THE QUEST FOR NATIONAL UNITY:
OTTAWA'S CONSTITUTIONAL STRATEGY IN THE TRUDEAU ERA

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ABSTRACT

The rise of Quebecois nationalism in the 1960s and regionalism in the 1970s presented a considerable threat to the Canadian state. A variety of political, institutional, economic and socio-cultural factors have contributed to these phenomena. One of the primary preoccupations of the federal government in recent decades has been the resolution of the national unity problem.

During the tenure of Pierre Trudeau as prime minister, Ottawa developed an intriguing and multi-faceted constitutional strategy to deal with the challenges facing Canadian federalism. This thesis has divided that strategy into three major parts: the reform of federal institutions in an intrastate direction; the policies of bilingualism and multiculturalism; and the entrenchment of a constitutional Bill of Rights. These initiatives may be briefly described as a restructuring of institutions and state-society relations designed to strengthen the national government and community at the expense of their provincial counterparts. The federal plan was an attempt to build a pan-Canadian identity which transcended regional identities, to limit the legislative capacities of provincial governments, and to increase the salience of non-territorial cleavages.

The national unity strategy of the Trudeau government can be viewed as part of a historical pattern of federal initiatives designed to prevent the provincialization of the country. However, by emphasizing Canada's linguistic duality and cultural diversity and by shifting the focus onto individual rights and the symbolic aspects of social organization, Trudeau's formula diverged somewhat from previous nation-building ventures.
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INTRODUCTION

In recent decades, the Canadian federation has been subject to an array of centrifugal pressures, some of which have presented a serious challenge to its continued existence. The rise of the new state-centred Quebecois nationalism that emerged in the 1960s brought demands for greater provincial autonomy, "special status," and even outright political independence. In the following decade, the development of the broader phenomenon of "provincialism" or "regionalism" within English Canada produced similar demands for a decentralization of powers and for an increased provincial role in national policy-making. The increased power and assertiveness of provincial regimes set the stage for a series of dramatic confrontations with Ottawa.

While many cleavages have emerged in Canadian society during the postwar era, those of the linguistic and regional character have been the most salient and have been the only ones with the potential to threaten the territorial integrity of the Canadian state. Not only did the emergence of regionalism and dualism intensify the intergovernmental struggle for power, it gave rise to alternative conceptions of community which put the very legitimacy of the federal government and the Canadian constitution in question. The phenomena of Quebec nationalism and provincialism brought with them a redefinition of Canada which emphasized provincial governments, communities and identities at the expense of their national counterparts. Canada was perceived
as an entity in which provinces were the basic unit and the national interest was no more than the aggregate of provincial interests.

The national unity "crisis" that emerged in Canada demanded a definitive response on behalf of the central government in Ottawa. The promotion of national unity has indeed been a fundamental concern of the federal government over the past three decades. Reacting to the balkanization of Canada and the decline of its own power and legitimacy, the federal government developed an intriguing and multi-faceted strategy for enhancing national integration. Articulated in this strategy was a rival conception of Canada, one which saw the central government as paramount and the national community as more than the sum of its component parts.

The purpose of this thesis will be to examine Ottawa's national unity strategy from its initial responses to the Quebec challenge in the 1960s to the signing of the 1982 Constitutional Accord. Given the time period under consideration, the primary — though not exclusive — focus will be on the years in which Pierre Elliot Trudeau was prime minister with particular emphasis on his personal contribution to the direction of federal initiatives. It will attempt to address the following questions: 1) what did Ottawa perceive to be the root cause of linguistic and regional conflict? 2) what were the underlying theoretical assumptions behind the strategy for promoting national unity? and 3) how did this strategy change -- if at all -- over this
time period?

Ottawa's plan for promoting national unity may be succinctly described as an attempt to restructure federal institutions and state-society relations in order to strengthen the national government and community to the detriment of provincial governments and communities. It involved the development of initiatives designed not only to limit the power and influence of provincial regimes, but to reorient citizen loyalties and identification toward the national level. This was to be achieved by giving "symbolic and practical expression to a national citizenship independent of regional location." ¹

Discussion of the nation-building strategy of the federal government has been divided into three parts and will be dealt with individually in chapters 2 through 4. ² Chapter 2 will look at the attempt to enhance the "intrastate" dimension of Canadian federalism -- that is, the attempt to sensitize federal institutions to regional particularisms. It was anticipated that through a selective regional input into national policy-making, the federal government could enhance its legitimacy while limiting the capacity of provincial governments to present themselves as the only effective regional representatives. Ultimately, the Trudeau administration was unsuccessful in implementing the bulk of these reforms.

One of the most important items on the federal agenda was the forging of a common and unifying "pan-Canadian" identity. One of the cornerstones of this objective were the policies of bilingualism and multiculturalism. Responding to the grievances of
French-Canadians and ethnic minorities, these policies were intended to alleviate feelings of alienation experienced by these groups and to make Canada’s French-English duality and cultural diversity central attributes of the Canadian identity. The inclusion of bilingualism and multiculturalism into the 1982 Charter of Rights and Freedoms helped further this objective and was an important aspect of the Charter’s nation-building dimension. This subject will be the focus of discussion in chapter 3.

The potential of the Charter to enhance national unity was not simply confined to the fact that it contained provisions regarding language and culture. As chapter 4 will demonstrate, the entrenchment of a constitutional Bill of Rights was intended to arouse a rights consciousness among Canadians; to endow citizens with a common identity as bearers of rights independent of provincial residency. It also reflected the firm commitment on behalf of federal elites to liberal-democratic principles. Such a document, along with the policies of bilingualism and multiculturalism, was intended to lessen the salience of territorial conflict and to limit the legislative capabilities of provincial governments.

The capacity of governments to partake in such premeditated acts of political and social engineering has been facilitated in modern times by the increased "politicization" of society. State and society have become tightly interwoven making societies highly susceptible to change by governmental activity and institutional arrangements. Both the federal and the provincial
state in Canada have engaged themselves in the art of refashioning their communities and both are intimately aware of the consequences such actions can have for their own authority and legitimacy. Their actions have had an enormous impact on the development and evolution of our collective identity.³

A careful look at the Trudeau government’s national unity strategy will reveal some striking continuities with the past. Historically, the federal government has consistently acted to protect and promote the national community and identity whenever threatened. As Alan Cairns observes:

To look back at the major initiatives is to see a strong thread of basic purpose: the ever renewed federal effort to proceed incrementally to the evolutionary creation of the symbolic and practical attributes of a single Canadian citizenship. Federal policy in the recent constitution review process was the contemporary expression of this historic and traditional federal government effort to strengthen the national community and to resist the provincialization of the Canadian people.⁴

Despite these similarities, nation-building in the Trudeau era had some important distinguishing features. Whereas past undertakings have focussed on such areas as the promotion of economic union or the development of uniform standards in social services, Trudeau’s primary focus was on the fundamental rights and freedoms of individuals.⁵ Canadian citizenship was to be redefined in terms of the common possession of liberal-democratic rights. In addition, the Trudeau era was marked by a relative shift in state activity from the material order to the symbolic order. Finally, while previous nation-building efforts did not question the continuation of the country as a British-type society, Trudeau sought to establish a distinctly Canadian
identity based on the values of linguistic duality and cultural diversity.

Before entering into a more detailed examination of Ottawa's national unity strategy, it would be useful to outline some the explanations as to why Canada has experienced such a high level of conflict and disunity. Chapter 1 will consist of a general overview of the academic literature on this subject. It will look at the contribution of institutional, political, economic, and socio-cultural factors to the national unity dilemma. As will become evident, a combination of factors has induced regionally based interests to find expression through provincial governments. This has served both to strengthen provincial power and to increase intergovernmental conflict. The response of the federal government was guided by its assessment as to which of these factors it considered to be most relevant. Its response was also determined by the particular theoretical assumptions regarding political integration to which it subscribed, by considerations of self-interest, and by the policy instruments at its disposal.
ENDNOTES: Introduction


2. It should be noted here that this thesis will not give a complete account of the Trudeau government's nation-building strategy, but will concentrate on the constitutional dimension. There are, indeed, other components to the overall strategy included among which are initiatives in the areas of economic and foreign policy.


5. This is not to claim that the Trudeau government ignored the economic and social realms entirely or that previous administrations excluded individual rights from their nation-building efforts. Diefenbaker had indeed enacted the Canadian Bill of Rights in 1960 and Trudeau brought forth the National Energy Program during his final mandate in office. There has, however, been a relative shift in the direction noted.
CHAPTER 1

THE ROOTS OF DISUNITY

Regional and linguistic conflict has been part of Canadian political life since Confederation. Often manifesting themselves in the form of federal-provincial confrontation, these phenomena have presented a fundamental challenge to Canadian unity. However, it was not until the 1960s that a substantial intensification of such conflict occurred. Until that time, the postwar era had been marked by relative harmony. The term, "cooperative federalism" was often used to characterize federal-provincial relations during this period. A number of factors can be cited as having contributed to the deterioration of the broad consensus that had developed on political objectives. This chapter will outline some of the major explanations for the national unity problem in Canada. It will be divided into three sections: the first will deal with socio-cultural explanations; the second with economic factors; and the third with the impact of political elites and institutions.

SOCIO-CULTURAL FACTORS

Some political theorists have argued that the development of a homogeneous political culture or a common pole of identification is a necessary prerequisite for the maintenance of unity and stability within ethnically and/or regionally divided societies.
Political integration depends, according to Karl Deutsch, on the existence of "common values, thoughts, or feelings" and a "common attachment to symbols." David Bell and Lorne Tepperman argue that common cultural traits are precisely what is lacking in Canada, that cultural diversity is what lies at the root of Canada's national unity crisis. They claim that there is an absence of a single political culture in Canada resulting in a situation in which citizens identify themselves very little with the national community and the federal level of government.

Although Bell and Tepperman have surely underestimated the existence of a Canadian identity, it is undoubtedly true that political attitudes and beliefs vary from region to region. Empirical evidence to this effect is provided in a study undertaken by David Elkins and Richard Simeon. By comparing cross-country survey data on political efficacy, trust and involvement, they conclude that there is indeed regional variations, particularly between the two dominant linguistic groups. These divergences are attributed to a variety of factors including differences in settlement patterns, colonial background, and ethnic composition.

Sociologist Raymond Breton has argued that the importance of the symbolic-cultural dimension of social organization has been underestimated in the study of politics. A society's symbolic order -- defined as the manner in which values, norms, customs, ideas, etc. are incorporated into the operations of public institutions -- represents the collective identity of a people and, hence, its construction has important implications for the
cohesiveness of society. As Breton explains:

The identity component of the symbolic order is important for individual members of the society; ... there is an interdependence between the individual and collective processes of identity formation. Thus, individuals expect to recognize themselves in public institutions. They expect some consistency between their private identities and the symbolic contents upheld by public authorities, embedded in the societal institutions, and celebrated in public events. Otherwise, individuals feel like social strangers; they feel that the society is not their society.*

Depending on how the symbolic order is constructed, it may have an integrative effect or it may induce a feeling of political alienation with certain segments of society. For many French-Canadians, the latter was certainly the case prior to the late 1960s. "Their intense feeling was that Canadian society was not their society, its institutions not their institutions, its meanings and symbols not their meanings and symbols. They felt alien or strangers, and in increasing numbers, they wanted out."5

Another approach links the recent rise of ethno-national movements in Canada and the rest of the Western world to the growth of the state and the imperatives of economic modernization. Milton Esman6 has argued that industrialized countries have undergone a process of economic rationalization and bureaucratic centralization, resulting in a shift of economic control and prosperity away from peripheral regions to the centre. Moreover, advances in communications have facilitated the penetration of ideas and values from centre to periphery and from majority linguistic communities to minority linguistic communities. This has resulted in an increased threat of cultural assimilation,
creating a reaction within minority communities to reassert their distinct identities through collective action.

The case of Quebec is undoubtedly the most vivid example of a culturally based intergovernmental conflict. In the early 1960s, Quebec society underwent a remarkable transformation known as the "Quiet Revolution." This phenomenon was not so much an upheaval of political and socio-economic structures -- though changes in these areas certainly did take place -- as it was a "revolution" in ideology. It was first and foremost a reformulation of attitudes regarding the "purpose and character of society and state." The Quiet Revolution marked the wholesale rejection of the traditional values of rural, Catholic Quebec and their replacement with secular, materialist values more attuned to an industrialized and urbanized society. As Kenneth McRoberts and Dale Posgate note, "this ideological revolution constituted a long-avoided reconciliation with social and economic development."

The Quiet Revolution ushered in a new nationalism in Quebec, one that perceived social and economic development to be a prerequisite rather than an impediment to linguistic and cultural survival. It was through the development of a dynamic economy owned and controlled by French-Canadians with French as the dominant language that "national" survival would be ensured. The old defensive nationalism of "survivance" was replaced by the new "rattrapage" and the desire to become "maîtres chez nous." Of course, the movement toward modernization presented an increased threat of linguistic and cultural assimilation. The imperatives
of modernization and national survival demanded an increased role for the provincial state in the social, economic and cultural realms. Foremost among these were the collectivist language policies, Bill 22 and Bill 101. The Quebec government's activities brought it into direct confrontation with Ottawa, which resisted its expansionism and viewed its language policies as a dire threat to Canadian unity.

Socio-cultural factors have, therefore, been a significant contributing factor to the increase in regional and — more importantly — linguistic conflict in Canada.

POLITICAL ECONOMY

The study of political economy provides some interesting insights into the anatomy of regional and linguistic conflict. The interaction between market forces and the state in Canada has resulted in regional disparities which have been the cause of considerable tension. Some have argued that Central Canada has been the primary benefactor of federal economic policies at the expense of the Western and Maritime regions. The protective tariffs instituted under the National Policy, for example, served the interests of the manufacturing sectors of Ontario and Quebec while lowering the living standards in the peripheral regions and inhibiting these regions from establishing advantageous commercial interactions with neighbouring American regions.

