CANADIANS IN DISCORD:
FEDERALISM, POLITICAL COMMUNITY AND DISTINCT SOCIETY IN CANADA

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Abstract

This thesis seeks to explain why Canadians have been unable to reach consensus on the meaning of Canadian citizenship and on the issue of how they relate to one another as citizens. Rather than adopt a longitudinal approach to this dilemma that seeks explaining why it has persisted over time, this study focuses on the 1987 Meech Lake Constitutional Accord, and specifically the provision recognizing Quebec as a "distinct society within Canada". This thesis treats the Accord as a microcosm of the larger "Canadian question". Applying the covenantal and compactual traditions in politics to the Canadian experience, this essay argues that the source of Canadian discord lies in the inability to agree on the essential nature of federalism and political community in Canada. This development has made it difficult for citizens to construct covenantal relations which would bind Canadians together in a lasting political arrangement, free of seemingly perennial constitutional "crises".

Résumé

L'objet de cette thèse est de savoir pourquoi les Canadiens sont incapables de s'entendre sur le sens à accorder au concept de citoyenneté canadienne et sur la façon d'établir des rapports entre eux en tant que citoyens. Au lieu d'aborder ce dilemme dans une perspective longitudinale, qui consisterait à expliquer pourquoi cette attitude s'est perpétuée avec le temps, cette étude se concentre sur l'accord constitutionnel du lac Meech de 1987 et plus particulièrement sur la disposition de l'accord reconnaissant au Québec le statut de «société distincte au sein du Canada». L'auteur traite de cette disposition comme d'un microcosme de la «question canadienne». En appliquant les traditions de pacte à l'expérience canadienne, l'auteur soutient que la discorde qui règne au Canada est due à l'incapacité des Canadiens à s'entendre sur la nature essentielle du fédéralisme et de la communauté politique canadienne. Ce phénomène a empêché les citoyens d'établir des relations de pacte qui lieraient les Canadiens ensemble au sein d'une entente politique durable exempte de «crises» constitutionnelles apparemment permanentes.

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CHAPTER 1

THE CANADIAN QUESTION

> *Indeed, there had never been any large transfer of loyalty from the older communities to the new Dominion.... The achievement of Confederation... had merely overshadowed or, at most, temporarily subordinated the separate interests of the distinct regions and communities.*
>
> The Royal Commission on Dominion-Provincial Relations, 1940[1]

For generations, Canadians have sought to resolve the fundamental political and constitutional question of how they relate to one another as citizens. This has, of course, been a continuously evolving process, which even pre-dates Confederation. In the eighteenth century, for example, under first the French, then the British colonial rule, French-speaking inhabitants referred to themselves as "habitants" or "Canadiens". These represented terms which identified a certain attachment citizens had to a particular community or political entity. With the influx of English-speaking United Empire Loyalists from the post-Revolutionary United States, the term of "British subject" was added to the political vocabulary of British North America. The federal union of 1867 marked yet another stage in the process of forging a new

political nationality. Throughout the life of this political arrangement, the term "Canadian" has come to define the inhabitants of a particular territory, at first limited to four provinces and then extended, over time, to six more. This is confirmed by Alan Cairns and Cynthia Williams, who write: "(c)ommunity changes since 1867 have been extensive. There were no Canadians in 1867, only the hope that they would emerge as the nation-building enterprise proceeded[2]." There can be no doubt that this process has been a slow one, as Canada has gradually distanced itself from its imperial roots. And equally undeniable is the fact that successive Canadian governments have played an active part in this process. The Canadian Citizenship Act (1947), the adoption of a distinctive Canadian flag and the entrenchment in the constitution of a charter of rights, to name but three, have all served to define and symbolize Canadian citizenship.

However, the bonds of citizenship extend beyond statutory provisions. They not only refer to privileges, rights and obligations between an individual and his/her governments, but also relate to a link between an individual and a particular territory or community. Indeed, Webster's dictionary defines "citizenship" as "the manner in which a person responds to his duties as a member of a community." An individual may face certain legal obligations and duties accompanying citizenship, as proscribed by law. However, citizenship also carries with it certain moral obligations to a political entity, which

cannot be enforced by law, but which are derived from a sense of mutual respect and personal commitment. This is illustrated by Donald Smiley, who wrote:

> The concept of a Canadian political community or nationality means that Canadians as such have reciprocal moral and legal claims upon one another that have no precise counterparts in their relations with others, and that Canadians as such have a continuing determination to carry out a significant number of important common activities together[3].

Thus, a sense of commonality or common citizenship emerges not simply from the fact that Parliament has recognized a group of people in a particular community as sharing a common identity. It also stems from those people themselves finding meaning in that identity, that community membership and that citizenship. As Cairns and Williams write,

> The extent to which citizens...identify with the political order, are willing to perform multiple citizen roles and to forbear from exploiting strategic positions of power in society are all positively linked to their view of the nature of community membership, the rights and obligations of citizens, and the feeling that they, as community members, are treated equitably and honourably by the state[4].

The challenge of the Canadian experience is precisely in giving meaning to a Canadian citizenship which finds some consensus among Canadians regardless of language or region. In 1867, this subject was avoided for various reasons. Among them was the fact that, for most English Canadians, this was largely a non-issue, as Canadians were defined and were bound to one another through their loyalty to the Crown[5]. This view

was not shared by French-speaking Canadians, for whom the imperial connection evoked memories of conquest. These two notions of citizenship, clearly, were not reconcilable. Consequently, political expediency dictated that this contentious issue be avoided rather than risk having it compromise the federal agreement[6].

In time, even though Canada's imperial links declined in importance, the matter of the way in which Canadians relate to one another has remained a source of discord. The question that begs to be asked is: why has this remained problematic? An examination of the 1987 Meech Lake Constitutional Accord[7] can provide some insight into this dilemma.

In recognizing Quebec as a distinct society in an amended section 2 of the British North America[8] (BNA) Act, this Accord sought, among other things, to set out a different conception of Canadian citizenship, based upon the idea that Quebec, not Canada as a whole, is the principal homeland for the French language and culture. Quebecers' sense of belonging to the Canadian political community was seen to stem from their attachments to a political community centred in Quebec. In short, the primary message contained in the Meech Lake Accord was that Canadian citizenship had meaning for Quebecers only insofar as it was derived from a Quebec-based citizenship. However, this vision of citizenship was, for a variety of reasons, rejected by the majority of Canadians.

The main purpose of this thesis is to explore further

the implications of the distinct society clause contained in the Accord and how it sought to redefine and restructure the relationship between the Quebec and Canadian political communities. Moreover, it will speculate on what the rejection of the Accord reveals about the nature of federalism, political community and distinct society in Canada. It will illustrate that the debate surrounding the merits of this failed constitutional amendment, in effect, reflected Canadians' perennial attempts to give meaning to Canadian citizenship.

Of course, English-French relations is not the only element of the Canadian dilemma worthy of attention. Some analysts have pointed to institutional weaknesses as a source of discord[9]. Others have argued that the nature of Canada's political economy, which has tended to encourage north-south trading ties at the expense of those running east-west, has strengthened the centrifugal forces in Canada and has hindered the development of the Canadian union[10]. The existence of these multiple perspectives not only serves to explain the persistence of discord in Canada, but also to illustrate that, in addressing the conception of Canadian citizenship outlined in the 1987 Accord, this thesis merely scratches the surface of the "Canadian question." In order to place the Meech Lake debate within an appropriate historical context, this thesis will first examine the broader dilemma of the Canadian experience and will then turn to the Meech Lake Accord as a

reflection or microcosm of the "Canadian question."

THE "CANADIAN QUESTION" IN HISTORICAL PERSPECTIVE

The Canadian question has been, in large part, though not exclusively, a debate centred around federalism, political community and distinct society in Canada. The roots of this debate can be found with Confederation. By the 1860's, after having experienced more than a quarter-century of unitary rule, it became evident to the Fathers of Confederation that a new political arrangement was necessary. The dilemma was in designing a system of government that would unite three disparate colonies and yet respect cultural, linguistic and religious diversity, as well as provide some degree of local autonomy. Federalism thus appeared as the ideal compromise. In the words of Georges-Etienne Cartier, "a federation scheme was the best because these provinces are peopled by different nations and by peoples of different religions[11]." Jurisdiction over that which had divided Canadians in the previous regime, such as language, education and religion, was assigned to provincial governments. The federal government retained sweeping powers, permitting it to act in areas of common interest to all citizens and to foster a new political nationality. This prompted Hector Langevin to proclaim that "in Parliament there will be no question of race, nationality, religion or locality, as this Legislature will only be charged with the settlement of the great general questions which will

interest alike the whole Confederacy, and not one locality only[12]." This seemed consistent with the views expressed by Cartier during the Confederation debates of 1865. In his now often-cited speech, he declared:

> Now, when we were united together, if union were attained, we would form a political nationality with which neither the national origin nor the religion of any individual would interfere[13].

However, the federation did not evolve in the manner foreseen by Cartier, Langevin and others. Rather than foster harmony and a sense of mutual commitment and obligation between Canadians and between diverse communities of people, the Canadian federal experience seemingly accentuated linguistic and regional cleavages, thus exacerbating the Canadian question. As a result, different conceptions of federalism and political community emerged. Did the BNA Act represent a pact among four provinces, designed to further the interests of the provinces, even those formed after 1867 by Act of Parliament? A confederation of provinces--as the lesson from the American Articles of Confederation suggests --denies the possibility of any meaningful attachment by Canadians to a Canadian national political community, as well as a citizenship which cuts across regional and linguistic lines. Or, was Confederation a compact between two "founding peoples", which saw citizenship as carrying with it a respect of Canada's two principal languages? By the 1960's, a new conception of community emerged in Quebec which added another

twist to the Canadian question[14].

While successive Quebec governments since the time of Honoré Mercier, had always been preoccupied with the defense of provincial autonomy, by 1960, the main concern of Premier Lesage and his successors had become that of expanding the powers of the provincial government so that it may transform Quebec from a traditional society to a more advanced, industrialized one. There was, during this period, renewed awareness among the French-speaking majority that the levers of government could be used to achieve certain collective goals. This gave rise to a change in outlook, as Quebecers no longer referred to themselves as "French Canadians", but as "Québecois". In effect, this reflected a new perception of community, revealing Quebecers' stronger attachment to their provincial government and provincial political community. The province, as the sole jurisdiction containing a majority of French-speaking citizens in North America, was no longer viewed as a province "comme les autres". Consequently, a different conception of community surfaced. It maintained that Confederation represented a pact between two equal nations: one English-speaking, represented by the "national" government in Ottawa, and the other French-speaking, represented by the "national" government in Quebec. This appeared consistent with the views expressed by the Commission royale d'enquete sur les problèmes constitutionels (Tremblay Commission), which, in 1956, described the province of Quebec as "le foyer national,

le centre politique du Canada français, la gardienne attirée de sa civilisation[15]." Thus, a sense of belonging to the Canadian political community was seen to emanate from membership in either of the two "national" political communities: "English" Canada and "French" Canada.

The entrenchment in the constitution of the Canadian Charter of Rights and Freedoms, in 1982, carried with it another conception of federalism and political community in Canada. Based upon the idea that all Canadians, as such, enjoyed certain rights and priveleges associated with citizenship, the Charter served to emphasize membership within the Canadian political community. Other ethnically and territorially defined characteristics, such as language or residence in a particular province or region, respectively, consequently declined as significant factors in the Canadian constitutional order, giving way to the principle of the equality of citizens[16].

Given the proliferation of these numerous conceptions of community, it should not be surprising that Confederation has appeared to be in question virtually since the very beginning. The dilemma of the Canadian experience was first articulated by Goldwyn Smith as early as 1891. Against the backdrop of the election in Nova Scotia of a separatist government, economic depression, which afflicted the Dominion in the 1870's, and the hanging of Louis Riel, which incited tensions between French and English Canadians, Protestants and Catholics, and

Quebec and the six other provinces, Smith wrote:

> Whether the four blocks of territory constituting the Dominion can forever be kept by political agencies united among themselves...is the Canadian question[17].

Since the time of Goldwyn Smith's work, Canadians and their governments have, on many occasions, attempted to resolve the "Canadian question". However, this has proved exceedingly difficult. The most direct evidence of the persistence of this dilemma is the numerous proposals for the amendment of the constitution that have emerged, arguably, since the first interprovincial conference in 1887. This is also seen in the number of commissions of inquiry that have been created in order to better define and resolve the Canadian dilemma.

Furthermore, judging from the profusion of academic work dealing with this topic, particularly over the course of the last quarter-century, it is safe to say that political scientists themselves have not only faced similar problems in resolving this predicament, but have also shown themselves to be rather pessimistic about the prospects for a definitive and constructive resolution[18]. An intellectual crisis has accompanied the constitutional crisis. One need only consider those literary sources referring to the "burden of unity" and the "roots of disunity" to see how this is true[19]. In addition, titles such as Must Canada Fail?, Canada in Question, Canada and the French Canadian Question, And No One Cheered and Unfulfilled Union, to name but a few, serve to

reflect both the pessimism with which political scientists have perceived this question as well as the scope and magnitude of this perennial dilemma[20]. This has contributed to an almost continuous crisis-like atmosphere within Canadian political discourse, which has come to influence Canada's legislators. The language employed in a number of commissions of inquiry lends support to this point.

For example, The Preliminary Report of the Royal Commission on Bilingualism and Biculturalism noted, in 1965, that "Canada, without being fully conscious of the fact, is passing through the greatest crisis in its history[21]." Subsequent commissions have more recently reiterated this tone of crisis. Fourteen years later, The Report of the Task Force on Canadian Unity proclaimed that "the crisis which the country faces today is not one of Quebec or of French Canada alone: it is a crisis of Confederation itself[22]." The Citizens' Forum on Canada's Future, in 1991, asserted that "Canada is grappling with twin crises--one of structure, the other, more profound and delicate, of the spirit[23]." Even, in March 1992, The Report of the Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) declared:

> Canada is at a critical point in its history. Either it continues on the path of unity, a strong nation, confident of its future and of its people, or it engages itself on a drastically new path, one laden with uncertainty and doubt[24].

The critical question is how did this issue reach such crisis proportions. What has made it so complex as to

preoccupy generations of Canadians? What has hindered the development of a sense of citizenship which appeals to Canadians regardless of the language that they speak or the region in which they live? The debate over the Meech Lake Accord can suggest some answers.

THE MEECH LAKE ACCORD AS A MICROCOSM OF THE CANADIAN QUESTION

The 1987 Meech Lake Constitutional Accord represented one of the latest attempts at resolving the Canadian question. It can be safely stated that the main issue in the current constitutional debate is not whether the term "distinct society" accurately describes Quebec society today. Instead, the source of debate centres around more substantive questions relating to federalism and political community in Canada. As Richard Simeon noted:

> The Meech Lake Accord has rekindled a broad debate about the fundamentals of Canadian state and society and about the character of Canadian federalism--about relations between national and provincial communities, between federal and provincial governments and between citizen and state[25].

Did the recognition of Quebec as a distinct society stand to confer new legislative powers upon the government and National Assembly of Quebec, thus undermining the idea of the equality of provinces? Or, did this clause merely provide a symbolic recognition of Quebec's distinctiveness, explicitly acknowledging what had already been implicitly recognized in the BNA Act? Would section 2 have resulted in a checkerboard

application of charter rights, thus subverting the equality of citizens? Would it have had no other effect than to undercut all attempts at fashioning attachments by all Canadians to a pan-Canadian political community? Would the affirmation of the French-speaking nationality, centred in Quebec, have been able to co-exist alongside the conception of community set out in the Charter? Finally, would the distinct society provision have contributed to the erosion of pan-Canadian bilingualism thereby undermining the equality of French and English across Canada? Or, was it fully consistent with the Canadian constitutional practice of devising constitutional arrangements around linguistic duality and cultural diversity?

These questions illustrate that the focus of the Meech Lake debate was not limited solely to the content of the proposed amendment, but rather touched upon the larger question relating to the nature of federalism and political community in Canada. It also revealed that Canadians are still unable to reach consensus on this issue and resolve the Canadian question. This elicits the query: why is this the case? Why has the resolution of the Canadian question proved so problematic, as reflected in the Meech Lake debate?

The answer to this question can be found in the second chapter. In reviewing the literature pertinent to this topic, the next chapter will outline the three main schools of thought that have attempted to better define the Canadian

question: the political economy approach, the institutionalist school and the covenantal and compact traditions in politics. The existence of these divergent perspectives illustrates how difficult it has been, and continues to be, to find consensus not only on the resolution of the larger Canadian question, but also on the nature of the question itself.

The third chapter will focus on the compact and covenantal traditions in politics and within Canadian political discourse. It will demonstrate that even within this school of thought, agreement on the nature of covenantal relations in Canada has been elusive. This has further contributed to the persistence of the Canadian question and to the dilemma of giving meaning to Canadian citizenship.

The fourth chapter will zero in on the distinct society clause contained in The Meech Lake Accord and the conception of community and citizenship underlying it. It will assess the arguments for and against this clause, as well as the context in which the current debate is taking place.

The concluding chapter will sum up the arguments presented throughout this thesis and will try to speculate on the future. It will also attempt to place the Canadian constitutional crisis in a more historical and comparative context.

