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Nations of Distinction:

An Analysis of Nationalist Perspectives on
Constitutional Change in Québec, Catalunya, and
Scotland

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Abstract

This thesis is a comparative analysis of nationalism in Québec, Scotland, and Catalunya and the perspectives of nationalist parties towards questions of constitutional change within the broader Canadian, United Kingdom, and Spanish states. It is the goal of this thesis to analyse how minority national groups view themselves within the constitutional framework of multinational states and what arguments they make for greater recognition for their national communities. All of the nationalist parties under discussion argue that the distinct position of the minority national group is not sufficiently recognised within the state. How this recognition can be achieved is of primary concern to nationalists and shapes their approach towards constitutional dialogue. Nationalist parties adopt various approaches towards constitutional reform in an effort to achieve either a reform of the existing state or the secession of the minority national group's territory from the state. This thesis analyses these approaches as advocated by the parties themselves and by other political and academic participant-observers. In examining the Catalan, Québécois, and Scottish cases this thesis compares the unique asymmetrical arrangements that each state has adopted as a means to accommodate the minority national groups. Many nationalists argue that this evolving asymmetry is insufficient to meet the goal of greater recognition, leading to their advocating various federal, confederal, and secessionist options. After considering the various constitutional options that are presented this thesis argues that promoting a higher degree of constitutional and administrative asymmetry is an effective means of bringing greater recognition to Scotland, Québec, and Catalunya within the state.

The qualitative analysis in this thesis is based upon original research and a review of available secondary source material. The original research consists largely of data obtained from personal interviews and from an analysis of party documents. The personal interviews were conducted in Scotland, Québec, and Catalunya with political participant-observers, including members of nationalist parties and individuals involved in developing constitutional policy and with academic participant-observers who specialise in constitutional politics. The thesis is divided into four sections. The first section includes the introduction that outlines the research method and Chapter 1 that examines various theoretical approaches to nationalism. The second section lays the groundwork for the following two sections. It consists of chapters two to four, which examine the historical evolution of nationalism in Québec, Catalunya, and Scotland from its antecedents to the late-twentieth century, paying particular attention to the evolution of nationalist political thought. The third section consisting of chapters five to seven is the main analytical section. In each of these chapters the constitutional framework of each state and the nationalist response are analysed through an examination of constitutional documents and party manifestos, leaders' speeches, and other policy material. Data obtained from interviews is analysed here. The fourth and final section is made up of the conclusion and a comparative analytical chapter that draws the three cases together through an analysis of various constitutional options in the three multinational states.

To my parents

With love and heartfelt gratitude

Table of Contents

<i>Abstract</i>	ii
<i>Acknowledgements</i>	v
<i>List of Abbreviations</i>	vii
Introduction.....	1
Chapter 1: Theoretical Foundations.....	11
Chapter 2: Nationalism and Québec 1760-1992.....	30
Chapter 3: Nationalism and Catalunya 1840-1980.....	58
Chapter 4: Nationalism and Scotland 1707-1999.....	90
Chapter 5: Québec's Constitutional Position.....	124
Chapter 6: Catalunya's Constitutional Position.....	175
Chapter 7: Scotland's Constitutional Position.....	231
Chapter 8: A Concluding Analysis.....	284
Conclusion.....	308
Appendix.....	314
Bibliography.....	349

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I decided to embark upon this research because of a long-held interest in different peoples, languages, and cultures. During my academic career this interest has translated into an interest in nationalism and its role in western society at the beginning of the twenty-first century. A comparison between Scotland, Québec, and Catalunya seemed like a natural one to me, as it would involve researching three different types of states and both linguistic and non-linguistic nationalisms. During the course of researching and writing this thesis over the last four years I have gained a greater appreciation of both Scotland and Québec and nurtured a new found interest in Catalunya. Although I have worked on this thesis for what often seemed to be an eternity, I still retain a genuine love of my subject.

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To St. Thomas Aquinas for his intercession.

Ad majorem Dei gloriam.

List of Abbreviations Used

Catalunya

CC – Cristians Catalans

CCMA – Comitè Central de Milícies Antifeixistes

CDC – Convergència Democràtica de Catalunya

CEDA – Confederación Española de Derechas Autonomas

CFPC – Coordinadora de Forces Polítiques de Catalunya

CiU – Convergència i Unió

CNDC – Consell Nacional de la Democràcia Catalan

CNT – Confederación Nacional del Trabajo

ERC – Esquerra Republicana de Catalunya

LOFCA – Organic Law on the Funding of Autonomous Communities

PCC – Partit Comunista de Catalunya

PCE – Partido Comunista Español

PCR – Partit Catalanista Republicà

POUM – Partit Obrer d'Unificació Marxista

PP – Partido Popular

PSOE – Partido Socialista Obrero Español

PSUC – Partit Socialist Unificat de Catalunya

SDEUB – Sindicat Democràtic d'Estudiants de la Universitat de Barcelona

UCD – Unión Central Democràtico

UDC – Unió Democràtica de Catalunya

USC – Unió Socialista de Catalunya

Québec

ADQ – Action Démocratique du Québec

ALN – Action Libérale Nationale

BQ – Bloc Québécois

FLQ – Front de Libération du Québec

PLQ – Parti Libéral du Québec

PQ – Parti Québécois

RIN – Rassemblement pour l'Indépendance Nationale

ROC – Rest of Canada

Scotland

COSLA – Convention of Scottish Local Authorities

ILP – Independent Labour Party

JCPC – Judicial Committee of the Privy Council

NPS – National Party of Scotland

SCC – Scottish Constitutional Convention

SHRA – Scottish Home Rule Association

SNL – Scottish National League

SNM – Scottish National Movement

SNP – Scottish National Party

STUC – Scottish Trades Union Congress

Introduction

This thesis is a qualitative and comparative analysis of nationalism in Scotland, Québec, and Catalunya and the link between nationalism and constitutional change within the broader nation-states of the United Kingdom, Canada, and Spain. This thesis addresses issues and controversies that surround this topic and analyses the particular understanding that nationalists have of the position of nations within states. The thesis adopts the position that Scotland, Québec, and Catalunya exist as minority nations within multinational states, or as certain commentators have described them, nations without states. The central argument of the thesis is that in the multinational states of Canada, the United Kingdom, and Spain a particular phenomenon is present where there is a conflict between rival conceptions of the nation. Nationalists in the three minority nations make a distinction between the nation, Catalunya, Scotland, or Québec, and the state, thus in certain cases holding a dual identity. This is in conflict with a view held by many outside the minority nation who identify much more strongly with the state as the nation. The goal of the thesis is to provide an explanation and greater understanding as to why this phenomenon exists.

The arguments and analysis in this thesis have very much been shaped by the constitutional events of the late 1990s in Canada, the UK, and Spain. 1997 ushered in a period of momentous constitutional change in the United Kingdom with the Labour Government embarking upon a programme of devolution to Scotland, Wales, Northern Ireland, and London. The UK government has also begun to reform the House of Lords, the first step of which was the elimination of hereditary peerage and the removal of all but a few of the hereditary peers from the house. In Canada, the period following the 1995 referendum on Québec sovereignty has been characterised by a reorienting of the Federal Government's

national unity strategy. The Supreme Court of Canada's decision in the Reference Case on Québec Secession and the Federal Government's response to it in the Clarity Act have been two significant developments that have affected the relationship between Ottawa and Québec. The year 2000 in Spain saw the re-election of José Maria Aznar's Partido Popular with a majority in the lower house of the Spanish Parliament, in Catalan the Congrés dels Diputats. This result has ended the hold on the balance of power in Madrid exercised by the dominant Catalan nationalist party *Convergència i Unió (CiU)* and the moderate Basque nationalists of the *Partido Nacionalista Vasco*. The ability to have researched and, indeed, confronted issues surrounding nationalism and constitutional reform during these periods of significant change helps to make this thesis a valuable contribution to the study of comparative constitutional politics.

Research Method

The research in this thesis is exclusively qualitative and is based on data obtained from a variety of primary sources including personal interviews with political and academic participant-observers, as well as constitutional documents and publications from the various political parties. A wide selection of secondary literature was also consulted in the fields of nationalism studies, political theory, constitutional law, history, and language policy. Information and analyses from these secondary sources was used to help provide greater background to the debates being considered here and to highlight particular issues and controversies.

Interviews

The principal focus of the research was to seek out the views held by various participant-observers on the issue of the perspectives of nationalists in Catalunya, Scotland and Québec on constitutional change taking place within the larger state. This was achieved through a series of personal interviews conducted with political and academic participant-

observers in the three nations. The interview subjects were selected based on their experience and involvement with the topic. This experience could include being a noted commentator on nationalism or constitutional issues, being a civil servant or political actor involved with the development of constitutional policy, or having played an active role in constitutional disputes. Of the academic participant-observers interviewed the majority were either political scientists or constitutional lawyers. The group of political participant-observers was more diverse including civil servants who had drafted constitutional documents, senior government officials, and both partisan and non-partisan political activists.

The interview method adopted was one that was appropriate to a survey of this unique set of participant-observers. Since most, if not all, of the interviewees were familiar with interview styles and the forms of questioning usually employed, an open-ended, flexible interview style was used. The set of questions chosen varied from person to person, but was generally grouped into five key categories: the idea of 'nation', the character of the specific nationalism in their own area, constitutional structures, issues and controversies relating to nationalism, and issues and controversies relating to constitutional change. Interviews were conducted using a microphone and tape recorder which allowed for a more relaxed, conversational style of interviewing. Tape recorded interviews were then transcribed verbatim.¹ In general, it was found that interviewees revealed more information and were more willing to expand on a specific idea or issue if they were not constrained by questions that were too narrowly construed. Some of the problems that arose in the process of interviewing are discussed in chapter eight along with the analysis of data obtained from the interviews. The number of interviewees was limited by the willingness of participant-observers to be interviewed and difficulties of access. In interviewing Catalan and

¹ In the case of non-English speakers interviewed in Catalunya and Québec, their grammar and diction was edited in transcription for the purposes of clarity and flow.

Québécois participants no significant language comprehension problems were experienced since all of them were able to express themselves to a reasonable or high degree in either French or English, as appropriate. In addition, the interviewer was able to pose questions in French and sometimes in Catalan thanks to a proficiency in the first language and a good understanding of the second. This often helped to elicit more information from the participant or to clarify certain points in the interview.

Document Analysis

A second level of primary research involved the analysis of various constitutional documents, party manifestos from nationalist parties, speeches made by nationalist leaders on constitutional issues, and constitutional policy papers of the parties. The constitutional documents analysed were those that establish in each case the current constitutional arrangements. These documents include for Québec in Canada the *Constitution Act, 1867* and the *Constitution Act, 1982*; for Catalunya in Spain the Spanish constitution of 1978 and the Catalan Statute of Autonomy of 1980; and for Scotland and the UK the *Scotland Act, 1998*. In analysing these documents, particular attention was paid to the division of powers, the conception of the state, issues of sovereignty, and how the position of the minority nation within the state is constitutionally conceived.

Party documents were analysed to provide an understanding of the individual parties' positions on constitutional reform and what particular constitutional option they favoured for their nation. These documents were also illustrative of the parties' broader ideology and positions on economic and social issues. In the case of Catalunya, party manifestos for elections to the Catalan Parliament, the Corts Generals in Madrid, and the European Parliament were analysed, as well as party platforms adopted at party congresses and speeches by nationalist leaders. Catalan nationalist parties have also entered into a series of accords with nationalist parties in Euskadi (the Basque country) and Galicia. These

accords are indicative of a broader pan-nationalist strategy being adopted by the self-styled historic nations of Spain. In Scotland, Scottish National Party (SNP) party manifestos for the first elections to the Scottish Parliament were analysed as were the party's programmes for the 1997 General Election and the 1999 European Parliament election. In the cases of the Parti Québécois (PQ) and Bloc Québécois (BQ) in Québec, the documents analysed were party programmes from party congresses and recent election campaigns and speeches by prominent PQ leaders.

Definition of Terms

When employing a comparative approach in research and making use of a wide variety of primary and secondary source materials, in three or four different languages, there frequently arises some overlapping of terminology and the use of some terms that can appear ambiguous. Or, the terms used can have a different meaning in different territories and at different times in history. The goal of this section is to identify several of these terms that appear throughout the thesis, and to account for the different contexts in which they are used. Due to the variation in constitutional and political traditions in Spain, Canada, and the UK, different nomenclature exists to describe one particular concept. A clear example of this is all of the various terms that are utilised by commentators and nationalists to describe the concept of self-government for the minority nation. The most commonly used terms here are autonomy, devolution, sovereignty, and independence. Independence can be understood as taking place when the minority nation leaves the larger state to establish itself as a separate, self-governing polity, either as part of a supra-state body such as the EU or not, with powers over all areas of policy including defence, foreign affairs, and monetary policy. In the present context the term 'independence' is most commonly used by the SNP and Esquerra Republicana de Catalunya who qualify it by arguing for 'independence in Europe' for Scotland and Catalunya, hence the establishment of separate Scottish and Catalan states with

membership in the European Union. Both the PQ and BQ favour an independent Québec, an independence from the current constitutional arrangement with the rest of Canada. The preferred term employed by these two parties is 'sovereignty' or 'sovereignty-association', which refers to their goal of achieving independence for Québec but with a negotiated economic and political partnership with what would remain of Canada. As will be discussed in chapter eight, this use of the term sovereignty is problematic given the various legal and other definitions ascribed to that term

'Devolution' is the process by which legislative, administrative, or other powers are transferred, i.e. devolved, from one level of government to another within a state.

Devolution is used in the Scottish context to define the process by which the power to legislate in a wide range of areas has been transferred from Westminster to the new Scottish Parliament at Holyrood. Devolution is viewed by its supporters as implying greater self-government for Scotland in devolved areas and by many as leading towards the creation of a new centre of political power in the Scottish Parliament. Devolution has, in effect, given Scotland greater legislative autonomy from Westminster, yet autonomy is not the term regularly used to define the outcome of devolution.

'Autonomy' is used in the Spanish context to define the status of Catalunya as a self-governing, autonomous community within Spain. Catalunya's autonomy has been achieved through a devolution of power from the state to the principal institution of Catalan self-government, the Generalitat. The process of devolving jurisdiction over a broad field of subjects has been ongoing since the enactment of the Catalan Statute of Autonomy in 1980. The two parties that have governed Catalunya in coalition since the granting of autonomous status, *Convergència Democràtica de Catalunya* and *Unió Democràtica de Catalunya*, describe themselves as autonomist parties as they support greater autonomy for Catalunya within the Spanish state.

A significant term that is utilised throughout this thesis to describe the Canadian, Spanish, and UK states is ‘multinational.’ The term is fully defined in chapter one and is used to describe states that consist of more than one nation. These nations within the state need not necessarily be recognised by the state in order to term the state multinational. Indeed, as will be discussed further, the failure of the state not to acknowledge the presence of these nations in the cases of Canada and Spain is central to the claims made by Catalan and Québécois nationalists for greater recognition. ‘Plurinational’ is often used instead of ‘multinational’ as a descriptor, especially by Spanish and Catalan commentators.² However, since ‘multinational’ is more commonly employed in English-language sources this will be the term used in this thesis. The term ‘multinational’ when applied to states must not be confused with its other applications, particularly in a business context where large, trans-global corporations who have operations in numerous countries are frequently labelled ‘multinational.’ A discussion of multinational states and the theory pertaining to them, as advanced by Canadian political theorist Will Kymlicka in his 1995 book *Multicultural Citizenship*, is found in chapter one.

Thesis Outline

The thesis is organised broadly into four sections. The first section is comprised of the introduction and chapter one. The first chapter discusses and gives a brief analysis of the key theories of nationalism and Kymlicka’s theory pertaining to minority national groups within multinational states. The aim of this chapter is to lay the foundation for the subsequent discussion and analysis of nationalist movements in Scotland, Québec, and Catalunya by placing them in a theoretical context.

² The terms *plurinacional* (plurinational) and *plurinacionalitat* (plurinationality) are employed frequently in Catalan literature on nationalism and constitutional questions in Spain, for example in Miquel Caminal, *Nacionalisme i partits nacionals a Catalunya* (Barcelona: Editorial Empúries, 1998) and in Ferran Requejo i Coll, *Federalisme, per a que?* (Barcelona: L’Hora del Present Edicions, 1998).

The second section consists of chapters two to four that examine the historical evolution of nationalism in the three nations. These three chapters illustrate the roles played by nationalist leaders and polemicists in the development of contemporary nationalism and make extensive use of primary source material, in particular the writings of many of these leaders and polemicists. In each chapter various strands of nationalist thought are highlighted and analysed. Chapter two traces the evolution of French-Canadian nationalism from 1759 and the conquest of New France by the British and its transformation to a specifically Québécois nationalism by the mid-twentieth century. The chapter discusses the impact of the Quiet Revolution of the 1960s on nationalism's growth, the rise of the PQ, and finally the role of nationalism in the last era of constitutional reform, and attempted reform, from 1981-1992. Chapter three adopts a similar approach in examining the development of contemporary nationalism in Catalunya from the flowering of Catalan literary nationalism in the 1860's to its rebirth in the late 1970s and 1980s following the repression of Catalanism under Franco. Chapter four is somewhat different in its treatment by examining conceptions of Scottish nationality within the United Kingdom following the Union of the Parliaments in 1707. The chapter then proceeds to examine the emergence of the home rule movement in the 1880s, the gradual growth in Scottish nationalism from the 1930s onwards, nationalism and devolution in the 1970s, and finally devolution and the creation of the Scottish Parliament in the late 1990s. The goal of this section is to set the scene and give an understanding of the development of nationalist and constitutional debates in Scotland, Québec, and Catalunya.

Section three is made up of chapters five, six, and seven which discuss and analyse the constitutional positions of Québec, Catalunya, and Scotland within the larger nation-state and nationalist perspectives on constitutional change. These chapters incorporate substantial analysis of interview data, constitutional documents, and documents of the various

Introduction

nationalist parties. A particular focus of these chapters is developing an explanation for the phenomenon of a conflict between rival conceptions of the nation within the multinational state. This is accomplished by contrasting the nationalist views of the nation vis à vis the state with the view that is dominant at the level of the state.

Section four consists of chapter eight and the conclusion. Chapter eight analyses the comparative approach adopted and the research claim being made. It argues that a pattern emerges in comparing the three cases and in attempting to explain the presence of the phenomenon discussed above. The chapter argues that the pattern consists of a number of concepts: sovereignty, recognition, and asymmetry, which emerge from the research data and provide a greater understanding of the conflict between rival conceptions of the nation than has existed hitherto. It should be noted that the research for this thesis was completed in the autumn of 2000 and thus does not cover the 2001 General Election in the United Kingdom or any debates on constitutional questions after that time.

1

Theoretical Foundations

The most readily identifiable political unit at the beginning of the twenty-first century is the nation-state. In broad terms, the world in 2001 is divided into essentially sovereign states, states which are recognised both by their own members and by other states as territorially defined, making allowances of course for border disputes which do exist. The nation at the start of the third millennium is a politically and culturally constructed community that inspires loyalty among its self-defined members. The quest to define the nation as it has come to be accepted in modern times has been the goal of sociologists, political theorists, and philosophers since Rousseau first postulated on the existence of modern nations in the late eighteenth century. The concept of the nation has also engendered its own peculiar “ism”. Nationalism has emerged as a tremendous political force, as well as a rallying cry, a focus for cultural expression, a builder of community, and a means of oppression. The nation-state, the nation, and nationalism are phenomena which greatly affect our perception of the world and how it is organised. If some sense is to be made of how this situation came about it is essential to examine some of the key theories and arguments that have been presented on these subjects.

This chapter will introduce some of the principal debates in the study of nations and nationalism and assess how far they have fostered a greater understanding of this complex issue. In general, the arguments presented below are focussed on attempting to define the nation and how nationalism emerged as such a potent force in the modern world. Many theorists have been unable to provide an accurate, all-encompassing definition of the nation; others have thrown up their hands and argued that no definition is possible. The goal of this chapter is not to define the nation or explain away the existence of nationalism; instead it is

to develop an understanding of nationalist theory. Consideration will also be given to where Scotland, Québec and Catalunya fit into the history of national development and the growth of nationalism as a phenomenon.

Before delving into theoretical debates on the theories of nationalism, it is essential to clarify two terms that will be the focus of the discussion: state and nation. In general terms the state is a political unit whereas the nation, very broadly speaking, is a human community. This distinction has to be made for the purposes of clarification rather than definition. Seton-Watson put this differentiation succinctly: “A state is a legal and political organisation, with the power to require obedience and loyalty from its citizens. A nation is a community of people, whose members are bound together by a sense of solidarity, a common culture, a national consciousness.”¹ This will form the backdrop for the subsequent discussion.

Anderson’s Imagined Communities

To a great extent, the theoretical discussion of nations and nationalism rests on the whole question of the origin of the nation and whether nationalism is a uniquely political or a cultural development. Did the concept of the nation originate in the age of the Industrial Revolution and in the aftermath of the Enlightenment, or does it have roots that stretch back to pre-modern times? One of the seminal works in the field of nationalism studies is Benedict Anderson’s Imagined Communities. Anderson’s persuasive and enlightening argument falls largely in the modernist camp. It is modernist in that it views the growth of nations and nationalism as a modern event with its origin in the late seventeenth and early eighteenth century. From the outset Anderson accepts the assumption that the nation is central to the human political experience in the modern era and that it is indeed universal.² However, he further argues that the nation and nationality are products of the era of the

¹ Hugh Seton-Watson, Nations and States (London: Methuen & Co. Ltd., 1977), p. 1.

² Benedict Anderson, Imagined Communities, rev. ed. (London: Verso, 1991), p. 3.

French Revolution and emerged in an environment in which various elements came together to promote their development.³ The various elements, or “discrete historical forces” as Anderson puts it, that came together to allow the emergence of nationalism and nations were Protestantism; the demise of Latin and the rise of vernacular languages; the emergence of print capitalism; and changing perceptions of time and space. Working together in the modern revolutionary age, these cultural developments encouraged the eighteenth-century age of nationalism, an age, according to Anderson, that accompanied the decline of religion in Europe and the rise of rationalist secularism.⁴ Nationalism, therefore, is truly a product of the Enlightenment during which previously held beliefs were held up to scrutiny and for criticism.

In Anderson’s argument, the decline of Latin in Europe encouraged the growth of local vernacular languages, which subsequently caused the fragmenting of communities into smaller collectivities.⁵ Latin’s decline in the pre-Enlightenment period and the resulting rise of vernacular languages as a means of communication had the greatest impact on the intelligentsia and local élites. As soon as administrators and rulers began using the vernacular to communicate with the populace, the breakdown of the larger Christian community within Europe was initiated and increasingly the community became more specific.⁶ While in many cases rulers and élites no longer used Latin they continued to use an élite language that was not the language of many of their people, contributing to the rise of linguistic-based nationalism. An example of this was the use of Swedish by élites in Finland in the centuries prior to independence in the early twentieth century, indeed Finnish nationalists such as composer Jean Sibelius and philologist Elias Lönnrot were educated in Swedish. The impact of vernacular languages on the creation of the imagined community of

³ Ibid., p. 4.

⁴ Ibid., p. 11.

⁵ Ibid., pp. 18-19.

⁶ Ibid., p. 42.

the nation was further accelerated by the growth of Protestantism and print-capitalism that encouraged the mass dissemination of ideas throughout Europe, enabling people to place themselves within a series of unique communities.

Anderson places a great emphasis on the role played by print-capitalism in the promotion of nation-ness, as he aptly terms the phenomenon. The argument is made that print-capitalism, the distribution of printed materials, across Europe enabled people to communicate with one another through the medium of print whereas before dialects hindered verbal communication.⁷ Furthermore, people existing within a particular language community came to realise that there were others who shared with them a common linguistic heritage:

In the process, they gradually became aware of the hundreds of thousands, even millions, of people in their particular language-field, and at the same time that *only those* hundreds of thousands, or millions, so belonged. These fellow-readers, to whom they were connected through print, formed, in their secular, particular, visible invisibility, the embryo of the nationally imagined community.⁸

Anderson extends this argument of vernacular language and time and place further by linking the growth of nationalist movements in the nineteenth century, in particular those of Finland and Ukraine, to bourgeois identification with the imagined community. It has been argued that it was largely bourgeois élites who were responsible for the promotion of nationalist goals and the engendering of nationalist movements. How was this achieved? Anderson argues that it was through vernacular print-capitalism that the members of the bourgeoisie were able to communicate, gaining an awareness of their place in a larger linguistic community, and thereby forming political and cultural links based on that community.⁹ The imagined community of the nation, as termed by Anderson, evolves out of this form of recognition within the newly self-aware élite community. According to his analysis, if the community is imagined at a certain point in history, it cannot have existed

⁷ *Ibid.*, p. 44.

