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The failure of constitutionalism in Canada

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I. Introduction

On October 26, 1992, Canadians voted in a national referendum on constitutional reform. It was, in historical terms, a very un-Canadian event. Never before had constitutional proposals been submitted to the national electorate for their approval or rejection. On only one previous occassion had a provincial government called a referendum on the constitution. That took place in May of 1980, when citizens of predominantly French-speaking Quebec were asked by their government to give it a mandate to negotiate political independence, though retaining formal economic links to the rest of Canada – a formula refered to as 'sovereignty-association'. Quebeckers refused. Likewise, a solid majority of Canadians, including majorities in six of the country's ten provinces, said 'no' to the constitutional proposals of 1992.

The fact that the separatist government of Quebec called a referendum in 1980 was not surprising. After all, it was proposing nothing less than the dismantling of Canada, an act that clearly required some form of popular legitimation. The constitutional proposals of 1992 were not as dramatic. Indeed, they were probably less far-reaching than the constitutional reforms passed in 1982, when a Charter of Rights and Freedoms and procedures for amending the constitution were adopted. These earlier reforms were achieved without submitting them to popular vote. In fact a federal government proposal that national referenda be made part of the formal amendment process was categorically rejected by the provincial governments. Why, then, was a referendum held in 1992, and what was the significance of Canadians' clear rejection of reforms that had been agreed to by the national and all provincial governments?

In order to answer these questions, one must understand the historical background to the intense constitutionalism that has characterized Canadian politics in recent years. By "constitutionalism" I mean the effort to find constitutional solutions to some of the country's political problems. These efforts have been spectacularly unsuccessful. I argue that this failure has been due to the inherent defects of constitutionalism in a country that has a weakly developed sense of national identity. Constitutionalism has, in fact, exacerbated the problems it was supposed to solve.

Canada's problems are not unique. Indeed, several features of Canada's political map call to mind similar ones in Belgium and other countries struggling to manage language and regional conflicts. If one compares Canada to Belgium, for example, a number of parallels are obvious. They include the following:

- both countries have two major linguistic communities whose interests and aspirations have often been in conflict;
- each country has a history of what might be called domestic colonialism, the English-speaking group dominating the French-speaking group throughout most of

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Canada's history, and Walloons dominating Flemings until fairly recently in Belgian history;

- both Canada and Belgium have linguistic frontiers separating the major language groups, although in Belgium these frontiers are sociologically much sharper and are constitutionally recognized (the fact that roughly 90 per cent of Canada's francophones live in a single province, Quebec, means that Canada too has linguistic frontiers);
- Canada and Belgium have federal political structures that were adopted chiefly to manage ethnolinguistic conflict by giving significant powers to regional governments;
- recent years have seen both countries engaged in a search for constitutional solutions to their linguistic and regional problems.

Similarities can, however, be deceptive. The historical, sociological, and institutional differences between Canada and Belgium are great. Applying conclusions drawn from one country's experience to another national case is, therefore, treacherous. Nevertheless, it may be that there are lessons to be learned from the failure of constitutionalism in Canada. Before speculating on what these might be, let us first try to understand what has gone wrong in Canada.

II. Historical Pressures on National Unity

Canadian unity has always been somewhat precarious. A major reason for this is, of course, the longstanding conflict between anglophones and francophones, a conflict whose roots reach back to the military conquest of New France by British troops in 1759. Despite the fact that the francophone majority in Quebec has dominated that province's politics since Canada's creation, and that today even the provincial economy is controlled mainly by francophones, there has been a persistent belief among Quebec's francophone elites that the language, culture, and interests of the French-speaking community have been under constant threat in Canada. The elimination by some provincial governments of minority language rights once enjoyed by francophones, and the overwhelmingly anglophone character of the federal state until the end of the 1960s were sound reasons for this belief. But even more important were the assimilationist pressures of market forces in a country, and on a continent, where English was the dominant language and certainly the language of upward economic mobility. Although these pressures were greater outside Quebec, they were felt within that province as well. Key indications of this included the dominance of anglophones in the managerial classes of the Quebec economy until the 1970s and the overwhelming preference among immigrants to Quebec for English as their second language and for educating their children in anglophone schools.

