



C.D. Howe Institute
Institut C.D. Howe

Communiqué

Embargo: For release *Tuesday, October 1, 1996*

Give Quebec explicit jurisdiction over use of language, says C.D. Howe Institute study

Canada should establish an explicit federal-provincial division of powers over language, concludes a *C.D. Howe Institute Commentary* published today. Specifically, the study recommends amending section 92 of the *Constitution Act* to grant to Quebec explicit jurisdiction over the public use of language, subject to the existing set of minority language services specified in the Canadian Charter of Rights and Freedoms and the maintenance of bilingualism within federal institutions.

The study, *Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee*, was written by John Richards, a professor at Simon Fraser University and an Adjunct Scholar of the C.D. Howe Institute.

Quebec's *Charte de la langue française* (Bill 101) has been controversial but necessary, Richards argues. While unilingual French signs were an unnecessary affront to linguistic minorities, in general Bill 101's restrictions on the use of English are reasonable, Richards says, if Quebec as a whole, and Montreal in particular, is to remain a majority francophone region. Unfortunately, the Canadian political system has not found a way to provide for the political legitimacy of Bill 101.

One way to do this, Richards argues, would be to entrench a new section in the Constitution. By analogy with section 92A (a 1982 amendment that clarified federal and provincial resource jurisdiction at the behest of western Canadians), a new section 92B would deal with jurisdiction over language. Drafting such a clause would pose complex issues: definition of a suitably robust provincial power to legislate, specification of the bilingual nature of federal institutions, and specification of a set of language services to be enjoyed by official language minorities.

Richards points out that the sovereignty movement in Quebec is in part fueled by the perfectly reasonable concern among francophone Quebecers over the survival of French as the lingua franca within their province. Given the powerful processes leading to assimilation of non-English speakers in North America — including francophones outside Quebec — francophone Quebecers want provincial legislation to promote French and, to some extent, to limit the use of English.

Bill 101, enacted in 1977, remains highly popular among francophone Quebecers, Richards says, because it has strengthened the status of French as the dominant language in the province. In 1971, prior to Bill 101, only 37 percent of anglophone Quebecers spoke French; by 1991, 59 percent were bilingual. In 1971, among allophones (those whose mother tongue is neither French nor English), 36 percent spoke English only, 33 percent spoke both official languages, and 14 percent spoke French only. By 1991, 21 percent of allophones spoke English only, 47 percent were French-English bilingual, and 22 percent spoke French only.

Beyond Quebec and the bilingual belts in adjacent provinces, francophone assimilation to English has accelerated over the past two decades, despite policies of official bilingualism, Richards points out. In the seven provinces beyond Quebec and its adjacent neighbors, 51 percent of mother-tongue francophones spoke French at home in 1971; this statistic had fallen to 41 percent by 1991. Within Quebec, however, language retention among francophones remains close to 100 percent.

The principle underlying Bill 101, Richards says, is that the majority within Quebec should, democratically, decide the law governing the public use of language in the province. The Canadian Charter of Rights and Freedoms is based on an alternate principle — that governments should award equal status across Canada to French and English. The Supreme Court of Canada's 1988 decision that Bill 101's unilingual sign provisions violated the right to freedom of expression was, Richards argues, an extraordinarily broad interpretation of the Charter, and accentuated the conflict between these principles.

The pragmatic reason to provide a robust authority to Quebec to legislate over language, Richards says, is that this matter is important in explaining the choice among francophone Quebecers between federalism and sovereignty. The majority of francophones believe that the situation of French would improve were Quebec sovereign.

Expansion of provincial powers over language requires consideration of the appropriate limits on individual rights and government powers, Richards says. Entrenching rights renders them more visible and enhances the legitimacy of the courts in the task of preventing coercion. This argument is strongest when applied to fundamental rights (such as *habeas corpus*). It is much weaker when extended to embrace the positive role of the state in an area such as determining language(s) to promote in legislatures, in schools, and via regulation of commercial activity. The danger then arises of judges' assuming powers that should remain in the hands of elected legislators.

Provision of a general legislative authority to Quebec over language will, Richards says, restrict the ability of anglophone Quebecers to use the Charter in bargaining language services. But, he suggests, actual Quebec policy may become more flexible. At present, Quebec governments fear the courts' potential to exploit flexible provisions as precedents for restricting legislative initiatives. With a firm constitutional basis for legislating over language, Richards argues, that fear would be attenuated.

This publication continues the C.D. Howe Institute's postreferendum research agenda, which comprises two *Commentary* series. The first series, "The Canadian Union Papers," focuses on ways to enhance Canada's political, economic, and social union. Papers already published in the series have examined some of Ottawa's legal and constitutional options for strengthening the economic union, and ways to enhance Canadians' common economic citizenship rights. Future papers will offer analysis and recommendations aimed at improving Canada's political institutions and protecting the social union in a "disentangled" federation.

Complementing this effort is another *Commentary* series called “The Secession Papers,” which examine issues relating to the following areas:

- the terms and conditions of a possible future referendum on Quebec sovereignty;
- the circumstances which the country might confront after a Yes vote, together with the processes by which the secession of Quebec might be addressed;
- the means by which a new Canada without Quebec might be established, should Quebec leave Confederation.

The papers are guided by the following principles: respect for democratic norms and the rule of law; the necessity for an authoritative decision and a stable outcome; and minimizing the social and economic costs of any transition. In the light of the results of the recent referendum in Quebec, “The Secession Papers” aim to assist Canadians to “think about the unthinkable.”

Both series are being published under the supervision of David Cameron, a political scientist at the University of Toronto.

* * * * *

The C.D. Howe Institute is Canada’s leading independent, nonpartisan, nonprofit economic policy research institution. Its individual and corporate members are drawn from business, labor, agriculture, universities, and the professions.

- 30 -

For further information, contact:

John Richards (604) 291-4568
Susan Knapp (media relations), C.D. Howe Institute
phone: (416) 865-1904
fax: (416) 865-1866
e-mail: cdhowe@cdhowe.org
Internet: <http://www.cdhowe.org/eng/pr/new.html>

Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee, C.D. Howe Institute Commentary 84, by John Richards (C.D. Howe Institute, Toronto, October 1996). 44 pp.; \$6.00 (prepaid, plus postage & handling and GST — please contact the Institute for details). ISBN 0-88806-403-9.

Copies are available from: Renouf Publishing Company Limited, 5369 Canotek Road, Ottawa, Ontario K1J 9J3 (stores: 71¹/₂ Sparks Street, Ottawa, Ontario; 12 Adelaide Street West, Toronto, Ontario); or directly from the C.D. Howe Institute, 125 Adelaide Street East, Toronto, Ontario M5C 1L7.



C.D. Howe Institute
Institut C.D. Howe

Communiqué

Embargo: à diffuser *mardi*, le 1 octobre 1996

Il faut reconnaître au Québec une autorité explicite en matière de langue, affirme une étude de l'Institut C.D. Howe

Le Canada devrait établir un partage fédéral-provincial explicite des pouvoirs sur la langue, conclut un *Commentaire de l'Institut C.D. Howe* publié aujourd'hui. Plus particulièrement, l'étude recommande une modification de l'article 92 de la *Loi constitutionnelle* afin de reconnaître au Québec une compétence explicite sur l'usage public de la langue, sous réserve des services existants offerts à la minorité linguistique et précisés dans la *Charte canadienne des droits et libertés*, et la préservation du bilinguisme au sein des établissements fédéraux.

L'étude, intitulée *Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee (La langue importe : veiller à ce que le sucre ne se dissolve pas dans le café)* est rédigée par John Richards, un professeur à l'Université Simon Fraser et un attaché de recherche à l'Institut C.D. Howe.

La *Charte de la langue française* du Québec (loi 101) a prêté à controverse mais elle est nécessaire, soutient Richards. Bien que l'affichage unilingue français ait constitué un affront inutile aux minorités linguistiques, les restrictions imposées par la loi 101 sur l'usage de l'anglais sont dans l'ensemble raisonnables, affirme Richards, si le Québec en général, et Montréal en particulier, souhaitent demeurer une région majoritairement francophone. Malheureusement, le système politique canadien a refusé de confirmer la légitimité politique de la loi 101.

Une façon de remédier à cette situation serait d'enchâsser un nouvel article dans la Constitution. Par analogie avec l'article 92A (une modification apportée en 1982 et exigée par les Canadiens de l'Ouest qui éclaircissait les compétences fédérales et provinciales en matière de ressources naturelles), un nouvel article 92B pourrait traiter de la compétence sur la langue. La rédaction d'une telle clause soulèverait des problèmes complexes : la définition d'un pouvoir provincial suffisamment énergique pour être en mesure de légiférer, la stipulation de la nature bilingue des établissements fédéraux, et d'un ensemble de services offerts aux minorités linguistiques officielles.

Richards signale que le mouvement souverainiste au Québec est alimenté dans une certaine mesure par la préoccupation parfaitement raisonnable que manifestent les Québécois francophones envers la survie du français en tant que *lingua franca* au sein de la province. Étant donné les énormes forces en jeu qui mènent à l'assimilation des non-anglophones en Amérique du Nord — les francophones en dehors du Québec y compris — les Québécois francophones

veulent une loi provinciale qui favorise le français et qui, dans une certaine mesure, limite l'usage de l'anglais.

Décrété en 1977, la loi 101 jouit d'une grande popularité auprès des Québécois francophones, affirme Richards, parce qu'elle a renforcé le statut du français en tant que langue dominante dans la province. En 1971, avant la loi 101, seuls 37 % des Québécois anglophones parlaient français alors qu'en 1991, 59 % d'entre eux étaient bilingues. En 1971, parmi les allophones, (c'est-à-dire ceux dont la langue maternelle n'est ni le français ni l'anglais), 36 % ne s'exprimaient qu'en anglais, 33 % parlaient les deux langues officielles, et 14 % ne parlaient que français. En 1991, 21 % des allophones ne parlaient qu'anglais, 47 % étaient bilingues en anglais et en français et 22 % ne s'exprimaient qu'en français.

Au-delà du Québec et des ceintures bilingues des provinces adjacentes, l'assimilation des francophones vers l'anglais s'est accélérée au cours des deux dernières décennies, et ce malgré les politiques de bilinguisme officiel, indique Richards. Dans les sept provinces en dehors du Québec et des provinces qui lui sont voisines, 51 % des personnes de langue maternelle française parlaient encore français chez elles en 1971; ce pourcentage avait chuté à 41 % en 1991. Au Québec par contre, le maintien de la langue parmi les francophones frôlait les 100 %.

Le principe qui régit la loi 101, indique Richards, est que la majorité au sein du Québec doit démocratiquement être en mesure de décider de la loi qui gouvernera l'emploi public de la langue dans la province. La *Charte des droits et libertés*, elle, repose sur un principe différent — celui selon lequel les gouvernements doivent octroyer un statut égal au français et à l'anglais dans tout le pays. La décision de la Cour suprême du Canada en 1988 selon laquelle les dispositions de la loi 101 portant sur l'affichage unilingue violaient le droit à la liberté d'expression était, soutient Richards, une interprétation extraordinairement élargie de la *Charte des droits*, et elle n'a fait qu'aggraver le conflit qui oppose ces principes.

La raison pragmatique justifiant la reconnaissance d'une autorité solide au Québec pour légiférer sur la langue, affirme Richards, est que cette question est déterminante dans l'explication du choix entre le fédéralisme et la souveraineté parmi les Québécois francophones. La majorité des francophones sont convaincus que la situation du français s'améliorerait si le Québec était souverain.

L'élargissement des pouvoirs provinciaux sur la langue exige une considération des limites pertinentes relatives aux droits des individus et aux pouvoirs gouvernementaux, affirme Richards. L'enchâssement de ces droits les rend plus visibles et accroîtrait la légitimité des tribunaux dans leur tâche visant à empêcher la coercition. Cet argument est solide lorsqu'on l'applique aux droits fondamentaux (comme l'*habeas corpus*). Mais il est beaucoup plus faible lorsqu'on l'élargit pour porter sur le rôle de l'État dans un domaine comme celui de la détermination de la langue à promouvoir dans les législatures, les écoles et la réglementation des activités commerciales. Le danger apparaît lorsque les juges s'octroient des pouvoirs qui devraient rester entre les mains des législateurs élus.

Richards affirme que l'octroi d'une autorité législative générale au Québec sur la langue restreindra la capacité des Québécois anglophones à avoir recours à la *Charte* pour négocier des services linguistiques. Mais, suggère-t-il, la politique actuelle du Québec pourrait s'assouplir. Présentement, le gouvernement québécois craint la capacité des tribunaux à exploiter des dispositions souples et s'en servir comme précédents pour restreindre les initiatives législatives. En le munissant d'un solide fondement constitutionnel pour légiférer sur la langue, on apaiserait cette crainte, affirme Richards.

Cette publication poursuit le programme de recherche post-référendaire de l'Institut C.D. Howe, qui englobe deux séries de *Commentaires*. La première série, intitulée « Les cahiers de l'union canadienne », porte sur les moyens d'améliorer l'union politique, sociale et économique du Canada. Parmi les documents déjà publiés, figurent ceux qui ont examiné certains des choix juridiques et constitutionnels dont disposerait Ottawa pour renforcer l'union économique, et des manières d'améliorer les droits de citoyenneté économique communs. Les documents à paraître offriront une analyse et des recommandations visant à améliorer les institutions politiques du Canada et à protéger l'union sociale au sein d'une fédération « clarifiée ».

Parallèlement à cette série, en figure une autre intitulée « Les cahiers de la sécession », qui se penchera sur les questions suivantes :

- les termes et les conditions d'un éventuel référendum sur la souveraineté du Québec;
- les circonstances dans lesquelles pourrait se retrouver le pays après un vote du Oui, ainsi que les processus qui permettraient de traiter de la sécession du Québec;
- les moyens par lesquels on pourrait établir un nouveau Canada sans le Québec, si ce dernier décidait de quitter la confédération.

Ces documents adhèrent aux principes suivants : le respect des normes démocratiques et la primauté du droit; le besoin d'une décision qui fasse autorité et d'un dénouement stable; et la minimisation des coûts sociaux et économiques de la transition. À la lumière des résultats du récent référendum québécois, « Les cahiers de la sécession » se veulent d'aider les Canadiens à « concevoir l'inconcevable ».

Les deux séries sont dirigées par David Cameron, un politologue de l'Université de Toronto.

* * * * *

L'Institut C.D. Howe est un organisme indépendant, non-partisan et à but non lucratif, qui joue un rôle prépondérant au Canada en matière de recherche sur la politique économique. Ses membres, individuels et sociétaires, proviennent du milieu des affaires, syndical, agricole, universitaire et professionnel.

- 30 -

Renseignements :

John Richards : 604 291-4568
Susan Knapp (relations avec les médias), Institut C.D. Howe
téléphone : 416 865-1904 ; télécopieur : 416 865-1866
courrier électronique : cdhowe@cdhowe.org
Internet : <http://www.cdhowe.org>

Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee, Commentaire n° 84 de l'Institut C.D. Howe, par John Richards, Toronto, Institut C.D. Howe, octobre 1996, 44 p., 6,00 \$ (les commandes sont payables d'avance, et doivent comprendre les frais de manutention et d'envoi, ainsi que la TPS — prière de communiquer avec l'Institut à cet effet). ISBN 0-88806-403-9.

On peut se procurer des exemplaires de cette publication auprès des : Éditions Renouf ltée, 5369, chemin Canotek, Ottawa ON K1J 9J3 (librairies : 71¹/₂, rue Sparks, Ottawa ON et 12, rue Adelaide ouest, Toronto ON), ou encore en s'adressant directement à l'Institut C. D. Howe, 125, rue Adelaide est, Toronto ON M5C 1L7.

Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee

by

John Richards

Canada is a prosperous, peaceful country that by and large respects human rights and has a good set of social programs. Yet it ranks high among countries likely to fall apart. Why?

At the core of any satisfactory answer to this riddle is the perfectly reasonable concern among francophone Quebecers over survival of French as the lingua franca within their province. Given the powerful processes leading to assimilation of non-English speakers in North America — including francophones outside Quebec — francophone Quebecers want provincial legislation to promote French and, to some extent, limit the use of English.

Quebec's *Charte de la langue française* (Bill 101) has been controversial but necessary. Unilingual French signs were an unnecessary affront to linguistic minorities but, in general, Bill 101's restrictions on use of English are reasonable if Quebec as a whole, and Montreal in particular, are to remain majority francophone regions. Unfortunately, the Canadian political system has not found a way to provide for the political legitimacy of Bill 101.

In debating this matter, the two principal protagonists over the past quarter-century have been the Parti Québécois and the Ottawa Liberals. In general, both have pursued noncooperative strategies. The former have argued that nothing short of Quebec sovereignty is adequate to protect language and culture; the latter have insisted on pan-Canadian bilingualism as a feasible substitute to the language protection legislated by Quebec City.