⁸ *Ibid.*

before in the form imagined; this is a particular point of debate between modernist theorists and those who question modernism as a basis for nationalism.

Finally, Anderson views the Protestant Reformation as that singular event in history that enabled vernacular language and print-capitalism to coalesce and thereby encourage the emergence of imagined national communities. The essential argument is that it was only through the expansion of Protestantism and its use of print-capitalism for spreading its message of reform that vernacular languages began to take hold in Europe. In sixteenth-century Catholic Europe both the Tridentine Church, through the *Index Liborum Prohibitorum*, and rulers proceeded to ban books as a means to halt the expansion of the reform message; Protestantism, however, encouraged vernacular publishing.¹⁰ With the expansion of Protestantism through central and northern Europe, peoples speaking the same language were further identified as national communities. Yet, it was not until the late eighteenth and early nineteenth century that this trend produced nationalist movements among the vernacular-speaking élites. Ultimately, these vernacular languages came to have political meaning, differentiating communities from one another. According to Anderson, these imagined communities now viewed themselves with respect to the ‘other’, those communities that did not share their linguistic, cultural heritage:

Until late in the eighteenth century no one thought of these languages as belonging to any territorially defined group. But soon thereafter... ‘uncivilized’ vernaculars began to function politically in the same way as the Atlantic Ocean had earlier done: i.e. to ‘separate’ subjected national communities off from ancient dynastic realms.¹¹

In Anderson’s final analysis, then, the nation and national identity are modern constructs engineered through the process of modernisation that began some time in the sixteenth century and continued unabated until the evolution of nationalist movements in the nineteenth century. Furthermore, the nationalist movements that emerged in nineteenth-

⁹ Ibid., p. 77.

¹⁰ Ibid., p. 40.

¹¹ Ibid., p. 196.

century Europe were culturally-based rather than having politics as a focus; they sought to differentiate one linguistic community from a dominant 'other'. Ernest Gellner further illustrates this last point through his Ruritanian allegory of the emergence of élite nationalism.¹² The role of Protestantism, print-capitalism, and the spread of vernacular languages enabled local élites to mobilise the people into an imagined community, the nation.

Kedourie's Modernist Theory

While Anderson embraces a modernist view of the development of nations it is one that does take account of events prior to the French Revolution and gives them pride of place in terms of influencing nationalist growth. Kedourie adopts the more extreme modernist position in his critical work Nationalism. Kedourie is a sceptic; he does not accept nationalism as anything other than an invented creed:

Nationalism is a doctrine invented in Europe at the beginning of the nineteenth century. It pretends to supply a criterion for the determination of the unit of population proper to enjoy a government exclusively its own, for the legitimate exercise of power in the state, and for the right organization of a society of states.¹³

Kedourie's position on the evolution of nationalism is as narrow and restrictive as it is reductionist. This theory rests on the premise that for a nation to exist it must constitute itself into a sovereign state where one language is dominant.¹⁴ For it is only through sharing a common language, as Kedourie argues, that a nation can exist and be defined as such. In arguing this, Kedourie takes his cue from Fichte's arguments for the unity of German peoples in the early nineteenth century where unity was defined solely on the basis of a common language.¹⁵ For Fichte, the territorial distinction between Prussians and other German-speakers in the west was an unnatural one; presumably this would apply to the Swiss, Austrians, and German-speaking Bohemians as well. Kedourie adapts this argument

¹² Ernest Gellner, Nations and Nationalism (Oxford: Blackwell, 1983), p. 55.

¹³ Elie Kedourie, Nationalism, 3rd ed. (London: Hutchinson & Co. Ltd., 1966), p. 9.

¹⁴ *Ibid.*, p. 68.

to modern twentieth century nations and nation-states and thereby reduces nationalism to a linguistic and ethnic phenomenon without addressing the presence of an inclusive nationalism rooted in ideas of citizenship as exists in North America, for example. With language as his sole criterion of national definition, Kedourie rejects the concept of differentiated British and American nations.¹⁶ Indeed, Kedourie extends this argument and dismisses such non-linguistically defined nation-states as aberrations:

On nationalist logic, the separate existence of Britain and America, and the union of English and French Canadians within the Canadian state, are both monstrosities of nature; and a consistent nationalist interpretation of history would reduce large parts of it to inexplicable and irritating anomalies.¹⁷

In his rejection of nation-states as viable and legitimate political entities, Kedourie signifies his rejection of civic nationalism as a form of national identity or nationalist expression. For him, the bonds engendered by civic nationalism are tenuous and are insufficient for national definition. The “irritating anomalies” that do emerge within the study of nationalism are what make it unique and are what prompt the creation of models for explaining the presence of nations. However, many of these existing models attempt to explain away, usually ineffectively, the differences between varieties of nationalism and thereby fail to take account of the uniqueness of each nationalism.

Gellner's Nations and Nationalism

Ernest Gellner was arguably one of the foremost writers and theorists on the subject of nations, nationalisms and identity. Gellner, like Kedourie and Anderson, was a modernist and argued that nations can only be viewed as such in the era of nationalism.¹⁸ In essence the argument states that nationalism is what establishes the existence of nations and not the other way around. This growth, the growth of nationality is based not only on the development of a national high culture but also on a collective will of a people to view themselves as distinct

¹⁵ Ibid.

¹⁶ Ibid., p. 74.

¹⁷ Ibid., p. 79.

and to group themselves into the nation, or the 'imagined community' in the words of Anderson.¹⁹ Central to Gellner's argument is the Ruritanian allegory that explains in a unique and highly effective way the evolution of a nationalist movement and the transition of the nation into the nation-state in post-imperial central Europe. The allegory presents the classical argument for late nineteenth-century nationalist development, modeled largely on the Czechoslovak experience or any of the other small states that emerged from the Austro-Hungarian Empire at the end of the First World War. It discusses how a minority community within a larger state or empire to which it is closely tied economically, linguistically, and socially is motivated by élites to nationalist agitation. Ultimately, through a folk and linguistic revival prompted by the élite group a nationalist movement emerges that encourages the establishment of a new Ruritanian nation-state out of the older association with the larger entity: Megalomania.²⁰ Through his analysis, Gellner advances an argument that has at its core the central feature of nationalist development and national identity: identification against the 'other'.

As national communities attempt to define themselves within the larger human community of which they are apart they are exclusive in relation to other nation-states, whether this exclusivity is defined ethnically through myths of common descent or language, or by civic means such as shared institutions, citizenship, or societal attitudes. Many nationalities, both civic and ethnic, define themselves against other nationalities, usually those that are closest to them politically, socially, or economically. For instance to be a Serb, apart from all the linguistic, religious, and regional labels, is not to be a Croat or a Bosnian Muslim. Canadians very often define themselves in opposition to the United States, as not American, which is a label that conjures up for many in Canada something that is antithetical to Canadian values and traditions. Linda Colley, in her pioneering work, makes

¹⁸ Ernest Gellner, *Nations and Nationalism*, rpt. (Oxford: Basil Blackwell Publisher, 1984), p. 55.

a similar argument with respect to the evolution of British nationalism as something that was not continental, not French, and not Catholic. There was a constant and concerted effort to define the nation against the other, the rival:

Imagining the French as their vile opposites, as Hyde to their Jekyll, became a way for Britons –particularly the poorer and less privileged- to contrive for themselves a converse and flattering identity. The French wallowed in superstition: therefore, the British, by contrast, must enjoy true religion. The French were oppressed by a bloated army and by absolute monarchy: consequently, the British were manifestly free. The French tramped through life in wooden shoes, whereas the British –as Adam Smith pointed out- were shod in supple leather and, therefore, clearly more prosperous.²¹

Hobsbawm's Interpretation

The shift between ethnic and civic nations is one aspect of nationalist development that has been examined in the work of Eric Hobsbawm, most notably in his Nations and Nationalism since 1780. Hobsbawm is largely in agreement with Gellner and Anderson as viewing nations as the product of myth and largely invented and modern entities.²²

Hobsbawm structures his argument around the various phases of nationalist development as illustrated by the emergent nationalist movements of the late nineteenth century, thereby concluding like Gellner, Anderson, et al. that nations and nationalism find their roots in that century. Like Anderson, he charts the growth of the administrative state and argues its role in the promotion of nationalism.²³ For Hobsbawm too, the existence of a common language is central to the development of nationalism, yet it is not the sole determining criterion for the development of national consciousness.²⁴ Hobsbawm's conclusion from his study of nations and nationalism is that the nation is doomed as a focus for collective loyalties and ultimately the nation-state will be superseded by a supranational world in which

¹⁹ Ibid.

²⁰ Ibid., pp. 58-62.

²¹ Linda Colley, Britons: Forging the Nation 1707-1837 (London: Pimlico, 1992), p. 368.

²² E.J. Hobsbawm, Nations and Nationalism since 1780, rev. ed. (Cambridge: Cambridge University Press, 1995), p. 10.

²³ Ibid., p. 81.

²⁴ Ibid., p. 62.

internationalism triumphs: “A world of nations cannot exist, only a world where some potentially national groups, in claiming this status, exclude others from making similar claims, which, as it happens, not many of them do.”²⁵ Ultimately, Hobsbawm concludes that nationalism is a modern sickness and that the politics of identity and the urge demonstrated by humans to belong to some sort of collectivity is symptomatic of this sickness.²⁶ He further concludes that the world of the late twentieth century will be supranational and that the concept of the nation-state is too limiting to contain the expanding world.²⁷ Hobsbawm’s argument exists within a particular internationalist tradition that views the nation-state as a somewhat parochial and limiting unit with which to organise the world politically. Yet despite this philosophical position, the nation-state continues to exert pressures and influence within the globalised world of the 1990s. Indeed, supra-state organisations such as the EU serve as forums for smaller nations, which are not nation-states to gain greater representation and acceptance, as in the cases with national regions such as Catalunya and Scotland.

Seton-Watson’s Critique of Modernism

The persistence of nationalism as a phenomenon and the dominance of the nation-state as a political and cultural unit in the late twentieth century is an issue explored in the works of both Anthony Smith and Hugh Seton-Watson. Seton-Watson, writing in the mid-1970s, challenged the modernist theory of nationalism by looking beyond the nineteenth century as the crucible for national formation, making a distinction between what he termed the old and new nations of Europe. His argument is based on the premise of nationalism being an eighteenth century doctrine, but that this does not preclude the existence of nations prior to the Enlightenment. According to Seton-Watson, the nation was formed over a long period of time, yet it was only in the late eighteenth century that its usefulness as a basis for

²⁵ Ibid., p. 78.

²⁶ Ibid., p. 177.

²⁷ Ibid., p. 191.

collective identity and means of exercising popular sovereignty became realised.²⁸ The old and new nations to which Seton-Watson refers to are defined by the stage of national development they were at when the doctrine of nationalism first emerged. Thus, the old nations had “acquired a national identity or national consciousness before the formulation of the doctrine of nationalism.”²⁹ The new nations are those in which the development of national identity and the emergence of nationalism happened at the same time. Seton-Watson categorises the old nations as: the English, Scots, French, Dutch, Castilians, Portuguese, Danes, Swedes, Hungarians, Poles, and Russians and argues that the Germans, Norwegians, Irish, Italians and Catalans were at an early stage of national development where the formation of national consciousness was incomplete.³⁰ Illustrative of this distinction is Seton-Watson’s example of English and French national consciousness which he argues was not present in 1200 when the two nation-states were not as centralised and were largely similar in their social stratification and general outlook. However, by 1600 there was a centralising trend and people in these two nation-states had increasingly come to identify with a larger community represented in the person of the monarch and were considerably further apart in outlook and comparatively different on an individual basis, most obviously in terms of religion.³¹ Therefore, some national communities existed for many years prior to the late eighteenth or early nineteenth century where modernists place their birth, due in large part to the slow development of these communities over many centuries. Yet, it is not until the age of enlightenment and revolution that we are able to label such a community as a nation.

Here is the crux of much of the debate over the origin of nations and nationalism: it is very much a chicken-and-egg argument. Seton-Watson, however, takes the position that

²⁸ Hugh Seton-Watson, *Nations and States* (London: Methuen & Co. Ltd., 1977), p. 13.

²⁹ *Ibid.*, p. 7.

³⁰ *Ibid.*

nations and the states which they constitute themselves into are real and powerful forces within the modern world which command considerable loyalty and should not be discounted lightly or debased, even though nationalism has caused tremendous hardship and suffering. He argues that there is no point in arguing for a world without nations as they have become an entrenched part of the modern world.³² Seton-Watson's rejection of the purely modernist arguments of Gellner, Anderson, and Kedourie is echoed in the work of Anthony Smith, who goes on to contest the argument that nations cannot exist prior to nationalism.

Smith's Critique of Modernism

Smith largely rejects the modernist argument out of hand and saves much of his attack for the Marxist, internationalist view of nations and nation-states as put forward by Hobsbawm and other theoreticians:

Basically, all these critiques accept the persisting reality and historic role of the large-scale national state, but seek to depoliticize it, to render it harmless, by turning the nation into a purely cultural or folkloristic phenomenon stripped of all political significance, in the interests of wider segments of humanity or of humanity as a whole.³³

Like Seton-Watson, Smith argues for the existence of nations prior to the eighteenth or nineteenth centuries, yet he is not a primordialist arguing for the existence of nations throughout history. For instance, his examination of early Greek city states found 'national' characteristics, but their national characteristics cannot be termed national in the modern sense.³⁴ Pre-industrial states such as England, the Netherlands, Sweden and Spain emerged in the sixteenth and seventeenth centuries where the state was based upon a national concept. The perceived success of these nation-states served as a model for the evolution of nations in the nineteenth century, argues Smith. For Smith, like Seton-Watson, there is a paradox in the formation of nations: "If the nation seems in many ways modern, it is also deep-rooted.

³¹ Ibid., p. 8.

³² Ibid., p. 13.

³³ Anthony D. Smith, Nations and Nationalism in a Global Era, rpt. (Cambridge: Polity Press, 1996), p. 12.

The nationalists were guilty of telescoping history, but they were not altogether mistaken.”³⁵ Smith argues that in Western Europe, nations were already in existence in large part prior to the emergence of a coherent doctrine of nationalism in the eighteenth century. This is essentially due to an accident of history and to the fact that these nations were “largely unplanned.”³⁶

A Critical Approach

The approach of Smith and Seton-Watson in their attempts to plot historically the emergence of nations is constructive, since it does not limit the evolution of nations and nationalism to the last two hundred years or so. The modernists’ approach fails largely to take account of those characteristics, which can be termed national, that existed within defined territories prior to the Enlightenment. A shared language, religion, system of laws and government, a common history, and most importantly a sense of shared territorial community with others did exist in Seton-Watson’s old nations. Even though such a community with these common characteristics cannot really be defined as a nation until the eighteenth century due to the limits of intellectual or philosophical development, this does not negate its existence or its importance. In a discipline such as the study of nationalism where so many exceptions and qualifiers exist, it is short-sighted to limit the field of view to national evolution since the late eighteenth century. Furthermore, the pervasiveness of nationalist movements at the beginning of the twenty-first century demonstrates the legitimate place of the nation within human culture. Nationalism exists in developed as well as underdeveloped states and secessionist forms of nationalism can no longer be labelled solely as colonial or anti-imperial agitation based upon economic disadvantage or oppression. As Smith argues, nationalism, particularly its ethnic variety, has largely been on

³⁴ Anthony D. Smith *National Identity* (London: Penguin Books Ltd., 1991), p. 48.

³⁵ *Ibid.*, p. 69.

³⁶ *Ibid.*, p. 100.

the upswing since the end of the Second World War.³⁷ Nationalism continues to be a real and present force in the world today, even when one considers the growing strength of such institutions and alliances such as the EU and NAFTA. If we are to understand the nationalisms of Québec, Scotland, and Catalunya, which are post-industrial and post-modern in character, then we must take Smith's argument as a point of reference:

In short, this myth of the modern nation has to be recognized for what it is: a semi-ideological account of nations and nationalism, one that chimes with modern preconceptions and needs, especially with those of a mobile, universalist intelligentsia, for whom the nation-state is only a staging-post in humanity's ascent to a global society and culture.³⁸

Many theories of nationalism, modernist and others, fail to account adequately for more recent minority nationalisms such as those being studied here that are liberal, democratic, and inclusive, and curious mixtures, in varying amounts, of civic and ethnic ingredients. Indeed, the use of terms such as civic and ethnic to describe these nationalisms is limiting. Many of the theories debated at present have an historical basis: they attempt to explain what has come before and then, having developed a sound argument, attempt to apply it to contemporary nationalist movements. The problem with this approach is that many western nationalisms that exist at the beginning of the twenty-first century are post-industrial, post-modern, and inclusive movements that are beyond the scope of earlier definitions of the nation and nationalism. In attempting to explain minority nationalisms in twenty-first century multinational states such as Canada, Spain, and the UK the focus should not be based solely on the pattern of nationalist development in the mid-to late-nineteenth century. Indeed, many of the same characteristics are present in both eras, but nationalist development is largely affected by broader global economic and political trends that vary considerably from generation to generation. The presence of a global economy and supra-state structures such as the EU in 2001 is something quite unlike the age of empires and their

³⁷ Smith, *Nations and Nationalisms in a Global Era*, p. 14.

subsequent dissolution in the twentieth century. What is required is an entirely new assessment of nations as units of communal identity and self-definition, one that takes account of the existence of multiple identities based on membership in a nation and on citizenship within a state. Such an analysis is particularly germane to the present discussion of minority nationalism in multinational states.

It will be argued in this thesis that there exists a conflict in certain multinational states between two rival concepts of the nation: one held by the minority national group, in this case the Catalans, the Scots, and the Québécois, and one held by those outside the minority nation who identify the nation with the state. As has been shown, many theorists have focussed on the nation as being co-terminous with the state. This thesis will instead focus on how a plurality of nations can exist within a single state and how nationalism flourishes in this context. Michael Keating has argued for the need to “separate nationalism conceptually from the idea of the state”.³⁹ Indeed, nationalism need not be linked to the goal of state formation. Although there are many nationalists in Scotland, Québec, and Catalunya who seek some form of independent state there are also many nationalists whose goals are centred on greater recognition for the minority nation within the state as will be discussed below.

In this discussion on multinational states and minority nationalisms a suitable point of departure is Kymlicka’s work on multinational states and concepts of citizenship. Even though much of Kymlicka’s theories are rooted in liberal conceptions of rights which are beyond this thesis’ frame of reference, his work does provide a conceptual framework for examining minority nationalism.

³⁸ *Ibid.*, p. 41.

³⁹ Michael Keating, Nations Against the State: the New Politics of Nationalism in Quebec, Catalunya and Scotland (London: Macmillan Press Ltd., 1996), pp. 15 & 18.

The United Kingdom, Spain, and Canada are multinational states; that is, states in which there exist minority national groups who embrace “internal minority nationalisms”.⁴⁰ They are collectivities that recognise themselves as nations through a common historical experience, occupying a particular territory, and in the cases of the Québécois and the Catalans sharing a language different from that of the majority. Recognition of this multinational character is explicit in the case of the United Kingdom where Scotland, Wales, and England are acknowledged to be nations. Prior to gaining its independence from the rest of the United Kingdom in 1921 Ireland too was identified as a nation within the UK multinational state. However, since 1921 Northern Ireland has not viewed itself as constituting a distinct nation within the British state. The situations in Canada and Spain are somewhat different where there is no explicit recognition of Québec and Catalunya as nations and where nationalists are seeking the explicit constitutional recognition of this. As mentioned above, these minority nationalisms frequently come into conflict with a majority conception of the state as nation. As Kymlicka argues, one of the greatest challenges facing multinational states is how to reconcile these competing nationalisms within a single state.⁴¹ Kymlicka’s arguments are based upon his understanding of liberalism and how liberal values should be fostered in multinational states. Liberal values of justice and equality can only be promoted in multinational states where the distinctiveness of minority national groups is recognised and they are given the opportunity to maintain their culture and that adequate protection is afforded them:

... we should aim at ensuring that all national groups have the opportunity to maintain themselves as a distinct culture, if they so choose. This ensures that the good of cultural membership is equally protected for the members of all national groups. In a democratic society, the majority nation will always have its language and societal structure supported, and will have the legislative power to protect its interests in culture-affecting decisions. The question is whether fairness requires

⁴⁰ Will Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998), p. 127.

⁴¹ *Ibid.*

that the same benefits and opportunities should be given to national minorities. The answer, I think, is clearly yes.⁴²

When such recognition is not afforded to minority national groups or the degree of recognition offered is seen as insufficient, particularly in the case of the Scottish National Party's response to devolution, the conflict between two conceptions of nation comes to the surface. Indeed, without recognition for minority national groups the integrity of the multinational state can be threatened:

The politics of nationalism has been powered for well over a century in part by the sense that people have had of being despised or respected by others around them. Multinational societies can break up, in large part because of a lack of (perceived) recognition of the equal worth of one group by another.⁴³

The nature of the conflict depends very much on the political options favoured by nationalist parties. While some of the parties that will be investigated in this thesis favour an accommodation of the nation within the larger state through greater devolution of powers and constitutional reforms, others opt for the secession of the minority national group from the state. Secession allows the minority national group to constitute itself into an independent state, possibly with close political and economic links with the old state or as a member of a supra-state organisation such as the EU. Devolution and moves towards a more federal arrangement are options by which these groups can seek greater recognition.⁴⁴ Scotland, Québec, and Catalunya have chosen all these alternatives in varying degrees.

In the Scottish case, the growth in the power of the Scottish Office in the post-war era is an example of decentralisation on an administrative level. As the welfare state expanded in the 1950s and 1960s the Scottish administration gained greater control in areas such as healthcare, education, and social services provision; this gave Scotland a certain degree of administrative autonomy from Whitehall. The *Scotland Act, 1998* moves beyond

⁴² Will Kymlicka, *Multicultural Citizenship* (1995; rpt. Oxford: Clarendon Press, 1997), p. 113.

⁴³ Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994), p. 64.

simple administrative decentralisation and devolves power from Westminster to a new Scottish Parliament, thus responding to popular calls for greater accountability and local control. As will be discussed in subsequent chapters, the belief that devolution is sufficient to promote greater recognition of Scotland's distinctiveness as a nation is dependent very much on whether you are a nationalist who supports a reformed Union or one who favours independence.

As a constituent part of the Canadian federal state, Québec enjoys a great deal of autonomy through its exercising of sovereignty in a number of areas. However, as separatist demands for greater autonomy increased in the late 1970s and 1980s, the Federal Government moved to devolve jurisdiction in a number of areas such as immigration, and more recently in the field of manpower training. Again, for many Québécois nationalists the devolution of sovereignty from Ottawa to Québec is insufficient as the federal system does not provide enough recognition for Québec as a nation and so the only option left is secession. Yet for many nationalists in Québec there is enough flexibility in the system to allow for significant constitutional and administrative reforms which would grant greater recognition.

In Spain there exists a high level of decentralisation to the autonomous communities, a move made by Madrid in the drafting of the 1978 constitution that attempted to meet nationalist demands in Catalunya and Euskadi among others. As in the other cases there are those Catalan nationalists who favour greater recognition of the Catalan nation within the Spanish State and, additionally, an affirming of the multinational character of the state and those who favour independence from Spain.

We can conclude that Kymlicka's arguments regarding minority nationalism and multinational states are useful when trying to put the nationalisms of Scotland, Québec, and

⁴⁴ Michael Walzer, "Pluralism: a Political Perspective," in *The Rights of Minority Cultures*, Will Kymlicka, ed. (1995; rpt. Oxford: Oxford University Press, 1997), p. 141.

Catalunya in context. Modernist theorists such as Kedourie, Gellner, and Hobsbawm do not adequately address these minority nationalisms; they do not fit their patterns of nationalist development where the nation is bound together with the idea of the state. The minority nationalisms that are the subject of this thesis exist in the unique context of the multinational state. The subsequent chapters in this thesis will go on to examine more closely the historical roots of these three nationalist movements and how their development in a multinational context has affected how nationalists see the nation and what positions they adopt regarding its place within the state. Kymlicka's theories around the need for recognition of minority national groups will serve as a point of departure for the thesis, which will help to underline how nationalists' arguments for greater recognition for the minority nation and constitutional change are inextricably linked.