The French-English conflict has been a major factor preventing the development of an overarching sense of Canadianism, a national identity bridging the cultural and linguistic differences of the two main ethnolinguistic groups. This is not to say that French-speaking Quebeckers do not feel positively toward Canada. Attitudinal surveys show that most of them do, and that positive attachment to one's province and country often exist together. Nevertheless, history has shown that the aspirations and interests of French and English Canadians are often divergent. This is as true today as at any time in Canada's history. A hard core of support for Quebec separatism has existed in that province since the 1960s and a party committed to independent statehood for Quebec, the Parti Québécois, governed the province between 1976 and 1985. The current governing party, the Liberal

Party of Quebec, also contains elements whose demands on Canadian federalism – demands for a massive devolution of powers from Ottawa to the Quebec government and for constitutional recognition of special status for Quebec – are not terribly different from the agenda of Quebec separatists. If there is a point of agreement among Quebec's francophone political, cultural, and labour elites, it is that the provincial government requires additional powers to protect and promote the French-speaking character of the province. Quebec's francophone economic elite agrees, although their support for this decentralist agenda is less aggressive. Even federal politicians from Quebec agree that current constitutional arrangements need to be changed so as to give Quebec more powers. Former prime minister Pierre Trudeau is one of the few prominent dissenters from the Quebec nationalist orthodoxy, but it is revealing that his ideas are taken far more seriously outside Quebec than in his home province.

A second strain on national unity emerges from Canada's uneasy and often defensive attitude toward the United States. English Canadians, or at least their cultural elites, have long struggled to escape from the huge shadow cast by American culture. Since the advent of electronic broadcasting and film, technologies that increased the penetrability of Canadian society to American culture, Canadian governments have invested heavily in cultural industries whose current survival depends on this state life support system.

Of course many societies are subject to Americanizing influences through the import of that country's cultural products. In the case of Canada, however, the phenomenon has greater significance because of the fact that the development in English Canada of a distinctive national identity has been impeded by American cultural influences. As one of Canada's foremost writers, Mordechal Richler, puts it, "The fundamental Canadian dilemma remains unchanged over the years. Namely, is it possible to operate a decent but small corner grocery of a country on the same continent as one of the most voracious of supermarket nations? Is the corner grocery worth defending? Is there anything on the shelves but wheat, iron ore, oil, and yearning?". [1]

Canadians are in the habit of blaming the United States for many things. It is unfair, however, to attribute the weakly developed sense of national identity in English Canada to Americanizing influences alone. An additional factor, this one entirely domestic, has been the very different histories of regional communities within English-speaking Canada. Western Canadians have long complained, for example, that Canada's history and culture is usually interpreted from a central Canadian perspective (i.e., based on the experiences and values of Ontario and Quebec) which ignores the distinctive characteristics of western Canada. Worse than this, they argue, centralist interpretations of the Canadian experience and identity actually impose a false set of values on regions whose historical development and current social-cultural profile are quite different, thus producing insensitivity toward the needs and aspirations of those in the 'peripheral' regions. Moreover, the grievances of these regions, particularly the West, are not limited to complaints about the centralist bias of Canada's cultural elite. The fact that policies of the national government have often discriminated in favour of central Canadian interests – a simple product of electoral arithmetic, given that Quebec and Ontario together account for most of Canada's population and the majority of seats

(1) M. RICHLER, Canadian Identity, in : E. FELDMAN and NEVITTE (eds.), *The Future of North America Canada, the United States, and Quebec Nationalism.* Cambridge, Mass : Harvard Center for International Affairs, 1979, p. 52.

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in the elected House of Commons – has given a bitter edge to regional discontent in western Canada. "The West", observes Alberta historian Doug Owram, "has never felt in control of its own destiny. None of the wealth of recent years has eased this feeling. In fact, the tremendous wealth of the region merely sharpens the contrast with the political powerlessness that exists on the national level". [2] The Atlantic provinces, less endowed with natural resources and heavily dependent on revenue transfers from Ottawa, are more resigned to their peripheral status.

Plagued by cultural self-doubt and insecurity as a result of living alongside a much larger, more vibrant and self-assured society with which English Canada has much in common, and wracked by internal conflict between regions whose histories and interests are different in important ways, English Canada has never developed the type of collective identity that could serve as a unifying agent in periodes of political crisis. Except for the unusual circumstances of wartime, the collective national identity of English Canada has never been much more than a sort of minimal patriotism occassionally fanned into something warmer by an event like the 1973 Canada Cup win over the Soviet Union (hockey) or an Olympic victory. This already fragile plant has been subjected to greater than usual stress in recent years as Canada has drifted into what one social critic calls 'a downward spiral of centrifugal forces'. [3]

The final pressure on Canadian unity comes from federalism. More precisely, it comes from the highly decentralized version of federalism that has evolved in Canada particularly since the 1960s. The constitution assigns to provincial governments exclusive or partial jurisdiction over several of the most important, and most expensive, legislative responsibilities of modern states. These include education, health care, most social services, culture, and a wide range of economic matters. Moreover, the provinces have extensive taxation and borrowing powers. Although Quebec has been the most aggressive in demanding increased powers and a diminished role for the federal government, other provinces have also resisted some of Ottawa's centralizing initiatives and expanded the reach of their own jurisdictions.

