney General, also well-known, endorsing that before any action is taken it must have a broad base of public support, and in view of the fact that 85 per cent of the people of the R.M. of Corman Park voted a certain way, can you advise those people whether or not you are going to be cognizant of that vote and act on that overwhelming vote?

HON. MR. ROMANOW: — Well, Mr. Speaker, the hon. member is incorrect when he says 85 per cent of the people of the R.M. of Corman Park voted a certain way. In reality, not to be diminished, 85 per cent of about 30 per cent voted a certain way. And you can interpret that however you want, but . . . (inaudible interjection) . . . That's right; you can interpret that how you want. And I know how the Conservatives oppose the protection of the river bank because, Mr. Speaker, it only stands to logic. They would like to see the river bank open to rampant development by their friends both ways from the Bessborough. They can laugh all the want but their outright opposition to that scheme from day one justifies my remarks.

SOME HON. MEMBERS: — Hear, hear!

ANNOUNCEMENTS

Canadian Men's Curling Championship

MR. ENGEL: — I'm sure that all the members of this Assembly will want to join me in wishing good luck and good curling to the members of the Bob Ellert rink from Assiniboia and district who are representing Saskatchewan at the Canadian Men's Curling Championship in Halifax this week.

The rink which received the Saskatchewan Good Sportsmanship Award includes Bob Ellert, Don Bushell, Ken Berner and Bill Wilson. After a tough loss in its opening game, the rink has come on strong and is now challenging the leaders. We wish them well and know that the Ellert rink and the delegation of approximately 75 supporters from Assiniboia will be good ambassadors for all of Saskatchewan in Halifax. Thank you.

HON. MEMBERS: — Hear, hear!

MR. PICKERING: — Mr. Speaker, I would also like to join with the member for Assiniboia-Gravelbourg, on behalf of all the members on this side of the House, in wishing the Bob Ellert rink good luck in the Canadian Men's Curling Championship being held in Halifax. I know all of the boys personally and I have sent them a telegram since they have left home. I certainly hope they bring the tankard back to Saskatchewan.

HON. MEMBERS: — Hear, hear!

HON. MR. ROMANOW: — Before the orders of the day, I understand that the Minister of Agriculture, who was acting House Leader in may absence yesterday, and the House Leader of the Conservatives have agreed to stand private members day to continue with the debate which was instituted yesterday on the government motion on the constitution. If that's the case, I would request the leave of the House to proceed on that basis.

MR. SPEAKER: — I gather the Attorney General is asking that we move down the agenda to item 10 under government orders which is the resolution standing in the name of Mr. Berntson, the Leader of the Opposition, and return later this day, if necessary, to private members business. Does the House Leader have agreement of the House? Agreed.

ORDERS OF THE DAY

GOVERNMENT ORDERS

ADJOURNED DEBATES

The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Blakeney:

> That this Assembly opposes the current attempt by the federal government to patriate and amend the constitution of Canada, believing that the unilateral nature of the process is incompatible with the fundamental principles of Canadian federalism, that constitutional changes must have a broad basis of support among Canadians; and that the proposals, if implemented, would upset the balance of Canada's federal system.

MR. BERNTSON: — Thank you, Mr. Speaker. I want to say at the outset that in any discussion of constitutional reform, I start from the premise of an indivisible Canada. The word is clear; it means exactly the same in English as it does in French. I personally do not believe in a theory of two nations, five nations or ten nations. This is an occasion when this nation calls for one Canada. That was Sir John A. MacDonald's objective, that was John Diefenbaker's objective and today it is the objective of thousands of Canadians. The message is clear. The principles that have served us well must be used as a basis to build an even greater Canada for future generations.

This is a serious time in the history of our nation. All of us in public life have a oral obligation to keep Canada together. The cause of freedom demands it. Canada faces a crisis, the gravity of which calls for leadership, not salesmanship. I say to this Assembly in all frankness that the government of the province has made a mockery of the whole constitutional debate. In the midst of a national crisis, they have placed political expediency before national purpose. I implore every member of this Legislative Assembly, in our deliberations on the constitution, to lay aside partisan considerations and remember the words of Sir Georges Cartier: "Before all else, let us be Canadians."

It is my purpose, Mr. Speaker, to be quite frank in discussing this constitution. In particular, it is my intention to be quite specific as to the record of the Premier and his government with regard to Canada's constitution. Indeed, Mr. Speaker, I am especially pleased to be in this Legislative Assembly today to witness a historic about-face as the Premier abandons his philosophical soul mate, Pierre Elliott Trudeau, in a cause that he deems every more noble, the very survival of his party here in Saskatchewan.

Well, I have no disagreement with the sudden change in policy by the opportunists opposite. Let the record show that it was the Progressive Conservative Party of Saskatchewan that was the leader in the battle against the constitutional chicanery of Pierre Elliott Trudeau and, until recently, his brethren, the Saskatchewan NDP.

History will show, Mr. Speaker, that the Progressive Conservative Party of Saskatchewan was the leader in this province in the cause of a strong Saskatchewan

and a strong West. Many months ago, we recognized the sense of frustration and attention that exists here in western Canada, but recognition is never enough. We fought and we stood up for the spirit of unity in western Canada. During that time where was the Premier? Where was the government of the province? They were too busy wheeling and dealing with their buddy, Pierre. Their silence on those concerns which matter most to Saskatchewan and western Canada was almost deafening.

Over a year ago, Mr. Speaker, we in the Conservative Party pointed out to the Premier and the people of Saskatchewan that we expected more from confederation, but that we would not receive it if, as Westerners, we were not united. That was glaringly pointed out, Mr. Speaker, in the now famous leaked document in which it says (and this is Pierre Trudeau's document):

> A solid front of provincial government and parliamentary opposition from the West could pose real difficulties for the Government of Canada. . . . Breaking up a solid western block of opposition is a prerequisite to our being in a position to take action. Saskatchewan may prove to be the key.

The Premier was aware of that . It didn't take him from his earlier position. It took the polls to take him from his earlier position.

During those months, we in the Conservative Party covered the length and breadth of this province of Saskatchewan warning the people of the serious consequences of the Premier's dealings with Trudeau. We said to the people of Saskatchewan that all of us want Canada to work but not at the expense of compromising the resources of Saskatchewan and western Canada.

Mr. Speaker, it is very clear that the people of Saskatchewan heard our message. They share the same beliefs. I am sure that that's what the Premier's pollsters told him. I'm sure the Premier's pollsters told him of the huge number of NDP supporters showing up at Elmer Knutson's meetings. That is why we are now faced with a motion from the Premier that, in effect, endorses where the Conservative MLAs and the rank and file have been advancing for months.

In all seriousness, Mr. Speaker, I am very pleased to hear the Premier endorse the Conservative position when he says in his motion that this Assembly opposes the current attempt by the federal government to unilaterally patriate and amend the constitution of Canada.

Mr. Speaker, I commend the Premier for joining with the Conservatives in taking such a position even if the Premier's decision was based on polls and political expediency, as I am sure, were Premier Davis' and Premier Hatfield's.

Mr. Speaker, I believe we must take a hard look at the constitutional position of Saskatchewan because until the actual introduction of this resolution, their activities included such things as clandestine meeting in such places as Hawaii, Toronto and others. Let the government prove how serious it is about opposing the Trudeau constitutional package. Prove it to the people of Saskatchewan by deeds, not by words.

Mr. Speaker, for the record, I should like, for a minute, to touch upon the government's whole attitude and approach in introducing the motion before this Legislative Assembly. The government literally made a joke out of its so-called negotiations and

consultations with the Progressive Conservative opposition in the wording of the resolution before it came to this legislature.

We must keep in mind, Mr. Speaker, that we are discussing a matter that concerns the very future of this nation. The Attorney General in his own words, stated that he wanted meaningful input from the opposition, but the government remained inflexible, arrogant and intransigent in its approach. It was not until supper time Wednesday, February 25 that the official opposition received the resolution — a resolution that was supposed to reflect the sentiments of the Legislative Assembly of Saskatchewan. The government was obviously stalling because it knew full well that most of our MLAs would be in Ottawa at a national party convention.

In my capacity as Leader of the Opposition, I met with the Attorney General to suggest meaningful changes to the resolution. They were flatly rejected.

While I am on that, I would just like to comment on a similar discussion that went on in B.C. sometime ago. This is Mr. Barrett speaking:

> First of all, Mr. Speaker, if there is a genuine desire on the part of the government to have unanimity in this House on the single question of patriation, why not pick up the phone and call the Leader of the Opposition and say, "Mr. Leader, this is above politics just as it was when you asked me to sign a motion handed to you in the corridor about keeping Quebec in confederation, just as when we showed that unanimity in the House when you signed that motion and we agreed to it and we had high level debate in the House about our unified desire to keep Quebec in confederation. Let us work out the wording of this resolution to show that we are above politics and that we can have unanimity in this House. Let us both sign the resolution and bring it to this House. Dave, let's work out a resolution so that I can go back to the federal government and tell them that we agree on this resolution."

But, it didn't happen in B.C. and, as I understand it, the resolution didn't receive unanimous support as it will here.

Mr. Speaker, if the Attorney General were sincere in his desire to have unanimous support for a resolution in this House of this importance, he would have taken a far better attitude toward the whole thing, Mr. Speaker, the resolution as it now stands is toothless and gutless. It exemplifies another half-hearted wishy-washy stand, the same type of stand this government has been taking right from the beginning on the constitutional debate.

Let's take a look at the record to date of the NDP government with regard to their dealings in Ottawa. On February 5, 1980 the Leader of the Progressive Conservative Party challenged the Premier to take a stand on energy policies. The Premier's answer — silence. On March 26, 1980 the Leader of the Progressive Conservative Party speaking for all Conservatives, called for a unity of spirit in western Canada. What was the Premier's response? Silence. All along he was working hand in hand with the Prime Minister. We stood solidly for an option for opportunity for Saskatchewan and we were the only ones standing up for our province one year ago. While western frustration and alienation grew, we heard absolutely nothing from those on the other side of this legislature, absolutely nothing to indicate they were even the least bit concerned about western aspirations.