2

Nationalism and Québec 1760-1992: Strands of Political Thought

Our statement on the basic prerequisites for fashioning a nationality and on the territory that moulded it leads us to say without hesitation that French Canadians in this country are a real *nation*, and that the vast expanse of territory irrigated by the St. Lawrence is their own legitimate *homeland*.¹

This chapter seeks to place in historical context the emergence and growth of nationalism in Québec since the conquest of New France in 1759-60. It is essential to understand both the foundations of Québécois nationalism and its various manifestations over the last two centuries to nationalism's role in seeking to bring about significant constitutional change. As this thesis employs a comparative approach in discussing these issues in Scotland, Catalunya, as well as Québec, the following chapters will explore the corresponding growth of contemporary nationalism in these other two nations. In general, this chapter will highlight the key political events and constitutional developments since the proclamation of the *Quebec Act, 1774*. It will also examine what the views and arguments of Québec's leaders and polemicists have been on the subject of the nation and Québec's role as the homeland for the French in North America. Attention will be given to a discussion of the writings of Québec's philosophers, liberal reformers, clerics, and nationalist leaders who have shaped the landscape of the nation since the late eighteenth century. This chapter seeks only to give a fairly broad summation of events and the philosophies that shaped them, thus laying the foundation for a more in depth discussion on nationalism and constitutional politics in chapter seven.

¹ Louis-François Lafleche, "The Providential Mission of the French Canadians," trans., in French-Canadian Nationalism: An Anthology, ed. Ramsay Cook (Toronto: Macmillan of Canada, 1969), pp. 95-96.

Strands of Nationalism

Broadly defined, there are four distinctive strands of nationalist thought in Québec, two which dominated in the period before the Quiet Revolution of the 1960s and two which have emerged since then. It would be wrong to see these various paths of nationalist development as mutually exclusive since there has been a good deal of interweaving between them, with many pre-1960 nationalist ideas finding resonance in the nationalism of the later period. Thus, there is no *sui generis* Québécois nationalism.

The two pre-Quiet Revolution strands of nationalist thought I wish to identify are the conservative-clerical and the liberal strands. As will be discussed, the conservative-clerical strand can be subdivided into two varieties of nationalist thought: Tory and Ultramontane, both of which frequently manifested themselves in the so-called *pure laine*, literally 'pure wool', form of nationalism. *Pure laine* nationalism is essentialist and has an exclusive conception of who comprises the nation. The liberal strand can also be divided into two varieties: the liberal or *rouge* variety and the pan-Canadian variety. There is also a sub-set of this second strand which can be labeled the *Patriote/Republican* variety of nationalist thought.

Tory Nationalism

Firstly, Tory nationalist thought in Québec is best expressed in the ideas of post-conquest leaders such as Bishop Joseph-Octave Plessis who viewed the resulting accommodation of the French-Canadian fact in North America by the British in 1774 as a deliverance from American republicanism and a fact to be celebrated. Ultramontane thought emerged later in the mid- to late-nineteenth century and had its promoters among senior clerics such as Bishop Louis-François Laflèche of Trois-Rivières, Bishop Ignace Bourget of Montréal, and the writer Jules-Paul Tardivel. Ultramontanism had its roots in France and was an ultra-conservative, Catholic nationalism that argued for the indivisibility of Church

and State and the providential mission of French Catholics in North America. The equally ultra-conservative, although more explicitly xenophobic and anti-semitic pure laine manifestation of this nationalism is evident in the writings of Laflèche and somewhat more subtly in some of the works of Abbé Lionel Groulx.

Liberal Nationalism

The liberal strand of nationalist thought became more explicitly linked with the Liberal party in Québec, also known as the rouges. This rouge nationalism was the antithesis of the nationalism of the Ultramontanes who were the Liberals' political adversaries in the late-nineteenth century. Leading Liberals were Louis-Hippolyte LaFontaine, who played a key role in Canadian colonial administrations from 1842-43 and 1848-51, and Antoine-Aimé Dorion, the Québec Liberal leader in the 1860s and critic of Confederation. The pan-Canadian variety of nationalist thought is best typified by Henri Bourassa and the publication, *Le Devoir*, which he founded, and by his protégé, André Laurendeau. Pan-Canadian nationalism argued for Québec's place within Canada, but a Canada shorn of the prevailing imperial nationalism, a nationalism dominant in English-speaking Canada during the Boer and First World wars. The sub-set of Patriote/Republican nationalist thought is largely confined to the era of the 1837-38 rebellions in Lower Canada and its champions, Robert Nelson and Louis-Joseph Papineau.

During the Quiet Revolution of the 1960s and the decades following, two other strands of nationalist thought emerged in Québec: the socialist/social democratic/indépendantiste and the moderate nationalist/étatiste. The first strand can again be divided into three varieties: Marxist, socialist, and moderate social democrat or Péquiste. The moderate nationalist/étatiste is represented largely by the post-1960 Québec Liberal Party.

Marxist/Socialist Nationalism

The Marxist and socialist varieties of nationalism post-1960 have common ideological roots although they used different methods to try and attain their goals. Marxist revolutionaries such as Pierre Vallières and members of the Front de Libération du Québec (FLQ) extensively employed post-colonial Marxist rhetoric in arguing for Québec's independence from the rest of Canada with the FLQ using terrorist tactics to achieve this goal. Socialists such as Pierre Bourgault and his party the Rassemblement pour l'Indépendance Nationale (RIN) also argued for Québec's independence, but through protest and occasionally riots, notably on 24 June 1968, in seeking to bring about this result.

Moderate Nationalism

The moderate social democratic thought of René Lévesque and his Parti Québécois became dominant in the 1970s and would eventually subsume other pro-independence parties such as Bourgault's, thereby emerging as the voice for Québec independence. What can be considered to be the moderate nationalist or étatiste variety of nationalism is represented in the Québec Liberal Party of Jean Lesage and his successor Robert Bourassa that helped to shape Quiet Revolution Québec. This variety of nationalist thought argued that Québécois should be in charge of their own affairs to a greater degree. A policy brought about to a large extent through increased government intervention in the economy. The level of government intervention in Québec's economy is something that even today distinguishes the province from the rest of Canada. This moderate nationalist approach is federalist, in that it argues for Québec's continued place in Confederation, however it is one that has led to a greater degree of asymmetry within the federal State. The moderate nationalism of the Québec Liberal Party has been influenced by the earlier pan-Canadian strand; it is in opposition to the separatist nationalism of its main rival since the mid-1970s, the Parti Québécois. Having identified the four main historical strands of nationalism in Québec the

rest of this chapter will go on to examine how these have developed since the conquest and, in turn, how they have influenced an understanding of Québec as a nation.

The French-Canadian Nation and Québec

Nationalism in Québec has manifested itself in a variety of different ways since the British conquest; thus it would be disingenuous to categorise it as merely ethnic or civic, revolutionary or moderate, linguistic or Catholic. As the political, social, cultural, and economic realities of Québec and the Québécois have changed and evolved, so has the nationalism in the territorial home of the French in North America. However, it would be wrong to imply that the French in North America are not at home in Manitoba, Eastern Ontario, or New Brunswick, as Franco-Manitobans, Franco-Ontarians, and Acadians are all established communities, territorially, culturally, and politically. It is, however, the French-Canadians in Québec who have come to define themselves as a nation in a way in which the other dispersed groups of French-speakers in Canada have not. As Silver has pointed out, it was not until the late nineteenth century that the French-Canadians living in Québec discovered or acknowledged the existence of the Acadians as a distinct community.² As the vast majority of French-Canadians lived in Québec they recognised it as their homeland, la patrie. Prior to the advent of the Quiet Revolution in the 1960s, it is more appropriate to talk of a French-Canadian and not a specifically Québécois nation and nationalism. While Québec was the historical homeland of the French in North America, it is not until the 1960s that there emerged an explicit identification of Québec as a nation and increased Québec demands for greater sovereignty within Canada. As a result this chapter will refer to French-Canadian nationalism up to the period of the Quiet Revolution.

The focus of the French-Canadian homeland, as the Ultramontane Bishop Laflèche pointed out in 1866, was “that vast expanse of territory irrigated by the St. Lawrence”, thus,

² A.I. Silver, *The French-Canadian Idea of Confederation*, 2nd ed. (Toronto: University of Toronto Press, 1997), p. 151.

the ancestral, seigneurial lands of New France. For the French-Canadians their focus was Québec first and foremost, a view that Silver argues failed to change much with Confederation in 1867:

‘The Quebec legislature had hardly begun its session when all eyes were turned toward the provincial capital and firmly fixed upon it.’... Given this attitude, it was not surprising that those who considered Quebec the proper homeland of the French Canadians should often look forward to its eventual separation from the rest of Canada and emergence as an independent French-Catholic state.³

The concept of Québec as the national homeland for the French-Canadians is one that would evolve over time under numerous influences: conservative and liberal; the arguments of armed revolutionaries; and through the link between nationalism and Catholicism in Québec through to the 1960s. The growth of nationalism in Québec, however, can be traced back to that one defining, watershed event in Canadian history: the British conquest of New France.

The Conquest of New France 1759-60

The events of 1759-60 are the backdrop to the nationalist discourse in Québec. Québécois nationalism cannot be understood without reference to the conquest; it became entrenched in the collective mind of the French-Canadians that they existed as a conquered people. For the inhabitants of New France and what was to become the new British colony of Québec, the conquest was a most traumatic event accompanied by a considerable amount of upheaval. Under the French regime most of the colonial administrators and senior clerics were imported from France, such as Bishop François de Laval who helped to shape the early political and religious life of the colony in the 1660s. Following the conquest, connections with France were severed, thus affecting institutions such as the Church.⁴ The British

³ Ibid., p. 117.

⁴ In his somewhat outdated *French Canadians, 1760-1967*, Mason Wade addresses this issue of clerical appointments and the upset caused by the conquest by examining the debate that took place between the former governor, Vaudreuil, and Lord Amherst over the appointment of a new bishop following the events of 1759-60. Vaudreuil argued that the French monarch should still be able to name the Bishop of Québec. Amherst refused this request, thus leaving the Québec Church without a head for six years and thereby eliminating the possibility of any further ordinations taking place until a new bishop was chosen. The loss of financial support from France for the Church and the lack of

political response to the conquest and its resulting impact on Québec society was unique given the importance of the common law to the British and that Catholics in the United Kingdom remained subject to penal laws until the mid-nineteenth century. It demonstrated that the British had some appreciation for the situation they found themselves, in which there was a pre-existing political, clerical, social, and economic order in the colony.

The *Proclamation of 1763* and the *Treaty of Paris* in the same year finalised the conquest and established the British administration in the colony. The *Quebec Act, 1774* was a landmark piece of legislation in the British empire since it acknowledged the presence in the colony of distinct institutions, namely the Catholic Church, the seigneurial system of land holding, and the civil law, and guaranteed their continued existence. The legal protection given to the Catholic Church is one of the most significant elements of the Québec Act:

And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That his Majesty's Subjects, professing the Religion of the Church of Rome of and in the said Province of Quebec, may have, hold, and enjoy, the free Exercise of the Religion of the Church of Rome, subject to the King's Supremacy...and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.⁵

The maintenance of the Catholic Church and its hierarchy in Québec would have a profound impact on the development of nationalism in the province over the following one hundred and seventy-five years. It would be under the influence of clerics such as Joseph-Octave Plessis, Laflèche, Ignace Bourget, Antonine Labelle, Lionel Groulx, and Georges-Henri Lévesque that the national identity of the French-Canadian would be defined and subsequently transposed on to the populace at large. This link between Catholicism and nationalism in Québec remained strong right up until the Quiet Revolution of the 1960s

legal sanction for the tithe meant that the Church in Québec was severely hampered by the effects of the conquest.

⁵ *Quebec Act, 1774*, 14 George III, c.83 (U.K.), s. V.

when the anti-clerical nationalism of the Cité libristes and groups such as the RIN dissolved it.⁶

Early 19th Century Nationalism

In the decades following the *Quebec Act, 1774*, French-Canadian leaders were generally glowing in their praise for the political accommodation of 1774 that allowed them to maintain their position as the leaders of civil and religious Québec. Ironically, Voltaire had equally praised the victory of the British at the Plains of Abraham, declaring it to be “the triumph of liberty over despotism, heralding the liberation of all America.”⁷ At the turn of the century there is little evidence of nationalist sentiment, let alone agitation. Joseph Octave Plessis was Bishop of Québec from 1806 until his death in 1825, during which time he preached deference to the colonial government and argued that the conquest was “a blessing in disguise”; indeed, Britain was best able to protect Québec from the anti-clerical excesses of the French republicans and from the revolution in America.⁸ In a sermon preached after Nelson’s victory against Napoleon’s navy at Aboukir, Plessis established his, and therefore the Church’s position:

Où est le bon patriote, où est le loyal sujet, je dis plus, où est le vrai chrétien dont le cœur n’ait été réjoui à cette heureuse nouvelle? L’empire des eaux assuré à la Grande Bretagne; son pavillon déployé majestueusement sur toutes les mers; ses ennemis confondus et humiliés; un paix après laquelle toute la terre soupire, devenue plus facile. Ces seules considerations ne suffisent-elles pas pour porter l’allégresse dans toutes les âmes? Ajoutons ici, que cette victoire a pour nous un mérite particulier, parce qu’en affermissant la puissance de la Grande Bretagne, elle assure la continuation du repos et du bonheur de cette Province.⁹

⁶ The term Cité libristes refers to that group of Québécois intellectuals, including Pierre Trudeau, Gérard Pelletier, and Pierre Vadeboncoeur, who wrote for the journal *Cité libre*. They challenged the prevailing nationalist orthodoxies of the 1950s and 1960s and the government of Maurice Duplessis.

⁷ Mason Wade, *The French-Canadians, 1760-1967*, 2nd ed., vol.1 (Toronto: Macmillan, 1968), p. 44.

⁸ “Mgr. Joseph-Octave Plessis,” in *Canadian Political Thought*, ed. E.D. Forbes (Toronto: Oxford University Press, 1987), p. 2.

⁹ Joseph-Octave Plessis, *Discours à l’occasion de la victoire remportée par les forces navales de sa majesté britannique dans la Méditerranée le 1 et 2 août 1798, sur la flotte française*, (1799; rpt. Québec: Dussault & Proulx, 1905), pp. 19-20.

Thus, it can be argued that it was under the authority of Great Britain that the peace and happiness of the province was gained. Plessis continued on to point out that the government best suited for the good of the province was that of Britain, since it had respected the faith and given the people a reasonable role in the administration of the province.¹⁰

This abundant respect for the colonial administration and its way of governing the colony did not extend very far into the nineteenth century. By the 1810s, there was considerable agitation on the part of some of the seigneurial and professional classes who argued that the entrenched colonial oligarchy, the Château Clique, was misusing its powers of patronage. Those who called for greater reform of colonial institutions became more militant and radical in their demands; this prompted open rebellion in the colony from 1837 to 1838. Patronage and power in Québec was controlled by a small coterie of colonial officials, merchants, and other prominent Anglophones who worked with senior members of the clergy to maintain the Anglophone ascendancy within the colony. They were challenged within the Legislative Assembly by a group of bourgeois liberal reformers in the Parti Canadien who sought to work within the existing system and argue for such reforms as responsible government, control over the civil list, and an elected Legislative Council.¹¹ By 1826, the Parti Canadien had come to be referred to as the Parti Patriote and its leader, Louis-Joseph Papineau, was becoming increasingly more radical and overtly nationalist, despite his bourgeois origins. Papineau was a lawyer and seigneur of Petite-Nation who, according to Ouellet, disliked politics and saw his actions more as patriotic responsibility. Indeed, Papineau did not become radical until he left the more moderate reform faction of the Parti Canadien in 1830 and began advocating an independent French-Canadian

¹⁰ Ibid., p. 20.

¹¹ John A. Dickinson and Brian Young, *A Short History of Quebec*, 2nd ed. (Toronto: Copp Clark Pitman Ltd., 1993), p. 160.

republic.¹² To that effect in 1832 the Patriotes adopted a tricolour flag reminiscent of another European revolution and found that support for their cause was increasing among the disaffected bourgeoisie of Québec. During the 1830s riots became common occurrences as supporters of the Patriotes defied the established order, such as in the West Ward of Montréal in 1832 when troops opened fire killing three during an election where a Patriote candidate, Daniel Tracey, had been nominated.¹³

The 1837-38 Rebellions

By 1837, the Patriotes under Papineau had become a popular revolutionary force made up of Francophones, Irish, and like-minded Anglophones. However, in the battles that took place between the Patriotes and the colonial militia, the Patriotes failed to register any great victories, due largely to the fact that they were poorly led, poorly equipped, and had failed to muster enough grassroots support as a result of the clergy preaching against the evils of rebellion.¹⁴ The rebellion was largely inspired by the revolutionary ideals of the French and American revolutions, such as the rights of men and the principles of liberty and independence.¹⁵ In his "Address to the Confederation of the Six Counties" in 1837, Papineau condemned the ineptitude and corruption of the colonial administration:

Loin que des réparations aient été concédées à nos humbles prières, l'agression a suivi l'agression, jusqu'à ce qu'enfin nous ne paraissions plus tenir l'empire britannique pour notre bonheur et notre prospérité, nos libertés et l'honneur du peuple et de la couronne d'Angleterre, mais en vue seulement d'engraisser un de horde d'inutiles officiels, qui non content de jouir de salaires énormément disproportionnés

¹² Fernand Ouellet, "The Insurrections," *Canada: Unity in Diversity*, ed. P.G. Cornell et al. (Toronto: Holt, Rinehart and Winston of Canada, 1967); rpt. in *Readings in Canadian History: Pre-Confederation*, eds. R. Douglas Francis and Donald B. Smith, 3rd ed. (Toronto: Holt, Rinehart and Winston of Canada Limited, 1990), p. 329.

¹³ *Ibid.*, p. 162.

¹⁴ As Ouellet points out, the Church realised in October 1837, after the *Patriotes'* publishing of their manifesto at the Assembly of St. Charles, that the rebellion was a threat to the established order and needed to be put down. The Bishop of Montréal, Jean-Jacques Lartigue, issued a pastoral letter condemning the actions of the *Patriotes* and the liberal, republican, and anti-establishment ideas that motivated their actions. Once again the conservative elements within the clerical leadership emphasised the need for order over the evils of rebellion and that active participation in rebellion could but only lead to excommunication.

¹⁵ Louis-Joseph Papineau, "Adresse de la confédération des six comtés au peuple du Canada," in *Papineau*, ed. Fernand Ouellet, 2nd ed. (Québec: Les Presses de l'Université Laval, 1970), p. 80.

aux devoirs de leurs charges et aux ressources du pays, se sont combinés en une faction uniquement mue par l'intérêt privé à s'opposer à toutes les réformes, à défendre toutes les iniquités d'un gouvernement ennemi des droits et des libertés de cette colonie...¹⁶

After the 1837 rebellions Papineau was driven into exile and the movement became increasingly radicalised under the leadership of Robert Nelson, who led a rebellion from a base in Vermont in 1838. The 1838 rebellion was an abortive one, but it was considerably more radical in its aims, many of which were inspired by the Chartists in Britain. These included: the separation of Church and State; the establishment of a republic; abolition of confessional schools; expropriation of clergy estates; universal suffrage; a secret ballot; and freedom of the press. Nelson's *Proclamation of the Independence of Lower Canada* of 1838 was republican in its entirety. Among its various declarations it proclaimed "Que le Bas-Canada doit prendre la forme d'un Gouvernement républicain et se déclare maintenant, de fait, république."¹⁷

The rebellions of 1837 and 1838 had two important effects: they signaled the emergence of a new nationalism and they brought about limited institutional reform. In 1839, at the behest of the British Government, Lord Durham issued a report which criticised the rule of the entrenched oligarchies in both Upper and Lower Canada and led to the establishment of a united parliament for the two Canadas with responsible government. In his observations of the situation in the British North American colonies Durham himself employed the language of nations to illustrate what he saw as irreconcilable differences between the French and the British:

I expected to find a contest between a government and a people: I found two nations warring in the bosom of a single state: I found a struggle, not of principles, but of races; and I perceived that it would be idle to attempt any amelioration of laws or institutions until we could first succeed in terminating the deadly animosity that now

¹⁶ Ibid., p. 81.

¹⁷ Robert Nelson, "La proclamation de l'indépendance du Bas-Canada," in Papineau, ed. Fernand Ouellet, p. 83.

separates the inhabitants of Lower Canada into the hostile divisions of French and English.¹⁸

The Union of the Canadas, 1840

The accommodation of 1840 had the assimilation of the French-Canadians as its objective; it was seen by the British as the most “expeditious way to prevent further such occurrences.”¹⁹ The *Union Act, 1840* united the two colonies of Upper Canada (Ontario) and Lower Canada (Québec) and gave them each forty-two seats in the new legislative assembly. From 1845 a double majority principle was established in the assembly through an alliance between the Lower Canadian Reform majority and the Upper Canadian Tory majority so that neither part of the united province could be dominated by a majority administration from the other.²⁰ However, it was not until 1847-48 that responsible government was established where the government had to have a majority in the assembly; the first administration was that of the reformers Robert Baldwin and Louis-Hippolyte LaFontaine. Baldwin and LaFontaine had different ideas on the ‘double majority’ principle, the need for a party to maintain majority support in its respective section of the Assembly as well as the Assembly as a whole. Baldwin denied it in theory but accepted it as it came to function in the Assembly whereas LaFontaine liked it in theory but feared its practical implications and the sectionalism it could foster.²¹ This style of joint administration would last until that of John A. Macdonald and George-Étienne Cartier when the Province of Canada came together in Confederation with the colonies of Nova Scotia and New Brunswick in 1867 to form the Dominion of Canada.

The Era of Confederation

¹⁸ Gerald M. Craig, ed., *Lord Durham's Report* (Toronto: McClelland and Stewart Limited, 1963), pp. 22-23.

¹⁹ Kenneth McRoberts, “The Sources of Neo-Nationalism in Quebec,” in *Quebec Since 1945: Selected Readings*, ed. Michael Behiels (Toronto: Copp Clark Pitman Ltd., 1987), p. 81.

²⁰ Wade, p. 248.

²¹ S.J.R. Noel, *Patrons, Clients, Brokers: Ontario Society and Politics 1791-1896* (Toronto: University of Toronto Press, 1990), pp. 166-67

The *British North America Act, 1867*, now the *Constitution Act, 1867*, which established the Canadian federal State was championed by the Conservative or bleu party of Cartier. Cartier characterised the Confederation agreement as a defining moment in the history of British North America: “ ‘British and French Canadian alike could appreciate and understand their position relative to each other. They were placed like great families beside each other and their contact produced a healthy spirit of emulation’ .”²² The Liberal or rouge party of Antoine-Aimé Dorion was less enthusiastic. The rouges saw Confederation as unacceptable and merely an extension of the assimilationist goals of the 1840 act; it would centralise power and lead to legislative union, which was the greatest fear of Dorion’s party.²³ This fear of Dorion’s was confirmed by Macdonald’s approach to dealing with the province in the years following 1867 by which he changed or disallowed provincial bills which were contrary to the federal interest or, as Young argues, the interest of the Anglophone ruling class of Montréal.²⁴ Ultimately, the opposition of Dorion and other Liberals had little effect on the passage of the BNA Act as Cartier, Hector Langevin and other bleus played dominant roles in helping to bring the Province of Canada into Confederation.

Emergence of Ultramontanism

Nationalism in Québec continued to develop in the period immediately following Confederation, taking on an ethnic and ultra-conservative guise under the influence of Ultramontane Catholicism. Increasingly, nationalist leaders and polemicists in Québec identified French-Canadians as being a people set apart, and in some cases a people with a messianic mission in North America. The explicit identification of French-Canadian nationalism with Catholicism by late nineteenth century writers and critics accompanied the

²² George-Étienne Cartier as quoted in Dickinson and Young, *A Short History of Quebec*, p. 187.

²³ Silver, p. 38.

emergence of Ultramontanism, an ultra-conservative Catholicism with its roots in France, as the dominant nationalist creed. Again, the Bishop of Trois-Rivières, Louis-François Laflèche, provided a clear indication of this link between the nation and the Church:

It is our firm belief that we should be doing our countrymen a great service by helping to strengthen their faith in our nationality and their trust in its future. We might further contribute toward encouraging us all to realize, as needs we must, that the SAVING OF OUR NATION depends, no less than that of our souls, on our constant, unyielding adherence to CATHOLICISM. This is doubtless our most powerful bond as a national entity, and one that will always be strongly effective in protecting us from the many dangers around us, the most fearful of which is unquestionably the threat of division.²⁵

For Laflèche and other conservatives, the terms French Canadian and Catholic were synonymous. They had been inspired in this view by Ultramontane writers in France such as Joseph de Maistre and Louis Veuillot who argued that France had a special providential mission to fight for Catholicism in the world; Ultramontanism in Québec was an extension of this philosophy.²⁶ In the 1880s and 1890s, certain French-Canadian polemicists pointed to how this mission of France's was under threat by all those forces that sought to secularise French society; these forces were liberal intellectuals, Freemasons, and the Jews.²⁷ As Silver has demonstrated, the popular press in Québec led the outcry against these enemies of French, and thus French-Canadian, Catholicism: "...but French Canadians could only lament at the 'mob of atheists, freethinkers, Jews, and other foreigners, who are now dancing upon the disfigured body of our unfortunate mother-country, insulting everything which is most dear to us.'"²⁸ This is strong imagery indeed, imagery that evokes the frequently xenophobic and anti-Semitic face of French-Canadian nationalism, the so-called pure laine, or "pure wool" nationalism.