ENDNOTES TO CHAPTER 1

1 Report of the Royal Commission on Dominion-Provincial Relations (Ottawa, 1940), Book I, p.54.

2 Alan Cairns and Cynthia Williams, "Constitutionalism, Citizenship and Society in Canada: An Overview," in Constitutionalism, Citizenship and Society in Canada, eds. Cairns and Williams (Toronto, 1985), p.15.

3 Donald Smiley, The Canadian Political Nationality (Toronto, 1967), pp.30-31.

4 Cairns and Williams, op.cit., pp.4-5.

5 Ramsay Cook, The Maple Leaf Forever (Toronto, 1977), p.163.

Kenneth Carty and Peter Ward, Canada in Crisis: Entering the Eighties (Toronto, 1980), p.12.

6 Carty and Ward, National Politics and Community in Canada (Vancouver, 1986), p.67.

7 While agreement on the 1987 Constitutional Accord was reached on April 30, 1987 at Meech Lake, Quebec, the final text was drafted on June 2-3, 1987 at the Langevin Block in Ottawa. Nonetheless, this Accord is commonly referred to as the Meech Lake Accord.

8 The Constitution Act, 1867. This will be referred to throughout this thesis as its original name, the British North America Act.

9 One such example is Roger Gibbins, Regionalism: Territorial Politics in Canada and the United States (Toronto, 1982).

10 An example of this approach can be seen in Garth Stevenson, Unfulfilled Union (St.Catherines, Ont., 1989).

11 Cited in Ramsay Cook, Canada and the French Canadian Question (Toronto, 1966), p.44.

12 Ibid., pp.44-45.

13 Parliamentary Debates on the Subject of the Confederation of the British North American Provinces, 7 February 1865, p.60.

14 Ramsay Cook wrote in 1966: "Canada and the French Canadian question is really the Canadian question." Canada and the French Canadian Question, p.2.

15 Commission royale d'enquête sur les problèmes constitutionels (Quebec, 1956), Vol.II, p.62.

16 Cairns and Williams, op. cit., p.40.

17 Goldwyn Smith, Canada and the Canadian Question (Toronto, 1891), p.5.

18 David Bell and Lorne Tepperman, The Roots of Disunity: A Look at Canadian Political Culture (Toronto, 1979), p.6.

19 Ibid.

20 Ibid.

21 Preliminary Report of the Royal Commission on Bilingualism and Biculturalism (Ottawa, 1965), p.13.

22 Task Force on Canadian Unity: A Future Together (Hull, 1979), p.15.

23 Report of the Citizens' Forum on Canada's Future (Ottawa, 1991), p.8.

24 Report of the Special Joint Committee on a Renewed Canada (Ottawa, 1992), p.4.

25 Richard Simeon, "Meech Lake and Shifting Conceptions of Canadian Federalism," Canadian Public Policy/ Analyse de Politiques XIV (September, 1988), p.10.

CHAPTER 2

UNDERSTANDING THE SOURCES OF DISCORD

The literature addressing the Canadian question is vast. Indeed much scholarly attention has focused upon, not only the means of resolving this seemingly perennial dilemma, but on how to better define the nature of the question as well. Accordingly, much of the literature pertinent to this issue takes a longitudinal approach, attempting to explain why this matter has remained problematic over time. In concentrating on the debate surrounding the Meech Lake Accord, this thesis seeks only to provide a snapshot of the enduring Canadian question. Thus, the literature review that follows is not intended to be a comprehensive survey of what has been written on the larger Canadian dilemma. Instead, it aims to provide an adequate cross-section of existing literature, in order to place the Meech Lake debate in historical context. For the our purpose, the relevant literature may be divided into three main schools of thought: the political economy approach, the institutionalist perspective and the covenantal and compactual tradition in politics. Each one will be examined in turn.

THE POLITICAL ECONOMY APPROACH

It is perhaps fitting that the first body of literature to be assessed in this chapter is that of political economy.

This field has, of course, figured prominently within Canadian political discourse, and has addressed many of the issues vital to Canada's political development, ranging from the staples tradition of Harold Innis, to concerns, in the 1960's and 1970's, over American ownership of Canadian industries. However, it is the works contained in The Canadian State: Political Economy and Political Power, edited by Leo Panitch, that represent an important point of departure for the purposes of this chapter.

Panitch, in "The Role and Nature of the Canadian State", contends that the links between the state and the dominant classes in Canada have been "particularly close and intimate[1]." Accordingly, the Canadian state has performed an important role in encouraging capital accumulation. However, because of Canada's federal nature, the more populous region of central Canada has dominated the peripheral regions of the country. This has undermined the unity of the bourgeoisie[2]. Consequently, the dominant classes have turned to their provincial governments to express their interests. As Panitch writes:

> The dominant...class fractions in the provinces, often unable to constitute a unity with their counterparts either through political parties or in economic coalitions, have used the provincial state to express their interests[3].

Similarly, Reg Whitaker, in "Images of the State in Canada" seeks to account for the domination of certain societal groups over others, be it capitalists over farmers

or the working class, or English Canadians over French Canadians. The source of such societal division, in the author's view, is the tory notion of state and society, which prevailed within English Canadian political culture. Toryism advanced a more aristocratic, hierarchical view of society than did liberalism, and reserved a minimal role for the state, thus reinforcing societal inequalities[4]. Likewise, it tended to see the relationship between state and society as separate and distinct. As a result, divisions between Canadians about the nature of community and citizenship have persisted. Whitaker elaborates:

> The nation and state were not coterminous concepts in Canadian discourse. The concept of cultural nationality and the concept of political or state sovereignty were distinct and analytically separate....The Canadian national state thus lacked one of the most powerful reinforcements known to the modern state--national sentiment and collective cultural identity....(E)very attempt to grasp such a collective definition only drove the internal divisions yet deeper[5].

Garth Stevenson's Unfulfilled Union (1989) represents a more recent application of political economy to an analysis of Canadian federalism. In this work, the author seeks to explain precisely why Canadians have been unable to reach consensus on the nature of political community and the meaning of Canadian citizenship. Like Panitch, Stevenson argues that Confederation, was designed largely to benefit the capitalist classes, namely those associated with the railway and banking industries[6]. Having perceived that Ottawa was unsympathetic

to their cause, these economic interests aligned themselves with provincial governments and tended to become defenders of provincial autonomy[7]. As a consequence, according to Stevenson, there would be no long-term loyalty to one particular level of government and no overarching loyalty to a Canadian political community[8]. Furthermore, the extensive economic power accumulated by the provinces meant that Canada would not become a true economic union. Barriers to the free flow of goods between provinces would remain, as preference would be given to local interests, thus discouraging inter-provincial trade[9]. This dilemma has been further compounded, according to Stevenson, by the Free Trade Agreement with the United States. This accord reinforces the north-south trading links at the expense of east-west links and, in the author's view, further strengthens the centrifugal forces in Canada[10].

The constitutional implication of these developments is that provinces have translated their economic influence into greater political power and constitutional leverage. The ten provincial governments have, as a result, gained significant bargaining power as agents of constitutional choice and as the only legitimate spokesmen for regional and provincial interests. In the author's view, this has served to undermine national unity by emphasizing ten provincial political communities at the expense of the national political community[11]. Consequently, provincial boundaries are seen as the "most significant basis of political interest or

allegiance...and the many interests and associations that unite individuals and groups across provincial boundaries are given little expression[12]."

Mark Sproule-Jones, in two articles, examines Canadian federalism from another variant of the political economy approach, that of rational or public choice theory. In "An Analysis of Canadian Federalism", he contends that federalism represents a form of self-governance that allows citizens to capitalize on choice. The existence of two levels of government, and the overlap that exists between them, provides citizens with greater reliability and choice in the provision of goods and services[13]. Thus, the co-existence of national and provincial political communities and identities is seen, in theory, as something beneficial rather than problematic. However, Sproule-Jones' emphasis on the "logic of clubs" suggests an explanation for the persistence of the Canadian question, which is at variance with most of the political economy literature in Canada.

Both federal and provincial governments are equated with members of an exclusive club whose tendency is to exclude new entrants, such as, for example, aboriginal groups. Each member of the club has an incentive to be the sole supplier of goods and services, while extracting from the other as large a financial contribution as possible[14]. In addition, each member has an incentive to refuse to contribute to programs that provide goods and services that are not consumable within its

sphere of jurisdiction[15]. Consequently, the imposition of new programs requires the consent of all governments[16]. In constitutional discussions then, each of the eleven governments aims to maximize its benefits--that is receiving constitutional concessions--while minimizing its costs and concessions to others. This helps to explain why provincial governments have emerged as sole legitimate representatives of provincial interests. It also illustrates how difficult it has been to fashion a conception of community and citizenship which transcends provincial boundaries.

In "The Enduring Colony?", Sproule-Jones examines the implications of the marriage of federalism and the Westminster model of parliamentary government. Whereas federalism is based upon the idea of dividing authority between concurrent levels of government, parliamentary responsible government concentrates power within the executive. The result of this combination is the omnicompetence of government, leaving few means of balancing the exercise of political power within each order of government[17]. This raises the question as to whether or not this type of government fosters a sense of national community and citizenship. In Sproule-Jones' view, Canada has remained a colony, as the old British governors have, since 1867, been replaced by executive-dominated governments[18].

Like Sproule-Jones, Albert Breton also writes in the public choice variant of political economy. In the "Supplementary Statements" of the Report of the Royal

Commission on Economic Union and Development Prospects for Canada (Vol. III) Breton sees competition between governments as a way of maximizing the provision of goods and services[19]. The extension of responsible government to two orders of government has meant that the provinces have come to serve the function of "checking" the federal government[20]. Whereas Sproule-Jones sees this as entrenching majority rule as an operative feature of government and politics in Canada, Breton believes that this introduces more "checks and balances" into the political system, thereby stimulating greater debate and citizen interest and participation in the political process[21]. Thus, for Breton, and unlike Sproule-Jones, the combination of federalism and parliamentarism is not necessarily a source of discord in Canada.

THE INSTITUTIONALIST PERSPECTIVE

The second group of literature to be reviewed in this chapter focuses on Canada's political institutions. Indeed, this emphasis is what unites writers of different ideas and traditions. There has been a significant evolution within the institutionalist perspective since Donald Smiley's Canadian Political Nationality (1967). This work was concerned primarily with the relations between French and English Canadians and between the governments of Quebec and Canada. As a way of offsetting increasing support within Quebec for that province's independence from Canada, Smiley argued that

the "Canadian political nationality" must incorporate the aspirations of French-speaking Canadians so as to better reflect the linguistic duality of Canada[22]. A similar message was expressed by Pierre Trudeau. While Trudeau's work in "Federalism, Nationalism and Reason" can be classified in the covenantal school, it is included here since it offers an institutional solution to the Canadian question.

In this article, Trudeau argued that the emergence of nationalist sentiment in Quebec represented a threat to the survival of a national political community in Canada. The only possible remedy to this development, and the only way to create a truly national sentiment that would incorporate all citizens, was to ensure the equality between French and English Canadians and between the French and English languages. This would enable all citizens to receive services from the federal government in either language anywhere in Canada. As Trudeau noted:

> the whole of the citizenry must be made to feel that it is only within the framework of the federal state that their sacred traditions and standard of life can be protected from external attack and internal strife[23].

However, such measures have seemingly proven insufficient as remedies for the Canadian question.

Roger Gibbins' analysis offers a different explanation for the persistence of the Canadian question. In Regionalism: Territorial Politics in Canada and the United States (1982), Gibbins compares the responsiveness of national institutions

in both the United States and Canada to regional and linguistic cleavages. In the United States, the process of national integration began with the creation of a new constitution in 1787[24]. Unlike the Articles of Confederation, where each state retained sovereignty and agreed to delegate certain powers to the central authorities, the new American constitutional arrangement created a national government that would have direct relations with citizens. In essence then, the national government would no longer derive its authority from state governments, but rather from "the people" themselves. The task of reconciling the sovereignty of "the people", as expressed through national institutions, and the sovereignty of the states, which is protected by the federal constitution, would rest with the Senate, where each state would be equally represented regardless of population. The change in the method of selecting Senators, in the late nineteenth century, from appointment by state legislatures to direct election, had an important impact on conceptions of community and political allegiances. First, the direct participation of citizens served to bind Americans more closely to their national political community[25]. And, second, by removing the power of appointment from state legislatures, the state governments were no longer able to establish themselves as sole spokesmer for their regions. In short, to use Donald Smiley's terms, intrastate federalism[26], that is the ability to represent regional interests within national

institutions, triumphed over interstate federalism, where the defense of regional concerns is left to the state governments[27].

Gibbins points out that the Canadian federal experience worked in the opposite direction. While the BNA Act was a considerably more centralized document than the American constitution, the Fathers of Confederation sought to ensure that matters which divided French and English and Protestant and Catholic citizens would not seep into national politics[28]. Consequently, they allocated all matters relating to language, religion and culture to the provinces, rather than attempt to conciliate them at the federal level[29]. However, as they soon discovered, they could not separate these questions entirely from national politics. As a result, provinces, relying on the cry of "provincial autonomy", came to play a larger role in resolving federal-provincial conflicts than their American counterparts.

The status of provincial governments and provincial political communities was consequently further enhanced. In Gibbins' view then, the Canadian federal experience has driven Canadians apart rather than integrate them more closely within the Canadian political community[30]. This has served to further exacerbate the Canadian question.

Alan Cairns, in a series of articles, has analyzed how Canada's political institutions have contributed to the fragmentation of political community in Canada. In two

articles, "The Constitutional, Legal and Historical Background to the Elections of 1979 and 1980" and "The Electoral System and Party System in Canada", Cairns points to how Canada's single-member plurality electoral system has tended to reward those parties that can concentrate support in the more populous areas of the country and capitalize on sectional cleavages. In effect then, some parties tend to "write off" certain regions in their electoral strategies, which has not only had important consequences on the party system in Canada, but has been detrimental to national unity by underrepresenting certain regions within the federal government[31]. This has further contributed to the weakness of intrastate federalism in Canada by reinforcing the role of provincial governments as the only credible representatives of particular regions. Similar to Gibbins then, Cairns maintains that this development has brought about a conception of citizenship which is based upon membership in provincial political communities.

Cairns expands upon this argument in the "Canadian Constitutional Experiment". He correctly points out that Canadians' definitions of political community have changed over time, from a perception of Canada as a British country with a substantial French minority, to one that recognizes Canada's bilingual and multicultural nature[32]. Provincial governments have subsequently come to play a role in this process of self-definition, and have tended to view the

Canadian national political community as nothing more than the aggregation of provincial political communities, for which they were the natural spokesmen[33]. The debate surrounding the meaning of Canadian citizenship has, as a result, been transformed into one of federalism, where the relationship between governments has become a primary concern[34].

In one of his latest works entitled Disruptions: Constitutional Struggles from the Charter to Meech Lake (1991), Cairns argues that the process of clarifying the boundaries of community has, since 1982, been rendered more complex with the addition of the Charter to our constitution. A new "language of rights" has become part of the Canadian political discourse, with a strong emphasis on Canadian citizenship[35]. The language of federalism and parliamentarism has been replaced by the emergence of gender, race and ethnicity as constitutional issues[36]. As a consequence, groups or individuals deemed to have "won" protection or recognition in the Charter, such as women's and Native groups, will seek to ensure that "their" Charter provisions are untouched by future constitutional amendments. According to Cairns, the Charter has multiplied the number of parties that have an interest in the constitution, making it more difficult to reach consensus on important constitutional issues[37]. This development will also make it difficult to talk of "two founding peoples" or of a "compact of provinces", without including these new "Charter groups"[38]. Thus, definitions of

community in Canada can no longer be based upon language or region, but must incorporate these new constitutional actors[39]. The inability of the eleven governments to comprehend this new reality over the course of the Meech Lake debate contributed to the perceived illegitimacy of both the process and substance of the 1987 Accord[40].

It is plausible to assert, when extending this analysis to include the Meech Lake debate, that the institutionalist perspective can offer an explanation for the rejection of the distinct society clause. There were those observers who expressed concern that this provision of the Meech Lake Accord granted Quebec a special legislative status, thus creating an asymmetrical relationship between the two levels of government, and between the provinces of Canada. While most of the literature pertaining to this Accord will be examined in greater detail in chapter four, some general comments are possible here.

One of the more outspoken critics of this provision, Premier Wells of Newfoundland cited as the main weakness of the distinct society clause the possibility of the National Assembly exercising powers not available to other provinces. If this were to occur, he maintained, then provincial, as opposed to federal, political institutions would be seen by Quebecers as the only ones capable of advancing their interests and worthy of their loyalty[41]. Pierre Trudeau made a similar claim[42]. Former cabinet minister Donald Johnston

wondered what jurisdiction the Parliament of Canada would retain over a post-Meech Lake Quebec[43]. And, David Bercuson speculated as to how a nationalist or separatist government in Quebec could interpret the distinct society clause in such a way as to gradually expand that province's legislative jurisdiction[44].

In short, this perspective illustrates that, for some analysts, the way in which the distinct society clause would have potentially impacted upon the political institutions both at the federal level and in Quebec, represented meaningful grounds for rejecting the Meech Lake Accord.

COVENANT AND COMPACT IN POLITICS

A third school of thought relating to the broader Canadian question addresses the covenantal and compactual elements of politics. This approach to politics differs from the previous two in that it assumes politics to be more than simply the exercise of power, or the domination of some groups over others. Indeed, this school of thought focuses on politics as a means of sharing power, fostering commonality and reciprocity, and structuring relationships among people.