Continuing with the record, Mr. Speaker, it should be noted that last spring on the eve of the Quebec referendum the government of this province, the NDP voted down a Progressive Conservative motion supporting confederation. Yes, Mr. Speaker, they voted no to allowing a motion urging Quebec to remain part of confederation, introduced by my colleague, the member for Kindersley. The NDP voted no. It makes you wonder how serious the NDP is about keeping Canada together.

Then Mr. Speaker, there never was a word one way or the other when the cabinet minister from British Columbia suggested that a deal existed between Saskatchewan's government and Ottawa to put this province on the federalist side with regard to resource ownership. Certainly they attempted to downplay the suggestion, but to this day they still have to prove that such a deal did not exist. While Trudeau was fractionalizing the West and seriously undermining national unity not a word was head from the Premier and his supporters. Well, Mr. Speaker, the Premier's reputation has been tarnished. His motives and credibility are highly in question throughout all of Saskatchewan.

Mr. Speaker, let me quote from *Maclean's* magazine as to why there suddenly has been a shift in the policy of the NDP. I refer to *Maclean's* February 23, 1981:

> One worried NDP from Saskatchewan said, "The Tories are our only opposition out there and they keep shouting that we are in bed with the Liberals. What else can people conclude?"

Of course, Mr. Speaker, that is why Lorne Nystrom, Simon de Jong, Stan Hovdebo and others joined with the Premier in changing their position on the constitution —because the people of Saskatchewan concluded right. Let me quote Simon de Jong. What really worries him is the potential damage to his party's future and reputation in the West. de Jong said, "I'm really leery of the spectacle of us cozying up to the Liberals."

Yes, Mr. Speaker, an admission that the NDP had indeed been cozying up to the Liberals, indeed an admission that their change in position has nothing to do with the constitution. On October 17, 1980 the Leader of the Progressive Conservative Party of Saskatchewan issued the following statement. In reference to the Premier he said:

> He not only looks like the weak link in the western front, but in fact is now willing to jeopardize Saskatchewan's future to save his own political interests and personal national image.

Now four months later we see that the Premier has come to his senses and has seen the wrongness of his ways. We took the position last fall that the Premier had to put Saskatchewan's interest ahead of his own, that he had to back the rest of western Canada for the following reasons:

1. It is impossible to guarantee provinces the right of control over resources under the Trudeau proposal because while it can be written in, it can also subsequently be written out by unilateral action. More specifically, a mere referendum could reverse the entire structure of resource control. It is consequently naive to even suggest that a measure of resource rights, enshrined in the Trudeau package, would even be functional in time.

2. Under the Trudeau proposal, Ontario will forever have veto power over all provinces.

As it now stands, any province, having or ever having had 25 per cent of the population could veto amendments. Thus at no time in the future of western Canada would there be power to control our own destiny.

3. Under the Diefenbaker bill of rights, there is the individual right of property. I shall discuss that matter during the course of my remarks. That right does not exist in the Trudeau package.

Finally, Mr. Speaker, last fall we correctly pointed out that Premier Blakeney did not have the full support of his cabinet, his caucus, party, or the people of Saskatchewan in his dealing with Trudeau. Now four months later we have been proven correct.

The Rt. Hon. John Diefenbaker once said and I quote:

> Canada will never achieve its destiny if the determination of its constitutional policies is made as a result of political vacillation masquerading as statesmanship.

I am sure that if the Chief were alive today he would have used those words to describe the Premier of Saskatchewan.

Mr. Speaker, history will record that in the midst of this great national debate the Premier of Saskatchewan vacillated and indeed he waffled!

Mr. Speaker, make no mistake. The Progressive Conservative Party favors patriation of the BNA Act. Time and time again we have advocated patriation, but with an agreed amending formula. But that is not what Trudeau is doing. The Trudeau resolution is asking the British parliament to make the changes he wants, while the act is still in Britain. Once the act is back in Canada, changes wanted by other partners in our federation would require a new amending formula, a formula which denies the very essence of our federation.

Mr. Speaker, our tradition as Canadians has taught us to believe in the supremacy of democratically elected parliaments and legislatures, and not in the supremacy of written constitutions. We believe that in future years Prime Minister Trudeau’s proposed constitution, with its rigid and inflexible amending formula, could become a dictatorship of words, overruling the parliamentary system that has for centuries guaranteed our freedoms.

Mr. Speaker, the essential weakness of written constitutions is that they are inflexible. The courts that interpret a constitution must look at what the constitution says and not at the political and social reality of the times in which the judgment is being made. Parliament responds to human needs in a way that no court can ever do, because a court is not being directed by human needs, but by the dead hand of a written constitution.

Mr. Speaker, I really wonder why there are those trying to lock up Canada’s future in a written constitution? Why do some in this generation, this day, this brief span in Canada’s history, believe they have the answer for all time? The genius of the British political institutions is that they have maintained tradition with the necessary flexibility. The Magna Charta and other charters of freedom and the parliament itself, though nurtured in English soil, have matured when their seeds have been planted in the far

corners of the earth.

The parliamentary system that Canada inherited and that Canadians have caused to flourish in a new environment is not something to tinker with lightly or to lay aside thoughtlessly. What is being done by the Mr. Trudeau government could be summed up in the words of Sukarno as "guided democracy," in which the freedom of the individual is diminished and the power of the governing authority is multiplied.

Mr. Speaker, the work of amending the Canadian constitution is for Canadians to do, not for the British parliament to do. The Prime Minister of Canada is asking that certain amendments, those that he prefers, should be sneaked through by the British people and by the British parliament. I say that the constitution of Canada should not be amended by the people of Britain, that the constitution of Canada should be amended in substance by the people of Canada.

Mr. Speaker, the Canadian constitution should be patriated without amendment other than the inclusion of an amending procedure which treats all Canadians equally and which enables Canadians to express the national will. Western Canadians, Mr. Speaker, see this constitutional package of Pierre Trudeau as just another one of his attempts to make the citizens of the West second class. I deplore such actions and I deplore the fact that our Premier was so willing to work with the Prime Minister in this constitutional effort.

I should like to address a number of particular constitutional matters that should be put on the record of this Legislative Assembly so that the people of Saskatchewan may be the judge. The Trudeau constitutional package contains a charter of rights binding on the provinces.

Mr. Speaker, I want to make it clear that we on this side of the House have a legacy and tradition of being the defenders of freedom. It is with a deep sense of pride that I say I am proud to belong to a party that had such a defender of freedom as the late member for Prince Albert. Let me quote what he had to say about freedom. Speaking in the House of Commons in 1960, he said:

> The principles of freedom are never final. Freedom is not static; it cannot be fixed for all time. It either grow or dies. It grows when the people of a country have it in their hearts and demand that it shall be preserved. I would be the last to contend that any document made by man, however impressive, can assure freedom, but I think what we have done will provide an anchor for Canadian rights. The ultimate assurance to them must always be a vigilant people, vigilant to invasions of and intrusions on their freedom, for when the spirit of freedom dies in the hearts of men, no statue can preserve it.

Mr. Speaker, the author of the bill of rights recognized that freedom comes from the people and not from a piece of paper.

Throughout the years many have made Canada their homeland because of the freedoms we have here. To prove that freedom originates with the people allow me to refer to the constitution of the Soviet Union. It is amazing how similar it is to our constitution. Section 2(a) of the proposed Canadians constitution reads:

> Freedom of conscience and religion.

Article 52 of the Soviet constitution reads:

> Citizens of the U.S.S.R. are guaranteed freedoms of conscience; that is, the right to profess in any religion and to conduct religious worship or atheistic propaganda.

Section 2(b) of Canada's constitution reads:

> Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Article 50 of the Soviet constitution reads:

> In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the U.S.S.R. are guaranteed freedom of speech, of the press, of assembly, meetings, street processions and demonstrations.

It goes on and on. Elections shall be equal. Each citizen shall have one vote. (I notice the reigning government won the election there yesterday.) Each citizen shall have one vote. All voters shall exercise the franchise on an equal footing. All the rights which are supposed to be entrenched in our constitution are in the constitution of the Soviet Union. They are very similar, even to the point where the right to own property is not included in either constitution. It is interesting to note that neither constitution includes property rights.

Therefore, is it any wonder that the Kremlin of the Soviet Union, through its official newspaper *Pravda* has endorsed the Trudeau constitution?

Mr. Speaker, I should like to raise the matter of property rights in Saskatchewan's Bill of Rights, section 10, it reads, and I quote:

> Every person and every class of persons shall enjoy the right to acquire, by purchase, to own in fee, simple or otherwise, to lease rent . . . without discrimination because of race, creed, color, religion or ethnic or national origin of such person or class of persons.

This was a piece of legislation put into law by the government of former premier Tommy Douglas.

On March 21, 1947, while speaking to this Legislative Assembly on the Saskatchewan Bill of Rights, the late Hon. J.H. Brockelbank said, and I quote:

> Now sections 7 to 9 deal with economic rights, the rights to occupy property. I contend without these economic rights the other rights and freedoms cannot endure very long.

Now, 34 years later, the NDP is turning its back on men such as Tommy Douglas and J.H. Brockelbank and opposing property rights.

Mr. Speaker, thousands of pioneers came to Canada because of the right to own land and be free. What are the implications of this? It does not mean that our homes, businesses and farms will necessarily be taken away. On the other hand, they will go

without protection under the new constitution.

I say to this legislature with all the sincerity at my command that property ownership is the fundamental basis for freedom in any democracy. Let the record show that the NDP solidly opposed property rights. Let the record also show, Mr. Speaker, that it was the NDP that rejected the supremacy of God. the argument was that many people do not believe in God, and therefore the reference should not be included, and that any such inclusion would diminish their rights as a consequence . . . (inaudible interjection) . . . You should check with the gang of four: they'll tell you what went on down there.

We should remind ourselves that the Judaeo-Christian roots have had a reference to God as part of the building process of this nation and its values. Immigrants coming to Canada came for the freedom to express their concepts of God as they saw fit, so the Mennonites, the Hutterites and the Soviet Jews came. God and the motivation of that belief have played an important part in the building of our nation. These roots come from the premise that God give life, and gives rights, and governments perform under God.