The uniqueness of each province's interests certainly has contributed to decentralizing tendencies in Canadian federalism. But governments, in Canada as elsewhere, have their own political and administrative interests, the pursuit of which may have nothing to do with the interests of those they represent. "Canadian federalism," political scientist Alan Cairns argues, "is about governments, governments that are possessed of massive human and financial resources, that are driven by purposes fashioned by elites, and that accord high priority to their own long-term institutional self-interest". [4]

Today, the provincial and local levels of government outspend and out-tax the national government. The larger and more affluent provinces have large, highly professional bureaucracies that are in no way inferior to the federal bureaucracy. While it is true that none of the predominantly English-speaking provinces has been nearly as aggressive as Quebec in demanding a transfer of legislative powers

(2) D. OWRAM, Reluctant Hinterland, in : PRATT and STEVENSON (eds.), *Western Separatism.* Edmonton, Hurtig, 1981, p. 61.

(3) K. VALASKAKIS, What Canada really needs is a new vision *Globe and Mail,* 12 October 1992.

(4) A. CAIRNS, Governments and Societies of Canadian Federalism, in : A. CAIRNS, *Constitution, Goverment, and Society in Canada.* Toronto, 1988, p. 153-154.

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and fiscal resources from Ottawa, western provincial governments in particular have called for a more decentralized federalism. It is also true that Ontario governments, presiding over the most populous and economically powerful province, have done little in recent years to oppose these regionalist tendencies.

In summary, Canadian unity has been subject to three main pressures. These have resulted from the longstanding conflict between the aspirations and interests of French- and English-speaking Canadians, the weak sense of collective identity in English Canada, and the competitive relations between the federal and provincial levels of government. Despite these pressures, the Canadian political system has managed comparatively well for over 125 years, the constitution proving flexible enough to adapt to the enormous changes that have taken place since then. This success can be attributed to a couple of factors that have facilitated compromise in the past. They include the national party system and Canada's deferential political culture. A third factor, official bilingualism, was supposed to have the same pacifying effect but has failed to defuse either Quebec nationalism or anglophone resentment against francophones and Quebec. We turn now to these mechanisms of accommodation.

Historically, Canada's oldest national political parties, the Liberal and Progressive Conservative Parties, have been key agents of national unity. They have been assiduous practitioners of brokerage politics, avoiding firm ideological commitments, formal links to social or economic organizations, and doctrinaire programmes. Indeed most of the time they have borne a striking resemblance to one another, at least in terms of their policies. In one of the most perceptive analyses of Canadian politics ever made, French political sociologist André Siegfried observed almost a century ago that "In the absence of ideas or doctrines to divide the voters, there remains only questions of material interest, collective or individual". [5]

Why have the major parties, the only two parties to have held power nationally, behaved in this way? Siegfried argued that their lack of sharp-edged principles was necessary to subdue the latent conflicts in Canadian society. He wrote:

"The lack of ideas, programmes, convictions, is only apparent. Let a question of race or religion be raised, and you will immediately see most of the sordid preoccupations of patronage or connection disappear below the surface. The elections will become struggles of political principle, sincere and passionate. Now this is exactly what is feared by the prudent and far-sighted men who have been given the responsibility of maintaining the national equilibrium. Aware of the sharpness of certain rivalries, they know that if these are let loose without any counter-balance, the unity of the Dominion may be endangered. That is why they persistently apply themselves to prevent the formation of homogeneous parties, divided according to race, religion, or class, a French party, for instance, or a Catholic party, or a Labour party. The clarity of political life suffers from this, but perhaps the existence of the federation can be preserved only at this price". [6]

The emphasis on accommodating the diverse interests – regional, linguistic, ethnic, class, religious – of the electorate through the prudent employment of public works and individual material incentives is still a characteristic feature of federal and provincial politics. Elections are usually preceded by a barrage of new

(5) A. SIEGFRIED, *The Race Question in Canada,* (ed.) F. UNDERHILL. Toronto, 1966 (originally published in French, 1906, p. 113).

(6) *Ibid.*, p. 114.

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government programs and spending initiatives in various parts of the country-ill-disguised attempts by the party in power to purchase electoral support in key ridings. As well, the nonchalant borrowing of elements of one party's program by another party, which Siegfried found so disconcerting, is still going on today.