Several authors have examined the nature of political community in Canada and of the Canadian constitution from this perspective. An important starting point however for an examination of this tradition is the American experience. As several authors have illustrated, the American federal union

represented the first application in the New World of covenantal ideas as a means of structuring political relationships. Accordingly, an understanding of the way in which the Americans struggled with this concept can provide some insight into the persistence of the Canadian question.

Daniel J. Elazar, in "The Political Theory of Covenant: Biblical Origins and Modern Developments" explains the meaning and political application of the "idea of covenant[45]." According to Elazar, a covenant is:

> a morally-informed agreement or pact between people or parties, having an independent and sufficiently equal status, based upon voluntary consent and established by mutual oaths or promises witnessed by the relevant higher authority[46].

In addition, a covenant provides for "joint action or obligation" to achieve a defined end[47]. Mutual respect and consent are considered vital elements of a covenant, which is "meant to be of unlimited duration, if not perpetual[48]."

As for its political application,

> covenant expresses the idea that people can freely create communities and polities, peoples and publics and civil society itself through such morally grounded and sustained compacts... establishing thereby enduring partnerships[49].

Thus, in politics, the essential component of covenant is the creation of relationships, not only between ruler and ruled, but between citizens as well. In this way, covenant can be said to link power with justice.

Alexis de Tocqueville's Democracy in America provides empirical support for this point. In discussing the principle

of the sovereignty of "the people"[50], Tocqueville illustrates how the covenantal nature of the American experience permits each individual to take part equally in the governance of the state. In addition, he emphasizes how this same covenantal basis serves to structure relationships between communities of people. As he writes:

> (each individual) obeys society, not because he is inferior to those who direct it, nor because he is incapable of ruling himself, but because union with his fellows seems useful to him and he knows that that union is impossible without a regulating authority[51].

Indeed, this is what Elazar was referring to when he wrote: "In politics, covenant connotes the voluntary creation of a people and body politic[52]." For Tocqueville, it is this sense of obligation between individuals which permits citizens to govern themselves in townships, styled after the New England township, and yet retain an attachment to larger political communities at the county, state and national levels[53].

This is explored further by Vincent Ostrom et al. in Local Government in the United States. Building on Tocqueville's work, the authors assert that a basic principle of self-government is that "the people", as the only objects of government, have the power to alter the arrangements of government under which they live to suit their interests and the interests of their community[54]. Thus, the sentiments citizens feel for the larger national political community are a function of the contribution they make to its general

welfare. In other words, when there is an absence of reciprocity between diverse communities of people, and when majority rule becomes the operative feature of government and politics, then covenantal relations break down and the sense of mutual obligation between citizens disappears. As Ostrom et al. write:

> Where authority is distributed so that each element of a community contributes to a common good, the different elements maintain a pattern of reciprocity with one another and thus are encouraged to participate to each other's mutual advantage. Reciprocity is abandoned however, when some, even when they are a majority, use their capabilities to exploit others. When reciprocity is abandoned, the spirit of cooperative participation in a joint venture is lost. Individuals become alienated and the sense of community erodes[55].

The American federal system then, multiplied the points at which citizens could engage in collective action, and govern themselves. As a result, Ostrom et al. describe American political discourse as "federalized" rather than "centralized" or "decentralized"[56].

Filippo Sabetti, in "Covenant Language in Canada" applies the covenantal elements of politics to the Canadian experience. He argues that a covenant is an important component of federalism. The idea of sharing power finds its basis in reciprocity and relationships based upon consent[57]. Such political discourse is often overlooked in discussions of federalism in Canada. Sabetti argues that while there may have been an implied covenant, either between provinces or peoples, in the making of a united Canada, it was only after

1867 that a "covenant language" came to be part of Canadian political discourse[58]. Paradoxically, this development had the effect of discrediting the notion of a covenant in Canada. This was primarily due to the fact that the compact theory that prevailed within Canadian political discourse was concerned more with the exercise of power than the sharing of power for the pursuit of joint objectives[59]. As a result, "contemporary political discourse has little or no reference to a language of sharing and joint action and obligation[60]." This has, in the author's view, made it difficult to foster a sense of belonging to a common political community in Canada[61]. Moreover, Sabetti outlines two theoretical problems with the covenantal tradition. First, how far must a covenant extend[62]? To what political relationships must it apply? Can there be a covenantal arrangement within a plural society? And second, how can "covenant language" serve as a basis for authority relationships? How can one give shape or meaning to the covenantal base of politics[63]?

Edwin Black's Divided Loyalties (1975) touches upon the empirical problems associated with the covenantal perspective of politics. In outlining five different conceptions of political community, Black confirms that there exists considerable debate about the nature of and parties to covenantal relationships in Canada. The Canadian question has consequently remained unresolved.

Black's view find support in the works of two other

authors, Arthur Silver and Ramsay Cook. Silver, in The French Canadian Idea of Confederation 1864-1900, outlines how, for Francophone Quebecers, Confederation represented an act of separation from Upper Canada rather than an act of union[64]. In granting Quebec provincial status, the new federal arrangement provided French-speaking Canadians the most far-reaching form of self-government since 1763. It became clear then, that provincial autonomy would be considered sacred for Quebecers[65]. This became even more evident following events involving French-language minority education rights in Manitoba, Prince Edward Island, New Brunswick and Ontario. History had shown that French-speaking Canadians could not trust constitutional arrangements that offered language guarantees[66]. Therefore, for Quebec, it was vital that any compact theory preserve that province's legislative autonomy, rather than set out a conception of citizenship, and the obligations accompanying it[67].

Ramsay Cook's Provincial Autonomy, Minority Rights and the Compact Theory confirms this message. The compact of provinces theory, which quickly gained acceptance among provincial Premiers, as well as the federal Liberal Party under Wilfrid Laurier, had no other implication but to reinforce majoritarian principles. In each case in the late 19th and early 20th centuries, where issues arose affecting minority language rights, the provincial governments opted to safeguard their legislative autonomy, rather than make a

commitment to advance the welfare of language minorities[68]. Thus the compact theory that had prevailed within Canadian political discourse did not contain a moral commitment to French-speaking citizens. Indeed, according to Elazar, it is the moral component which marks the difference between a compact and a covenant[69]. Without such a firm moral obligation to French Canadian minorities in Canada, it became difficult to create a Canadian political community that would bind all citizens and foster mutual respect and joint obligation[70]. It can be said then, that the boundaries of provincial political communities came to perform an important role in structuring relationships between Canadians.

More direct empirical evidence of the significance of provincial political communities can be seen in attempts by the federal government to amend the constitution. As Sabetti writes in "The Historical Context of Constitutional Change in Canada", when Prime Minister King first attempted, in 1927, to reach an agreement with the provinces on the patriation of the BNA Act, unanimity had become the operative principle. Due largely to the prevalence of the compact theory, the provinces had evolved from "glorified municipalities to agents of constitutional choice[71]." Thus, not only would provincial governments become active participants in shaping Canada's constitutional arrangements, but, not surprisingly, they would interpret the Canadian constitution and the nature of political community in Canada in a manner which strengthened

their status and bargaining power. As a result, no agreement was reached on patriation for another fifty-four years.

Michael Stein, in an article entitled "Canadian Constitutional Reform, 1927-1982" points to the actions of the Trudeau government in 1980, to explain how agreement was finally possible in November of the following year. He argues that whereas Prime Ministers King, Bennett, St. Laurent, Diefenbaker and Pearson had accepted the unanimity principle, Trudeau did not. In 1980, the federal government, adopting the view that citizenship and membership in a Canadian political community was not derived from attachments to provincial political communities, challenged the basic premise of the compact theory and took steps to patriate the BNA Act unilaterally. According to Stein, such action facilitated compromise between the federal and provincial governments, as it required the Supreme Court of Canada to arbitrate between unanimity and unilateralism[72]. Once the unanimity principle had been cast aside, provinces lost the incentive to hold out for further concessions and gained an incentive to compromise or else risk being excluded from a constitutional agreement[73].

The Meech Lake Accord, and the distinct society provision in particular, offers an opportunity to assess the way in which the covenantal and compactual tradition in politics can be applied to one of the more recent attempts at resolving the Canadian question. Clearly, this clause in the Accord sought to redefine the meaning of Canadian citizenship and

restructure the relationship between the Quebec and the Canadian political communities. Several analysts have commented on this subject. While a more detailed examination of these works will be presented in the succeeding chapters, some brief generalizations can be made here.

For Richard Simeon, for example, the strength of the 1987 Accord lies in its flexibility and the possibility it offers for multiple conceptions of community to co-exist[74]. Guy Laforest advances a similar argument, claiming that the Meech Lake Accord served to "correct" the 1982 Constitution Act and the Charter, which reflected a pan-Canadian nationalism that did not respect Quebec's collective identity[75]. This view was also shared by Charles Taylor[76]. In contrast, other observers like Trudeau[77], Ramsay Cook[78] and John Whyte[79], Dean of Law at Queen's University, to name but a few, maintained that the distinct society provision served to further exacerbate the Canadian question rather than resolve it. For these individuals then, the clause in question did not contain an obligation or commitment to the national Canadian political community but rather, in emphasizing membership in the Quebec political community, contributed to undermining it.

DISTINCT SOCIETY AND THE CANADIAN QUESTION

This literature review has provided only a glimpse of the complexity of the Canadian question. Each of the three schools of thought presented in this chapter offer

explanations for the persistence of this seemingly perennial dilemma. Some analysts, like Garth Stevenson for example, identify the fragmentation of class fractions as the source of discord. For Mark Sproule-Jones on the other hand, it is the uneasy combination of federalism with parliamentary government that is at the root of the Canadian question, while for Albert Breton this feature of Canadian government and politics is considered beneficial. Still others point to the structure of Canada's political institutions, and how, contrary to the beliefs of the Fathers of Confederation, they have seemingly emphasized all that which divides Canadians along linguistic and sectional lines. A third group of scholars point to the covenantal and compactual tradition in politics, and consider the moral or metaphysical foundation of the Canadian constitutional experience. Given the wealth of literature on the broader Canadian question, the principal challenge of this thesis is to determine which perspective can best account for the failure of one of the more recent attempts at resolving the Canadian question. In short, which approach to politics best explains the rejection of the Meech Lake Accord and particularly of the distinct society clause?

It can be said that Stevenson's focus on the alignment of class fractions with provincial governments, and the subsequent enhancement of provincial power does not provide sufficient insight into Canadians' attitudes toward the distinct society provision. The issue in question simply

extends beyond the interplay of economic forces. Similarly, Sproule-Jones' use of rational, public choice theory, and emphasis on executive dominance, fails to explain repeated attempts in this country to redefine and restructure the relationship between competing political communities. The institutionalist school can offer an explanation for the rejection of the distinct society clause. Numerous analysts expressed concern as to how this provision would affect the division of powers and how this would impact upon the legislative capacities of political institutions both in Ottawa and Quebec City. However, this approach does not address the pertinent issue of how citizens relate to one another and to what degree they are prepared to commit themselves to joint ventures. In this the covenantal and compactual tradition is perhaps best suited. Unlike the other schools of thought, which are primarily concerned with the exercise of political power, this approach focuses specifically upon the way in which citizens share power so as to construct lasting political relationships. It is this perspective that can perhaps best account for the ultimate rejection of the distinct society clause.

Accordingly, the third chapter in this thesis will examine the Canadian compact tradition and assess the degree to which the compact theories prevalent within Canadian political discourse have contributed to structuring political relationships in this country. Chapter 4 will then focus on

the Meech Lake Accord as a microcosm of the Canadian question and how it set out to define citizenship and political community in Canada.

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CHAPTER 3

THE CANADIAN COMPACT TRADITION

The principal task of this chapter is to focus upon the covenantal and compactual traditions in politics and within Canadian political discourse. This task is of particular significance since, somewhat surprisingly, this tradition in politics is frequently overlooked. Much scholarly attention has focused on politics as nothing more than the exercise of power, and the domination of some societal groups and political actors over others. Indeed this is the main thrust of the political economy and institutionalist literature examined in the previous chapter. There is however another element to politics, especially within federations, which focuses mainly on the sharing of power as a means of structuring lasting political relationships between diverse communities of people. It is against the backdrop of this approach to politics that this chapter turns its attention to the Canadian compact tradition. Of particular interest is the way in which the Canadian compact theories have attempted to define citizenship and structure relationships between Canadians. Before addressing this matter however, it is necessary to better understand the political applications of covenant and compact. In this, Daniel Elazar's work, and, correlatively, a brief examination of the American federal

experience are valuable.

COVENANT IN POLITICS

The American revolution of 1776 marked the first time that a group of citizens transferred their allegiances from a Sovereign to themselves so as to constitute a self-governing society[1]. It is the element of consent that is a critical component of citizenship[2], for it enables people to construct and alter the political arrangements under which they live[3]. This contrasts with monarchical notions of state and society, where political arrangements are imposed upon people and where emphasis is placed, not on citizenship and voluntary participation in politics, but on loyalty and obedience to the Sovereign, the ultimate source of political power[4]. The significance of consent, as a basis of the American system of government, was further emphasized by Alexander Hamilton in Federalist No. 1:

> It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, *whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force*[5]. (emphasis added)

The initial experience under the Articles of Confederation however proved problematic, primarily because it was based upon the consent of governments rather than the consent and choice of citizens. Each state of the union

retained sovereignty, but agreed to delegate certain powers to the national authorities, which would be exercised in the interests of all states. Citizens would not have direct relations with the national government but would be represented through their state governments. In short, political power would be exercised at two levels, but this division of sovereignty would not be binding on the component units. Consequently, the enforcement of federal laws at the state level proved difficult. This prompted Hamilton, in Federalist No. 15 to draw the comparison with leagues or treaties in Europe:

> they were scarcely formed before they were broken, giving an instructive but afflicting lesson to mankind how little dependence is to be placed on treaties which have no other sanction than the obligation of good faith[6].

The remedy then was to extend sovereignty to "the people" rather than to the states of which the union was composed. This had two important implications. First, both state and federal governments would derive their power from the same source. And second, and related to this, the sovereignty of "the people" would be exercised at coordinate levels. Thus emerged the covenantal foundation of the American federal experience. Individual citizens would become the main units of government and would be able to set out the conditions under which they are governed, as well as the nature of the communities in which they live. This degree of citizen participation added a moral dimension to political

relationships[7].

Tocqueville elaborates upon this in his discussion of life in the New England township, which, in his view, represents the foundation of American self-governance[8]. Not only is each individual presumed to be the best judge of his/her own interests, but each person is considered free to contribute to the governance of the community[9]. This, of course, contributes to a spirit of liberty, but also results in a sense of attachment to a community, which emerges more out of personal commitment and obligation, than legal requirements. In Tocqueville's words:

> The New Englander is attached to his township not so much because he was born there as because he sees the township as a free, strong corporation of which he is part, and which is worth the trouble of trying to direct[10].

Thus, the rights, duties and obligations of citizenship emanate more from the moral elements of the American system of self-governance, than from legal conditions issued by those who govern. Citizens consequently recognize a higher binding authority than merely "the letter of the law." This prompted Tocqueville to conclude that in the American experience, political freedom and religion are linked. As religion is based upon the recognition of a higher authority than that of the temporal world, so too, in Tocqueville's view, was the American system of self-governance[11]. This moral component then, has the effect of facilitating enforcement and respect

of constitutional arrangements as well as fostering a sense of mutual obligation and trust between citizens[12].

This brief analysis of the American experience elicits the following question: to what extent and how has the covenantal and compactual approach to politics been applied to continuous attempts in Canada to better define the meaning of Canadian citizenship? It is to this question that this inquiry now turns its attention.

COVENANT AND COMPACT IN CANADA

The covenantal and compactual traditions in Canada date back to the years following Confederation. This chapter identifies four types of "covenantal" arguments in Canada: that which sees Confederation as a compact among provinces; that which sees it as a compact between peoples; third, a slight variant of this latter concept which sees Canada as a pact between two nations and two governments, one representing "English" Canada and the other representing "French" Canada; and fourth, there is the idea advanced by Alan Cairns, which currently appears to prevail among English Canadians, and which rejects the legitimacy of the previous three theories. This view claims that the only "compact" that would be acceptable to Canadians is one that emphasizes citizenship, free of other territorially- and ethnically-demarcated identities. This chapter does not seek to consider the merits and validity of each of these theories. This could be the

subject of another thesis in itself and has been addressed by other works. Instead, it will examine and assess the implications of each one in turn. It will then attempt to identify what each of these theories reveals about the Canadian question, and about the rejection of Quebec as a distinct society.

Compact of Provinces

The compact of provinces theory is perhaps the ideal point of departure, since it was the first compact theory to emerge after Confederation and represented, at least at one point in time, one of the more contentious conceptions of federalism and political community within Canadian political discourse[13]. In essence, this theory maintained that the BNA Act represented a pact between the three previously self governing colonies of Canada, New Brunswick and Nova Scotia, which had received Imperial ratification. In entering a federal union, these colonies agreed to delegate certain powers to the "General" government, which would act in areas of common interest, while retaining the full sovereignty each held prior to 1867.