Conflict between Canada's two dominant linguistic groups has been at least partially motivated by economic disparities. Along
with the movement toward modernization that swept Quebec in the
1960s came a feeling of resentment among many French-Canadians
because of their inferior socio-economic status and lack of
career opportunities and mobility in the business world and in
the federal public service."

Perhaps the most intriguing argument relating political
conflict to economic forces is one which links intergovernmental
strife with class conflict. Garth Stevenson argues that the key
to understanding federal-provincial conflict lies in "certain
characteristics of the political economy of Canada, which both
produced conflicts between different classes and class fractions
and at the same time caused these contending forces to identify
their interests with different levels of government, and vice
versa."

Stevenson claims that the regional nature of the economy
coupled with the fact that jurisdiction over natural resources
rests with the provinces has created not only a high level of
inter-regional conflict, but a natural alliance between the
provinces and their major resource industries. Given the power
of the resource sector, this alliance has strengthened provincial
governments relative to Ottawa. It has enabled the provincial
state to expand and diversify and has ultimately served as a
decentralizing force in Canadian federalism. This process is
aptly summarized by Stevenson as follows:

In Canada, important sections of the ruling class have an
interest in strengthening the provinces in relation to
Ottawa. ... Provincial jurisdiction over resources makes
control over the provincial state apparatus important to
certain sections of the bourgeoisie, and gives them an interest in strengthening the provincial state and providing it with the wherewithal to carry out its functions effectively. The increasing effectiveness and power of the provincial state, as well as its revenues from resource royalties, give it the means to assume new functions and acquire new assets. These in turn make it still more essential for the bourgeoisie -- no longer simply those elements directly interested in resources -- to solidify their relationship with the provincial state on which they increasingly rely to promote their common interests. The process thus continues indefinitely.¹¹

Canadian history is replete with examples of how conflicts between classes or class fractions have been translated into regional or federal-provincial conflict. The controversy surrounding the National Policy of Sir John A. Macdonald is a classic example of how governments took sides in a battle between private economic actors. In this case, manufacturing interests were in conflict with resource/ agricultural interests. Federal-provincial confrontation between Ontario and Ottawa was particularly intense in the early part of the twentieth century over such issues as the imposition of a "manufacturing condition" on certain raw material exports by Queen's Park and the provincial takeover of hydro-electric power facilities. These conflicts were instigated by the divergent interests of foreign resource capital and those of the local bourgeoisie, the former aligning itself with Ottawa and the latter with Toronto.¹²

Conflicts between the prairie provinces and the federal government derive from what C.B. Macpherson has called the "quasi-colonial" status imposed on the region by the capitalist interests of central Canada. The independent commodity producers of the prairies turned to their provincial governments to seek
redress from federal tariff and freight policies that catered to the interests of eastern capital. The election of the Social Credit Party in Alberta in 1935 reflected western discontent with the federal government and marked the beginning of a series of confrontations resulting from Premier William Aberhart's unorthodox attempts to deal with the problems of the Great Depression.13

Economic based disputes between Ottawa and the prairie provinces persisted during the postwar period. Larry Pratt and John Richards have given a full account of how federal-provincial conflict was sparked by interventionist policies on behalf of the Albertan and Saskatchewan governments.14 The Blakeney and Lougheed regimes instituted a number of regulatory and revenue-producing measures which brought opposition from multinational resource firms and the federal government. These actions had the broad support of the rising indigenous middle class which included business entrepreneurs, urban professionals, and state administrators -- all of whom benefitted greatly from the resulting socio-economic developments. They were the driving force behind the government's actions and provided the knowhow and expertise for their province-building ventures.

The conflict surrounding the National Energy Program (NEP) in the early 1980s was particularly intense. The NEP was part of the Trudeau governments effort to reassert federal primacy in the energy sector. In this case, an alliance between the producing provinces and the multinational oil companies was pitted against the federal government and the corporate interests of central
Canada, which wanted to ensure a cheap energy supply to enhance their competitive position.\textsuperscript{15}

A class-based interpretation has also been given to conflicts between Ottawa and Quebec. McRoberts and Posgate argue that changes in the class structure of Quebec society help explain the rise of the new nationalism in the 1960s.\textsuperscript{16} As in the West, urbanization and industrialization led to the emergence of a "new middle class" with a vested interest in a more autonomous and interventionist provincial state. Eager to expand their personal opportunities, this group of urban professionals and businessmen favoured a rapid expansion of social services and economic activity. The attempt to gain control of social institutions brought them into confrontation with the Catholic Church while efforts to move into higher positions in the economic spheres were impeded by the dominant anglophone business establishment. The solution in both cases was to use the provincial government as the vehicle for achieving their objectives. The new middle class was largely responsible for the development of the new Québécois nationalism which stressed the virtues of "rattrapage" or modernization, the need to take control of their economic destiny, and the expansion of provincial power at the expense of the federal government. In the words of Albert Breton, "nationalism is a tool used by the middle-class to accede to wealth and power."\textsuperscript{17}

Despite the earlier assertion that provincial governments have gained in relative strength due to support given to them by
resource capital, it is apparent from the above examples that private interests are not oriented toward any one level of government on a permanent basis. As Pratt and Richards astutely observe:

There is no evidence for the argument that big business in Canada has typically resisted centralization and favoured provincial autonomy. The only things that capital consistently supports are its own interests, and when these have been threatened by aggressive provincial governments, business has unhesitatingly pushed for a stronger central government. ... About all that can be concluded is that big business understands that a federal system provides interest groups with a number of potential sources of leverage and veto points, and that capital, like perfidious Albion, has no permanent allies or enemies, only permanent interests.¹⁰

To summarize, the notion that federal-provincial conflict can be attributed to the existence of economic or class-based conflict is a valuable perspective that helps us to better understand the turbulent world of intergovernmental relations in Canada.

POLITICAL ELITES AND INSTITUTIONS

The institutions and elites of the Canadian political system have also contributed to linguistic and regional tension and, therefore, the conflict between the two levels of government. The rapid expansion of the public sector at both the federal and provincial levels in the absence of a clearly defined division of powers has led to intense intergovernmental competition. In addition, the written constitution and the process of judicial review have empowered the provinces, enabling them to challenge the dominance of the federal government. Finally, national
institutions generally have tended to be insensitive to regional interests, thus forcing these interests to find expression through provincial governments. Consequently, an unnecessary strain has been placed on federal-provincial relations.

Public sector expansion is a phenomenon common to all Western industrialized countries in the contemporary era. The Canadian experience is marked by expansion at both the national and provincial levels, with the latter expanding more rapidly than the former over the past 30 years. A number of factors have been cited as contributing to the growth of the public sector. For example, the process of industrialization and urbanization has led to tremendous social change, thus giving rise to the need for a wide range of social welfare programs. Certain "externalities" of the capitalist system such as economic fluctuations, environmental pollution and occupational hazards have resulted in the need for increased governmental intervention and regulation. Moreover, the proliferation of organized special interest groups has put increased pressure on governments to act on their behalf. Finally, governments have expanded public services in an effort to enhance their legitimacy in the eyes of those they govern. The decline of traditional values, the increased heterogeneity of society, and increased public awareness have all contributed to a legitimacy problem for modern Western governments.17

Of course, one need not look to factors external to the political process in order to explain public sector expansion. Alan Cairns has argued that there is built into the Canadian
political system a "bias in favour of bigness."

As in all modern social democratic societies, the electoral system tends to foster competitive bidding and a short-term outlook among political parties, and the tax system is endowed with the capacity to absorb increases in government spending by broadly distributing the costs. Moreover, inherent in any governmental organization is a tendency toward expansion. Political and bureaucratic elites at both levels are driven by the desire to enhance their own status and power. In the Canadian case, such expansionist tendencies are further abetted by a vague and outdated written constitution which has failed to clearly demarcate the jurisdictional boundaries between the two levels of government. This has given each level the incentive to launch preemptive strikes into new areas of jurisdiction and even to intrude into policy areas normally reserved for the other. The inevitable outcome has been a high degree of jurisdictional overlap and entanglement. Cairns has gone so far as to describe the situation as one approaching "intergovernmental anarchy." He goes on to claim that "[t]he federal-provincial game has gotten out of hand, and we are in danger of being left not with a flexible division of powers, but a non-existent division."  

The fact that the provincial state has expanded more rapidly than its federal counterpart also helps explain the increase in intergovernmental conflict. The provinces have emerged as powerful and independent actors, thus giving them the capacity to challenge the dominance of the central government in a way that was previously not feasible. This can largely be explained by
the fact that the BNA Act gave the provinces control over those policy areas which, in the postwar era, went on to become the growth areas of government. Among these were health, welfare, education, and natural resources. As the provincial governments expanded into these areas, they became endowed with increasing administrative and fiscal resources and were headed by new leaders who embarked on ambitious "province-building" ventures. Armed with these new capacities, the provinces were in a position to challenge federal authority. Canadian federalism has become characterized by big government at both levels, each endowed with sizable public sectors and intent on moulding their economies and societies to their own purposes.

Another approach to explaining the expansion of provincial power focuses on the process of judicial review. One of the preeminent roles of the judiciary in a federal system is to interpret the meaning of the constitution in times of inter-governmental deadlock. In performing this function, the courts can potentially have a major impact on the allocation of jurisdictional powers. Some scholars contend that during its tenure, the Judicial Committee of the Privy Council (JCPC) made several critical misinterpretations of the constitution that resulted in excessive increases in provincial power at the expense of the dominion government. Frank Scott has argued that the general power of Parliament to enact legislation for the "Peace, Order, and Good Government of Canada" was narrowly and inaccurately interpreted as being an "emergency" power rather
than the residual power it was initially intended to be. In addition, the "Regulation of Trade and Commerce" set out in section 91 was also narrowly interpreted while provincial powers under the "Property and Civil Rights" clause of section 92 were given a relatively broad interpretation. Hence, in its adjudication of constitutional matters, the JCPC increased the powers of the provincial governments thus bringing them into jurisdictional areas in which the dominion government was already actively involved.  

Having replaced the JCPC in 1949, the Supreme Court of Canada proved to be somewhat less restrictive in defining federal powers, though it did not by and large abandon the precedents set by its predecessor. However, unlike the Judicial Committee, the Supreme Court has played a relatively insignificant role in the evolution of the division of powers prior to the 1970s. The primary reason for this is that political leaders became less willing to resort to the courts as a way of resolving jurisdictional disputes. Court decisions came to be viewed as unpredictable, overly rigid, and lacking in clarity, thus discrediting the entire process of judicial review. The lack of faith in judicial decision-making led governments to seek resolution of jurisdictional disputes through intergovernmental negotiations.

The cultural and linguistic diversity of Canada combined with the regionalized nature of the economy virtually ensures the existence of conflict regardless of the kind of political structures in place. Yet, it is evident that the federal institutions
of government have exacerbated regional tensions in a number of ways due to their inability to effectively accommodate regional interests. A useful distinction has been made by Donald Smiley between two methods in which to deal with the diversities within federal societies. The first, which has come to be known as "interstate" federalism, involves the representation of regional interests through provincial governments. Consequently, this model is primarily concerned with the relations and the distribution of powers between the two orders of government. The second, known as "intrastate" federalism, involves the expression of regional interests within the central government. Simply stated, Smiley's argument is that the Canadian federal system has come to rely almost exclusively on the former while ignoring the latter in its attempt to accommodate territorial interests, thus placing an excessive burden on intergovernmental relations.

Canada was the first country to combine federalism with a parliamentary form of government -- a combination not easily reconcilable. While a federal system was adopted to reflect the country's regional diversity, a parliamentary system based on the Westminster model exhibits a strong "majoritarian" thrust. Unlike the American system where power at the centre is fragmented, there is a concentration of power in Canada which enables the governing party, under most circumstances, to dictate public policy without the obstruction of minority groups. As the Canadian political system evolved, power has become more and more concentrated in the hands of the prime minister and the senior cabinet members. In conjunction with this development, national
institutions — including the House of Commons, the Senate, the electoral system, political parties, the cabinet, and the federal bureaucracy — have evolved in a fashion that has made them less responsive to regional particularisms.

A predominant feature of the House of Commons is the rigid party discipline exhibited in parliamentary voting. Unlike the early years of Confederation when MPs were unrestrained by party dictates, dissenting votes are now a rare occurrence. A study of two parliamentary sessions in 1963 revealed that 96.8 per cent of all votes cast by MPs were consistent with the position of their party leadership. In fact, 78.1 per cent of MPs never broke with the party line during these sessions. Consequently, Members of Parliament are inhibited from acting as effective representatives of their regions or constituencies. Party caucuses do give individual MPs the opportunities to present regional viewpoints, though the secrecy of this forum makes it difficult to assess the impact that this has had.

Just as the House of Commons has not adequately given expression to territorially based interests, neither has the Senate. It was the initial intention of the Fathers of Confederation that this body serve as a forum in which regional interests could have an influence on federal decision-making. However, the fact that the Senate is entirely appointed by the prime minister usually on the basis of party patronage has gradually undermined its legitimacy as a democratic and regionally representative body. Although formally still powerful, in
practice, the upper house has declined in importance over the years as pressure from elected officials and public opinion has relegated it to the sidelines of national politics. Numerous proposals advocating the reform or abolition of the Senate have appeared, particularly over the past twenty years.

The first-past-the-post electoral system has also served to inhibit the expression of regional interests at the federal level by causing certain regions to be underrepresented within party caucuses. In his study of the electoral and party systems, Cairns argues that political leaders are encouraged to concentrate their campaign effort and appeal on those parts of the country where they are most likely to achieve success in terms of parliamentary seats and to ignore the other parts. This strategy, in turn, tends to create regionally based parties and regional blocs of seats in the legislature, thus reinforcing the territorial divisions within the country. At no time in Canadian history was this more acute than in the late seventies and early eighties when the federal Liberals and Tories had virtually no representation in the West and Quebec, respectively.