The basic recommendation of this *Commentary* is straightforward: establish an explicit federal-provincial division of powers over language which, among other provisions, accords a robust general authority to Quebec to legislate in this domain. Specifically, amend section 92 of the *Constitution Act* and thereby grant Quebec explicit jurisdiction over the public use of language, subject to the existing set of minority language services specified in the Charter of Rights and Freedoms and the maintenance of bilingualism within federal institutions.

Main Findings of the Commentary

- Linguistically, Quebec is like Denmark, Finland, Hungary, Singapore, and the cantons of Switzerland. In small jurisdictions whose respective languages differ from the languages spoken by large adjacent neighbors, linguistic boundaries roughly correspond to the relevant political boundaries. The languages of small linguistic communities do not survive as lingua francas, unless buttressed by law.
- Bill 101, enacted in 1977, remains highly popular among francophone Quebecers, because it has strengthened the status of French as the dominant language in the province.
- Beyond Quebec and the bilingual belts in adjacent provinces, francophone assimilation to English has accelerated since 1971 — despite policies of official bilingualism. Within Quebec, language retention among francophones remains close to 100 percent.
- The principle underlying Bill 101 is that the majority within Quebec should, democratically, decide the law governing the public use of language in the province. The principle underlying the Canadian Charter of Rights and Freedoms, however, is based on an alternate principle, that governments should award equal status across Canada to French and English. The Supreme Court of Canada's 1988 decision that Bill 101's unilingual sign provisions violated the right to freedom of expression was an extraordinarily broad interpretation of the Charter, and accentuated the conflict between these principles.
- Language policy in multilingual countries is always a potential source of conflict. Many countries that manage the conflict reasonably well — India and Switzerland, for example — have accepted a formal division of power over language. Thereby, local majorities determine most aspects of language policy. Compromises apply to national institutions (such as the central civil service) and to elaboration of minority language services.
- The pragmatic reason to provide a robust authority to Quebec to legislate over language is that this matter is an important factor in explaining the choice among francophones between federalism and sovereignty. The majority of francophone Quebecers believe that the situation of French would improve were Quebec sovereign.
- Expansion of provincial powers in this domain requires consideration of the appropriate limits on individual rights and government powers. The rationale for entrenched legal rights is a negative theory of human liberty. Entrenching rights enhances the legitimacy of the courts in the task of preventing coercion, especially when undertaken via the state. This argument is strongest when applied to fundamental rights (such as habeas corpus); it is much weaker when extended to embrace the positive role of the state. The danger then arises of judges assuming powers that should remain in the hands of elected legislators. Among the state's positive roles is determination of language(s) to promote in legislatures, in schools, and via the regulation of commercial activity. The appropriate institution to determine public language policy is usually an elected legislature, not the courts.
- Provision of a general legislative authority to Quebec over language will restrict the ability of Quebec anglophones to use the Charter in bargaining over language services. However, actual Quebec policy may become more flexible. At present, Quebec governments fear the potential for courts to exploit flexible language provisions as precedents for restricting legislative initiatives. With a firm constitutional basis for legislating over language, that fear would be attenuated.
- By analogy with section 92A of the Constitution Act (a 1982 amendment that clarified federal and provincial resource jurisdiction), Canadians should entrench a section 92B dealing with jurisdiction over language. Drafting such a clause poses complex issues: definition of a suitably robust general provincial power to legislate; specification of the bilingual nature of federal institutions; and specification of a set of language services to be enjoyed by official language minorities.

Canada poses a conundrum. It is a prosperous peaceful country that by and large respects human rights and has a good (if far from perfect) set of social programs. Relative to those of most countries on the globe, its political and economic problems are trivial. Yet Canada ranks high among countries likely to fall apart. That probability is higher now than at any time in its history since Joseph Howe was elected premier of Nova Scotia in 1868 with a mandate to pull his province out of the young and fragile Dominion.

How to explain this riddle? At the core of any satisfactory answer, I argue, is the perfectly reasonable anxiety of the Québécois¹ over survival of French as the lingua franca within their province (see Box 1). Given the powerful processes leading to intergenerational assimilation of non-English speakers in North America — including francophones outside Quebec — the Québécois want provincial legislation to promote French and, to some extent, to limit the use of English.

Their *Charte de la langue française* (Charter of the French Language), most often still called Bill 101 although it was enacted in 1977, has done the job. It has strengthened the status of French as the working language in the province, preserved Montreal as a predominantly francophone metropolis, and confirmed that French remain the dominant language in the school system. Bill 101 has been controversial but necessary.

Unfortunately, the Canadian political elite has not found a way to provide for the political legitimacy of Bill 101. In debating this matter, the principal protagonists over the past quarter-century have been the provincial Parti Québécois and the Ottawa Liberals. On occasion one or the other has endorsed a cooperative *beau risque*, but in general both have pursued non-cooperative strategies. The former have argued that nothing short of Quebec sovereignty is adequate to protect language and culture; the latter have insisted on pan-Canadian bilingualism as a feasible substitute for language protection legislated by Quebec City.

The policy conclusion of this Commentary is straightforward: if the federation is to survive intact, a necessary reform is an explicit compromise on the language dossier that, among other provisions, accords a robust general authority to Quebec to legislate in this domain.

Despite the importance of language laws in Canada, the authority of either Ottawa or the provinces to legislate on this matter presently rests on constitutional quicksand. As one historian summarizes, “[t]here is no general authority to enact legislation with respect to language.”² The preferable option is, I suggest, an amendment to the Constitution to grant Quebec explicit jurisdiction over the public use of language, subject to the existing set of minority language services in both Quebec and the rest of Canada (ROC) and to the maintenance of bilingualism within federal institutions.

In outline, I proceed as follows. In the first section, I survey data on language use in Canada and the basic idea of language as a form of human capital with major external effects. Then I introduce three alternative principles upon which to base language policy and review the stark conflict between Ottawa’s preference for individual choice between the two official languages and Quebec City’s insistence on a formal federal-provincial division of powers. I also provide some history. The third section deals briefly with the controversial matter of commercial signs, which illustrates the conflicts between Bill 101 and the Canadian Charter of Rights and Freedoms. In the fourth section, I introduces three tactical options and make the case for explicit provincial jurisdiction over language. I conclude by speculating on the practical implications such a reform would have for Canada.

Why Language Matters

A large portion of the human brain is given over to acquiring and using language, which is perhaps the most important characteristic distinguishing human beings from all other species. Despite its immense importance, peo-

Box 1: Like Sugar in the Coffee

The title of this *Commentary* comes from an image used by Greg Marchildon, Saskatchewan deputy minister of intergovernmental affairs, in the preface to an important compromise proposal (discussed further below). Marchildon briefly describes the fate of his *pure laine* family, which migrated from Quebec to Ontario following the *Patriotes* rebellion of 1837. In the early twentieth century, his branch came west to Saskatchewan. "Those members of my paternal family who stayed within the protective womb of their community or moved back to Quebec have remained resolutely francophone, but those who moved to other parts of Canada assimilated within one generation." Central to any cooperative outcome, Marchildon suggests, is the simple idea that English-speaking Canadians pursue a strategy offering a credible guarantee to Québécois that they "not dissolve like the proverbial lump of sugar in an English cup of coffee."*

* Greg Marchildon, "An Attempt to Reconcile the Irreconcilable," *Inroads* 5 (1996): 99, 101.

ple generally think about their own language, like their health, only when it is threatened. English-speaking Canadians have few occasions to feel their language threatened. Hence, they tend to ignore language policy and to suspect that those who insist on the subject harbor an illiberal desire to suppress freedom of speech. Most do not understand what is required to preserve a small linguistic community in an industrial society with mass communication and significant migration.

Linguistically, Quebec is like Denmark, Finland, Hungary, Singapore, the cantons of Switzerland, and other small jurisdictions whose respective languages differ from the languages spoken by their large adjacent neighbor(s). Not coincidentally, linguistic boundaries in these cases roughly correspond to the relevant political boundaries. The languages of small linguistic communities do not remain as *lingua francas* unless buttressed by law.

Although not unusual internationally, Quebec is unique within the Western Hemisphere. The Québécois are the only linguistic community on this side of the globe to have simultaneously built a prosperous industrial

society and avoided linguistic assimilation to one of the three dominant languages (English, Spanish, and Portuguese).³ Marcel Côté, a prominent political consultant and a leading francophone federalist, nicely captures the linguistic reality lived by the Québécois:

Quebec is different, not only because a majority happen to speak a different language but because this language, being a minority language on the continent, provides a collective bonding. There is more to Quebec's distinctiveness than language and culture. There are all the other attributes of a people, resulting in a clear "us and them." The "us" speak French, live in Quebec, share a common culture and, more importantly, have developed among themselves a high degree of social trust. Because of their language, Québécois are bound together like the Swedes, the Danes or the French.

The consequence, Côté explains,

is a "social trust divide" along linguistic lines, between "us" who speak French and "them," other Canadians who do not. At the end of the day, when everything else is accounted for, Québécois will trust each other for any collective decision more than they will trust non-Quebec Canadians.

The glue underlying social trust is the distinct common language. It determines whom we know, where we go to school, where we live, what we read, the news we listen to on TV, the particular college buddies we reunite with later in life. It provides the raw material for the comedians who ridicule our collective flaws, and for opinion makers who form the conventional wisdom of the day.

Language is a very powerful social definer.⁴

One of the sources of "us-versus-them" divisions in Canadian public life is the country's vast size, which limits social exchange among Canadians living in different areas. A major role for our politicians is therefore to adjudicate the inevitable interregional conflicts. Similarly, Canadian politicians must adjudicate the inevitable conflicts that arise from diverging identities defined by language.

Not surprisingly, states that are both geographically large and multilingual are inherently hard to govern; unforeseen shocks can generate divisive social dynamics. In Canada's case, the linguistic division is exacerbated because the anglophone group is large and linguistically secure while the francophone group is relatively small and linguistically insecure. Approximately 6 million Québécois live in a continent of 300 million anglophones or immigrants whose children will become anglophones.

Below some population threshold, small linguistic communities cannot support the cultural industries (newspapers, publishers, theater, film, and television) that generate new "linguistic goods." They survive, if at all, in a truncated form, and over time they quite literally die off. A century ago, Yiddish was the vehicle for a vibrant North American culture of some 2.5 million European immigrants. But the relative attraction of English proved overwhelming for their children. Despite Jewish culture's emphasis on learning, the number of people speaking Yiddish has declined to the point at which its survival depends on small ultraorthodox communities. (Ruth Wisse compares the fate of Yiddish to that of French in Quebec.⁵)

Above a threshold of, say, 4 million, linguistic communities can realize the scale economies required to support a lively cultural sector.⁶ But small communities must bear a cost for linguistic distinctiveness. Parents individually and the state collectively must devote considerable resources to foreign-language instruction and to protection of the *lingua franca*. Most professionals must become proficiently bi- or multilingual in order to be as productive as their unilingual colleagues who live in large linguistic communities. And inevitably, a high proportion of the community's linguistic goods is consumed in translation (consider the Finns) or borrowed from larger communities with the same language (Geneva from France, Singapore from Hong Kong and China).

From the perspective of a large, secure community, linguistic protection may appear

Box 2: *Cultural Protectionism: An Analogue*

An analogue to Quebec's linguistic protectionism that many Canadians in the ROC can appreciate is the promotion of autonomous Canadian culture in the context of a North American cultural mainstream dominated by the United States. The language barrier provides some protection to francophones against imported US cultural products. No such barrier protects English-Canadian cultural industries, and fear of US domination is common to many Canadians, particularly those with a strong involvement in Canadian culture.

a Canute-like exercise in resisting the inevitable. From the perspective of a small, more precarious community, however, cultural/linguistic survival is something worth paying for. One of the most robust of political propositions is that, wherever small linguistic communities are territorially compact and can exercise political power, they rank cultural/linguistic survival above most other collective goals.

Take two examples. Over the past decade, it has been uncertain whether or not the Georgians would remain within the Russian empire and whether or not the Danes would join the European Union. In neither case has the debate included any discussion of abandoning protection for their respective languages. These communities may engage in economic free trade and even political union; they do not engage in linguistic free trade.

French in Canada Today

It is useful at this point to summarize the recent trends of language use in Canada and to briefly address the economics of language as a form of human capital.

Linguistic Trends

Such is the political importance of language in Canada that the Canadian census, the Quebec government, and academics exhaustively analyze the distribution of language communities,

Box 3: *Some Canadian Language Terms Defined*

Canadian analysts of language employ the following terms with quite exact definitions.

- A person's *home language* is the language spoken most often at home by that person at the time of the census. In 1991, Statistics Canada aggregated responses into eight mutually exclusive categories: (1) English; (2) French; (3) nonofficial language; (4) English and French; (5) English and nonofficial language; (6) French and nonofficial language; (7) English, French, and nonofficial language; (8) nonofficial languages. Note that definitions and data presentation have changed slightly between censuses. The 1971 census did not record use of multiple languages, and the earliest data on home language date from that census. Earlier censuses collected data only on mother tongue.
- A person's *mother tongue* is the first language learned at home in childhood and still understood by that person at the time of the census. Statistics Canada aggregates responses into the same eight categories as for home language.
- *Knowledge of a language* refers to the ability to conduct a conversation in it. It does not imply full written and oral fluency, or that it is a home language.
- *Rate of French-language retention* is defined for 1991 as the proportion of those whose mother tongue is French and who use French or French plus other languages (one of which is almost always English) as their home language(s). The results from 1971 and 1991 are not exactly comparable; multiple language responses were not recorded in the 1971 census, so the retention rate for that year refers solely to the ratio of those whose mother tongue is French and who use French only as their home language.
- Canada's *official languages* are French and English.
- *Nonofficial languages* are all languages other than French and English.
- An *allophone* is an individual whose mother tongue is not an official language.

French-English bilingualism, and rates of language retention. There is general agreement on four basic points.

1. Within Quebec, French has retained its status as the overwhelmingly dominant language. The census uses two concepts to measure the linguistic distribution of Canadians: *mother tongue* and *home language* (see Box 3 for definitions). If the latter is the same as the former, language is being retained; if not, linguistic transfer has taken place.

By both measures, the proportion of Quebec francophones has fluctuated little since 1931 (see Table 1). In 1991, it was roughly five out of six, both in terms of mother tongue and of home language. Because of the high birth rate among the Québécois before World War II, the province's population share increased between 1931 and 1951; because of a subsequent, precipitate decline in the birth rate and rising net outmigration, its share has declined since 1951.

The distribution of nonfrancophones within Quebec has not been stable. The proportion of anglophones has declined, especially since

1971; many anglophones have left the province, and relatively few moved there. Simultaneously, the number of allophones (see Box 3) has increased. In 1951, Quebec was much more homogeneously French-English than the ROC. The proportion of allophones in that year's census was only a quarter of the corresponding ROC statistic. By 1991, Quebec was becoming more like the rest of the country in this respect; the proportion of allophones had more than doubled to nearly half the corresponding ROC statistic.

2. Outside Quebec, French is declining as a language of use. With the exception of the bilingual belts of eastern Ontario and Acadia, regions adjacent to Quebec, French is not intergenerationally surviving as a home language. In terms of mother tongue, the proportion of francophones in the ROC was down to less than 5 percent in 1991, and in terms of home language, it was only 3 percent. Table 2 flips the point of view, documenting the geographic distribution of language communities, rather than the linguistic distribution of those within geographic regions. Measured by mother

Table 1: Distribution of Population in Regions of Canada, by Mother Tongue and Home Language, 1931–91

	French	English	Other	Share of Canadian Population
	(percent)			
	<i>By Mother Tongue</i>			
Quebec				
1931	79.7	15.0	5.3	27.7
1951	82.5	13.8	3.7	29.0
1971	80.7	13.1	6.2	27.9
1991	82.2	9.7	8.1	25.2
Rest of Canada				
1931	7.2	73.1	19.7	72.3
1951	7.2	77.6	15.2	71.0
1971	6.0	15.6	78.4	72.1
1991	4.8	77.7	17.5	74.8
Canada				
1931	27.3	57.0	15.7	
1951	29.0	59.1	11.9	
1971	26.9	60.1	13.0	
1991	24.3	60.4	15.3	
	<i>By Home Language, 1991</i>			
Quebec	83.0	11.2	5.8	
Rest of Canada	3.2	87.6	9.3	
Canada	23.3	68.3	8.4	

Notes: For definitions, see Box 3. Some rows may not add to 100 percent because of rounding.