For those who say society is changing, let us look at our multicultural mosaic today. Let us be reminded that those who came from Islamic, Buddhist, Confucian and other religious backgrounds brought with them a concept of God which is not strange to their culture. Surely as we look at our roots and try to embed our determination to protect rights, we need to go back.

Mr. Speaker, the record will speak for itself. The NDP rejected the supremacy of God and property rights. They alone must answer for their actions.

Mr. Speaker, this is the time for Canadians to document the vision of an enduring nation enjoying imperishable freedom that moved the Fathers of Confederation more than a century ago. Like many loyal Canadians, I worry about where Canada is going. Those who believe in the principles that made this nation great will not be deluded by the propaganda which appears to assert that the history of this country began on June 25, 1968. Mr. Speaker, the time has come to bind the nation in unity. In 1948, Canada's first Canadian born governor general spoke about his dream for Canada. He said:

> I believe in Canada, with pride in her past, belief in her present and faith in her future. I believe in the quality of Canadian life, and in the character of Canadian institutions. I believe that Canada is one, and that if our minds dwell on those things which its parts have in common, we can find the unity of the whole. I believe that with sound work, the spirit of a team, and an awareness of ourselves, we can look forward to achievements beyond our imagining.

Mr. Speaker, the ultimate goal of this constitutional debate is to build a greater Canada.

Some people talk about Switzerland and Germany and every other kind of federalism known to man, pointing out their relative merits vis-a-vis the Canadian system. The Fathers of Confederation were not thinking about Switzerland when they began their discussions. They were thinking of Canada, a huge country with a tiny population, and they designed a political structure to preserve this unique and fragile identity on the northern half of a continent, dominated even then by our southern neighbors. They were trying to devise a framework within which we could live and grow, a framework

that was solid but flexible.

They tried to create a society that would be decent and fair, where freedom would flourish, prosperity grow, and most of all a country whose virtues, attractions, and accomplishments would of themselves encourage national development and enhance the desire of people to remain Canadians because citizenship in the country was a privileged station in life and because, quite simply, it was good for them and good for their families.

The Fathers of Confederation built better than they knew because in this entire world — and there are no exceptions — there is no nation with greater opportunity, greater tolerance, greater individual liberty, greater inbred traditions of justice and democracy than Canada.

SOME HON. MEMBERS: — Hear, hear!

MR. BERNTSON: — With all our failings — and we have many — our country stands out in bold relief as a place where freedom truly rings. For a nation founded by immigrants, we haven't done badly.

Having said all that, Mr. Speaker, let me once again strongly emphasize that it was the Progressive Conservative Party of Saskatchewan that stood up first in Saskatchewan against the Trudeau constitutional package. Let me repeat that the Canadian constitution should be patriated without amendment — I repeat, without amendment, other than the inclusion of an amending procedure which treats all Canadians equally and which will enable Canadians to express the national will.

I conclude my remarks with the words of Sir John A. MacDonald in 1890:

> If I had influence over the minds of the people of Canada, any power over their intellect, I would leave them this legacy: Whatever you do, adhere to the union. We are a great country and shall become one of the greatest in the universe if we preserve it; we shall sink into insignificance and adversity if we suffer it to be broken!
>
> God and nature made two Canadas one — let no factious men be allowed to put them asunder.

Mr. Speaker, later in the debate our members and colleagues in the Conservative caucus — one of them at least — will be offering an amendment to the resolution which I'm sure the Attorney General will support in that spirit of co-operation we were talking about . . . (inaudible interjection) . . . I'll give you a copy of it just as soon as I find out how the discussion went between Bennett and Barrett. I don' t want to do anything original or earth-shattering here. Mr. Speaker, we will be supporting the motion.

MR. PEPPER: — Mr. Speaker, the renewal of any nation's constitution is not an act which can be undertaken lightly. Today, we in Saskatchewan, like Canadians everywhere, are at a crossroads in our nation's history. Decisions are now being made, and are about to be made, which will affect every one of us and our descendants for generations to come. It is in the days and months ahead that the future shape of our parliamentary democracy in Canada will be determined.

I do not enter into the discussion of the constitution resolution before this Assembly lightly. Indeed, I am saddened by the failure of the federal and provincial governments to reach a broad consensus for constitutional renewal. Without a broad consensus for reform, any reshaping of our constitution is fraught with danger. I wish today to examine some of the major concerns that face us, and in so doing, express the fervent hope that on this matter the legislature of Saskatchewan can speak with one voice for the people of our province.

Mr. Speaker, we in Saskatchewan have many objections to the nature of the changes now proposed by the federal government. We also most strongly object to the manner in which these changes are being brought about.

Unilateral action by the central government to amend the constitution, it seems to me, is contrary to the spirit of Canadian federalism. Canada is not a unitary state. We are a vast geographic land mass with very strong regional loyalties and a host of cultural and linguistic differences. It has been said that only a federal state could work in a country as diverse as Canada.

We need a strong central government to define and pursue national goals, to handle the national economy, and to provide mechanisms for equalization between regions. Equally true is the fact that we need strong provincial governments to respond to the unique needs and challenges of our different regions.

Provinces must be free to tackle problems, realize opportunities, and develop in the manner they choose. Saskatchewan, for example, has been referred to as a social laboratory in which great advances, like medicare, have been pioneered. So, to have this we pioneered a mixed economy in which the people have a direct say in how their provincial economy will develop. It is contrary to our proud tradition of co-operative federalism that one level of government should, on its own, try to alter the powers of another level.

The purpose of constitutional renewal is not to weaken or strengthen one level of government at the expense of another. Rather, it ought to be to strike a new balance that is both more useful for, and more acceptable to, Canadians than the existing arrangements. There is no question that Ottawa, should it follow its announced plans, will, on its own, alter the federal-provincial relationship in a very fundamental way.

Was the federal government simply acting on its own to repatriate the constitution, perhaps with a fair amending formula, the situation might be tolerable if not acceptable.

Everyone agrees that we ought to bring the constitution home, but by unilaterally altering the fundamental balance of powers in our federal state, and by attempting to use the parliament of another nation to effect that change, the federal government risks deep divisions in Canada that could take generations to heal.

Thus it is that we object to the present process of patriation, because unilateral repatriation sets us as a nation on a previously uncharted course. The co-operative federalism of which Canadians have been so proud is incompatible with unilateral constitutional change.

Nevertheless, it would seem the federal government intends to proceed with its constitutional plans whether or not we accept the process and whether or not the people approve it. I deeply regret, Mr. Speaker, that the Prime Minister has chosen to follow such a course. I fervently hope he does not remain deaf to the voices across the land that warn of the possible consequences because even now voices are heard calling for this dismemberment of our nation.

Today, Mr. Speaker, I also want to briefly examine some of the major areas of concern for us regarding the proposed content of the new constitution. I speak of resources, the proposed charter of rights, an amending formula for our new constitution, equalization of the Senate. These are topics that everyone in Saskatchewan and in Canada ought to be concerned with. As a nation we are on the verge of decisions which will have a profound effect on our future. Most of our laws and rules are being rewritten.

For us in Saskatchewan resources are the key to our continued growth and prosperity. Most of our resources (such as potash) and much of our oil is exported. The people of Saskatchewan have, for example, worked hard to develop a stable, prosperous potash industry. Yes, indeed, since the Natural Resources Transfer Act of 1930 (I believe it was), we in the West have assume that the provinces own their resources and, therefore, could regulate the manner and pace with which they are developed. Yet, in two separate court cases, one affecting the oil industry and one affecting potash, the Supreme Court of Canada has struck down provincial taxes and regulations because of their supposed interference with federal trade and commerce power.

The legal arguments involved were complex and we discovered that provinces did not control their resources as completely as everyone had thought. Our government, throughout this constitutional process, has sought to clarify and confirm provincial powers to manage and tax resources that we though we had, but which were called into question by the court cases which I have just mentioned.

Saskatchewan then, Mr. Speaker, and since then has sought the power to make laws in certain areas for resources which are exported from Canada. Without constitutional provision for such power, any attempt we make to regulate resource production, pricing, marketing and the like could be struck down by the Supreme Court of Canada for intruding upon the federal government's international trade power. We do not seek to regulate international affairs; we seek to regulate our own resource development.

To be fair, I must point out Ottawa proposed to allow indirect provincial taxation of resources and that is a step in the right direction. But, for Saskatchewan, whether we talk about heavy oil, potash or uranium, our markets are international export markets. If we cannot control the production of resources, whether or not they be destined for such markets, if we cannot do anything that might affect pricing, if we cannot regulate marketing — if we cannot become directly involved in these areas we cannot take control of our economic destiny.

It is on the resources issue that we in Saskatchewan feel a particular frustration. Early in 1979 the federal government was prepared to confirm provincial powers over resources by an international trade clause. I believe it was last year that it retracted the offer. Yet we will struggle for control of our natural resources. I say to you, Mr. Speaker, and it is of utmost importance, that on this matter the people of Saskatchewan speak with one voice.

We are also extremely concerned about the federal plans to give the Senate a veto over any and all future constitutional changes, including any change relating to the reform of the Senate itself. Frankly, federal actions regarding the entrenchment of a Senate veto in the constitution is completely unacceptable. In a democracy elected bodies must be supreme over appointed ones. Originally the only proposal about the Senate in the federal resolution was to limit its veto power to first 90 and then 180 days. I believe it was early this year signs began to emerge that the senators were pressuring the federal government. Faced with the prospect of having their own resolution stalled in the Senate by his own appointees, it would seem the Prime Minister caved into the Senate's demand for a permanent right of veto over all future constitutional amendments.

If the federal resolution is adopted, I say to you, Mr. Speaker, there would be no way, no way for as long as our nation might endure, that we could make any change in our constitution without Senate approval. I do not wish to be alarmist about this issue, but I would like to point out that of the 104 Senate seats in Canada in 1975 that 75 were occupied, I believe, by the Liberal Party. The Senate is not even an elected body; it is an appointed group and all too often appointment to the Senate is simply a reward for political services rendered.

