

## Dualism and Equality in the New Constitution

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*The need for constitutional reform has brought to light the fundamental problem of defining the concept of dualism in Canada and deciding how it should be reflected in political institutions and the distribution of powers. The author indicates here the wide implications of dualism as understood by the Acadian people and shows how this concept could translate into the political realities of tomorrow.*

*La nécessité d'une réforme constitutionnelle n'est pas sans créer certains problèmes fondamentaux. Entre autres, comment définir le concept du dualisme au Canada? De quelle façon ce concept devrait-il se refléter dans les institutions politiques et sur le partage des pouvoirs? C'est ce que l'auteur tente de caractériser en indiquant, d'une part, quelles sont les nombreuses implications du dualisme tel que le conçoit le peuple acadien et en démontrant, d'autre part, comment ce concept pourrait se manifester dans les réalités politiques de demain.*

### INTRODUCTION

Despite the eagerness of the premier of New Brunswick to tackle publicly the problem of constitutional reform, despite the establishment of constitutional committees by the provincial legislatures in New Brunswick and Nova Scotia, and despite the public meetings held in New Brunswick by *la Fédération des francophones hors Québec* along with those held earlier by the Task Force on Canadian Unity, it would be a mistake to believe that the Atlantic region has come to grips with this important question. Even the referendum debate, which inspired many detailed articles in the Quebec press and in specialized publications, has not led to a heightened awareness. The subdued role of the media in the Atlantic region is partly responsible for this, but there is good reason to be even more concerned with the apparent lack of foresight, commitment, and vision demonstrated by our political parties. In short, no one has yet seriously examined the potential impact of the various reform options on the Atlantic communities, and no one has attempted to exert an influence, on behalf of these communities, on the debate in progress.

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I wish to examine constitutional reform and the distribution of power in the future constitution from the perspective of dualism in the Canadian and Atlantic societies. I will try to demonstrate how this problem, which is the root of the present crisis, will probably have a determinative effect on the success or failure of the reform undertaken. I will also attempt to show that the way in which this aspect of the Canadian reality is dealt with can have a serious impact on the future of the Atlantic region.

## THE CONCEPT OF DUALISM

We are becoming increasingly accustomed to political commentators who draw distinctions between the approach of the federal Liberal Party, which recommends constitutional recognition of the fundamental linguistic rights of Canadian citizens, and that of the Parti Québécois, which advocates recognition of the collective right of Quebecers to choose a political system establishing their equality of status. In addition to the fact that the first approach is based on the recognition of individual rights while the second favours collective rights, the two approaches are also dissimilar in that they take into account two basically different communities — one consisting of Francophones and Anglophones throughout Canada, and the other consisting of Canadians and Quebecers. The first approach also tends to establish a preference for the recognition of linguistic communities, while the second uses the broader sociological definition of "national" communities. These distinctions are not the result of a confusion in terms, but rather of different conceptions of society, its needs, and the role of the State. And yet the Task Force on Canadian Unity believed it was important to clarify the vocabulary used in the debate; consequently, it made a fundamental distinction between cultural dualism, which "besides demographic evidence . . . is often supported by a number of historical, legal and political concepts such as 'the two founding peoples', the 'compact theory of Confederation', 'the two nations', and 'equal partnership' "<sup>1</sup> and political dualism, which takes into account the special position of Quebec within the Canadian federation.<sup>2</sup>

Without retracing the history of *The British North America Act*<sup>3</sup> or analyzing the demographic and social data which substantiate the present existence of two national communities, it may be useful to determine the extent to which the definitions of dualism (stated above) correspond with or differ from the perception of dualism prevalent in

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<sup>1</sup>*Coming to Terms in Second Rept. Pepin-Robarts Commission* (Ottawa: Dept. Supply and Services, 1979), at 10.

<sup>2</sup>*A Future Together in First Rept. Pepin-Robarts Commission* (Ottawa: Dept. of Supply and Services, 1979), Recommendation 33.

<sup>3</sup>1867, 30 & 31 Vict., c. 3 (U.K.).

the Atlantic region. First of all it must be emphasized that Acadians and Anglophones in this region, from the beginning, developed a distinct collective personality, one that was not founded exclusively on linguistic factors. The immigration of people of all nationalities during the 20th century did not change the socio-linguistic profile of the Atlantic region and did not create, as in the West, a new challenge to Canadian federalism. This is, doubtless, the reason for the indifference shown in the East to the federal government's multiculturalism policy. It would seem that Acadians and Anglophones believe that integration of immigrants has been achieved without transforming the essential characteristics or homogeneity of the two original communities (other than the American Indians, of course). Therefore, there is in the Atlantic region an awareness not only of a bicultural society on the national level, but an awareness as well of a very special Quebec community, since Francophones in the Atlantic region are considered and consider themselves to be different from Quebec Francophones.