Sources: For 1931 to 1971: Marc Termote, "L'évolution démographique du Québec et du Canada," in Quebec, Commission on the Political and Constitutional Future of Quebec [Bélanger-Campeau Commission], *Éléments d'analyse institutionnelle, juridique et démographique pertinents à la révision du statut politique et constitutionnel du Québec* [Background papers], vol. 2 (Quebec 1991). For 1991: Canada, Statistics Canada, *Language Retention and Transfer, 1991*, Cat. 94-319 (Ottawa, 1993); Quebec, *Le français langue commune: enjeu de la société québécoise*, Report of the Interministerial Committee on the Situation of the French Language (Quebec: Ministère de la Culture et des Communications, 1996), p. 272.

tongue, six out of seven French-speaking Canadians were living in Quebec by 1991. Measured by home language, the geographic concentration of francophones in 1991 was even greater: nine out of ten lived in Quebec.

The tables here do not desegregate the geographic distribution of language communities beyond Quebec and the ROC. It is worth noting, however, the importance of physical proximity to Quebec among non-Quebec fran-

cophones. As of 1991, 77 percent of mother-tongue francophones outside Quebec lived in either New Brunswick or Ontario, and fully 85 percent of home-language francophones outside Quebec lived there.⁷

Another way to assess the intergenerational survival of a linguistic community is to measure the proportion of those who, having learned a language as infants, still use it at home as adults. Table 3 reports the rate of

Table 2: Distribution of Population in Language Communities, by Regions of Canada, 1931–91

	Quebec	Rest of Canada
	(percent)	
	By Mother Tongue	
French		
1931	80.9	19.1
1971	84.0	16.0
1991	85.1	14.9
English		
1931	7.3	92.7
1971	6.1	93.9
1991	3.8	96.2
	By Home Language, 1991	
French	89.9	10.1
English	4.1	95.9
Other	17.5	82.5

Note: For definitions, see Box 3.

Sources: For 1931 to 1971: Marc Termote, "L'évolution démographique du Québec et du Canada," in Quebec, Commission on the Political and Constitutional Future of Quebec [Bélanger-Campeau Commission], *Éléments d'analyse institutionnelle, juridique et démographique pertinents à la révision du statut politique et constitutionnel du Québec* [Background papers], vol. 2 (Quebec 1991). For 1991: Canada, Statistics Canada, *Language Retention and Transfer, 1991*, Cat. 94-319 (Ottawa, 1993).

French-language retention among Canadians for whom French is the mother tongue. (The home-language data for this calculation were not available for years before 1971; hence, that is the first year of the table.) Within Quebec, retention is nearly 100 percent, and it rose marginally between 1971 and 1991. Among New Brunswick francophones, retention is also high, but notice that roughly one in ten Acadians have abandoned their mother tongue.

Elsewhere in the ROC, the evidence is grim. In Ontario, French-language retention declined between 1971 and 1991 from 70 per-

cent to 59 percent. (The retention rates reported here are, of course, averages for entire provinces. The rate for the bilingual belt of eastern Ontario is higher than elsewhere in the province.)

For the nine jurisdictions (seven provinces and two territories) beyond Quebec and the provinces adjacent to it, the retention rate fell over these two decades from 51 percent to 41 percent. Despite the support provided to official language minorities, in these nine jurisdictions only two out of five mother-tongue francophones speak French at home.

3. French has a weak attraction for allophones, even within Quebec. Outside Quebec, a trivially small percentage of allophone immigrants transfer their linguistic loyalties from their native tongue to French.⁸ Even within Quebec, English has a stronger attraction than French (and one can guess it would be even stronger in the absence of restrictive provincial legislation). In Table 4, which is restricted to Quebec, English as measured by home use consistently exceeds French as measured by mother tongue. Most of the explanation for the gap must be allophones transferring to English.

Table 5 concerns the less stringent, but useful, linguistic measure known as knowledge of a language (see Box 3 for a definition). By this measure, the relative position of French among allophones has improved since 1971. In that year, the proportion of allophones who knew only French was less than half the proportion of those who knew only English. By 1991, the position of French among allophones had improved; the proportion knowing only French had risen and the proportion knowing only English had fallen such that the former was in fact slightly higher than the latter. The proportion that had become French-English bilingual had also risen, from a third to nearly a half.

Montreal has been Canada's principal linguistic battleground during the past half-century. As can be inferred from Table 4, the great majority of allophone immigrants to Quebec have chosen Montreal, which is also home

Table 3: Rate of French-Language Retention, by Region and Province, 1971 and 1991

	1971	1991
	(percent)	
Newfoundland	56.5	45.0
Prince Edward Island	56.8	53.1
Nova Scotia	65.9	58.3
New Brunswick	91.2	90.3
Quebec	98.4	98.8
Ontario	69.7	59.1
Manitoba	62.8	49.7
Saskatchewan	47.6	32.4
Alberta	45.9	35.2
British Columbia	26.4	26.7
Yukon	25.6	45.7
Northwest Territories	46.6	45.7
Rest of Canada	70.2	64.7
Rest of Canada, less Ontario and New Brunswick	51.3	40.8
Canada	93.8	93.8

Note: For a definition of French-language retention, see Box 3.

Sources: Author's calculations from data in Canada, Statistics Canada, *Population: Statistics on Language Retention and Transfer*, Cat. 92-776 (SP-6)

The Canadian Union Papers

Language Matters:

Ensuring That the Sugar
Not Dissolve in the Coffee

by

John Richards

to most Quebec anglophones. The world's second most important francophone city straddles the boundary between a small, unilingual French-speaking hinterland and an immensely larger, English-speaking one.

The linguistic composition of Montreal has fluctuated dramatically over the past 300 years. The city began as a francophone settlement in the seventeenth century; at times in the nineteenth century, it had an anglophone majority. In the second half of this century, the francophone share, defined in terms of mother tongue or home language, has been roughly two-thirds, rising slightly over time in metropolitan Montreal and falling slightly on the Island of Montreal (which includes the core city).

Table 4: Distribution of Population in Regions of Quebec, by Mother Tongue and Home Language, 1971-91

	French	English	Other
	(percent)		
	<i>By Mother Tongue</i>		
Island of Montreal			
1971	61.2	23.7	15.1
1991	56.8	20.6	22.6
Montreal metropolitan area			
1951	64.9	26.5	8.6
1971	66.3	21.7	12.0
1991	68.5	15.7	15.8
All Quebec			
1951	82.5	13.8	3.7
1971	80.7	13.1	6.2
1991	82.2	9.7	8.1
	<i>By Home Language</i>		
Island of Montreal			
1971	61.2	27.4	11.4
1991	58.5	25.7	15.9
Montreal metropolitan area			
1971	66.3	24.9	8.8
1991	69.4	19.3	11.3
All Quebec			
1971	82.5	12.7	4.8
1991	83.0	11.2	5.8

Notes: Some rows may not add to 100 percent because of rounding. For definitions, see Box 3.

Source: Quebec, *Le français langue commune: enjeu de la société québécoise*, Report of the Interministerial Committee on the Situation of the French Language (Quebec: Ministère de la Culture et des Communications, 1996), pp. 271-272.

Although the shifts in the city's francophone share have been small, those among anglophones and allophones have been much larger. If we consider metropolitan Montreal in terms of residents' mother tongues, the proportion of anglophones declined by two-fifths, while the allophone share nearly doubled. The allophones' share now slightly exceeds the anglophone one.

Table 5: Knowledge of Official Languages in Quebec, 1971–91

Mother Tongue	French Only	French and English	English Only	Neither English nor French
	(percent)			
French				
1971	74.3	25.7	—	—
1981	71.2	28.7	—	—
1991	68.4	31.5	—	—
English				
1971	—	36.7	63.3	—
1981	—	53.4	44.8	—
1991	—	59.4	39.2	—
Other				
1971	14.0	33.1	35.8	17.0
1981	17.7	44.6	26.1	11.6
1991	22.0	46.6	20.9	10.4

Notes: Some rows may not add to 100 percent because of rounding. For definitions, see Box 3.

Source: Quebec, *Le français langue commune: enjeu de la société québécoise*, Report of the Interministerial Committee on the Situation of the French Language (Quebec: Ministère de la Culture et des Communications, 1996), p. 274.

4. French-English bilingualism has risen in both Quebec and the ROC. The proportion of Canadians with a knowledge of both official languages rose from 13 percent in 1971 to 16 percent in 1991. In Quebec, the increase was from 28 to 35 percent; in the ROC, from 7 to 10 percent (see Tables 5 and 6 for details).

In explaining this increase, federal bilingualism policy and Quebec's Bill 101 both play a part.

Ottawa's support for instruction in minority official languages played a central role in increasing French-English bilingualism in the ROC. But the most dramatic increase in French-English bilingualism occurred among Quebec anglophones. In 1971 only 37 percent of them could speak French; by 1991 a clear majority, 59 percent, could do so (see Table 5).

Two factors are important in explaining this jump in Quebec. First, the outmigration of unilingual anglophones increased the ratio. Second, by increasing the importance of French at work and in education, Quebec government policies raised the utility of a knowledge of French to those remaining in the province.

French-English bilingualism also rose in Quebec among francophones over the past two decades, though not as dramatically as among anglophones.

Language as Human Capital

The most important generalization to be drawn from this survey data is the relevance of the economics of language. Language is a kind of human capital. Like any kind of capital, language skills are costly to acquire — in terms of time and effort — but generate important benefits.

The first benefit is simply the ability to read cultural artifacts. Consider that a small number of people today continue to learn dead languages such as ancient Greek, Old English, and Sanskrit in order to access literary and/or religious works in the original.

The second and most important benefit is the ability to communicate with others who also speak and write the language. This second benefit entails a major external effect (an impact on other people). When an allophone

Table 6: French-English Bilingualism, 1971-91

	1971	1981	1991
	(percent)		
Quebec	27.6	32.4	35.4
Rest of Canada	6.9	9.2	9.9
Canada	13.4	15.3	16.3

Source: Canada, Statistics Canada, *The Daily*, Cat. 11-001E (Ottawa, January 12, 1993).

immigrant to Montreal invests in learning French, for example, she generates a benefit for herself (ease of communication with her francophone neighbors); she also bestows a benefit on her neighbors (who can now communicate with her). Conversely, if allophone immigrants transfer their linguistic loyalties to English, they lower the value of the human capital of francophones.

The third benefit is the ability to participate in the production and consumption of new cultural goods. Since many of these activities display scale economies — the unit cost of a newspaper, a literary novel, or a rock concert falls with a rise in the size of the potential market — this third benefit also generates external effects. When an immigrant transfers his linguistic loyalty to French, he increases the market for francophone cultural activities. Were the majority of Montrealers ever to cease being francophone, the Québécois would lose the one metropolitan center in North America large enough to generate a consistent supply of high-quality journalism, television, fiction, drama, popular music, and film in French.

Humans begin acquiring their first — and usually sole — language at an age when the primary struggle is learning to walk. Babies do not choose their language on the basis of a cost-benefit analysis. On the other hand, immigrants to a country whose lingua franca is other than their mother tongue do make such an analysis. The elderly may decide the costs of acquiring a new language are too high and

choose to live out their lives in their mother tongue. Younger immigrants must consciously decide whether to learn a new language and, if the new country is multilingual, which new language (or languages) to learn.

For an allophone immigrant to Montreal, who may well choose to relocate within Canada, the net benefits of learning the language of 300 million North American anglophones usually outweigh the benefits of learning the language of the 6 million Québécois. In the absence of Quebec's language laws, the distribution of linguistic choices among allophone immigrants to Quebec would probably not have differed much in 1991 from what it was in 1971.

Allophone immigrants are not the only ones who make an implicit cost-benefit assessment concerning linguistic investment. So too do francophones who migrate beyond Quebec and the adjacent bilingual belts. The language-retention results of Table 3 indicate that, despite improvement in the French-language services associated with official bilingualism, the proportion of francophones using English at home increased between 1971 and 1991. Outside Quebec and the adjacent bilingual belts, the only province with stable retention rates over the past two decades was British Columbia, a province in which French has always been a minor immigrant language, less important in terms of home use than Cantonese or Punjabi.

Language Policy and Its Results

If multilingual states are to be politically stable over the long term, they must reach a social contract with respect to the public use of language. The experiences of India and Pakistan, two other multilingual countries to have emerged from the British Empire, offer a good contrast.

Following independence in 1947, regional movements demanding redefinition of internal boundaries and powers arose in both countries. Frequently, promotion of a regional language was the most prominent feature of these

movements. In summary, the center in India accepted a formal division of jurisdiction over language policy; in Pakistan, it did not.⁹ In other words, although Pakistan abjectly failed to realize linguistic accommodation, the Indian experience illustrates that reasonably peaceful accommodation is possible, even under conditions of extreme poverty.

Specifically, following mass protests, Prime Minister Jawaharlal Nehru reluctantly created a new state (Andhra Pradesh) in 1953 to accommodate Telegu speakers. Subsequently, a government committee recommended wholesale redefinition of internal borders based essentially on linguistic criteria, and by 1960 the reorganization was more or less accomplished.

At the level of national institutions, a compromise emerged in the 1960s. Hindi, the most important of the Indo-Aryan languages of the north, became the country's sole official language. But the elites of non-Hindi regions opposed expansion of the use of Hindi, preferring English for purposes of national and interregional communication. Accordingly, English survives as an associate official language, and 14 other languages have been designated as official regional languages.

In contrast to this reasonably peaceful accommodation is the breakup of Pakistan, a spectacular illustration of what can happen when a multilingual country fails to reach a social contract on language. The word Bangladesh means simply "land of people who speak Bengali," a language used by roughly 200 million people living around the delta of the Ganges. East and West Pakistan fractured for many reasons, including lack of physical contiguity, but the most important was the failure of the Urdu-speaking majority in the west to recognize that language was as important as religion in defining loyalties. Restriction of the use of Bengali was the catalyst for the formation in the 1950s of a nationalist movement in the area that became, in 1971, a sovereign country. (Incidentally, independence did not bring prosperity for Bangladesh. In the economic and political chaos following independence, this very poor region grew poorer yet.)

Different Principles for Language Policy

In broad strokes, multilingual states base their language policy on some combination of the three principles described below.

- *Assimilation to the dominant language(s).* Government policy may explicitly favor the country's dominant language(s) and discourage all others. Canada seeks to assimilate allophone immigrants to one or other of the official languages — hence school instruction is almost exclusively in English or French. Allophone immigrants expect to make a linguistic investment and, in general, consider linguistic assimilation legitimate. Where they comprise a significant community, however, they often seek public resources to fund programs intended to preserve their linguistic heritage (for example, instruction in Ukrainian in the prairies, in Cantonese and Punjabi in Vancouver). And, as discussed more fully below, they have objected to Quebec language policy, which restricts their access to English.
- *Linguistic free trade.* Language policy may be the equivalent of a free trade agreement among a group of countries. The federal government has sought to establish a bilingual infrastructure such that there is no supply side impediment to individual choice between the two official languages. That is the principle underlying both the *Official Languages Act* and the Charter of Rights and Freedoms. Over the past generation, Ottawa has dramatically improved the language services available to official language minorities, extending more generous support to them and imposing more stringent bilingual requirements on the federal government. Ottawa has thereby attempted to make French-English bilingualism more attractive across the country.
- *A formal division of powers over use of language.* Many multilingual states, from India to Switzerland, explicitly allocate jurisdiction over the public use of language

to regional governments with the full expectation that they will adopt divergent policies reflecting the interests of their majority language communities. This principle enables local majorities to determine most aspects of language policy, but it still requires linguistic communities to effect a compromise applicable to national institutions, such as the central civil service and state-run media, and to define some set of minority language services. In designing language laws that promote French and, to some extent, limit English, the Quebec government has *de facto* insisted that this principle apply to Canada.

No country consistently bases policy on any one principle. As the summary of Indian language policy illustrates, life entails messy compromises. In Canada, however, the past generation has seen stark disagreement between Ottawa's preference for free trade between the two official languages and Quebec City's insistence on a division of power over language.

Quebec and Bill 101

Bill 101, the *Charte de la langue française*, was one of the first pieces of legislation enacted by the newly elected Parti Québécois (PQ) government in 1977 and has assumed great symbolic importance in Quebec. The preamble contains the following statement:

[T]he National Assembly of Quebec recognizes that Quebecers wish to see the quality and influence of the French language assured, and is resolved therefore to make of French the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business;...

[T]he National Assembly intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the institutions of the English-speaking community of Quebec, and respectful of the ethnic minorities, whose valuable contribution to the development of Quebec it readily acknowledges;...