We also know, Mr. Speaker, that no constitution is complete without a formula for changing it. We ought to closely examine how the federal government says amendments ought to be brought to the Senate for approval. All provinces except Ontario are angered that the federal government is giving itself the power to act unilaterally again and again. The source of this concern is the federal referendum proposals. In the future, when the central government wants an amendment but the provinces do not, the central government can call a referendum, effectively by-passing the provinces in pursuit of its goals. Yet, if the provinces want an amendment but the federal government does not, there is no provision for the provinces to call a national vote. Thus, Mr. Speaker, the very nature of how a referendum might be called is contrary to the spirit of co-operative federalism. It also endangers the very fabric of federalism, presenting as it does the potential for the federal government to try to alter the balance of powers on its own at any time it chooses. Even the referendum itself is weighted such that Ontario and Quebec have a veto. It seems to me that in a federal state, at a minimum, both levels of government ought to have some measure of equality in the calling of a referendum.

Now, Mr. Speaker, we worry that the legitimate aspirations of the provinces for change, as our nation grows and develops, can be forever frustrated, either by the central government's refusal to move on the matter, or by the Senate's refusal to approve any amendment, or by either Ontario or Quebec, both of whom have a veto. This frustrates us.

In this Assembly, we ought also to be urging our constituents to carefully consider the so-called charter of rights. No one in Canada seriously suggest limiting or reducing the rights and freedoms which we now enjoy, nor ought we to be under any illusion that a charter of rights will somehow prevent this. Many nations in the world have wonderful charters, including South Africa, the Soviet Union, and a host of repressive states which are guilty of massive violations of human rights.

By entrenching rights in the constitution, we radically alter our parliamentary system. Important social decisions will now be made, not in our legislatures but in the courts. I

say to you, Mr. Speaker, that our judges may well be learned men, but with all due respect, they are not representative of society, nor are they responsible to it. Judges, like senators, are appointed and I submit in our parliamentary democracy they ought to resolve disputes over law, not assume the role of law makers themselves.

Again, Mr. Speaker, I do not wish to be an alarmist, but I do not want to see situations develop here that our American neighbors have had to cope with. I do not wish to see society's right to combat pornography or hate literature, for example, struck down because it interferes with a publisher's right of free speech. I do not want to see legislation making Christmas a holiday declared unconstitutional because such laws give special status to one religion. Entrenching non-discrimination might mean that no government could subsidize for senior citizens.

So, Mr. Speaker, entrenchment of rights might sound good but it will only complicate matters and will, inevitably, frustrate many people. It is our tradition of freedom and tolerance, rooted in the people's right to choose their law makers, that preserves our freedom

A charter does not assist that process and should the will to protect freedoms be lost, I say to you, Mr. Speaker, no charter will revive it.

There are many areas of the federal resolution that we find unacceptable. When one takes a broad overview of the detailed and fundamental changes being proposed, it is clear that our federal state is rapidly becoming a decentralized one. It will, I fear, set region against region and Canadian against Canadian. Those areas of the country now frustrated with the existing federal balance will find the proposed new centralized constitution even more intolerable. It is difficult to escape the conclusion that the thrust of constitutional reform is really only an entrenching of power in central Canada. Already the central government unilaterally decides the price at which our oil resources can be sold. We have also found that federal courts feel only the central government has the right to direct the development of resources bound for export markets. Now we are faced with a constitutional reform that opens the door to massive intervention by the central government in all areas of provincial jurisdiction.

Yes, there will be trying days ahead. The British parliament is already expressing reluctance to become involved in what many see as a Canadian matter. It has been suggested that the British parliament might not, unreasonably in my view, wish that proposed changes to our constitution ought to at least meet the test of a Canadian amending formula. There is already speculation that, should Britain balk at making changes to our constitution that are so clearly opposed by a significant majority of Canadians, the federal government might seize on the matter as a pretext for a referendum, or for a general election. Such an action would be politically irresponsible, driving, as it would, ever deeper rifts into the fabric of our nation.

Six provinces are now challenging unilateral actions in the court. In Manitoba their challenge was rejected, a judgment, is pending in Newfoundland, and a challenge will be launched before the Quebec Court of Appeal in a few days, as I understand it. It would be a sad day indeed, should such vigorous action opposing unilateral action inadvertently serve to strengthen the federal hand, as it will should the cases be lost and the Newfoundland and Quebec courts reject the challenge. Courts also tend to give yes or no answers and such decisions do little to assist the development of a federal state where matters ought to be worked out by negotiation.

We in this Assembly have a clear duty to speak out for the people of Saskatchewan by supporting the resolution now before us. Through long negotiations, Saskatchewan has taken a rational and positive approach. The Premier or our province has sought to find ways to make the package more broadly acceptable to Canadians. He has also striven to preserve the spirit of Canadian federalism, a federalism in which a province like Saskatchewan can protect the legitimate aspirations of its people.

Sadly, we have found that the federal government has maintained its single-minded determination to drive its constitutional resolution to parliament. In the days and months ahead, Saskatchewan will need the continued strong leadership provided by our Premier. We must continue to put our case before the people, reasonably and forcefully. We must continue to strive to preserve our traditional federalism. We are indeed fortunate to have as capable a leader as Premier Allan Blakeney in these troubled times. Today, Mr. Speaker, we in this Assembly have an opportunity to speak with one voice on behalf of the people of the province. The resolution before us is one every member ought to be able to support . It is an opportunity we cannot afford to miss and I call on all members, in the interest of Saskatchewan and all of Canada, to support this resolution.

SOME HON. MEMBERS: — Hear, hear!

MR. WHITE: — Mr. Speaker, in rising to speak in support of this resolution, I do so for a particular reason and I will concentrate the greater part of what I have to say on that point — the great upset in the balance in Canada's federal system which will result from Trudeau's proposed changes.

As an individual with a fair knowledge of American constitutional development, I want to point out that there is a better approach to changing the constitution than the unilateral approach of the Trudeau government.

Canada, Mr. Speaker, today is engaged in constitution making. A constitution we received over 100 years ago is being altered, and being altered quite radically. That is a very important undertaking. It could well be the most important task the nation deals with in the last quarter of this century. The constitution in its renewed form will likely be with us for a good many years.

So far the constitutional renewal process has produced a good deal of criticism and acrimonious debate. It is dividing Canadians. The basis reason is well-known; the decision by the federal government to patriate and alter the constitution unilaterally.

There are other ways to change a constitution, Mr. Speaker, and there are other ways for Canadians to obtain a charter of rights, if they so desire. It can be done by conciliation and compromise, and sharing of the decision-making process — as the government of this province has so stoutly maintained. If there is one thing Canadians are adept at, it is compromise.

Yesterday the Premier and Minister of Northern Saskatchewan ably outlined our concerns about shifts in the balance in the direction of the federal government and

away from the provincial governments. The increased power of the Senate was also discussed. To some extent, so was the increased power of the supreme court resulting from Mr. Trudeau's charter of rights. Of these changes, what concerns me perhaps most of all in the long term is the later shift. Adoption of the charter of rights will have the effect of making the Canadian Supreme Court the overpowering element in the Canadian federal system, Hence, it is on the proposed charter of rights and the implications it has for the supreme court that I will primarily centre my comments.

In the course of the constitution making now occurring, it has been said that Mr. Trudeau is seeking to Americanize our constitution by, among other things, the inclusion of a charter of rights. That will result in the Canadian Supreme Court, like the American Supreme Court, having an enlarged and much more decisive role in governing the country. Government by legislation, to a substantial degree, will give way to a more expensive and time-consuming form — government by litigation. Nor is that all. As few as five out of nine individuals, to date always of the male sex, appointed for long terms, elected from a single field (the legal profession), rather than people from a variety of walks of life who must seek a fresh mandate at the polls every four or five years, will make many important decisions affecting all segments of society.

Mr. Speaker, let me put this question to you. Are Canadians really prepared to accept this type of an arrangement? Some of them say they want a charter of rights. But do such people really know what follows? There will be without doubt supreme court decisions which will be unpopular with a large number of people. How will they react? They may not react as Americans have. Americans have endowed their supreme court with a semi-sacred character. They have venerated both their constitution and their supreme court. Canadians have not. Where attitudes toward their supreme courts are concerned, Canadians and Americans have shown themselves to be two very different people.

A charter of rights and a much more powerful supreme court may serve in the future to drive Canadians apart just as Trudeau's handling of constitutional change presently is doing. Because I perceive this difference between Canadians and Americans and because of the way the Trudeau government is going about changing the constitution and drafting a charter of rights and because of the misconceptions I have heard expressed about the origin and operation of the American Bill of Rights, I propose to speak on the latter subject to some length today when this resolution is before the House.

First, Mr. Speaker, I propose to say something concerning how the American Bill of Rights came into being. A few days ago I heard it stated that Americans always had a bill of rights. That statement is true or false depending upon how you look at it. If it is taken to mean that Americans had state bills of rights in revolutionary days and thereafter, the statement is correct. If it is meant to suggest that Americans had a bill of rights associated with their national constitution ever since the coming into force of that constitution, the statement is false. Allow me to enlarge upon this, Mr. Speaker. It may, among other things, help us to understand the Trudeau government's strategy in seeking to change our constitution.

After their revolution, Americans at the national level operated under the articles of confederation. But that system of government proved unsatisfactory and a move developed for what they called a "more perfect union." This led to the drafting of their present constitution in 1787 by a constitutional convention. I would point out that their constitutional convention even included a committee on style to make sure that the

constitution was well-written and as clear as possible. Well, once the constitution was completed it was submitted by Congress to the several states for ratification. By late 1788 sufficient states had ratified it and it went into operation March 4, 1789, with George Washington as the first elected president.

During the course of ratification by the states, one criticism repeatedly advanced was the constitution's lack of a bill of rights. For that and for other reasons there was widespread opposition to its adoption. Those who had drafted the constitution had examined the idea of including a bill of rights but had refrained from doing so for two reasons which I won't go into. They and their supporters now discovered that one of the strongest bargaining points to secure ratification by the various states was a readiness to promote adoption of the bill of rights by constitutional amendment once the constitution had been ratified and put into operation.