It is not the Maritime Provinces that are demanding fundamental constitutional reform. Rather it would seem that reform is sought not by those with special economic problems, but by those with enough power to make themselves more autonomous, either economically or culturally, in the future. Perhaps it is for this reason that, notwithstanding the existing image of the structure of society, Anglophones in the Atlantic region find it extremely difficult to accept the advent of a dualism which would transform existing social and political relationships. The reasons are twofold: Francophones do not exercise much political or economic influence in the region, and the Quebec problem is viewed as one concerning relationships between states or governments only.

It should be emphasized that, while the Acadians and other Francophones outside Quebec recognize the special nature of Quebec society and the validity of the efforts of the Quebec government to obtain a greater degree of autonomy, the majority of them also believe that Canada will be viable as a federal state if it can agree to incorporate cultural dualism into its laws and institutions. This dualism, however, cannot be limited to the constitutional recognition of linguistic rights; it must extend to the recognition of distinct national communities to ensure them true legal status, cultural security, and representativeness. If we look for a solution to this problem solely in the division of powers, then we accept a situation whereby Quebecers identify exclusively with their provincial government and increasingly view the federal government as foreign, and a situation in which national minorities dispute the legitimacy of governments which ignore their collective interests and condone their assimilation. If we attempt to limit dualism to the granting of linguistic guarantees, we will be ignoring the fact that Quebecers, even when well represented in federal institutions, continue to decry their economic inferiority and their inability to change the orientation of federal policies. It would also be a mistake to believe that

there exists a true dualism able to provide Quebecers with equal status solely as a result of the assurances of the federal government to redistribute the national wealth, or to appoint a large number of French-speaking civil servants, especially if this is done unilaterally. The cause of the constitutional crisis is not the demands of Western provinces for control over natural resources, the cause is an identity crisis framed in terms of dualism.

### DEMANDS OF CANADIAN DUALISM

The significance of Canadian dualism has been examined by most constitutional law authors, and can be summarized in two basic principles: cultural security and political representation of the two national linguistic communities.

Cultural security is the commitment of the State to protect the language and culture of the two national communities and to provide them with the means essential for their economic, social, and cultural development. With this in mind, it must be emphasized that there is no agreement in Canada on the means of ensuring such cultural security or, indeed, whether to first ensure security of the individual or of the community. But the difficulty which results from a confrontation between the Parti Québécois option, which sees the Quebec community as an equal partner with Canada, and the federalist option, which wants to reconcile the interests of the Canadian nation and those of the Province of Quebec by broadening individual protections and readjusting the division of powers between Ottawa and the provinces, is not the only problem which must be faced. There are also the two opposing concepts of federalism which were symbolized by the decisions of Léon Dion and Jean-Paul L'Allier to join the Yes forces in the referendum campaign. Both opponents of the Quebec Liberal Party's Beige Paper object to the domination of Quebec by the Ottawa government, even with increased delegation by Ottawa to Quebec of the right to exercise federal powers. Mr. L'Allier stated: "In cultural matters, more specifically, the right to veto, either directly or by a provincial House, will not suffice. Just as on a worksite, there can and must be a single architect deciding the use of funds and public resources. Only then, complementarity will be possible . . . . Voting yes on the referendum also means saying yes to irreversible progress toward true equality between the two majorities or founding peoples of Canada; it means saying no to a country which, in order to promote its own development, will require, day after day, the dismantling of regionalisms and cultural communities by refusing to recognize the will to act as a community."<sup>4</sup>

These reactions result from the publication of Bill C-60, a document which has caused serious problems for the Liberal Party of Canada. In

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<sup>4</sup>*Le Devoir*, 2 April 1980, at 9.