Successful brokerage politics requires that the governing party include representation from the country's chief regions. This condition became increasingly elusive during the 1970s and early 1980s, when the governing Liberal Party elected only a handful of members of parliament in the four provinces west of Ontario. The major opposition party, the Progressive Conservatives, also had a problem of representation. It won very few seats from the province of Quebec. In these circumstances neither of the two major parties was very successful in brokering the language issue. The Liberal Party was perceived by many English Canadians, particularly in the West, to be too solicitous to the demands of francophones and Quebec. The Conservative Party, despite having supported all of the Liberals' major language policies, tended to be mistrusted by francophones and in Quebec. Nevertheless, when the Conservatives won a landslide victory in the 1984 election they captured most of Quebec's seats, a tribute more to the self-interestedness of Quebec voters who saw that the Liberals would be defeated than to any other factor. But despite having significant representation from all major regions of the country, a feat that no party had accomplished since the 1960s, the Conservative party has not had an easier time managing the language issue and the related question of Quebec's constitutional status than did the Liberal Party before it.

Brokerage politics, as traditionally practiced, has become more difficult in Canada for a couple of reasons. One of these involves elite accommodation and its demise. Elitist deal-making and a political culture that did not encourage popular participation beyond voting have long been characteristic features of Canadian politics. To some extent the success of brokerage politics depended on a deferential political culture in which the compromises reached between elites representing regional and language communities would be accepted with little opposition. Elite accommodation, à la canadienne, took place mainly in negotiations between the federal and provincial governments and within the governing party. Between governments, the practice is often refered to in Canada as executive federalism.

Although it is impossible to pinpoint just when elite accommodation started to become more elusive, it is clear that the traditional model of elitist decision-making faces greater obstacles today than in the past. There are several reasons for this. First, the transformation during the 1960s of French Canadian nationalism into a more assertive Quebec nationalism, associated with the powers of the Quebec state, has reduced the space for compromise on the language issue. The Quebec state elite is not interested in national bilingualism, arguing that only in Quebec can the French language and culture survive and grow. This requires, according to moderate Quebec nationalists, a significant transfer of powers from Ottawa to Quebec and some constitutional recognition of the province's special status. The more fervent nationalists, as in the Parti Québécois, insist that outright political sovereignty is necessary. Either way, the contemporary demands of Quebec nationalists reject the view that Quebec ought to be treated like all the other provinces and that Ottawa should play a major role in Quebec in such fields as social, cultural, immigration and even most aspects of economic policy. One sometimes gets the impression that Quebec's provincial parties and politicians see the transfer of money by Ottawa to the province, and federal contracts and public works that benefit Quebec, as the only truly legitimate functions of the national government.

Although successive federal governments have shown themselves willing to concede many of these decentralist demands, actually reaching agreements in 1987

and 1992 on constitutional reforms demanded by Quebec governments, this has been more a policy of grudging appeasement on the federal side, while no serious observer of Quebec politics imagined that what Ottawa was capable of giving was enough to satisfy the demands of even the moderate nationalists. Indeed, during the 1992 referendum campaign in Quebec, the only serious question debated by the province's politicians and media elite was "Did Quebec get enough?" Most of them answered "No", as did a majority of Quebec voters.

A second factor that has reduced the effectiveness of elite accommodation in Canada has been its increasing inability to include important interests, particularly those of the West. Political scientist Walter Young observes that "Attempts to represent a national consensus have been usually based on the assessment of a few with limited access to the attitudes of the whole. The result has been that the national consensus has in fact been the view of the most dominant voices in the old parties. And these are the voices at the centre : historically, the voices of the elite or the establishment". [7]

This is not new. The West has felt excluded from national political influence for decades. Indeed, the region has been fertile ground for minor parties of protest, supported by voters convinced that the major national parties were unwilling and unable to break from their central Canadian preoccupations. This sense of resentment against the biases of Canadian politics has, however, acquired a sharper edge since the 1970s when Ottawa and some of the Western provinces were locked in a bitter dispute over control of energy resources. A new political party, the Reform Party, emerged in the West during the 1980s and has served to galvanize populist feelings of frustration in that region (although not only in the West : the Reform Party has spread into Ontario and the eastern provinces and appears capable of capturing a respectable share of the popular vote, though perhaps no seats, in those provinces). It led the campaign in western Canada against the 1992 constitutional reforms. Large majorities rejected these constitutional proposals, despite the fact that all four provincial governments in western Canada actively supported them.

It is not only the West which has been increasingly unhappy with the traditional elite accommodation model, centred as it was on central Canadian interests and the language issue. Groups representing aboriginal Canadians, women, visible minorities and other special interests have claimed the right to be formal participants in the political decision-making process, and to have their interests recognized in the constitution. Ironically, these group demands have been encouraged to some degree by government policies that encourage Canadians to think of themselves as members of collectivities, rather than as members of a Canadian collectivity. The 1992 constitutional proposals were praised by governments and many special interest groups for recognizing these group identities. Others criticized the accord for not going far enough in guaranteeing certain collective rights. And others criticized the accord's emphasis on collective rights as being inherently divisive and destructive of the basic liberal-democratic idea that all people should have the same rights.