To put matters bluntly, Mr. Speaker, the American Bill of Rights served as a bargaining tool in American constitution making. If one thing can be said of Pierre Elliott Trudeau, it is that he is a well-read individual. He is probably well aware of what occurred in the United States — that a promise to include a bill of rights in the constitution brought support for constitutional change which would otherwise not have existed. Knowing that, he put one in his package so that people who would otherwise question things he is doing, and how he is doing them, would support him simply to get a charter of rights. Mr. Speaker: Is Pierre Elliott Trudeau above attempting to entice people into selling their birthrights for what could turn out to be the proverbial mess of pottage?

Now Mr. Speaker, permit me to say a few words about the actual drafting of the American Bill of Rights. It is a process which we might follow. During the process of ratifying the American Constitution of 19787, the various states, having been promised a federal bill of rights, made numerous suggestions as to what should be included. In total they proposed 124 alterations, the great majority of which dealt with guarantees for individual rights. The 124 items sound somewhat like the 30-odd-item hodge podge the Trudeau government is putting forward as its charter of rights.

The 124 proposals went to the newly operative Congress where they underwent a careful examination and digestion. The House of Representatives eventually produced 17 proposals. These in turn were studied by the U.S. Senate, which endorsed 12 of them. The 12 were submitted to the various states for ratification. By late 1791 the required 11 of the then existing 14 states had ratified them and the 10 became the first 10 amendments of the U.S. Constitution or, if you like, the American Bill of Rights. Three things stand out about the American procedure, Mr. Speaker. First, the existing American Constitution and Bill of Rights resulted from two different processes. Secondly the drafting of the bill of rights received careful consideration over a fairly lengthy period of time. Thirdly, it was not a unilateral production of authorities in Washington.

Mr. Speaker, I'm certainly not a great proponent of following doggedly in American footsteps; however, I am firmly of the belief that we could look at the procedures they followed to discover any of their merits. And I feel the procedures they followed in this instance do have merit. Adoption by Canada of somewhat similar procedures might well be a way of reducing present divisions and avoiding future divisions among Canadians.

Having said that, Mr. Speaker, I want to turn to an examination of the operation of the

American Constitution, and protection given to the American people by their all-powerful supreme court in particular cases which came before that court under their bill of rights. I will follow that up with a discussion of the American Supreme Court itself. I do this because I believe there is some confusion in Canadian minds concerning what an entrenched charter of rights will do for them and a lack of public awareness as to the future position and powers of the Supreme Court of Canada in Mr. Trudeau's scheme of things. They are vitally important subjects, about which there should be as little misunderstanding as possible.

Before I begin, Mr. Speaker, I would point out that henceforth, in referring to the American Bill of Rights, I will not refer exclusively to the first 10 amendments. Amendments 13, 14, 15 and 19 are closely associated with the first 10 dealing as they do with involuntary servitude, privileges and immunities of American citizens, equal protection of the law, the franchise, and the like.

The Trudeau government, as already stated, proposes to upset the balance in our present federal system by among other things, establishing a much more powerful supreme court. Just how powerful it will be, I will speak of later.

But first, Mr. Speaker, let me take you beyond the day of changes Mr. Trudeau suggests. When you go to the supreme court rather than parliament or the legislatures for protection of expansion of your rights, you may find yourself dealing with a body so supreme that when it calls a heart a spade, a heart truly becomes a spade in constitutional law. I will demonstrate that by direct reference to American Supreme Court cases.

What I say, Mr. Speaker, will of necessity be quite detailed and I sincerely hope you will bear with me. What I say is highly relevant, if we are to see where Mr. Trudeau leads us. It is not my style as an historian to say something and expect you to take it as gospel. Rather I feel compelled to provide the evidence to you, that you may draw your own conclusions.

My desire to help you compare what we now have with what we will have, if Mr. Trudeau has his way, also necessitates detailed treatment, and I will cover about 180 years of the operation of the American Bill of Rights in selected cases.

The first point I want to make, Mr. Speaker, is this. Just because a bill of rights, backed by an all-powerful supreme court, guarantees you certain rights, it does not mean that you enjoy them. This become abundantly clear when one examines protection extended to blacks over a good many years by the American Bill of Rights.

Following the American Civil War, certain amendments, including the 14th, were made to the United States Constitution. They were designed, among other things, to give full rights of citizenship to blacks. The 14th amendment read in part:

> No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

To carry into force the intent of the amendment, Congress passed what was called the second civil rights act and it read in part:

> Be it enacted . . . that all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, privileges of inns, public conveyances on land or water, theatres, and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

It was not long before blacks sought enforcement by the U.S. Supreme Court of what they saw as their rights guaranteed them under the constitution — no discrimination in accommodation, etc. But the relief they sought was not forthcoming. What follows is a portion of a supreme court decision:

> The essence of the law is not to declare broadly that all persons shall be entitled to full and equal enjoyment of accommodations, advantages, facilities and privileges in inns, public conveyances and theatres but that such enjoyment shall not be subject to any condition applicable only to citizens of a particular race or color or who had been in a previous condition of servitude. It is proper to state that civil rights, such as are guaranteed by the constitution against state aggression, cannot be impaired by the wrongful act of individuals unsupported by state authority in the shape of laws, customs or judicial or executive proceedings. The wrongful act of an individual unsupported by such authority is simply a private wrong or a crime of that individual. The court went on to argue. “It would be driving the slavery argument into the ground to make it apply to every act of discrimination which a person might see fit to make as to the guests he would entertain or as to people he would take into his coach or cab or car.”

The court’s decision to distinguish individual from state discrimination totally nullified congressional attempts reduced from what the constitution and the laws of the United States said they were to what the judges of the supreme court said they were.

And now, Mr. Speaker, how does one really determine exactly what rights an individual possesses under these sections of Mr. Trudeau’s proposed charter of rights? I quote section 27:

> This charter shall be interpreted in manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

> (Section 28 says) nothing in this charter abrogates or derogates from any right or privilege guaranteed by or under the constitution of Canada in respect to denominational, separate or dissentient schools.

Mr. Speaker, might not the rights supposedly laid down in these sections be determined by the courts to be substantially less than people affected by them today believe they are? I certainly feel they could be. To go back to the U.S. experience, having decided that the rights blacks sought to have enforced were social as opposed to civil, the supreme court a few years later went so far as to declare:

> The object of the 14th amendment was undoubtedly to enforce absolute equality of blacks before the law. But in the nature of things, it could not have been intended to abolish distinctions based upon color or to enforce social, as distinguished from political equality or a co-mingling of the races upon

> terms unsatisfactory to either. Laws permitting or even requiring their separation in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other. And it has been generally, if not universally, recognized that within the competency of the state legislatures in the exercise of their police power, the most common instance of this is connected with the establishment of separate schools for whites and colored people.

I need not point out, Mr. Speaker, that such rulings validated segregation by states, not only in education, but also in buses, trains, parks, benches and restaurants — the whole system of Jim Crow that resulted.

Mr. Speaker, in Saskatchewan and elsewhere in Canada we are doing, by means of human rights, codes and commission, what the powerful U.S. Supreme Court maintained it could not do under an entrenched bill of rights backed by acts of Congress. And what about the political equality that justice has spoken of? And I'll come to that amendment.

The second point I want to make, Mr. Speaker, and I think I've already made it in part, is this: rights entrenched in a constitution, no matter how clearly stated, are not self-enforcing. Let me give you an example. Section 1 of the 15th amendment reads:

> The right of the citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude.

Not long after it became part of the supreme law of the land, two election officials of the state of Kentucky refused to allow a black to vote at a time when the Ku Klux Klan was actively seeking to keep newly enfranchised blacks from doing so. The actions of two officials were examined by the U.S. Supreme Court in the case U.S. v. Reese. The justices in part had this to say, and I would take you back to the 15th amendment. It says:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state.

And the U.S. Supreme Court says:

> The 15th amendment does not confer the right of suffrage upon anyone.

I told you about converting a heart to a spade.

> The 15th amendment does not confer the right of suffrage upon anyone. It prevents the states of the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race.
>
> . . . It cannot be contended that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at state elections. It is only when the wrongful refusal at such an election is on account of race, etc., that Congress can interfere and provide for its punishment . . .

Not only did the interpretation weaken the force of the amendment, it could be easily read to mean that while preference in voting could not be built on race, it might be established by other means. Such means proved to be the grandfather clause, voters tests and the like.

The nation's supreme court chose not to enforce the right of blacks to vote and a great many of them were denied the opportunity through state or individual action.

The third point I want to make, Mr. Speaker, is that the enshrinement of certain basic principles in a constitution does not necessarily lead to an end to discrimination or an expansion of rights. American women were apprized of this by their supreme court in the case of Minor v. Happersett.

Section 1 of the 14th amendment reads in part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. . .

Women asked for the vote as a consequence of the passage of this amendment fully conversant with the fact that the 15th amendment had extended the right to vote to former male slaves. However, the supreme court had this to say:

> . . . The argument is that as a woman, born or naturalized . . . in the United States . . . she has the right to suffrage as one of the privileges and immunities of her citizenship.
>
> . . . There is no doubt that women might be citizens has never been one of the elements of citizenship in the United States.
>
> . . . If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direct question is therefore . . . whether all citizens are necessarily voters.

The supreme court answers its own question thus:

> The constitution does not define the privileges and immunities of citizens, for that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.
>
> It is certainly nowhere made so in express terms.

One brief question, Mr. Speaker: does Mr. Trudeau's proposal 25 in his charter of rights define aboriginal rights? If not, who will and what are they? When the aboriginal people claim that this or that is one of their rights, the all-powerful Canadian Supreme Court may respond that it is not so stated in express terms.

Mr. Speaker, American women had a substantial wait before voting in national elections became one of the "privileges and immunities" they enjoyed under the 14th

amendment.