Bill C-60, the Liberal Party set forth its federalist philosophy, which drew its inspiration from individualism and denied any special recognition of Quebec as a national community.<sup>5</sup>

There has also been a significant evolution among Francophones outside Quebec, which has found expression in the publication of a draft constitutional reform document emphasizing cultural dualism and giving top priority to the recognition of local and regional communities with special interests. This document recognizes that such communities need "a power of initiative" to enable them to exercise certain powers autonomously, and stresses the fact that cultural security is a hallmark of the equal partnership of Francophones and Anglophones in Canada. It is therefore necessary to decide whether and by what methods such security is to be assured to individuals or communities.

In the Atlantic region, only the Government of New Brunswick has to date attempted to examine the problem of the recognition and equality of the two national communities. The New Brunswick Acadians have, however, often denounced their government because of the gap between its intentions and its achievements. For present purposes it will suffice to note that the recognition granted in New Brunswick is individual and limited to linguistic status, that the methods of implementation are generally ineffective and inadequate, and that the province's commitment does not truly extend to measures deemed essential by the Acadians to check assimilation and to ensure the economic and social development of their communities. Politically, therefore, the Atlantic region functions as a homogenous English-language region, allowing a few exceptions to make sure the system continues to function when disputes arise. This, to a large extent, reflects the situation which exists nationally, except that the central government has made real efforts to integrate Francophones into the civil service and has given them the means for social development (in particular, through the Secretary of State's programmes and through the regionalization of Radio-Canada). The power structure, however, remains intact at all levels, so much so that expressions of disagreement by the minority now take the form of territorial and collective demands, even in New Brunswick.

It appears clear that only recognition of the collective rights of national communities will satisfy the expectations of these communities. This excludes any solution which does not respect Quebec's desire for greater autonomy as a specific national community. To express this concretely, I would say that cultural security requires recognition of the legal equality of national communities and the commitment of all governments to undertake positive measures to ensure their develop-

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<sup>5</sup>The proposed declaration of principles of federalism released by the Trudeau government at the June Constitutional Conference showed the same inclination and met with total disapproval in the Quebec press.

ment. This indicates the need for a specific charter of linguistic rights binding on all governments — a charter which is fair, realistic, and no less specific than the one proposed by *la Fédération des francophones hors Québec*. The Charter must be supported by an effective implementation mechanism to ensure that justice is done impartially and expeditiously, without the infliction of any economic and social penalties on the injured party wanting to enforce his rights. In addition to a guarantee of linguistic rights, including the right to education, means must also be found to provide national communities with tools to develop culturally, socially, even economically, as they see fit, and to protect themselves against assimilation. This imposes upon public authorities the duty to take positive action, not only to prevent discrimination, but also to establish institutions which foster the development of national communities. This means that, notwithstanding the constitutional recognition of fundamental rights, the Quebec community, as represented by its government, must have greater control over the policies which directly affect it, while in the Atlantic region, new mechanisms must be found to ensure local and regional power which respects the priorities and is under the control of the communities concerned. Whether political union in the Atlantic region will be considered or not, it appears essential in order to check assimilation to find convincing expression of dualism at the institutional level. Government devolution, decentralization and the reformulation of regional structures are essential to facilitate the development of the two national communities and to establish the atmosphere of security which alone can promote the unity and equality desired.

But Canadian dualism is much more than the security of national communities; it also requires their participation in government and in the construction of the Canadian nation. This is where it becomes difficult, however, to translate equality into reality. We know that, in view of this difficulty, the Parti Québécois suggests that sovereignty-association is the only option which can abolish the minority status to which Quebec is condemned under the federal system. We also know that it was the treatment of this subject in the reports of the Quebec Liberal Party and the Task Force on Canadian Unity which provoked the strongest opposition. These reports do not seem to have succeeded in proposing the establishment of viable dualistic political institutions. Edward McWhinney emphasizes that Anglophones perceive the Federal Council proposed by the Quebec Liberal Party as a "house of obstruction,"<sup>6</sup> and many Francophones see a continuation of the minority position of Quebec even within the Dualist Committee, which would attempt, at the Council level, to assert Canadian duality each time this dimension was affected by federal government initiatives. It is clear that viewing dualism solely in terms of the distribution of powers means renouncing the idea of the acceptance by Quebecers of the federal

<sup>6</sup>*Le Devoir*, 29 February 1980, at 9; see also *Toronto Star*, 10 January 1980, at A8; Francis Fox, *Le Devoir*, 4 February 1980, at 5.

government as their own. But establishing a perfect partnership of Francophones and Anglophones on the institutional level seems no less impossible.