Canadian politics have never been dominated by liberal individualism after the American fashion. Group identities and rights have always been important, particularly those associated with language. Indeed, for most of Canada's history a

(7) W. YOUNG, The Anatomy of a Party : The National CCF, 1932-61. University of Toronto Press, 1969, 300 p.

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dualist conception of the country as a partnership between two major ethnolinguistic groups has prevailed in political and intellectual circles. This dualist conception continues to be important today, but it has been increasinly rejected by groups opposed to the idea of two founding 'nations', 'peoples', or 'charter groups' as the English and French ethnolinguistic groups are sometimes called. Organizations representing non-charter groups – and it should be kept in mind that about 30 per cent of Canada's population has neither British Isles nor French ancestry – object to the dualist conception on the grounds that it privileges two ethnolinguistic groups over others (in fact it privileges two languages and their speakers over others, but the distinction between language and ethnicity is sometimes ignored by these critics). Associations representing aboriginal Canadians have been especially vocal in arguing that the dualist conception of Canadian society ignores their status as the country's authentic founding peoples. Women's groups have protested that the dualist vision of Canada implies that language rights are more fundamental than gender equality, and that in the event of a conflict women's rights will be sacrificed.

The ascendance of multiculturalism and group identities in Canada during recent years has undermined the effectiveness of the traditional elite accommodation/executive federalism model that was based on representation of French and English Canada and of the provinces. In recent years the agenda of constitutional reform has become more crowded, as aboriginal self-government, women's rights, additional rights for 'visible minorities', demands for social rights (i.e., right to decent accommodation, education, health care, etc.) and even environmental rights now compete for attention and recognition with the issues that traditionally have dominated constitutional debate in Canada.

Brokerage politics and elite accommodation/executive federalism have been key mechanisms for managing the pressures to which Canadian unity has been subject. We have seen that neither of these mechanisms is as effective today as in the past. A third aspect of conflict management has involved official bilingualism, a policy pursued by Ottawa since the late 1960s. This policy is based on a conception of French and English Canada that cuts across provincial borders, and rejects the Quebec nationalism perspective which identifies French Canada with the territory of Quebec. The basic premise of official bilingualism is that language rights should be guaranteed to the individual. Unlike the territorial solution to linguistic conflict, as practiced in Belgium for example, this means that both official languages have equal formal status in national political institutions throughout the country and, moreover, that educational rights are guaranteed to official language minorities in those communities where the minority language group is sufficiently large to warrant paying for their schools out of public funds.

Although official bilingualism was intended to be part of the solution to linguistic conflict in Canada, helping to defuse indépendantiste sentiment in Quebec, it has failed to perform this role. Ottawa's efforts to better integrate Quebec, and francophones generally, into Canada have been countered by the policies of successive Quebec governments. These policies have promoted the use of French as the sole official language of the province and the dominant language in Quebec's economy, and have systematically discriminated against the use of English in government, commerce and education. Quebec's francophone elites have by and large not been interested in the federal government's approach to bilingualism, prefering a territorial approach to language rights. This approach is also prefered by the majority of francophone Quebeckers. Their preference was evident when the provincial government decided to override a 1988 Supreme Court of Canada ru-

ling which held that the province's French-only commercial sign law violated the Constitution's guarantee of free speech. There was overwhelmingly popular support for the government's decision. What was perceived outside Quebec as a blatant violation of individual freedom and minority language rights was viewed by the province's francophone majority as a necessary protection for the French language against anglicizing tendencies.

Official bilingualism has not prevented the growth of a strong nationalist movement in Quebec nor eliminated the threat of separatism. One might argue, of course, that had it not been for official bilingualism Quebec separatism might be an accomplished fact instead of the nagging menace it has been for two decades. Viewed from this perspective, the policy may not have been a total failure.

But a second objective of official bilingualism has been to help preserve and promote official language minorities throughout the country, particularly francophone communities outside Quebec. This goal is quixotic, to say the least. It attempts to overcome the enormous assimilationist pressures to which francophones are subject, pressures that are somewhat weaker in parts of northern and eastern Ontario and in northern New Brunswick where significant numbers of francophones reside. Public money spent on providing government services, education and broadcasting in French has not been able to change the basic fact that the social and economic milieux outside Quebec are not supportive for francophones. It is very difficult to shop, work, worship, play and do the other daily activities that keep a language alive. Even francophone schools in predominantly English-speaking communities experience the pressures of language erosion.

In all provinces except Quebec, the French language community loses some of its members to the English majority. This may be seen from the difference between the number of people for whom French is their mother tongue compared to the number for whom it is their home language. The difference represents the rate of language transfer to the dominant language group (see Table I). Only in Quebec and, to a lesser degree, New Brunswick is the rate of French language retention high. By contrast, the rate of language retention among native English-speakers is high everywhere in Canada. Whereas the rate of transfer from French to English is 4 per cent for the country as a whole, it is only 0.3 per cent from English to French.