²⁴ Brian Young, "Federalism in Quebec: The First Years After Confederation," in *Federalism in Canada and Australia: The Early Years*, eds. Bruce W. Hodgins et al. (Waterloo: Wilfrid Laurier University Press, 1978), p. 102.

²⁵ Laflèche, p. 103.

²⁶ Silver, p. 230.

²⁷ *Ibid.*, p. 232.

²⁸ *L'Étendard*, 3 Feb. 1883, as quoted in Silver, p. 232.

As Ultramontane France had Louis Veuillot as its polemicist, Québec had Jules-Paul Tardivel whose works such as the 1895 *Pour la Patrie* vindicated the position of the Catholic Church as the guardian of the French-Canadian nation and vilified liberalism and other forces which sought to subvert its position. Some of Tardivel's most strident attacks of liberalism came in 1882 in articles he published in his Ultramontane paper *La Vérité*. More often than not these attacks were directed at the rouge party and its successor the Québec Liberal Party of Wilfrid Laurier rather than liberalism as a philosophical or ideological construct, although Tardivel rarely made any distinction between the two :

And take careful note that by nature this liberalism we have just defined resembles godless liberalism and atheism, to which it inevitably leads. In effect, one begins by excluding God from politics; one contends that He has nothing to do with elections, laws, and public policy; that electors, deputies, and ministers owe Him no account of their public acts. Then one goes a step further: one says that the good Lord has no place in school; then that he has no place in the family; and finally, that He is superfluous everywhere, even in the Church and in the conscience of individuals. Such is the slippery slope taken by those who begin by denying the rights of God in the civil order, and it is a slope that leads to the abyss, to hell.²⁹

The conflict between the Ultramontanes and the rouges emerged as a dominant one in Québec political discourse until the Quiet Revolution. The approach of the Ultramontanes coalesced politically through the publication of the *Programme catholique* in 1871 by followers of Bishops Laflèche and Bourget. The goal of the Programmistes was to educate electors how to vote, in essence telling them to vote for the Conservative Party as it was the only party which had their spiritual and national interests at heart, which were one in the same.³⁰ Ultramontane thought inspired the direction taken by the Church in Québec in all political and national matters. Evidence of this can best be found in two of the important episodes of the late nineteenth century: the colonisation movement and the Riel Affair.

The Colonisation Movement

²⁹ Jules-Paul Tardivel, "On Liberalism," in Forbes, p. 153.

³⁰ As quoted in Marcel Hamelin, *Les Premières années du parlementarisme québécois (1867-1878)*, (Québec: Les Presses de l'Université Laval, 1974), p. 122.

As part of the providential mission of French Canadians to spread the work of the Church in North America, clerical and other leaders in Québec encouraged the development of a colonisation movement. The purpose of this movement was to colonise those parts of rural Québec that were far from the traditional seigneurial lands in the St. Lawrence Valley. These areas included the Saguenay-Lac St. Jean region, the Eastern Townships, and the Outaouais region. These colonisation projects were encouraged and led by figures such as the Bishop of Montréal, Ignace Bourget, and by L'Abbé François-Xavier-Antoine Labelle. In 1869, the *Colonization Societies Act* was passed in Québec which financed the cost of buying Crown land so that colonisation societies such as the Société Générale de Montréal could encourage Francophone and Catholic migration to these new areas of settlement.³¹ The colonisation of these areas was generally successful, yet in the case of the Eastern Townships there was often friction between the established Anglophone settlers and the new Francophone Catholic colonisers. Colonisation demonstrated the desire of nationalist leaders in Québec to carry forward the mission of the Church in the remote parts of the province.

French-Canadian Nationalism and Louis Riel

In November 1885, the Métis rebel leader, Louis Riel, was executed after a questionable trial in which he was convicted of treason. The Métis are the people who were the outcome of unions between Cree women and French and Scottish fur traders who came to live in the Canadian Northwest. After having played a key role in the creation of the province of Manitoba out of the Northwest Territories in 1870, Riel had led a rebellion by the Métis over the issues of land claims and non-aboriginal settlement in the Northwest. The Métis were aggrieved at Ottawa's poor handling of their land claims, particularly in the face of increasing European settlement which was accompanying the construction of the Canadian Pacific Railway. There has been much debate over whether Riel was insane. He viewed himself as a messianic figure among the Métis people. His execution for his part in

³¹ Dickinson and Young, p. 115.

the rebellion inflamed public opinion in Québec where Francophones saw this event as an attack against Francophones and Catholicism; this was despite French-Canadian condemnation of the insurrection and their vigorous support of the French-Canadian militia units that went to fight.³² Many Québec newspapers turned the Northwest rebellion and Riel's execution into a racial issue, in which the Federal Government sided with the influential Orange Order to oppress the Métis:

'Orange fanaticism which would like to exterminate the French Métis of the North-West, and which must have fomented these troubles on purpose, in order to have a reason to deal severely with the hated race.' Surely this was, after all, the real if secret reason for the abuse and mistreatment to which the Métis had been subjected by English-Canadian employees of the federal government.³³

The ethnic aspect of this nationalism was something that would remain until well into the twentieth century.

During the late nineteenth and early twentieth centuries there appeared two new advocates of nationalism in Québec: Henri Bourassa and Abbé Lionel Groulx. Both Groulx and Bourassa's nationalism were characterised by a broader view of Québec's place within both Canada and the world, yet each was still firmly rooted in French Canadian Catholicism. Increasingly this nationalism was focussing more and more on Québec itself and not French Canada as a whole, although this transition would not be complete until the dawn of the Quiet Revolution in the 1960s.

Henri Bourassa and Pan-Canadian Nationalism

Henri Bourassa was one of the most significant Québec politicians and nationalists of the twentieth century. He was both a federal and provincial Member of Parliament during his career and sat as a Liberal, a Conservative and as an independent at various times. He stood out as a nationalist in Québec due to his opposition to Canadian involvement in the Boer War and to conscription in World War I, both issues which provoked furious debate in

³² Silver, pp. 154-55.

³³ *La Verité*, 4 Apr. 1885 and *L'Etendard*, 1 Apr. 1885 as quoted in Silver, p. 156.

Québec and served to divide English and French Canada. Bourassa's founding of the Montréal newspaper *Le Devoir* in 1910 contributed to the growing influence of nationalism within Québec politics.³⁴ The nationalism of Henri Bourassa was typified by its promotion of a pan-Canadian nationality that had at its core a belief in biculturalism and greater Canadian autonomy:

We are neighbours and partners of the English majority. We do not wish our fellow citizens to tighten the ties which attach us to England nor to upset for their advantage the equilibrium between the two races in Canada. In return we should not hurt their nationalist feelings and their justified susceptibilities by desiring a political rapprochement with France or a rupture of Canadian Confederation. Let us remain solidly on the ground where the circumstances of history have placed us. Let us resist firmly the political absorption of Canada into the Empire and the extinction of our nationality in Canada. Let us respect the vow we have sworn to England and the Anglo-Canadian majority: this is the way to make them respect their own word. It is important for our security to convince Anglo-Canadians of one undeniable fact: it is not as Frenchmen but as Canadians that we do not wish to draw closer to England and assume new obligation in the Empire...³⁵

Bourassa also sought a truer, reformed federalism by which the provincial autonomy of Québec would be respected.

The Concept of Duality in Canada

In the years following Confederation various commentators, such as the jurist Thomas J.J. Loranger, began to advance a dualist theory of the Canadian federation that came to be known as the compact theory. Advocates of the compact theory argued that Confederation was a partnership, or compact, between two founding nations, the British and the French. The compact theory became an accepted view of the events of 1864-67, a view that remained dominant in Canadian political discourse until the late 1960s with the arrival of Pierre Trudeau and his conception of Canada rooted in liberal ideas of equality. The dualist understanding of Canadian federalism remains dominant in Québec and runs counter to the predominant, Trudeau-influenced view in English Canada that the federation is one of

³⁴ Dickinson and Young, p. 246.

equal provinces where Québec is no different than Ontario, British Columbia, or Nova Scotia. The long-running debate between the dualist argument of the compact theory and the equality of provinces argument has its roots at the turn of the century. The federalism of Bourassa echoes this concept of duality and the need for mutual respect between English Canada and French Canada:

Let us avoid living or falling into an over-narrow provincialism; let us resist the encroachments of an absorbing federalism. Let us keep in the provincial domain all that is essential to the maintenance of our national character: education, civil laws, municipal organization. Equally let us work for the proper functioning of the federal system; in this area let us take the place which belongs to us and let us inspire the confidence of our neighbours by showing ourselves to be worthy of participating with them in common government.³⁶

L'Abbé Groulx and Modern Nationalism

While Bourassa argued for a greater understanding among the two nations of Canada, Abbé Groulx argued for a reaffirmation of the Catholicity of French Canadian nationalism and for a greater appreciation for the sovereignty of the Québec nation. Abbé Lionel Groulx has been credited by many as the father of contemporary Québécois nationalism. Indeed, he influenced a vast proportion of the Québec educated middle-class who would help to bring about the Quiet Revolution of the 1960s. Groulx achieved much of this through his prodigious writing and through his occupation of the chair in Canadian History at the Université de Montréal from 1915. His founding in 1903 of the Association Catholique de la Jeunesse Canadienne-Française, subsequently the Action Nationale, had a profound influence on young Québécois with its indoctrination of conservative, Catholic ideals.³⁷ Groulx's nationalism exhorted the past history of the French Canadians and placed Catholicism firmly at the centre of their national identity:

³⁵ Henri Bourassa, "French Canadians and Canadian Nationalism," in Henri Bourassa on Imperialism and Bi-culturalism, 1900-1918, ed. Joseph Levitt (Toronto: Copp Clark Publishing Company, 1970), p. 106.

³⁶ *Ibid.*, p. 104.

³⁷ E.D. Forbes, p. 251.

The essence of our being can be expressed in two words, French and Catholic. French and Catholic we have been, not merely since our arrival in America, but for the past thousand years since and even before Tolbiac and the birth of the Frankish nation. Our rights go back far enough to inspire respect, and surely we are of quite respectable lineage as well.³⁸

Groulx's use of the terms 'nation' and 'rights' is explicit. The ethnic nationalism expressed here is one which seeks recognition of its place within the world and in hearkening back to medieval history Groulx seeks to give it a foundation. Groulx's nationalism had a strong ethnic element to it, an extension one might say of the earlier 'providential mission' nationalism of Laflèche and others:

...who would dare maintain that French culture no longer ranks first among European cultures? And in what respect could others claim to be superior? The culture and civilization of the Anglo-Saxon nations, which are at the forefront of today's world scene, are praised to the skies. In this case I would ask the question I have already asked elsewhere. Are these cultures presently at the beginning of a climb to further heights, or are they at the beginning of a decline?...Gentlemen, if we really must choose, is it worth abandoning the ship which may be ancient and outmoded, but in which we willingly took refuge in times of war, simply to throw ourselves upon other doomed vessels, their shattered hulls hidden below the water line?³⁹

The nationalism of Lionel Groulx is important because of what it said about the cultural identity of the nation and that it challenged Confederation and the impact it was having in transforming the French-Canadian into a minority within Canada. The image of Québec presented by Lionel Groulx was of a conservative, French-Catholic, rural nation, an image that was championed politically from 1936 to 1960 by the Union Nationale party under the autocratic leadership of its leader, le Chef, Maurice Duplessis.

The Rise of the Union Nationale

³⁸ Lionel Groulx, "French Canadian Nationalism," in *Abbé Groulx: Variations on a Nationalist Theme*, ed. Susan Mann Trofimenkoff (Toronto: Copp Clark Publishing Company, 1973), p. 87.

³⁹ *Ibid.*, p. 92.

The Union Nationale was founded by the leader of the Québec Conservative Party, Maurice Duplessis, and members of the reformist Action Libérale Nationale (ALN) of Paul Gouin on 7 November 1935.⁴⁰ The ALN had sought considerable social and political reform in Québec: labour reforms; control of the various trusts in Québec; agricultural reform and the creation of cooperatives; electoral reforms and an end to the political corruption in the Liberal government of Louis-Alexandre Taschereau. In an attempt to bring down Taschereau the two parties formed an alliance with Duplessis as leader and with an ALN platform. The Union Nationale came into office in August 1936, at which time Duplessis abandoned the principles of the ALN, turned his back on its leaders, and transformed the party into a conservative, populist, Catholic party that would govern Québec until 1960 with a five year break from 1939-44. The nationalism of Duplessis and the Union Nationale embraced the Church, ruralism, the principles of provincial autonomy, and autocracy. Duplessis' period in office was characterised by the persecution of what his government perceived to be the opponents of Québec: the unions, communists, Jehovah's Witnesses, socialists, and other so-called "heretics".⁴¹ Duplessis' governments enjoyed a great deal of cooperation from the clergy and support from rural and working-class voters, allowing him to stay in power for almost twenty years. Much of this support was gained through patronage and corrupt electioneering, as evidenced by what he said to voters at Verchères in 1952: "I warned you in 1948 not to vote for the Liberal candidate. You didn't listen to me. Unfortunately your county did not receive the grants, the subsidies that would have made it happier. I hope that the lesson will suffice."⁴² However, the excessive use of patronage and the violent repression of the unions at Thetford Mines and Asbestos in 1949 provoked greater opposition from an emerging generation of liberal critics in the province. Most prominent among these opponents were André Laurendeau and his Bloc Populaire, and the

⁴⁰ Richard Jones, "Duplessis and the Union Nationale Administration," in Behiels, p. 9.

⁴¹ *Ibid.*, p. 15.

Cité libristes Pierre Elliott Trudeau, Gérard Pelletier, and Pierre Vadeboncoeur. They challenged the nationalism of Duplessis and in the case of Trudeau rejected nationalism out of hand.

Laurendeau and the Bloc Populaire

In the 1930s, André Laurendeau challenged Bourassa's interpretation of French-Canadian nationalism and promoted a nationalism that emphasised the importance of the collectivity and the importance of personalism within that collectivity. Laurendeau was inspired by the French personalists Jacques Maritain, Nicholas Berdiaeff, and Emmanuel Mounier who existed on the left of the Catholic Church and advocated a Christian transformation of society along the lines of democratic socialism.⁴³ In 1942, Laurendeau along with other like-minded nationalists associated with *Le Devoir* and under the influence of both Groulx and Bourassa founded the Bloc Populaire Canadien which took as its slogan "Canada for Canadians, Quebec for Quebeckers!"⁴⁴ The Bloc Populaire led the fight against conscription in the Second World War and called for an end to the increasing centralisation of Canada. Economically, the Bloc advocated an interventionist State which would encourage the growth of small and medium-sized, Francophone-owned corporations, nationalisation of industries, and the creation of agricultural cooperatives.⁴⁵ It was, however, unable to have much of an effect politically due to its lack of electoral success. As Behiels argues, it did represent a transition between two styles of nationalism in Québec: "The Bloc's provincial programme was both a reaffirmation of the essentially conservative nature of traditional French-Canadian nationalism and a harbinger of the liberal-oriented neo-nationalism that would emerge in the postwar years."⁴⁶

⁴² Ibid., p. 18.

⁴³ Michael D. Behiels, Prelude to Quebec's Quiet Revolution: Liberalism versus Neo-Nationalism, 1945-1960 (Montréal: McGill-Queen's University Press, 1985), p. 27.

⁴⁴ Ibid., p. 29.

⁴⁵ Ibid., p. 31.

⁴⁶ Ibid.

The Quiet Revolution

Following the death of Duplessis, the Union Nationale was defeated in the 1960 provincial election by Jean Lesage's Liberal Party. Under the Liberal slogan "Maîtres chez nous!" a new period of nationalist development was ushered in through the Quiet Revolution. The Quiet Revolution was a cultural, political, social, and economic renaissance that profoundly transformed Québec into a liberal, secular society with an increasingly activist government that sought to promote with greater vigour the interests of Québec within Canada. Through the full nationalisation of Québec's power utilities into the State-owned and run Hydro Québec and the establishment of the Caisse de dépôt et placements du Québec, a key source of investment capital for the province, the étatiste nationalism of "Maîtres chez nous" developed within the Québec Liberal Party. In contrast to this was the emerging separatist movement and its various manifestations in the 1960s as well as its antagonist the anti-nationalism of the intellectual journal *Cité Libre* and Pierre Trudeau.

Trudeau as Nationalist Critic

Trudeau and the other writers in the Montréal journal had been criticising the autocratic brand of nationalism of Duplessis throughout the late 1950s. When the 1960s ushered in the Quiet Revolution and the new separatist nationalism, Trudeau did not differentiate between the two nationalisms. He saw both to be divisive, parochial, and reactionary. As a leading anti-clerical intellectual who argued passionately for a bilingual Canada free from what he viewed as petty nationalism, Trudeau adopted a position diametrically opposed to the emergent separatism of Bourgault and later Lévesque and frequently berated the separatists for turning nationalism into the new religion:

The separatist devout and all the other zealots in the Temple of the Nation already point their fingers at the non-worshiper. And a good many non-believers find it to their advantage to receive their nationalist sacrament, for they hope thus to attain sacerdotal and episcopal, if not pontifical, office, and to be permitted thereby to recite prayers, to circulate directives and encyclicals, to define dogma, and to pronounce excommunication, with the assurance of infallibility. Those who do not

attain the priesthood can hope to become churchwardens in return for services rendered; at the very least they will not be bothered when nationalism becomes the state religion.⁴⁷

For Trudeau, the independence of Québec from Canada that was emerging as the new nationalist credo was never an option. In his view it would be a regressive step that would lead to Québec's further isolation from the rest of the world. Separatism was against the internationalism that Trudeau fervently believed in, an apposition that effectively meant that the two sides would never be reconciled:

The truth is that the separatist counter-revolution is the work of a powerless petit-bourgeois minority afraid of being left behind by the twentieth-century revolution. Rather than carving themselves out a place in it by ability, they want to make the whole tribe return to the wigwams by declaring its independence.⁴⁸

Trudeau's ideas would fundamentally re-shape Canada in the late 1960s and through the 1970s and early 1980s during his terms as prime minister when the battle with the separatists would be joined on numerous occasions. Trudeau's promotion of a bilingual and multicultural Canada angered Québécois nationalists since both concepts were anathema to them in that they rejected duality. By the time he left office in 1984, the anti-nationalist Trudeau had succeeded in promoting a new nationalism in the rest of Canada outside Québec where the nation was the State, a bilingual, multicultural, nation in opposition to the Québécois conceptions of the nation and the State. There will be further elaboration on this issue below in chapter seven.

Separatist Nationalism

The nationalism emerging in the atmosphere of the Quiet Revolution was separatist and more on the left of the ideological spectrum than the earlier conservative, clerical

⁴⁷ Pierre Elliott Trudeau, Federalism and the French Canadians (Toronto: Macmillan of Canada, 1968), pp. 206-207.

⁴⁸ *Ibid.*, p. 211.

nationalism or even the pan-Canadian nationalism of Bourassa. The publication of Pierre Vallières' Marxist manifesto *Les nègres blancs de l'Amérique* (White Niggers of America) in 1971 compared the Québécois to other subject nations in the world.⁴⁹ Vallières had been influential earlier in the formation in 1963 of the Front de Libération du Québec (FLQ), the terrorist organisation responsible for a campaign of bombing, kidnapping and murder which culminated in the October Crisis of 1970. Trudeau invoked martial law under the War Measures Act and effectively put an end to the FLQ's activities, although there would be lasting recriminations and accusations that civil liberties were violated. The FLQ made effective use of Marxist rhetoric in its attempts to destroy "all colonial symbols and institutions, in particular the RCMP and the armed forces; all the information media in the colonial language...; all commercial establishments and enterprises that practise discrimination against Québécois and that do not use French"⁵⁰ The attempt by the FLQ to bring about an independent Québec through violent revolution was thwarted and the organisation was a spent force following October 1970. From this point on separatist nationalism would be democratic.

The more influential left-wing nationalist movement to emerge out of the 1960's was Pierre Bourgault's RIN, which contested seats in the 1966 provincial election but failed to get more than eight per cent of the vote. Bourgault made effective use of anti-colonial language in his characterisation of Québec's position in Canada and in advancing the argument that the only goal for the Québécois could be independence:

Québec n'échappera pas au processus historique. Si, un jour, nous voulons que les Canadiens français se fassent connaître dans le reste du monde; si nous voulons que les Canadiens français profitent des autres cultures, des autres civilisations, il faudra que nous sortions du colonialisme dans lequel nous maintient Ottawa et que nous prenions enfin nos responsabilités. Il faudra que le Québec suive l'exemple de ces huit pays courageux et qu'il conquière enfin sa liberté. C'est alors seulement qu'il

⁴⁹ Dickinson and Young, p. 312.

⁵⁰ Ibid.

nous sera permis de traiter égal à égal avec les Algériens, les Jamaïcains, les Ruandais...et avec tous les autres peuples de la terre.⁵¹

The ideas of Bourgault and other separatists became dominant in nationalist discourse by the end of the decade when a former member of Jean Lesage's cabinet, René Lévesque, declared his support for separatism and founded the PQ. The creation of the René Lévesque's Parti Québécois in 1968 brought about the demise of the RIN leaving Bourgault and the rest of his party to join the PQ.

The Parti Québécois and the Sovereignty Movement

In 1968, René Lévesque published *An Option for Québec* after his departure from the Québec Liberal Party. In it, he championed the collective aspirations of Québécois and argued that full sovereignty for Québec was how these aspirations might be met:

For our own good, we must dare to seize for ourselves complete liberty in Quebec, the right to all the essential components of independence, i.e., the complete mastery of every last area of basic collective decision-making. This means that Quebec must become sovereign as soon as possible. Thus we finally would have within our grasp the security of our collective 'being' which is so vital to us, a security which otherwise must remain uncertain and incomplete.⁵²

The Parti Québécois had consolidated its position in the early 1970s as the nationalist party in Québec; separatism had now become a viable argument in Québec. Lévesque and the PQ's advocacy of independence for Québec, what would come to be termed sovereignty-association, led them to contest the 1970 general election in Québec in which they garnered 23.1% of the popular vote. By 1976 the PQ's message of sovereignty-association for Québec had made an impact and they were elected to government in the general election of that year when they defeated Robert Bourassa's Liberals. The PQ's election was a rejection of the soft nationalism of the Québec Liberal Party and the perceived ineptitude of Robert Bourassa. It was also seen as a reaction to the inability of Québec to reach an agreement

⁵¹ Pierre Bourgault, "Dépendance, indépendance, interdépendance," in *La Politique*, vol. 1 of *Écrits polémiques*, ed. Pierre Bourgault (Montréal: Lanctôt Éditeur, 1996), p. 47.

⁵² René Lévesque, "A Country that Must be Made," in *Canadian Political Thought*, ed. H.D. Forbes (Toronto: Oxford University Press, 1987), pp. 398-99.

with the rest of Canada over the contentious issue of the Canadian constitution after the failure of the Victoria Charter of 1971. The PQ promised that once elected they would hold a referendum on sovereignty-association. This was done in 1980 with the PQ and those in favour, the “OUI”, receiving 40% of the vote and those federalists opposed to any form of separation, the “NON”, receiving 60% of the vote. The Anglophone and Allophone vote was almost entirely in favour of the NON, while the Francophone vote was evenly split between the two sides.⁵³ The result at the time was seen as a defeat of Québécois separatism and a victory for a renewed federalism that had been promised by Prime Minister Trudeau and the federal government. Despite the referendum defeat, the PQ remained a powerful force in Québec politics, holding on to power with a second majority government in 1981.

The Patriation Debate and its Aftermath

In 1982, after lengthy constitutional negotiations between the Federal and provincial governments, the Canadian constitution was patriated from the United Kingdom with a new amending formula and the new *Canadian Charter of Rights and Freedoms*. This fulfilled the promise of constitutional renewal made by the Federal Government during the referendum campaign. Patriation, however, was achieved without the support of Premier Lévesque or the National Assembly in Québec, thus alienating the government of Québec and a majority of Québécois. The Meech Lake constitutional accord of 1987 and the Charlottetown Accord of 1992 went some way to the recognition of Québec as a nation through the so-called “Distinct Society clause”:

1. (1) The Constitution of Canada shall be interpreted in a manner consistent with
 - (a) the recognition that the existence of French-speaking Canadians, centered in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present within Quebec, constitutes a fundamental characteristic of Canada; and

⁵³ The term ‘Allophone’ is unique to the language politics of Québec and refers to a Québécois whose first language is neither French nor English. Allophones make up a sizeable majority of Montréal’s immigrant community.