While this compact theory was first articulated in the 1870's and 1880's by Ontario Premier Oliver Mowat[14], and then by his Quebec counterpart Honoré Mercier, Ramsay Cook has traced its origins to the year following Confederation. In 1868, the Nova Scotia legislature, controlled by an anti-

Confederation government seeking a repeal of the BNA Act, passed the following resolution:

> that there being no Statute of the Provincial Legislature confirming or ratifying the BNA Act, and it never having been consented to nor authorized by the people, nor the consent of the Province in any other manner testified, the preamble of the Act, reciting that this Province has expressed a desire to be Confederated with Canada and New Brunswick is untrue, and when Your Majesty was led to believe that this Province had expressed such a desire, a fraud and imposition were practised on Your Majesty[15].

Several important observations follow from this resolution. First, as Cook argues, this demonstrated that the Nova Scotia government, in challenging the terms of the union on the grounds that Nova Scotians were not consulted about the new constitutional arrangements, denied being part of the compact[16]. Second, and related to this, this resolution implied that despite the wishes expressed by Nova Scotia's representatives at Charlottetown or Quebec City, provincial consent was essential in order to carry out constitutional change. In effect, the provincial legislature was the only true expression of Nova Scotia's interests. And third, after having been granted better financial terms, the government of Nova Scotia realized, as would other provincial governments, that it could get concessions from Ottawa by adopting the view that Confederation was a compact of provinces[17].

In addition, the economic depression of the 1870's served to revive local loyalties, despite the emphasis placed on forging a new "political nationality". This was noted in the

Report of the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission):

> The failure of the Dominion's economic policies, which formed such important elements in the new national interest, discouraged the growth of a strong, national sentiment; and local loyalties and interests began to reassert themselves[18].

The significance of provincial political communities was consequently further enhanced.

It was however, the judicial ruling that emerged from the Maritime Bank case in 1892, that provided more support for the compact of provinces interpretation. The Judicial Committee of the Privy Council endorsed a claim put forward by the provinces, which asserted the equality, in their respective spheres of jurisdiction, of the Lieutenant-Governor and the Governor-General[19]. The former was no longer seen as an agent of the federal government, but rather as Her Majesty's representative in the provinces. The equality of the two levels of government was consequently confirmed, thus ensuring that parliamentary responsible government would be extended to the provinces.

This decision lent credence to the claims advanced by proponents of the compact of provinces, who saw the federal government as merely a creation of the provincial governments[20]. The authority exercised by Ottawa was seen as nothing more than that which the provinces had bestowed upon it. This was most clearly, and perhaps most ably, articulated by Judge T.J.J. Loranger in 1884, in a publication entitled

Letters Upon the Interpretation of the Federal Constitution known as the British North America Act:

> by forming themselves into a federal association under political and legislative aspects, they formed a central government, only for inter-provincial objects, and far from having created the provincial powers, it is from the provincial powers that has arisen the federal government to which the provinces have ceded a portion of their rights, property and revenue[21].

Judge Loranger's contention implied that the federal government did not exercise power on behalf of the "people of Canada", but rather in the interests of the provinces of which the Dominion was composed. This interpretation was substantiated, to a degree, by two statements contained in the preamble of the BNA Act. The first refers to the expressed desire of "the provinces of Canada, Nova Scotia and New Brunswick to be federally united into One Dominion" while the other reads: "And whereas such a Union would conduce to the Welfare of the Provinces." For supporters of this view then, these provisions illustrate that the formation of a federal union represented a means of serving the interests of the provincial governments rather than dividing political power so as to structure lasting political relationships. It follows then, that this theory denied the possibility of a Canadian citizenship which transcended provincial boundaries. This is not all that surprising if we recall that the notion of citizenship, as described by Elazar and as implied here, was foreign within Canadian political discourse at this time and for most of the twentieth century. Canadians, primarily

English Canadians, tended to see themselves as British subjects rather than Canadian citizens as such[22]. What is noteworthy however, is that the significance of provincial political communities was further enhanced, as this compact theory provided provincial governments with a prominent role in constitutional amendment[23].

Consequently, decisions pertaining to constitutional arrangements and to structuring political relationships between Canadians, tended to take the form of intergovernmental relations. A key corollary of the compact of provinces theory then, was the idea that all provinces were equal. No province, not even Quebec, could, according to this conception of federalism and political community, claim a status unlike other provinces[24]. What is surprising is that two of the more ardent advocates of this theory were Quebecers Judge Loranger and Premier Mercier. For them, as for other provincial politicians, the main appeal of this theory was the justification it offered for the protection and enhancement of provincial legislative autonomy. This, in conjunction with the extension of parliamentary responsible government to the provincial orders of government, served, as Mark Sproule-Jones' work outlined in the previous chapter, to reinforce majority rule and executive dominance at both the federal and provincial levels[25].

The impact of this development became painfully evident for French-language minorities in Manitoba, New Brunswick and

Ontario, when the predominantly English-speaking provinces exercised their autonomy in the area of education, and curtailed French-language education rights. Federal MPs from Quebec proved themselves reluctant to utilize the vast federal powers at their disposal to intervene on behalf of French Canadian minorities, fearing that this would permit English-speaking MPs to impinge upon Quebec's legislative autonomy in the future[26]. Thus, the principal concern of the theory of the compact of provinces was the way in which political power was exercised at the provincial level. In this, it was more of a legal compact than a moral one, for it articulated little or no sense of obligation and mutual commitment between French and English Canadians and between majority and minority groups throughout Canada. The defense of legislative autonomy, not the articulation of a sense of citizenship that would appeal to all Canadians, was considered the primary aim of the federal union. It was for this reason that, by the turn of the century, "the compact theory attained a position close to motherhood" in the minds of provincial Premiers[27]. Even the Prime Minister of the day, Wilfrid Laurier warned that "Confederation is a compact, made originally by four provinces, but adhered to by all the nine who have entered it...that...should not be lightly altered[28]." Consequently, the exercise of provincial autonomy, which is admittedly an essential component of federalism, came to be seen as an adversary, rather than an ally, to the protection of minority

rights in Canada[29]. The work of F.R. Scott lends support to this point. As he wrote:

> Provincial autonomy, which is the right of the legislature of a province to make what laws it pleases, not infrequently becomes the enemy of minority rights. The two concepts are quite different. One promotes majority rule, the other limits it in favour of more fundamental rights[30].

Provincial political communities came to perform an integral role, not only in formally amending the constitution, but in giving meaning to Canadian citizenship and the collective Canadian identity. This, in addition to an emphasis on majoritarian principles, made it exceedingly difficult to formulate a covenantal basis to Confederation that would bind Canadians together through lasting political relationships.

Compact of Peoples

In response to the majoritarian elements contained in the compact of provinces theory, and the controversies surrounding minority language instruction in schools, a new compact theory emerged within Canadian political discourse at the turn of the twentieth century. And, as Ramsay Cook remarked, this interpretation of the Canadian constitution was based more upon a moral compact than specific legal guarantees[31].

First articulated by Henri Bourassa, and later adopted to some extent by Pierre Trudeau, this view asserted that Confederation represented a solemn pact, not among provinces, but between French and English Canadians, the "two founding

peoples" of Canada. In forming a federal union, of which French Canadians were an integral part, Canadians had committed themselves to preserving a bilingual and bicultural country. The French and English languages and the rights of French and English-speaking minorities would be placed on an equal footing and protected throughout Canada. Bourassa recognized, of course, that section 133 of the BNA Act and section 23 of the Manitoba Act provided for only limited bilingualism[32]. Yet, he took these legal provisions as an indication of a higher moral commitment to the respect of Canada's two language groups. And, it is the language of covenant, focusing on consent, joint obligation and a claim of citizenship that extends beyond legal provisions, that pervades Bourassa's political vocabulary. This is seen clearly in the following statement, made by Bourassa in 1913:

> The Canadian Confederation...is the result of a contract between the two races, French and English, treating on an equal footing and recognizing equal rights and *reciprocal obligations* (emphasis added). The Canadian Confederation will last only to the extent that the equality of rights will be recognized as the basis of public law[33].

Bourassa repeated a similar message four years later, when he asserted:

> The Canadian nation will attain its ultimate destiny, indeed it will exist, only on the condition of being biethnic and bilingual, and by remaining faithful to the concept of the Fathers of Confederation: the free and voluntary association of two peoples, enjoying equal rights in all matters[34].

This was the main thrust behind the Trudeau government's official language policy, which culminated in the Official Languages Act (1969) and the entrenchment of French and English as official languages in section 16 of the Charter of Rights and Freedoms.

Thus, for Bourassa, as for Trudeau more than a half-century later, Canadian citizenship, and an attachment to the Canadian political community was not based upon membership in a provincial political community or in a particular linguistic or ethnic group, but on principles of justice and mutual respect among Canadians. Not surprisingly, this moral compact theory did not appeal to Canadian politicians. As Cook asserted:

> In the politics of a constitution, claims based on moral principles are often less successful than those based on specific legal guarantees, or on power. The idea of provincial compact was successful to the extent that it won the support of a number of provinces. The failure of the idea of cultural compact was that it had no similar appeal[35].

Consequently, the compact of provinces theory predominated within Canadian political discourse for most of the 20th century.

The Two Nations Theory

The 1960's marked the emergence of another interpretation of the Canadian federal experience. Based more upon a legal as opposed to a moral compact, it emphasized a new division

of legislative powers between the governments of Quebec and Canada.

The election, in 1960, of the Liberal Party in Quebec, under the leadership of Jean Lesage, signalled the beginning of the period in Quebec history known as the Quiet Revolution. This era was characterized by the emergence of a more progressive kind of Quebec nationalism than that which marked the Duplessis era, as well as a more activist Quebec "state". That these two developments occurred at the same time should not be surprising. As Donald Smiley has noted, nationalism cannot be examined separately from the scope of government activity. As he wrote:

> In the contemporary world, nationalism often manifests itself, not exclusively as a diffuse sentiment of solidarity or as participation in the ritualistic aspects of national life, but also as quite specific demands that nationals as such are entitled to prescribed kinds of treatment in their dealings with each other and with the public authorities[36].

One of the consequences of the increased governmental activity in Quebec was a re-examination of the terms of Confederation. At a most basic level, Premier Lesage took the lead in calling for an adjustment to the division of tax revenues between the federal and provincial governments. Moreover, the new Premier of Quebec advanced a different interpretation of federalism and political community in Canada, one which would be articulated more forcefully by some of his cabinet colleagues and successors as Premier. According

to this view, Confederation was neither a pact between provinces, nor peoples, but between two nations, one French-speaking, represented by the "national" government in Quebec, and the other English-speaking, represented by the "national" government in Ottawa. This reflected a phenomenon, prevalent in Quebec, where Francophones tended to identify themselves more as "Québecois", and as part of a "national" majority in Quebec, rather than as "French Canadians" and part of a "national" minority in Canada. The two nations conception is based essentially upon two sources: first, an interpretation of Canadian constitutional history, different from the previous two compact theories, and second, a different understanding, among Francophones, of "nation".

As for the first source, supporters of this theory pointed to the evolution of French-English relations in Canada since 1763 to illustrate that Quebec (Lower Canada) and the French Canadian nation had always been treated on an equal footing with the English majority in British North America. For Jennifer Smith the practice of identifying communities based on nationality began with the Quebec Act of 1774[37]. The Constitution Act 1791, which had separated Canada along the Ottawa River, represented, according to the late former Premier Daniel Johnson, a recognition of the existence of two nations within the British North American colony[38]. Johnson termed this "la solution séparatiste"[39], and, in time, this cultural and national duality brought about political duality.

This became evident by 1840, when Lord Durham spoke of the "struggle...of races." Even during the unitary experience from 1840-1867, the French Canadian nation was accorded treatment equal, in some respects, to the English-speaking majority of Upper Canada. Both sections were granted the same number of Members in the Legislative Assembly, despite the fact that, by the 1850's, Upper Canada had a greater population. Furthermore, one could also point to the existence of dual ministries during this period as an indication of, not only the bicultural nature of the United Province of Canada, but also of the equality between the French- and English-speaking nationalities in this territory.

With Confederation, the two linguistic communities were separated once again. And whereas the Act of Union of 1840 appeared to "ignore claims based on nationality[40]", the arrangements of 1867 made special recognition of the French-speaking nationality[41]. This was reflected in sections 133, 92(13) and 94 of the BNA Act[42]. One could also cite section 51, which fixed Quebec's representation in the House of Commons, originally at 65 Members, now 75, despite population. This provision ensured that Quebec and the French Canadian nationality would maintain a relatively prominent place within the House of Commons. While the 1982 Constitution Act recognized the rights of individuals, the 1987 Accord, in Jennifer Smith's view, returned to the practice of acknowledging the rights of communities[43]. Thus, according to

some analysts, the recognition of the claims of nationality is fully consistent with Canada's constitutional past.

These constitutional developments and conventions represent only one way of rationalizing the argument in favour of special status and the idea of the equality of nations. The other claim that was advanced centred around the meaning of "nation". Several authors have addressed this issue and it is possible to distinguish between the legal/political meaning of the term and a sociological definition of nationhood. In the sociological sense of the word, "nation" can be said to refer to a group of people sharing a common language, history and territory, as well as a desire to live together[44]. Indeed the Larousse dictionary defines "nation" as "une communauté humaine...installée sur une même territoire, et qui, du fait d'une certaine unité historique, linguistique, religieuse ou même économique, est animée d'un vouloir-vivre commun[45]." Following this definition then, there is no "Canadian nation", but rather one French Canadian nation centred in Quebec, and an English-Canadian nation consisting of all other citizens in the rest of Canada[46]. This definition of nationality would appear to exclude those members of linguistic minority groups both inside and outside of Quebec.

According to the legal/political perspective, there is only one "Canadian nation". Only Canada, not "French" or "English" Canada, is a member of the United Nations and the General Agreement on Tariffs and Trade[47]. Therefore, it is

only Canada that, from this point of view, can be described as a nation. Needless to say, it is this conception of nation that prevails in "English Canada", while the one described above is the one favoured by Quebec nationalists. This prompted Eugene Forsey to conclude that "Canada is both two nations and one: two nations in the ethnic, cultural, sociological sense; one nation in the political, legal, constitutional sense[48]."

The dilemma that emerges however, is that the idea of nation with which English Canadians identify, became more closely linked with the Canadian polity. This induced some Quebec nationalists to argue that, because of the difference in outlook of the meaning of nation, Quebec cannot be treated as any other province. Quebec, as the home to the French Canadian nationality, must exercise power over that nationality just as the "national" government in Ottawa exercises authority over the predominantly English-speaking nationality in Canada[49].

Many ideas have been advanced over the course of the last three decades that have sought to give expression to this conception of community and citizenship in Canada. They can be summarized by two main political options: the first calls for a "special status" for Quebec, while the other adopts a more extreme view, advocating Quebec's secession, albeit in varying degrees, from the Canadian union.

As for the "special status" option, the principal aim is

to restructure the Canadian constitution so as to reflect the existence of two nations in Canada. As Daniel Johnson described, a new Canadian constitution must be "fondée sur l'alliance de deux nations possédant chacune toute la souveraineté nécéssaire pour lui permettre de s'épanouir dans la ligne de son destin propre[50]." However, it can be said that this option is based largely on a legal rather than moral compact.

From a purely legal standpoint, and evident in Mr. Johnson's statement, the "special status" idea carries with it a drastically different division of legislative powers than that contained in the BNA Act. It is not the aim of this chapter to review all of the proposals that have been advanced regarding a new division of powers. Suffice it to say however, that they have traditionally included a transfer to the National Assembly of greater taxing powers, full authority over language, culture, communications and immigration, greater input in international relations, especially with French-speaking countries, while at the same time limiting Parliament's power to spend in areas of provincial jurisdiction. Matters of common interest between the two nations, such as currency, defense and postage, among other things, would be governed by a common supra-national parliament.

While this new political arrangement is largely a legal compact, there is, to a degree, a moral component almost

inherent within it. In order for such radical constitutional change to occur, English Canadians in the rest of Canada would have to be willing to recognize the legitimacy of the French Canadian nation and the government of Quebec as its political expression. According to proponents of this view, it is only once the English Canadian majority make this gesture, founded on the respect and equality of nations, that a true Canadian union can emerge which would respect the rights and privileges of both French and English-speaking Canadians. Thus, according to Mr. Johnson, this new constitutional arrangement would be based upon the union of nations rather than the unity of diverse groups of people within one nation[51]. As he states: "dans un pays binational ce n'est pas l'unité nationale..., mais l'union nationale, l'harmonie nationale, fondee sur le respect des particularismes légitimes[52]."

There is however, another political manifestation of the two nations theory in Canada, which seeks an even looser political union between the French and English-speaking nations. The separatist/sovereignty-association option was based upon the same premise as the special status alternative. Both saw Quebec as the principal, if not exclusive, political expression of the French Canadian nation. Accordingly, this conception maintains that the National Assembly of Quebec exercise greater legislative powers than other provincial legislatures. However, whereas special status advocates express a willingness to retain some form of union based upon

constitutional arrangements, supporters of sovereignty-association seek to formulate a limited union based upon a series of treaties, negotiated between the two sovereign states of Canada and Quebec. However, as Hamilton described in Federalist No. 15, treaties, which carry "no other sanction than the obligation of good faith", can be abrogated by either party. The sovereignty-association alternative is based neither on a moral compact, carrying with it a higher binding authority, nor on constitutional arrangements, enforceable by law. In short, there is nothing that can prevent one party or the other from unilaterally terminating such a Canada-Quebec association. This type of political union then, cannot be as stable and as reliable as one based upon constitutional arrangements.