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TABLE I

Language Transfer from French to English, by Province (1986)*

	French Mother Tongue	French Home Language	English Home Language	Transfer Rate
Canada	6,090,430	5,611,035	298,910	4%
Newfoundland	2,085	905	980	47%
Prince Edward Island	5,040	2,615	1,945	38%
Nord Sealid	30,835	18,230	9,605	31%
New Brunswick	223,680	197,825	15,965	7%
Quebec	5,251,815	5,079,980	73,375	1%
Ontario	422,770	258,680	116,080	27%
Manitabo	422,770	22,035	17,265	38%
Saskatchewan	21,210	5,825	12,550	59%
Alberta	47,475	15,490	25,685	54%
British Columbia	38,605	8,715	24,530	63%
Yukon	600	180	325	54%
North West Territories	1,265	525	610	45%

* The numbers in the middele columns do not add to the number in the lefthand column because of transfers to groups other than English.

Source : Statistics Canada, Census 1986. *Language Retention and Transfer,* p. 93-153.

III. Constitutionalism and the 1992 Referendum

For over one hundred years Canadians lived with essentially the same constitution, modifying it rarely and only in minor ways. By and large the constitution was found to be flexible enough to cope with changing societal conditions and the evolving responsibilities of the two levels of government. In recent years, however, the constitution appears to have had few friends. A sort of obsessive constitutionalism has come to characterize Canadian politics, fueled by the widespread belief – widespread among elites, at any rate – that constitutional change is a necessary part of the solution to some of the major problems confronting the country. The one point of agreement among the governments, special interest groups, and academics who have been busy trying to rearrange the constitution to suit their own designs is that reform is needed.

The rise of constitutionalism is testimony to the failure of the traditional mechanisms for bridging linguistic and regional differences in Canada. But it also reflects a new spirit in Canadian politics that has been unleashed since the important constitutional reforms of 1982. It is a spirit of contentiousness and rights-consciousness that has been encouraged by the Charter of Rights and Freedoms and by the fact that, since the 1982 reforms, the doctrine of parliamentary supremacy

has been replaced in Canada by that of constitutional supremacy. [8] Politics has undergone a sort of legalization in Canada, as groups and governments increasingly have turned to the constitution and the courts to achieve their goals.

While the constitution was always a battleground in Canadian politics, particularly concerning the federal division of powers, it has assumed even greater importance in recent years. Societal groups and governments have come to see constitutional reform as an opportunity to entrench their interests and values in the constitution, thus either insulating themselves against change or increasing their political leverage and legitimacy.

For example, the 1992 Charlottetown Accord would have guaranteed Quebec one quarter of the seats in the elected House of Commons, despite the fact that Quebec's share of the national population is declining and that growing provinces like British Columbia would have to be denied future increases in their proportion of representation in order to fulfil this guarantee. This was clearly a proposal intended to entrench a feature of the status quo in the Constitution, placing it beyond the possibility of change. The Accord also included recognition of native Canadians' right to self-government and references to gender equality and multiculturalism as being fundamental characteristics of Canadian society. Critics argued that further entrenching group identities and associated rights in the constitution threatened liberal notions of equality held by most Canadians. There is little doubt that the prominence of these group identities would not have been diminished, and would probably have been promoted, by these reforms.

When Ottawa and the provinces negotiated a deal on constitutional reform in 1987, they did so in the elitist way that has so often characterized Canadian politics. The Meech Lake reforms, as they were known, were presented as a fait accompli. No prior public input was sought and the idea that the reforms might be altered before ratification was rejected. This elitism proved too much for many Canadians, and the Meech Lake Accord's failure was in large measure a repudiation of what was widely perceived to be an undemocratic process.

The 1992 Charlottetown Accord appeared to be quite different. It was preceded by two years of consultation and public debate that included government-sponsored task forces, forums and special hearings, as well as hundreds of privately-organized conferences on constitutional reform across the country. But despite this marathon of consultation before the deal on constitutional reform was struck, there was a peruasive sense – in English Canada at least – that the reforms agreed to by Ottawa, the ten provincial governments and Canada's main aboriginal groups, reforms that were supported by the three largest national political parties and by the country's major business associations and labour unions, represented more of the elitist deal-making that had proven the undoing of the Meech Lake Accord. Reform Party leader Preston Manning captured this popular sentiment when he said "If you vote Yes, you are following the politicians ; if you vote No, you are leading them". [9] This view was echoed by political scientist Duncan Came-

(8) A vestige of parliamentary supremacy is retained through art. 33 of the *Constitution Act, 1982,* known as the "notwithstanding clause". It allows either Ottawa or a provincial legislature to pass a law that violates the individual freedoms, legal rights or equality rights set down in the Charter of Rights and Freedoms. This power has been used on only a handful of occasions.