Almost all the study groups on the constitution have recommended changes in the Senate as a possible means of establishing true representation of the two national communities. They have also tried to locate control mechanisms in the Senate to limit the exercise of the federal government's special powers, such as the spending power, the emergency power and the declaratory power. It is therefore difficult to evaluate the various reports solely from the viewpoint of dualism. Bill C-60 provided for a legislative body with very limited powers, to be composed of provincial representatives and representatives appointed by the central government; the House would ensure a certain degree of respect for dualism by a double-majority vote on questions of a cultural nature. The Task Force on Canadian Unity proposed establishing a House of the Federation which would not be legislative and which would exercise a right of veto over certain appointments, as well as a suspensive right of veto over legislation which concerns the provinces; the House would vote with a two-thirds majority on the exercise of the emergency power and shared-cost programs in areas of provincial jurisdiction. Quebec would hold 20 per cent of the seats. Dualism would be reflected in the composition of the Supreme Court. The Quebec Liberal Party's report placed dualism under the jurisdiction of a Committee of the Federal Council; but it must be emphasized that the Council which is advocated is not a legislative body, but a forum where representatives of the provincial governments would meet to advise the federal government and to exercise a right of veto over certain decisions. This Federal Council would be composed of delegates of provincial governments, not necessarily elected, who would vote unanimously in accordance with their governments' instructions. The Dualist Committee which would deal with questions of cultural consequence would be composed of an equal number of Francophones and Anglophones with 20 per cent of the Francophones coming from outside. But the Francophones outside Quebec have no guaranteed places to fill the reserved seats in the Committee of the Federal Council, they have no control over the choice of their representatives; they have no freedom to exercise their right to vote; the matters on which they must decide are not defined.

*La Fédération des francophones hors Québec* has pushed the concept of dualism as far as it will go within the federal system by opting for a dualistic upper house with a broad mandate. Establishment of such a body is intended, not only to provide cultural equilibrium in the exercise of federal powers, but also to limit the imbalance resulting from the exercise by the federal government of special powers, such as the spending and emergency powers.

If all these solutions are still unacceptable, then they must be used as a starting point to induce the federal government to bring together the two major national communities on a regular basis and to ensure that its policies respect the values and priorities of each of them. The provinces also need a mechanism by which they can force the federal government to respect in practice the distribution of powers set forth in the constitution.

With regard to the composition of the upper house, it is necessary to accept the election of its members so as to counter the difficulties of the Quebec Liberal party's formula, notwithstanding the fact that Canada has responsible government. It is also essential to ensure effective representation of both Francophones and Quebecers. This gives rise to the need for two superimposed electoral maps in order to establish a chamber reflecting the cultural dualism and the regional composition of Canada. We must ensure, if not equality of representation, then a veto for each community, notably for Quebec apart from the Francophones outside Quebec, on certain fundamental matters to be specified in the constitution. This chamber must also exercise effectively very wide powers in comparison to those exercised by the present Senate. Otherwise, the new house would be merely a façade for a central government reflecting majority interests. The powers of the upper house might be the following:

1. A 90-day suspensive veto over all House of Commons bills;
2. The power to introduce bills, providing they involve no public expenditures;
3. The power to elect its speaker for each session;
4. The power to appoint:
  - (a) judges of the Supreme Court of Canada,
  - (b) commissioners of the Commission responsible for the Charter of Rights;
5. The power to ratify the appointment of:
  - (a) all senior State officials (deputy ministers and assistant deputy ministers),
  - (b) all heads and directors of government agencies and Crown corporations,
  - (c) all Canadian ambassadors,
  - (d) all judges appointed by the federal government.
6. The power to ratify all treaties made by Canada with other States or international organizations;
7. The power to ratify all shared-cost programmes between the federal government and the provinces;
8. The power to ratify any declaration that a specific work is to the general benefit of Canada;



9. The power to ratify any declaration that there exists a state of war or of real or apprehended insurrection;
10. The power to investigate and table its reports for debate.

In the Atlantic region there has certainly been no rush to take a stand on the various reform proposals. Despite its desire to support constitutional reform, New Brunswick saw fit to propose retention of the Senate in its present form. This attitude reflects the superficiality of the constitutional policy of the New Brunswick government, a policy which demonstrates courage and an open mind in statements of principle, but a lack of commitment and openness in decision-making. More recently, the Atlantic governments have become increasingly aware of the problem of control over natural resources, but no confrontations or external events have forced them to demonstrate imagination as regards institutional reform. It is sad to realize that support for true institutional reform will probably have to be imposed on the Atlantic region. The situation could be otherwise, especially in the case of New Brunswick, which has been facing very serious cultural and social tensions for the last fifteen years, although these have not yet become a substantial election issue. In fact, New Brunswick should now be in the process of experimenting with various forms of regional government or devolution in order to counter the feeling of alienation and rejection which continues to grow in Acadian regions. Such experiments would help the province evolve socially and culturally and would permit it to exercise the national leadership expected of it.