It could be said, however, that these manifestations of the Two Nations theory, not surprisingly, advance a similar conception of citizenship. Both options see Quebec as the primary political expression of the French Canadian nationality in Canada. Accordingly, both call for a greater devolution of political power to the National Assembly. Thus, proponents of this theory are not concerned so much with how to structure relations between French and English Canadians across Canada, nor with how to share power between majority and minority groups in this country[53]. Instead, the focus is on structuring a new political arrangement between competing political majorities, one French-speaking, centred in Quebec,

the other English-speaking concentrated in the rest of Canada. Not only does this provide little in the way of protection for linguistic minorities, but it offers little that would bind French and English Canadians together across Canada. In short, it advances a conception of citizenship that is based upon membership in one of Canada's two main "national" groups, and denies the existence of a sense of community among members of these two groups that transcends national origin. This notion of citizenship is reflected in the distinct society clause of the Meech Lake Accord.

Compact and the Charter

Perhaps one of the main reasons for the reluctance of English Canadians to accept the idea of citizenship outlined in the Meech Lake Accord, and the premise upon which it is founded, can be traced to the 1982 Charter of Rights. By advancing the idea that all Canadians enjoy certain rights and priveleges associated with citizenship, regardless of the language that they speak or the region in which they live, the Charter has served to accentuate membership in a national Canadian political community[54]. As a result, according to some authors, those identities which are territorially- or ethnically-based have diminished in constitutional importance[55]. This is further reinforced by the recognition, in the Charter, of certain societal groups, such as visible minorities (s.15), official language minorities (s.23),

multicultural groups (s.27), women (s.28) and Aboriginal peoples (s.35)[56]. In Alan Cairns' view, constitutionalism, and the recognition of the supremacy of the Charter has displaced federalism and the relations between governments as the fundamental organizing principle shaping community and citizenship in Canada[57]. Accordingly, attachments to a common political community and joint obligation and commitment associated with citizenship emerge out of constitutional arrangements which recognize the supremacy of law, and the fact that Canadians, as such, enjoy equal rights, duties and privileges which permit them to pursue certain collective goals. Thus, consistent with this conception of citizenship and community, constitutional amendments aimed at restructuring the relationship between Canadians must appeal to citizens in their collective identity as Canadians, rather than as members of provincial political communities or ethnic or linguistic groups.

THE CANADIAN COMPACT TRADITION AND THE MEECH LAKE ACCORD

After having examined the way in which the various theories within the Canadian compact tradition have sought to resolve the Canadian question, the question that now remains is: how does this relate to the Meech Lake Accord? What does the knowledge of Canadian compact theories reveal about the substance and ultimate rejection of the 1987 Accord?

It can be said that while the numerous compact theories

emerged and gained prominence at different periods in Canadian history, they have each left their mark on Canadian political discourse, and the Canadian constitution. As for the former, one need only consider the findings of two royal commissions conducted in Quebec. In 1956, the Tremblay Commission appeared to have endorsed both the Compact of Provinces and the Two Nations theories. This was particularly apparent in the description of Confederation as "à la fois une entente entre les deux principaux groupes nationaux, un pacte entre les provinces et une loi du Parlement impériale[58]." Thirty-five years later the Commission on the Political and Constitutional Future of Quebec (Bélanger-Campeau Commission) identified the entrenchment in the constitution of multiple visions of community, save for that which would recognize Quebec's distinctive collective identity, as a source of Canada's latest constitutional stalemate[59].

The impact of these compact theories on the Canadian constitution is no less evident. The message of citizenship advanced by the Charter has been examined. In addition to this however, the entrenchment in the constitution of the equality of the French and English languages, set out in sections 16 and 23 of the Constitution Act 1982, appears consistent with the compact theory advanced by Bourassa. Provincial participation in the amendment of the constitution, first set out in the 1982 document, but subsequently expanded in the Meech Lake Accord, can be traced back to the compact of

provinces theory. Finally, the recognition of Quebec as a distinct society, appears most consistent with the notion of "special status" advanced by the Two Nations conception of Confederation. Herein lies the source of Meech Lake discord. Rather than contribute to structuring political relationships between citizens in Canada, the multiple compact theories and conceptions of federalism and political community that have emerged, have served, and continue to serve as points of contention. Indeed, much of the debate surrounding the 1987 Accord focused on whether the Canadian constitution and definitions of community and citizenship should be based upon the equality of provinces, of citizens or of nations, or whether some or all of these principles can co-exist alongside each other. In other words, the main challenge for Canadians attempting to resolve the Canadian question is to agree on the nature of and parties to a covenantal relationship in Canada. The chapter that follows examines how a number of analysts have, not only assessed the merits of the distinct society clause in the 1987 Accord, but also, by extension, how they have perceived the interrelationship of these "three equalities[60]" as the basis of citizenship and community in Canada.

ENDNOTES TO CHAPTER 3

1 Pierre E. Trudeau, "Federalism, Nationalism and Reason," in Federalism and the French Canadians, ed. Pierre E. Trudeau (Toronto, 1968), pp.183-184.

2 Daniel Elazar, "The Political Theory of Covenant: Biblical origins and Modern Developments," Publius: The Journal of Federalism 10 (Fall, 1980), p.6.

3 Vincent Ostrom, Robert Bish and Elinor Ostrom, Local Government in the United States (San Francisco, 1988), p.13.

4 Kenneth Carty and Peter Ward, National Politics and Community in Canada (Vancouver, 1986), pp.65-66.

5 Alexander Hamilton, James Madison and John Jay, The Federalist Papers, ed. Clinton Rossiter (New York, 1961), p.33.

6 Ibid., p.109.

7 Vincent Ostrom, Robert Bish and Elinor Ostrom, op. cit., pp.12-13.

8 Alexis de Tocqueville, Democracy in America, trans. George Lawrence, Vol.I (New York, 1988), p.67.

9 Ibid., p.66.

10 Ibid., p.68.

11 Ibid., pp.46-47.

12 Ibid., p.68
Elazar, loc.,cit., p.11.

13 Ramsay Cook, Provincial Autonomy, Minority Rights and the Compact Theory 1867-1921, (Ottawa, 1969), p.1.

Filippo Sabetti points out that references to a "compact" in Canada dated back to the 1830s and the "Family Compact" oligarchy of Upper Canada. This however carried pejorative connotations, which contributed, in part, to discrediting notions of compact and covenant in Canadian political discourse. See Sabetti, "Covenant Language in Canada," p.8.

14 Filippo Sabetti, "Historical Context of Constitutional Change in Canada," Law and Contemporary Problems 45 (Autumn, 1982), pp.17-18.

15 Cook, Provincial Autonomy, Minority Rights and the Compact Theory, pp.10-11.

16 Ibid., p.11.

17 Ibid.

18 Report of the Royal Commission on Dominion-Provincial Relations (Ottawa, 1940), Book I, p.54.

19 "The Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor-General himself is for all purposes of Dominion government." Liquidators of the Maritime Bank v. Receiver-General of New Brunswick [1893]
Quoted in J.R. Mallory, The Structure of Canadian Government (Toronto, 1984), p.34, note 4.

20 Garth Stevenson, Unfulfilled Union (St. Catherines, Ont., 1989), p.50.

21 T.J.J. Loranger, Letters Upon the Interpretation of the Federal Constitution known as the British North America Act (1867) (Quebec, 1884), p.7.

22 Ramsay Cook, The Maple Leaf Forever (Toronto, 1977), p.163.
Edwin Black, Divided Loyalties (Montreal, 1975), p.60.

23 Sabetti, "Historical Context of Constitutional Change in Canada," loc.,cit., p.20.

24 Cook, Provincial Autonomy, Minority Rights and the Compact Theory,p.30.

25 Mark Sproule-Jones, "The Endu[illegible] Colony?" in Canadian Federalism from Crisis to Constitution, eds. Harold Waller et al (Lanham, MD., 1988).

26 Arthur Silver, The French Canadian Idea of Confederation: 1864-1900, (Toronto, 1982), pp.90-91.

27 Cook, Provincial Autonomy, Minority Rights and the Compact Theory, p.44.

28 Ibid., p.45.

29 Ibid., p.65.

30 F.R. Scott, "French Canada and Canadian Federalism," in Evolving Canadian Federalism eds. A.R.M. Lower and F.R. Scott (Durham, N.C., 1958), p.74.

31 Cook, Provincial Autonomy, Minority Rights and the Compact Theory, p.62.

32 Section 133 of the BNA Act allows for either the French or English language to be used in debates in the Parliament of Canada or National Assembly of Quebec, as well as in any Courts of Canada or Quebec. Both languages are to be used in the Journals and Records of both of these legislative bodies, as well as in Acts of Parliament and of the National Assembly.

Section 23 of the Manitoba Act allows for either the French or English language to be used in debates in the Legislative Assembly, as well as in the Courts of Canada and Manitoba. Both languages are to be used in Records and Journals of the Legislative Assembly, as well as in Acts of the Legislature.

33 Ramsay Cook, Canada and the French Canadian Question (Toronto, 1966), p.150.

34 Ibid., p.51.

35 Cook, Provincial Autonomy, Minority Rights and the Compact Theory, p.62.

36 Donald Smiley, "Federalism, Nationalism and the Scope of Public Activity in Canada," in Nationalism in Canada, ed. Peter Russell (Toronto, 1966), p.96.

37 Jennifer Smith, "Political Vision and the 1987 Accord," in Competing Constitutional Visions, eds. Katherine Swinton and Carol Rogerson, (Toronto, 1988), pp.271-72.

38 Daniel Johnson, Egalité ou Indépendance (Montreal, 1965), p.27.

39 Ibid., p.28.

40 Smith, loc.cit., p.272.

41 Daniel Latouche, "Problems of Constitutional Design in Canada: Quebec and the Issue of Bicommunalism," Publius: The Journal of Federalism (Spring, 1988), p.140.

42 Smith, loc.cit., pp.272-73.

43 Ibid., p.273.

44 Johnson, op.cit., p.22.

45 Ibid.

46 Eugene Forsey, "Canada: Two Nations or One?" Canadian Journal of Economics and Political Science XXVIII (November, 1962), p.489.

47 Ibid.

48 Ibid.

49 Johnson, op.cit., p.52.

50 Ibid., p.92.

51 Ibid., p.83.

52 Ibid., pp.84-85.

53 Cook, The Maple Leaf Forever, p.69.

54 Rainer Knopff and F.L. Morton, "Nation-Building and the Canadian Charter of Rights and Freedoms," in Constitutionalism, Citizenship and Society in Canada, eds. Alan Cairns and Cynthia Williams (Toronto, 1985), p.136 & 146.

55 Alan Cairns and Cynthia Williams, "Constitutionalism, Citizenship and Society in Canada: An Overview," op. cit., p.40.

56 Alan Cairns, "Constitutional Change and the Three Equalities," in Options for a New Canada, eds. Ronald L. Watts and Douglas M. Brown (Toronto, 1991), pp.78-79.

57 Alan Cairns, Disruptions: Constitutional Struggles from the Charter to Meech Lake (Toronto, 1991), p.18 & 162.

58 Commission royale d'enquête sur les problèmes constitutionels (Tremblay Commission) (Quebec, 1956), Vol. II, p.145.

59 Report of the Commission on the Political and Constitutional Future of Quebec (Bélanger-Campeau Commission) (Quebec, 1991), Chapter 5, esp. pp.33-36.

60 Cairns, "Constitutional Change and the Three Equalities," op.cit.

CHAPTER 4

VISIONS STALEMATED: THE MEECH LAKE ACCORD

The main focus of this chapter is section 2(1)(b) of the proposed 1987 constitutional amendment, which declared that "(t)he Constitution of Canada shall be interpreted in a manner consistent with...the recognition that Quebec constitutes within Canada a distinct society." As mentioned in the initial chapter, the debate surrounding the distinct society clause of the Meech Lake Accord, did not focus on whether Quebec was or was not "distinct" from other provinces[1]. Rather, the source of discord centred around the potential negative impact that this clause might have had on federalism and political community in Canada. And, if anything, this debate illustrated how difficult it has been, and continues to be, for Canadians to agree on the nature of Canadian citizenship. Is it to be based upon the notion of the equality of citizens and of the French and English languages across Canada? Or, is the idea of the equality of provinces, an important feature of federal government, to be given primacy? Can these principles co-exist? Is it possible to recognize the equality of nations, or would such recognition necessarily subvert the other principles of equality? The Meech Lake debate illuminated the conflicting visions surrounding the meaning of Canadian citizenship, and by so doing, offered some insight as to why

this issue has remained a source of discord in Canada.

Opinions regarding the merits of the distinct society clause can be divided into four categories, which can be summarized briefly here. First, there were those who supported the distinct society clause because it provided a merely symbolic recognition that Quebec is, and has always been, different from the other provinces. Second, there were those, conversely, who embraced the distinct society clause because it would have provided the Quebec government with greater legislative powers, or at the very least, would have presented an opportunity for the Quebec government to make an argument of this nature, thus creating political pressure for a transfer of powers to occur. Interestingly, there was a significant number of observers who opposed the distinct society clause for this very reason. They advanced the argument that it would have provided Quebec with a special legislative status that would have enabled it to exercise powers not available to the other provinces. Yet a fourth category could include those who saw the provision in question as not going far enough in meeting Quebec's demands and as being devoid of meaning for Quebecers. This thesis now turns to a more detailed examination of each category. It does not attempt to present the opinions of all of those who had commented on the merits of the distinct society provision. Instead, it seeks to offer a sufficiently representative cross-section of the views expressed by a wide range of

analysts.

Supporters of the Distinct Society Clause: The Three Equalities Remain Intact

One of the primary arguments advanced for the ratification of the Meech Lake Accord, and for approval of the distinct society clause, was that it recognized a sociological fact and political reality in Canada, and did nothing to place Quebec in a privileged position as a province[2]. José Woehrling, professor of law at Université de Montréal, argued that Quebec's distinctiveness, and the acknowledgement of the French nationality in Canada, had already been affirmed in the BNA Act (ss. 93, 94, 133), while sections 16-20 and 23 of the Charter had entrenched linguistic duality as a political fact in Canada[3]. The 1987 Accord, in Woehrling's view, merely built upon existing constitutional provisions and, as such did not represent a major shift away from Canadian constitutional practice[4]. In fact, Woehrling believed that, in affirming linguistic duality in Canada as well as Quebec's distinctiveness, section 2 of the Meech Lake Accord actually strengthened the commitment on behalf of federal and provincial governments to minority language rights and to safeguarding the Francophone presence in North America[5]. This opinion was echoed by Ivan Bernier, law professor at Université Laval. In an article in Competing Constitutional Visions, entitled "Meech Lake and Constitutional Visions," Bernier wrote:

> (The Meech Lake Accord) represents the formal acceptance by the rest of Canada of the fact that a Francophone presence and space exists within Canada that is here to stay, is essentially part of the Canadian fabric and contributes to defining the Canadian identity[6].

For both Woehrling and Bernier then, the recognition of the equality of nations could have easily co-existed alongside the equality of citizens and of provinces.

According to Richard Simeon, a constitutional document "must be a symbolic representation of what we are as a people....(It) is... to be judged in terms of whether one sees oneself, one's own conception of what Canada is in some abstract sense, mirrored in the text. If not, it must be rejected[7]." In Simeon's view, the 1982 Constitution Act placed greater emphasis on a conception of citizenship that was derived from attachments to the pan-Canadian political community[8]. This, in turn, served to downplay other notions of citizenship which were more provincially or ethnically-based[9]. Section 2 of the 1967 Accord, which articulated a provincialist conception of Canada, would have balanced the more nation-centred vision of community that prevailed in the 1982 amendment, and would have enabled multiple conceptions of citizenship to co-exist[10].

As described in the previous chapter, Jennifer Smith adopted a similar line of reasoning. In her view, the recognition of Quebec as "distinct" was fully consistent with the practice, throughout Canadian constitutional history, of

constructing political institutions and constitutional arrangements in response to the needs of national communities[11]. This first began in 1774, and was continued in 1791 and 1867. The arrangements of 1840 and 1982 deviated from this principle, and in Smith's judgment, represented the exceptions to the rule[12]. The 1987 Accord returned to the practice of acknowledging the claims of nationality[13].

Smith's views were shared by a key figure from the Meech Lake process, the then federal Minister of Intergovernmental Affairs, Senator Lowell Murray. Senator Murray defended the Accord as a reflection of contemporary Canada, and the distinct society clause as nothing more than "a simple fact of our national life[14]." In response to claims made by critics of the Accord, the Minister argued that the provision in question did not, in any way, alter the division of powers between the federal and Quebec governments, nor did it affect the Charter of Rights. In essence then, the three equalities as the basis of constitutional arrangements, remained intact[15]. In his words: "This Accord leaves all individual rights intact. The Charter of Rights and Freedoms has not been amended, nor is there anything in this Accord that overrides it[16]." Similarly, Peter Leslie saw the distinct society clause as a "guide to the interpretation of the Canadian constitution. It does not replace or invalidate any other part of the constitution[17]." Gordon Robertson echoed this belief. In his appearance before the Special Joint Committee on the

1987 Constitutional Accord, he affirmed that the distinct society clause would not have expanded the powers of the National Assembly[18]. He repeated this belief in a March 1990 article in the Globe and Mail. As he wrote, "the distinct society clause recognizes a simple reality for Quebec[19]."