Given that the extra-parliamentary wings of Canadian political parties are virtually excluded from any substantive decision-making, a large imbalance in the regional composition of the caucus is bound to have a major impact on party policy. In Cairns's words, "the general perspectives and policy orientations of a party are likely to be skewed in favour of those interests which, by virtue of strong parliamentary representation, can vigorously assert their claims." Should the governing party
find itself in such a situation, it runs the risk of alienating certain sections of the country, hence contributing to regional tensions and federal-provincial conflict.

The federal public service has also evolved in a manner which has made it less regionally representative. The patronage system of recruitment was replaced by one based on the merit principle by the Borden administration in 1918-1919. One of the most noteworthy consequences was the decline of French-Canadian participation in the federal public service. Technocratic efficiency became the governing principle of the bureaucracy — a principle which leads to a bias towards uniformity and insensitivity to regional particularisms.

Finally, changes in the structure and operation of the federal cabinet have contributed greatly to the decline of the intrastate dimension of Canadian federalism. Due to the concentration of power in the executive, the extent to which the central government is receptive to regional concerns will depend largely on how the cabinet functions. The transition from what Stefan Dupre calls the "departmentalized cabinet" to the "institutionalized cabinet" in the late 1950s and early 1960s had a profound impact on the federal system. The increased role of central agencies and the Prime Minister's Office, and the shift toward a collegial process of decision-making are among the major features of the present-day executive. Although cabinets generally tend to be comprised of members from all regions, the new reforms have diminished the capacity of ministers to act as
regional brokers in the way they once did. Nevertheless, as Herman Bakvis points out, the role of the cabinet as a forum in which regional concerns are articulated has been undervalued. Despite its recent evolution, "the Canadian cabinet does remain as the only significant intra-state component in the Canadian federal system."30

Political institutions are, to a large extent, shaped by ethnic and regional forces, but they also have a profound impact on whether these cleavages become suppressed or more pronounced. To quote a frequently cited passage by E.E. Schattschneider: "All forms of political organization have a bias in favour of the exploitation of some kind of conflict and the suppression of others. ... Some issues are organized into politics while others are organized out."31 In applying this insight to the Canadian case, Richard Simeon claims that our political institutions "serve systematically to reinforce and make salient the territorial dimensions of political life, and to dampen, minimize or curtail non-regional -- or national -- cleavages. We institutionalize the regional dimensions."32 The end result has been a high degree of federal-provincial conflict.

CONCLUSION

The academic community has engaged in a vast amount of research in recent decades for the purpose of uncovering the underlying causes of Canada's national unity crisis. This chapter is but a small representative sample of this literature.
Cultural, economic, and political/institutional factors have all played a contributing role. However, the clarification of the root causes of disunity in any given society will not necessarily culminate in the ability to reverse such trends. Disagreements on appropriate action, the limits of political power, conflicting political interests, bureaucratic inertia, and the circumstances of history and geography combine to make such problems extremely difficult to resolve.

It is in this context that we now turn to the efforts of the Trudeau government to sustain national unity in the face of the variegated centrifugal forces at work. The following chapters will outline three broad nation-building strategies and the rationale behind them. They will focus on what Ottawa identified as the root causes of disunity and on what obstacles it had to overcome in order to achieve its objectives.
ENDNOTES: CHAPTER 1


2. David Bell and Lorne Tepperman, The Roots of Disunity: A Look at Canadian Political Culture (Toronto: McClelland and Stewart, 1979)


5. Ibid. p. 129


11. Ibid. p. 78-79


14. Larry Pratt and John Richards, Prairie Capitalism: Power and Influence in the New West (Toronto: McClelland and Stewart, 1979)


16. McRoberts and Posgate, Quebec p. 98-103

18. Pratt and Richards, *Prairie Capitalism* p. 8
19. For a good overview on factors contributing to increased state activity, see: Stevenson, "The Division of Powers" in Richard Simeon, research coordinator, *The Division of Power and Public Policy* vol. 61 of the Macdonald Commission Studies (Toronto: University of Toronto Press, 1985) p. 102-109
20. Alan C. Cairns, "The Other Crisis of Canadian Federalism" *Canadian Public Administration* 22 (1979) pp. 175-95
21. Ibid. p. 186-87
22. Ibid. p. 180-82
25. Donald V. Smiley, "The Structural Problem of Canadian Federalism" *Canadian Public Administration* 14 (Fall 1971)
26. Donald V. Smiley and Ronald L. Watts, *Intrastate Federalism in Canada* vol. 39 of the Macdonald Commission Studies. (Toronto: University of Toronto, 1985) p. 92. It is not likely that these figures would be any different today.
28. Ibid. p. 70
32. Ibid. p. 292
CHAPTER 2

THE RESTRUCTURING OF FEDERAL INSTITUTIONS

The central government has often been criticized for being insensitive to regional interests. Yet, prior to the mid 1970s, little attention was given to the intrastate dimension of Canadian federalism. Constitutional debate leading up to the 1971 Victoria Charter focussed almost exclusively on interstate affairs, with some discussion concerning rights-based issues. Given that the major impetus for constitutional change had emanated from Quebec, debate was monopolized by the issue of French-English relations. Demands from the Quebec government tended to concern the revision of the formal division of powers in order to increase provincial power and autonomy rather than the transformation of institutional structures to raise provincial influence in central policy-making. English-Canadians and their provincial elites, on the other hand, generally tended to be satisfied with the existing institutional arrangements at the federal level. Grievances certainly existed but tended to be of a non-institutional nature, focusing on such matters as regional economic development and equalization.¹

From the federal government came only half-hearted suggestions regarding the reform of central institutions. In its position paper prepared for the first Federal-Provincial Conference on the Constitution, several references were made
regarding structural change of an intrastate nature. It declared that "[t]he Government of Canada believes that the central institutions of government must be designed to ensure that the [federal] character of the country is preserved." There is an explicit recognition that the Senate was inadequate in this regard, and that its function, powers and method of appointment should be reviewed. However, Senate reform was not considered an immediate priority and was, in fact, not recommended as a topic of discussion at the upcoming conference. The Supreme Court was also mentioned as a possible subject of review. Again, little was mentioned in the way of concrete proposals. Regarding the federal public service, there was an expressed desire to continue the intrastate reforms designed to make that institution more reflective of Canada's French-English duality.

Released before the second Constitutional Conference in 1969, The Constitution and the People of Canada stated more explicitly the government's position regarding the reform of central institutions. It recommended that the Senate "be re-organized to provide for the expression in it, in a more direct and formal manner than at present, of the interests of the provinces." To this end, Ottawa proposed that both levels of government take part in the selection of Senators. An elected Senate was explicitly rejected on the grounds that provincial governments should have at least some representation in the upper chamber and that such an institution could potentially threaten the dominant position of the lower house. The Senate should, according to the federal government, be given the authority to
ratify appointments to the Supreme Court and be given special powers in matters concerning language and human rights legislation. One can see in these recommendations an embryonic version of the more comprehensive initiative that was to be taken in this field almost a decade later. Regarding Supreme Court appointments, the federal government acknowledged that "it would be preferable that there be some form of participation on behalf of the provinces." To this end, it was recommended that all appointments require ratification by the Senate.

Despite the recommendations that discussions of intrastate reforms be included in the constitutional review process, little attention appears to have been given to these matters during the constitutional negotiations leading up to the Victoria Conference of 1971. The Victoria Charter contained only one institutional change of an intrastate nature. The First Ministers had agreed that federal—provincial consultations would take place prior to any appointments to the Supreme Court. However, the ultimate demise of the Charter meant that even these minimal reforms did not come to pass.

Within the Canadian academic community, the concept of intrastate federalism began to receive currency following the publication of Donald Smiley's seminal 1971 article, "The Structural Problem of Canadian Federalism." This represents the first instance in which the intrastate model of federalism was explicitly spelled out in Canadian academia. In it, Smiley warns that "a radical restructuring of the institutions of the Govern-
ment of Canada may be the price for the survival of the Canadian federal system."4

The reform of central institutions also received attention from the Special Joint Committee of the Senate and House of Commons on the Constitution, more commonly known as the Molgat-MacGuigan Committee. In its 1972 Report, recommendation 39 stated that half the Senate should be "appointed by the Federal Government from a panel of nominees submitted by the appropriate Provincial or Territorial Government."5 Consistent with the Victoria Charter, it also recommended that provincial governments be consulted on the appointment of Supreme Court judges. However, despite these developments, little public discussion was generated on intrastate reforms at this time.

By the mid 1970s, constitutional debate had finally moved beyond the narrow confines of French-English relations as new demands for change began to emerge from a previously dormant English Canada. The broader phenomenon of "regionalism" or "provincialism" appeared on the Canadian political scene thus introducing a different dimension to the process of constitutional review. A new "conventional wisdom" emerged in which intrastate as opposed to interstate reform was seen as the appropriate solution to the problems confronting the Canadian federal system. In stark contrast to the previous decade, a plethora of constitutional proposals invoking the restructuring of central institutions was brought forth by a variety of governmental and non-governmental sources alike. Among provincial governments, the most comprehensive proposals of this
nature emanated from British Columbia in 1978 and from Alberta in 1982. The federally appointed Pepin-Robarts Task Force on Canadian Unity also recommended several intrastate reforms in its final report. Other proposals emerged from the Progressive Conservative Party of Canada, Canadian Bar Association, the Canada West Foundation, the Ontario Advisory Committee on Confederation, the Quebec Liberal Party, as well as a number of independent academic studies. Finally, the federal government itself introduced the Constitutional Amendment Bill into the House of Commons in June 1978, thus officially commencing the second major round of Constitutional debate. The Bill emerged in conjunction with a supporting White Paper, A Time For Action, and was followed by a series of position papers clarifying the government’s various proposals.

Reasons for the relative shift in constitutional debate from interstate to intrastate federalism and from dualism to regionalism are twofold. Firstly, the coming to power of the Parti Québécois put an abrupt end to Quebec’s activism inconstitutional politics. Having no interest in working toward a renewed federalism, the PQ government went into a self-imposed exile from the national political arena and concentrated on amassing popular support within the province for its separatist platform. Quebec’s withdrawal in turn encouraged provincial governments and organizations in English Canada to ignore dualism in their constitutional proposals. Secondly, the major impetus for intrastate reforms came from western Canada. Western assertiveness grew as
the region sought to raise its political power to a level comparable with its newly attained economic power. Bitter disputes over Ottawa's natural resource policies combined with the virtual absence of representation within federal Liberal caucuses in the 1970s induced a feeling of alienation among westerners, thus prompting them to seek alternative means through which to exercise influence over the central government. While western discontent was by no means a new phenomenon, it had historically been expressed through attacks against party discipline or Ottawa's economic policies, not in terms of institutional reform. As Roger Gibbins notes, it was not until the mid 1970s that western grievances were translated into an "alternative constitutional vision" -- a vision in which intrastate reform played a prominent role.  

A useful distinction has been made by Alan Cairns between two distinct versions of intrastate federalism. The first, entitled, "provincial intrastate federalism," includes those arrangements in which regional interests are represented within federal institutions by provincial governments. A prime example of this is the Bundesrat of the Federal Republic of Germany. The second, entitled, "centralist intrastate federalism," involves the allocation of this authority to non-governmental regional actors. In this case, the Australian and American Senates serve as useful examples. Not surprisingly, provincial government proposals for intrastate reform tended to be more akin to the former version, while Ottawa's proposals clearly favoured the latter. Each version is claimed by its proponents to be the best
means through which to enhance national unity and the legitimacy of the federal government.

Before discussing Ottawa’s Constitutional Amendment Bill, it would be useful to give some attention to the more prominent provincialist proposals. A general understanding of the prevailing provincialist thought will help put the federal government’s initiative in proper perspective. The following section will outline the major intrastate recommendations of the Pepin-Robarts Task Force, the government of British Columbia, and the Quebec Liberal Party. The first is chosen because it contains the recommendations of a major federally appointed commission asked to deal specifically with the issue of national unity. The second is included not only because it represents a western perspective, but because it contains the most comprehensive of all intrastate proposals to emerge from the provincial capitals. Finally, the PLQ document is included because it represents a political alternative acceptable to Québécois nationalists of a non-separatist persuasion.

Appointed by the Trudeau government in the summer of 1977, the Task Force on Canadian Unity conducted a series of cross-country public hearings over a one and a half year period to solicit the views of Canadians on the issue of national unity. This was followed by the release of a report containing the observations and recommendations of the Commissioners. In A Future Together, their understanding of the root causes of disunity is revealed:
We believe that the heart of the present crisis is to be discovered in the intersecting conflicts created by two kinds of cleavages in Canadian society and by the political agencies which express and mediate them. The first and more pressing cleavage is that old Canadian division between "the French" and "the English." The second cleavage is that which divides the various regions of Canada and their populations from one another.

In dealing with the challenges presented by dualism and regionalism, the Task Force recommended that the conditions be created which would allow for the full expression of these diversities. This would be accomplished through the decentralization of powers to the provinces in a number of jurisdictions and by the restructuring of central institutions in order to make them more responsive to provincial concerns.

The Commission's intrastate proposals include the replacement of the Senate with the "Council of the Federation" and the reform of the electoral system. The new second chamber would be composed of provincial delegations led by provincial cabinet ministers acting on the instructions of their respective governments. It would contain "no more than 60 voting members" with a distribution weighted in favour of the smaller provinces. Federal cabinet ministers could also participate as non-voting members. This would give the central government the opportunity of defending proposed legislation within the Council. The Council would have a suspensive veto over legislative bills in areas of provincial and concurrent jurisdiction, the duration of which varied according to the category of legislation. Also subject to Council approval would be federal appointments to the Supreme Court and to major central agencies and Crown corporations.
The Task Force also recommended changes to the electoral system in order to compensate for the tendency of party membership in the lower house to become concentrated into regional blocs. Recognizing the threat that this phenomenon may pose to national unity, it was proposed that approximately sixty seats be added to the House of Commons and allocated according to a system of proportional representation. The primary purpose of this measure was to give political parties seats in regions where they ordinarily would receive none or very few. Such a system would improve the representativeness of parties while not greatly increasing the likelihood of minority governments.