[T]he National Assembly of Quebec recognizes the right of the Amerinds and the Inuit of Quebec, the first inhabitants of this land, to persevere and develop their original language and culture.¹⁰

Bill 101 has been amended many times since 1977. Its major provisions can be summarized as follows:¹¹

- French is the official language of Quebec. The Quebec government seeks to promote French as the *langue commune* (common language) understood and used in public by all Quebecers. This goal is deemed incompatible with institutional bilingualism, which accords equal individual rights to use of English and French within Quebec public institutions.¹²
- Major workplaces must be *francisé*. Quebec citizens should be able to work in French, and major enterprises (those with more than 50 employees) must ensure that it is feasible to do so throughout their establishments.
- Provincially licensed professionals must, as a condition of licensure, demonstrate a working knowledge of French.
- Immigrants coming to Quebec must send their children to French-language schools. Before the enactment of the Charter, Bill 101 restricted access to English-language schools to children of Canadian citizens who had themselves received their education *in Quebec* in English.
- As a symbol that French is the official language of the province, Bill 101 originally required that all commercial signs be unilingual French. This provision has been the subject of much controversy over the past two decades. As amended in 1993, current Quebec law permits, in most instances, bilingual commercial signs in provided that French dominates.
- Provided the use of other languages does not adversely affect the integration of cultural minorities into a French-speaking society, the Quebec government respects

the use of other languages. In particular, it recognizes “that Quebec anglophones must preserve their language, their style of life and their culture.”¹³ Furthermore, learning of additional languages is important. This applies to the promotion of English as a second language among francophones, as well as the learning of aboriginal languages.

Ottawa and the Charter

The federal Liberals interpreted the “no” victory in Quebec’s 1980 referendum as a mandate to introduce constitutional changes consistent with the classic liberal ideals of then-Prime Minister Pierre Trudeau.

As a politically engaged intellectual before his entry into politics, Trudeau had been as eloquent as any Québécois nationalist in his criticisms of the fate accorded francophones in Manitoba in the nineteenth century and the restrictions placed on the use of French in Ontario schools before World War I. Yet he aggressively opposed the nationalist Quebec response, which he characterized as ethnic nationalism.¹⁴ Canada could not survive, he argued, if each linguistic community retreated into its respective solitude. The country required more people who were effectively French-English bilingual. His solution was official bilingualism: policies to enhance dramatically the services provided to official language minorities across the country.

Since the sovereignists decisively lost their 1980 referendum, it was not surprising that the victors chose the opportunity to redefine the political game in a manner corresponding to their vision of the country. The most important aspect of the 1982 constitutional reforms was the adoption of the Charter of Rights and Freedoms, whose linguistic provisions can be summarized as follows:

- “English and French are the official languages of Canada and have equality of status...in all institutions of the...government of Canada” (section 16(1)).

- New Brunswick having opted in 1981 to become an officially bilingual province, its government is given the same linguistic obligations as Ottawa (sections 16–22). At various times, Ottawa has proposed that other provinces, in particular Ontario, follow New Brunswick’s precedent.
- A set of primary and secondary education services in the minority language are defined as justiciable rights (section 23).¹⁵ As it stands, the Charter defines somewhat asymmetric minority education rights in Quebec and the ROC. In Quebec, it allows anglophone Canadians who received their primary education in English in Canada to educate their children in English. In the ROC, francophone Canadians whose first language is French *and who learned it anywhere in the world* have the right to educate their children in French. If Quebec agrees at some future time, the more generous minority language right would extend to that province as well. The right is qualified by addition of a clause stipulating that it can only be exercised “wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction” (section 23(3)(a)).

Notice that the Charter made no attempt to accommodate the historic compromise, dating from the days of New France (as discussed below), whereby Quebec could exercise local control over linguistic/cultural institutions. Ottawa’s single important concession in constructing the Charter was to accept the demand of the four western premiers for a limited legislative override of Charter-based court decisions — section 33, the “notwithstanding” clause.

Consider too that, in several cases (most significantly *Ford v. A.G. Quebec*, discussed below), the courts have given a broad interpretation to the Charter’s section 2, which defines “fundamental freedoms.” Their interpretation of the legal protection for “freedom of thought,

belief, opinion and expression” (section 2(b)) has become an important potential constraint on the ability of the Quebec government to define language policy.

Opposing Principles

The conflict between the principles underlying the Charter and Bill 101 is like a chronic disease. Much of the time it is in remission, but occasionally it erupts. It is potentially fatal. In summer 1996, conflict broke out, once again, over the use of English on commercial signs. Aggressive English-rights groups demanded more use of English in anglophone regions of the province and condemned Bill 101 as an unwarranted constraint on their choice of language. The *purs et durs* militants within the PQ insisted on strengthening Bill 101 to restrict further the use of English.

It is well known in game theory that a prisoners’ dilemma game of this sort can never end with both parties’ gaining everything they want. Cooperate strategies can, however, lead to less-than-disastrous outcomes all around. In Canada’s language game, however, both the federal and the Quebec governments have been obdurate about not cooperating.

It is always dangerous to speculate on motivations of individuals, but, with that caveat, I must say that it appears that the principals in this scenario — the senior members of the governments in Ottawa and Quebec City — are playing games with this current conflict. Each side remains committed to its noncooperative strategy and is adamantly uninterested in political compromise.

PQ cabinet members fully understand that linguistic anxiety among Québécois is an important source of their political support and have consistently stressed that the principle underlying federal language policy is incompatible with Bill 101. They interpret the failure of constitutional compromise over the past generation as proof that only in a sovereign Quebec will the French language and culture be secure.¹⁶

The PQ cabinet has a second tactical concern. Before any further referendum, it intends to eliminate the provincial deficit and hopes to increase the attraction of sovereignty among allophone and anglophone Quebecers. Accordingly, through time of writing (September 1996) it has resisted the demands of its militants to strengthen Bill 101 and further antagonize the linguistic minority.

Ottawa Liberals have also played games. In the current conflict, the prime minister has spoken in defense of linguistic minorities; he has made no parallel acknowledgment of the value of Bill 101 in preserving the francophone character of the province. Federally, Liberal electoral support lies disproportionately with official language minority and allophone communities across the country, groups that have benefited from the linguistic provisions of the Charter. Nonetheless, Ottawa is reluctant to see Quebec English-rights groups pursue their challenge to Bill 101, for fear that such activities will augment support for sovereignty among the Québécois.

The Historical Context

That matters have come to this standoff is not surprising given the record of British North America since 1760. This is not the place for a thorough survey of the role of language in Canadian history but a little history is unavoidable. My conclusion from what follows is that Québécois have been remarkably consistent ever since Wolfe defeated Montcalm on the Plains of Abraham. The majority have opted to cohabit with English-speaking Canadians provided — a major proviso — they could control institutions crucial to their cultural/linguistic survival.

Pre-Confederation

In a successful attempt to secure the neutrality of its French-speaking Roman Catholic colonists in the escalating conflict with its English-speaking Protestant colonists to the south, Britain enacted in 1774 the Quebec Act.

This law gave legislative security to the seigneurial system of property rights and to the institutions of the Roman Catholic church.

Until the middle of the twentieth century, Quebec society inextricably mixed faith, culture, and language — a situation well summarized by the maxim *celui qui perd la langue perd la foi* (he who loses his language loses his faith). Attempts at cultural assimilation, most notably the 1840 Act of Union, were failures: in order to function, the legislature that act created required joint majorities from Upper Canada (Ontario) and Lower Canada (Quebec).

Confederation

Expectations for industrial growth and fear of the US army's turning north were central factors in persuading politicians in London and in the colonial capitals to envision Confederation in the 1860s. (Were they conducting their debates today, they would have called it "re-balancing the empire.")

Nonetheless, cultural and linguistic differences mattered. Indeed, they were central to explaining why the Dominion became a federation rather than a unitary state, the latter being the preference of John A. Macdonald.¹⁷ George-Étienne Cartier prevailed and, in addition to the list of exclusive provincial powers enumerated in section 92 of the British North America Act (BNA Act), Quebec and the other provinces obtained jurisdiction over education (section 93). On the basis of this compromise, the Quebec elite agreed that, since they had to enter into a marriage of convenience with someone, better to do so with the Anglais next door than the Anglais in London.

Some French Canadians hoped that Confederation would allow the expansion of francophone culture across Canada. They were quickly disabused of this ambition.

The one significant attempt to establish a French-speaking, Catholic presence beyond Quebec and the adjacent bilingual regions was in Manitoba under the leadership of Louis Riel. Perhaps it would have failed under the most auspicious of government policies. But the

Protestant, English-speaking, white majority pursued the most inauspicious of policies with respect to the French-speaking, Roman Catholic Métis. There was no local equivalent to the Quebec Act to accommodate Métis land-holding traditions and cultural institutions. The geometric grid homestead survey prevailed.

The situation culminated tragically with Riel's execution in 1885, but the ripple effect went on and on. In 1890, despite the terms of Confederation specified in the 1870 Manitoba Act (the imperial legislation whereby Manitoba become a province), anglophone Manitobans, now in the majority, enacted the Official Languages Act, stating that henceforth English would be the province's sole official language. These events in Manitoba poisoned official French-English relations in Canada for the next half century.

The episode had a late-twentieth-century postscript. Inspired by federal policies of official bilingualism across Canada, franco-Manitobans challenged the 1890 Manitoba legislation. In 1979, the Supreme Court ruled that the provincial statute was indeed unconstitutional because it violated the bilingual provisions of the 1870 Manitoba Act.

The challenge was quixotic, however. Beyond creating employment for bilingual lawyers and legal translators, who quickly brought many Manitoba statutes into French, the Supreme Court could do little. It had acted a century too late to have any real effect on the language spoken in the streets of Winnipeg.

The Quiet Revolution

Following the Quiet Revolution of the 1960s, the Québécois abandoned *la foi* but not *la langue*. Almost immediately, they demanded improved educational services and entered, en masse, into technical and business occupations formerly dominated by anglophones. Meanwhile, allophone immigrants became a much more significant component of Quebec society.

Two questions arose: How to assure the ability of the Québécois to work in French?

How to induce the majority of immigrants to assimilate to French? The Quebec government having replaced the Roman Catholic church as the primary institution protecting and promoting francophone language and culture within the province, the answer lay in the National Assembly. Synthesizing a series of less-comprehensive laws, the Parti Québécois in 1977 enacted Bill 101, the Charte de la langue française.

Bill 101 proved extremely popular among the Québécois — and for good reason. It is the twentieth-century equivalent to the eighteenth-century Quebec Act and to sections 92 and 93 of the nineteenth-century BNA Act. All three acts limited to some extent individual freedom of access to anglophone institutions, in particular to English-language schools. The first two accorded special powers to the Roman Catholic church, the key collective institution of the Québécois before 1960; the third accorded analogous powers to the Quebec government. They were essentially pragmatic responses to the local francophone majority's demand for control over matters pertaining to cultural/linguistic survival.

The Next Step

By now astute readers will have guessed that I favor a formal division of powers over language jurisdiction. So it is time to get to the heart of this Commentary, the pragmatic and moral arguments for accepting that path.

The Pragmatic Argument

The strictly pragmatic argument is that the Québécois' anxiety over linguistic survival is fundamental to explaining their support for sovereignty. If federalists, both inside and outside Quebec, want to maintain Canada intact, they must accord the Québécois a more credible guarantee than presently exists about the legitimacy of Bill 101.

Setting aside for the moment the moral question of whether a linguistic community should exercise such powers, I maintain that

Bill 101 or its equivalent was essential if Quebec was simultaneously to be a secular industrial society open to immigration and to remain francophone. In an environment of linguistic free trade, the great majority of allophones would have assimilated to English, and firms — especially those controlled by Anglo-Canadians — would probably have been slower to accommodate the much-enlarged cohorts of well-trained francophones.

The election of the PQ in 1976 prompted creation of the federal Task Force on Canadian Unity, jointly chaired by Jean-Luc Pepin (subsequently a federal Liberal cabinet minister) and John Robarts (a Conservative former Ontario premier). On the subject of language policy, the Pepin-Robarts report accepted the pragmatic argument on behalf of a federal division of powers:

We support the efforts of the Quebec provincial government and of the people of Quebec to ensure the predominance of the French language and culture in that province. We believe that the people of Quebec must feel as confident and secure in the present and future potential of their language and culture as do the people of Ontario and the other English-speaking provinces. There can be nothing more damaging, in our view, to the cause of Canadian unity than the rejection of these aspirations of francophone Québécois by English-speaking Canadians. We believe that present constitutional arrangements which allow the provinces to adopt those laws and regulations which they deem suitable are appropriate to the present and emerging Canadian social context.¹⁸

(See the Appendix for the report's explicit language recommendation.)

Ironically, Bill 101 was probably a principal reason for the PQ's defeat in the 1980 referendum. Many moderate Québécois nationalists, reassured over linguistic matters, voted "no." Why incur the uncertainties of sovereignty if the prospects for a French Quebec were reasonably secure?

By the time of the 1995 referendum, however, Bill 101 was nearly two decades old. By and large, it had realized the goals of its authors,

improving the status of French as the working language of the province and confirming Montreal as a primarily francophone metropolis. And so language figured less prominently in the 1995 public debate than it had in 1980.

Some analysts have concluded, therefore, that the Québécois' anxieties on this subject are no longer central in explaining why a majority of them voted "yes."¹⁹ (Given the overwhelming support for the "no" side among allophones and anglophones, the 49.4 percent overall "yes" support implies that roughly 60 percent of the Québécois voted "yes.")

Polling evidence suggests, however, that linguistic matters continue to explain a good deal — though not all — of Québécois attitudes.

Table 7 reports results from a mid-1995 province-wide survey of Québécois. In summary, more than half thought that the situation of French in Quebec would, to some extent, be better if the province were a sovereign country; about a third thought it would be the same; only 9 percent thought it would be worse. And a third thought the disappearance of French in Quebec was "somewhat likely" or "very likely" if the province remained in Canada.

The sponsors of this survey were a group of academics at the Université de Montréal, who used the results to conduct a statistical analysis of variables that materially affected the probability of voting "yes" in the forthcoming referendum.²⁰ The three most significant variables in explaining the probability of a "yes" vote were the extent to which a respondent (1) believed that Quebec would perform economically better if sovereign; (2) identified primarily as a Quebecer (rather than a Canadian); and (3) believed that the situation of French would improve were Quebec sovereign.²¹ The Québécois may be mistaken in their beliefs about the effect of sovereignty on both economic prosperity and the fate of their language, but the undeniable conclusion is that language matters in explaining their choice between federalism and sovereignty.

Another way to judge the importance of language is to ask whether the Québécois are

Table 7: Québécois Assessments of Alternate Constitutional Outcomes

In your opinion, if Quebec became a sovereign country, would the situation of French in Quebec be...	
	<i>(percent)</i>
worse/much worse	3
worse/little worse	3
same/little worse	3
same/exactly the same	35
same/little better	12
better/little better	20
better/much better	24

If Quebec remains in Canada, do you think that the French language could one day disappear in Quebec?	
	<i>(percent)</i>
very likely	13
somewhat likely	23
not very likely	30
not at all likely	34

Note: These are two questions from a survey conducted by the polling firm Léger & Léger in June 1995 on behalf of Martin, Nadeau and Blais, professors at the Université de Montréal. The reported results refer only to respondents whose first language of use at home is French. The total in this subset of respondents was 666.

Source: P. Martin, R. Nadeau, and A. Blais, "Choosing a Nation: Risk, Uncertainty, and Political Choice in the Quebec Referendum on Sovereignty" (Paper presented at the annual meeting of the American Political Science Association, 1995).

now prepared to relax provisions of Bill 101. Polling evidence reveals they are not.

The results reported in Table 8 are typical. A plurality (almost two out of five) of francophones support strengthening it; roughly a quarter favor leaving it as is; and fewer than a third want to relax the law. Conversely, among nonfrancophone Quebecers, only about one in ten accept Bill 101 as is; the great majority (almost three-quarters) favor relaxing it; and an inconsequential minority (4 percent) want to strengthen it.

The pragmatic argument is straightforward: Québécois want the anglophone majority in Canada to provide a credible guarantee that they, the Québécois, can legislate over their cultural/linguistic fate within Quebec.

The Moral Arguments

A formal division of powers over language jurisdiction does, however, lead to more losses for linguistic minorities than a policy based on linguistic free trade. This calculus poses some difficult questions. Why should our moral conclusion about Bill 101 differ from that about the 1890 Manitoba Official Languages Act? The English majority trampled on the long-established interests of the Métis. Why should the Québécois be able to restrict the linguistic choices of the long-established anglophone minority within Quebec? Why should allophone immigrants be restricted in their choice between the two official languages if they settle in Montreal but not if they settle in Toronto?

Setting aside the injustices perpetrated against aboriginals and African slaves, Canada and the United States are democratic societies to which many linguistic minorities have voluntarily migrated, and these immigrants have made their way intergenerationally without linguistic protection. Why should the Québécois have a unique ability to dictate the linguistic evolution of a region where they happen to be the majority?

These questions have three fundamental answers based respectively on ending discrimination, on the economics of language, and on the distinction between rights and interests.

Overcoming Past Discrimination

Knowledge of a society's elite language affords an individual an economic advantage independent of his or her qualifications. This advantage is both unjust and inefficient. Productive people fail to secure promotion, and aggregate economic performance suffers. (An extreme example was the disadvantage suffered by Russian speakers within their own

country during the eighteenth and nineteenth centuries, when French was the preferred language of the nobility.)