- (b) the recognition that Quebec constitutes within Canada a distinct society.⁵⁴

However, the failure of these two accords in 1990 and 1992 respectively was seen by nationalists within Québec as a further rejection of Québec and its argument that it is unique from the other provinces in that it is a nation, a province unlike the others, a distinct society, or possessing a special character.

The proclamation of the *Constitution Act, 1982* containing the Charter and a new amending formula without the approval of the Québec National Assembly has been the catalyst for all subsequent constitutional debates in Canada and a focus for nationalist criticism in Québec. A more in-depth analysis of the constitutional situation since 1982 will follow in chapter seven with a view to understanding the position of nationalists in Québec vis à vis the Canadian federal State. The focus of both federalist and nationalist discourse since 1982 has been on the place of Québec within Canada and its relationship to the other constituent parts of the federation. The debate focusses on how the explicit recognition of Québec as a nation by nationalists in Québec can be reconciled with the broad rejection of this concept in the rest of Canada where the Canadian federal State has come to be viewed as the nation. This will be the focus of the discussion below.

⁵⁴ Constitutional Accord, 1987 (Ottawa: Minister of Supply and Services, 1987).

3

Nationalism and Catalunya 1840-1980: La Renaixença to Pujol

Lo programma del catalanisme en totas sas manifestacions no pot ésser més que un: rompre las lligaduras que tenen á las nostra Regió agarrotada y subjecta, substituhintlas per los suaus y dolsos llassos del afecte que la germanor fa neixer.

- Valentí Almirall¹

The evolution of the nationalist discourse in Catalunya from the mid-nineteenth century to the immediate post-Franco period of the late 1970s can be traced through the writings of not only political thinkers, but through those of the literary and clerical classes as well. The emergence of Catalanisme in the mid to late 1800s had a profound effect on the construction of this discourse; it was a movement which promoted, and in many ways rediscovered, a political, cultural and religious Catalan identity. As the writing of Valentí Almirall suggested in 1885, Catalanism sought change and a departure from the status quo in Catalunya's relationship with the Spanish state. The principles of Catalanisme were not linked to one specific political ideology or form of cultural expression, rather they were absorbed by groups as diverse as Socialists, conservative Catholics, and Anarchists. This chapter traces the development of Catalan nationalist, or Catalanist, thought in all of its various guises, by examining the works of various thinkers and puts the development of Catalan nationalism in historical context. The history of Catalunya and that of Spain as a whole has been a turbulent one punctuated by civil war, repression and dictatorship, and tremendous economic and social changes. It is a complex and intricate history that can be very difficult to unravel, particularly in such a short space as this chapter allows. As a result,

¹ "The Catalanist programme in all of its manifestations seeks nothing more than this: to break the bonds which keep our region subjected and unable to move, substitute them with soft and sweet bonds that the affection of brotherhood will give birth to." Valentí Almirall, Lo Catalanisme (Barcelona: n.p., 1885), p. 11.

the description of various events will be limited with the emphasis being placed on key events that, when linked, form a relatively coherent chronology of the development of Catalanist thought since the beginning of la Renaixença in the middle of the nineteenth century.

The political history of the Spanish State and Catalunya's place within it over the last 150 years is characterised by periods of centralisation and decentralisation. Periods of centralisation include the First Republic in the 1870s and the dictatorships of Primo de Rivera and Franco during which centralisation was compounded by the repression of Catalan culture and politics. The three main periods of decentralisation are the era of the Mancomunitat from 1923-30, the Second Republic, and the post-Franco era beginning in 1977 with the re-establishment of the Generalitat and the promulgating of the 1978 Constitution. Political events in Catalunya and the growth of Catalan nationalism had a tremendous impact on these shifts between a centralised and decentralised State. As will be discussed, the response made by political leaders in the rest of Spain to Catalan nationalist pressures for a federalist, autonomist, or independentist solution depended very much upon which political party or faction was ascendent in Madrid.

Catalunya's Geography and its Early History

Before moving on to an examination of Catalan nationalism's historical evolution it is first worthwhile to examine Catalunya and its political geography. Present-day Catalunya is one of seventeen autonomous communities that make up Spain. Situated in the northeast corner of the country it is organised into thirty-eight provinces and has a population of approximately seven million inhabitants. The major cities and towns are Barcelona, the capital, Tarragona, Girona, and Lleida. The geographical autonomous community of Catalunya is more or less coterminous with the principality of Catalunya of the Middle Ages, a state that emerged in the eleventh century under the rule of the Counts of Barcelona. It has

been argued that the campaign against the Moors at Cordobà in 1010 which united the Counts of Barcelona, Urgell, and Besalú with the Bishops of Barcelona, Elna, Girona, and Vic in a collective act affirmed the existence of a Catalan people for the first time.² Under the Counts of Barcelona, Catalunya emerged as a dominant Mediterranean power in the thirteenth centuries with the conquest of Valencia and Mallorca. In addition, Count Ramon Berenguer IV had secured a dynastic union with Aragon in the twelfth century which gave Catalunya a considerable role in the construction of medieval Spain prior to the Reconquista.³

Catalunya is distinguished from much of Spain by its linguistic heritage. The Catalan language is part of a small branch of Romance languages that includes Provençal and Occitan spoken in southern France and it is more closely related to them than to Castilian. Through the expansion of medieval Catalunya came the expansion of Catalan, as a result Catalan is spoken today in Catalunya proper, and in Valencia, the Balearic Islands, the eastern part of Aragon, in southeastern France around Perpignan (Perpinyà), and around the town of Alguer on Sardinia. However, Catalan is being employed less and less in these last two regions. To nationalists, particularly those in Esquerra Republicana de Catalunya who favour independence for Catalunya, these Països Catalans constitute greater Catalunya. The promotion of the Catalan language has been a central goal of Catalan nationalism from the mid-nineteenth century. Political nationalism in Catalunya arose in the late 1800s out of a literary nationalism that resurrected Catalan as a literary language.

La Renaixença

A greater awareness of Catalan culture emerged in the 1840s with a movement that sought to reclaim Catalan as a literary language. The foundations for this reawakening or

² Michel Zimmerman, "Orígens i Formació d'una Societat Feudal (785-1137)," in *Història de Catalunya*, eds. Joaquim Nadal i Farreras and Philippe Wolff (Barcelona: Oikos-Tau, s.a.-ediciones, 1983), p. 261.

renaixença had been laid in the eighteenth century by Catalan historicists who revived interest in Catalan mediaeval civilisation, the most notable of whom was the historian and philologist Antoni de Capmany. Although his writings were in Castilian, they were a base upon which future political and literary thinkers could build, as argued by Grau and López: “The most important of the eighteenth century Catalan contributions towards the construction of modern political thought is, without doubt, that of Antoni de Capmany i de Montpalau.”⁴ Following Capmany in the 1820s and 30s was the romantic movement in Catalan literature which centred around the journals *El Europeo* and *El Vapor* and their guiding force, Bonaventura Carles Aribau.⁵ Again, much of the work published in these reviews was written in Castilian although many of the contributors wrote in Catalan as well. As time passed more and more authors began to break with the use of Castilian as a means of literary expression in favour of Catalan. This development was to have political implications in the mid-nineteenth century and help to further the development of Catalan nationalism.

Historians such as Risques, have argued that la Renaixença began as an élite-led movement in which conservative intellectuals moulded a bourgeois Catalan culture shaped by a provincial culture that emphasised, among other things, the defence of historicism, Catholicism, and Catalan as a cultivated language.⁶ This fits in well with the mid-nineteenth century European pattern of nationalist evolution where the importance of history and a desire to reclaim a language are central to an evolving literary nationalism. A parallel can be drawn with the emergence of Finnish nationalism and the desire among élites such as Jean Sibelius to encourage Finnish as a national language, transposing its use among the peasant

³ Thomas N. Bisson, “L’Epoca dels Grans Comtes-Reis (1137-1276),” in *Història de Catalunya*, p. 279.

⁴ Ramon Grau and Marina López, “Antoni de Capmany: el primer model del pensament polític català modern,” in *El Pensament polític català del segle XVII a mitjan segle XX*, ed. Albert Balcells (Barcelona: Edicions 62, 1985), p. 13.

⁵ Jesús Mestre i Godes, *Breu història de Catalunya*, 3rd edition (Barcelona: Edicions 62, 1998), p. 196.

⁶ Manuel Risques, “Liberalisme, Industrialització i Pràctiques Subalternes, 1833-1874,” in *Història de la Catalunya Contemporània*, eds. Manuel Risques et al. (Barcelona: Pòrtic, 1999), p. 143.

and working classes to the Swedish-speaking middle and upper classes. A further comparison can be made with Scotland when considering the importance of historicism and reclaiming the national past. The historical novels of Walter Scott fostered a romantic view of Scotland's history, its national history, while the Macphersons' *Ossian* sought to reclaim Scotland's Celtic past. In many ways nineteenth-century Catalunya was no different, except that Catalan élites were reclaiming a language with a long literary tradition from the dominance of Castilian as the principal means of literary expression.

Lo Gaiter del Llobregat and Literary Nationalism

A key event during la Renaixença that reflected this emphasis on historicism and the importance of reclaiming the Catalan language was the publication of Catalan poems by Joaquim Rubió i Ors. Known by his pseudonym Lo Gaiter del Llobregat, Rubió i Ors published his poetry in the conservative journal *Diari de Barcelona* during the years 1839 and 1840.⁷ Puig i Oliver argues that the resulting volume of Rubió i Ors poems were seen as a manifesto of la Renaixença and that he had created in the language a symbol, a patriotic one that called upon Catalans to reclaim their literary and cultural identity.⁸ Rubió i Ors' works and those of other Catalan authors in the mid-nineteenth century were part of a long Catalan literary tradition, both oral and written, which goes back to the epic histories and ballads of the Catalan-speaking troubadours of the Middle Ages. Poets and troubadours such as the king Alfons el Cast, Cerverí de Girona, and Ramon Vidal de Besalú were composing lyrics and ballads in identifiable Catalan and Provençal from the middle of the twelfth century to the end of the thirteenth.⁹ According to Molas i Batllori, these ballads and histories that often related experiences of everyday life were popular among all classes and could be heard sung and recited in both palaces and streets. The legacy of the troubadours

⁷ Lluís M. de Puig i Oliver, "La Renaixença," in *Història Contemporània de Catalunya. Volum I*, ed. Jaume Sobrequés i Callicó (Barcelona: Columna Assaig, 1997), p. 337.

⁸ *Ibid.*, p. 338.

⁹ Joaquim Molas i Batllori, "La Literatura," in *Història de Catalunya*, p. 127.

was significant to the romantics in nineteenth century Catalunya who sought to forge a modern Catalan literary identity. Indeed, Rubió i Ors believed that by following the way of the troubadours it would be possible to fully reclaim the Catalan language.¹⁰

Accompanying the development of Catalan literature in this period various organisations and groups that promoted the literary revival emerged. The restoration of the Jocs Floral, or Floral Games, in 1859 helped to bring Catalan literature to a wider audience through poetry contests. Risques argues that the institution of the Jocs Florals by the local government of Barcelona was an attempt by élites once again to remove Catalan from the streets, where it was poorly spoken, and re-establish it as a literary language rooted in antiquity.¹¹ While largely an apolitical, cultural movement in the 1840s and 1850s, la Renaixença began to evolve into a coherent expression of a distinct Catalan political identity by the late 1860s and early 1870s. Some progressives such as Victor Balaguer took the middle-class Catalanism that was emerging out of la Renaixença and from it constructed a political argument which called for a quasi-federal decentralisation of the monarchic state.¹² This emergent political nationalism would take shape in the the 1870s following the 1868 Revolution that brought about an end to the old Borbon régime.

The Sexenni Democràtic

The 1868 Revolution, “La Gloriosa”, that brought about the dethronement of Isabel II encouraged the expansion of the Catalanist movement into the political sphere as calls came from Catalan political leaders for constitutional reform. It inaugurated the Sexenni Democràtic or Six Years of Democracy during which time Catalanists organised themselves politically into groups that were strongly anti-centralist and began to call for the establishment of a federal republic in Spain. Similar calls were being made prior to the revolution by intellectuals in Barcelona who saw the regionalisation of Spain as its salvation.

¹⁰ Puig i Oliver, “La Renaixença,” p. 338.

¹¹ Risques, p. 144.

Those advocating regionalism existed on both the right of the political spectrum such as Joan Mañé i Flaquer and Manuel Duran i Bas, and on the left among those who advocated federalism and defended the rights of workers such as Francesc Pi i Margall.¹³ By 1869 under Pi i Margall, federal republicanism had emerged as a major force in Catalunya. Those who were sympathetic to the republican cause won a majority of the vote in the elections of that year, while in the rest of Spain the party was in a minority.

Pi i Margall's Federalism

As the dominant figure among the federal Republicans, Pi i Margall became incredibly influential at the time in developing a political ideology that called for radical democratic change within Spain. Pi i Margall's nationalism advocated a federal model for Spain in which Catalunya would have a greater voice and the centralist legacy of the Borbon monarchic state could be overcome. His influence had a long-lasting effect on Catalan nationalist thought. This continued right through the period of the Civil War of 1936-39 and contributed to the present-day federalist nationalism of the Partit dels Socialistes de Catalunya, demonstrating that nationalism need not mean separatism.¹⁴

Pi i Margall was born in Barcelona in 1824. His writings are firmly rooted in the ideas of the late nineteenth century as they are characterised by a championing of democracy and the need for a division of powers within the State that would bring about increased representation and thus greater liberty. As Molas argues, Pi i Margall was in favour of greater power being given to lower levels of government, whether they be municipalities within a region or a nation within a state.¹⁵ Pi i Margall sought to bring about a political revolution within Catalunya and Spain by moving from a monarchy to a liberal and democratic republic. He desired a shift away from the concentration of power at the centre

¹² Ibid.

¹³ Mestre i Godes, p. 198.

¹⁴ Isidre Molas, "Francesc Pi i Margall: democràcia i federalisme," in *El Pensament Polític Català*, p. 75.

to a federal division of powers and away from an outdated economic system to one that was more progressive and cooperative.¹⁶ He argued that greater decentralisation was the key to democratic growth in Spain and ultimately political and economic progress:

“Decentralisation is unity in variety, and unity in variety is the way of the world. Decentralisation is freedom and we are human because we are free. Decentralisation is calling to life all those social groups, and in this calling to life there is a rapid move towards progress. That is to say, we support the federation of classes and peoples, and we are enemies of the republic as much as we are enemies of the monarchy, unless it is committed to decentralisation.”¹⁷

Pi i Margall's ideology was taken up by many leading intellectuals at the time, not the least of whom was Valentí Almirall.

Expansion of Catalanism

In 1869, Almirall launched the strongly anti-centralist and federalist paper, *El Estado Catalan*, in Barcelona. From these early beginnings Almirall went on to publish his seminal work *Lo Catalanisme* in 1885, a political text that laid out the Catalanist programme through a crude comparison of the national character of Catalans and the national character of Castilians. In employing this approach he argued what was necessary for Catalunya's 'rebirth' as a nation. In this political environment, Catalanist ideas began to take root among the urban middle-classes in Catalunya. In Barcelona in 1870 there appeared the first Catalanist association, Jove Catalunya (Young Catalunya), led by the literary figures Àngel Guimerà, Pere Aldavert, and Josep Roca i Roca. This was followed by the publication in 1871 of the magazine *La Renaixensa* the purpose of which was to encourage the restoration of the Catalan language. It was an influential journal at the time and it was from its title that la Renaixença derived its name.

There has been some debate over the extent to which la Renaixença was a cultural movement and the extent to which it was a means of political mobilisation. The Catalan

¹⁵ Ibid., p. 83.

¹⁶ Ibid., p. 82.

historian, Llorenç Prats, has argued that la Renaixença was an ideological movement, literary in its inspiration, that led to a promotion of Catalunya and Catalan identity which became the dominant conception of identity in Catalunya during the nineteenth century: “ ‘the Renaixença, as an ideological movement mainly expressed in literature, promoted a particular definition and symbolic representation of the notion of Catalunya and Catalan-ness... that became hegemonic in Catalunya in the nineteenth century.’”¹⁸ Ultimately, political Catalanism or Catalan nationalism found fertile ground in this literary and cultural renaissance for its development later in the century. While maintaining its cultural roots and continuing to champion the promotion of the Catalan language, Catalanism was able to develop into a diverse and hegemonic political movement by the twentieth century. It was hegemonic in the sense that it dominated political discourse in Catalunya from the end of the nineteenth century onwards, giving Catalunya a political culture distinct from the rest of Spain. It was diverse in the way it could be appropriated for both cultural and political means by groups on all sides of the political and cultural spectra. Republicans, socialists, Carlists, anarchists, communists, federalists, separatists, and conservative Catholics at various times incorporated Catalanism into their programmes or developed positions in response to the overwhelming presence of Catalanist thought in the late nineteenth and twentieth centuries, as will be discussed.

The First Republic

The politics of Spain were thrown into further chaos in the 1870s when the Third Carlist War erupted in 1872, reviving the ongoing dynastic disputes that had dominated the political landscape for most of the previous sixty years. Upon the abdication of Amadeus of Savoy as King of Spain in 1873, the monarchist Parliament proclaimed the establishment of the First Republic. Although a new republic had been proclaimed it did not come with a new

¹⁷ Francesc Pi i Margall as quoted in Molas, p. 83.

¹⁸ Llorenç Prats as quoted in Mestre i Godes, p. 195.

constitution, instead the pre-existing 1869 constitution remained the fundamental law of the State albeit shorn of all references to the monarchy and the power of the king.¹⁹ In response, a small minority of radical Catalan federalists and anarchists tried to coerce the Diputació de Barcelona, the provincial government, to proclaim a Catalan state. The radicals' plans were undermined by Pi i Margall and Almirall. Despite the efforts of Pi i Margall to lobby in the Corts for a federal constitution the First Republic remained strongly centralist in its orientation and as a result the efforts of Catalan federalists were thwarted.

The First Republic was short-lived and ended with the restoration of the Bourbon monarchy in 1874. In Catalunya, Catalanism continued to flourish with the establishment in 1879 by Almirall of the first Catalan-language newspaper *El Diari Català*. This was accompanied by the convening, in the same year, of the first Catalanist Congress by Almirall that gathered together monarchists, republicans, and Catholics for the purpose of coordinating Catalanist organisations. The Congress also agreed to establish a commission to defend the position of Catalan civil law within an increasingly centralised and standardised Spanish legal system, and to create an academy that would standardise and regulate the Catalan language.²⁰

The Lliga de Catalunya

The first instance of a coalition of Catalanist groups taking action against the centralised state came in 1885. In that year the apolitical group, Centre Català (Catalan Centre), founded in 1882 among the followers of Almirall and Pi i Margall, led a protest against the threat posed to the Catalan textile industry by free trade agreements with France and Britain.²¹ The group also protested against the new Castilian law-based Spanish *Código Civil* that did not take into account the Catalan civil law tradition. The concerns of the group

¹⁹ Risques, p. 134.

²⁰ Albert Balcells, *Catalan Nationalism: Past and Present*, ed. Geoffrey J. Walker, trans. Jacqueline Hall (London: Macmillan Press Ltd., 1996), p. 35.

²¹ *Ibid.*, p. 36.

were laid out in a document titled the *Memorial de Greuges* (Memorandum of Grievances) and presented to Alfonso XII. It was not until 1889 that the demands relating to the anomaly of Catalan civil law within the Spanish legal system were met when, as a result of pressure exerted by mass rallies organised by the newly founded Lliga de Catalunya, the Catalan civil code was entrenched in the *Código Civil*. The Lliga de Catalunya succeeded the Centre Català in 1885 and was a group centred around those who had been involved with the paper *La Renaixensa* and supported by Catalanist university leaders Enric Prat de la Riba, Narcís Verdaguer i Callís, Lluís Domènech i Mutaner, Francesc Cambó, and Josep Puig i Cadafalch who were to become the dominant Catalanist leaders of the first decades of the twentieth century.²² Increasingly, the Catalanist movement was becoming more conservative and less Republican in its orientation, due in part to the emergence and growing influence in the 1880s of the Catholic Vigantist movement or Vigantisme.

Torras i Bages and Vigantisme

Vigantisme was a conservative, Catholic movement based at Vic that established itself in opposition to the progressive, liberal Republicanism of Almirall. Its leaders were Jaume Collell and the future Catalanist Bishop of Vic, Josep Torras i Bages, and it embraced a Catalanist ideology that viewed Catalan identity as intrinsically and necessarily Catholic. The emergence of this political ideology in Catalunya during the mid-1880s coincides with the development of ultramontanist thought in France and its championing by clerics in Québec such as Ignace Bourget (see above). Vigantisme did not distinguish between Catholicism and Catalanism and as such emerged as the dominant branch of conservative Catalanist thought in the late nineteenth and early twentieth centuries. The ideas of Vigantisme were disseminated in the paper *La Veu de Montserrat* (The Voice of Montserrat). The name of the paper derived from the Benedictine monastery at Montserrat that was viewed as being the spiritual heart of Catalunya and would later be a focus of anti-

²² *Ibid.*, p. 37.

Franco, pro-Catalanist protests during the years of the dictatorship. In 1890, the new Barcelona voice of Vigantisme, *La Veu de Catalunya* was adopted as the organ of the first Catalanist political party, the Lliga Regionalista de Catalunya (Regionalist League of Catalunya). The programme of *La Veu de Montserrat*, and by extension *La Veu de Catalunya* was conservative, pacifist, and Catholic.²³ The paper had as its primary goal the renewal of the Catalan 'race', "renovació de la raça catalana", and the reclaiming of Catalunya's ancient rights. It was strongly historicist in its approach and focussed on Catalunya's "antigues glòries" (former glories).²⁴

Vigantisme found its greatest expression in the writings of Torras i Bages, particularly his work *La Tradició Catalana* published in 1892. Born in 1846, Torras i Bages' ideology was centred around opposition to the liberalism and secularism that had emerged out of Enlightenment thought. He argued that out of this environment had emerged a political and social revolution that promoted republicanism and what he viewed as the dangerous trend of Jacobin centralisation, the ultimate goal of which was a secularised state.²⁵ Torras i Bages argued that the proper model for Catalunya's regional development was based upon a conception of the Church as it had existed in the Middle Ages in Catalunya: as being the focus of society. Again, the influence of historicism is in evidence in his thought. Regionalism existed as a way forward against liberal and secular revolution and the centralisation of the Spanish state. What was needed was a renewed Catalan society that adopted the ideas of the Middle Ages and applied them to the contemporary era.²⁶ In *La Tradició Catalana*, Torras i Bages defends the position that the Church and Catalunya are

²³ Maties Ramisa, *Els orígens del catalanisme conservador i «La Veu del Montserrat» 1878-1900* (Vic: Eumo Editorial, 1985), p. 87.

²⁴ Ibid.

²⁵ Casimir Martí, "Torras i Bages: el regionalisme tradicionalista, un antitipus ètico-històric del sistema de la Restauració," in *El Pensament Polític Català*, p. 164-65.

²⁶ Ibid., p. 173.

bound together in such a way by history that to diminish the role of the former would threaten the survival of the latter:

Catalunya and the Church are two things in our land's past that are impossible to distinguish between. They are two ingredients that bonded well and created the fatherland [patria]. And if somebody would want to repudiate the Church, he should have no doubts that he would also be repudiating the fatherland.²⁷

There are very strong echoes in the political philosophy of Torras i Bages of ultramontanism and its condemnation of liberalism and the secularisation of traditional society. Torras i Bages' contemporaries in Québec, including Ignace Bourget and Jules-Paul Tardivel, were adopting very similar positions vis à vis the position of the French-Canadian nation within Canada. The writings of French ultramontanes Veillot and Le Maistre were having a clear impact on conceptions of Church and State in Catholic Europe and Québec and how prelates and other Catholic polemicists conceived of nationalism. The impact of Torras i Bages' philosophy and of Vigantisme in general shaped the future of conservative Catalanist political thought, particularly as represented by the Lliga Regionalista de Catalunya. The 1890s was a decade of political developments in Catalunya based upon an evolving sense of political identity. With this evolution came greater organisation of the Catalanist movement and an expanding list of Regionalist demands directed at the Spanish government.