While I'm on the subject of women's suffrage, allow me to digress for a moment and point out a difference between the American and the Canadian system of extending rights. Women in the United States received the federal franchise through constitutional amendment. Canadian women through an act of parliament. It took the Canadians parliament two months and six day to extend the federal franchise to Canadian women. The bill was promised in the throne speech on March 18, 1918, and received royal assent on May 24, 1918. The same extension of rights took two years in the United States. President Wilson asked Congress to frame the 19th amendment in September 1918. Congress completed its task on June 14, 1919, and the 36th state, making the necessary three-quarters of the states, ratified it and it became law on August 26, 1920.

That, Mr. Speaker, is not nearly as long as it took to pass certain other amendments. Amendment 16, authorizing a federal income tax, was recommended to Congress by the president in 1907. It was not ratified by three-quarters of the states until February 25, 1913, — I think I'm safe in saying a full six years later. Which system of expanding rights or providing new ones, I ask you, is the better — the Canadian or the American?

The fourth point I want to make is that rights entrenched in a constitution can be used to prevent social progress and, indeed, to turn back the clock. The member for Moosomin was talking about property rights and I have something to say here about that.

Just to go back, the fourth point to be made is that the entrenchment of rights in a constitution can hold back social progress and indeed turn back the clock. This was particularly evident in the United States in the '20s, when the majority of justices on the supreme court were very conservative. Among them were Justices Van Devanter, Butler, McReynolds and Sutherland, later known as "The Four Horsemen" for the way they run roughshod over Roosevelt's New Deal. Statements by individuals prominent in government characterized very accurately the attitude of the majority of the nine supreme court justices of the day. President Warren G. Harding remarked: "What America needs is less government in business and more business in government." The U.S. Supreme Court during the '20s generally acquiesced in business domination over government regulatory commissions and administrative agencies, thus translating contemporary conservation and constitutional law.

Justice Sutherland set the tone for the decade by overruling a minimum wage law for women (and this says something about property rights). Despite the fact that similar state laws had previously received supreme court approval, he condemned wage legislation as economically and socially unsound and a denial of due process of law. In stating the court's ruling, Sutherland wrote:

> The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guarantee of the due process clause of the fifth amendment. (That amendment read in part: No person shall be deprived of life, liberty, or property without due process of law.)

Sutherland continued:

> That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause is settled by the decisions of this court and is no longer open to question . . . Within this liberty are contracts of

> employment of labor. In making such contracts, generally speaking the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining.
>
> The present law is simply and exclusively a price-fixing law, confined to adult women . . . who are legally as capable of contracting for themselves as men . . . What is sufficient to supply the necessary cost of living for a woman worker and to maintain her in good health and protect her morals is obviously not a precise or unvarying sum — not even approximately so. The amount will depend upon a variety of circumstances: the individual temperament, habits of thrift, care, ability to buy necessaries intelligently, and whether the woman lives alone or with her family.
>
> . . . The relation between earnings and morals is not capable of standardization. It cannot be shown that well-paid women safeguard their morals more carefully than those who are poorly paid.

That is the supreme court talking. Sutherland then spoke of the need to consider other mattes and finally concluded:

> It has been said that legislation of the kind now under review is required in the interest of social justice, for whose ends freedom of contract may lawfully be subjected to restraint . . . But, nevertheless, there are limits to the power and when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority to so declare.

According to the court, social justice had to give way to a grossly inflated view of freedom to contract. I need not point out how a similar interpretation of entrenched rights by an all-powerful supreme court could affect affirmative action programs for women or the handicapped or the Amok agreement which ensures employment to Northerners. I would also urge you to recall that Liberals and Tories were and, I can doubtless say, are prepared to add property rights or the free movement of capital to Trudeau's charter of rights. What a field day Trudeau's supreme court would have when it was properly stocked with Liberals.

Of the decisions I have outlined, one of America's greatest justices of all times, Oliver Wendell Holmes, stated in a minority report:

> This case is decided upon an economic theory which a large part of the country does not entertain . . . A constitution is not intended to embody a particular economic theory. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the constitution of the United States.

Holmes's dissent, Mr. Speaker, is regarded to this day as a classic among criticisms of the U.S. Supreme Court by its members.

The fifth point, Mr. Speaker, is that in times of national stress and hysteria — hysteria which may infect the supreme court itself — a bill of rights can be rendered quite meaningless for a whole class of people. I am thinking of course, of the Japanese Canadians during World War II. They were faced with conflicting orders from the

military (they couldn't obey all of them): curfew, confinement, deportation and lengthy detention. They obtained little comfort from the court, though dissenting judges made such statements as these:

> (The curfew order bore) a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and other parts . . . (or deportation from the Pacific coast) goes over the "very brink of constitutional power" and falls into the ugly abyss of racism.

Of the constitutional results of the whole affair, a constitutional expert has written:

> As a result of the court's opinions, it is now written into constitutional law that a citizen of the United States, set apart from his fellows only by race, may be expelled from his home, separated from his native community, forcibly transported to a concentration camp and there detained against his will, at least until his loyalty has been established.

Rights guaranteed by the constitution (and supposedly protected by the U.S. Supreme Court) to the people of Hawaii, were also seriously affected during the war. There, civilian government was replaced by military government, military tribunals were set up to try civilians, and habeas corpus was suspended. In examining these occurrences, the supreme court would rule that creation of military courts to try civilians was illegal, that martial law could only be declared under conditions of actual invasion or rebellion, and that military authority when used for police purposes must always be subordinate to the civil power. However, these rulings did little to protect enshrined rights during the war. The decisions were handed down in 1946, after hostilities had ceased.

The Canadian constitution, as it now exists without an enshrined charter of rights provided Canadians with essentially the same degree of protection when Trudeau invoked the War Measures Act as the American Bill of Rights and the American Supreme Court gave Japanese Americans and Hawaiians during World War II. the protection extended in both cases was pretty well nil.

Mr. Speaker, in the final analysis, an entrenched charter of rights gives no more protection to individuals than national sentiments of the day support. When it comes right down to it, is it not possible that the civil, legal and political rights of citizens are as securely or more securely held when the need to protect them is firmly stamped on the hearts and minds of the population by long tradition rather than being merely printed ink-deep on a piece of paper?

Point number six, Mr. Speaker. Judges of even such an August body as the U.S. Supreme Court are human and capable of what some of their number would probably call an error. Such an instance occurred with first amendment freedoms — the entrenched right to practise one's religion. Because I have spoken for some time though, I'll skip the details of the two cases involved. Suffice it to say that in reversing their first decision, the supreme court said in part:

> We are required to say that a bill of rights, which guards the individual's right to speak his own mind, left it open to the public authorities to compel him to utter what is not in his mind.

In deciding the first case, its decision had allowed public authorities to compel a person, contrary to his religion, to utter what is not in his mind.

Mr. Speaker, so far I've demonstrated, through reference to decisions on the U.S. Supreme Court, that entrenching certain rights and freedoms in a constitution does not mean that people will necessarily enjoy them, does not necessarily mean that they will come fully into force, does not necessarily end discrimination or lead to an expansion of rights, can frustrate attempts to provide greater social justice and indeed nullify progress already made along those lines, may not protect large groups of people during periods of national hysteria, and that even freedoms which appear at the very top of the U.S. Bill of Rights, religious freedom, dealt with in the first amendment, may not be fully guaranteed.

Before I take my seat, Mr. Speaker, there are a couple of other matters I'd like to bring to the attention of members of this House, and citizens generally, respecting entrenchment of a charter of rights in the constitution and Trudeau's consequent great expansion of the role of the Canadian Supreme Court in our federal system.

When rights are entrenched in a constitution it follows that some body must be empowered to see that those rights are not infringed upon. That task is given to a supreme court, in the case of the United States, to a body presently made up of nine men. In Canada's case the task would also fall to nine men, our supreme court now being made up of nine judges.

It is therefore useful to examine what has been said about the powers and responsibilities of the United States Supreme Court and of certain individuals who have made it up, as those are likely to be the future powers of our supreme court. The position of the United States Supreme Court in the American system of government is dealt with in many books. But for present purposes I'll relate what only one author has to say: Fred Rodell in *Nine Men*: A Political History of the Supreme Court of the United States from 1790 to 1955. Rodell, by the way, was a member of the Yale University Law School when he produced his book.

The three words which make up the title of chapter 1 in Rodell's work are catchy. to say the least. They are "Powerful, Irresponsible and Human." And in the course of the first chapter he has this to say:

> At the top levels of the three branches of the civilian government of the United States sit the Congress, the president plus his cabinet, and the supreme court. Of these three — in this unmilitary, unclerical nation — only one wears a uniform. Only one carries on most of its important business in utter secret behind locked doors — and indeed never reports, even after death, what really went on there. Only one, its members holding office for life if they choose, is completely irresponsible to anyone or anything but themselves and their consciences. Only one depends for much of its immense influence on its prestige as a semi-sacred institution and preserves that prestige with the trappings and show of superficial dignity rather than earning it, year after working year, by the dignity and wisdom of what it says and does. Under our otherwise democratic form of government, only one top ruling group uses ceremony and secrecy, robes and ritual, as instruments of its official policy, as wellsprings of its power.
>
> The nine men who are the Supreme Court of the United States are at once the most powerful and the most irresponsible of all men in the world who govern

> other men. Not even the bosses of the Kremlin, each held back by fear of losing his head should he ever offend his fellows, wield such loose and long-ranging and accountable to-no-one power as do the nine or five out of nine justices who can give orders to any other governing official in the United States. Ours may be, for puffing purposes, a "government of checks and balances" but there is no check at all on what the Supreme Court does — save only three that are as pretty in theory as they are pointless in practice. The nine justices sit secure and stand supreme over Congress, president, governors, state legislators, commissions, administrators, lesser judges, mayors, city councils and dog catchers — with none to say them nay.

Lest you conclude that Rodell is overstating his case, let me refer to you what three of the most thoughtful men ever to hold high public office had to say about the supreme court's powers and responsibilities.

President Thomas Jefferson:

> Our constitution, intending to establish three departments, co-ordinate and independent, that they might check and balance one another . . . has given . . . to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by and independent of the nation.

Supreme Court Justice Oliver Wendell Holmes:

> As the decisions now stand I can see hardly any limit but the sky to the invalidating of the constitutional rights of the states, if they happen to strike a majority of this court as for any reason undesirable.