At the 1978 First Ministers' conference, Premier Bill Bennett presented a nine-part brief outlining the B.C. government's proposals for constitutional reform. The document begins by expressing "dissatisfaction with the importance given to British Columbia within our present federal system." It goes on to declare that western alienation and maritime regional disparities are not merely catch phrases, ...they express serious concerns with deep-seated structural deficiencies in the central institutions of federalism, the division of powers, and with certain longstanding national policies.

Among the initial proposals forwarded is that British Columbia be elevated to the status of "region" on the basis of its distinctness and rising importance in the Canadian federation. In addition, the reform of central institutions was considered a high priority by the Bennett Government. As outlined in Paper No. 3, it advocated a reconstituted, Bundesrat-type Senate that would be truly representative of provincial
governments. It was to consist of sixty members, twelve from each of the country's five regions. Each provincial government would appoint Senators to represent it including a "leading Senator" from within its own cabinet. The revised Senate would have the capability to employ an absolute or a suspensive veto depending on the circumstances. The absolute veto would apply to appointments to the Supreme Court and to federal Crown corporations and agencies. It would also apply to the federal declaratory power, to the federal spending power in areas of provincial jurisdiction, to federal laws administered by the provinces, and to most constitutional amendments. Such a veto would be exercised by the leading Senators who would cast a bloc vote on behalf of their respective governments. A suspensive veto would apply to all other matters with the exception of money bills. In exercising this prerogative, all Senators would vote as free agents unrestricted by their provincial governments.

Quebec Liberal Party (PLQ) sought to formulate an attractive alternative to the PQ's "Sovereignty-Association" prior to the Quebec Referendum. Released in early 1980, the so-called "Beige Paper" proposed a large-scale decentralization of fiscal and legislative powers along with intrastate reforms of a strongly provincialist nature. Central to the PLQ's recommendations was the replacement of the Senate by the "Federal Council." The Council was to be composed of delegations appointed by and responsible to the provincial governments, and was to have at least 25 per cent of its membership from Quebec. It would have
ratification powers not unlike those of the revised Senate in the B.C. proposals. In addition, it would have an advisory capacity in all areas of federal jurisdiction that substantially affect the provinces and regions. Finally, it was recommended that a "Dualist Committee" of the Federal Council be established with an equal number of French- and English-speaking members. The Committee would have the authority to ratify all federal laws pertaining to language and culture.

All three of the provincialist proposals recommend that the Senate be transformed from an independent chamber of sober-second-thought into what is essentially an intergovernmental body. The senate was to become an instrument of "executive federalism." Its primary functions would be to ensure provincial input into federal policy-making and to improve the conduct of federal-provincial relations.

All of the above proposals recommended similar reforms with respect to the Supreme Court of Canada. The existence, composition and jurisdiction of the Court would be entrenched into the constitution. Appointments to the Court by the federal government would require the ratification of the newly constituted second chamber. The Pepin-Robarts and B.C. proposals contained an additional feature requiring that consultations be undertaken with provincial Attorneys-General -- a measure similar to that adopted at the Victoria Conference. Recommendations were also made to ensure a broad regional composition within the Supreme Court. Special attention was given in the PLQ and Pepin-Robarts proposals to the proportion of judges to be appointed from Quebec
and to the general dual nature of the Court and its operation.

Inherent in the provincialist proposals was a particular vision of the Canadian community which saw the provincial governments as the most legitimate representatives of regional interests and aspirations. They incorporated a compact theory of Confederation which viewed the provinces as the basic units of the political system and the federal government as their creation. Canada, it would seem, is no more than the sum of its component parts. The prevailing theme in provincialist thinking was that the role of the federal government in provincial affairs had to be restricted while the role of provincial governments in federal affairs needed to be augmented — a complete reversal of the intentions of the Founding Fathers. The purpose of constitutional reform, therefore, was to restructure central institutions so that provincial interests were better represented. Regional and linguistic diversities are to be accommodated and not suppressed. There is no recognition within provincialist thought of a tension between territorial diversity and national unity. In fact, such diversity is viewed as a valuable resource which, when fully expressed, can enhance national unity.

In an effort to regain control over the constitutional agenda in the face of the various provincialist initiatives and pressures, the Trudeau government embarked on its own plan of action, thus initiating a new round of constitutional review. The experience of the failed Victoria Charter and the perceived need for an immediate response to the separatist threat prompted
Ottawa to develop a new strategy for the second round. The procedure for constitutional reform was divided into two phases. Phase I included reforms which the federal government believed could be unilaterally undertaken through a simple act of Parliament. Phase II, to be carried out at a later date, included those reforms requiring provincial approval and the involvement of the British Parliament — namely, patriation and an amending formula.

Phase I entailed a comprehensive set of proposals introduced in Parliament as the Constitutional Amendment Bill, more commonly known as Bill C-60. The Bill contained a series of reforms of central institutions including the federal executive, the Senate, and the Supreme Court. Because it dealt solely with the reform of federal institutions, the Trudeau administration assumed that provincial approval would not be necessary. However, a subsequent Supreme Court ruling declared that such approval was indeed necessary and, hence, struck down the legislation as unconstitutional. Despite its ultimate failure, Bill C-60 is nevertheless interesting for the insight it provides regarding the Trudeau government's conception of how greater national unity was to be achieved.

Provisions concerning the Supreme Court of Canada are set out in sections 101-115 of the Constitutional Amendment Bill and are further elaborated on in a separate position paper. To begin, the existence, composition, and jurisdiction of the Court would become entrenched into the constitution. Changes regarding the
composition of the Court and the appointment of its judges are also included. The number of judges was to be increased from nine to eleven, of which four were to come from Quebec and at least one from each of the other four regions (B.C. is considered a separate region under this formula). It was also stipulated that the federal government had to consult with provincial Attorneys-General regarding judicial appointments and provisions were set out concerning the resolution of deadlocks. Finally, all appointments would have to receive ratification in a newly constituted second chamber.

The provisions contained in Bill C-60 regarding Supreme Court appointments are essentially the same as those agreed upon at the Victoria Conference, with the additional requirement of upper house approval for all appointments. As in the first round of constitutional review, the federal government reaffirmed its belief that provinces should have a voice in the selection of Supreme Court justices and that the regional composition of the Court should be an important consideration. However, it was also committed to maintaining an uncumbersome appointment process and to ensuring that well-qualified individuals were assigned to the Court. Judges were in no way to become "representatives" of their respective regions or provinces. The impartiality of the Court had to be maintained. Under the proposed formula, these objectives were likely to be upheld. Hence, by relinquishing its monopoly on judicial appointments in this manner, the federal government would have enhanced the legitimacy of the Court while not putting undue power in the hands of the provincial govern-
The most important institutional change contained in Bill C-60 involved the replacement of the Senate by the "House of the Federation" (sections 62-70). The House was to contain 118 members, half of which were to be selected by the House of Commons and the other half by the provincial legislatures. Seats were to be distributed in the following manner: 32 for the Atlantic provinces; 24 for Ontario; 24 for Quebec; 36 for the Western provinces; and one for each of the northern territories. This represented a substantial increase in Western representation in the upper house relative to the other regions. Members would be appointed by party leaders in proportion to their parties' share of the popular vote in the most recent general election. Under this formula, each province would have Senators representing a diversity of interests. Furthermore, because elections are held at least once every five years in each of the eleven political units, membership in the House of the Federation would be subject to almost continuous change.

Powers allocated to the House of the Federation included the right to confirm or reject appointments of Supreme Court judges and of heads of certain federal agencies and Crown corporations. In addition, it was to have a two-month suspensive veto over most legislation passed by the lower house. Formally, this would entail a reduction in the upper house's present ability to employ an absolute veto. In practical terms, however, this power has long fallen into disuse and, consequently, a de facto increase
in power would actually result. Finally, legislation of "special linguistic significance" would require a double majority in the House of the Federation -- that is, a majority of English-speaking and of French-speaking members -- in order to receive passage.

In the federal position paper on the House of the Federation, the desire to replace the Senate is justified on the grounds that "the country and Parliament need a second chamber that will function as a politically effective regional forum." Three criteria for a new second chamber are set out:

1. The second chamber should constitute a forum in which regional views may freely be expressed.
2. The regional views expressed in the second chamber should reflect the broadest possible mix of representative groups.
3. The House of Commons should remain supreme, so that the principle of responsible parliamentary government will be preserved.

Using these criteria, an elected Senate is rejected on the grounds that such a body would become plagued by the problem of party discipline as is the case with the Australian upper house. Such an institution would be unable to fulfill the first criterion. An elected Senate may also be in a position to challenge the dominance of the lower house. Should the Senate be controlled by the opposition party in the House of Commons, it would be in a position to persistently thwart the will of that body. A Bundesrat-type solution, in which Senators acted as direct representatives of provincial governments, is also rejected on the principle that the second criterion would not be met. In a first-past-the-post electoral system, it is not
uncommon for governments to attain office with the support of only a minority of the electorate. Hence, it is argued that governing parties do not adequately represent the diversity of interests within provincial societies.

For these reasons, the federal government determined that an indirectly elected second chamber was the alternative best suited to the country's needs. The fact that it is an appointed body would make it less likely that it would challenge the will or dominance of the House of Commons with great frequency. Regarding the composition of the new second chamber, the mix of federal and provincial appointees was defended on the grounds that "both represent regional interests, although from different perspectives." Given the diversity of its membership, the House of the Federation is unlikely to fall under the control of the governing party or the official opposition of the day. It is therefore reasoned that party discipline should play a minor role and, as a result, regional viewpoints could be more freely expressed. With all opposition as well as government parties represented, the debates would probably be more vigorous, and the confrontation of differing views and their reconciliation would probably be a more open process.¹⁶

From a national unity standpoint, the Trudeau government's expectation was that the House of the Federation would help moderate regional tensions through the formation within the House of different inter-party alliances that cross provincial boundaries.¹⁷ Once individuals or groups mobilize on particular issues which form alliances that transcend provincial boundaries, territorial cleavages tend to become less salient. Ottawa also
sought to enhance its own legitimacy by creating a central institution that was more sensitive to regional interests while, at the same time, not unduly increasing the powers of the provincial governments. By having each province represented by a multiplicity of interests, the diversities contained within provincial societies are emphasized. This in turn, serves to undermine the capacity of provincial governments to present themselves as the sole legitimate representatives of regional interests.¹⁶

Contrary to the view of the Pepin-Robarts Commission and many provincial governments which saw the provinces as the "basic building blocks of Canadian Society," the Trudeau government had an entirely different vision of Canada. In its eyes, the national community was paramount and needed to be strengthened in the face of the provincialist challenge. Rather than being a mere collection of provinces, Canada was considered more than the sum of its component parts. Regionalism and dualism were looked upon as forces that had to be contained and undermined, not accommodated. Ottawa's intrastate constitutional proposals reflected this view. It sought to reform central institutions in a manner that challenged provincial authority and legitimacy while enhancing its own.
ENDNOTES: CHAPTER 2

4. Smiley, "The Structural Problem of Canadian Federalism" Canadian Public Administration 14 (Fall 1971) p. 327
6. Roger Gibbins, "Constitutional Politics and the West" in Keith Banting and Richard Simeon, eds. And No One Cheered: Federalism, Democracy and the Constitution Act (Toronto: Methuen, 1983) p. 120
7. Alan C. Cairns, From Interstate to Intrastate Federalism in Canada Institute Discussion Paper No. 5 (Kingston: Queen’s University, Institute of Intergovernmental Relations, 1979) p. 11-13
8. Canada, Task Force on Canadian Unity, A Future Together: Observations and Recommendations (Ottawa: Minister of Supply and Services, 1979) p.21
9. Ibid., chapter 7
14. The existing Senate distribution was: 30 for the Atlantic provinces and 24 for each of the other three regions.
16. Ibid. p. 11
17. Ibid. p. 12
CHAPTER 3

BILINGUALISM and MULTICULTURALISM

The second major component of the federal government's national unity strategy was the policy of official bilingualism and its concomitant, multiculturalism. Inspired by the recommendations of the Royal Commission on Bilingualism and Biculturalism as well as the political will of elites in Ottawa, bilingualism was the federal government's first major response to the challenge presented to the Canadian political system by the new nationalism in Quebec. Multiculturalism signified an official recognition of the contributions that other ethnic groups have made to Canadian society. It was a repudiation of the tendency to view the Canadian community purely in dualistic terms. Bilingualism and multiculturalism may be seen as part of an attempt to forge a new Canadian identity — one that transcended regional identities and could bind citizens to the national community. It was at once a transformation of public institutions that reflected changing social realities and a work of social engineering designed to reinforce certain attitudes and characteristics that would strengthen Canadian unity. It was, in addition, an act designed to limit the scope of provincial power with respect to the treatment of citizens.

The policy of official bilingualism was first announced in April 1966 by Prime Minister Lester Pearson. Focussing primarily
on the operations of the federal civil service, the Prime Minister issued the following statement:

The government hopes and expects that, within a reasonable period of years, a state of affairs will be reached in the public service whereby

(a) it will be a normal practice for oral or written communications within the service to be made in either official language at the option of the person making them, in the knowledge that they will be understood by those directly concerned;

(b) communications with the public will normally be in either official language having regard to the person being served;

(c) the linguistic and cultural values of both English-speaking and French-speaking Canadians will be reflected through civil service recruitment and training.¹

Three years later, Parliament enacted the Official Languages Act which dramatically expanded the new linguistic regime thus thoroughly entrenching it in Canadian public life. Official bilingualism may be sub-divided into four major parts: the granting of equal status to the French and English languages; the expansion of French language services by federal institutions; public employment practices and the language of the workplace; and finally, language rights with respect to education and the funding of second language education.