(9) Quoted in : G. FRASER, Canada won't be the same after vote. *Globe and Mail,* 11 October 1992, A6.

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ron who observed, "it is a take-back-democratic-control vote when you vote No and a concession to the elite when you vote Yes". [10]

The results of the referendum seemed to confirm this interpretation. There was a clear pattern of class voting on the reform proposals. Less affluent working class communities were more likely to reject the Charlottetown Accord than were more affluent professional ones. In Ontario, where the outcome was almost a dead heat, comparatively prosperous communities like Toronto, Ottawa, London and Waterloo voted for the Accord (albeit by relatively small margins in many constituencies). But in communities with a relatively larger working class, many of which have been hit hard in recent years by the decline in manufacturing, the Accord was generally rejected, often by large margins. Communites like Windsor, Kitchener, Oshawa, Niagara Falls, St. Catharines, Sudbury and Sault Ste. Marie fell into this group.

The class division was also apparent within individual cities, such as Hamilton, where poorer working-class constituencies voted No more heavily than the more affluent constituencies adjacent to them. In the West, where the Accord was rejected by every province, the Yes side tended to do best in the most affluent urban constituencies. It was among the less advantaged and less economically secure parts of Canadian society that the Accord was most likely to be seen as a self-serving pastiche of compromises among Canada's political elites.

The catalogue of reasons why the Charlottetown Accord was rejected was vast. As journalist Jeffrey Simpson wrote of British Columbia.

"A No vote here would send 'em a message, or rather a variety of jumbled ones : a pox on politicians, Quebec, Ontario, the East, (Prime Minister) Mulroney, high taxes, unemployment, free trade, male-dominated politics, bilingualism, (Quebec Premier) Bourassa, Quebec's language laws, special status, shirty Indian chiefs, executive federalism, distinct society, Godlessness, social change, constitutional debate and a neo-corporatist agenda, to name just a few targets". [11]

The 'Yes' side in the referendum was hardly more coherent. Some supported the Accord because they liked its provisions on aboriginal self-government, gender equality, distinct society status for Quebec, a reformed Senate, decentralized powers or some other part of the Charlottetown package. But many others doubtless voted Yes out of 'constitution fatigue", a weariness brought on by years of incessant debate over constitutional change. The Yes forces attempted to exploit this weariness by arguing that the Charlottetown Accord, though not perfect, was the best deal possible and that it would put the constitutional issue to rest until the next century (not so far off, a critic might add).

Nor were they shy about using blatant fear tactics in an attempt to cow citizens into voting Yes. Federal cabinet ministers told Canadians that Canada could suffer the fate of Lebanon or ex-Yugoslavia if the 1992 accord was rejected, comparisons as absurd as they were lurid. Politicians and business leaders who supported the Charlottetown agreement held out the spectre of economic instability and enormous job losses. The campaign of fear probably swayed many voters. But if call-in radio shows and letters to the editor in newspapers were anything to judge by, the scare-mongering tactics used by some on the Yes side generated deep resent-

(10) *Ibid.*, A6.

(11) J. SIMPSON, Leaving aside the fine points, B.C. just wants to flex its muscles. *Globe and Mail,* 16 October 1992.

ment among many Canadians, as did Ottawa's imputation that No supporters thought less of their country than did those on the Yes side. When former Prime Minister Pierre Trudeau broke his silence and condemned the Charlottetown Accord as just the latest instance of Quebec politicians blackmailing the rest of Canada in order to acquire additional powers and money, opposition to the agreement acquired an unstoppable momentum.

In the end, the Charlottetown Accord was rejected by 54.4 per cent of those who voted, including No majorities in six of the ten provinces. Contrary to the federal government's apocalyptic campaign predictions, the sky did not fall the day after. But neither was there any reason to assume that all was well in the land. Quebec's No meant something very different from British Columbia's or Alberta's. Separatists rejoiced in the outcome, but in no way could Quebec's solid No be interpreted as a vote for separatism. It was more plausibly viewed as rejection of a deal that did not go far enough toward satisfying Quebec's demands for more powers and recognition of their distinctive collective identity. Of course many English Canadians said No to the Charlottetown Accord because they thought it went too far in these directions. Le plus ça change, le plus c'est la même chose !

IV. Conclusion

Are there lessons to be learned form the recent constitutional débâcle in Canada ? Some observers believe so. An article that appeared in the Belgian newspaper Le Soir on the day of Canada's referendum refered to 'le syndrome Maastricht au Canada', arguing that 'le rejet du compromis constitutionnel sera aussi celui de la classe politique'. [12] As in Denmark and France, where referenda were held on the controversial Maastricht Treaty, there was undeniable evidence that many Canadians believed their political elites to be out of touch with, and insensitive to, their interests.