This opinion was also supported by Gérald Beaudoin, former Dean of the Faculty of Law at the University of Ottawa, constitutional expert and currently a member of the Senate. In his appearance before the Special Joint Committee on the 1987 Constitutional Accord, Mr. Beaudoin argued that the distinct society provision, as an interpretive clause, could not possibly have created any new powers for Quebec, nor could it have affected the application of the Charter to any significant degree[20]. The only way in which it could have been applied to the Charter would have been in the interpretation of section 1, the article which permits limits on Charter rights on the condition that such limits are "demonstrably justified in a free and democratic society." As Mr. Beaudoin asserted:

> In my opinion..., the recognition of a distinct society...is an explicit and important interpretive clause but it does not change the distribution of powers or the Canadian Charter of Rights and Freedoms. But it can, in certain cases, in particular under section 1 of the Charter and in grey areas concerning the distribution of powers, give more weight to certain arguments[21].

This view was shared by the Committee. In its Report, it asserted that "(a)s a matter of law, the `linguistic duality' and `distinct society' clauses neither grant new powers nor

derogate from existing powers. They are merely aids to interpretation of what is already there[22]."

In essence then, according to proponents of this view, the strength of the distinct society clause rested in its symbolic importance and the possibility it offered for respecting individual rights, while at the same time recognizing regional and linguistic differences as well as a diversity of societal and communitarian values[23]. In short, for those in this category, the distinct society provision advanced the idea that Canadian citizenship was based upon the equality of citizens, of French and English across Canada, of provinces as well as of two nations.

Supporters of the Distinct Society Clause: Paramountcy of the Equality of Nations

For those in the second category of Meech supporters, the distinct society clause represented more than an explicit recognition of what had already been implicitly accepted as political realities in Canada. Instead, it offered the possibility of expanding Quebec's legislative jurisdiction, and at the very least, of formally acknowledging the legitimacy of, and indeed giving primacy to, the equality of nations as the basis of federalism and political community in Canada.

An impassioned argument in favour of the distinct society clause was offered by Guy Laforest, member of the faculty of political science at Université Laval. In examining the

political impact of this clause, Laforest maintained that the formal recognition of Quebec as different from the other provinces was of vital importance for Quebecers. While sections of the BNA Act had already established this point, the explicitly worded clause of the Meech Lake Accord accomplished something more. It "represented the first official recognition by Canada of the French Canadian nation[24]." In Laforest's view, it would have provided Quebecers with a legal recognition of their distinctiveness which, would have carried more meaning than a mere de facto or conventional acknowledgement[25]. As he wrote:

> Symbolically (the distinct society clause) is quite important. But it means much more than token recognition....(It) covers the admission that something is real, legal, true, authentic, certain[26].

While Laforest would not go so far as to contend that section 2(1)(b) would have unequivocally resulted in a devolution of legislative powers to the National Assembly, he did affirm that this clause advanced a conception of citizenship which emphasized the idea of the equality of nations. By recognizing the important position of the province of Quebec as the political expression of the French Canadian nationality, it would have served to conciliate a pan-Canadian nationalism, which has come to see the individual as the primary component of political community, with a Quebec nationalism and a conception of community that has the French-Canadian or Quebec nation as an essential element[27]. As he wrote:

> The dualistic vision, which had always been important, without exercising a symbolic monopoly, was sacrificed to facilitate the emergence of a new and homogeneous Canadian national identity....(This) required all Canadians, from all parts of the country, to share an identical set of fundamental values. There was, and there still is, no significant place whatsoever in this vision for the recognition of Quebec either as a distinct society or as a nation[28].

Charles Taylor has argued that while Quebecers and Canadians in the rest of the country may share much more in common than observers admit, it is Quebecers' concerns over "la survivance" which sets them apart from their counterparts outside Quebec[29]. The defense of "la nation canadienne-française" and later "la nation québecoise" has been the primary concern for Quebecers and politicians alike since the Conquest[30]. This was best illustrated in the report of the Commission rôyale d'enquête sur les problemes constitutionels (Tremblay Commission 1956), which asserted that "au fond tous savent très bien que pour le Bas-Canada le fédéralisme veut dire d'abord et avant tout la possibilité d'etre maitre chez lui et d'organiser sa vie nationale comme il l'entend[31]." According to Taylor then, the conception of citizenship that prevails, and that has always prevailed, among Quebecers sees the Quebec political community, and not all of Canada, as the political expression of the French Canadian nationality. Thus, "(f)or Quebecers, and for most French Canadians, the way of being a Canadian...is by their belonging to a constituent element of Canada, la nation quebecoise[32]." In his view, as

well as that of Laforest's, this explains why the Trudeau/Bourassa approach never had any significant long-term appeal to Quebecers, since it undermined conceptions of citizenship that were more provincially-based[33]. In Taylor's words, "a genuine patriotism for a bilingual two-nation Canada, never developed[34]." Herein lay the strength of the distinct society clause.

Finally, Quebecers saw a constitutional document which would have formally recognized and placed importance on the equality of nations in Canada. As Taylor wrote, "Meech was important because it was the first time that recognition of Canadian duality and the special role of Quebec was being written into a statement of what Canada was about[35]." That this may have occurred at the expense of the equality of citizens and/or of provinces was not problematic for Taylor, as it would have represented a means of respecting multiple conceptions of citizenship, federalism and political community in Canada.

Two other views worthy of examination in this category, primarily because of their participation in the negotiation process, are those of Premier Robert Bourassa and the provincial Minister of Intergovernmental Affairs Gil Rémillard. These two political figures can provide some insight into the interpretation of section 2 that prevailed within the Quebec government. Both Mr. Bourassa and Mr. Rémillard, in their defense of the Meech Lake Accord in the

rest of Canada, suggested that the distinct society provision contained a symbolic importance which would not have permitted the National Assembly to override Charter rights or acquire more legislative powers. However, what they said in Quebec suggested otherwise. And, rather than speak of section 2 as a means of sharing power and making reciprocal commitments between Canadians governed by a higher, morally-binding authority, these political actors spoke of the Meech Lake Accord as a way of consolidating Quebec's legislative authority. The clause that was most frequently cited in this argument was section 2(4), which reads:

> Nothing in this section derogates from the powers, rights or priveleges of Parliament of the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or priveleges relating to language.

Speaking in the National Assembly on the day following the Langevin Block meeting, the Premier argued that in using the term "derogate" in section 2(4), the Meech Lake Accord would have safeguarded Quebec's jurisdiction over certain areas, such as language. As he stated, with section 2(4) "on se protege quant au bas et on peut gagner du terrain vers le haut[36]." In other words, according to the Premier, this article would have set the minimum level of Quebec's legislative power, but would have left open the possibility for future expansion. This view was echoed the following day, on June 5, by Mr. Rémillard who stated that "la clause 4 donne au Québec un instrument éxcéptionel pour défendre ses lois

linguistiques[37]." In the National Assembly debate two weeks later, as the legislature was about to ratify the Accord, the interpretation held by the Premier and the Minister, became more evident.

On June 18, 1987, Mr. Bourassa emphasized that the placement of the distinct society clause at the beginning of the BNA Act meant that the entire constitution would have been interpreted in a manner consistent with Quebec's distinctiveness. In short, the distinct society clause represented more than a token symbol. As the Premier himself stated:

> Nous devons constater d'abord qu'avec la société distincte, nous realisons un gain majeure qui ne se limite pas à la pure symbolique, car toute la constitution du pays devra dorénavant etre interpretée conformement à cette reconnaissance.... Il faut souligner que toute la constitution, y compris la charte, sera interpretee et appliquee à la lumiere de cet article sur la société distincte. L'éxercice de compétences législatives est visé et cela nous permettra de consolider les acquis et de gagner du terrain[38].

Mr. Rémillard, the following day, went so far as to argue that this article would have helped the Quebec government expand its jurisdiction into the so-called "grey areas" of the division of powers[39]. The examples he cited included the three areas over which Quebec governments have sought greater control since the 1960's. The Minister pointed to the field of communications and how the government could have relied on the distinct society clause to argue for greater control in this domain because of the role performed by Radio-Québec in

promoting the French language in Quebec[40]. Mr. Rémillard also referred to the possibility of the Supreme Court utilizing the distinct society provision to formally recognize Quebec's jurisdiction over caisses populaires within the province, even though banking and commerce fall under federal jurisdiction. As the Minister stated:

> Parce que nous sommes une société distincte et parce que le gouvernement et l'Assemblée nationale du Québec ont le rôle de protéger et de promouvoir la spécificité québecoise, nous avons la possibilité d'utiliser cette règle d'interprétation pour soutenir notre compétence sur les caisses populaires parce qu'elles font partie de notre vie sociale, économique, culturelle[41].

International Affairs and Quebec's relations with other French-speaking countries was also singled out as a potential grey area which the provincial government could have occupied as a result of the distinct society provision[42]. Mr. Rémillard did not go so far as to argue that this would permit Quebec to appoint ambassadors to these countries, but he did say that section 2 could have provided Quebec with a more active role within La Francophonie[43]. In the Minister's words:

> ce n'est pas parce qu'on est reconnu comme une société distincte qu'on va aller demander maintenant d'avoir des ambassades partout dans tous les pays du monde. Ce n'est pas cela qu'on veut faire. Ce que l'on veut...c'est avoir la possibilité d'exprimer ce que nous sommes sur la scène internationale[44].

It is true that much of what has been said by members of the Quebec government can be dismissed as political rhetoric, advanced simply for the consumption of Quebec nationalists and a separatist Opposition in the Assembly. However, when all due

allowance is made for such rhetoric, one must still consider the seriousness with which the Quebec government, as well as the general public, accepted the interpretations of the distinct society provision and the relationship between the three equalities. As evidence, one need only examine the reaction, by the Quebec government and a number of Quebec MPs, to proposed amendments to the Meech Lake text that would either place the distinct society clause in the preamble of the constitution or would include it in a so-called Canada clause. This latter recommendation was advanced by The Special Committee to Study the Proposed Companion Resolution to the Meech Lake Accord, chaired by Jean Charest.

The Charest Committee endorsed many of the proposed amendments put forward by the New Brunswick government. Included among them were three provisions of particular importance. One would have accorded the legislature of New Brunswick a role in preserving and promoting the equality of that province's two linguistic communities[45]. A second would have affirmed Parliament's role in not simply "preserving", but also in "promoting" linguistic duality in Canada[46]. Yet a third element of this proposal would have affirmed the supremacy of the Charter of Rights and the integrity of the division of powers[47]. The Committee report was endorsed by the three main federal parties and most provincial premiers, but was rejected by the Quebec government and many Quebec MPs. One of the MPs was Lucien Bouchard, who resigned from the

Mulroney cabinet in opposition to this report, and who opted to argue in favour of Quebec's separation from Canada. His rejection was based on a fear that the recommendations would have diluted the meaning and potential legislative impact of the distinct society clause as it was written in the Meech Lake text and as it was understood by those in Quebec who had negotiated it[48]. In essence, the addition of a Canada clause, designed to ensure the supremacy of the Charter and to safeguard the integrity of the division of powers, was seen as a way of preserving the concepts of the equality of citizens and of provinces, thus reducing the principle of the equality of nations to a less prominent status within Canadian constitutional discourse. Clearly then, for these section 2 supporters, virtually all Quebecers, the conception of Canadian citizenship contained in the Meech Lake Accord was based not upon membership within the Canadian political community, but upon a sense of belonging to a political community centred in Quebec.

Critics of the Distinct Society Clause: Subordination of the Equality of Nations.

For some critics of this Accord, there was no such sentiment towards the Canada clause. The feeling was that the distinct society provision, as written in the document, was meaningless to begin with, since it did not appear to have given enough primacy to the concept of the equality of nations, while still preserving the other equalities as

fundamental constitutional principles. According to this view, section 2 included neither a sufficient symbolic recognition of the French Canadian nationality centred in Quebec, nor a transfer of legislative powers to the National Assembly. Moreover, all the limits which the Constitution had placed upon the National Assembly, section 133 of the BNA Act and section 23 of the Constitution Act 1982, would have remained intact. This was the message of Guy Bouthilier, spokesman of the nationalist group Le Mouvement Quebec Francais. He claimed:

> Dans le texte du 3 juin, en effet, il n'y a aucun pouvoir nouveau pour le Québec en matière de langue.... la place...on y trouve une vague phrase sur une société qui rest indéfinie[49].

Not surprisingly, Mr. Bouthilier found an ally in then Parti Québecois leader, and former Premier, Pierre-Marc Johnson, who questioned whether the distinct society clause, in conjunction with the recognition of Canadian duality, would have allowed Quebec to sustain language legislation such as Bill 101[50]. In addition, Mr. Johnson claimed that not only would section 2(4) have ensured that the division of powers would have remained unchanged, but it would have also secured the supremacy of the Canadian Charter of Rights and Freedoms, thus maintaining the limits on the legislative capacity of the National Assembly[51]. As Mr. Johnson stated in the legislature:

> Pendant 25 ans, tous les premiers ministres du Québec...ont constamment revendiqué pour l'État québécois, *le seul maîtrisé par notre peuple*, (emphasis added) plus de pouvoir....C'est cela que vous aviez abandonné sur les berges du lac Meech....(V)ous aviez perdu des pouvoirs linguistiques pour le Quebec et non pas gagné des pouvoirs linguistiques[52].

A similar argument was expressed by Michel Vastel in Le Devoir. He asserted that the Meech Lake Accord was filled with contradictions and hardly recognized Quebec as distinct at all[53]. In addition to the uncertainty surrounding the meaning of section 2, and precisely what it was about Quebec society that was distinct, Vastel also pointed to the fact that the other Quebec demands were eventually granted to the other provinces as well[54]. Lysianne Gagnon, in La Presse, made a similar comment[55]. Even the much-coveted veto was extended to all provinces for most constitutional amendments. This prompted Vastel to conclude that the 1987 Accord put forward a much stronger message of the equality of the provinces than that of a distinct status for Quebec[56].

For analysts in this category then, the main shortcomings of the proposed constitutional amendment lay in its failure to set out a new division of powers that would adequately reflect the principle of the equality of nations, and that would advance a notion of citizenship consistent with Quebecers' primary attachment to the Quebec political community.

Critics of the Distinct Society Clause: Undermining the Three Equal [illegible].

There are other critics of the Accord, primarily centred outside Quebec, who felt that this document went too far in attempting to acknowledge the equal status of nations, sacrificing the principles of the equality of citizens, of the French and other linguistic groups in Canada and of provinces. The most ardent advocate of this view was Newfoundland Premier Clyde Wells. In his opinion, section 2(1)(b) would have provided Quebec with a special legislative status not available to other provinces, thus creating an asymmetrical federal system. The other nine provinces of Canada would have consequently been relegated to an inferior status. In his words:

> The Meech Lake Accord...gives the Quebec legislature and government the special role that no other province has to 'preserve and promote' the distinct identity of Quebec....The role of a legislature is to legislate or pass laws. Clearly therefore, the Meech Lake Accord creates a special legislative status for one province[57].

This view was echoed by David Bercuson, who warned that "the powers which Meech Lake gives to the government of Quebec will allow a nationalist government...to basically create the kind of sovereignty-association which René Lévesque aimed at for all those years[58]."

Moreover, Premier Wells felt that sections 2(2) and 2(3), in according the Parliament of Canada the responsibility to

"preserve" linguistic duality, while granting the National Assembly the power to "preserve" and "promote" Quebec's distinctiveness, respectively, would have compromised the equal status of Canada's two language groups[59]. If the legislature of Quebec would have come to exercise more power in the name of preserving the primary feature of that province's distinctiveness, namely the French language and culture, then clearly non-Quebec Francophones would not have access to the same treatment. The main effect of the Meech Lake Accord, would have been to distinguish between Francophones living in Quebec and those residing elsewhere. This would have had no other effect than to shift focus away from the linguistic rights of individuals toward "a territorial and state based idea of dualism[60]." Access to certain services in French would no longer have been based upon the rights and privileges emanating from a common citizenship, but would have been derived from residence in one particular province and membership in one particular "national" majority[61].

This was repeated by the spokesman of at least one organization representing Francophones residing outside Quebec. Georges Arès, of the Association canadienne-française de l'Alberta (ACFA) expressed concern that the 1987 Accord may have overridden the Charter guarantees set out in sections 15 and 23[62]. Of perhaps more importance was his fear that sections 2(2) and 2(3) would have led "to the creation of two

or three Canadas and (would have) destroy(ed) the bilingual Canada that has been built since Confederation[63]." In ACFA's view, this section of the Accord advanced a "false concept of duality", as it would have further consolidated the preeminent position of the French-speaking community in Quebec, while providing little in the way of constitutional obligations toward French-language minorities in the rest of Canada[64]. The result would have been a Quebec that would have become more and more French-speaking, with the rest of Canada, except perhaps New Brunswick and Ontario, functioning virtually exclusively in English[65]. This would have placed in question the equality of the French and English languages across Canada, as well as the equality of French and English Canadians wherever they may reside.

Section 2, according to some analysts, would have affected the equality of citizens in another way. If the Quebec government would have been able to exercise powers not available to the other provinces, and federal MPs would not perform the same function in Quebec as in all other parts of the country, then an imbalance would have occurred[66]. Quebec MPs would be able to participate in drafting legislation that would govern citizens outside of Quebec, yet MPs representing other parts of Canada would not enjoy a reciprocal responsibility to Quebecers[67]. This would have resulted, not only in the creation of two tiers of MPs, but would have also brought about a relative inequality in the influence of the

two groups of citizens on the political process[68].