And you may substitute province for states.

A recent United States Supreme Court Justice, Harlan F. Stone, said:

> The only check upon our own exercise of power is our own sense of self-restraint.

I need not comment on what I have just read. Suffice it to say that entrenching a charter of rights has extremely far-reaching implications for our existing balance in our federal system, not to mention responsible government as it has been practised in Canada. Entrenchment indeed involves the transfer of ultimate power from the people as a whole to a group as small as five of nine appointed judges. I would urge women to note they are and never have been males.

In the course of his book, Rodell maintains that court decisions often reflected political beliefs and personal backgrounds of individual judges, that the Supreme Court of the United States is a much more political body than is realized, owing in part to presidents frequently making strictly partisan appointments, and that its decisions all too often reflect social thinking that is out of date at the time the decisions are made.

As a commentary on judges into whose hands fall a great deal of power through an entrenched bill of rights, I propose to refer to the background, appointment and career of two men of markedly different ability, Justice Pierce Butler and Chief Justice John Marshall. Butler I have already referred to. He was a member of the ultra-conservative

court of the 1920s and one of the Four Horsemen of the New Deal era. Her is how one writer describes Butler and his performance as a supreme court judge.

> Fourth of the Horsemen, and least intellectually gifted of the nine old men, was Pierce Butler of Minnesota, the farm boy become millionaires by his monolithic legal services to the Great Northern, Northern Pacific, and Chicago, Burlington and Quincy railroads, whom Harding appointed as a second-rate successor, of sorts, to far abler Justice Edward White, when he was pressed to put another Catholic on the court after he had named Protestant and former U.S. President William Howard Taft in White's place. Like so many risers from rags to riches, big, bull-headed Butler had an almost religious devotion to the status quo and especially to railroads. He was an expert at only one thing, the complicated accounting involved in figuring out railroad values and railroad rates. And his expertise was single-mindedly one-sided. Confirmed by the Senate only after he had solemnly pledged that he would not sit on railroad rate cases, he got around his pledge by actually writing the court's decision on two major rate cases dealing with water companies which he knew would set clear precedents for railroad cases to come, nor did he disqualify himself when railroad taxes, not rates, came before the court — even though in one big tax case the railroad was his old client, the Great Northern. Butler, of course, voted to cut the tax. His attitude towards scholarship and civil liberties had been presaged when, as ruling regent of the University of Minnesota, he had engineered the firing of three professors because of their liberal views. The whole New Deal could not but prove anathema to his Philistine philosophy of politics and law.

Mr. Deputy Speaker, how would you like to entrust your life, liberty, property and pursuit of happiness to him, or one like him?

Justice Marshall was a supreme court judge for a long period of time in the 19th century and is the first of the American chief justices to be regarded as great. He has been commonly described in these terms:

> Marshall is conceived to have dominated his associates on the supreme court so completely that he was able to make the constitutional decisions of that tribunal express his own views and nothing else. His ideas, it has been commonly assumed, were those of his political party, the Federalists.
>
> Consequently, the common view is that John Marshall was able to use, and did use his domination of the court to read the old Federalist constitutional views into the court's decisions and thus to lay the foundations upon which our constitutional law ever since has rested, or, as some might wish to insist, the foundations upon which it rested until the notorious Roosevelt court fight.

Also permit me to quote a passage from Rodell describing Marshall.

> Marshall not only though that the nation should be fun by a strong central government, he also though the nation and its government should be run by and for his own kind, his political and economic class — meaning, of course, the creditor-capitalist, the federalist, the financial conservatives.

Mr. Speaker, it might interest you and other members to know that John Marshall was

appointed chief justice early in 1801, following the election of 1800, by President John Adams, a Federalist. On March 4 of that years, the Federalists transferred power, and it proved to be a permanent transfer, to the Republicans under President Jefferson. Was Marshall's appointment an attempt by the Federalists to perpetuate their power in the supreme court? His appointment has been characterized as one of President Adams's "Midnight Appointment." Be that as it may, Marshall continued federalist efforts to nationalize the constitution, or if you prefer, to centralize power in Washington, a task at which he was quite successful.

Mr. Trudeau proposes entrenching a charter of rights in the constitution and thereby significantly expanding the powers of the supreme court. I ask you, Mr. Deputy Speaker, what is the political life expectancy of Pierre Elliott Trudeau and the Liberal Party of Canada?

I'm sorry I have taken so long, but I did think certain things had to be said about entrenching a charter of rights in the constitution and the changes that will involve in our federal system. particularly those changes as reflected in our supreme court. Indeed, I believe a good deal more has yet to be said. For the moment, however, I'll be satisfied if you permit me just a few more words.

From what I have said, the conclusion might easily be drawn that I'm dead set against entrenchment of a charter of rights in Canadian constitution. As a student of both our system and the American system, I have serious reservations about it. An entrenched charter of right does hold our certain benefits, some of which people are aware of, through, among other things, watching American TV. However, there are definite adverse results which I firmly believe they are less well informed about, as they are on the implication of an entrenched charter of rights.

My purpose in making my remarks are multiple, Mr. Speaker. I believe that it is absolutely essential that Canadians, if they choose to entrench a charter of rights, be fully aware of the implications of their actions. They must consider carefully which rights should and should not be entrenched. They should also carefully examine the terms used as each rights is entrenched. Those terms will be subject to interpretation by a very powerful court. They must above all realize that by entrenchment they are taking power out of hands of people they can control and placing it in the hands of a very small group, usually elderly and of one sex, that they cannot control. They must also face the fact that their potential for reversing decisions of a supreme court is much less than for reversing decisions of a legislature. The complexion of a legislature can be changed within about four years; that of a supreme court takes much longer. People should know these things at a very minimum.

The Canadian people should also realize that if they really so desire, they can obtain an entrenched charter of rights by means other than the divisive ones presently being employed the Trudeau government. They should not forget that there is an alternative to entrenchment. They have it now and it has served them well.

Mr. Speaker, I sincerely hope that what I have said will help everyone understand more fully the reasons for this government's position on one aspect of Trudeau's proposed constitutional changes. I also hope it has helped inform the members of the opposition in this respect. I would urge all listeners to call upon the Trudeau government to go back to the bargaining table where the constitution is concerned.

Lastly, in closing, I would appeal to all members of the House to give their unqualified

support to this resolution. Thank you.

SOME HON. MEMBERS: — Hear, hear!

MR. ANDREW: — Mr. Deputy Speaker, I would wish to make a few comments with regard to the constitutional resolution. At the conclusion of those remarks I intend to move one of the amendments to that resolution and, perhaps, will refer to a second subamendment that will be moved later on in the debate.

I can say, Mr. Deputy Speaker, that in the two and one-half years that I have been involved as an elected politician. it seems to me that politics is centred around three main issues, both at the federal level and at the provincial level. Those issues are quite simple, and I think I have a fair degree of support identifying these three: (1) the economy, (2) the energy pricing or energy agreement, and (3) the constitution.

Now, Mr. Deputy Speaker, everyone is going to put different preferences on one or the other of those issues. There is nothing precisely wrong with that. The question I have and the one thing we must look at is that we cannot look at all three of those issues of any one of those three issues in isolation from the others. From that point of view it is important that we address all three issues when we are talking about the constitution.

I reject those who say that the constitutional debate which is going on today in Canada is a lot of hot air, that we should set it aside, that we should put it back and get on with the issues of the day — whether they be the economy, or helping the poor, or solving the problems in the auto industry. The constitutional question is, in fact, wrapped up in the fibre of Canadian politics both at the federal level and at the provincial level.

Equally, I reject those who say the constitution can be looked at in isolation, that there is no connection between the constitution and the energy program. I think I might refer to an answer to a question in this House last fall by the Premier who suggested that the two are not connected other than by the fact that the antagonists are the same.

Therein lies part of the problem, part of the concern which I have with regard to the procedure and process developed by the Government of Saskatchewan. The issue of the constitution in conjunction with those two other issues has clearly pitted region against region in this country and province against province. They have strained the fibres of all three political parties in this country and (I think all of us have seen it in our riding) they have brought the country to a point where many citizens are in fact questioning the very foundations of this nation.

Those people who are questioning that, those people who are raising that point, are not wild-eyed, right-wing red necks. The include the elderly gentleman who calls you and asks about the constitution and suggests that perhaps separation is the way to go. That same elderly gentleman has lived and farmed in that area for 50 years. Another could be a student at the at the university or even one of the people in the media, silently suggesting or looking at that type of option.

My suggestion is that if we cannot address those three questions, the nation cannot grow or cannot realize the potential which it is so important to realize if we are to put the thing back in order. But never has democracy been a quiet enterprise. Freedom and equity in this country have never rung with silence. Those who criticise in a moderate way or in a strong robust way cannot be looked upon as somehow being un-Canadian or wrong or whatever it might be.

When I say, Mr. Deputy Speaker, that the three are intertwined, I am saying that when the economy of this country is wrong, very little else is right, whether it is the constitution or anything else. When the Ontario home-owner faces an 8 per cent mortgage payment, he tends to hunger after the resources of western oil. When inflation hits double digits, the consumer has no option but to go some place and try to find more revenues. Hence, Canadians tend to eye the resources rents of western Canada, at this point in time, as a solution to their immediate problems. As a result, we see region pitted against region and province against province. Therein lies the dilemma we face in the constitution.

As well as that, I think we have to add the situation of what we see as the federal state and what the history has been in this province. We must recognize, whether it is by convention or other means, the reality of regionalism in this country. Regionalism does exist. The reason for that regionalism, I believe, is that the people of the Prairies feel more community with other people in that prairie region. They feel more community with the people here than they do with the broader Canadian scenario.

Against this background, Mr. Deputy Speaker, I think we have to look at the constitutional debate presently before us and before the House of Commons. In that regard, I suppose what we have to do is ask what, in fact, a constitution is. To me, a constitution is the rules by which we as a society will govern ourselves. In this country that means a federal state and it means a parliamentary system of government.