Regarding the status of the French and English languages, section 2 of the Official Languages Act declares that "the English and French languages are the official languages of Canada and possess and enjoy equality of status and equal rights and privileges as to their use in all the institutions of Parliament and the government of Canada." Section 133 of the Constitution Act, 1867 had already declared French and English to be the
languages of Parliament and of federal courts, and bilingualism had since been extended into such symbolic areas as stamps (1927), currency (1936), and federal cheques (1962). The new legislation, however, was much farther reaching in that it attached the status of "official language" to French and English and extended the principle of language equality into all areas of the federal public sector as well as certain areas of the private sector. In practice, this meant that all statutes, signs and publications issued by federal institutions as well as consumer product labels had to appear in both official languages -- a practice which until that time had usually been carried out almost exclusively in English.²

The Official Languages Act also changed the nature of the services provided by agencies and institutions of the federal government by ensuring that these services were provided in both languages across the country. In effect, the purpose of the legislation was to extend French language services outside Quebec, where they had previously been virtually non-existent. This provision of the Act was based on the principle that "Canadians should be able to communicate with, and to receive services from, the federal institutions of government in the official language of their choice and arrangements should be made to this effect wherever there is sufficient demand for it."³

Both of the above principles regarding language status and services were incorporated into the 1982 Charter of Rights and Freedoms under Sections 16(2) and 20(1), respectively, with virtually identical wording.
The third aspect of official bilingualism was to eliminate the inequality between anglophones and francophones with respect to employment opportunities and career mobility in the federal civil service on the principle that "Canadians of the two official language groups should have equitable opportunities for employment and a career in the federal institutions of government and to carry out their work in the official language of their choice." Initiatives to this effect were initially undertaken in 1966 and were followed by further measures in 1973 in which language requirements were attached to all federal public service positions and measures were taken to promote an increased use of French within the service. As a result, 19 per cent of all positions -- 45 per cent within the National Capital Region -- were designated as "bilingual" while 13 per cent were categorized as requiring proficiency in French only.

The final aspect of official bilingualism deals with the subject of language education. Substantial funding has been allocated by the federal government since 1970 to encourage Canadians to acquire knowledge of both official languages. This investment was made on the following assumption:

Knowledge of the two official languages of Canada, by those Canadians who may choose to learn them, is desirable as a personal and national asset so that members of the two official language groups may be able to communicate with each other, understand and cherish each others diverse ways of life, and serve as a natural link between the two linguistic communities.

The federal government also took certain initiatives designed to enhance the rights of linguistic minority groups with respect
to education. The entrenchment of these rights was advocated in federal constitutional proposals since the 1960s and they were incorporated into the 1982 Charter of Rights and Freedoms under Section 23. The insistence that these linguistic rights be included in the Charter and not subject to the legislative override clause is a clear indication of the importance attached to them by the federal Liberals.

The policy of official bilingualism has been remarkably successful in meeting several of Ottawa’s key objectives. Far-reaching changes have taken place within federal institutions. These institutions have come to reflect more accurately the dual nature of Canadian society. Moreover, the growth of "French Power" particularly in Ottawa has been quite dramatic. French has become a language of work and francophones now occupy a share of civil service positions more in line with their proportion of the population. Whereas in 1965 francophones occupied only 21 per cent of all federal public service positions and only 17 percent of senior positions, by 1984 they had attained a level of 27 per cent and 25 per cent, respectively.

The stimulus for official bilingualism came in large part from the research and recommendations of the Royal Commission on Bilingualism and Biculturalism. Established in 1963 by the Pearson government, the Commission was asked "to inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races." Co-chaired by André Laurendeau
and Davidson Dunton, the B & B Commission was active over an eight-year period during which it produced a preliminary report along with six lengthy volumes. Given the Commission's profound influence on the thinking and policies of federal elites, it would be useful to outline some of its major findings and proposals.

In the course of its investigations, the B & B Commission came to the conclusion that relations between anglophones and francophones in Canada were profoundly unequal in virtually every respect. A large disparity existed both in the symbolic status and in the functional role of the French and English languages within Canadian public life. In addition, the gap in socio-economic condition between anglophones and francophones was considerable. These inequalities were cited as the primary source of French-Canadian grievances. According to the Commission, they presented a considerable threat to national unity and immediate action was necessary to ensure that they were eliminated.

The B & B Commission charged that the rights of linguistic minorities outside of Quebec have historically been systematically ignored. These "language rights" refer to the ability to communicate with public authorities in one's mother tongue and the rights of parents to have their children receive public education in the official language of their choice. In order to ensure the protection of linguistic minorities, Book 1 of the Commission's Report recommended that equality of status
between the French and English languages, and the linguistic rights that follow from this, be formally recognized both at the federal level and in the provinces of Ontario and New Brunswick. This would allow the French-speaking minorities outside of Quebec the same benefits that have traditionally been enjoyed by the English-speaking minority within Quebec. It would serve to demonstrate that the French language is not and should not be confined to the province of Quebec. The Commission portrayed the current situation as follows:

"The impossibility of living a full life in French outside Quebec (and even in certain parts of Quebec) is certainly one cause of the present crisis in Canada. Living in French must be made possible in every part of Canada where there are enough French-speaking people."

The extension of linguistic rights and services to all of French Canada would serve to demonstrate that the French language is not and should not be confined to the province of Quebec, and that French-Canadians need not look to the Quebec government as the sole defender of their language and culture. It would help eliminate much of the discontent in French Canada and, as a result, undermine the raison d'être of Quebec nationalism.

Despite the importance attached to the equality of language status, the B & B Commission expressed an even greater concern for social and economic inequalities. On this subject, the following warning was expressed:

"Formal linguistic equality is of little importance to those living under a system that always places them in inferior social and economic conditions. Such a partnership is not only unequal, but may in the long run imperil Confederation; the fate of the two cultures and the two dominant languages of Canada, within two distinct societies, ultimately depends on their positions in the"
work world and in the economy at large.  

The Commission expressed concern that in virtually every measure of socio-economic status -- income, education, occupation, or ownership of industry -- the position of francophones is considerably lower than that of anglophones. The restricted use of the French language in both the public and private sectors was cited as a major occupational disadvantage for francophones in that it inhibited their upward mobility and the ability to perform their work effectively. Thus, in order that equality with respect to socio-economic condition be attained, it was recommended in Book 3 that the conditions be created that would enable members of both linguistic groups to share comparable access to society's material wealth and to positions of power, along with the ability to participate in the work world in the official language of one's choice.

The federal bureaucracy was specifically singled out as a target of criticism and reform: "The possibility of national disintegration has forced a reexamination of the linguistic policies of the Public Service. ...no institution requires reform more urgently than does the federal administration." The predominance of English as the language of work has resulted in low participation and mobility rates for French-Canadians. The Commission insisted that the public service be reformed in an intrastate direction, thus making it more reflective of Canada's linguistic duality. It was to be transformed into a thoroughly bilingual institution that protected the linguistic rights of its employees as well as its clients. The explicit correlation
between the structure and operation of the public service and national unity is a clear indication of the importance attached to these reforms by the Commission.

Not all of the major recommendations of the B & B Commission, however, were translated into government policy. For example, the proposed creation of "French-language units" (Book 3, Part II) and "bilingual districts" in the public service (Book 1, Part II), did not receive sufficient political support. More significant was the government's rejection of the reference to Canada as a "bicultural" country. Although Book 4 dwelled at length on the considerable contributions "other ethnic groups" have made to Canadian life and encouraged government support for various cultural activities, the Commission ultimately maintained a conception of Canada based essentially on two cultural groups.

It is clear that we must not overlook Canada's cultural diversity, always keeping in mind that there are two dominant cultures, the French and English. It is in this perspective that we shall study the contribution of various other cultures to the life of the country.\textsuperscript{12}

In the place of biculturalism, the federal government adopted a policy of "multiculturalism" (this initiative will be dealt with in further detail later on in this chapter).

Perhaps as significant as the impact of the B & B Commission on subsequent government policy was that of the political elites in Ottawa; in particular, the prime minister himself. It would be difficult to overestimate the influence that Pierre Trudeau has had on language policy in Canada. Although official bilingualism had actually begun in 1966 under Lester Pearson, it
did not reach fruition until after Trudeau took over as leader. It was, after all, Trudeau who introduced the far-reaching legislation of the Official Languages Act and vigilantly ensured that its objectives were achieved. His primary purpose for entering federal politics was, indeed, to strengthen national unity by increasing the "French fact" within national institutions. According to one of his biographers, "bilingualism [was] to Trudeau as the CPR was to John A. Macdonald, his instrument for building a continent-wide country out of a huddled group of provinces."\textsuperscript{13}

In his academic writings of the 1950s and 1960s, Trudeau dwelled at length on the causes and solutions to the problems facing Canadian federalism. Not unlike the B & B Commission, he saw the roots of French-Canadian discontent lying in the condition of inequality between the two major linguistic groups. In a submission to the Constitution Committee of the Quebec Legislative Assembly in 1965, Trudeau wrote that "the English-speaking majority has behaved, historically, as though French Canadians were merely one of the country's ethnic minorities, with a few special privileges." He went on to lament the fact that English had become the predominant language within the federal civil service and agencies of the federal government, that the linguistic rights of minorities outside of Quebec have been virtually ignored, and that English Canadian and American corporations established in Quebec have not respected the language and culture of its francophone inhabitants. For Trudeau, there is a clear link between the extension of
linguistic rights and national unity.

The Canadian community must invest, for the defence and better appreciation of the French language, as much time, energy, and money as are required to prevent the country from breaking up. ...

In practice, this can be achieved by a constitutional amendment granting French minorities in other provinces ... the same rights and privileges as the English minority in Quebec.14

Trudeau maintained tremendous consistency in his outlook regarding the national unity question throughout his many years in office. He maintained a strong commitment not only to extending rights and services to the francophone community but to entrenching those rights and services into the written constitution. This would provide French-Canadians with a feeling of linguistic security that was previously lacking. In doing so, it would enhance the legitimacy of and loyalty toward the federal level of government. It would also instill a greater attachment to the Canadian community thus enhancing the "French-Canadian" identity over the narrower "Quebecois" identity. Furthermore, Trudeau’s language policy was consistent with his long-held commitment to the principles of liberalism. Language rights, as all rights, were seen as belonging to individuals, not societies. Because of the importance he attached to individual freedoms, Trudeau rejected any notion of collective language rights.

Official government statements regarding bilingualism also reveal what Ottawa saw as the national unity potential of this policy. A 1977 publication entitled, A National Understanding, dwelled at length on the enormous diversities within Canadian society and the difficulties this has presented in the way of
forging a common Canadian identity. It concludes paradoxically that "national unity cannot exist without a deep and abiding affirmation of personal, cultural and regional differences." Unity is not necessarily achieved through uniformity. Canada’s linguistic and cultural differences are, therefore, at once a source of disunity and the foundation of a unifying collective identity.

...Canadians must be willing to live together in a country of differences, accepting, even rejoicing, in those differences. ...Canadians must accept and, whenever they can, create the conditions in which those differences are welcomed and can flourish, even if it means sacrificing some of their own convenience or accommodating their own point of view to that of others.

On the surface, this sounds very similar to the proposals forwarded by the Pepin-Robarts Commission and a number of provincial governments, for it emphasizes the need to accommodate as opposed to undermine Canada’s diversity. However, the diversities to be accommodated under the federalist formula are not the territorially based provincial identities. They are, rather, the diversities that exist within the provinces. Linguistic minorities of each province were to be protected in order to prevent the coincidence of provincial and linguistic communities. Furthermore, by raising the recognition and status of official language minorities, provincial legislatures are presented with a disincentive to enact any collectivist measures on behalf of their provincial majorities that may jeopardize the status of these groups.

Reaction toward official bilingualism varied throughout the
country. In Quebec, language policy moved in a direction opposite to that of the federal government. The political elites that had taken power following the Quiet Revolution were no longer content to accept the socio-economic plight of French-Canadians and the inferior position of the French language in Quebec society. This, along with new demographic trends and the assimilationist pressures associated with modernization, convinced the Quebec government that corrective legislative measures needed to be taken. The new language policy adopted by Ottawa was considered inadequate to ensure the long-term survival of the French language and culture. Hence, bilingualism -- a long-standing practice in the province of Quebec -- was replaced by a policy of unilingualism.

Responding to the recommendations of the Gendron Royal Commission, the Bourassa Government introduced Bill 22 in the Assemblee nationale in 1974. The Bill declared French to be the sole official language of the province, brought forth measures to increase the use of French in the work world, and placed certain restrictions on the ability of immigrants to enroll their children in English language schools. Three years later, more comprehensive and far-reaching language legislation was passed by the governing Parti Quebecois. Bill 101 went beyond Bill 22 in its provisions regarding education and the "francization" of the workplace, and introduced new measures requiring commercial advertising to be in French only.

The language policies of Quebec and Ottawa were both designed to protect the French language, but attempted to do so through
entirely different means. The federal government advocated the protection of language rights on an individual basis, whereas the Quebec government was primarily interested in advancing the rights of franco-Quebeckers on a collective basis, even if the rights of the English-speaking minority had to be sacrificed. Quebec nationalists argued that because of their minority position within Canada, a policy of bilingualism with its emphasis on individual rights would simply serve the interests of English majority and lead to the eventual assimilation of the Quebecois nation. Because the "nation," with all its linguistic and cultural attributes, is fundamental to the development of the individual and his/her sense of self-identity, its protection and survival are considered a top priority. ¹⁷

Even Québecois of a federalist persuasion tend to support the collectivist thrust of their provincial language laws. They argue that the linguistic and cultural security which the legislation is intended to foster is essential to Canadian unity for the simple reason that Quebeckers will reject any political arrangement that threatens their national survival. A language policy based solely on individual rights simply does not provide the security that franco-Quebeckers seek. ¹⁸ Hence, they tend to espouse a consociational solution to the Canadian federal system, one marked by a high degree of provincial autonomy and significant provincial input into decision-making at the federal level. ¹⁷

Given the reaction in Quebec to the federal language
policies, it is apparent that the diagnosis of Trudeau and the B & B Commission regarding the root causes of French-Canadian discontent was based on premises that were not entirely accurate. Bilingualism, as it turned out, was only a partial solution to the Quebec challenge. While suitable at the federal level, it was no longer considered appropriate for the needs of franco-Quebeckers at the provincial level. It was, in short, a necessary but not a sufficient means of allaying Quebecois grievances.