Until the Quiet Revolution, English was the language of business within the province of Quebec. The current policy of francisation of the workplace has probably generated inefficiencies by, for example, accelerating the emigration of anglophone professionals. But it has also probably contributed positively to the partial economic catchup since 1960 by assuring appropriate private sector employment for the much-enlarged cohort of well-trained Québécois. By the simple measure of per capita gross domestic product (GDP),²² Quebec has closed roughly 30 percent of the gap between its productivity and that of Ontario, the other heavily industrialized province in Canada.²³

In considering any policy justified as affirmative action, one must weigh the benefit of advancing a disadvantaged group against the costs imposed on the advantaged. Using 1970 data, Daniel Shapiro and Morton Stelcner find evidence of discrimination in earnings: bilingual francophone males earned 9 percent less than comparably qualified bilingual anglophones. By 1980, that gap had fallen to 3 percent.²⁴ Some portion of this collapse in the earnings differential was the result of the lowering of linguistic barriers for the Québécois and some the result of the exodus of high-earning anglophones.

In addition to the costs imposed on anglophones, Quebec policymakers face the reality that English is the pre-eminent language of international business and of information technology. Although the Quebec government can subsidize translations and encourage the use of French in computer software,²⁵ if Quebec business is to be productive, the Québécois must accommodate English or suffer serious economic costs.

Like other small jurisdictions whose respective languages differ from those of large adjacent neighbors, Quebec faces tradeoffs between the value of protecting the local "minor" language and the need to use "major" languages in order to remain productive and

Table 8: Attitudes toward Bill 101

For several years, different groups within Quebec society representing primarily anglophones and allophones have questioned certain aspects of Bill 101, while several groups representing primarily francophones want to preserve Bill 101. According to you, should we...				
	Leave It as Is	Relax It	Strengthen It	No Answer
	<i>(percent)</i>			
Total (n = 1,002)	20	40	33	7
	<i>Region</i>			
Metropolitan Quebec (n = 300)	26	35	29	10
Metropolitan Montreal (n = 452)	20	44	27	9
Rest of province (n = 250)	20	34	41	5
	<i>Mother Tongue</i>			
French only (n = 837)	23	32	39	6
English/other (n = 158)	11	72	4	13

Note: This survey was conducted by the Montreal polling firm SOM for *La Presse* and the Société Radio Québec in February 1996, with a sample size of 1,002. The heading above is a translation by the author of the actual French question posed, which read: "*Depuis plusieurs années, certains aspects de la Loi 101 sont remis en question par différents groupes de la société québécoise regroupant surtout des anglophones et des allophones alors que plusieurs groupes regroupant surtout des francophones veulent conserver la loi 101, selon vous devrait-on...*" The column headings are translations of the following responses offered to respondents: "*garder telle quelle*," "*l'assouplir*," and "*la renforcer*."

Source: D. Lessard, "Les Québécois partagés en deux blocs sur tous changements à la Loi 101," *La Presse* (Montreal), March 2, 1996, p. A8.

to respect the interests of linguistic minorities. Workable compromises are feasible, as demonstrated by the combination of stable linguistic patterns with high per capita incomes in countries such as Switzerland and Denmark. Bill 101 has not imposed a language regime on Montreal that is more restrictive than that of Geneva, Zurich, or Copenhagen.

Two "sins" are worth mention. One is the matter of commercial signs, which is discussed in detail below. The second is the composition of the Quebec civil service, which, over the past generation, has made inadequate attempts to hire among linguistic minorities. According to one study, the proportion of anglophones shrank from 7 percent in 1941 to 1 percent in 1991.²⁶ Over the past generation, Ottawa encouraged francophones to enter the federal civil service; as they should, linguistic minorities are now insisting that Quebec City do likewise.

The Economics of Language

One implication of the economics of language is the importance of external effects of any one group's language choices. Whenever effects on third parties are significant — whether in transactions generating pollution or in choice of language — free market transactions are potentially inefficient and unjust.

If language policy differs across jurisdictions, inevitably some linguistic communities find themselves on the wrong side of the linguistic border. This is particularly true when that border runs near a major metropolitan center, as is the case with Brussels, Mumbai (Bombay), and Montreal. To see the problem, imagine that, over the past generation, Quebec had embraced federal policies on official bilingualism and placed no barriers on allophone assimilation to English. In that case, Montreal might have preserved its status as the princi-

pal financial center of the country, and allophone immigrants might have settled there in as large numbers as in Toronto. But Montreal would by now be a majority anglophone city, and many young Québécois in Montreal would probably be transferring their linguistic loyalties to English. As happened to Yiddish culture in New York, Montreal francophone culture would be in sharp decline. Although that outcome might be acceptable to many Canadians, it would be a traumatic loss to most of the Québécois.

When faced with the economics of language, moral arguments about language policy cannot retreat into liberal discussions about free choice. Quebec — and Canada — faces a stark choice: which linguistic community has the better moral claim to pursue language policy conducive to its survival — the Québécois or Quebec anglophones?

Unambiguously, the answer must come down on the side of the Québécois. The first reason is utilitarian. The Québécois are the majority within Quebec, and fewer face linguistic losses with a policy that favors French than under an alternative, such as linguistic free trade, that favors English. (The implicit assumptions here are that this generation can legitimately decide the linguistic environment not only for themselves but also for their children and future generations, and that we should ignore the linguistic preferences of people living outside Quebec.)

The second reason is that, for better or worse, ever since the enactment of the Quebec Act in 1774, the basic rules of the Canadian political game have been that the francophone majority controls the institutions governing language and culture within New France. As already discussed, Bill 101 is a secular age's logical extension of section 93 of the BNA Act. Both the ROC and, to a lesser extent, Quebec are now multicultural societies, but, unlike the United States and France, we Canadians did not set up our political game on the basis of a revolutionary break with the past and an assertion of liberal individual rights. We formed an ambiguous entity, a dominion, on the basis

of a pragmatic social compact among the contemporary elites of British North America.

Ironically, on matters constitutional, the Québécois have remained more British than other Canadians. They continue to adhere to ideas of classic federalism espoused by Victorian legal scholars such as A.V. Dicey and to Burkean concepts of parliamentary authority. The majority of Canadians in the ROC have fully embraced the Charter and, like Americans, are now prone to frame political problems in terms of justiciable rights (those to be determined by the courts). In Quebec, however, political dialogue continues to turn more on negotiations among encompassing interest groups; the Charter figures less prominently.²⁷

To advocate linguistic free trade as a substitute for territorial allocation of jurisdiction over language is a form of moral evasion. Although elaboration of a set of minority language services is important, there simply is no escape from making explicit choices about winners and losers in linguistically contested regions. To insist on linguistic free trade as an adequate principle is itself a choice: it condemns minor linguistic communities to intergenerational extinction.

Legitimate Interests, Not Fundamental Rights

The rationale for entrenched legal rights is a negative theory of human liberty. The exercise of liberty requires protection of individuals from coercion by others, particularly when those others are using the power of the state. Entrenching rights renders them more visible and enhances the legitimacy of the courts in the ongoing task of preventing such coercion.

This argument is strongest when applied to fundamental rights, such as freedom of religion, of peaceful assembly, and of expression, and the common law tradition of habeas corpus. The argument for entrenching rights is much weaker when extended to embrace the positive role of the state. The danger then arises of judges' assuming powers that should

remain in the hands of democratically elected legislators.

The state's positive role includes activities such as redistribution of income, the provision of primary/secondary education and social insurance, and the determination of the language(s) to use and promote in legislatures, in schools, and via the regulation of commercial activity. In very general terms, the rationale here is that individuals pursuing their own self-interest are prone to produce a result that the community collectively finds unacceptable. The government's involvement in these activities inevitably entails exercising discretion and making tradeoffs. Overall, government can advance the public interest, but it also creates losers. The appropriate mechanism for scrutinizing and correcting bad public decisions in this domain is via representation to legislators or via elections, not via the courts.

Where public use of language is a matter of contention, most nations do not treat the claims of linguistic communities as justiciable rights. When German-speaking Swiss citizens migrate from Zurich to francophone Geneva, they enjoy much less generous public support for their mother tongue than do Genevans; migrating in the reverse direction, citizens of Geneva lose out. In the United States, Spanish speakers enjoy more services in their language in Miami than they do in Seattle. In both countries, language policy is at times a matter of political debate and language-based interest groups contend. In neither do citizens expect to resolve the matter via judicial decisions.

The Charter recognizes something of this argument by, for example, qualifying the exercise of minority language education rights to places where numbers warrant the provision of publicly funded instruction. Imagine the outcry if the Charter introduced analogous qualifiers to truly fundamental rights. For example, section 3 stipulates that every citizen has the right to vote in elections for Parliament and his or her legislative assembly; section 11 states that "any person charged with an offence has the right...to be tried within a reasonable time." Quite rightly, the Charter does

not qualify either of these sections by reference to the cost of government compliance.

In summary, it is entirely legitimate for linguistic minorities within Quebec to protest provisions of Bill 101 and to seek to expand minority English-language services available. An analogy is the ongoing debate in all societies over the extent to which government should use the tax-transfer mechanism to redistribute income away from the wealthy. But these political debates should be resolved democratically within the appropriate jurisdiction; they should not — with rare exceptions — be matters for the courts.

Bill 101 and the Charter: An Unstable Mixture

The simultaneous existence of Bill 101 and the Charter — manifestations of two divergent language policy principles — has proved an unstable mixture, one that threatens to explode the federation.

Commercial Signs and Rights

Most people (fortunately) do not spend their time perusing the implications of constitutional law. Thus, implications of the Charter for language policy were not widely appreciated until 1988, when the Supreme Court invoked it in a case that dealt with Bill 101's requirement for unilingual French commercial signs.

The PQ had defended the provision as a symbol of Montreal as a francophone city, arguing that it did not impose an undue burden. Montreal anglophones and allophones intensely disliked the provision; they were very public in saying so, and they regularly flouted the law. The advent of the Charter gave non-francophones an occasion to translate their opposition from the political to the legal arena.

The Supreme Court decision in this case, *Ford v. A.G. Quebec*, was complex.²⁸ It allowed, for example, that there were legitimate grounds for the Quebec government to legislate over language. But it ruled that Bill 101's require-

ment for unilingual French commercial signs was in violation of the Charter right to “freedom of thought, belief, opinion and expression” (section 2(b)).

This very broad interpretation of fundamental rights raised the prospect for justiciation of minority language interests far beyond the matter of minority education services explicitly specified in the Charter, extended the concept of freedom of expression firmly into the domain of commercial language, and established a major precedent for future Charter-based challenges intended to limit the Quebec government’s ability to regulate francisation at the workplace.

At the time, the Parti Québécois seemed a spent force. It had been soundly defeated in the 1985 provincial election, and the Meech Lake Accord appeared a done deal. But the Ford decision was a catalyst that immediately brought language concerns to the fore and resurrected the PQ’s fortunes. With near unanimity, Québécois opinion opposed the decision; anglophones both in Quebec and elsewhere supported it.

Then-Premier Robert Bourassa attempted a legislative compromise. He used the notwithstanding clause to enact Bill 178, which provided that outside signs remain unilingually French but inside signs could be bilingual. Québécois opinion was divided; some were willing to accept the compromise, while others wanted simply to reinstate the original unilingual sign provisions of Bill 101. Anglophone opinion, both inside and outside Quebec, was adamantly hostile to Bourassa’s resort to the notwithstanding clause.

More than any other event, this controversy turned the country’s opinion against the Meech Lake Accord and made it impossible to sustain sufficient public support in the ROC for its entrenchment.²⁹

The View from Quebec

It is hard to exaggerate the destructive effect on French-English relations of the Supreme Court’s broad interpretation of Charter rights

with respect to language. Probably most Canadians in the ROC believe that the Court’s decisions with respect to Bill 101 have been minor, largely justified limitations on the excesses of Quebec linguistic protectionism. But for most of the Québécois, the Charter now appears as an ill-defined threat to their language laws.

Even as convinced a federalist as Stéphane Dion has articulated this fear.

Since the [Supreme Court] judgments have been issued, one may think that the survival of [Quebec language] policies is secured. In fact, nothing is less certain. A Supreme Court might decide someday that denying the right of a new immigrant or of a francophone to go to an English school, when English speakers have such a right, is contrary to the *Charter of Rights*; the Court could invoke...Article 15 prescribing legal equality of all citizens. Such a judgment may seem unlikely today, but who knows for the next generation? The French presence will decrease as a demographic reality outside Quebec, and Quebec’s weight will decline in Canada. Therefore, it is necessary to solidify language protections now.³⁰

To Dion,

[t]he key issue is and always will be language. The government of Quebec would better serve its citizens if it focused the negotiations on such a critical issue, instead of bringing on the table vague notions (distinct society) as it did during Meech Lake, or instead of demanding almost everything as it did after Meech Lake (the Allaire report).³¹

Dion has subsequently modified his position. At times, he has argued that entrenchment of a distinct society clause is sufficient to assure Quebec’s cultural/linguistic interests; at other times, he has called for some as-yet-unspecified constitutional guarantee for the French language in Quebec.³² The precise nature of Dion’s position is irrelevant to the argument at hand. What is important is to recognize that, for many thoughtful Québécois, a fortiori for sovereignists, the Charter poses a

significant threat to the historic compromise whereby they could effectively legislate over cultural/linguistic matters within their own province.³³

Federalists want Québécois sovereignists to ask themselves, is independence worth the disruptions to social and economic relations that it would entail? Simultaneously, federalists must ask themselves hard questions about the noncooperative strategy on language policy implicit in the Charter. Admittedly, the commercial sign provisions of Bill 101 are a blunt means to make a point, but surely they come under the category of bureaucratic annoyances. Are the costs imposed on Quebec allophones and anglophones by Bill 101 of such gravity that they should be elevated to the status of violations of fundamental, justiciable human rights? Does the ROC so mistrust the current generation of Québécois political leaders that the Supreme Court must assume wide responsibility for language policy within Quebec? At present, Quebec has no firm constitutional basis on which to legislate over the public use of language in the province. Is that reasonable, given the importance to most Québécois of language legislation?

What Is to Be Done?

On both sides of the Ottawa River pessimism prevails. Any constitutional compromise is now destined for failure, say many: constitutional reform is the equivalent of Sisyphus's futilely rolling his stone uphill.

In part, this pessimism merely reflects the depressing fact that both the PQ and the federal Liberals have pursued noncooperative strategies since 1976. It seems to me only realistic that Canadians in the ROC should at this stage explore options for dealing with possible Quebec secession. But if Canadians — anglophones and francophones — invest all their political energy in analyzing a future in separate beds, they should not be surprised if divorce is what comes to pass. (Indeed, if Gordon Gibson is correct in his predictions of

a subsequent breakup of the ROC,³⁴ the children may also fall out among themselves.)

Given that caveat, I see three tactical options:

- Ignore the language problem and rebalance the federation.
- Try, for a third time, to entrench a distinct society clause in the Constitution.
- Negotiate a more explicit federal/provincial division of jurisdiction over the public use of language.

As I have already said, I believe the preferable option is the third, explicit provincial language jurisdiction, but each is worth considering briefly.

Ignore the Language Problem

Some federalists, while sensitive to the importance of language matters, argue that the failure of the Meech Lake and Charlottetown Accords is proof of the impossibility of realizing any constitutional compromise on cultural/linguistic matters. However important is language, ignore it, they say. Attempts to improve the probability of the federation's survival should pursue other directions, in particular administrative devolution of responsibilities from Ottawa to all provinces. Along this route lies a convergence of interests between the majority of the Québécois and many Canadians in the ROC.³⁵

This first tactic falls under the category of letting sleeping dogs lie. It might succeed, and some decentralization is worth pursuing (see Box 4). But decentralization should be defended on its own grounds (in general, it allows for a more efficient provision of public goods and services). I doubt it can serve as an adequate substitute to explicitly tackling the problem of language. To the extent Stéphane Dion is correct in saying "the key issue is and always will be language,"³⁶ the unresolved conflict between the principles underlying Bill 101 and the Charter will sooner or later frustrate the expectations of those who advocate decentrali-

zation as a sufficient solution to the unity problem.

Pragmatic federalists should not let this dog sleep. The refusal of most federalist politicians — in the ROC especially, but also in Quebec — to discuss jurisdiction over language amounts to what Michael Mandel calls the legalization of politics, an abdication by politicians in favor of judges.³⁷ The government in London achieved a workable social compact for New France in the 1770s; John A. Macdonald and George-Étienne Cartier worked one out for the new Dominion in the 1860s. Surely, Canadian politicians can do likewise in the 1990s.

Entrench A Distinct Society Clause

The essence of the second tactic is to insert a clause in the Constitution calling on the courts to interpret constitutional cases from the perspective that Quebec is distinct relative to the rest of Canada.