*La fédération des francophones hors Québec* has already recommended, in the first pages of its constitutional proposal, that an in-depth study of dualism in relation to New Brunswick laws and institutions be undertaken as soon as possible. It has also alluded to external forces which might in the near future give rise to a movement favoring union of the Maritime Provinces, a movement which itself should come to terms with the reality of dualism in the Atlantic region. It is high time that people other than the Acadians became concerned about dualism; the indifference which now exists can only contribute to the breakdown of Canadian federalism and to ethnic confrontation in the Atlantic region.

### **EFFECT OF DUALISM ON THE DISTRIBUTION OF POWERS IN THE NEW CANADIAN CONSTITUTION**

It is essential to limit the special powers of the central government because the exercise of these powers may make the division of powers provided for in the constitution ineffective. A Canadian federalism better adapted to the cultural reality of Quebec and to the strong regionalisms which characterize the country can be realized through greater decentralization and more accurate allocation of powers, as well

as through granting residual powers to the provinces and inserting the equalization principle into the constitution. This analysis will touch on only those aspects of the division of powers which most affect the dualism of Canadian society: jurisdiction in cultural affairs, communications, income security and social services.<sup>7</sup> Before discussing these it is important to consider the asymmetry of future federalism and the delegation of legislative powers with the right to withdraw, with compensation, from any shared-cost programme.

Actual needs, and in particular the needs of Quebec, demand that the new constitution be highly decentralized. Canada is not a socially, culturally or politically homogeneous country. The cultural interests of Quebec may be obvious, but no more so than the enormous disproportion between the large and small provinces in their potential to assume new areas of jurisdiction. Hence the need for a certain asymmetry in the distribution of powers. The Task Force on Canadian Unity suggested that this asymmetry be defined by a "de facto" distinctive status for certain provinces, a status which would result from individual provincial decisions not to participate in shared-cost programs or not to delegate certain powers to the central government. There is, however, nothing which prevents a certain asymmetry from being recognized "de jure" as in the case of the *British North America Act* of 1867, although for many this possibility constitutes a reformulation of the special status option which was debated during the 1960's. Protests were made that in the event of such asymmetry all members of Parliament would not have equal status in discussing all the bills in the House of Commons and the parliamentary function would thereby lose some of its value. These do not seem to be sufficiently serious objections however; in fact, it is possible to make room for decentralization only if asymmetry is possible.

## Culture

If there are major problems in arriving at a consensus on the distribution of powers in cultural matters it is because culture is now linked to the idea of national identity. Quebec's project to preserve the French heritage in America clashes with Ottawa's project to protect the national character of the country against American cultural invasion and to ensure national unity. The fact that the cultural dispute is a conflict exclusively between Quebec and Ottawa constitutes an additional difficulty. The English-language provinces willingly accept the cultural co-operation directed by the Department of External Affairs, the Secretary of State's programmes to assist ethnocultural communities and the arts, the special programmes of the Department of Indian and

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<sup>7</sup>Questions concerning the unification of family law and labour legislation are also important with regard to dualism; I favour the solution proposed in the Report of the Constitutional Committee of the Quebec Liberal Party in these areas but will not deal with them here.

Northern Affairs, copyright regulations, and federal interventions in the application of customs duty and the *Income Tax Act*; but they do not understand the attitude of Quebec which does not feel any greater emotional and intellectual affinity with the majority than it did formerly and is consequently aspiring to gain control over the above mentioned areas of jurisdiction.