The Unió Catalanista and the Bases de Manresa

In 1891 the umbrella Catalanist organisation, Unió Catalanista (Catalanist Union) was established and it was through its actions that demands for Catalan regional autonomy were first organised into a specific political programme. The drafting of the *Bases de Manresa* (The Manresa Bases) at Manresa in 1892 by Unió Catalanista encapsulated the constitutional programme of the Catalanists. The document called for Catalan self-government; established the bases for a regional constitution; and called for the

²⁷ Josep Torras i Bages, *La Tradició Catalana*, as quoted in Martí, p. 168.

establishment of Catalan as the only official language of Catalunya.²⁸ The specific constitutional proposals focused on decentralisation and new roles for Catalan institutions. They included the demand that a Catalan government have jurisdiction over justice and public order; that obligatory military service be replaced by a volunteer force; that only Catalans be eligible to hold office in Catalunya; and that there be no appeals beyond the Catalan high court.²⁹ The bases were framed by liberal constitutional thought, emphasising the rights and liberties of the Catalan people, as Base 2 establishes:

The expansive character of our ancient legislation will be maintained in the formal part of the Catalan Regional Constitution, amending, where in keeping with new needs, its wise clauses which are respectful of the rights and freedoms of Catalans.³⁰

Indeed, this document was promoted as being the expressed wishes of the Catalan people since a broad cross-section of Catalan civil society was represented in the 243 delegates present at Manresa including writers, artists, architects, historians, academics, clergy, lawyers, doctors, and businessmen.³¹ Among those Catalanist leaders present were Guimerà, Puig i Cadafalch, and Domènech i Mutaner. This was a watershed in the history of Catalanist development in that it was the first time a broad consensus was reached by Catalan civil society on the way forward towards the goal of Catalan self-government within Spain. It could be argued that the *Bases de Manresa* and the movement behind them were not unlike the *Claim of Right* in Scotland one hundred years later which put Scotland firmly on the road to devolution.³² Yet, the *Bases de Manresa* did not lead to any real degree of devolution or self-government for Catalunya at the end of the nineteenth century and the Mancomunitat of the 1910s was to prove to be insufficient. One could argue that the failure

²⁸ Balcells, p. 38.

²⁹ Ibid.

³⁰ Unió Catalanista, "Bases pera la constitució regional catalana" (Barcelona: Estampa de «La Renaixensa», 1900), p. 7.

³¹ Mestre i Godes, p.202.

³² The impact of the *Claim of Right* on Scottish devolution will be explored further in chapter seven.

to achieve a more devolved Catalunya during this period was due to the inherent instability of the Spanish state, of which the dictatorship of Primo de Rivera was symptomatic.

The Lliga Regionalista de Catalunya: Autonomism and Conservatism

By 1901 a group of right-wing nationalists organised themselves into the Lliga Regionalista de Catalunya (Regionalist League of Catalunya), a new party which emerged out of the Centre Nacional Català and the Unió Regionalista. The moderate and Catalanist Lliga reflected the middle-class perspective shared by both its precursor parties. It was dominated by the urban bourgeoisie of Barcelona who were disaffected by Madrid and its antagonism towards the Catalan middle-classes' modernism and support of industry.³³ The key founding members of the party were Domènech i Mutaner, Puig i Cadafalch, Verdaguer i Callís, Francesc Cambó, and the emergent Catalanist leader Enric Prat de la Riba. Two years earlier Prat de la Riba and Pere Muntanyola had founded *La Veu de Catalunya*, a paper that embraced much of the rhetoric of Vigantisme.³⁴ Prat de la Riba expressed the view in a 1902 edition of *La Veu* that "the conquest of Spain is a fatal consequence of our nationalism."³⁵ The conquest, in Prat de la Riba's view, would be a peaceful one by which the establishment of autonomy and federalism as well as the Catalan 'race's' conception of good government would be entrenched.³⁶ Views such as these would shape the conservative Catalanism of the Lliga and its understanding of the Spanish State as it emerged at the beginning of the twentieth century as the dominant Catalan party.

In 1901, the Lliga fought their first elections in Barcelona in which it did well against the republicans of Unió Republicana garnering 6.3% of the vote compared to the

³³ Josep M. Roig Rosich, "Catalanisme, Anticatalanisme i Obrerisme, 1900-1930," in *Història de la Catalunya Contemporània*, p. 218.

³⁴ Àngel Duarte, "La Restauració Canovista, 1875-1900," in *Història de la Catalunya Contemporània*, p. 168.

³⁵ Enric Prat de la Riba as quoted in Francesc Bonamusa, "Les Dificultats de la Reconstrucció Nacional (1898-1980)," in *Història de Catalunya*, p. 466.

³⁶ *Ibid.*

latter's 4.4%; the monarchists remained the dominant party.³⁷ In 1905, the republicans were victorious in Catalunya in the general election, however the Lliga's percentage of the popular vote was on the rise. In the local elections for Barcelona in the same year they took twelve seats compared to Unió's fourteen, demonstrating that the Lliga had emerged as the principal Catalanist rival to the republicans.³⁸ This was due in large part to the divisions that existed within the republican movement during this period. Unió was a very broad coalition, or 'union', of disparate republican groups including moderate Catalanist republicans such as Pi i Margall, groups of radical workers, and the new activist republicanism championed by Alejandro Lerroux. In 1908 Lerroux and his followers established the Partit Republicà Radical which Roig Rosich argues created a clearly radical and republican alternative to the monarchists and the emerging bourgeois Catalanism of the Lliga.³⁹

As support for the Lliga increased it met greater opposition from various other quarters, particularly those opposed to Catalanism such as the army. In 1905 soldiers from the Barcelona garrison attacked two of the Lliga's papers, *Cu-cut!* and *La Veu de Catalunya* for their brutal satirising of the army's defeat in the Spanish-American War of 1898. The Catalanist response to the army's attack was a mass mobilisation of the main Catalanist forces, the Lliga, Unió Catalanista, republican Catalanists, Carlists, and a few other republicans. These groups came together in yet another broad coalition, Solidaritat Catalana (Catalan Solidarity) that was founded in Girona in 1906. In that same year Solidaritat gained 71% of the votes in local elections in Barcelona, compared to the anti-Solidaritat Republicans headed by Lerroux.⁴⁰ The coalition had given Catalanism one of its most significant electoral successes to date. This success was tempered by the events of 1909 and *la Setmana Tràgica*, events that placed all the Catalanist gains in jeopardy.

³⁷ Balcells, p. 44.

³⁸ *Ibid.*, p.53.

³⁹ Roig Rosich, "Catalanisme, Anticatalanisme i Obrerisme, 1900-1930," p. 221.

⁴⁰ *Ibid.*, p. 58.

La Setmana Tràgica

La Setmana Tràgica (The Tragic Week) began in Barcelona with a mass protest against the incidents that eventually began the Moroccan War. By the end it had turned into a frenzied attack on conservative institutions, in particular the Church. The results of the violence were that 40 religious schools, monasteries and convents were burned and destroyed as were 12 parish churches in and around Barcelona. No one admitted responsibility for the atrocities, but it became evident that much of the damage had been caused by a radical group within the Partit Republicà Radical known as the *jóvenes bárbaros* (Young Barbarians).⁴¹ The right-wing, populist Partit Republicà Radical and Lleroux had emerged as the staunchest opponents of Catalanism; they were also rampantly anti-clerical and extreme Spanish nationalists whose political approach was typified by the street violence of the Young Barbarians.⁴² The political fallout from la Setmana Tràgica was the closure of all non-denominational schools and republican clubs by the Maura government in Madrid following a brutal repression of the violence and execution of 5 people. These actions were supported by the Lliga in *La Veu de Catalunya*.⁴³

The Mancomunitat

In the 1914 Barcelona elections the Lliga was victorious. For the next seven years the Lliga's hegemony in Barcelona was confirmed again and again. Their dominance was due in large part to there being no party that was more liberal than the Lliga and the absence of any viable leftist party.⁴⁴ The strength of the Lliga in 1914 prompted the monarchist government in Madrid to establish the Mancomunitat, a commonwealth of the four Catalan provinces which would regionalise services in Barcelona. Enric Prat de la Riba was chosen as the first President of the Mancomunitat and following his death succeeded by the Catalanist

⁴¹ Mestre i Godes, p. 205.

⁴² Francisco J. Romero Salvadó, Twentieth-Century Spain: Politics and Society in Spain, 1898-1998 (London: Macmillan Press Ltd., 1999), p. 23.

⁴³ Balcells, p.62.

architect, Puig i Cadafalch, in 1917. The nationalism of Prat de la Riba made a significant impression on Catalanist thought, arguing as he did strongly for Catalunya's existence as a distinct nation and the need for regionalism to develop further towards a mature and self-assured nationalism.⁴⁵ Prat de la Riba saw the development of a Catalan nationalism as being essential to the development of civil society in Catalunya and in constructing a world view that was internationalist:

...the Nation, that is, a society of people who speak a distinct language and share the same spirit which is clearly one and unique through the variety of all collective life...thus we arrived at a clear and concise notion of nationality, to the conception of this social, primary, fundamental unity, destined to exist in world society, in Humanity...⁴⁶

Prat de la Riba's writings in works such as *La Nacionalitat Catalana* and *La Nació i l'Estat* made a valuable contribution to the thought of the moderate right in Catalanism, later inspiring many in the revived Catalanist movement of the 1950s such as Jordi Pujol.⁴⁷

With Prat de la Riba's death the development of the Mancomunitat's role in Catalunya was left to Puig i Cadafalch who would ultimately contribute to its demise. By 1920 all of the Catalan diputacions had completed the transfer of services to the Mancomunitat, giving it control over such areas as roads and agriculture.⁴⁸ There was no devolution of services from the state to the new regional body. In the same year the council of the Mancomunitat presented to the Spanish Congress a proposal for Catalan self-government. The proposal was soundly rejected, causing the Catalan minority to withdraw from the Cortes, demonstrating the limits of the Mancomunitat and thus the limits of this attempt at decentralisation.

⁴⁴ Roig Rosich, "Catalanisme, Anticatalanisme i Obrerisme, 1900-1930," p. 262.

⁴⁵ Jordi Casassas i Ymbert, "Enric Prat de la Riba: le tenacitat d'un estratega," in *El Pensament polític català*, p. 189.

⁴⁶ Enric Prat de la Riba as quoted in Casassas i Ymbert, p. 189.

⁴⁷ Balcells, p. 139.

⁴⁸ *Ibid.*, p. 69.

In 1922 a serious split resulted in the Lliga led by Jaume Bofill i Mates and Nicolau d'Olwer, who went on to found Acció Catalana (Catalan Action) at the Conferència Nacional Catalana (Catalan National Conference) along with the nationalist Republicans of Antoni Rovira i Virgili. Their goal was to unite all nationalist opinion in Catalunya and challenge the hegemony of the Lliga.⁴⁹ Acció Catalana had tremendous support within the Mancomunitat and among former members. This led to its defeating the Lliga in provincial elections in the 2nd district of Barcelona in 1923, which initiated the decline of the Lliga as the dominant political force in Catalunya. Although there were significant political tensions within Catalanism at the time it can be argued that nothing could have prepared the Mancomunitat for the events of September 1923 when General Primo de Rivera seized power in a coup d'état.

Catalanism and the Dictatorship of Primo De Rivera

In his role as President of the Mancomunitat Puig i Cadafalch tacitly, and mistakenly, supported Primo de Rivera whom he saw as being pro-regionalist.⁵⁰ This proved to be a grievous error since very soon after seizing power Primo de Rivera halted the progress of Catalanism by banning the Catalan language and flag and outlawing numerous organisations such as the apolitical youth movement Pomells de Joventut (Garlands of Youth). Puig i Cadafalch was forced to resign as President of the Mancomunitat in 1924 and was succeeded by the dictator's puppet, Alfons Sala Argemí, who initiated a purge of Catalanism within the institution. Ultimately, the Mancomunitat was abolished by Primo de Rivera in 1925. The politics of the Mancomunitat and attempts to decentralise the Spanish State were replaced by an authoritarian unitarism that emphasised the sovereignty of the State and promoted a "hegemonic and homogenising Spanish-ness."⁵¹ Centralisation was accompanied by significant repression on the part of the régime. The dictatorship through its

⁴⁹ Roig Rosich, "Catalanisme, Anticatalanisme i Obrerisme, 1900-1930," p. 262.

⁵⁰ Balcells, p. 83.

party the Unión Patriótica imposed a Spanish nationalism that was based upon religion and upon a deterministic conception of history.⁵² Under Primo de Rivera political life changed fundamentally as all political parties were banned as were the trades unions while military officials occupied administrative positions throughout Spain. In Catalunya all specifically Catalan organisations and bodies were suppressed, all Catalanist and regionalist politicians were replaced by those who embraced Spanish-ness, and all higher officials were replaced by military personnel.⁵³

During the dictatorship, Catalanist action was not entirely repressed. For instance, there was moderate growth in the number of Catalan newspapers from seven in 1923 to ten by 1927.⁵⁴ In 1926, in an attempt to engineer an insurrection in Catalunya, the militant left-wing separatist Francesc Macià tried to enter Catalunya from France with a group of guerrillas from his party Estat Català their goal being to overthrow Primo de Rivera. Macià's insurrection failed and he was subsequently tried and exiled to Belgium.

Republican Catalanism

In 1930, Primo de Rivera suddenly resigned and constitutional rights were restored under the new government, in which the Lliga refused to participate because of the repression unleashed against Catalunya during the dictatorship. The position of the Lliga as a dominant party was further challenged in the same year when the Spanish republican parties signed a pact with the left-wing Catalan parties Estat Català, Acció Catalana and its offshoot Acció Republicana de Catalunya (Republican Action of Catalunya). The *Pacte de Sant Sebastià* united the republican forces and pledged that a future Republican government would grant Catalunya a statute of autonomy, at the same time preparing a coup d'état to

⁵¹ Roig Rosich, "Catalanisme, Anticatalanisme i Obrerisme, 1900-1930," p. 265.

⁵² Ibid.

⁵³ Ibid., p. 267.

⁵⁴ Ibid., p. 85.

implement their plans.⁵⁵ This represented a fundamental reorganising of left Catalanist forces along unified Republican lines, bringing about also a reunited Acció Catalana under the name Partit Catalanista Republicà (Catalanist Republican Party) or PCR. To the centre of these far-left parties existed a large number of organisations, parties and workers' groups which represented varying degrees of orthodox separatism, nationalism, republicanism and federalism. These groups lacked both focus and a common sense of strategy unlike the far-left republicans. As a result they were increasingly on the margins of what was happening politically in Catalunya immediately prior to the start of the Civil War.⁵⁶

The 1930s were a decade of profound upheaval for both Catalunya and Spain, a decade of tremendous advances in terms of Catalunya gaining greater autonomy within the Spain of the Second Republic while also one of great tragedy and repression. The left in Catalunya was ascendant in 1931, winning 68% of council seats compared to 21% for the Lliga.⁵⁷ The parties of the moderate left Partit Republicà Català and Estat Català were united under one banner in the elections. The new party Esquerra Republicana de Catalunya, ERC (Republican Left of Catalunya), was to dominate Catalan politics up to the Civil War and re-emerge during the transition to democracy in the 1970s. In the 1931 general election ERC's victory was repeated in electing twenty-five members compared to the federalists five, the Lliga's three, and the PCR's three.⁵⁸ Following ERC's victory in Catalunya and corresponding republican successes across Spain on 14 April 1931 Lluís Companys of ERC proclaimed the new Catalan republic from Barcelona's City Hall followed by Francesc Macià's proclamation on the balcony of the old Mancomunitat of "the Catalan Republic as a

⁵⁵ Mestre i Godes, p. 208.

⁵⁶ Lluís M. de Puig i Oliver, "El catalanisme polític durant la Restauració. Dels orígens a la Mancomunitat," in *Història Contemporània de Catalunya. Volum I*, p. 433.

⁵⁷ Balcells, p. 93.

⁵⁸ Josep M. Roig Rosich, "Segona República i Guerra Civil," in *Història de la Catalunya Contemporània*, p. 286.

State within the Iberian Federation.”⁵⁹ The Catalan Republic lasted only three days before Macià reached an agreement with the Spanish republicans to fulfil the *Pacte de Sant Sebastià* and bring into existence regional government for Catalunya under the name of the Generalitat. After a referendum in which 99% of Catalans supported the statute bringing the Generalitat and new regional régime into force the Statute of Self-Government was proclaimed in 1932 bringing a much greater degree of decentralisation through the creation of such a regional government.

The Second Republic and Catalunya

The Generalitat under the presidency of Macià gained considerable devolved powers in the Statute. The Catalan language was granted official status in Catalunya for the first time alongside Castilian. This was a major boost to the Catalanist cause. In terms of powers, the Generalitat exercised exclusive jurisdiction over Catalan civil law and territorial administration. It had executive powers in the areas of social insurance, labour relations, and it had devolved powers relating to law and order, administration of justice and public works. It was, thus, a major development in relations between Catalunya and the Spanish state, bringing about for the first time a great degree of the powers of self-government that Catalanists had been arguing for since the publication of *Les Bases de Manresa*.

In 1933, there was yet another change in the political landscape of Catalunya with the dissolution of the last isolated fragments of Acció Catalana and the move by Antoni Rovira i Virgili and Carles Pi i Sunyer to ERC, other members established the Christian democratic party Unió Democràtica de Catalunya (Democratic Union of Catalunya), or UDC. While ERC dominated the Generalitat and Parliament, the republican right and the Partit Republicà Radical were weak. However, at the same time the larger Spanish right-wing coalition, the Confederación Española de Derechas Autonomas, CEDA (Spanish Confederation of Right-wing Autonomous Groups) emerged as a powerful anti-republican

⁵⁹ Mestre i Godes, p. 209.

force. The left-wing programme of ERC provoked considerable unease amongst the landowning and petit bourgeois classes of Catalunya. In 1934, the Generalitat's *Llei de Contractes de Conreu* (Catalan Law of Agricultural Contracts) was introduced as a social reform bill that allowed a majority of Catalunya's tenant farmers to buy their land. This reform was bitterly opposed by the landowners and ultimately was disallowed by the government in Madrid, provoking the ERC as well as the Basque Nationalists to withdraw from the Corts Generals. The growing right-wing sentiment was made manifest in the fall of the Samper government that same year and the establishment of a right-wing government led by Lerroux and CEDA.

The change in government brought a quick response from Barcelona. The new President of the Generalitat, Lluís Companys, declared his opposition to the Madrid government on 6 October 1934 and proclaimed the existence of a Catalan state within a new Spanish federal republic. Companys' state lasted only ten hours before he was forced to surrender to the army. Lerroux and Madrid viewed Companys' act as a separatist rebellion, resulting in he and his ministers being sentenced to thirty years hard labour as a result. At the same time all municipal councils were suspended by Madrid, the press was censored, and earlier social reforms such as the *Llei de Contractes de Conreu* were repealed. The fallout from the events of 1934 continued into the following year when Lerroux repealed the *Catalan Statute of Self-Government*, dismissed the civil servants, and closed the Parliament. Leftist agitation in Barcelona increased and in 1935 the Trotskyist Andreu Nin helped to establish the Partit Obrer d'Unificació Marxista, POUM (Workers' Party of Marxist Unification). It sets itself in opposition to the Stalinist Partido Socialista Obrero Español, PSOE (Spanish Socialist Workers' Party) and the Partido Comunista Español, PCE (Spanish Communist Party). The ground was then set for civil war in Spain as the parties on

the right and left established their hard-line positions, and ERC had an effective hegemony in the Generalitat.

The Civil War

A seemingly infinite number of sources exist on the events leading to the Spanish Civil War and the war itself, offering a variety of historical, political, and economic interpretations. It is not appropriate here to enter into a prolonged discussion of the Civil War and its effects on Catalunya as they are well documented. However, something should be said of the events of 1936 and their impact on Catalunya.⁶⁰ With the electoral victory of the leftist Front d'Esquerres, the Catalan Frente Popular, and Spanish left in the rest of Spain the Generalitat was re-established and amnesties granted. At that time there was a further consolidation of Socialist parties in Catalunya when the Catalan parties Unió Socialista de Catalunya (USC), the Partit Comunista de Catalunya (PCC), the Partit Català Proletari, and the Catalan branch of the PSOE formed the Partit Socialista Unificat de Catalunya, PSUC (Unified Socialist Party of Catalunya). The new party was a national party of Communists and Socialists whose focus was Catalunya and their goal the establishment of a Socialist/Communist hegemony in Catalunya, according to Caminal.⁶¹ The leader of the new coalition was Joan Comorera, leader of the USC. He was a formidable political thinker who contributed greatly to the evolution of Socialism in Catalunya during the Second Republic.

The Marxist Political Thought of Joan Comorera

Comorera was a Communist intellectual who subscribed to Leninist doctrines pertaining to nations and nationalities, and who saw the exercise of the right to self-

⁶⁰ For a more detailed account of the events leading up to the Civil War see Paul Preston *The Coming of the Spanish Civil War: Reform, Reaction and Revolution in the Second Republic*. For the Civil War itself see Preston's *A Concise History of the Spanish Civil War*, Raymond Carr *The Civil War in Spain*, or Preston and Mackenzie *The Republic Besieged: The Civil War in Spain*. For the Civil War in Catalunya see Various Authors *Catalunya i la guerra civil*, P. Pagès *La guerra civil espanyola a Catalunya* and A. Manent *De 1936 a 1975: Estudis sobre la Guerra Civil i el Franquisme* for a broader examination of Franco's victory on Catalunya.

determination as a means to achieve an international family of nations united in the common cause of Socialism. Comorera was anti-clerical and republican in his outlook and he viewed the Second Republic of the embodiment of liberty and democracy, two principles that were incompatible with the old clerical, conservative, authoritarian, monarchic Spain:

The Republic was coming to symbolise the fight against economic backwardness, against cruel social injustice, against alienating clericalism, against conservative authoritarianism... against the Monarchy, as incompatible with freedom and democracy.⁶²

Comorera's concept of revolution thus involved the shedding of the undemocratic and illiberal political culture of pre-Republican Spain. It was his view that only the working class of Catalunya had the power or the capacity to change Catalunya since neither the landowners or the petit bourgeoisie of Barcelona were motivated by either history or experience to bring about revolutionary change.⁶³ Joan Comorera was to play a central role in guiding the PSUC in the last years of the Second Republic as well as during the Civil War and the early years of the Franco régime.

Collapse of the Generalitat

The re-establishment of the Generalitat was followed in July by the revolt of Franco's troops in Morocco and the start of the Civil War. Barcelona was the main republican centre and where the Generalitat under Companys sought to maintain control over Catalunya in an atmosphere of street violence between Socialists, members of the POUM, and the anarchists of the Confederación Nacional del Trabajo, CNT (National Confederation of Labour). In an effort to bring about some unity of purpose in fighting the Nationalist forces of General Franco, Companys formed an alliance with the CNT: the Comitè Central de Milícies Antifeixistes, CCMA (Central Committee of Anti-Fascist Militias). The increasing influence and power of the anarchists and Marxists of the PSUC and POUM

⁶¹ Miquel Caminal, "Joan Comorera: vers un comunisme català," in *El Pensament polític català*, pp. 395-96.

⁶² *Ibid.*, p. 383.

forced the hand of Companys who in September 1936 welcomed the CNT, PSUC, and POUM into a coalition government with the ERC under Josep Taradellas.⁶⁴ The new coalition did not last long as infighting broke out between the POUM and PSUC. It was further undermined by a POUM backed anarchist mutiny in May of 1937 which left a government made up of the ERC and PSUC surviving until the end of the war. The events of the Civil War and the power struggles in Catalunya among left-wing forces that resulted from it brought about the end of the Generalitat and undermined the successes of the Second Republic and moderate left-wing Catalanism. With the fall of Barcelona to Franco's forces in January 1939 and the forced exile of almost 60,000 Catalan political and other leaders the "oasis of the republic" that had been Catalunya was shattered.⁶⁵ What followed was a prolonged period of Fascist repression and reprisals that had a negative impact on Catalan nationalism.

Franco and Catalunya

The Nationalists of Franco were profoundly anti-regionalist and anti-Catalanist. This led to a rapid shift in power from the abolished Generalitat to the dictator in whom all state power was vested. During the 1940s the use of Catalan was banned under Franco as it had been under Primo de Rivera, 25,000 civil servants were dismissed, and pro-Catalanist school teachers were removed to other parts of Spain and replaced with teachers from Castilla and Extremadura whose role was the de-Catalanisation of the school system.⁶⁶ The most brutal repression came at the hands of the military tribunals. Between 1939 and 1945 approximately 40,000 Catalans were forced to appear before the tribunals in Catalunya. The same tribunals executed approximately 4,000 Catalans for political purposes between 1938 and 1953. In some provinces, such as Baix Penedès, along the coast south of Barcelona over

⁶³ Ibid., p.395.