For another critic of the Accord, Ramsay Cook, two scenarios were possible. Either the distinct society clause had more than a symbolic meaning or it did not[69]. If it did not, then Quebec nationalists could claim that they were duped into accepting a new constitutional arrangement. This would hardly have served as a basis for lasting political relationships in Canada. If it did mean more than a token symbol, on the other hand, what would have been the criteria used to specify this distinctiveness[70]?

Historically, Quebec society has been defined through its language, culture, religion and separate legal tradition, all of which have been recognized in the BNA Act. Thus, at the very least, in Cook's opinion, section 2 would have provided an explicit affirmation of what had already been implicitly acknowledged in 1867[71]. However, there was the possibility that its scope could have extended beyond this. Given the stronger identification of Francophone Quebecers with what has been referred to as "the Quebec state" after 1960, Cook wondered whether the distinctiveness of Quebec referred to the French-speaking majority centred in that province, or to the government that is accountable to, and acts on behalf of that majority. If it was the second interpretation that was favoured in Quebec, and the statements made by Premier Bourassa and Mr. Rémillard suggested that it was[72], then, in Cook's view, this clause would have placed in question the

integrity of the principles of citizen and provincial equality[73]. Moreover, Cook wondered whether the federal policy of official bilingualism represented a means of "preserving" linguistic duality in Canada, or whether it promoted it[74]. Would Ottawa have been able to provide services to non-Quebec Francophones beyond those already offered in federal institutions, or would this have been beyond the scope of its jurisdiction as outlined in section 2[75]? Also worthy of consideration was whether Ottawa would have been able to legislate on matters of language affecting the distinct society of Quebec?

Furthermore, Cook, and others, expressed concern as to how Charter rights would have been interpreted alongside the distinct society clause. Some critics questioned the opinion of Senator Murray, who insisted that the distinct society clause would not have affected Charter rights in any way[76]. Others considered the interpretation advanced by Mr. Beaudoin, that this clause would have only guided interpretations of section 1 applications, potentially threatening to the principle of the equality of citizens. The argument was advanced that if some infringements on Charter rights were to have been deemed "demonstrably justified" in lieu of Quebec's distinct society, then the result would have been a checkerboard application of Charter rights[77]. Canadians in one part of the country would not enjoy the same rights as Canadians living elsewhere[78]. This would have had no other

effect than to undermine the intended purpose of the Charter[79] and attempts at forging a common Canadian citizenship and political nationality.

Former Prime Minister Trudeau, in his comments on the merits of the 1987 Accord, articulated a similar argument. In his judgment, the distinct society provision conflicted with the principle of the equality of citizens, as it emphasised the interests of the nation, or a collectivity, above those of the individual. This clause, according to Trudeau, conveyed the message that a people, concentrated in one particular territorial entity, can have interests of its own which transcend or exist independently of the interests of the individual citizens of which that territory and that collectivity is composed[80]. Trudeau argued throughout his political career, that the best way to preserve and promote the interests of Quebec society is not by devolving more powers to the Quebec government so that it may pursue nationalist aims, but rather to encourage truly democratic and non-nationalist government which would provide the individual citizen with the opportunity to satisfy his/her interests[81]. And, Trudeau saw bilingualism, and the idea of the equality of the "two founding peoples", as a means of ensuring such democratic government, for it enabled the federal government to communicate with, and provide services for a larger number of citizens than would have otherwise been the case[82].

In Trudeau's mind, section 2 of the Meech Lake Accord challenged the validity of these ideas, as it would have served to reinforce the predominant position of the French language in the province as well as the identification Quebecers have with their provincial government[83]. This would have "ghettoised" French-speaking Canadians in Quebec and lead them to believe that it is only in that province where they can be at home. By so doing, section 2 would have also served to undermine all previous attempts at forging a loyalty to a pan-Canadian political community, that transcends regional, linguistic or ethnic boundaries[84]. The former Prime Minister stated his position clearly before the Special Joint Committee of the Senate and House of Commons on the 1987 Constitutional Accord. As he put it on August 27, 1987:

> (T)here must be in relation to one's country, one's nation and one's people, a greater loyalty than the sum of the loyalties towards the provinces. In other words, there is a Canadian common good that broadens in a way the common good of each of the provinces. There must be some sense of belonging in order to cultivate the national spirit; there must be an attachment to the larger entity we call Canada, an attachment somewhat less sentimental, more rational and broader than just loyalty to each of the individual provinces. In short,... the Canadian entity (must be) more than simply the sum of all of the provinces[85].

For these critics of the distinct society clause, the primacy of the pan-Canadian political community, the preservation of the equality of citizens and of the French and English languages across Canada, as well as, in the case of Premier Wells, the equality of provinces, were considered

of fundamental importance. These principles were seen as the foundations upon which a meaningful Canadian citizenship was built. The possibility that the recognition of Quebec as a distinct society may have undermined any or all of these principles, as well as the conception of citizenship that flows from them, represented sufficient grounds for the rejection of the Meech Lake Accord.

MEECH LAKE VISIONS

The declaration by Trudeau, as well as those made by Guy Laforest, Clyde Wells and others, illustrates unequivocally the scope and complexity of the Meech Lake debate. As Peter Russell has written, Canadian constitutional politics, or in his words, "macro-constitutional politics" have tended to take the form of debates surrounding "the very nature of the political community on which the constitution is to be based[86]." It was precisely this, as much as the substance of the 1987 Accord, that had become the focus of debate among Canadians between April, 1987 and June, 1990[87]. And, if anything, this experience has proved consistent with previous attempts at constitutional amendment. Not only did this latest round fail to provide an authoritative resolution to the Canadian question, but it exposed, once again, Canadians' inability to agree on the meaning of Canadian citizenship and the way in which Canadians relate to each other as citizens. For Francophone Quebecers, it was seemingly essential that any

new constitutional arrangement provide a "special status", a recognition of Quebecers' collective identity, as well as a realignment of the division of powers which would permit the National Assembly to exercise greater influence over the daily lives of Quebecers. This was consistent with the conception of citizenship that appeared to prevail among Quebecers since 1960. For others, mainly those residing outside Quebec, the equality of all provinces, of citizens and of the French and English languages across Canada represented the essential basis of Canadian citizenship. By the end of the Meech Lake debate, the preservation of these principles had attained a near-sacred status, which could not be compromised under any circumstances and which could not be combined with the recognition, whether symbolic or not, of Quebec as a distinct society. This clash of visions produced the latest constitutional impasse facing Canadians.

This being the case, what are the prospects of Canadians ever agreeing on a new and lasting constitutional arrangement that would set out a conception of citizenship that would find meaning for all Canadians? Short of answering this question definitively, the final chapter attempts, as a way of conclusion, to provide some insight into this issue by assessing it within a more historical and broader context.

ENDNOTES TO CHAPTER 4

1 Katherine Swinton,"Competing Visions of Constitutionalism: Of Federalism and Rights," in Competing Constitutional Visions: The Meech Lake Accord eds., Katherine Swinton and Carol Rogerson (Toronto, 1988), pp.280-281.

Richard Simeon, "Meech Lake and Visions of Canada." in Swinton and Rogerson, eds., Ibid., p.300.

2 This opinion was expressed by, among others, The Honourable Robert L. Stanfield. See The Special Joint Committee of the Senate and of the House of Commons on the 1987 Constitutional Accord (Ottawa, 1987), 2:17.

3 José Woehrling, "La reconnaissance du Québec comme société distincte et la dualité linguistique au Canada: conséquences juridiques et constitutionelles," Canadian Public Policy/Analyse de Politiques XIV (September, 1988), p.56.

4 Ibid.
In fact, Woehrling points out that the term "distinct society" is hardly a new concept, but dates back to the Royal Commission on Bilingualism and Biculturalism, the Task Force on Canadian Unity and the Beige Paper issued in 1980 by the Liberal Party of Quebec.

5 Ibid., p.57.

6 Ivan Bernier, "Meech Lake and Constitutional Visions," in Swinton and Rogerson, eds., op.cit., p.243.

7 Simeon, "Meech Lake and Visions of Canada," in Swinton and Rogerson, eds., op.cit., p.295.

8 Ibid., p.298.

9 Richard Simeon, "Meech Lake and Shifting Conceptions of Canadian Federalism," Canadian Public Policy/Analyse de Politiques XIV (September, 1988), p.14.

10 Simeon, "Meech Lake and Visions of Canada," in Swinton and Rogerson, eds., op.cit., pp.304-305.

11 Jennifer Smith, "Political Vision and the 1987 Constitutional Accord," in Swinton and Rogerson, eds., op.cit., pp.271-72.

12 Ibid., pp.272-73.

13 Ibid., p.273.

14 The Honourable Senator Lowell Murray, "The Constitutional Politics of National Reconciliation," in The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord ed. Michael Behiels (Ottawa, 1989), p.18.

15 Ibid., p.14.
Senator Murray identified three objectives which the Accord sought to satisfy: "recognition of Canada's diversity and linguistic duality; respect for the principle of the equality of the provinces; and promotion of cooperation and collaboration among governments."

16 Ibid., p.15.

17 Special Joint Committee of the Senate and House of Commons on the 1987 Constitutional Accord--Proceedings (Ottawa, 1987), 4:99-100.

18 Ibid., 3:80-81; 85-86.

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an interest in Canadian arrangements.
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74 Ibid., pp.156-157.

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76 Stephen Scott, "Meech Lake and Quebec Society: `Distinct' or `Distinctive'?", in Behiels, ed., ibid.,pp.162-163.

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CHAPTER 5

CONCLUSIONS:

TOWARDS A MEANINGFUL CANADIAN CITIZENSHIP?

And if a House be divided against itself, that House cannot stand.

Mark 3:25

The meaning of citizenship and attempts at better defining the way in which Canadians relate to one another have proved to be highly contentious issues within Canadian politics. In addressing this subject, this thesis has distinguished between, on the one hand, the moral components and personal sentiments associated with citizenship, and, on the other hand, the purely legal and statutory requirements that apply to citizens of Canada. While the latter may bind Canadians together in law, they alone do not guarantee a sense of fellowship among citizens. There are some Canadians in Quebec for example, who value their passports which define them as Canadian citizens, yet, at the same time, wish to see the dissolution of the Canadian union. This illustrates that at a personal level, citizenship can take on different values, for different people at different times. At issue, then, is how to give meaning to this citizenship in such a way as to bind Canadians together in more than name only. In short, how can Canadians construct constitutional arrangements that would

foster reciprocal obligations and a sense of mutual commitment between them? Of course, such questions are not easily resolved. A review of what has been undertaken in this thesis allows us to recapitulate the critical questions and to suggest grounds for some optimism.

CITIZENSHIP AT CONFEDERATION

At the time of, and subsequent to Confederation, the way in which Canadians relate to each other as citizens was and has remained a source of discord. As Kenneth Carty and Peter Ward write, "(t)he general question of citizenship was so awkward a problem that those who drafted the confederation agreement largely avoided it. Thereafter, Canadian politicians generally dealt with the matter of political citizenship as expedience dictated[1]." There are a number or reasons why this was considered problematic. Foremost among them perhaps, was the feeling among most English Canadians, that Canadian citizenship was best defined through a loyalty to the Crown, and the status of loyal British subject[2]. This, of course, was more consistent with monarchical notions of the relationship between state and society, which placed emphasis on loyalty, allegiance and obedience to the Sovereign[3]. In contrast, it was the republican idea of citizenship that was based upon consent and the voluntary association of people[4].

Furthermore, in 1867, the term "Canadian" had little significance for British North Americans. For French-speaking

Lower Canadians, it was the expression "Canadien" that had meaning and that referred primarily to the political community that ended at the Ottawa River to the west[5]. For Nova Scotians and New Brunswickers, reference to "Canadian" citizenship was more likely to elicit resentment rather than any sense of fellowship, for it evoked images of Ontario and Quebec, the territories that had previously formed part of the United Province of Canada[6]. Consequently, any attempt at giving meaning to Canadian citizenship at the time of Confederation, likely would have compromised the Confederation agreement. Political expediency therefore dictated that the federal arrangement of 1867 remain an "ambiguous bargain"[7].

Over time however, Canada's imperial connection waned as a source of discord. As the proportion of those of British origin in Canada decreased, support for conceptions of Canadian citizenship that were defined in terms of a relationship to Britain, declined as well[8]. Why then has this issue, the way in which Canadians relate to one another as citizens, remained problematic? The Meech Lake Accord and the debate surrounding the distinct society clause can offer some answers to this question.

CITIZENSHIP AND THE ENDURING CANADIAN QUESTION

If anything, the recent debate over the conception of citizenship contained within 1987 Accord confirms that Goldwyn Smith's declaration, slightly more than a century ago, can

still apply to contemporary Canada. The scope of the Canadian question however has grown in complexity since 1891. Not only has it come to incorporate concerns relating to institutional reform and the strengthening of the Canadian economic union, but from the covenantal approach to politics, it has taken the form of a debate among Canadians over divergent conceptions of federalism and political community. The difficulty at reaching consensus on the nature of and parties to covenantal relations in Canada has hindered the development of a sense of citizenship that appeals to all Canadians. This thesis has identified four such conceptions, which each emerged at different periods in time, and which have each left their impact upon Canadian political and constitutional discourse.

By the 1890's the covenantal component of the Canadian question was largely confined to determining the proper relationship between the federal and provincial governments and between federal and provincial political communities. In the words of Ramsay Cook: "(i)n the course of the years immediately following 1867, particularly during the first two decades, there was an almost constant clash of loyalties and interests between the federal and provincial governments[9]." This however, seemed a natural occurrence for a newly formed federation, intent on forging a Canadian political nationality from among a collection of previously self-governing colonies, which had each enjoyed their own unique political history, traditions and customs prior to 1867. As noted by the Royal

Commission on Dominion-Provincial Relations (Rowell-Sirois):

> The enactment of the British North America Act did not, of itself, assure the balance between national loyalties and interests and provincial loyalties and interests which an effective federation requires.... During the first thirty years, Canada had to search for an equilibrium between these two sets of forces[10].

For a substantial portion of the twentieth century, the Canadian question tended to take the form of a debate between the merits of two compact theories, that of provinces, articulated by the likes of Oliver Mowat and Honoré Mercier, and that of peoples, advanced by Henri Bourassa. The latter carried with it a moral obligation toward French and English-speaking citizens, based upon the recognition of rights associated with citizenship, free from territorially and ethnically demarcated attachments. The former represented, in essence, a legal compact which addressed, exclusively, the basis of provincial power and which offered an effective defense of provincial legislative autonomy. It advanced the idea that it was the provinces and provincial political communities, and not individuals in their capacities as Canadian citizens, that represented the essential component of federalism and political community in Canada. Citizenship, according to this theory, was derived from membership within a component unit of Canada, and not from the rights, duties and priveleges associated with membership within a pan-Canadian political community. The status of provincial governments and provincial political communities was

consequently further enhanced. It should not be surprising then, that it was the compact of provinces theory that prevailed within Canadian political discourse for much of this century.

This is not to suggest that the compact of peoples theory had no impact upon federalism and political community in Canada. Whereas the compact of provinces resulted in the emergence of provincial governments as agents of constitutional choice and advanced the idea of the equality of provinces, the Bourassa compact theory left a legacy of the equality of French and English Canadians, "the two founding peoples" of Canada. While this view found little support among early twentieth century federal and provincial politicians, it did find sympathetic allies in the Pearson and Trudeau governments of the 1960's and beyond, ultimately culminating in the entrenchment in the constitution of the equality of French and English as official languages in Canada.

The 1960's marked the emergence of a third conception of federalism and political community in Canada, one which asserted the equality of two nations. This was largely the product of the Quiet Revolution in Quebec and of more active involvement of the Quebec "state" in the daily lives of Quebecers. This concept saw the government of Quebec as the sole political expression of the French Canadian nationality, with Ottawa acting exclusively on behalf of the English

majority in the rest of the country. While this may have contained a limited moral component, in that it would have required a willingness on the part of English Canadians to formally acknowledge the legitimacy of the French Canadian nationality centred in Quebec, it was primarily a legal compact. This theory was advanced by Quebec governments of varying political stripes and nationalist orientation, as a means of justifying the consolidation and expansion of the National Assembly's legislative jurisdiction[11]. Thus emerged the now familiar terms of "statut particulier", "special status" and "asymmetrical federalism". Of perhaps more importance was that this theory, like the compact of provinces, offered little in the way of a commitment to language minorities and to advancing the cause of bilingualism throughout Canada. As such, this theory could not be said to bind Canadians together and foster a conception of citizenship that would elicit any sense of mutual respect and reciprocal obligation. Yet, not surprisingly, it was endorsed by successive Quebec governments as well as the federal Progressive Conservative and New Democratic parties in the 1960's[12].

The fourth conception of federalism and political community to surface in Canada, emerged out of what Alan Cairns described as the "Charter culture". In recognizing Canadian citizens as bearers of certain fundamental rights and freedoms, as well as preserving gender equality and the

rights of visible minorities and multicultural and aboriginal groups, the Charter cut across those cleavages in Canadian society that are territorially and/or ethnically demarcated[13]. Consequently, federalism and the relationship between federal and provincial governments, and between competing political communities have diminished in importance within the Canadian constitutional order[14]. In Cairns' view, as for most English Canadians, any constitutional document that returns to these principles as the basis of constitutional arrangements, and that consequently challenges the "Charter culture", will be rejected by most English Canadians[15]. Such was the case with the Meech Lake Accord. As Cairns writes:

> For its anglophone supporters, the Charter fosters a conception of citizenship that defines Canadians as equal bearers of rights independent of provincial location....The Charter generates a roving normative Canadianism oblivious to provincial boundaries and thus hostile to constitutional stratagems such as the Meech Lake `distinct society' that might vary the Charter's availability in one province[16].