It, therefore, I would suggest, requires two prerequisites to amend the constitution. First, it must have the support of a large segment of the population. The reason for that is it must be able to protect the minority. How are the minorities defined? I suppose this will vary from one person to the next person. It could well be the native population of this country or it could well be the province of Newfoundland or the province of Alberta. All those would fit into that definition of minority. Second, and equally as important as that broad support for any constitutional change, is that the change must be consistent with our basic principles of justice and what a parliamentary system is. It also must be consistent with reason.

The former, the wide basis of public support, protects against the oppressor, which, in this case I think is the federal government. It is against the less powerful people. The latter projects against what I see as the great danger we face today — trying to react to an immediate problem with a solution that is not time-tested and not based on reason and the principles on which our country has stood for some 113 years.

So, with those introductory statements, Mr. Deputy Speaker, we have to look at two parts of the package. Part one, obviously, is the process. Part two is the content or substance of the resolution.

Dealing with the question of the process, we deal with the question of unilateral patriation. I think that before we simply react to that, we must look at the basis from which this unilateral action stems. Obviously, the federal Liberal government prior to the last first minister's conference in September, I believe, 1980, determined in its mind what its strategy would — not only with regard to the constitution but with regard to the economics and, in particular, with regard to the energy question and the resources issue.

I think that when you look at number one, the constitutional resolution, to be followed quickly on its heels by the national energy program. I believe a good case can be made, and many have made the case, that the national energy program is really and truly power politics in action, and that the constitution is intertwined with that and part and parcel of the same.

What I am saying of power politics in the national energy program is quite simply that the direction in which the federal Liberal government is moving on the question of resources, as it relates to oil, is as follows: they are going to develop programs and have developed that will discourage development of western resources as we know that word, primarily in the provinces of Saskatchewan, Alberta and British Columbia.

The emphasis of the national energy program will be to develop the frontier that is the high North, and to develop the east coast — the Hibernia that we refer to. The reason for that is the federal land part of the national energy program. Through that system, the federal government will be able to control the resources if it is successful in establishing is control over the resources offshore, and it appears to have solved it's problem with regard to the ownership of the resources in the high North.

From that point of view, that gives them economic power and it also takes away the political power of the people of western Canada. That, my friends, it seems to me, is part of that strategy. Given that, the second thing, and the second most important part of the national policy with regard to constitutional change is the charter of rights. It has kicked around for a long time, and they see the charter of rights as a way of being able to lull people into thinking that if we, as Canadians, have a charter of rights, somehow we are going to have more freedoms, somehow things will be freer, somehow many of our problems will disappear so we will not have to worry about the struggles people have made in this country for the past 100 years to develop those freedoms, to develop those rights, somehow that is going to be all closed up. I think that is really one of the great tragedies of the Trudeau package as it relates to the entrenchment of the bill of rights.

I ask everyone in this Chamber: do you really disagree with me as to what the strategy of the federal Liberal government is with regard to the national energy program? Does anyone disagree with me as to the strategy of economic development in this country by the federal Liberal Party? That strategy, my friends, in this: we put the emphasis on protecting the Chryslers and the Massey-Fergusons of this world to preserve those jobs. To their credit, there is a concern with preserving jobs, but in doing that, they are preserving something that is unproductive, something that is moving toward being obsolete. Their emphasis is to encourage that type of economic development in the East to the detriment of the people of the West. I say whether the members opposite agree with me on that proposition or not, they must agree that if that is, in fact, their strategy, it is wrong strategy for economic development in this country.

It is against that background, Mr. Deputy Speaker, that I think it is clear what the strategy of the federal Liberal government was with regard to the constitution.

It is in that regard that I think it becomes very significant as to the federal strategy that was leaked during the last first ministers' conference. With your indulgence, Mr. Deputy Speaker, I would like to read that.

> In our negotiation strategy, we have linked very closely to resources.

They're talking about their strategy with regard to the constitution — that they have lined it very clearly with the resource question.

> If there is to be a solid western block of opposition to the federal government, it will be an inadvisable course of action to proceed the way we are in fact proceeding today. Given the government's lack of western representation, it would probably be more difficult to defend unilateral, federal action on such a regionally sensitive issue as resources.

So, it's tied in again, Mr. Deputy Speaker — the question of the constitution and the question of resources, I suggest to you that we cannot separate those two. We must never separate those two. Here's their strategy.

> Breaking up a solid western provincial block of opposition is the prerequisite to be in a position to take action of this package.

That is the strategy of the federal Liberals as stated in September, 1980. The members opposite obviously had copies of that. It goes on:

> A solid front of provincial government and parliamentary opposition from the West could pose real difficulties for the Government of Canada.

It could pose real difficulties for the Government of Canada! It is in that setting, and I suggest, around the question of resources. In view of the leaked federal strategy, I think we can all admit that that strategy is pretty well right on course today. Unfortunately, maybe that strategy is going to lead it right through to the point of fruition.

The government opposite, knowing that, sought to say, "No, we had better negotiate." They're prepared to say, "Well, let's go for Trudeau's carrot. We really don't think this is his strategy. We think that we can outmanoeuvre Pierre Trudeau." There lies, I think the dilemma. But the dilemma, it strikes me, is even . . . (inaudible interjection) . . .

I think the members opposite are prepared to admit that they tried that. It didn't work. I'm not going to go into that whole process of whether they should or should not any more than I have now.

What strike me as being wrong is this: how can we as parliamentarians, as leaders of this country, go through the process that we have been through in the last three or four months — drafting or attempting to draft a new constitution for our country based on the political whims of one pressure group or another, based on whether we'll make this trade so I can get your political support, or make that trade so I can get your political support? That is exactly what is happening.

The most recent one, and I think the one the Attorney General made reference to, was the question of the Senate. I agree that there should be reform in the Senate. The Senate is archaic. I think there is very little support for that institution throughout this country. It's probably a weak argument to use — that that was the straw which broke the camel's back. But they also traded that. How can you reason that it is proper to draft a constitution when you will deal with the question of the Senate by saying, "We will throw that in because that will give the senators their support so we can get the package through?" If they're dealing with the question of a charter of rights (I disagree with the charter of rights but it's into the process of dealing) and they say we want to have property rights in it, that's great; we agree with property rights. The members of the New Democratic Party in the federal House, stand up and say, "If you have property rights, we're off the train, we're no longer with you." So they pull the property rights.

Is that any way, I say, to draft a constitution? Is that the way the Americans drafted their constitution: by a trade here and a trade there, the political whims, misrepresentation? That is the process and that is the tragedy of the process that the people of this country do not say, do not agree with, do not stand behind and fight. And regardless of what happens in the process from here on in, you are not going to have the much needed support of the people of this country because of the lack of diplomacy or statesmanship of the whole issue.

Having said that, Mr. Speaker, and prior to moving the amendment, I suppose what we are left with now is that that's water under the bridge. We're not at that stage any more. Regardless of whether we failed or not, the question now is: what do we do as people of this region? Obviously, one thing is this motion today which I hope will get unanimous support. Another thing would be to bring court action. And what we're suggesting is a reference to the Saskatchewan Court of Appeal so that the Saskatchewan Court of Appeal can deal with the question as it relates to convention.

I think that the Premier and the Attorney General have been perhaps less than . . .

AN HON. MEMBER: — Honest.

MR. ANDREW: — No, I wouldn't use that one. Let's say, less than frank with the population of this province by referring to the line that they can not and must not join those awful group of six that are going to the courts because they have but one position and that is unanimity.

There is no question that what is also being argued in those court challenges is the question: what is the convention? Has a convention developed to the point of being law? And what is that convention if it is in fact developed? Surely it is a function of the courts of this land to interpret our constitution. If we are to say that from now on with a charter of rights we're going to throw this open to the courts to deal with all the issues (whether they are the social issues or the legal issues or the resource issues), if we're going to throw that to them as the package, surely it seems to me that we should put the fundamental question to them as to what is the convention before we get to that stage. That's number one.

As for number two, I think the question is going to build, Mr. Speaker. I think the issue in this province is going to build against a constitutional package, against what they're doing in the constitution. I suggested time. If the provinces have time on their side, if the people have time on their side (those opposed to the Trudeau motion), if they have that time, the momentum of the opposition is going to continue to build, not only in

western Canada, but throughout this country.

I think we're all finding now that the public is becoming genuinely interested after six months of debate. Some of the people are starting to call and I'm sure they're calling you, "Can you tell me what this package is about?" And that's not to belittle the people, but that is to suggest that there is more and more public awareness in what the constitution is about.

In order to delay that process, I call on the Premier or the Attorney General or the other people of this Assembly to lobby in the halls of Westminster. I believe the only process we are going to get from the government in Great Britain is the slow shuffle. The House of Commons is not going to turf out the package. It is going to practise that old British tradition of doing it in its own way. That slow shuffle, I think, is going to be in the process if it is properly lobbied. I call on this government to lobby in that way because we must buy time.

If we believe that this system which Mr. Trudeau is pushing on us is wrong, if we genuinely believe it is wrong, then we have the obligation to stand up and fight against it with everything we have in our power. One of those is going to court and one of those is going to Westminster. I call on the government and all members of this Assembly to join with us and make that same representation, because that is the only way it is going to stop. If it does not stop, my friends, the requirement is going to be more difficult.

The basis of the amendment, Mr. Speaker, and the first amendment to be advanced by the opposition will read as follows:

> That the motion be amended by adding thereto the words, "and that this Assembly urge the Lieutenant-Governor in Council to refer the proposals for unilateral patriation of the constitution of Canada to the court of appeal of the province of Saskatchewan pursuant to the provisions of The Constitutional Questions Act, Revised Statues of Saskatchewan, 1978, chapter 29."

I move that amendment, seconded by my colleague, the member for Meadow Lake.

MR. SPEAKER: — I find the amendment in order and the debate continues concurrently on the motion and the amendment.

MR. SHILLINGTON: — I have a number of words I wish to address. I know members are waiting with bated breath and I know they wouldn't want my remarks divided in two by the bell. I wonder if we might call it 5 o'clock and pick this up again at 7 o'clock?

The Assembly recessed until 7 p.m.