⁶⁴ Balcells, p. 117.

⁶⁵ Ibid., p. 125.

⁶⁶ Ibid., p. 127.

3% of the population was executed. In Barcelona itself 573 people were executed during that period⁶⁷ Exiled Catalan intellectuals established themselves abroad at this time with the first organisation being the Consell Nacional de Catalunya set up in 1939 under Lluís Companys, with Pompeu Fabra, Rovira i Virgili, Josep Pous i Pagès, and Santiago Pi i Sunyer involved.⁶⁸ This was a short-lived group, eventually broken up by the capture of Companys by the Gestapo and his subsequent execution by Franco in October of that year in Barcelona. Ultimately, a government in exile was set up in London under the aegis of the Consell Nacional Català with Carles Pi i Sunyer as representative of the Generalitat and Josep Batitsta i Roca as secretary. In Barcelona, Josep Pous i Pagès established the Consell Nacional de la Democràcia Catalan, CNDC (National Council of Catalan Democracy) in 1945 which was sponsored by a wide range of left-wing student and labour groups as well as by former members of the POUM, CNT, the Unió Democràtica de Catalunya and the Front Nacional de Catalunya.⁶⁹ Relationships between the remaining militants in Catalunya and the exiles were frequently strained as they both tried to rebuild after the Civil War. Catalanism, however, did not die out as a movement or ideology during the years of Franco's dictatorship. As will be discussed, Catalanism was maintained by small groups of individuals and by one major player in Catalan civil society, the Catholic Church.

The Catalan Church and Resistance to Franco

The Church hierarchy was split on the issue of Catalunya, but there were many activist priests and religious who through various activities and Church-sponsored organisations promoted Catalanism relatively openly. One seminal event took place in 1947 when the Virgin of Montserrat was enthroned at the Benedictine monastery at Montserrat. It was an event attended by 70,000 people with a ceremony conducted in Catalan below a hill

⁶⁷ Borja de Riquer, "Franquisme, Transició i Democràcia," in *Història de la Catalunya Contemporània*, p. 361.

⁶⁸ Balcells., p. 126.

⁶⁹ *Ibid.*, p. 129.

top on which a Catalan flag flew. Due to the autonomous position of the monastery within the Church, it was little affected by Franco's National Catholicism and its abbot, Abbot Escarré, acted with impunity against the régime on a number of occasions in the 1950s. Among the various Church organisations that were Catalanist in their orientation, including the Catholic Scout Movement of Fr. Antoni Batlle and the student sections of the Jesuit Marian congregations, the most activist was Crist i Catalunya or Cristians Catalans (CC) founded in 1954.⁷⁰

Cristians Catalans was a non-political, Catholic organisation that promoted Catalanism and trained militants to fight the régime's Spanish nationalism and anti-Catalanism. CC was established during the era of the Second Vatican Council at which John XXIII had repudiated Franco's doctrine of National Catholicism and condemned his repression. The most militant section of CC was led by Jordi Pujol, a group which engineered one of the most significant mass protest actions during the period of the régime. The leader of the Francoist Barcelona paper *La Vanguardia*, Luís Martínez Galinsoga, had attended mass at which the priest preached in Catalan and he reacted afterwards by uttering the fateful words: "Todos los catalanes son una mierda," (All Catalans are shit.). Pujol and his followers protested against Galinsoga which resulted in the mass cancellation of subscriptions to the paper and a fall in its revenue. Franco was forced ultimately to get rid of a disgraced Galinsoga. Towards the later years of the régime, in the 1960s, a growing number of clerics in Catalunya were willing to take a stand against the government. Another clear example of this was the clerical protest after the events of la Caputxinada.

La Caputxinada and Student Resistance

In 1966, a group of students from the University of Barcelona who were members of the newly established left-wing, pro-Catalanist and independent students' organisation, the Sindicat Democràtic d'Estudiants de la Universitat de Barcelona (SDEUB), were meeting in

⁷⁰ Ibid., p. 140.

the Capuchin monastery of Sarrà in Barcelona.⁷¹ The purpose of the meeting was to listen to a group of Catalanist literary figures, Jordi Rubió, Salvador Espriu, and Joan Oliver. The meeting was broken up when the police raided the monastery, arresting the speakers and numerous student leaders. University staff connected with SDEUB were dismissed and one Communist student leader was dealt with harshly by the police. The régime's reaction prompted a protest of 130 priests and religious in front of police headquarters which was dispersed by uniformed police with truncheons. This event is seen as seminal in the history of opposition to Franco in Catalunya. It demonstrated that a much broader group of organisations, many Catalanist in orientation, were emerging in the late 1960s and willing to go farther than before in their open opposition to the régime.

Revival of Catalanist Organisations in the 1960s

Towards the end of the dictatorship during which there was a greater degree of openness than there had been before, Catalanist forces began to organise in preparation for a return to democracy. In 1969 the Coordinadora de Forces Polítiques de Catalunya, CFPC (Coordination of the Political Forces of Catalunya) was established by the PSUC, UDC, and ERC and was one of the first attempts to coordinate all the forces opposed to the Franco régime. At the insistence of the CFPC, the Assemblea de Catalunya was convoked at the church of Sant Agustí in Barcelona in 1971 at which meeting a programme was developed calling for a general amnesty, a statute of self-government for Catalunya, and a coordination of forces opposed to the dictatorship. The Assemblea de Catalunya, like the meeting at Manresa almost one hundred years earlier, was a coming together of Catalan civil society in an attempt to bring about change in the Spanish government and recognise the goals of Catalanism. Among those organisations involved in the Assemblea were the political parties of the CFPC, the Grup Cristià de Defensa dels Drets Humans (Christian Group for the

⁷¹ Joan Casañas, *El Progressisme Catòlic a Catalunya (1940-1980)* (Barcelona: La Llar del Llibre, 1988), p. 287.

Defence of Human Rights), the Assemblea Permanent d'Intel·lectuals (Permanent Assembly of Intellectuals), the Comunitats Cristianes de Base (Basic Christian Communities), the Assemblea Permanent de Capellans (Permanent Assembly of Priests), and various other professional and neighbourhood associations.⁷² The prominent role played by the Church in the defence of Catalanism during the last decades was clearly reflected by their involvement in the Assemblea.

Post-Franco Catalan Nationalism

With the death of Franco in November of 1975, the Assemblea's role diminished as the then legalised political parties began to fill the vacuum that had been created. The demands voiced in Catalunya for a return to self-government and the Generalitat were difficult for the new government of Arias Navarro in Madrid to ignore. However the government did choose to move more slowly than Catalans had wanted and only proposed the bare minimum, a form of Mancomunitat.⁷³ Massive demonstrations of over 100,000 filled the streets around Barcelona demanding that the government act quickly to bring about self-government. In the period following Franco's death the liberalisation of the media gave a boost to Catalanists when the first Catalan daily paper, *Avui*, began publication in 1976, the same year in which Ràdio 4 began broadcasting in Catalan and the Institut d'Estudis Catalans was recognised.

With the victory of the left in Catalunya in the first democratic elections of 15 June 1977 and a victory for the autonomous parties in local elections, the newly formed Unión Central Democràtica (UCD) government of Adolfo Suarez chose to act to address the Catalan question.⁷⁴ Josep Taradellas, President of the Generalitat-in-exile in France returned to Spain in 1977 for meetings with Suarez over the Catalan question. Suarez took a risky political decision in choosing not to negotiate with the newly elected Catalan representatives

⁷² Balcells., p. 165.

⁷³ *Ibid.*, p. 169.

and with Taradellas instead because Taradellas was seen by many as the symbol of Catalanism, a Catalanism that had been defiant throughout the dictatorship.⁷⁵ Under Taradellas, a provisional Catalan government was set up in October 1977 made up of socialists, communists, the UCD, and the Pacte Democràtic. Following the adoption of the new Spanish constitution in 1978 in which the right of the “historic nationalities” to autonomous community status was recognised, the Assembly of Catalan Parliamentarians met at Sau to draw up a new statute of self-government. On 25 October the *Statute of Self-Government* was ratified by Catalans in a referendum and the Generalitat with devolved powers was once again established in Barcelona. Elections were called for the new Parliament in which the socialists and communists performed well and took a majority of seats in Barcelona. But in the process a new force emerged in Catalan politics, namely CiU. CiU was a coalition formed between the Christian Democratic Unió Democràtica de Catalunya and the left-of-centre Convergència Democràtica de Catalunya, and was led by Jordi Pujol. Ultimately, the nationalist coalition came to dominate the Parliament and the Generalitat and under Pujol CiU became a dominant player in the power politics of the new Spain. A new Catalanism rooted in the Catalanism of the early twentieth century became the dominant force in post-Franco Catalan politics as Catalunya participated in a newly decentralising, regional Spanish State.

The constitutional developments that came following the death of Franco will be explored in greater detail in chapter six when the balance of powers between the State and the autonomous communities in the 1978 constitution is examined more closely. Greater attention will also be given to the Catalan Statute of Autonomy and how it helps to define the structure of the modern Spanish State and what has emerged as an expanding asymmetrical relationship. The perceptions of Catalan political and academic participant-observers of

⁷⁴ Ibid., p. 170.

⁷⁵ Romero Salvadó, pp. 168-69.

Catalunya's place within Spain's constitutional framework will be analysed in chapter six in an effort to examine the various approaches of Catalan nationalism, federalist, autonomist, and independentist towards the reform of the State. These three strands have evolved over the course of 150 years and continue to provide three very different routes towards greater recognition of Catalunya in Spain. After continual fluctuation between periods of decentralisation and centralisation beginning in the 1900s Catalan nationalism has come to play a significant role in the development of a more highly regionalised and decentralised Spain.

4

Nationalism and Scotland 1707-1999: From Union to Parliament

As with the two previous chapters that gave some brief background of the development of nationalism in Québec and Catalunya, this chapter examines the major influences on the development of political nationalism in Scotland. In tracing the evolution of Scottish nationalism this chapter will focus on the constitutional developments that have shaped Scotland since the Union and the impact of the debate between Unionism and Scottish nationalism as expressed in the activities of nationalist groups and other political parties. Whereas the evolution of political nationalism in Québec and Catalunya has often been characterised by linguistic or ethnic tensions, these features have been relatively absent from the history of Scottish nationalism's development. The recognition of Scotland's position as a nation within the United Kingdom has been explicit, unlike the Spanish State's rejection of Catalan nationhood and Canada's seeming inability to come to terms with Québec's dualistic view of the Canadian State. It has been argued by some commentators that the all-encompassing British identity that emerged out of the *Treaty of Union* in 1707 largely negated any need for a distinct Scottish nationalism prior to the mid-twentieth century.¹ Smout argues that 1707 was a watershed event that "erased the formal Parliamentary independence of Scotland [and] reduced her to the status of a 'region' in the new hybrid kingdom of Great Britain."² With the collapse of the Empire, a nascent Scottish nationalism that had been taking shape since the turn of the century found a voice as a distinctly Scottish identity. Fry argues that this nationalism emerged as the economic prosperity by the Empire began to disappear and a historic "indifference" to Scottish

¹ Michael Fry, Patronage and Principle: A Political History of Modern Scotland (Aberdeen: Aberdeen University Press, 1987), p. 201.

institutions “was aggravated by centralisation and failure compounded by immobility.”³ The history of nationalism’s development is very much about a gradual shift in the understanding of Scotland’s place within the U.K. State. From nineteenth century *fin de siècle* agitation for home rule for Scotland within the Union, to the creation of the Scottish Parliament in 1999, Scottish nationalism has emerged as a significant political force in the constitutional politics of the United Kingdom.

Diffuse Nature of Scottish Nationalism

As in the cases of Québec and Catalunya, nationalism in Scotland should not always be equated with separatism, or the desire for independence from the existing nation-state. Although the Scottish National Party (SNP) is the only explicitly nationalist party among the four main Scottish parties, nationalists who have favoured a greater devolution of power to Scotland have found a home at various times in the Liberal/Liberal Democrat, Labour, and Conservative and Unionist parties. Lindsay Paterson has argued that Scottish nationalism is very diffuse, allowing all parties to use the mantle of nationhood to their benefit. The Conservatives, who in the 1930s could equate Scottish nationalism with imperial loyalty and a defence of Presbyterianism, made effective appeals to a sense of Scottish nationhood.⁴ A sense of Scottishness, or loyalty to an idea of Scottish nationhood, evolved over the course of the centuries following the *Treaty of Union* that united the parliaments of Scotland and England. An explicit desire for home rule, devolution, or some form of self-government did not manifest itself in Scotland until the late 1880s with the creation of the Scottish Home Rule Association. The home rule movement was a movement that developed in the existing political structure that dated from the era of reform in the mid-nineteenth century. Its evolution and its impact on the Union will be discussed below.

² T.C. Smout, *A History of the Scottish People 1560-1830* (London: Harper Collins, 1969), p. 199.

³ Fry, p. 201.

⁴ Lindsay Paterson, *The Autonomy of Modern Scotland* (Edinburgh: Edinburgh University Press Ltd, 1994), p. 114.

The experience of the Union has shaped ideas of nationalism in Scotland in a fundamental way. This nationalism differs from its counterparts in Québec and Catalunya as a result of the political framework of Unionism. Prior to the 1960s and 1970s during which time the Scottish National Party emerged as the nationalist party with a platform of independence for Scotland, nationalism in Scotland was expressed largely through an imperial British nationalism. A minority of Scots who termed themselves Scottish nationalists existed on the cultural and political fringes of the late nineteenth century and the first sixty years of the twentieth century. For the majority of Scots the Union negotiated in 1707 allowed them to participate in the building of an empire that brought prosperity and an equally fervent loyalty. Smout argues that the Union did not, in fact, eliminate a Scottish identity but rather created a duality of national consciousness, of being both Scottish and British at the same time.⁵ Indeed, as Paterson argues, the Union was a framework which allowed Scotland considerable autonomy within the United Kingdom State, something which the Catalans rarely experienced within the Spanish State. For the Québécois there was not a similar sense of partnership with the rest of British North America until the era of Confederation. Their position as a linguistic and religious minority motivated nationalist development in Québec; similar factors did not exist in Scotland nor was Scotland seen as having been conquered except by perhaps the most reactionary of anglophobes.

The Treaty of Union, 1707

The *Treaty of Union* of 1707 brought about not only a political union between Scotland and England, but also an economic one. Commentators hold various views as to whether the political or economic aspect of the Union was more important. The political union did have a significant impact by incorporating the Scottish political tradition and the English parliamentary tradition with its doctrine of the legislative supremacy of Parliament. Many Scottish lawyers have argued since the Union that this doctrine was foreign to Scots

⁵ T.C. Smout, *A Century of the Scottish People 1830-1950* (London: Harper Collins, 1986), p. 238.

Law, an argument that was frequently employed when various sections of the *Treaty of Union* were repealed.⁶ Smout argues that Scotland did not surrender its sovereignty to England in 1707, but rather surrendered its sovereignty along with that of England to the new state created as a result of the Union. However, as argued by Smout “the letter of the law...was not altogether the same as the spirit, for the partnership was a grossly unequal one.”⁷ Fry has argued that the political union in fact did not have a tremendous impact as the loss of the Scottish Parliament and its particular tradition was relatively insignificant. This was due to the Scottish Parliament not being historically the focus of political life in Scotland as Parliament was in England. Scottish political life was centred instead on a number of institutions, in particular the Kirk, the law, the burghs, and the education system, all of which were maintained under the terms of the *Treaty of Union*.⁸ As Smout argues, the Union transformed Scottish political life as political élites moved south to advance their political careers and take advantage of the system of patronage that operated at Westminster. As will be discussed below, under the political system that emerged after the Union Scotland was in essence ruled by Westminster through Scottish notables such as the Duke of Argyll, Lord Bute, and Henry Dundas.⁹ They became the agents of the new British state, the dispensers of local patronage, and political overlords of Scotland.

While the debate over the nature of the political union achieved in 1707 was significant it was overshadowed by the arguments for an economic union. It was this economic union that Scots sought gaining them entry to the imperial market that was beginning to expand as England exploited its overseas colonies. The failure of the Darien scheme at the end of the seventeenth century and the lack of available capital in Scotland necessitated some form of relationship with England, since competing against its growing

⁶ James G. Kellas, *The Scottish Political System*, 4th ed. (Cambridge: Cambridge University Press, 1989), pp. 21-22.

⁷ Smout, *A History of the Scottish People 1560-1830*, p. 200.

⁸ Fry, p. 202.

economic power was seen as being futile. Scotland was not to be an imperial power in its own right. Andrew Fletcher, in his opposition to the Union, pointed out that it was impossible to compete against England since, following the Union of the Crowns in 1603, the expansion of English trade had adversely affected Scottish commerce. Despite the demise of Scottish trade, the Scottish political class in London was seemingly unable to exercise any influence on the government:

Upon the Union of the crowns not only all this went into decay; but our money was spent in England, and not among ourselves; the furniture of our houses, and the best of our clothes and equipage was bought at London: and though particular persons of the Scots nation had many great and profitable places at court, to the high displeasure of the English, yet that was no advantage to our country, which was totally neglected, like a farm managed by servants, and not under the eye of the master.¹⁰

For Fletcher the Union was a great debacle; for other members of the ruling political and economic class in Scotland it was to present innumerable opportunities for advancement in England and abroad as imperial merchants, administrators, and soldiers.

Jacobitism

The guarantees provided for in the *Treaty of Union* that protected the Scottish legal system, system of local government, the Scottish universities, and in a subsequent act the Presbyterian form of government in the Kirk facilitated Scotland's political assimilation into the British State. However, this assimilation was far from complete as the Jacobite rebellions of 1715 and 1745-46 demonstrated. The rebellions openly challenged the Hanoverian succession and threatened the stability of the Union as a loose coalition of Episcopalians, certain Highland clans, Roman Catholics, and northern English Tories sought the restoration of the Stuarts to the British throne. Jacobitism can hardly be declared to be a nationalist movement or some form of nascent Scottish nationalism since it was confined to

⁹ Smout, *A History of the Scottish People 1560-1830*, pp. 202-03.

¹⁰ Andrew Fletcher, "An Account of a Conversation Concerning a Right Regulation of Governments for the Common Good of Mankind," in David Daiches, ed. *Fletcher of Saltoun: Selected Writings* (Edinburgh: Scottish Academic Press, 1979), p. 114.

particular constituencies within Scotland who were opposed to the constitutional and religious settlement brought about by the Glorious Revolution. Jacobitism was one dominant factor in shaping the future of Scotland in the late eighteenth and early nineteenth century. With the defeat of Charles Stuart's forces at Culloden Moor in 1746 came a period of brutal repression by the Crown which sought to impose its will on the Highlands and those elements in Scottish society that had supported the uprisings. The repression included the *Disarming Act*, which banned the carrying of weapons; the proscribing of Highland dress; the suppression of Episcopalian meeting houses; the abolition of heritable jurisdiction; and the scorched earth policy practised by the forces of the Crown in the western Highlands.¹¹ Accompanying this repression was the experience of the Clearances, which led to the collapse of the clan system, and the depopulation of the western Highlands and Islands as Gaels migrated to North America. The confiscation of Jacobite estates was a further attempt at establishing the Crown's hegemony in disparate parts of the kingdom. As Linda Colley has argued, the dispossession of Highland estates was an effective way of redistributing wealth and buying off Lowland Scots through the subsidising of industry:

The intention [of the Crown's actions post-1745] being, as one MP succinctly put it, to 'carry off the King into every part of the United Kingdom'. These were the sticks designed to beat down Highland autonomy. But an attempt was made to create some meagre carrots as well. As far as the Highlands were concerned, this meant ploughing money from confiscated Jacobite estates back into the economy. Basic industries like tanning, whaling and paper-making were subsidised. Schools were established to instruct adults in the mechanics of linen production and to teach Gaelic-speaking children English. Yet again, the rulers of the British state betrayed their absolute conviction that trade and patriotism were inseparably linked.¹²

Without a doubt the Crown was able to carry out its aims of uprooting Highland society and extending its influence. However, the view of the Jacobite and the Highlander as counter-revolutionary did not last and soon became appropriated as the symbol of Scottish identity, an identity that sought to distinguish itself from the other.

¹¹ T.M. Devine, *The Scottish Nation 1700-2000* (London: Allen Lane The Penguin Press, 1999), p. 46.

¹² Linda Colley, *Britons: Forging the Nation 1707-1837* (London: Pimlico, 1994), pp. 119-20.

Highlandism as an Identity

It has been argued that with the incorporation of Highland regiments into the British military in the eighteenth century a positive impression of the Highlander as noble, loyal, and brave emerged in popular culture. Jacobitism and the Highland way came to be further romanticised through the poetry of Burns and the publication of numerous songs that sought to capture the daring exploits of Bonnie Prince Charlie and his loyal band of Highland followers.¹³ Devine has argued convincingly that through this popularisation of Jacobite myth and legend Jacobitism and Highlandism was appropriated as a new national identity. As the Scots became more and more integrated with England economically and gained by this integration there arose a fear that their own sense of nationhood would be assimilated.¹⁴ Increasingly, Highlandism became Scottishness as the tartan and the pipes were adopted in the Lowlands and became intrinsic to Scottish identity. This was an identity that was fostered in Walter Scott's Waverley novels and other works such as *Ivanhoe* as well as in the writings of James Hogg and James Macpherson. The promotion of this identity reached its apogee when George IV on his visit to Edinburgh in 1822 appeared at state functions in full Highland dress; Highlandism was triumphant. Fry has argued that the creation of this identity by Scott and other nineteenth century Conservative romantics reflected a "deep historical consciousness of their country" that was similar to what was happening in other European national movements. However, Fry goes on to argue that this romanticism was in effect an effort to maintain the privileges of the Conservative aristocratic class in Scotland in the early 1800s.¹⁵ Although there was an emerging popular consciousness of Scottish history based upon invented tradition, as Hobsbawm would argue, this did not evolve into a new Scottish nationalism.¹⁶

¹³ Devine, p. 237.

¹⁴ *Ibid.*, p. 244.

¹⁵ Fry, p. 203.

¹⁶ See Eric Hobsbawm and Terrence Ranger, eds., *The Invention of Tradition*.

While the adoption of this mythical identity as national does not point directly towards the evolution of nationalism in Scotland, it does serve to illustrate the attitude among certain Scots towards their relationship with the English. This relationship was one not of equal partners in fact, but one of a dominant power and a small nation that feared the cultural and political influence of England and felt the need to construct a distinct, yet wholly invented, cultural identity. As Devine contends, the “ ‘archaic world’ of the contemporary Highlands...was an alluring myth for a society searching for an identity amid unprecedented economic and social change and under threat of cultural conquest by a much more powerful neighbour.”¹⁷ If the nineteenth century opened with Scots seeking a distinct national identity to embrace in their cultural life, it also ushered in a period that was both politically conservative and radical.

19th Century Patronage and Reform

Political life in Scotland in the nineteenth century was characterised by various movements, many of which had a uniquely Scottish dimension to them. The radical societies of the early decades, Chartism in the 1840s, liberalism in the middle of the century, temperance, and the push for home rule at the century’s close all helped to shape the nature of Scottish political debate. While these movements in their own ways represented challenges to the status quo, they existed within the larger framework of imperial Britain and Scotland’s role within the Empire, a role that the majority of Scots can be said to have embraced since in the Empire lay prosperity. Scottish politics in the second half of the eighteenth century and early nineteenth century were dominated by political managers such as the Duke of Argyll and Henry Dundas who were the fount of patronage in Scotland and the *de facto* representatives of the imperial government. These managers acted as a “subordinate monarch” and effectively governed Scotland; they were also the advocates of

¹⁷ Devine, p. 245.

Scottish interest at Westminster.¹⁸ While this was a relatively efficient, if not representative, system it was not able to withstand the challenges that were launched against it in the 1820s and 1830s by the diversity of radical societies that were arguing for reform of the political system. There was considerable cooperation between Scottish and English radical societies including the Anti-Corn Law League and those who followed English radicals such as Richard Cobden.¹⁹ What was unique about Scottish involvement was the use of particular Scottish symbols in radical protests such as banners displaying the names of Wallace, Bruce, and St. Andrew and the singing of “Scots wha hae”. While these symbols were employed so also were the Union flag, images of Britannia, and as in Edinburgh in 1832 placards with imperial slogans in the manner of Nelson’s famous entreaty at Trafalgar that ‘England expects that every man will do his duty!’.²⁰ The use of national symbols alongside imperial ones does hint at the growing importance of a unique identity and its effective use. It must be emphasised, however, that radical demands did not take the form of demands for the dissolution of the Union or any condemnation of the Empire. Scots had a strong attachment to the Union that had brought them material prosperity. When Scottish radicals joined with their English neighbours to press for reform in the 1830s it was done in the context of British institutions and the need to give Scotland greater equality within them.²¹

With the passage of the *Reform Act* of 1832 there were further demands for an expansion of the franchise and the reform of constituencies. In the late 1830s and 1840s Chartism emerged as the movement which would articulate a radical programme of reform including: universal manhood suffrage, abolition of property qualifications, paid members of Parliament, equal constituencies, the secret ballot, and annual parliaments. In Scotland Chartism was a mass movement with over eighty associations in existence by 1838 that

¹⁸ Paterson, p. 33.