It was the tactic chosen by the Quebec Liberals and federal Conservatives as they attempted, between 1985 and 1992, to define a cooperative strategy, and many people have conducted a great deal of analysis in attempting to explain why it failed. Suffice it to say that, among the leading opponents of adding any distinct society clause to the Constitution were many leaders of the PQ and the federal Liberals. While out of power, both remained committed to their respective noncooperative strategies.

The two versions of a distinct society clause — from the Meech Lake and Charlottetown Accords — can be summarized as follows. (See the Appendix for the precise texts of both versions.) Both “affirmed” the role of the Quebec government to “preserve and promote the distinct society of Quebec.” The Meech Lake version called on the courts to interpret the constitution in a manner consistent with the idea that “Quebec constitutes within Canada a distinct society.” It did not define distinct society; the Charlottetown version, however,

Box 4: *It's Not Only Language*

In my emphasis on the centrality of language, I do not mean to imply that the unity problem is solely a function of language conflicts. Clarifying federal and provincial responsibilities for social and economic policy is equally important. The key reform needed here is probably for Ottawa to agree to vacate the field of worker training in favor of any province that wants to take it on, and for the provinces to pursue more aggressively active labor market policies designed to return the unemployed to work. The manifesto recently published by the Group of 22* provides a good synthesis of ingredients for a cooperative strategy pertaining to social and economic policy. Furthermore, these reforms can, as Gilles Paquet has eloquently put it, use the “downtrodden administrative road” and thereby minimize traffic on the “constitutional high road.”[†]

* Group of 22, *Making Canada Work Better* ([Toronto?], 1996).

† Gilles Paquet, “The Downtrodden Administrative Route,” *Inroads* 5 (1996): 121.

defined it in terms of “a French-speaking majority, a unique culture and a civil law tradition.”

The Meech Lake version noted “the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec.” Furthermore, this version “affirmed” the role of Ottawa, Quebec, and the other provinces to “preserve” this “fundamental characteristic of Canada.” The Charlottetown version imposed a more ambitious obligation on all Canadian governments: that they be “committed to the vitality and development of official language minority communities throughout Canada.” Both versions insisted that the amendment entailed no transfer of powers between Ottawa and any province.

This tactic with regard to distinct society, which specified very little and relied on the good will of the principals, can be summarized as creative ambiguity. Ambiguity plays a useful role in diplomacy where the parties agree that the political process is likely to allow future mutually satisfactory negotiation of un-

specified matters. In the mid-1980s, that was the prevailing sentiment among most Canadians. Even a superficial reading of the speeches and analyses of Meech Lake supporters reveals the conciliatory intent: the desire to put an end to the noncooperative strategies that had been pursued by the PQ and the federal Liberals.

Many federalists, in particular the leadership of the Quebec Liberal Party, remain committed to this tactic.³⁸ But, to import a baseball metaphor, the distinct society tactic has struck out twice, and in what has become a close game, the federalist coaches should send it to the benches. Its virtues have now become its vices. Because its meaning is so imprecise, both its supporters and its opponents have interpreted it to mean wildly divergent things.

Donald Savoie nicely summarizes the prevailing confusion:

Canadians simply do not understand what the term “distinct society” actually means nor, were it enshrined in the constitution, what difference it would make to the running of our country. Furthermore, I doubt that anyone really knows for sure what it means. Some constitutional experts insist that the phrase is two symbolic words with negligible substantive meaning, while others argue that, once in the constitution, “distinct society” would take on a life of its own and there is no telling where it would take us.³⁹

Private polling evidence suggests that a distinct society clause means very different things to different people. Furthermore, these differences are not regionally random. For example, the evidence suggests that the majority in the ROC think that a distinct society clause would encourage Quebec to reduce further the use of English and presumably promote further the use of French; the majority in Quebec disagree that it would have this result.

The prevailing confusion and divergent regional interpretations have led to a marked regional variance in support for and opposition to this tactic (see Table 9). A large majority in Quebec want their province to be recognized as a distinct society; in the ROC, a majority do

not want Quebec to receive that status. While all ROC regions oppose the distinct society designation, opposition is stronger in the four western provinces than in the Atlantic region or in Ontario.

In summary, the phrase distinct society now has too many contradictory meanings and is too adamantly opposed in western Canada to be of much use in defining a cooperative strategy. A minor role remains, and is discussed below in the context of establishing an effective provincial language jurisdiction.

Negotiate a Division of Language Jurisdiction

This third tactic is based on the idea that it is better to be hanged for a wolf than a sheep. Language is so inherently controversial a matter that it is better to be frank about our differences and attempt to negotiate an explicit compromise over the division of powers.

How could such an outcome be accomplished? Logically, any constitutional amendment dealing with language belongs in section 92, the section specifying provincial powers. Perhaps luckily, section 92A — the specification of federal and provincial jurisdiction over the management and taxation of nonrenewable natural resources, which was entrenched in 1982 (see Box 5) — provides precedent for adding a complex clause to clarify a matter of serious interregional conflict. If we can open the constitution to relieve Westerners’ anxiety over the Supreme Court’s interpretation of provincial resource jurisdiction, we can surely do the same to accommodate Québécois anxieties over the status of Bill 101.

A Constitutional Amendment

If we attempted to solve the language problem with an addition to the Constitution — call it section 92B — what would it say? Three significant attempts to grapple with the complexities of the problem have appeared over the past two decades: the report the Pepin-Robarts Task Force in 1979; the Beige Paper published by the constitutional committee of the Quebec

Table 9: Public Support for Constitutional Recognition of Quebec as a Distinct Society

	Agree	Disagree
	<i>(percent)</i>	
Atlantic	42	53
Quebec	80	13
Ontario	47	50
Prairies	38	60
British Columbia	36	61
Rest of Canada	43	55
Rest of Canada, 1995-96 average	43.5	53

Source: These statistics are from polls conducted by Environics Research Group Ltd. All results — except the four-poll average — are from a national poll conducted in March 1996, with a sample of 2,249 adult Canadians. The average ROC statistics are calculated from four polls conducted between February 1995 and March 1996.

The Canadian Union Papers
 Language Matters:
 Ensuring That the Sugar
 Not Dissolve in the Coffee
 by
 John Richards

Liberal Party before the 1980 referendum; and the PQ proposals released in the waning months of its first government. Excerpts from these documents bearing on language are reproduced in the Appendix.

All are useful in considering the content of a section 92B, where the necessary ingredients are threefold:

- Specification of the bilingual nature of federal institutions.
- Definition of a suitably robust general provincial power to legislate over the public use of language.
- Specification of a set of language services to be enjoyed by official language minorities.

The Charter does a good job in defining the bilingual nature of federal institutions. The tough problems all reside in getting the right mix of the second and third ingredients. Box 6 contains my own suggestions for a section 92B and an accompanying revision to the Charter. (My reasons for the latter are explained below.)

Some Outstanding Questions

The previous subsection certainly does not answer all the questions about what we need by way of constitutional amendment. Two of the most obvious are:

- Should all provinces or Quebec alone receive specific language powers?
- Should minority language services be defined in terms of existing justiciable rights or in statutes (or constitutional language) outside the Charter?

I shall discuss each in turn.

Language Powers to Quebec Alone?

Should all provinces receive language powers? My personal preference is for an asymmetric answer — for Quebec alone to enjoy constitutional power over language. But one can raise good tactical arguments on behalf of provincial symmetry.

The Pepin-Robarts report and the Beige Paper both advocated symmetry. Moreover, preserving equality of constitutional treatment among provinces has become a central position of many in constitutional debates over the last decade. Reform Party leaders, for example, have simultaneously championed provincial equality and, usually *sotto voce*, supported provincial language jurisdiction. They have also called *fortissimo* for less bilingualism within the federal jurisdiction, raising once again the tradeoff between majority and minority linguistic interests.

Given the need to garner western support for any constitutional change, the Reform position must not be treated lightly.

On the other hand, the provinces are obviously distinct in terms of their respective language preferences. Most Québécois want a credible guarantee of their government's power to protect French. New Brunswick is the only genuinely bilingual province in the country; its governments have been content with the self-imposed requirements of official bilingualism entrenched in the Charter in 1982.

Box 5: Section 92A of the Constitution

The 1970s saw considerable federal/provincial conflict over natural resource industries, with both levels of government legislating and attempting to regulate and capture windfall revenues. Tempers ran high.

Many of the provinces, especially in the west, had set in place complex regimes to regulate natural resource production and extract royalty revenues. Their constitutional basis for doing so was ambiguous, however, and two contentious Supreme Court decisions brought the matter to a head.

In *CIGOL v. Government of Saskatchewan and Central Canada Potash v. Government of Saskatchewan*, the Court ruled that Saskatchewan legislation went beyond provincial jurisdiction, infringing on federal jurisdiction over taxation and inter-provincial trade and commerce.*

These decisions eroded what the provinces had thought to be their jurisdiction over natural resources and prompted appeals from western Canada for constitutional redress. The result was section 92A, a complex clarification of respective provincial and federal powers to regulate and tax resource industries. It was entrenched in the Constitution (along with the Charter and the amending formula) in 1982.

* For a survey of the complex legal and political debates of the 1970s about resource jurisdiction, see J. Richards and L. Pratt, *Prairie Capitalism: Power and Influence in the New West* (Toronto: McClelland & Stewart, 1979), chap. 11.

Elsewhere in the country, provincial governments have shown little interest in changing their constitutional status on this matter.

An amendment that defined a language power for Quebec alone would have several advantages. It would not raise the threat that militant English-rights groups in New Brunswick would seek to use the new provincial language jurisdiction to undo that province's special linguistic provisions. (Indeed, the special treatment already accorded to New Brunswick is a precedent for the idea that, on this matter, Quebec could be treated differently from other provinces.)

Also, such a constitutional amendment would not require approval under section 38's standard 7-50 rule (support by the House of Commons and by legislatures of two-thirds of the provinces representing more than half the Canadian population). An amendment that affected only Quebec could be entrenched with approval of the House of Commons and the legislature of that province under section 43.

Minority Language Services as Charter Rights?

To what extent should individuals be able to use the courts to define what they perceive to be appropriate minority language services?

The question looks back to the earlier discussion about whether language communities have interests or fundamental rights. Aggrieved individuals can initiate Charter-based court cases; they can also challenge the constitutionality of a statute, arguing that it exceeds the jurisdiction of the province or of Ottawa. If a government loses a conventional court challenge of a statute, it may be able to realize its goal by rewriting the law or by negotiating with the other level of government. If a government seeks to overturn a Charter-based decision, on the other hand, the notwithstanding clause may or may not be applicable, and even if it is, invoking it will involve political cost.

This question poses yet another tradeoff for policymakers: using the Charter would give greater assurance to linguistic minorities but conversely weaken the credibility of whatever political compact was struck among linguistic majorities. The Pepin-Robarts report advocated that minority language services be expressed in provincial statutes and be entrenched only in the case of unanimous provincial agreement. I agree in principle. But given the sensitivity of minority language issues and given that some minority language services are already entrenched in the Charter, the only feasible policy is to leave what is there intact.

Box 6: Proposed Constitutional Amendments

Section 92B: Powers to Legislate over Public Use of Language

My proposal features two constitutional changes: a new section 92B that specifies the federal/provincial division of jurisdiction over languages, and the introduction of a very limited distinct society clause.

As discussed in the main text, this amendment could be symmetric and accord a language power to all provinces. Alternatively, it could apply to Quebec alone.

Section 92B(1)

This section would open with a blunt statement to the effect that each province (or Quebec alone) can determine an official language or languages for itself and can legislate over matters pertaining to the public use of language within the province.

Tactically, it would make sense to resurrect the wording of the Pepin-Robarts report* (with suitable modifications in the event of a Quebec-only clause): “Each provincial legislature should have the right to determine an official language or official languages for that province, within its sphere of jurisdiction.”

Section 92B(2)

This subsection should state that the power specified in subsection 92B(1) is to be interpreted in a

manner consistent with the minority language services specified in the Charter. In particular, it should not curtail official language minority education services and, if the clause is drafted symmetrically, it does not modify the official bilingual status of New Brunswick.

The Pepin-Robarts Task Force proposed that official language minorities should have access to essential health and social services in their language and be able to plead before any court in their language, but qualified the provision with reference to “wherever feasible”; the PQ in 1985 made somewhat similar proposals.⁷ Subsection 92B(2) could specify these minority language services as desirable but note that, being outside the Charter, there would be no intent that they become justiciable rights.

Section 92B(3)

Following the precedent of subsection 92A(3), the section should contain a statement to the effect that “nothing in this section derogates from the authority of Parliament” to legislate for the equal treatment of French and English within the federal jurisdiction.

The thorny matter of the federal spending power with respect to official bilingualism must be considered. This section could specify that Ottawa be able to spend in this domain, but if undertaken in an area of provincial jurisdiction, such spending would be subject to the approval of the relevant

We cannot, however, let the genie of litigation over minority language rights completely out of the bottle; we must be able to dispatch it when necessary. In a valuable trial balloon recently launched on behalf of the Saskatchewan government, Greg Marchildon, the province’s deputy minister of intergovernmental affairs province, addressed this problem:

We need creative thinking to address both Quebec’s need for some greater degree of legislative jurisdiction than it has at present to protect and promote its language and culture and for a *Charter of Rights* that is more sensitive to the challenges faced by Quebecers in ensuring that they do not dissolve like the proverbial lump of sugar in an English cup of coffee. We also need to reassure the rest of Canada that we are not giving an open-ended ill-defined set of special powers to Quebec.⁴⁰

To avoid the dilemma, he suggests:

- We could grant provinces exclusive jurisdiction over public use of language...with that power subject to limits imposed by the *Charter*.
- To assure Quebecers that the *Charter* does not take away with one hand the jurisdiction afforded by the other, the *Charter* itself could be amended by addition of a qualified distinct society — or equivalent — clause. The clause would specify that Quebec is distinct with respect to its language, culture and civil law tradition, and provide an interpretive “lens” through which *Charter* cases should be viewed. Application of the clause would be limited to the Charter alone. This would at least partially reassure those concerned about an open-ended distinct society clause as contained in the Meech Lake Accord.⁴¹

province. This specification would allow Ottawa to continue funding, without constraint, minority language associations across Canada, but it would also assure the provinces that this spending power would not become a means of infringing on provincial jurisdiction in areas such as education.

The Canadian Charter of Rights and Freedoms: Revised Section 27

As discussed in the text, the courts should be instructed to interpret the Charter from the perspective that Quebec is distinct with respect to its language, culture, and civil law tradition. The purpose of a Charter amendment is pragmatic. Expressed bluntly, it is to lower the probability that the courts repeat the mistake of the *Ford* decision.

A distinct society clause could usefully draw on the precedent of the existing interpretive clause in section 27. (It reads: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.") An appropriate means to introduce a severely qualified distinct society clause is an amendment to section 27:

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the following fundamental characteristics of Canada:

- a) Quebec as a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition; and
- b) the multicultural heritage of Canadians.

The placement of any distinct society amendment poses a tradeoff. Placing it up front would appeal to those Québécois wanting symbolic recognition of their distinctness; placing it at the back would minimize its symbolic import and somewhat placate those concerned with the inherent ambiguities of "distinct society." Relegating it to the back is preferable, I think. The appropriate symbolism implicit in section 92B and this Charter amendment is not that Quebec enjoys an ambiguous special status within Canada. To the extent that symbols can be separated from specific powers and rights, the intended symbolism is that *all* Canadians accept the legitimacy of the Québécois' deciding collectively their linguistic destiny.

* Canada, Task Force on Canadian Unity, *A Future Together*, chaired by Jean-Luc Pepin and John Roberts (Ottawa: Supply and Services, Canada 1979), p. 121.

† *Ibid*; and Quebec, *Draft Agreement on the Constitution: Proposals by the Government of Quebec* (Quebec City, 1985). The relevant sections of both documents appear in the Appendix.

The introduction of a limited distinct society clause, applicable solely to interpretation of the Charter, seems a nice compromise. (See Box 6 for further elaboration.)

Conclusion

What substantive difference would it make to entrench a section 92B in the Constitution? No answer to such a question can be definitive, so in conclusion, I indulge in some speculation with respect to the implications for another referendum, to bilingualism in federal institutions, and finally to official language minorities.

The Sovereignty Question

A depressing parallel exists between the failure of the Meech Lake Accord and, a century earlier, the defeat of British Prime Minister William Gladstone's Irish home rule bill. Both were attempts at accommodation. In 1886, the Unionists triumphed over Gladstone and in

the short run prevented devolution of power to an Irish assembly. In the long run, positions hardened; those leaders who shared some elements of Victorian liberalism were replaced by others who did not. The Unionists' refusal to compromise has now become part of a festering wound in British society.

Fortunately, the major protagonists in Canada's unity conflicts remain genuine democrats. Positions have hardened in recent decades, however, and the window for compromise may be slowly closing. Many Québécois of this generation are convinced sovereignists; nothing short of a sovereign Quebec state can satisfy their expectations. Conversely, many Canadians in the ROC identify adamantly with the rights-based approach to the Constitution entailed by the Charter and believe that all provinces must be constitutionally equal regardless of manifest differences among them.