It is, of course, necessary to look at national and provincial cultural objectives to decide on the powers to be established in the future. It seems, however, that we will face the same fundamental problem as that which dualism poses for the Canadian federation, the problem of the confrontation of two societies. Is a multicultural and officially bilingual Canada stretching from sea to sea compatible with the French Quebec envisioned by Quebec nationalists? On the one hand, the national government wishes to develop a distinct Canadian identity by promoting cultural exchanges between Canadians from all regions, and by offering to Canadians an access to the major means of production required for effective competition with foreign cultural industries. It also wishes to set national standards and thereby establish cultural facilities of high quality even in the poorer regions, to encourage mobility of artists and educators, and to enable everyone to benefit from major national institutions. On the other hand, the Quebec government, which sees culture reflected in all social manifestations, wishes to be the sole architect of the cultural policies which will shape the Quebec society of the future. Thus, Quebec's objectives are also, in fact, national objectives.

In the Atlantic region, where cultural facilities are already very inadequate and the possibilities of financing cultural activities very limited, the problem of the distribution of powers must be analyzed from the point of view of equal opportunity in the cultural field. Decentralization may mean no services, or services of an inferior quality, and increased dependence on American productions. For Acadians, decentralization may also mean even greater inequality. The continued existence of the *Ecole de droit* in Moncton, the *Centre communautaire* in Fredericton, and other cultural centres could be uncertain in a system where the provinces have complete control over cultural matters, especially in the case of those provinces which lack vision in this field and which are beset by a multitude of problems they consider more important.

These facts lead us again to the problem of political dualism: can Quebec reconcile its project for a new society and cultural association with the desires of the other provinces? Can the other provinces agree on an authentic policy of cultural development? The answer to this problem lies solely with the flexibility of Canadian federalism and its potential to survive in a very diversified society. The asymmetry proposed by the Task Force on Canadian Unity is essential here and suggests a distribution of powers which favors the provinces. This

distribution could take the form of concurrent jurisdiction with provincial primacy on certain points and exclusive provincial jurisdiction with the possibility of delegating powers on other points. It is difficult, however, to imagine a system which will eliminate conflicts when Quebec's objective is exclusive control over cultural development and the Canadian objective is unity, that is, inter-regional exchanges and the establishment of national standards in particular. The fact remains that Canada has much more to lose by stubbornly insisting on developing an artificial national culture than by encouraging the special evolution of the Quebec society. The national government should nevertheless retain the minimum required to exercise its role nationally, for example, in respect to the archives and the national library, as well as the special powers which enable it to assist official-language minority groups and to administer, following a delegation of powers, certain national institutions such as the CBC and NFB, thereby contributing to an equalization of cultural services outside Quebec.

### Communications

Canada owes its origin to the need for improved communications; it is therefore not surprising to see strong centralization of powers in this field. The following discussion deals with recently developed means of communication such as television, telephone and cable television, rather than with transportation services.

Exclusive federal power was established in this field by judicial interpretation; it has been extended progressively to radio, television, cablevision, and will soon involve pay television. In fact, the only exceptions to the exclusivity of federal power come from the recent decision of the Supreme Court of Canada in the *Kellogg* case,<sup>8</sup> which granted Quebec the right to control advertising for children, and the arrangements made with the provinces in the field of educational television and telephone communications.<sup>9</sup>

The cultural, social, and economic importance of electronic media is clear today, and the technological changes expected in the coming years with the advent of the optic fiber have hardened the positions of the federal and provincial governments. The federal government wishes national control to strengthen the cultural, political, social and economic fabric of Canada,<sup>10</sup> to promote bilingualism and cultural diversity, and to develop Canadian social values. In addition to expressing the

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<sup>8</sup>*Attorney-General of Quebec v. Kellogg's Co. of Canada et al.* (1978), 83 D.L.R. (3d) 314 (S.C.C.).

<sup>9</sup>Although the federal government has established its exclusive power over Bell Canada and B.C. Telephone and aspires to extend it to the complete telephone system with the advent of satellite relay in this area.

<sup>10</sup>*An Act Respecting Telecommunications in Canada* (26 January 1978).

Canadian identity, the central government wishes to promote equality of services in Canada and to protect certain Canadian financial interests. Some provinces, sensitive to the reflection cast by the media on social development and political attitudes, feel they can no longer allow themselves to be isolated from jurisdiction in this field. Quebec demands control over the cultural content of broadcasts, the western provinces wish to use this privileged means of communication to develop remote regions, and Ontario wishes to participate in the choices which will shape the electronic society of tomorrow and to regain its competitive position in this field.