But other lessons also emerged from Canada's referendum experience. One had to do with the dangers of submitting controversial constitutional questions to the electorate. In linguistically divided societies like Canada and Belgium, referenda are seldom resorted to in part because of their potential for exposing and exacerbating divisions between the major linguistic communities. For example, a plebiscite on obligatory military service during World War II sharpened the ill-feeling that existed between English (for) and French (against) Canadians, confirming the dangers of this democratic device.

The fact that Canada's 1992 referendum did not widen the gap between French and English Canada was more apparent than real. In terms of appearances, the fact that Quebec and most of the predominantly English-speaking provinces rejected the Charlottetown Accord suggested that there was no linguistic division on the issue. In reality, however, the reasons why English Canadians rejected the Accord tended to be quite different – in many cases diametrically opposite ! – to those of their québécois compatriots.

Another lesson involved the limits of constitutionalism as a mechanism for resolving conflicts and accommodating differences. It is hard to escape the conclusion that, at some point, the process of constitutional reform got out of hand in Canada, so that too much was demanded of it by too many groups. A country

(12) C. de GROULART, "Le syndrome Maastricht frappe au Canada". *Le Soir,* le 26 Octobre 1992, p. 1.

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whose political and constitutional histories have been characterized by gradualism, in contrast to the revolutionary and violent nation-building of its southern neighbour, found itself on unfamiliar terrain. A sort of pressure-cooker situation was created, largely by the orchestrations of the federal government. Canadians were asked to accept dozens of changes to the Constitution, including several highly controversial ones like distinct society status and guaranteed representation for Quebec, recognition of the right to native self-government and a 'Canada clause' that enumerated the 'fundamental' characteristics of Canadian society. Although this is in the realm of speculation, it seems likely that many citizens felt confused and threatened by what appeared to be a vast and complicated reform agenda. What is more certain is that some of the values English Canadians perceived to be embedded in the Accord struck them as objectionable. No aspect of the agreement stirred more vitriolic in English Canada than the ad vitam guarantee of Quebec's share of representation in the House of Commons, a proposal that ran against the idea of majoritarian democracy subscribed to by most English Canadians. While many of the Charlottetown Accord's supporters explained their defeat as having been due to the deep unpopularity of the Prime Minister and widespread mistrust of politicians and the major parties, this explanation unfairly trivializes the extent to which the Accord's rejection was also a rejection of some of the ideas it was believed to contain.

In the wake of the failed Charlottetown Accord, which itself came only two years after the defeat of the Meech Lake Accord, the prospects for reforming Canada's constitution do not appear good. Although many politicians and most citizens would prefer to let the issue rest, it is clear that it will not go away. Many argue that this is because no Quebec government has agreed to the 1982 constitutional reforms which, although they apply in Quebec as everywhere else in Canada, lack legitimacy in Canada's only predominantly francophone province. Thus, they say, the constitution remains unfinished business.

In fact, however, the deeper reason why the constitutional issue will remain on the agenda is because Quebec nationalism is inextricably tied to demands for greater jurisdictional competence for that province. Both of Quebec's major political parties believe that a formal transfer of powers from Ottawa to the province is necessary, differing mainly in whether they think political independence is necessary to achieve nationalist goals. If the separatist Parti Québécois is elected in the next provincial election, Ottawa will have little choice but to again promise constitutional reforms as a way of appeasing more moderate nationalist elements in Quebec. But even if the 'federalist' Quebec Liberal Party remains in power, constitutional reform is bound to resurface. Nationally, neither of the two largest parties is able to ignore these demands because of the strategic importance of Quebec to their election chances. And so constitutionalism seems likely to remain Canada's fate, despite its past failures and notwithstanding that the terms of a reconciliation between the aspirations of French and English Canada are elusive as ever.

Summary: **The Failure of Constitutionalism in Canada**

An obsession with constitutional reform characterized Canadian politics between 1987 and 1992. This reflected the failure of traditional mechanisms for bridging linguistic and regional differences in Canada, and the spirit of contentiousness and rightsconsciousness that has been encouraged since the passage of the Charter of Rights and Freedoms in 1982.

These efforts to reform the constitution failed. In the 1992 referendum a majority of both French- and English-speaking Canadians, and majorities in 6 of the 10 provinces, rejected proposals supported by the country's political and economic elites. Support for the reform proposals was greatest among the more affluent parts of Canadian society. Despite the fact that both French and English Canada rejected the proposed reforms, their reasons for doing so were quite different. In the wake of this failure, the terms of a reconciliation between the aspirations of French and English Canada are elusive as ever.