The reaction to official bilingualism outside of Quebec was varied. Some saw it as a necessary sacrifice for national unity while others responded with outright hostility. While public support for the expansion of French-language services was generally favourable, the elevation of French to official and equal status was not. Non-francophones generally tended to regard Canada as an English-speaking country, rejecting any notions of compact theory or equal partnership. Opposition was intense particularly in the West and among Canadians of non-English, non-French origin. Because of their small numbers, French-Canadians tended to be looked upon by Westerners as just another ethnic group deserving of no special treatment and were expected to assimilate like all the others. Other ethnic groups tended to see bilingualism in negative terms because it defined Canada in a manner that did not sufficiently reflect their contribution to it, thus making them feel as second-class citizens. It was, in short, the relative decline in status that determined the negative reaction to bilingualism outside of the
non-francophone community. Consequently, it may be said that, at least in the short term, bilingualism was more of a nation-dividing than a nation-building phenomenon. However, recent public opinion surveys suggest overwhelming support for official bilingualism and seem to indicate that Canadians have come to regard linguistic duality to be an important component of the Canadian identity.

Responding to the criticisms noted above and to the ever-increasing heterogeneity of Canadian society, the federal government chose to complement its policy of bilingualism with that of multiculturalism. Announcing this policy to the House of Commons on October 8, 1971, Prime Minister Trudeau stated that "although there are two official languages, there is no official culture, nor does any ethnic group take precedence over any other." Contrary to the B & B Commission’s analysis and the PQ’s White Paper on language policy, language and culture were explicitly separated. The federal government recognized that language has a dual function — it is both a vehicle for the transmission of culture and a means of communication which is culturally neutral — and that for the purposes of public policy it was advantageous to place emphasis on the latter thus, in effect, divorcing language from culture. Not only was the concept of an "official culture" contrary to the government’s ideological commitment to the tenets of liberalism, but bilingualism had to be repudiated in order to salvage bilingualism in the face of intense criticism from ethnic minority groups.
The federal government opted for "multiculturalism within a bilingual framework," thus affirming that Canada is open to all cultures and recognizes all cultures as being equal. The prime minister asserted that support for this new initiative would be provided in four ways:

First, resources permitting, the Government will seek to assist all Canadian cultural groups that have demonstrated a desire and effort to continue to develop, a capacity to grow and contribute to Canada, and a clear need for assistance, the small and weak groups no less than the strong and highly organized.

Second, the Government will assist members of all cultural groups to overcome cultural barriers to full participation in Canadian society.

Third, the Government will promote creative encounters and interchange among all Canadian cultural groups in the interest of national unity.

Fourth, the Government will continue to assist immigrants to acquire at least one of Canada's official languages in order to become participants in Canadian society.25

As with the policy of bilingualism, multiculturalism has also been given constitutional recognition in the Charter of Rights and Freedoms. Section 27 instructs the courts to interpret the Charter "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians" and Section 15 prohibits discrimination on the basis of ethnicity.

Justification for the policy of multiculturalism was presented in terms of its enrichment of society, its moral correctness, and its national unity potential. As with statements concerning its language policy, the federal government believed that unity would be enhanced through the recognition of diversity. Rather than contributing to social and political fragmentation, cultural pluralism would become an essential part of the Canadian
identity, thus serving as a unifying force.

[Multiculturalism would] help to break down discriminatory attitudes and cultural jealousies. National unity, if it is to mean anything in a deeply personal sense, must be founded on confidence in one's own identity; out of this can grow respect for that of others and a willingness to share ideas, attitudes and assumptions. A vigorous policy of multiculturalism will help create this initial confidence. It can form the base of a society which is based on fair play for all.26

In addition, multiculturalism would also have the effect of enhancing the loyalty and identification felt by ethnic minority groups toward the central government. In acquiring such an ally -- one that was becoming increasingly powerful by virtue of its rising share of the population -- Ottawa would be able to strengthen its position via the provinces.

As with bilingualism, many Franco-Quebeckers expressed strong reservations about multiculturalism. They believed that Canada should be defined in terms of its French-English duality and viewed any deviation from this definition as a threat to their status. Not unlike the B & B Commission, they saw language and culture as inseparable and argued that bilingualism should be supplemented by a policy of biculturalism.27

The policies of bilingualism and multiculturalism and their constitutional entrenchment were designed to foster a new and unifying pan-Canadian identity, one based upon the principles of linguistic duality and cultural diversity. Confronted with a situation in which the existing political order was no longer acceptable to increasingly identity-conscious French-Canadians and ethnic minority groups, the Canadian state sought to refashion, both on a symbolic and practical level, the federal
institutions of government and its relations with the country's linguistic and cultural communities. It was anticipated that such measures would help restore the allegiances of franco-Quebeckers and multicultural groups to the national government and community.

Of the two policies, bilingualism was clearly the most important in the minds of federal elites. It was, after all, the desire of establishing a truly bilingual country that inspired much of Trudeau's writings and, ultimately, his decision to enter public life. It was bilingualism that received the bulk of his government's attention and financial resources. Multiculturalism, on the other hand, was introduced more as an afterthought: it was a means of gathering political support for -- and, indeed, salvaging -- the more important objective of bilingualism. Once established, however, multiculturalism became an important part of the Liberal government's nation-building agenda.

Finally, Ottawa's linguistic and cultural policies were guided by its ideological disposition toward liberalism. It insisted that rights and services be awarded to individual citizens, not to collectivities. The outcome of federal initiatives was also determined not only by the extent of its jurisdictional authority but by the responses of provincial administrations. Quebec shunned bilingualism and opted for a unilingual regime. While other provinces have extended French language services, only New Brunswick was declared itself officially bilingual. The uncooperativeness of provincial governments has surely been a factor in limiting the effectiveness of the federal initiative.
ENDNOTES: CHAPTER 3

4. Ibid.
5. Smiley, *Canada in Question* p. 229-31
6. Canada, *A National Understanding* p. 44
7. Gibbins, *Conflict and Unity* p. 70
9. Ibid. p. 30
10. Ibid. p. 75
11. Ibid. p. 93
12. Ibid. p. 135
15. Canada, *A National Understanding* p. 35
16. Ibid. p. 38
17. This point is further developed in: Charles Taylor, "Why Do Nations Have to Become States?" in Stanley G. French, ed. *Philosophers Look at Canadian Confederation* (Montreal: Canadian Philosophical Association, 1979)
19. See, for example, the Beige Paper of the PLQ. Quebec Liberal Party, *A New Canadian Federation* (Montreal: 1980)
20. Gibbins, *Conflict and Unity* p. 71-72
21. 73.1% of anglophones and 95.9% of francophones consider it "important" to preserve bilingualism at the federal level. See: Paul M. Sniderman, et al., *Political Culture and the Problem of Double Standards: Mass and Elite Attitudes Toward Language Rights in the Canadian Charter of Rights and Freedoms* *Canadian Journal of Political Science* XXII:2 (June 1989) p. 264. This high level of support may have waned in recent months as a result of the controversial language legislation (Bill 178) passed in Quebec by the Bourassa government.

23. Quebec, *Quebec's Policy on the French Language* (Quebec City: 1977) On page 2, the PQ declares that "[t]he French in Quebec have never believed that their language could be dissociated from the destiny of the entire nationality, of its economy and its culture."


26. Ibid. p. 45

CHAPTER 4

A CONSTITUTIONAL BILL OF RIGHTS

In July 1967, Prime Minister Pearson announced his intention to hold a federal-provincial conference in order to discuss the possibility of entrenching a Bill of Rights into the constitution. The position paper prepared for that conference, *Federalism for the Future*, stated categorically that "[t]he first goal of the Canadian federation, in the opinion of the Government of Canada, is the protection of the rights of the individual."\(^1\)

Shortly thereafter, Justice Minister Pierre Trudeau released a document entitled, *A Canadian Charter of Human Rights*, outlining in further detail the contents of the proposed Bill of Rights.\(^2\)

The constitutional protection of fundamental rights was a high priority of the federal Liberals when they initially declared their willingness to proceed with constitutional renewal and remained the central theme of all subsequent constitutional proposals. Ottawa had, in fact, succeeded in including a Bill of Rights in the 1971 Victoria Charter, albeit in a less comprehensive form than it had intended. This was, however, nullified after Quebec withdrew its support for the Charter. Seven years later, the failed Constitutional Amendment Bill also contained a "Charter of Human Rights and Freedoms." This Charter was also limited by the fact that it would initially have been binding
only on the federal government and would have bound the provinces upon their consent. So deeply was the Trudeau government committed to the entrenchment of a charter that, in the months prior to the 1981 Constitutional Accord, it repeatedly threatened unilateral action to achieve this objective.

The strong commitment on behalf of the Trudeau administration to a constitutional Bill of Rights can be attributed to two key factors. The first is the strong conviction held by federal elites that the fundamental rights and freedoms of citizens must be better protected from the abuses of power by public authorities and from the often insensitive will of majorities. It was, indeed, this justification that was most often put forth by Ottawa in its effort to amass public support for its proposals. The second factor lies in the perceived "nation-building" capacity of a charter. It was anticipated that a Charter of Rights would undermine the provincializing trends within Canadian federalism by enhancing the "Canadian" identity of citizens at the expense of regional identities, by ensuring that certain minimal national standards are maintained in provincial legislation, and by reducing the salience of territorial cleavages. This would, in turn, strengthen the hand of the federal government in dealing with its provincial counterparts. As Peter Russell has argued, "[t]his national unity function of the Charter is most relevant to explaining why politicians, especially those who led the federal government, pushed so hard for the Charter."

As indicated above, the contents of the proposed constitu-
tional Bill of Rights were initially set out in detail in a Canadian Charter of Human Rights and were restated with relative consistency in subsequent documents. The rights and freedoms to be included in the new Charter were classified into four categories: political, legal, egalitarian, and linguistic (economic rights were also discussed but were not recommended for inclusion in the Charter). Included under political rights were traditional liberal rights such as freedom of expression, freedom of conscience and religion, freedom of assembly and association, and freedom of the press. Using the language of the 1960 Canadian Bill of Rights, legal guarantees included ‘the right of the individual to life, liberty, security of the person and the enjoyment of property’. Other rights included in this category — and also originating in the 1960 Bill — were the guarantee of ‘equality before the law and the protection of the law’ along with the gamut of traditional rights associated with the arrest and trial of an accused person (ie. the presumption of innocence until proven guilty, the right to a fair hearing, etc.). The provision of egalitarian rights would prohibit discrimination on the basis of race, national or ethnic origin, colour, religion, or sex. Finally, linguistic rights — as already outlined in the previous chapter — would entitle every citizen the right to communicate with the federal institutions of government and receive a public education in the official language of his/her choice.

Fourteen years later, the final draft of the Charter of
Rights and Freedoms contained several additions and omissions. Among the more significant changes were the additional categories of democratic and mobility rights. These included the right of all citizens to vote, to run for public office, and to take up residency in the province of their choice. The legal right to the enjoyment of property, however, was omitted in the 1982 Charter. Responding to pressure by feminist lobby groups, equality rights were revised to include equality "under the law" and the "equal benefit of the law." Finally, the prohibition of discrimination was extended to the categories of age and mental or physical disability.

In the postwar era, public interest in the entrenchment of fundamental rights into the Canadian constitution can be attributed to a number of factors — both domestic and international. Domestically, the internment of Japanese-Canadians during the Second World War and incidents involving the ill-treatment and persecution of Jehovah Witnesses by the Duplessis regime also served to generate public support for stronger rights guarantees. In the 1970s, the enactment of the War Measures Act and revelations pertaining to the abuse of power by the RCMP's Security Service further reinforced this support. Provinces had become increasingly active in the establishment of human rights commissions and the invocation of legislation pertaining to individual freedoms which, in turn, raised federal interest in the subject. Finally, it had become apparent that the 1960 Canadian Bill of Rights introduced by the Diefenbaker administration was not as effective in protecting rights as many
had anticipated. Because it was simply an act of Parliament, it tended to be given a rather narrow interpretation by the Supreme Court of Canada.  

There is also an important international dimension to the increased interest in the issue of rights. The decline of Britain both as major power in world affairs and as an important trading partner eroded the Canadian attachment to such British institutions as the principle of parliamentary supremacy. The American experience with a Bill of Rights and the judicial activism that it spawned had come to be seen as an attractive alternative. Finally, there was a renewed commitment within the international community to the inalienable rights of the individual arising from the experience of fascism in Europe. This was reflected in the Universal Declaration of Human Rights passed in the United Nation’s General Assembly in 1948 and in subsequent international covenants. These developments had a strong impact on Canadian thinking. They brought pressure on Canada to emulate the international pattern regarding human rights and created an atmosphere within the global community in which the possession of a Charter of Rights became a important symbol of status and modernity.  

In Ottawa, interest in the entrenchment of fundamental rights was derived, in large part, from the deep commitment among federal elites to liberal democratic principles. These principles were well articulated in government position papers. From the initial position paper which stated that "the rights of
people must precede the rights of governments" to the 1978 White Paper which declared that "[t]he renewal of the Federation must confirm the pre-eminence of citizens over institutions." The federal government repeatedly asserted its conviction that sovereignty within Canada must ultimately lie with the people and that it is the duty of government to ensure that the fundamental rights of Canadians -- including linguistic rights -- are protected. These principles are perhaps most eloquently stated in the 1969 position paper, *The Constitution and the People of Canada*.

Government should not be an end in itself, but instead a means of promoting the well-being of the people. In the process of constitutional review we should therefore look to the needs of people before we look to the needs of government. ... Human rights are, after all, of equal importance to every person whatever may be his province, region, religion, or language. The need for freedom of thought and action, for protection of liberty and security of fair laws, for equal treatment without prejudice, and for the means of expressing oneself in the official language of his choice -- these are basic to all of our people. It should be a primary purpose of government to secure these things, for without them man loses the peace, dignity and power of self-expression which should be part of his unique heritage.