Fortunately, polls show that the majority of Québécois still prefer some variant of "re-

newed federalism.” This term has as imprecise a meaning as “distinct society,” but a common thread among its advocates is that all Canadians accept the legitimacy of the Québécois’ deciding collectively their linguistic destiny.

An optimistic but nonetheless reasonable prognosis is that, if something like my section 92B were entrenched, if Ottawa engaged in a credible exercise of devolving jurisdiction over matters such as manpower training, and if all ten provinces behaved as statesmen in assuming enhanced social policy responsibilities (see Box 4), support for sovereignty would decline substantially among “soft nationalists.” Overall, support for sovereignty might quickly decline from its present 50 percent range to, say, 35 percent, and the PQ would be obliged to repeat René Lévesque’s *beau risque* (when he accepted Brian Mulroney’s call for reconciliation within a federal context).

Two swallows do not a summer make. But the Reform Party’s *sotto voce* support for provincial language jurisdiction and the Saskatchewan government’s trial balloon indicate some political willingness in the ROC to accommodate Québécois linguistic concerns. Negotiation of an explicit provincial language jurisdiction is for many in the ROC a more attractive option than establishing Quebec as a “distinct society,” which has come to imply that it would obtain a nebulous set of special powers, powers not available to the “indistinct” ROC provinces.

Admittedly, my proposal contains a Charter amendment that introduces a distinct society clause. However, it is so circumscribed I doubt it could excite passionate opposition. The core of this proposal is section 92B (see Box 6), the negotiation of which would undoubtedly entail controversy.

The Status of Official Languages

How might explicit Quebec language jurisdiction for Quebec affect the status of English in that province and the status of French in central institutions, such as the federal civil

service and the Canadian Broadcasting Corporation? Again, no answer can be definitive.

Already — and probably inevitably — Québécois insistence on preservation of the francophone character of Montreal has shifted both the financial center of English-speaking business and the preferred destination for most allophone immigrants outside Quebec. That shift has dramatically eroded the power and influence of the Quebec anglophone community over the past half-century.

The proposed section 92B would extend this erosion inasmuch as it restricted the ability to use Charter-based court challenges in bargaining over English language services. Anglophones’ status would unambiguously be that of a minority contending within the arena of Quebec provincial politics. Perhaps, the francophone majority would prove ungenerous. It is far more likely, I predict, that the Québécois would demonstrate their commitment to pluralist democratic traditions and respond flexibly. Indeed, they might well respond more generously than in the past. At present, Quebec governments fear the potential for the courts to exploit flexible language provisions as precedents for restricting future legislative initiatives. With a firm constitutional basis for legislating over language, that fear would be attenuated.

If linguistic jurisdiction was resolved in Quebec’s favor, Canadians in the ROC might be less willing to promote bilingualism in central institutions. But even Reform Party leaders have recognized the need for extensive bilingualism within these institutions. The primary Reform complaint lies elsewhere: frustration at the ability of Quebec-based MPs of all stripes — from Trudeau Liberals through Mulroney Tories and Bouchard Bloquistes — to act as a large unified bloc in Parliament and thereby obtain policies that transfer excessive income from Canadians west of the Ottawa River to Canadians east of it.

French in the ROC

A standard objection to my kind of proposal is the need to protect the language of franco-

phones in the ROC. Following such a reform, ROC Canadians might be less willing to subsidize ROC francophones outside Quebec. A far greater threat to their survival than reduced federal funding, however, is Quebec secession, which would reduce the extent of their informal exchange with a major francophone community. The great majority of ROC francophones, recall, live in the two provinces adjacent to Quebec, and their fate depends crucially on the continuation of Quebec as a francophone province within Canada. More even than Montreal anglophones — who live in an anglophone continent and, at worst, can always migrate to Toronto — ROC francophones have a stake in the federation's survival.

For a moment, view the conflict as a game of chess in which ROC francophones have been pawns. Ottawa claims official bilingualism is a means to prevent their assimilation, but simultaneously Ottawa has promoted official bilingualism as an alternative within Quebec to Bill 101 and, more generally, as evidence that federalism is superior to secession. Its potential has been oversold. The evidence on language retention (recall Table 3) is that, beyond Acadia and eastern Ontario, official bilingualism has at best slowed the rate of linguistic assimilation and that French-language retention nonetheless declined between 1971 and 1991.

Were there a more satisfactory social contract among the major linguistic communities — francophone in Quebec and anglophone in the ROC — Ottawa and the provinces could examine minority communities' fate more realistically. ROC francophones would no longer be pawns. Quebec City would not fear federal support to them as a tactic to undermine Bill 101's restrictions on use of English within Quebec, and the ROC provinces would be less inclined to view official bilingualism as an extension of the "Quebec problem."

C.D. Howe Institute Commentary® is a periodic analysis of, and commentary on, current public policy issues.

John Richards, the author of this issue, is Associate Professor of Business Administration at Simon Fraser University and Adjunct Scholar of the C.D. Howe Institute. The text was copy edited by Lenore d'Anjou and Elizabeth d'Anjou and prepared for publication by Wendy Longsworth.

As with all Institute publications, the views expressed here are those of the author, and do not necessarily reflect the opinions of the Institute's members or Board of Directors.

To order this publication, please contact: Renouf Publishing Co. Ltd, 5369 Canotek Road, Unit 1, Ottawa, Ontario K1J 9J3 (tel.: 613-745-2665; fax: 613-745-7660), Renouf's stores at 71¹/₂ Sparks Street, Ottawa (tel.: 613-238-8985) and 12 Adelaide Street West, Toronto (tel.: 416-363-3171), or the C.D. Howe Institute, 125 Adelaide Street East, Toronto, Ontario M5C 1L7 (tel.: 416-865-1904; fax: 416-865-1866; e-mail: cdhowe@cdhowe.org).

We also invite you to visit the Institute's Internet web site at:

<http://www.cdhowe.org>

Quotation with proper credit is permissible.

\$6.00; ISBN 0-88806-403-9

A Closing Warning

In closing, I can only paraphrase Georges Clemenceau: language is too important to the survival of the Canadian federation to leave to the Quebec academics, politicians, and journalists who have exhaustively debated the matter over the past generation, or to Supreme Court justices. If Canadians want to preserve the federation, a necessary (if far from sufficient) condition is that Canadians in the ROC engage the debate. Without a modern equivalent of the deal between John A. Macdonald and George-Étienne Cartier, the probable long-term outcome is Quebec secession.

Notes

- Portions of this *Commentary* appeared in J. Richards, "The Case for Provincial Jurisdiction over Language," in J. Richards et al., *Survival: Official Language Rights in Canada*, The Canada Round 10 (Toronto: C.D. Howe Institute, 1992). In the earlier work, I make the same policy argument: that any cooperative solution to the unity game requires more explicit Quebec jurisdiction over the public use of language.
- This essay has benefited from animated critiques of earlier drafts by many people. I thank Ken Boessenkool, Michael Bryant, David Cameron, Tom Courchene, Angela Ferrante, Greg Marchildon, John McCallum, Henry Milner, Patrick Monahan, Bill Robson, and Daniel Schwanen. Some strongly agree and others strongly disagree with the basic policy recommendation; none should be blamed for the remaining inadequacies in the argument. Lee and Elizabeth d'Anjou conducted a superb edit of the text, for which I am truly appreciative.
- 1 Throughout this essay, I use *Québécois* as shorthand for francophone Quebec citizens. In no way should this be interpreted as implying that nonfrancophone Quebecers are less legitimate citizens of the province.
 - 2 B. Reesor, *The Canadian Constitution in Historical Perspective* (Scarborough, Ont.: Prentice-Hall Canada, 1992), p. 303.
 - 3 Were Quebec a sovereign country with its present per capita GNP, it would rank third among countries of the Western Hemisphere, behind the United States and the ROC. In 1993, the United States' per capita GNP was US\$24,700; Canada's was US\$20,000. Quebec's per capita GNP is approximately nine-tenths of the Canadian average and its population is one-quarter of the total. Based on these approximations, the 1993 per capita GNP for the ROC was US\$20,600, and for Quebec US\$18,000. (Incidentally, this calculation places Quebec's per capita GNP exactly equal to that for the United Kingdom.) The Quebec figure is two and a half times that of Argentina, the fourth-ranking country in the Western Hemisphere, with a 1993 per capita GNP of US\$7,200. World Bank. *Workers in an Integrating World*, World Development Report 1995 (New York: Oxford University Press, 1995), table 1.
 - 4 Marcel Côté, "What Does Quebec Want?" *Inroads* 5 (1996): 106-107.
 - 5 Ruth Wisse, "Reaping the benefits of English," *Globe and Mail* (Toronto), June 15, 1996. Reprinted from *The New Republic*. Like many other nonofficial languages in Europe, Yiddish would probably have declined over the present century, even without the tragedy of the Holocaust. The Holocaust put an abrupt end to European Yiddish culture.
 - 6 Four million is a somewhat arbitrary lower bound. The population of Singapore is roughly 3 million; that of Norway is 4 million; that of Denmark, Finland, and Georgia, about 5 million each.
 - 7 Canada, Statistics Canada, *Language Retention and Transfer*, Cat. 94-319 (Ottawa, 1993).
 - 8 In Ontario, for example, the Canadian census counted nearly 2 million allophones in 1991. In terms of home language, slightly over 1 million retained their mother tongue; 817,000 spoke English, and only 3,200 spoke French. Of the 130,000 who reported multiple home languages, only 2,400 cited French as one of them. *Ibid.*
 - 9 F. Robinson, ed., *The Cambridge Encyclopedia of India* (Cambridge: Cambridge University Press, 1989) is an excellent introduction to the complex subject of language in South Asia. See also S. Wolpert, *A New History of India*, 4th ed. (Oxford: Oxford University Press, 1993).
 - 10 Quebec, *Charter of the French Language*, R.S.Q. chapter C-11, updated to August 16, 1994, p. 1.
 - 11 This summary is derived from Quebec, *Le français langue commune: enjeu de la société québécoise*, Report of the Interministerial Committee on the Situation of the French Language (Quebec: Ministère de la Culture et des Communications, 1996), pp. 13-16.
 - 12 The courts have limited the ability of Quebec to establish French as the official language within the province. For example, in *A.G. Quebec v. Blaikie*, the Supreme Court struck down certain provisions of Bill 101 as being contrary to the intent of section 133 of the *Constitution Act*, which provides that both French and English enjoy equal status in the records of the Quebec Assembly. Since Quebec had continued to publish unofficial English versions of statutes and many official documents after the passage of Bill 101, the practical import of *Blaikie* has been minor.
 - 13 Quebec, *Le français langue commune*, p. 15.
 - 14 Pierre Elliott Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968).
 - 15 The Charter obliged the Quebec government to relax restrictions on access to English primary and secondary schools. Simultaneously, it required the ROC provinces to provide more extensive schooling in French for their respective francophone minorities.
 - 16 For a succinct statement of this argument, see, for example, Quebec, Commission nationale sur l'avenir du Québec, *Report* (Quebec, May 1995), pp. 52-54.
 - 17 See D. Creighton, *Canada's First Century* (Toronto: Macmillan, 1970), p. 9.
 - 18 Canada, Task Force on Canadian Unity, *A Future Together*, chaired by Jean-Luc Pepin and John Robarts (Ottawa: Supply and Services Canada, 1979), p. 51.
 - 19 A critique of the position being advanced here is contained in two articles written by Lysiane Gagnon: "Language is no longer the issue; control over immigration is," *Globe and Mail* (Toronto), January 7, 1995, p. D3; and "Why sovereigntists don't attack the Official Languages Act," *Globe and Mail* (Toronto), January 14, 1995, p. D3. These were vigorous rebuttals to an article

-
- of mine, "The case for a simple deal with Quebec," *Globe and Mail* (Toronto), January 3, 1995, p. A17.
- 20 P. Martin, R. Nadeau, and A. Blais, "Choosing a Nation: Risk, Uncertainty, and Political Choice in the Quebec Referendum on Sovereignty" (Paper presented at the annual meeting of the American Political Science Association, 1995).
- 21 This paragraph summarizes a complex statistical analysis. As constructed, the authors' model assumes identity is independent of other variables. Arguably, it is not. If the model were specified such that identity depended on expectations about linguistic survival and economic performance, then the relative importance of those expectations would loom even larger.
- 22 For the years 1961–65, Quebec's per capita GDP averaged 75.9 percent of Ontario's; for the most recent five-year period, 1990–94, the analogous ratio was 82.8 percent. Calculated from Canada, Department of Finance, *Economic Reference Tables* (Ottawa, 1995), table 8.2.
- 23 Thomas J. Courchene makes this argument in interpreting Quebec language laws:
- Bill 101 was not so much a cultural and linguistic measure as it was an economic one — French as the language of work. With the civil service no longer able to absorb the new wave of graduating Québécois, Bill 101 ensured that they now had easier access to the upper echelons and to the board rooms of Canadian and multinational enterprises operating in Quebec.
- T.J. Courchene, "What Does Ontario Want?" *Rearrangements: The Courchene Papers* (Oakville, Ont.: Mosaic Press, 1992), p. 7.
- 24 D.M. Shapiro and M. Stelcner, "Earnings Disparities among Linguistic Groups in Quebec, 1970–1980," *Canadian Public Policy* 13 (March 1987): 97–104.
- 25 According to a recent Quebec government report, in 1986 the language of computer programs used by francophone employees in Montreal was 33 percent French, 13 percent bilingual, and 54 percent English. By 1989, French had made modest gains. The analogous statistics were 38 percent French, 21 percent bilingual, and 41 percent English. Quebec, *Le français langue commune*, p. 88.
- 26 J. Gow, "La gestion des ressources humaines dans une période de compressions budgétaires: la fonction publique du Québec de 1981 à 1991," in R. Bernier and J. Gow, eds., *Un état réduit? A Down-Sized State?* (Montreal: Presses de l'Université du Québec, 1994), p. 96.
- 27 On the theme that Quebec remains committed to a British tradition of parliamentary supremacy, whereas ROC constitutional dialogue is increasingly conducted in terms of justiciable rights, see G. Caldwell and J. Legault, "Demise of the Living Constitution in the Land of the Culturally Deprived," *Inroads* 1 (1992).
- 28 Reesor, *The Canadian Constitution*, pp. 303–305.
- 29 A. Cohen, *A Deal Undone: The Making and Breaking of the Meech Lake Accord* (Vancouver: Douglas & McIntyre, 1990), pp. 195–203.
- 30 S. Dion, "Explaining Quebec Nationalism," in K. Weaver, ed., *The Collapse of Canada?* (Washington, DC: Brookings Institution, 1992), pp. 119–120.
- 31 *Ibid.*, p. 118.
- 32 B. Yaffe, "'Distinct Society' is dead, but guarantee is being sought," *Vancouver Sun*, August 31, 1996.
- 33 For a survey of what the Quebec government considers unwarranted legal encroachments on its language laws, see Quebec, *Le français langue commune*, chap. 1.
- 34 G. Gibson, *Thirty Million Musketeers: One Canada for All Canadians* (Vancouver: Fraser Institute, 1995).
- 35 An important spokesman subscribing to this position has been Alain Dubuc, writing in the editorial pages of *La Presse*.
- 36 Dion, *The Collapse of Canada?* p. 118.
- 37 M. Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Wall & Thompson, 1989).
- 38 In a recent collection of essays, a number of prominent federalists have also come to its defense: Côté, "What Does Quebec Want?"; G. Robertson, "Avoiding a Third Referendum," *Inroads* 5 (1996); and J. Whyte, "The Language of Accommodation," *Inroads* 5 (1996). The majority of signatories to the Group of 22 manifesto, *Making Canada Work Better* [Toronto?], 1996) continue to support entrenchment of a distinct society clause.
- 39 D. Savoie, "From Six Degrees of Separation to Three Degrees of Reality," *Inroads* 5 (1996): 126.
- 40 G. Marchildon, "An Attempt to Reconcile the Irreconcilable," *Inroads* 5 (1996): 101.
- 41 *Ibid.*
-

Appendix: Some Important Language Policy Documents

This appendix reproduces the section(s) most relevant to language policy of several important documents from the past 15 years or so of the constitutional debate. They are presented uncommented and unedited, in chronological order.

The Task Force on Canadian Unity (Pepin-Robarts), 1979

(from Canada, Task Force on Canadian Unity, *A Future Together*, chaired by Jean-Luc Pepin and John Robarts (Ottawa: Supply and Services Canada, 1979)

1. The principle of the equality of status, rights and privileges of the English and French languages for all purposes declared by the Parliament of Canada, within its sphere of jurisdiction, should be entrenched in the constitution.