An equilibrium will not easily be reached. On the one hand, we must see the need for centralization in the granting of frequencies and in the maintenance of interprovincial and international connections and we must recognize Ottawa's desire to avoid balkanization of means of production, which would facilitate the American cultural invasion and perhaps increase regional tensions and threaten the weakest regions of Canada. On the other hand, it is important that the provinces, particularly Quebec, have access to the most significant medium of cultural values in existence. But how, in the Canadian political context, can a bilateral regulation be established, and a decision be reached on which government gets priority? Here again it seems preferable to consider a certain diversity or asymmetry in the distribution of powers, established legally rather than administratively, and to achieve the desired national standards through interprovincial agreements. The priority of federal powers must be retained only in the administration of frequency systems, since the orientation of cultural, social, and economic development is primarily within provincial jurisdiction, subject to Ottawa's duty to ensure that official-language minority groups have access to services in their mother tongue.

In the Atlantic region, one cannot help but stress the difficulty in developing high-quality means of production in the area of communications. It must be emphasized that the present system has not fulfilled its unification mandate successfully because its centralizing policies have created a feeling of alienation in regions far away from central Canada, thereby removing all credibility from the argument that provincial control would encourage partisanship and dissension. Therefore, even here, we must consider as preferable the division of powers and the primacy of provincial powers with regard to programming and interprovincial technical regulations. The Atlantic region will find a place in the system according to its own priorities and according to its desire to make more or less frequent use of the delegation of powers.

### **Income Security and Social Services**

The Victoria Charter failed because Quebec and the federal government were unable to arrive at an agreement on social

programmes. This fact alone should be sufficient to dispel the idea that the conflicts of jurisdiction which arose after the war have now disappeared because of an acceptable co-operative federalist system. Yet many English-Canadian authors believe that the present system is ideal because of its flexibility, which is the result of numerous administrative arrangements. This reflects the incompatibility of the pragmatic approach of Anglophones and the institutional approach of Quebecers, who are opposed to Ottawa's unilateralism and opposed to the absence of definition inherent in the federal exercise of the spending power and in its right to make laws for the good government of Canada.

For Quebec, integration of social and income security programmes is essential. It must be accompanied by a decision to place all these services in the hands of the authority closer to the people, the provincial government. Ottawa feels it must check poverty and compensate for disparities in income distribution through a universal programme, at least for minimal services, and ensure transferability of benefits. It is also necessary to emphasize that the social expenditures of the central government may represent up to 50 tax points and that they may for that very reason be essential to its fiscal policy.

In the Atlantic region it is generally noted that because of the economic and technological inferiority of the small provinces it will be difficult to maintain the present level of services if the powers are decentralized in this field, even if a system is established whereby the provinces can benefit from direct grants or tax credits. This observation alone does not, however, explain the region's insensitivity to Quebec's demands in respect to social services. To grasp the full significance of this attitude one must refer to the lack of a global vision of society, to the absence of analysis of prevalent agents of social change in Atlantic Canada, and to the detached attitude towards these services as they are provincially administered.

The solution to the present problem offers many possibilities, notably a federal programme with the possibility of non-participation by the provinces, a national programme defined by Ottawa and managed by the provinces, a national programme subject to provincial approval, or a provincial programme which meets certain minimum standards and fiscal agreements. This does not require the establishment of a uniform system. The system is already very different from one province to another because of administrative arrangements. Nor must national standards and a universal system be established to protect the weak regions. Other means have been found, in other federations, to promote equalization. I believe it is essential to recognize the validity of Quebec's approach and to encourage a distribution of powers which is clearly favorable to the provinces. The small provinces must be given due consideration if a federation in the true sense of the word is to be established.

Although political dualism is predominant in this field, I believe cultural dualism must also be stressed. In fact, Francophones outside of Quebec and Acadians have been very poorly served by centralized social services and they rightly demand personalized services adapted to their linguistic and cultural characteristics.

## **SUMMARY**

This paper addresses a question which is central to the present constitutional debate by examining the need for Canada to express in concrete terms the dualism of its social structure. It is clear that federalism is viable only if this multifaceted question is met without ambiguity. The people of Atlantic Canada must become aware of how late they are in recognizing this reality and must take steps toward reaching the compromise essential to Canada's survival. They must present their own constitutional proposals and take the necessary steps at home to recognize the Acadian community. Historical reality and the economic impact of social and cultural problems will be omnipresent in the renegotiation of federal ties, but we must remember that it is also time to present clearly the problem of under-development in the Atlantic region and its isolation from central government. A new federation is essential; let us hope that the Atlantic region will be able to overcome its apathy and meet the challenge of constitutional reform.