The current version of the Canadian question is essentially a struggle to determine whether and in what way each of these conceptions of federalism and political community can co-exist[17]. Clearly, the notions of the equality of provinces, of French and English and of citizens have left their mark on the Canadian constitution. Is there room for an affirmation of the equality of nations? Or, will this necessarily and inherently undermine each of the aforementioned equalities? Moreover, can political analysts

ever refer to popular sovereignty in Canada--or, in Peter Russell's words, "can the Canadians be a sovereign people[18]" --without necessarily and inherently undermining other conceptions of community, namely those that prevail in Quebec? In short, can Canadians, at one and the same time, advance a conception of citizenship that is based upon the legislative equality of provinces, that respects individual rights, yet affirms the collective identity of the French Canadian nationality centred in Quebec, and that still maintains French and English as official languages throughout Canada? And, to make this dilemma even more challenging, can these issues be resolved, while at the same time addressing concerns over institutional reform, Aboriginal self-government and an expanded economic union?

LESSONS FROM ABROAD?

Solutions to these questions are not readily and easily available. To some extent, such predicaments arise naturally from the federal form of government itself. The reconciliation of self-rule and shared rule not infrequently results in a conflict between popular sovereignty, as expressed by national majorities, and the sovereignty of the component units, which is a crucial feature of federalism[19]. The institutional response to such conflict can usually be found in an effective upper chamber, which tempers popular representation, of some form or another, in the lower house, with representation of

the component units. From the covenantal perspective, this could be seen as evidence of how power can be balanced and shared so as to structure political relationships among diverse communities of people.

From the viewpoint of this school of thought, the need for such balance and division of sovereignty is even more acute in federations characterized by linguistic and cultural diversity. It is only by constructing morally-binding political relationships, based upon the mutual respect of peoples, that diverse communities can freely join together in lasting constitutional arrangements. The disintegration of multinational federations in what were formerly known as the Soviet Union and Yugoslavia, as well as increasingly fractious relations between Czechs and Slovaks, which threaten the survival of the Czechoslovakian federation, can provide some indication as to the importance of covenant as a basis of political relationships.

It could be said that these eastern European states were federations in name only. The various national and ethnic groups inhabiting these territories were brought together, not out of covenantal arrangements, based upon reciprocal obligation and mutual respect, but under highly centralized, party-dominated political systems which demanded a total and exclusive allegiance to the state and to the party.

Can the Canadian federal experience be said to be comparable to those of the aforementioned multinational

federations? Two arguments can be made to this effect. First, one need remember that Confederation was based upon an allegiance to the Sovereign. Indeed the preamble of the BNA Act described a union of three colonies "into One Dominion, under the Crown of the United Kingdom". The provision calling for a "Constitution similar in principle to that of the United Kingdom" meant that parliamentary responsible government would be extended to all governments in Canada. As shown in chapter 3, this form of government proved, at times, unresponsive to linguistic and cultural diversity, as it entrenched majority rule as an operative feature of politics in Canada. In the words of Lord Acton:

> The parliamentary system fails to provide for (national claims) as it presupposes the unity of the people. Hence, in those countries in which different races dwell together, it has not satisfied their desires and is regarded as an imperfect form of freedom[20].

This consequently has made it difficult to fashion a conception of community and citizenship that appeals to diversity and that is based upon the sharing of power.

A more contemporary argument is made by Guy Laforest. In his view, the 1982 Constitution Act and the Charter of Rights served as a nationalizing tool, enhancing the status of the Canadian national political community[21]. He interpreted this as a way in which the Trudeau government utilized the state to create a single nationality in Canada which would be the exclusive focus of Canadians' loyalties[22]. Like the multinational eastern European states, post-1982 Canada has,

in Laforest's view, proved unable to give expression to national pluralism[23]. The critical difference is, of course, that the Canadian system of government was based upon liberal principles of self-government. It was these principles that have allowed Canada to evolve more and more toward a self-governing society.

THE CANADIAN QUESTION AND THE FUTURE

Do the points raised above imply that conceptions of citizenship in Canada are as rigid as those that prevailed within former communist-bloc multinational federations? Or, have Canadians shown greater tolerance of and flexibility toward competing conceptions of federalism and political community? Are the enduring Canadian question, the rejection of the Meech Lake Accord and the vision of community contained in it, and the disintegration of the aforementioned multinational federations, suggestive of an unavoidable trend which is destined to afflict Canada and lead to the fragmentation of the Canadian union? Or, has too much been made of such perennial "crises", which have rarely, if ever, led to the outbreak of violence or have interrupted the provision of goods and services? At a less extreme level, will Canadians continue redefining their constitutional arrangements in a piecemeal fashion, simply readjusting the division of legislative powers between governments, but stopping short of addressing the fundamental and highly

contentious issue of citizenship? In short, are Canadians destined simply to manage successive "crises" rather than resolve them outright? Most of the literature within Canadian politics, as outlined in chapter 1, has tended to respond to these questions with considerable pessimism. However, there are a number of realities of Canadian politics which can provide some grounds for optimism.

First, there is the idea, advanced by some analysts, which sees the emergence of multiple conceptions of federalism and political community as a sign of strength, having contributed to the stability and durability of the Canadian experience. The work of J.R. Mallory is one such example. In 1965, Mallory pointed to the "five faces of federalism", five different forms of federalism that have emerged since Confederation, as evidence that "Canadian federalism is different things at different times. It is also different things to different people[24]." Such flexibility permitted multiple conceptions of community to co-exist, and has enabled Canadians to express their attachments to multiple political communities in a variety of ways. This prompted Mallory to conclude that the "fact that the Canadian federal system has materialized in so many forms is proof of its essential vitality[25]."

The more contemporary work of Alain Gagnon, in a 1989 article entitled "Canadian Federalism: A Working Balance", supports this contention. Gagnon claims that the strength of

the Canadian federal experience has been the way in which it has been able to manage conflict rather than resolve it outright, balancing centrifugal and centripetal tendencies at different times throughout Confederation[26]. In his words: "Canadian federalism should be understood as a federal bargain being continually revived as vested interests are challenged and federal arrangements modified to accommodate them[27]." According to Gagnon then, the essence of the Canadian federal experience, is not, and has not been, the adhesion to one conception of federalism and political community, but the adoption of multiple conceptions, which permits Canadians to express their citizenship in a multitude of ways.

It is interesting to recall the views of Richard Simeon on this point. As initially noted in chapter 4, Simeon argued precisely that the more provincialist Meech Lake Accord served to balance the more centralist, nation-centred 1982 amendment, thus enshrining multiple visions of federalism and political community within the constitution[28].

A second reason for optimism relates to constitutional proposals put forward by the federal government in 1991, entitled "Shaping Canada's Future Together", which recognized the need to address, at least to some extent, the issue of citizenship and the way in which Canadians relate to one another[29]. The need for a declaration of principles, spelling out "who we are as a people and who we aspire to be[30]", whether it be contained within the preamble of the

constitution or in a so-called interpretive "Canada clause", was subsequently recognized by those attending the Renewal of Canada Conferences on "Identity, Rights and Values", held in Toronto, in February 1992[31].

Among the contents of such a declaration were included the recognition of the equality of men and women, protection against discrimination for all visible minorities, the affirmation of the responsibility of all governments to preserve Canada's "linguistic majorities and minorities", as well as that of the Quebec government to preserve that province's distinct society, recognition of Aboriginal rights in Canada, and an affirmation of the supremacy of the Canadian Charter of Rights and Freedoms[32]. Indeed, the Special Committee on a Renewed Canada supported these proposals and recommended "that a statement of Canada's identity and values be included in a prominent place in the Constitution[33]." One such prominent place, in the Committee's view, was an amended section 2 of the BNA Act[34].

A third basis for optimism is rooted in the views of the Canadian people themselves. Beneath the declarations of Canada's First Ministers, there does appear to exist some common ground which unites Canadians at some basic level. In April 1991, The Globe and Mail, in conjunction with the Canadian Broadcasting Corporation, conducted a poll asking Canadians their views on constitutional issues. Of the numerous subjects that formed part of this survey, four

questions are of particular importance here. When asked whether or not there is a "common Canadian identity, which Canadians of all regions share", 53% of Quebecers polled and 65% of those from the "rest of Canada" answered affirmatively[35]. In the other three questions, participants were read statements and were then asked whether they agree or disagreed, in varying intensities. To the statement, "we should feel proud about the joint achievements of French and English in this country", 83% of Quebecers and 80% of Canadians outside Quebec agreed or strongly agreed[36]. On the declaration "Canada is the best country in the world to live in", 83% of Quebecers polled, compared to 89% in the rest of Canada agreed or strongly agreed[37]. Finally, the assertion "Quebec and the rest of Canada really don't have much in common" elicited the disagreement or strong disagreement of 64% of Quebecers, compared to 72% from among those polled in the rest of Canada[38].

More recently, in April 1992, a poll conducted by the TVA television network, the CROP polling firm and L'Actualité magazine produced results that led to the conclusion that "les Québecois sont profondément attachés au Canada et à ses symboles[39]." For example, 73% of Quebecers asserted that "être canadian est très important pour moi[40]." Among Francophones, this figure rested at 69%, while even 41% of "indépendantistes purs et durs" admitted to an attachment to Canada[41]. Furthermore, 73% of Quebecers admitted to

identifying "somewhat" (assez) or "a lot" (beaucoup) with the Charter, 65% with the maple leaf, 63% with the Canadian flag and 68% with bilingualism[42]. Perhaps the most interesting results, to say the least, can be found in questions relating to independence. Asked whether they were more favourable to Quebec remaining a province of Canada or becoming an independent country, 54% of those polled chose the former option, with 34% supporting the latter[43]. When asked "seriez-vous plus favorable à l'indépendance si un Quebec independant pouvait s'appeler le Canada, conserver le drapeau canadien et l'hymne national?", 54% admitted to being favourable or more favourable to Quebec's secession from Canada[44]. In essence then, rather paradoxically, the more strongly an independent Quebec could remain tied to Canada, at least symbolically, the more favourable Quebecers appeared to be towards severing political ties with the Canadian union.

It is true that the survey results merit a more profound analysis than what is offered here. However, they do indicate that, at some level, Quebecers do feel an attachment to the Canadian political community, and do share many values and features of citizenship with their fellow Canadians residing in the other provinces and territories of Canada.

Do these three factors--the flexibility of the Canadian federal system, the apparent willingness of the federal government to acknowledge the need for a statement of principles defining Canadian citizenship, and the agreement,

at a basic level, among Canadians on certain fundamental values and beliefs-- suggest that an authoritative resolution of the Canadian question is imminent? Not entirely, though they may, at least, serve to temper some of the pessimism with which Canadians have seemingly viewed the future of Canadian unity. Having said this however, it is perhaps now time, after decades of discussion, and in Peter Russell's words, four rounds of macro-constitutional negotiations[45], for this constitution-weary population to translate, what appears to be, agreement on certain fundamental beliefs and values into a constitutional discourse of shared citizenship. If, in the face of a pending Quebec referendum on some form of "sovereignty-association", Canadians cannot resolve the latest version of the Canadian question, they may witness a last opportunity pass them by. Indeed, a house divided cannot stand. But, the history of the Canadian federal experience --however imperfect a union--offers some grounds for hope.

ENDNOTES TO CHAPTER 5

1 Kenneth Carty and Peter Ward, National Politics and Community in Canada (Vancouver, 1986), p.67.

2 Ramsay Cook, The Maple Leaf Forever (Toronto, 1977), p.163.
Kenneth Carty and Peter Ward, Canada in Crisis: Entering the Eighties (Toronto, 1980), p.12.

This point was most evident in a frequently-cited statement made by Prime Minister Macdonald in 1890, when speaking on behalf of the rights of French-language minorities residing outside Quebec. He stated: "there is no conquered race in this country: we are all British subjects, and those of us who are not English are none the less British subjects on that account."

Quoted in Edwin Black, Divided Loyalties (Montreal, 1975), p.175.

The implication being, of course, that certain rights and priveleges flowed, not from citizenship as such, but from the status of British subject.

3 Carty and Ward, National Politics and Community in Canada, pp.65-66.

4 Ibid.

5 Michel Brunet, "The French Canadians Search for a Fatherland," in Nationalism in Canada, ed. Peter Russell (Toronto, 1966), pp.49-50.

6 P.B. Waite, The Life and Times of Confederation (Toronto, 1962).

7 Carty and Ward, National Politics and Community in Canada, p.67.

The term "ambiguous bargain", comes from J.R. Mallory, "Confederation: The Ambiguous Bargain," Journal of Canadian Studies 12 (July, 1977).

8 Donald Smiley, "Reflections on Cultural Nationhood and Political Community in Canada," in Canada in Crisis: Entering the Eighties, eds., Carty and Ward (Toronto, 1980), pp.37-38.

9 Ramsay Cook, Provincial Autonomy, Minority Rights and the Compact Theory (Ottawa, 1969), p.1

10 Report of the Royal Commission on Dominion-Provincial Relations (Ottawa, 1940), Book I, p.47.

11 By "nationalist orientation", this thesis differentiates between the comparatively more moderate nationalism of the Lesage Liberals, the "egalite ou indépendence" nationalism expressed by the Daniel Johnson Union Nationale government and the "sovereignty-association" nationalism expressed by René Lévesque's Parti Québecois.

12 For a more detailed discussion of this point, see Edwin Black's Divided Loyalties (Montreal, 1975), chapters 6-7.

13 Alan Cairns and Cynthia Williams, "Constitutionalism, Citizenship and Society in Canada: An Overview," in Constitutionalism, Citizenship and Society in Canada, eds., Cairns and Williams (Toronto, 1985), p.40.

14 Cairns, Disruptions. Constitutional Struggles from the Charter to Meech Lake (Toronto, 1991), p.18.

15 Cairns, "Constitutional Change and the Three Equalities," in Options for a New Canada, eds. Ronald Watts and Douglas Brown (Toronto, 1991), p.80.

16 Ibid., pp.79-80.

17 Report of the Commission on the Political and Constitutional Future of Quebec (Bélanger-Campeau) (Quebec, 1991), Chapter 5, esp. pp.34-36.

18 Peter Russell, "Can the Canadians be a Sovereign People," in Canadian Journal of Political Science XXIV (December, 1991).

19 Reg Whitaker, Federalism and Democratic Theory (Kingston, 1983), p.23.

20 Lord Acton, "Nationality," in Essays on Freedom and Power (Cleveland, 1964), p.167.

21 Guy Laforest, "The Meaning and Centrality of Recognition," in Meech Lake and Canada: Perspectives from the West, ed. Roger Gibbins (Edmonton, 1988), p.85.

22 Ibid.

23 Lecture by Prof. Laforest at McGill University, March 26, 1992.

24 J.R. Mallory, "The Five Faces of Federalism," in The Future of Canadian Federalism, eds., Paul A. Crepeau and C.B. MacPherson (Toronto, 1965), p.3.

25 Ibid., p.15.

26 Alain Gagnon, "Canadian Federalism: A Working Balance," in Federalism and Nationalism (Leicester, 1989), pp.157 & 160.

27 Ibid., p.166.

28 Richard Simeon, "Meech Lake and Shifting Conceptions of Canadian Federalism," Canadian Public Policy/Analyse de Politiques XIV (September, 1988), p.11.

29 Shaping Canada's Future Together (Ottawa, 1991), p.9.

30 Ibid., p.12.

31 Renewal of Canada Conferences: Compendium of Reports (Ottawa, 1992), p.7.

32 Shaping Canada's Future Together, p.12.

For more specific constitutional provisions see Report of the Special Joint Committee on a Renewed Canada (Ottawa, 1992), pp.23-24.

33 Report of the Special Joint Committee on a Renewed Canada (Ottawa, 1992), p.23.

34 Ibid., p.22.

35 The Globe and Mail (National Edition), 22 April 1991, A4.

36 Ibid. 23% of Quebecers strongly agreed; 60% agreed. Outside of Quebec, 24% strongly agreed; 56% agreed.

37 Ibid. 32% of Quebecers strongly agreed; 51% agreed. 51% in the rest of Canada strongly agreed, compared to 38% who agreed.

38 Ibid. 19% of Quebecers strongly disagreed; 45% disagreed. Among those in the rest of Canada, 22% strongly disagreed, while 50% disagreed.

39 L'Actualité, July 1992, p.21.

40 Ibid.

41 Ibid.

42 Ibid., p.27. The figures were as follows: 45% identified "a lot" ("beaucoup") and 28% identified "somewhat" ("assez") with the Charter; 43% identified "a lot", and 22% "somewhat" with the maple leaf; 40% identified "a lot" and 23% "somewhat" with the Canadian flag; 41% identified "a lot" and 27% "somewhat" with pan-Canadian bilingualism.

43 Ibid., p.24.

44 Ibid.

45 Russell, "Can the Canadians be a Sovereign People," loc. cit., pp.699-700.

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