These purposes should include:

- (i) The equality of both official languages in the Parliament of Canada;
 - (ii) the right of members of the public to obtain services from and communicate with the head offices of every department, agency or Crown corporation of the Government of Canada, the central administration in the National Capital Region, and all federal courts in Canada in either of the official languages. Elsewhere, members of the public should be able to obtain services from and communicate with the central administration in both official languages where there is significant demand, and to the extent that it is feasible to provide such services;
 - (iii) the equality of both official languages as languages of work in the central administration in the National Capital Region, in all federal courts, and in the head offices of every department, agency or Crown corporation of the Government of Canada. Elsewhere, the usual language or languages of work in central institutions should be the language or languages of work normally used in the province in which the central institution is operating. This recommendation is subject to the previous recommendation concerning the languages of service;
 - (iv) the right of any person to give evidence in the official language of his or her choice in any criminal matter;
 - (v) the right of every person to have access to radio and television services in both the French and English languages;
 - (vi) the availability in both official languages of all printed material intended for general public use.
2. Each provincial legislature should have the right to determine an official language or official languages for that province, within its sphere of jurisdiction.
 3. Linguistic rights should be expressed in provincial statutes, which could include:

- (i) the entitlement recognized in the statement of the provincial first ministers at Montreal in February 1978: "Each child of a French-speaking or English-speaking minority is entitled to an

education in his or her language in the primary or secondary schools in each province, wherever numbers warrant." This right should also be accorded to children of either minority who change their province of residence.

(ii) the right of every person to receive essential health and social services in his or her principal language, be it French or English, wherever numbers warrant.

(iii) the right of an accused in a criminal trial to be tried in his or her principal language, be it French or English, wherever it is feasible.

4. Should all provinces agree on these or any other linguistic rights, these rights should then be entrenched in the constitution.
5. The provinces should review existing methods and procedures for the teaching and learning of both French and English and make greater efforts to improve the availability and quality of instruction in these languages at all levels of education.

The Beige Paper, 1980

(from Quebec Liberal Party, Constitutional Committee, A New Canadian Federation (Quebec, 1980))

1. A Charter of Rights and Liberties should be enshrined in the constitution.
2. The Charter should protect the fundamental rights to life, freedom, physical integrity and privacy; it will also guarantee freedom of thought, of religion, of opinion, of speech, of association and freedom of the press, as well as the basic principles of non-discrimination;
3. The Charter would also enshrine legal rights including:
 - (a) the right of equality before the law and to the protection of the law;
 - (b) the right of every person to a public and impartial hearing by an independent tribunal;
 - (c) the right of every person who is arrested or detained to be promptly informed of the reasons for his arrest or detention and to be promptly brought before a competent tribunal;
 - (d) the right of protection from unreasonable seizures and searches.
4. The Charter should ensure the right of each Canadian to settle anywhere in Canada and to enjoy rights identical to those of the citizens of the province where he settles.
5. The constitution should recognize that French and English are the official languages of federal political institutions as well as of those bodies which fall within their jurisdiction.
6. The provinces should be empowered to legislate with respect to language, subject however to certain inviolate rights safeguarded by the constitutionally enshrined Charter of Rights and Liberties.
7. The constitution should extend to Ontario and New Brunswick those obligations already incumbent upon Quebec and Manitoba by virtue of sections 133 of the B.N.A. Act and 23 of the Manitoba Act.
8. The Charter should recognize the following language rights:

(a) the right of any French or English-speaking person as well as of any native person to be served by the federal government in their language, wherever the number of people seeking such services justifies it.

(b) the right of every French or English-speaking person and every native person to request primary and secondary level education for their children the province in which they reside in their mother tongue;

(c) the right of French-speaking, English-speaking and native communities whenever they constitute sufficiently large groups, to administer their own public educational institutions;

(d) the right of every person to have access to health and social services in their own language, be it French or English, where the number warrants it;

(e) the right of every French or English-speaking person as well as every native person to demand that a criminal or penal trial which exposes them to possible imprisonment be held in their mother tongue;

(f) the right of every French or English-speaking person to demand access in every region of the country to radio and television services in their mother tongue where the number of people seeking such services justifies it.

The Charter of Rights and Freedoms, 1982

(from Canada, The Charter of Rights and Freedoms, 1982)

Official Languages of Canada

Official languages of Canada	16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
Official languages of New Brunswick	(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
Advancement of status and use	(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.
Proceedings of Parliament	17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.
Proceedings of New Brunswick legislature	(2) Everyone has the right to use English or French in any debates or other proceedings of the legislature of New Brunswick.
Parliamentary statutes and records	18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
New Brunswick statutes and records	(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.
Proceedings in courts established by Parliament	19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament. (2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Communications by public with federal institutions	<p>20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where</p> <p>(a) there is a significant demand for communications with and services from that office in such language; or</p> <p>(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.</p>
Communications by public with New Brunswick institutions	<p>(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.</p>
Communications by public with New Brunswick institutions	<p>(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.</p>
Continuation of existing constitutional provisions	<p>21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.</p>
Rights and privileges preserved	<p>22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.</p>

Minority Language Educational Rights

Language of instruction	<p>23. (1) Citizens of Canada [section 23(1)(a) currently applies in the ROC only, not in Quebec.]</p> <p>(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or</p> <p>(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,</p> <p>have the right to have their children receive primary and secondary school instruction in that language in that province.</p>
Continuity of language instruction	<p>(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.</p>

Application
where numbers
warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Government of Quebec Proposals, 1985

(from Quebec, Draft Agreement on the Constitution: Proposals by the Government of Quebec, Quebec, May 1985)

Recognition of the Primary Authority of Quebec in the Matter of Rights and Freedoms

Quebec can take pride in being the guarantor of individual rights and freedoms through its institutions. The Government of Quebec intends to protect the integrity of its jurisdiction in this matter. This applies to language rights which are so intimately linked to the personality of the people of Quebec: it is Quebec that must assume primary responsibility for these rights. This is also true in the domain of civil, political, economic and social rights codified by the Quebec Charter of Human Rights and Freedoms, which should alone take precedence over Quebec statutes.

1. Quebec's Responsibility for Language Rights

The distinctiveness of the people of Quebec goes far beyond the question of language, but language is at the origin and the heart of that distinctiveness.

For nearly four centuries, there has existed along the shores of the St. Lawrence a people of French origin which, under two colonial regimes and many constitutional systems, has progressively affirmed itself through its institutions and, with the contribution of other communities, has developed to the point where it has acquired all the characteristics of a distinct society.

This people spread into the greater part of the continent and contributed to its development, but, in the course of time, the English language gained ascendancy everywhere except in Quebec. This is how the Canadian duality came about.

The advent of mass communications, the spectacular expansion in the dissemination of sound and pictures, books and ideas, and increasingly, the movement of commercial goods and services, both along the north-south and east-west axes, lead us to consider North America as the point of reference of the linguistic, cultural and economic reality in which we are evolving. French-speaking persons today constitute scarcely 2 per cent of the North American population. At a ratio of fifty to one, specific measures are required to protect French as the everyday language. This fact is self-evident if we consider the case of the French-speaking communities outside Quebec and it also holds true in Quebec, even though more than 80% of its people are French-speaking.

The interests of French-speaking Quebecers are akin to those of French-speaking communities outside Quebec. For Quebecers, the assimilation of French-speaking communities outside Quebec is a loss to, and a dangerous weakening of, the French-speaking cultural mainstream.

For their part, the French-speaking minorities in the other provinces recognize the importance of the vitality of the Quebec French fact for the maintenance of their cultural and linguistic identity.

Although there are interests common to both, the means required to promote them differ according to the context. The Quebec context is quite different from that of the other provinces with regard to language. Recognition of this reality is a prerequisite to the development of solutions which penalize neither group.

Thus, in the opinion of French-speaking communities outside Quebec, section 23 of the Canada Act 1982 offers a means, insufficient in itself though it be, for protecting their rights. That section was designed to ensure protection of the linguistic rights of a minority and is, therefore, suited to their reality. On the other hand, the effect of section 23 in Quebec is to neutralize certain measures adopted by the National Assembly of Quebec to ensure the survival, affirmation and development of the French identity in the face of the enormous linguistic pressure placed upon it by the North American environment, and to which these measures were designed to act as a counterweight.

Quebec is the only North American territory where the linguistic, cultural and economic concerns of the French-speaking population are predominant. Therefore, Quebec legitimately claims confirmation of its powers in linguistic matters.

We take into account, however, that the people of Quebec is not entirely composed of French-speaking citizens. The English-language community, the ethnic communities and the native peoples have rights and, over and above their individual and particular rights, they have a more general right of access to all the resources society makes available to everyone.

In the past, Quebec experienced certain periods of tension with regard to language matters. That tension bespoke the concern of the French-speaking population over its future, particularly in regard to the means of ensuring the survival of French over the long term which appeared to be clearly insufficient. In spite of these periods, a climate of tolerance and respect in the treatment of minorities has generally prevailed in the search for affirmation of the French character of Quebec. In that respect we quote from the Pepin-Robarts Commission Report:

We also expect that the rights of the English-speaking minority in the areas of education and social services would continue to be respected. These rights, and this should be stressed, are not now guaranteed by the Canadian constitution. Yet they are recognized under Bill 101, the charter of the French language, a law passed by a Parti Québécois government. Thus, we already have proof that the rights of the English-speaking community in Quebec can be protected, without any constitutional obligation, and that the governments of Quebec are quite capable of reconciling the interest of the majority with the concerns of the minority. (The Task Force on Canadian Unity, A Future Together, Observations and Recommendations, January 1979, pp. 52-53)

Quebec intends to fulfill its responsibilities to its minorities: to continue to actively promote their rights and to give them the means necessary to exercise them.

With regard to the English-speaking community, the Government of Quebec is ready to undertake, within this new framework, to enshrine in its laws the right of the English-speaking community to receive health care and social services in its own language, as well as its right to its own cultural and educational institutions.

The Government of Quebec is also ready to amend the Charter of the French Language to secure access to the English school system for the children of those who have received their primary instruction in Canada in English; it expects in return that throughout Canada [emphasis in original] those who benefit from section 23 will be able in actual fact to avail themselves of access to the French school system.

Quebec also intends to fully support the French-speaking communities outside Quebec. The Government of Quebec is prepared to cooperate actively with any provincial government that

wished to improve the services it provides to its French-speaking minority. It is rather by way of intergovernmental cooperation than by the sole authority of the Constitution that progress can be achieved.

To sum up, the Government of Quebec proposes:

- That the Constitution recognize that Quebec has the exclusive right to determine its official language and to legislate on any linguistic matter within its jurisdiction.
- That Quebec secure the right of the English-speaking minority to its cultural and educational institutions, as well as the right to receive health care and social services in its own language.
- That the Quebec Charter of the French Language be so amended that the children of those who have received their primary instruction in Canada in English be guaranteed access to the English school system, regardless of their number.
- That throughout Canada, those who are eligible for instruction in French may in fact avail themselves of the rights guaranteed by section 23 of the Canadian Charter of Rights and Freedoms.
- That to support the development of the French-speaking minorities outside Quebec, agreements of mutual assistance be signed between the governments concerned.

The Meech Lake Accord “Distinct Society” Clause, 1987

(from “1987 Constitutional Accord,” a proposed amendment to the Constitution Act, 1982)

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:

Interpretation	2. (1) The Constitution of Canada shall be interpreted in a manner consistent with (a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and (b) the recognition that Quebec constitutes within Canada a distinct society.
Role of Parliament and legislatures	(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristics of Canada referred to in paragraph (1)(a) is affirmed.
Role of legislature and Government of Quebec	(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.
Rights of legislatures and governments	(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language.

The Charlottetown Accord, 1992

(from the Charlottetown Accord, Draft legal text)

Constitution Act, 1867

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:

Canada Clause	<p>2. (1) The Constitution of Canada, including the Canadian Charter of Rights and Freedoms, shall be interpreted in a manner consistent with the following fundamental characteristics:</p> <ul style="list-style-type: none">(a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;(b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of three orders of government in Canada;(c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;(d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;(e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;(f) Canadian are committed to a respect for individual and collective human rights and freedoms of all people;(g) Canadians are committed to the equality of female and male persons; and(h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.
Role of legislature and Government of Quebec	<p>(2) The role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec is affirmed.</p>
Powers, rights and privileges preserved	<p>(3) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers, rights or privileges relating to language.</p>
Aboriginal and treaty rights	<p>(4) For greater certainty, nothing in this section abrogates or derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada.</p>

Recent C.D. Howe Institute Publications

- Richards, John. *Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee*. C.D. Howe Institute Commentary 84 (October 1996). 44 p.; \$6.00.
- Sauvé, Pierre, and Daniel Schwanen, eds. *Investment Rules for the Global Economy: Enhancing Access to Markets*. Policy Study 28 (September 1996). 332 pp.; \$19.95.
- Mintz, Jack M., and James E. Pesando, eds. *Putting Consumers First: Reforming the Canadian Financial Services Industry*. Policy Study 27 (September 1996). 104 pp.; \$14.95.
- Iacobucci, Edward. *Value for Money: Executive Compensation in the 1990s*. Observation 41 (September 1996). 178 pp.; \$14.95. With Michael J. Trebilcock.
- Monahan, Patrick J., and Michael C. Bryant. *Coming to Terms with Plan B: Ten Principles Governing Secession*. C.D. Howe Institute Commentary 83 (June 1996). 56 pp.; \$9.00. With Nancy C. Côté.
- Schwanen, Daniel. *Drawing on Our Inner Strength: Canada's Economic Citizenship in an Era of Evolving Federalism*. C.D. Howe Institute Commentary 82 (June 1996). 20 pp.; \$6.00.
- Howse, Robert. *Securing the Canadian Economic Union: Legal and Constitutional Options for the Federal Government*. C.D. Howe Institute Commentary 81 (June 1996). 20 pp.; \$6.00.
- Boessenkool, Kenneth J. *The Illusion of Equality: Provincial Distribution of the Canada Health and Social Transfer*. C.D. Howe Institute Commentary 80 (June 1996). 24 pp.; \$6.00.
- Horstmann, Ignatius J., C. Frank Mathewson, and Neil C. Quigley. *Ensuring Competition: Bank Distribution of Insurance Products*. Observation 40 (May 1996). 110 pp.; \$12.95.
- Boessenkool, Kenneth J., David E.W. Laidler, and William B.P. Robson. *Devils in the Details: Improving the Tactics of Recent Canadian Monetary Policy*. C.D. Howe Institute Commentary 79 (April 1996). 20 pp.; \$6.00.
- Neave, Edwin H. *Canadian Financial Regulation: A System in Transition*. C.D. Howe Institute Commentary 78 (March 1996). 28 pp.; \$6.00.
- Beach, Charles M., and George A. Slotsve. *Are We Becoming Two Societies? Income Polarization and the Myth of the Declining Middle Class in Canada*. The Social Policy Challenge 12 (March 1996). 190 pp.; \$14.95.
- Scarth, William. *Beyond the Deficit: Generation X and Sustainable Debt*. C.D. Howe Institute Commentary 77 (February 1996). 20 pp.; \$6.00.
- Cadsby, Charles Bram, and Kenneth Woodside. *Canada and the New Subsidies Code*. C.D. Howe Institute Commentary 75 (February 1996). 12 pp.; \$6.00.
- Barley, Stephen R. *The New World of Work*. British-North American Committee 40 (January 1996). 59 pp.; \$18.95.
- Robson, William B.P. *Putting Some Gold in the Golden Years: Fixing the Canada Pension Plan*. C.D. Howe Institute Commentary 76 (January 1996). 28 pp.; \$6.00.
- Belous, Richard S., ed. *Information Technology and Corporations: An Interview with Professor Edward A. Feigenbaum*. British-North American Committee Issues Paper 4 (January 1996). 47 pp.; \$11.95.
- Leycegui, Beatriz, William B.P. Robson, and S. Dahlia Stein, eds. *Trading Punches: Trade Remedy Law and Disputes under NAFTA*. North American Committee 1 (December 1995). 294 pp.; \$21.95.
- Drost, Helmar, Brian Lee Crowley, and Richard Schwindt. *Market Solutions for Native Poverty: Social Policy for the Third Solitude*. The Social Policy Challenge 11 (December 1995). 172 pp.; \$12.95.
- Nicholls, Christopher C. *Government Procurement after the Uruguay Round*. C.D. Howe Institute Commentary 74 (December 1995). 16 pp.; \$6.00.
- Crow, John W. *Two and a Half Cheers for Canadian Monetary Sovereignty*. C.D. Howe Institute Commentary 73 (November 1995). 20 pp.; \$6.00.
- Courchene, Thomas J. *Redistributing Money and Power: A Guide to the Canada Health and Social Transfer*. Observation 39 (November 1995). 122 pp.; \$12.95.
- Chandler, Mark, and David Laidler. *Too Much Noise: The Debate on Foreign Exchange Rate Variability and Policies to Control It*. C.D. Howe Institute Commentary 72 (October 1995). 32 pp.; \$6.00.