While the decision within the Liberal party to make a Bill of Rights the centrepiece of its constitutional proposals had already been taken prior to the ascent of Trudeau to party leader, Trudeau undoubtedly had a considerable influence on that decision in his capacity as Justice Minister and was instrumental both in subsequent initiatives and in the ultimate success of this objective. Trudeau had long been a passionate defender of the rights of the individual and a strong critic of nationalism in any form. His political philosophy was firmly rooted within
the liberal tradition. Following the ideas of John Locke and the "philosophes" of the Enlightenment period, Trudeau embraced a theory of rights that centres on the individual. For Trudeau, human beings are by nature free, independent, and rational agents that are endowed with certain inalienable rights. The preservation and advancement of individual liberties should, therefore, be the ultimate goal of any political system in order that each person may be able to follow his/her own path to happiness and self-fulfillment.

I believe that, in the last analysis, a human being in the privacy of his own mind has the exclusive authority to choose his own scale of values and to decide which forces will take precedence over others. A good constitution is one that does not prejudge any of these questions, but leaves citizens free to orient their human destinies as they see fit.*

Trudeau has long been an adamant opponent of nationalism, an ideology which he considered to be destructive and incompatible with the development of a "just society." In his article, "New Treason of the Intellectuals," Trudeau argues the case for his rejection of nationalism. Again, his thought is rooted in his overwhelming emphasis on the value of the individual. He argues that human beings are not bound by their language, culture or race, but rather transcend any of these labels. Any attempt to identity a person solely with these characteristics would constitute a denial of his/her dignity.10 It is the individual defined as a free and moral agent that must be the primary concern of any political system. Paraphrasing Lord Acton, Trudeau argues that when the nation becomes the basis of the
state, the individual is no longer paramount. Rather than the state existing to serve the individual, the individual exists to serve the nation-state.

In attaching such importance to the idea of nation, [nationalists] are surely led to a definition of the common good as a function of an ethnic group, rather than of all the people, regardless of characteristics. This is why the nationalistic government is by nature intolerant, discriminatory, and when all is said and done, totalitarian. A truly democratic government cannot be ‘nationalist’, because it must pursue the good of all its citizens, without prejudice to ethnic origin. ... any thinking that calls for full sovereign powers for nations is politically reactionary because it would put complete and perfect power in the hands of a community which is incapable of realizing a complete and perfect society.  

Hence, Trudeau concludes with Acton that the coexistence of many ethnic groups within a single state provides the best insurance of personal freedom.

Trudeau’s conviction that the ultimate role of the state is the protection and furtherance of individual freedoms led him to become a strong supporter of democratic principles and of a federal system of government: the former because it places ultimate sovereignty with the people and the latter because it protects the individual from an over-concentration of state power. It also led him to advocate the incorporation of a Bill of Rights into the written constitution. The entrenchment of such a bill — one which was to include language rights as well as traditional political and social rights — was a relatively consistent aspect of Trudeau’s political thinking from his early writings in the 1950s to his final mandate in office.

In addition to its function as a guarantor of fundamental rights and liberties, a constitutional Bill of Rights was clearly
recognized at an early stage as nation-building device. In his address to the Canadian Bar Association in 1967 while serving as Minister of Justice, Trudeau affirmed that in adopting such a document "we will be testing -- and, hopefully, establishing -- the unity of Canada."\(^{12}\)

The most often cited nation-building feature of a constitutional Bill of Rights both in federal position papers and academic works alike is its potential to serve as a unifying symbol. It is unifying in the sense that it would endow citizens with an identity as sovereign, rights-bearing entities; an identity they would universally share regardless of regional origin. This would, in turn, promote an attachment to the national level.

The capacity of symbols or the "symbolic order" to serve as integrative devices has been the focus of considerable attention among social scientists. Raymond Breton was instrumental in bringing this idea to the fore of Canadian political thinking in his seminal 1977 article, "The production and allocation of symbolic resources." Breton argues that "much of society's activities cannot be adequately understood if we over-emphasize the material dimension to the detriment of the symbolic dimension of social organization."\(^{13}\) His basic premise is that there is a tight interconnectedness between a society's symbolic order and the collective identity of its people; that collective identities are both reflected in and forged by the symbolic order. He claims that much of the recent turmoil in Canadian political life can be explained from this perspective -- that is, governments
acting to alter the symbolic order and various groups reacting to
to changes to their position within the social hierarchy.

The state, as recent Canadian history will attest, is
intimately involved in the process of restructuring the
identities of its citizens through the manipulation of the
symbolic order. Generally speaking, this objective is pursued
for a number of purposes, all of which are interrelated. They
include the generation of loyalty or legitimacy, the redressing
of grievances, and the promotion of political integration. The
task of the Canadian government in forging a unifying identity
has always been a difficult one and has been greatly complicated
in the postwar period by the proliferation of new and diverse
group identities. Canada's continuation as a traditional
British-type society was challenged by a greater assertiveness of
French-Canadians, ethnic minorities, native groups, the women's
movement, visible minorities -- all of whom demanded increased
recognition and status. Most significant from a national unity
standpoint was the rise of Quebecois nationalism and the more
general phenomenon of provincialism. These territorial
identities presented the most serious obstacle to the central
government in its effort to build a common and unifying Canadian
identity. Cairns has eloquently described the situation in the
following manner:

The psychic integration of these mushrooming identities
into a common harmonious Canadianism is one of the central
contemporary challenges facing the Canadian federal state.
The failure of the state to meet this challenge will not
leave the populace unmoved. We will be left floundering
if no overarching sense of community emerges.
The effort to establish this "overarching sense of community" is perhaps best articulated in the 1978 White Paper, *A Time for Action*, which preceded Bill C-60. In brief, this document argues that the values to which all Canadians commonly aspire must be clearly expressed in the written constitution. It recognizes that a constitution is not merely a formal statement of governmental or state-society relations, but an instrument capable of moulding or enhancing certain identities and attitudes. It has an educative capacity with an ability to inspire patriotism and solidarity. The inter-relationship between the symbolic order -- of which the constitution is an important component -- and the individual citizen's world of identities and meanings is clearly recognized. Included among the values to which Canadians commonly aspire are the pre-eminence and fundamental rights of the individual, democratic principles, equality of opportunity for all. These values are an integral part of the Canadian identity and should, according to Ottawa, be clearly expressed in the constitutional order. In addition, it believed that those values that would further the cause of national unity -- namely, language equality and cultural diversity -- should also be incorporated into the constitutional order so that they too may become an integral part of the Canadian psyche.

In addition to its symbolic dimension, a constitutional Bill of Rights would set in motion a process of judicial review that would have important implications for legislative powers in Canada. Writing on the 1982 Constitutional Accord, Peter Russell
argues that it is not at the symbolic level that the Charter will have its greatest nationalizing effect, but rather through the generation of judicial policy-making at the expense of legislative policy-making. Whereas legislative policy-making tends to result in a diversity of provincial laws and standards, the Supreme Court -- being a centralized and national institution -- will set "uniform national standards" which all provincial legislatures would be obliged to follow. In effect, the Charter would, in Cairns's words "set limits to the diversities of treatment of Canadian citizens by provincial governments."15

Although the Charter would apply to laws at both levels, it was more likely to have a disproportionate impact on the legislative autonomy of the provinces. The US experience with a Bill of Rights following the Fourteenth Amendment17 and a recent study of Charter cases between 1982 and 1988 confirm this point.18 During this period, the courts of appeal have nullified a total of 65 statutes, of which 33 were provincial and 32 were federal. Despite the apparent equity in judicial nullifications, closer observation reveals that the provincial statutes referred to were primarily "substantive" in character (56%) while the federal statutes were largely "procedural" in nature (82%). Furthermore, most of the federal statutes (64%) were enacted prior to 1970 while the vast majority of the provincial statutes (85%) appeared after that year. The study concluded not only that the Charter has had a greater impact on provincial policy-making, but that the impact of the Charter on legislative statutes has been
There is yet another more subtle way in which a constitutional Bill of Rights could serve a national unity function. It was considered to have a centripetal effect based on its capacity to mobilize citizens on national or non-territorial issues. The pervasiveness of the territorial dimension of Canadian political life has led many social scientists to argue that cross-cutting cleavages need to be developed. John Porter, for example, has advocated the need to promote an ideologically-based politics that will divide Canadian society along class lines as opposed to regional lines.¹⁹ The Charter of Rights was expected to fulfill a similar role. The constitution would be transformed from a document that dealt entirely with governmental relations into one which emphasizes the relationship between citizen and state. It would mobilize Canadians on a whole host of rights-based issues which would tend to be national in scope and less likely to result in intergovernmental disputes. Canadians would become divided on such issues as abortion, the censorship of pornography or other offensive material, the limitation of police authority, school prayers, capital punishment, compulsory retirement, affirmative action, etc. -- issues which, as Russell notes, "do not call into question the legitimacy of Canada as a national political community."²⁰

Thus far, the analysis of the federal motivations concerning a constitutional Bill of Rights has tended to distinguish the objectives of entrenching liberal-democratic principles and enhancing national integration. Yet, it may be argued that gradually increasing.
federal elites -- and Trudeau, in particular -- saw these goals as inseparable. Unity was to be attained through the establishment of a political order which is perceived as fair and just -- one to which citizens would grant their allegiance and loyalty. For example, Trudeau's writings clearly indicate that national unity would be established through the protection and promotion of linguistic rights. As elaborated in the previous chapter, he firmly believed that the denial of French language rights outside of Quebec was one of the root causes of the existing crisis in Canadian federalism. By declaring and securing these rights, the federal government would establish itself as a legitimate defender of the French language and culture, thus removing much of the raison d'etre of the new Quebecois nationalism. According to Trudeau, only when the Canadian polity established itself as truly bilingual with equal rights and status guaranteed to both linguistic groups could it hope to acquire the legitimacy in the eyes of all its citizens needed to ensure national unity.

This argument may be extended to a constitutional Bill of Rights as a whole. By guaranteeing a broad range of fundamental rights and freedoms to its citizenry, a political order may be given a legitimacy it previously lacked. This argument is developed further in a recent article by Sam LaSelva. Looking at Trudeau's academic writings, LaSelva notes that Trudeau, as a political philosopher, was preoccupied first and foremost with the question of justice. More specifically, he was concerned with establishing the conditions for human progress and the
justification of authority. To this end, federalism is espoused as the optimal and most rational system of government. However, federalism is somewhat limited in that it is concerned primarily with governmental actors and does not take individuals and groups into account. A Charter of Rights is, therefore, required to give them adequate recognition and to fully resolve the problem of reconciling the individual with the state. In order for a political system to fully attain legitimacy and stability, it must be seen as fair and just by the citizenry. Therefore, according to Trudeau, national unity is achieved as much through the perception of legitimacy via liberal justice as through some sentimental attachment to the national community or the centralization of political power. "For Trudeau the political theorist, the principles of statecraft were dictated by the requirements of justice and the cohesion of the nation was based on the soundness of its principles."21

In its effort to sell the Charter, the federal government focussed almost entirely on its symbolic and rights enhancing function and downplayed or denied any claim that federal power would be augmented at the expense of the provinces. It emphasized that a Charter of Rights would not entail any transfer of powers between governments, but rather a transfer of power from all governments to the people. It included in virtually every proposal a provision that no new legislative authority would be acquired by any level of government as a result of the Charter.22 It would, undoubtedly, have been strategically unwise to hail the Charter as a federal power grab while trying
to obtain provincial consent for it. Nevertheless, Ottawa was without question aware of the Charter's potential. The fact that it offered to abolish the federal powers of reservation and disallowance as a *quid pro quo* is a clear recognition that provincial powers would be sufficiently restricted so as to render such powers superfluous.²³

Provincial opposition to the Charter came in the form of a defence of the British tradition of parliamentary supremacy. Premiers Allan Blakeney of Saskatchewan and Sterling Lyon of Manitoba were amongst the more vocal defenders of this principle during the final round of constitutional negotiations. Cognizant of the limitations that it would impose on provincial powers, they steadfastly opposed the Charter despite overwhelming public support for the document and were instrumental in securing the inclusion of the legislative override in its final draft. Lyon and Blakeney argued that it would be inappropriate to place excessive authority to make political decisions in the hands of appointed and unaccountable judges; that such authority is best left with the duly elected legislatures where the people can participate in and influence political choices. The entrenchment of a charter would make it difficult to change legislation as the values and norms of society change. It would unjustly impose a certain set of values on future generations — a kind of "generational imperialism."²⁴ In Blakeney's words:

I say that many of these issues are better left to be dealt with at a provincial level where possible or at a national level, but at least at a level where we can respond to the felt needs of Canadians as they exist
today, and change it 10 years later if the felt needs of Canadians are different. I feel ... very, very strongly, that we are making a mistake to turn over many of these difficult issues to the courts for decision because I believe that the citizen believes that he has a right to a voice in those decisions ...\textsuperscript{25}

Both federal and provincial governments adopted the rhetoric of popular sovereignty in the constitutional debate over the Charter. Each claimed that its position represented genuine democratic ideals. Although there may have been a bona fide commitment in each camp to the principles it espoused, it is not coincidental that these principles were self-serving. Provincial governments had a vested interest in maintaining a broad scope of legislative action in order to protect their province-building ambitions. Ottawa, on the other hand, sought to augment its own power and legitimacy by strengthening the attachment of citizens to the national community through the establishment of a common identity as rights bearers, by restricting the capacity of provincial governments to construct distinctive provincial communities and identities through the implementation of divergent standards of rights, and by reducing the salience of territorial cleavages upon which provincial power and legitimacy thrives.
ENDNOTES: CHAPTER 4

4. Ibid. p. 33-35
6. Pearson, *Federalism for the Future* p. 8
10. Ibid. p. 159
11. Ibid. p. 169
12. Ibid. p. 54
17. The Fourteenth Amendment declares that no state shall "deprive any person of life, liberty, or property, without due process of law." Prior to this, the Bill of Rights applied only to the federal level of government.
20. Russell, "The political Purposes of the Canadian Charter of Rights and Freedoms" p. 41. The abortion issue has been the most salient in recent months. Not only has it
mobilized Canadians along non-territorial lines, but the recent Supreme Court decision striking down a ruling by the Quebec Court of Appeal (August 8) may actually serve to legitimize the Canadian Charter against the Quebec Charter in the eyes of many Quebecois pro-choice advocates. Much depends however on the Supreme Court’s justifications which have not yet been released.

However, a note of caution is warranted here. The increased tensions over language policy in recent months indicates that the Charter also has the potential to induce territorially based conflict as well.


22. See, for example, Canada, *The Constitution and the People of Canada* p. 22, and *Constitutional Reform: Canadian Charter of Rights and Freedoms* (Ottawa: Canadian National Unity Office, 1978) p. 2

23. See *Ibid.* p. 4. Trudeau also recommended this in 1965, see *Federalism and the French Canadians* p. 45

24. Term used by Alan Cairns in seminar discussion

CONCLUSION

The primary tasks of the state are the creation and maintenance of internal order and the protection of its own territorial integrity in the international system. A related task is the integration of the regions, classes, ethnicities, lifestyles, generations, and gender and other cleavages that always pull society apart, erode the sense of community, and weaken the capacity for effective collective action.¹

The above observation is particularly pertinent to the recent Canadian experience. It has been increasingly feasible and, indeed, necessary for the Canadian state to engage in such integrative activities — feasible because of the high degree of interdependence that has developed between state and society and necessary in order to counteract the centrifugal forces which challenged its authority and legitimacy.

The rapid expansion of the public sector in the postwar era has resulted in the development of a multiplicity of linkages and interrelationships between state and society. Gone are the days of the night watchman state when governments had only a miniscule involvement in the spheres of social welfare and economic development. Governments have become endowed with massive human and fiscal resources enabling them to penetrate virtually every aspect of our lives. The consequent "politicization" of society has resulted in a situation whereby the activities of governments and the functioning of public institutions, both at the symbolic and substantive level, have a profound effect on the formation of collective values, norms, identities and allegiances.

Through the restructuring of public institutions and state-
society relations, modern states have become intimately involved in a complex and continuous process of social engineering designed to shape societies according to their imperatives. However, this is not to portray the state as an independent, autonomous agent of Orwellian proportions capable of imposing its designs upon a receptive and malleable society. To the contrary, governments are restricted in their actions by numerous factors. The state is "embedded" in, and hence constrained by, the society it governs. In federal systems with overlapping jurisdictions, governmental ambitions are restricted by the existence of other governments which often have divergent interests and espouse different conceptions of community. Finally, governments are limited by the policy instruments available to them through the constitutional division of powers and by their own previous policy initiatives which invariably create a certain degree of bureaucratic inertia within the state apparatus.

Moreover, governments are guided by considerations of self-interest and by the ideological dispositions of their leaders. Like any organization, the state carries out its activities with an eye toward its own self-preservation and, where possible, its self-aggrandizement. Ideology also plays an important role. Politicians do not enter public life without some preconceived ideas about the world: each brings his/her own philosophical baggage and attempts to impose it on the political order.

Over the past three decades, the Canadian federation has become subject to an array of decentralizing forces which have
presented a considerable threat to its continued existence. Beginning with the emergence of the new nationalism in Quebec and spreading to the English-speaking provinces, demands emerged for increased provincial autonomy and a greater provincial voice in federal policy-making. At the extreme was the additional threat of Quebec separatism. A variety of political, institutional, economic, and socio-cultural factors have contributed to the growth of provincial power and the increased salience of dualism and regionalism. Seeing the need to respond to these developments, the federal government had to decide which of these factors contributed the most to the provincialist threat. Taking into account the various limitations to which it was subject and its own self-imposed imperatives, the Trudeau government developed a constitutional strategy that focussed primarily on the socio-cultural dimension and the reform of federal institutions.

This thesis has divided the federal government’s national unity strategy into three segments: the attempted restructuring of central institutions in an intrastate direction; the policies of bilingualism and multiculturalism; and the constitutional entrenchment of a Bill of Rights.

The reform of federal institutions was designed to enhance Ottawa’s responsiveness to regional concerns. The existing structures and operations have induced a considerable degree of political alienation and intergovernmental conflict, particularly since the early sixties. In order to regain its faltering legitimacy, the federal government proposed a set of reforms referred to as "centralist intrastate federalism." Categorically
rejecting the claim that provincial governments are the only legitimate or capable representatives of regional interests, Ottawa insisted that a reformed upper house contain diverse regional representation of which provincial regimes were but minor players. Although intrastate reforms were included among federalist proposals since 1968, they clearly were not a high priority of the Trudeau government. With the demise of Bill C-60 and the return of the Liberals to power in 1980, the idea was all but abandoned in the final round of constitutional negotiation.

Official bilingualism was a policy adopted in direct response to the new nationalism in Quebec. Federal institutions were reformed to better reflect the francophone side of Canada's dual nature and linguistic rights were instituted for the purpose of protecting francophone communities outside of Quebec. In doing this, the federal government hoped to establish itself as a capable and legitimate defender of the French language and culture and to encourage among French-Canadians a stronger identification with the national community. Multiculturalism, on the other hand, emerged as a response to ethnic minorities of non-French, non-British origin who resented the growing tendency to define Canada in dualistic terms. Such a definition did not accurately reflect their contributions to Canadian society making them feel as second-class citizens. In order to salvage bilingualism, Ottawa instituted the policy of multiculturalism thus establishing both linguistic duality and cultural diversity as fundamental attributes of the Canadian community and identity.
An entrenched Bill of Rights has been the focal point of federal proposals since the onset of the constitutional review process. Support for such a document among federal elites came as a result of a deep commitment to liberal-democratic principles and a belief in its nation-building potential. Consisting of a variety of political, legal, egalitarian and linguistic rights, a Bill of Rights was intended to protect the fundamental rights of individuals and minorities, to serve as a unifying symbol, and to act as a vehicle for keeping provincialism in check. The federal objective was eventually achieved through the 1982 Charter of Rights and Freedoms, albeit with the inclusion of a legislative override clause.

Seen in its entirety, the federal national unity strategy was essentially an attempt to undermine rather than accommodate the centrifugal, provincializing forces within Canadian federalism. This was, indeed, the ultimate objective of the three initiatives noted above. There is an implicit rejection of consociational theory which claims that political union can by enhanced through the provision of greater autonomy for sub-national units. To succumb to the decentralizing pressures would, according to Ottawa, lead Canada down the "slippery slope" toward political disintegration. The overall federal strategy contained three major components. First of all, it involved what Knopff and Morton refer to as an attempt to "establish and articulate the conditions of a national citizenship and identity which transcended regional identities." Secondly, it sought to reduce the salience of regional cleavages by encouraging the development of
cross-cutting cleavages which did not run along territorial lines. Finally, Ottawa attempted to erect certain barriers inhibiting provincial governments from constructing distinct provincial societies and identities.

Ottawa clearly recognized that the establishment of a common pole of identification was essential to creating the political will to preserve the federal union. It also recognized that the collective identities can be effectively modified by the state. Hence, it sought through the refashioning of public institutions and state-society relations to construct a common and unifying pan-Canadian identity which surpassed provincial identities in importance. A constitutional Bill of Rights and the policies of bilingualism and multiculturalism were intended to serve precisely this purpose. They would foster a unifying collective identity based on a common adherence to liberal-democratic principles and the values of linguistic duality and cultural diversity.

The predominance of the territorial dimension of Canadian political life has prompted the federal government to seek ways in which to increase the salience of non-territorial, or cross-cutting, cleavages. The Charter, for example, by inducing rights consciousness was intended to mobilize and divide citizens on ideologically and morally based issues, issues which are national in scope and, consequently, do not bring the legitimacy of the central government into question. Official Bilingualism, with its emphasis on minority language rights can also be seen from
this perspective. By sustaining official language minorities within provinces, Ottawa hoped to prevent a coincidence of linguistic and political boundaries. Finally, the intrastate proposals for Senate reform embodied in Bill C-60 provided for the existence of a diversity of regional interests within the upper chamber in the anticipation that this would induce alliances and divisions which did not run exclusively along federal-provincial lines.

Federal initiatives were also designed to limit the scope of provincial power and their capacity to forge stronger provincial communities and identities. By transferring policy-making authority from the legislatures to the judiciary, the Charter was expected to assist in the establishment of "uniform national standards" from which provinces could not deviate. The policies of bilingualism and multiculturalism placed an emphasis on intra-provincial diversities. By endowing linguistic minorities with status and recognition, provincial legislatures are hindered from enacting measures on behalf of their majorities which may infringe upon the rights of these groups. In effect, the federal strategy inhibits provincial governments from constructing distinctive provincial societies and identities through the differential treatment of citizens.

The political maneuvering carried out on behalf of the federal government in pursuit of its objectives evolved over time. In the first round of constitutional negotiations, Trudeau was content to adhere to the conventional requirement of unanimous consent by all provinces. However, with the failure of the
Victoria Charter and the rise to power of the Parti Quebecois, Trudeau began to look seriously at the option of unilateral action. Although Bill C-60 contained some unilateral elements, it still acknowledged that provincial approval was required to patriate the constitution and to include within it a new amending formula. After the collapse of the negotiations that followed the Quebec Referendum, Ottawa decided that even this requirement could be waved and proceeded to embark on the unilateral option.

There is some question concerning the compatibility of the federal policies and proposals. The pan-Canadianism espoused by Trudeau is in some respects antithetical to the underlying premises of intrastate federalism, even in its centralist form. Intrastate federalism assumes that the national interest is derived from the aggregate of regional interests. Based on a compact theory of federalism, this perspective tends to view provincial communities and identities as paramount. Although it is compatible with the overall strategy of enhancing federal legitimacy and limiting provincial power, intrastate federalism seems irreconcilable with a vision that seeks to establish a transcendent national identity, sees the country as more than the sum of its parts, and is concerned more with increasing federal input into provincial policy-making than vice versa. The intrastate proposals of the Trudeau government can perhaps be best understood as a pragmatic response to the many provincialist proposals that were receiving wide attention and support at the time. This may explain why the intrastate initiative was pursued
with less vigor than the others and why it was so quickly abandoned after the Supreme Court struck down Bill C-60.

The nation-building plans of the federal government were constrained by the limits of its jurisdictional authority and subverted by powerful and equally ambitious provincial regimes which adhered to opposing vision of Canadian federalism. Provincial opposition to Bill C-60 prompted the federal government to refer the legislation to the courts, a decision which was to bring about an abrupt end to Ottawa's intrastate ambitions. In the area of language policy, Quebec moved in a direction opposite to that of the federal government by adopting a unilingual regime while no other province with the exception of New Brunswick has yet declared itself bilingual. This has seriously undermined the federal aspirations of building a thoroughly bilingual country. Finally, the provincial opposition to a constitutional Bill of Rights justified by the principle of parliamentary supremacy resulted in a Charter weakened by the inclusion of a "notwithstanding" clause. The fact that Quebec was not a signatory to the 1981 Constitutional Accord also took away some of its legitimacy and nation-building potential.

Inconsistencies and shortcomings in governmental policies are commonplace in the world of practical politics. Theories and ideas when put into practice become subject to a range of hostile political, institutional and societal forces, and emerge as policies in a somewhat diluted and altered form. Any theoretical assessment of governmental policy must take into account the existence of these counterveiling forces.
The Trudeau government's overall objective of undermining provincializing trends and enhancing federal power and legitimacy is by no means a novel approach. It is consistent with a number of federal initiatives throughout Canadian history. Macdonald's National Policy is a prime example of an attempt to integrate diverse provincial economies and societies through the imposition of tariff barriers and the development of a national transportation system. Following the Great Depression, Ottawa's move to assume jurisdiction over unemployment insurance and old age pensions through constitutional amendments and its effective use of conditional grants and the federal spending power to implement certain social programs can be seen as an attempt to establish a firm basis for Canadian citizenship through the provision of uniform welfare entitlements. In addition, the 1960 statutory Bill of Rights -- despite its limited nature -- was yet another attempt to fashion a Canadian citizenship, this time based on the equal entitlement of rights. The initiatives of the Trudeau government can, therefore, be seen as part of the ongoing federal effort to establish "the symbolic and practical attributes of a single Canadian citizenship, ...to strengthen the national community and to resist the provincialization of the Canadian people."

Despite these similarities, there are several ways in which the federal strategy in the Trudeau era diverged from previous efforts. The preoccupation with rights as a means of strengthening the national government and community is certainly one of
the key distinguishing features of this period. Although this began initially in the Diefenbaker years, it was Trudeau who completed the task through the constitutional entrenchment of these rights. Moreover, the expansion of state activity beyond the material order and into the symbolic realm is another important distinguishing characteristic. The redistribution of social status through change in the symbolic order has became an integral part of the federal government's nation-building plans. Finally, while previous efforts did not question the continuation of Canada as a British-type society, Trudeau sought to develop a unifying and distinctly Canadian identity and value system based on the country's linguistic duality and cultural diversity.

To conclude, the Trudeau era was marked by an intriguing and multi-faceted strategy for promoting national integration. It involved a titanic struggle over governmental power and competing conceptions of community which will undoubtedly have a lasting impact on Canadian political life. While continuing the federal tradition of battling the provincialization of Canada, the national unity strategy of the Trudeau government had some important features that distinguished it from its predecessors. Changing societal forces created new political tensions that demanded alternative and innovative responses if Canada was to continue as a nation into the next century. Although it is often difficult to establish causal links between state activity and political outcomes, it would appear that the nation-building efforts in the Trudeau era have been at least moderately successful in achieving the objective of greater national unity.
ENDNOTES: CONCLUSION


2. Ibid., p. 55-58

3. Consociational theory posits that "distinct lines of cleavage among subcultures may actually help rather than hinder peaceful relations among them. Because good social fences may make good political neighbours, a kind of voluntary apartheid policy may be the most appropriate solution for a divided society." See: Arend Lijphart, "Cultural Diversity and Theories of Political Integration" Canadian Journal of Political Science IV:1 (March 1971) p. 11


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