¹⁹ Fry, p. 39.

²⁰ Colley, pp. 338-39.

²¹ Fry, p. 206.

called for reform of the system through peaceful agitation.²² For the Scottish Chartists the movement was embraced with particular evangelical zeal and it became strongly linked to Calvinist virtues such as struggle, temperance, cooperation, education, and hard work. The principles outlined in the Charter were seen to have been inspired by the New Testament, and the Chartist struggle was akin to that faced by the Covenanters in the seventeenth century as they fought for the survival of Presbyterianism in Scotland.²³ As Fry argues, Scottish Chartism reflected the dominance of religion in Scottish society, thus giving it a distinctly “moralistic [and] rather apolitical character.”²⁴ In fact, within Scottish Chartism there could be found a clear expression of a distinct national culture and perspective on reform that was firmly rooted in Calvinism and the ethos that it inspired.

Liberalism in Scotland

As the reforming zeal of Chartism had dominated Scottish political life in the middle part of the century, liberalism and the position of the Liberal Party dominated the latter half of the 1800s. With the expansion of the franchise following the *Reform Act* of 1868 the new working-class electorate in Scotland put its weight behind the Liberal Party of Gladstone and the values that they saw liberalism supporting: education, self-improvement, temperance, and general respectability. Devine has argued that in the late nineteenth century liberal values were Scottish values due to the extent to which the Scottish electorate sympathised with them.²⁵ These were the same values articulated through the prevailing Calvinist ethos in Scotland, values that had been championed by the Chartists. The inclusion of the working class in the political system in Britain in the nineteenth century has been argued to have acted as a disincentive towards the type of popular revolutions that were common on the continent. In this context the dominance of liberalism and the new inclusiveness brought

²² Ibid., p. 42.

²³ Devine, p. 279.

²⁴ Fry, p. 44.

²⁵ Devine, p. 285.

about in 1868 acted as moderating factors in Scottish politics along with the inherent conservatism of Calvinism. Scotland at the time was also benefiting substantially from imperial expansion and so there was even less of a need to argue for revolutionary change.

Such revolutionary change could have included a challenge to the constitutional status quo of the Union, yet the majority of Scots throughout the nineteenth century and into the twentieth century continued to be supportive of the Union and its benefits. If Britishness enjoyed hegemony as the common national identity in Britain during this period, it is because of the strength of the Empire and the population's wholehearted acceptance of it. As stated above, Britishness only began to decline in Scotland as a unifying identity in the years following the Second World War as the Empire and the economic prosperity it brought began to collapse. The era of Liberal dominance in Scotland during the mid-Victorian period was an era in which there was very little nationalist agitation. Indeed, the only notable organisation to appear was the National Association for the Vindication of Scottish Rights, and it only existed for three years from 1853-56. The National Association was founded by James and John Grant and called for better Scottish representation at Westminster. Their approach centred on the distribution of pamphlets and the writing of letters that focussed on the various wrongs done to Scotland since the Union that needed to be redressed. The association pleaded for more government attention to Scottish matters. However, it always sought to work within the system and reform the Union.²⁶ It is evident that there was concern for the Union and that there should be a recognition of particular Scottish grievances, but it was not until the latter part of the century that a more fully developed movement emerged to argue in favour of greater self-government or home rule for Scotland.

The Irish question was a dominant political issue in the United Kingdom during the last three decades of the nineteenth century and the first three of the twentieth. The impact of

Irish home rule on Scotland was that it motivated a group with allegiances to the Scottish Liberal Party to advocate the principle of Home Rule all around. This concept argued that a measure of self-government be offered to Scotland within the Union along the same lines as that being championed by Irish home rulers such as the Protestant landowner Charles Stewart Parnell and the more radical Fenian Michael Davitt. Along with his championing of home rule for Ireland Davitt went on to found the Irish National Land League in 1879 in which he and Parnell argued for land reform.²⁷ The Land League served as an inspiration to Highland crofters in Scotland who went on to found the Highland Land Law Reform Association in 1883, a prelude to later demands for home rule for Scotland.²⁸ Gladstone's ultimate conversion to the home rule cause encouraged the re-establishment of the Scottish Office in 1885 as a means to give greater prominence to Scottish affairs at Westminster.²⁹

The Liberal Response

The establishment of the Scottish Office by Gladstone's government was in many ways a response to demands for greater Scottish autonomy that would allow Scots to have a certain measure of control over the administration of the nation. Paterson argues that the Scottish Office came about as a result of nationalist demands.³⁰ In many ways it can be argued that the creation of the Scottish Office in 1885 was a recognition by central government of the distinct nature of Scotland within the British State and that this merited a unique form of administration. In essence, the Scottish Office fulfilled many of the roles performed by political managers such as Argyll and Dundas in the eighteenth century before the era of reform; its function was to administer Scotland leaving Westminster to perform

²⁶ Fry, p. 206.

²⁷ T.W. Moody, "Fenianism, Home Rule, and the Land War (1850-91)," in *The Course of Irish History*, eds. T.W. Moody and F.X. Martin, 3rd ed. (Niwt, Colorado: Roberts Rinehart Publishers, 1995), p. 285.

²⁸ Michael Lynch, *Scotland: A New History* (London: Pimlico, 1992), p. 375.

²⁹ Richard J. Finlay, *A Partnership for Good? Scottish Politics and the Union Since 1880* (Edinburgh: John Donald Publisher Ltd., 1997), p. 44.

³⁰ Paterson, p. 107.

similar functions for England and Wales. Paterson also contends that the creation of an official nationalism was embodied in the technocracy of the Scottish administration, a nationalism that was reinforced when the Scottish Office was moved to Edinburgh in 1939. The move of the Scottish Office allowed Scottish politicians to govern in a Scottish context with a Scottish civil service assisting them, thus giving Scottish politics more of a national focus: "...yet again, we are reminded that Scottish nationalism was partly official, providing a taken-for-granted context in which Scottish politicians operated."³¹ As the State expanded so did the Scottish Office, which enabled the welfare state of the post-war years to develop a particularly Scottish character as the Scottish administration came to have more and more power over administration in areas of a purely local concern.³² However, as will be discussed below, the lack of the Scottish Office's direct accountability to the Scottish people through a legislative body became one of the key arguments in favour of legislative devolution in the late twentieth century. Even in the late 1880s there were demands for legislative devolution to Scotland -home rule that would allow for greater debate on Scottish issues and greater representation. These demands came from a new political group that emerged out of the Liberal Party: the Scottish Home Rule Association.

The Scottish Home Rule Association

The establishment of the Scottish Home Rule Association (SHRA) in 1886 by the Liberals Charles Waddie, G.B. Clark, William Mitchell and John Romans planted the roots of Scottish political nationalism.³³ The SHRA was outside the formal party structure of Scottish politics and as such sought to influence the policy of the Liberal Party, and subsequently that of the Labour Party in the early twentieth century, towards the adoption of home rule for Scotland. The SHRA was joined by the Young Scots in 1900 who were allied with the Liberal Party to advocate home rule, although they were more of a Liberal Party

³¹ *Ibid.*, p. 108.

³² *Ibid.*, p. 109.

faction than an exterior pressure group.³⁴ The Young Scots proved to be a potent campaigning force advocating the preservation of free trade at the turn of the century and working to unite the Liberals in Scotland following their defeat in 1900.³⁵

The SHRA's objectives were similar to those of the Irish home rulers and its leaders believed that the "national aspirations of the Irish people were identical with their own."³⁶ The SHRA was strong in its support for the Empire, yet called upon the government to grant Scotland self-government through a legislature and executive with full control over affairs of a purely Scottish nature, and to devolve control over the Scottish civil service and judiciary. These requests were made in the spirit of promoting "the national sentiment of Scotland and maintain[ing] her national rights and honour."³⁷ Through the canvassing of candidates at elections and the subsequent advocating of Scottish home rule at Westminster the SHRA was able to promote its cause. As the majority of the SHRA members were also members of the Liberal party this encouraged the Liberals to endorse the principle of home rule for Scotland at the party conference of 1888.³⁸ There was, however, a considerable amount of opposition to home rule for Scotland among some of the Liberal membership. The Conservative Party was consistent in its opposition to home rule during this period.³⁹ In the period between 1886 and 1914 there were no less than eight Scottish home rule bills proposed in the Commons by Liberal members who supported the SHRA.⁴⁰ The last of them was proposed in 1914, but died on the order paper when war was declared. The SHRA was the first organisation to emerge that argued for a measure of legislative devolution for Scotland; it was also the first to have any measure of real support.

³³ Ibid., p. 45.

³⁴ James Mitchell, *Strategies for Self-Government* (Edinburgh: Polygon, 1996), p. 72.

³⁵ Finlay, p. 52.

³⁶ Mitchell, *Strategies for Self-Government*, p. 70.

³⁷ Ibid.

³⁸ Finlay, p. 48.

³⁹ Ibid. p. 50.

Following the war the SHRA was re-established by Roland Muirhead, a member of the Independent Labour Party (ILP). In its new incarnation the SHRA had a largely Labour membership including the radicals James Maxton and Tom Johnston and it was affiliated to the Scottish Trades Union Congress (STUC).⁴¹ In the 1918 general election fifty-eight candidates from the Liberal, Labour, and Unionist parties declared their support for home rule and the aims of the association.⁴² By 1928 there were over three hundred groups affiliated with the SHRA, many of which had a left-wing focus, thus drawing it all the more closer to the Labour Party. The SHRA under the leadership of Roland Muirhead remained the main voice for Scottish self-government up until the 1930s advocating the cause of legislative devolution for Scotland. What is notable about the SHRA is that it did not seek to dissolve the Union or undermine the political system; rather, it sought to enhance Scotland's position within the Union and Empire through the achieving of home rule and limited legislative devolution.

Labour and Home Rule

With the SHRA emerging after the First World War as an essentially Labour-led body there was increasing pressure placed on the Labour Party to embrace home rule for Scotland. The ILP passed a resolution at its 1919 party conference endorsing the idea of a Parliament for Scotland, a resolution that was surpassed by one in 1922 which demanded that Scots themselves be allowed to choose what sort of government would best be suited to them.⁴³ By 1923 the Scottish Labour Party and its National Executive Committee were fully in support of home rule for Scotland. Their support of home rule translated into a home rule bill being introduced in the House of Commons in 1924 by the Labour government.

⁴⁰ Gordon Donaldson, "Scottish Devolution: The Historical Background," in Government and Nationalism in Scotland, ed. J.N. Wolfe (Edinburgh: Edinburgh University Press, 1969), p. 10.

⁴¹ Michael Keating and David Bleiman, Labour and Scottish Nationalism (London: Macmillan Press Ltd., 1979), pp.61-62.

⁴² Mitchell, Strategies for Self-Government, p. 75.

⁴³ Keating and Bleiman, p. 61.

Supported by all the Scottish Labour MPs, the bill was piloted through the Commons by George Buchanan and Tom Johnston until a Labour motion for closure of debate was ruled out of order by the Speaker.⁴⁴ With the defeat of Labour in that year the Conservatives paid little attention to the home rule issue.

During its second period of office under Ramsay MacDonald, Labour quietly abandoned home rule in the face of the need for social and economic reform. The evolution of the labour movement in Scotland and the rest of the U.K. also encouraged the decline of home rule as a viable policy. Although the Scottish Council of the Labour Party and the Scottish Trades Union Congress favoured home rule they became marginalised by the growth of the larger U.K.-wide trade unions. In addition, as Harvie argues, the debates emerging around the time of the General Strike of 1926 shifted the focus away from the constitutional issues of the 1910s to social and economic issues, reinforced class consciousness, and emphasised the “political archaism” of the Liberal home rule agenda.⁴⁵ The Labour-dominated SHRA ultimately fell into decline when MacDonald, a former leader in the SHRA, refused to receive any deputations from them.⁴⁶

Nationalism's Fringe in the 1930s

The failure of the SHRA's strategy of working within the political system to bring about constitutional change encouraged the growth of other, more radical groups to emerge in Scotland in the 1930s. These groups were marginal players at best whose approaches can be placed on a spectrum running from moderate and inclusive to extremist and ethnically exclusive. As Fry argues, these groups of “militant socialists, Gaelic revivalists, the leaders of the Scottish literary renaissance...were not bothered about administrative efficiency or constitutional tinkering –their concern was with the soul of the nation and with independence

⁴⁴ *Ibid.*, p. 82.

⁴⁵ Christopher Harvie, *Scotland & Nationalism: Scottish Society and Politics 1707-1994*, 2nd ed. (London: Routledge, 1994), p. 23-24.

⁴⁶ Mitchell, *Strategies for Self-Government*, p. 79.

as the one way of restoring it.”⁴⁷ The earliest of these groups were the Scottish National League (SNL) and the Scottish National Movement (SNM) both of which worked outside the party structure to try and promote the cause of Scottish self-government; they were both precursors to the National Party of Scotland and its successor, the Scottish National Party. The SNL was led by Celtic romanticists such as Ruairidh Erskine of Mar and William Gillies and beginning in 1920 began to call for Scots to rise up and assert their national independence. The league’s message was peppered with Celtic myth, Catholic collectivism, clan superiority, and an unhealthy dose of ethnic superiority and anglophobia.⁴⁸ The SNM, itself an off-shoot of the SNL, argued for a Scottish Parliament and for the greater promotion of Scottish culture, yet its overall strategy was ill-defined. The movement’s leader, Lewis Spence, also had anglophobic tendencies and so it was largely hampered in achieving any sort of mass support.⁴⁹ With considerable division in the nationalist movement in the 1920s between the SNL, the SNM, and the SHRA there was a lack of focus and a lack of a coherent strategy on how to achieve what was their aim: self-government for Scotland. With the birth of the Scottish National Party (SNP) in 1934, the attentions of nationalists in Scotland could be focussed in one political party.

Founding of the SNP

The Scottish National Party came about in 1934 as the result of a merger between moderates in the National Party of Scotland (NPS) under the leadership of John MacCormick and the Conservative and aristocratic Scottish Party led by Sir Alexander MacEwen Younger.⁵⁰ The appearance of the SNP in Scottish politics in the 1930s shows that there was a considerable degree of unity among nationalists in Scotland regarding the strategy they would adopt: the contesting of elections and seeking to bring about their stated aim of

⁴⁷ Fry, p. 211.

⁴⁸ Mitchell, *Strategies for Self-Government*, p. 82.

⁴⁹ *Ibid.*, p. 84.

⁵⁰ Finlay, p. 82.

constitutional change through the democratic process. The SNP remained a minor political player until after the Second World War and it was dogged by internecine struggles between pragmatists and fundamentalists over the course of the following decades.⁵¹ Yet, the presence of the SNP demonstrated greater organisation and coherence in the nationalist movement than can be found in either Québec or Catalunya.

As has been shown in the previous chapter Catalan nationalism was widely diffused and, while appealing to the vast majority of Catalan élites in the early twentieth century, it was typified by the continual breaking apart and reforming of coalitions, parties, and pressure groups. It was really not until the last years of Franco's dictatorship in the 1970s that Catalan nationalist groups began to focus their attention and rallied around Pujol's coalition of *Convergència i Unió* and the democratic socialist PSC as the dominant nationalist parties. In the same way, Québécois nationalism did not fully emerge as a democratic movement until the Quiet Revolution of the 1960s when nationalists abandoned the older nationalist ideals of the conservative, Catholic Union Nationale and embraced the progressive and secular doctrines of the Liberal Party of Jean Lesage and subsequently the Parti Québécois of René Lévesque. The strategy and philosophy of the SNP developed as the party expanded in the 1960s and 1970s and the nature of the relationship between Scotland and Westminster evolved. However, there appears to have been a much greater coherence among Scottish nationalists in the 1930s than among their counterparts in Catalunya and Québec, possibly because they were a small force within Scottish politics at that time.

The approach adopted by the SNP was significantly different in that it established itself outside existing political parties. In its statement of goals there was a rejection of this earlier strategy employed by the SHRA and the Young Scots of working within the traditional party structure to try and bring about a firm commitment to self-government from

⁵¹ Mitchell, Strategies for Self-Government, p. 173.

the Liberals or Labour. This had clearly failed as an approach. The goals of the new SNP in the 1930s were clear:

- (1) The establishment of a Parliament in Scotland which shall be the final authority on Scottish affairs, including taxation and finance;
- (2) Scotland shall share with England the rights and responsibilities they, as mother nations, have jointly created and incurred within the British Empire;
- (3) Scotland and England shall set up machinery to deal jointly with these responsibilities, and in particular to deal with such matters as defence, foreign policy, and customs;
- (4) It is believed that these principles can be realised only by a Scottish National Party independent of all other political parties.⁵²

The commitment made by the founders of the SNP in 1934 was essentially to a federal Britain. A Scottish Parliament was to be created exercising sovereignty as “the final authority” in areas of local concern with Westminster being left control over areas that would normally be within the ambit of the central government in a federal system. The federalism evident in these goals harkens back to the federal concept of Home Rule All Around that had been embraced by the SHRA some decades earlier. This was not a proposal for constitutional reform which would dissolve the Union or take Scotland out of the Empire; the commitment to the Empire and therefore to the United Kingdom is explicit in the above statement. The SNP was to become the sole voice advocating self-government for Scotland since it was contended that none of the traditional Scottish parties could be counted upon to advance this goal.

The SNP and its precursor, the National Party of Scotland, had very little impact on Scottish electoral politics in the 1930s and early 1940s. It was not until the Motherwell by-election of 1945 when the SNP candidate Robert McIntyre took the seat from Labour that the SNP gained its first measure of success.⁵³ This was a Pyrrhic victory in that it was the result of the wartime electoral truce between Labour and the Conservatives, that thus allowed the SNP to adopt the mantle of opposition to the wartime coalition. McIntyre subsequently lost

⁵² *Glasgow Herald*, 31 January 1934, as quoted in Mitchell, p. 183.

⁵³ Mitchell, *Strategies for Self-Government*, p. 191.

the constituency in the Labour sweep of the 1945 General Election and the SNP continued to perform poorly in by-elections during the 1940s, rarely gaining more than 8% of the popular vote.⁵⁴ What did not help the SNP was the division brought about in the party in 1942 when one of its leaders, the influential John MacCormick opposed the selection of Douglas Young as Party Chairman in the conference of that year. MacCormick went on to form the rival Scottish Convention, which embraced a populist rhetoric in arguing for Scottish self-government.

The Scottish Convention and National Covenant

MacCormick's Convention was moderate and non-partisan, seeking to bring about self-government within the United Kingdom rather than outright independence for Scotland. Its gradualist approach made it popular and helped the Convention to mobilise Scottish civil society into action. At its March 1947 Scottish National Assembly in Glasgow 600 delegates from the trade unions, the Kirk, and chambers of commerce who supported the aims of the Convention came together to launch the *National Covenant*.⁵⁵ The two million signatures that accompanied the covenant when it was presented to the third National Assembly in 1949 demonstrated to great effect how Scottish civil society could be mobilised around the issue of self-government.

The use of covenants in Scottish history as a means to express Scottish grievances to central authority illustrates the unique position of Scottish civil society, a civil society that was autonomous from the State, in the political culture of the nation.⁵⁶ This political culture, it has been argued by Paterson and others such as Tom Nairn, is centred around a concept of popular sovereignty in which certain claims are made by the people as to how they should be governed. There are echoes of this in the *National Covenant* and *Solemn League and*

⁵⁴ F.W.S. Craig, *Minor Parties at British Parliamentary Elections 1885-1974* (London: Macmillan Press Ltd., 1975), p. 90.

⁵⁵ Devine, p. 566.

⁵⁶ Paterson, p. 45.

Covenant of the seventeenth century, MacCormick's *National Covenant*, and the *Claim of Right* of 1988 which declared that Scots had the right to determine how they were to be governed. The increased role of Scottish civil society in the campaign for self-government is a dominant theme in Scottish politics after 1945. The relative success of MacCormick's strategy in the 1940s can be seen as a watershed in this sense.

Nationalism and the Post-War Consensus

MacCormick's failure to achieve devolution through the *National Covenant* focussed attention back on the SNP. In the late 1940s and 1950s the SNP remained on the margins of Scottish politics. This period was the "high point of modern British Unionism", as termed by Devine.⁵⁷ Labour's landslide victory in 1945 ushered in the post-war consensus that brought Keynesian economic reforms and the adoption of the principles of William Beveridge's report which championed social insurance and state provision of services. After the experience of war and the defeat of fascism and nationalism it was very difficult to compete with Labour. As Morgan has argued:

Labour concentrated on the 'people's war' theme of emphasising housing, social insurance, and full employment. Allied to this was the need for modernization and central planning instead of the acknowledged waste of the industrial stagnation of the thirties. In addition, for once in its history, Labour could uninhibitedly play the patriotic card.⁵⁸

What Labour could offer Scotland in terms of economic restructuring was palatable and Scots saw Westminster as having the ability to deliver the programmes and assistance that Scotland needed to improve its society.⁵⁹ In light of its adoption of Keynesian economic planning and the post-war consensus the Labour leadership had by 1945 abandoned its

⁵⁷ Devine, p. 566.

⁵⁸ Kenneth O. Morgan, *The People's Peace: British History Since 1945*, 2nd ed. (Oxford: Oxford University Press, 1999), p. 27.

⁵⁹ Finlay, p. 135.

support of home rule for Scotland believing that a Scottish Parliament could be a barrier to solving Scotland's social and economic problems.⁶⁰

While Westminster embarked on a programme of nationalisation of industry and centralisation of power there was some measure of administrative devolution to the Scottish Office during the post-war years. Some further areas of central government jurisdiction, in particular justices of the peace and road planning, had been devolved to the Scottish Office in 1954 following recommendations made by the Balfour Royal Commission on Scottish Affairs. The role of the Scottish Office as the Scottish administration thus continued to expand in keeping with the expanding role of the State; it had expanded to become the focal point for Scottish politicians and administrators.

SNP Growth in the 1960s

With the demise of the Covenant movement by the 1960s the SNP began to gain strength. This was also helped by the in-fighting that was taking place within the Labour Party.⁶¹ The SNP performed well in by-elections in Glasgow Bridgeton in 1961 and West Lothian in 1962 with 18.7% and 23.3% of the popular vote respectively.⁶² The party also found its membership increasing. The party, through the efforts of its new organiser, Ian Macdonald, had established a strong branch organisation by the middle of the decade and had 42,000 members in 1966 compared to only 2,000 in 1962.⁶³ It was largely due to effective organisation that the SNP was able to win a major by-election victory in Labour's Glasgow fiefdom when Winifred Ewing took Hamilton in 1967.

The victory at Hamilton shocked the Labour Government into action as they came to perceive nationalism as a threat, particularly to the party's increased hegemony in Scotland. In April 1969, Prime Minister Harold Wilson appointed the Royal Commission on the

⁶⁰ Ibid., p. 136.

⁶¹ Mitchell, *Strategies for Self-Government*, p. 198.

⁶² Craig, p. 90.

⁶³ Harvie, p. 176.

Constitution under the chairmanship of Lord Crowther. The commission's remit was to give consideration to the constitutional arrangements existing between the constituent nations or regions of the United Kingdom and what, if anything needed to be done. The report of the Crowther, later the Kilbrandon Commission, in 1973 proved to be one in a series of events that would focus greater attention on Scotland and nationalism in the United Kingdom and lead to the first attempt at recognition of Scottish demands for self-government.

The Conservatives and Nationalism

The Conservative Party was equally shocked at the SNP's win at Hamilton causing it to re-examine its long-held opposition to any form of home rule. Immediately following Hamilton in November 1967 a group of young, reform-minded, Scottish Conservative and Unionist MPs formed the Thistle Group to advance the cause of devolution within the party. The group of roughly twelve members including Malcolm Rifkind, Michael Ancram, and Alex Pollock published a paper entitled *Devolution: A New Appraisal* which was highly critical of the Scottish Office and the role of Secretary of State, arguing that they were not subject to enough Parliamentary scrutiny.⁶⁴ The paper went even further and argued for a federal solution in which a Scottish Parliament would have complete fiscal independence and possibly some control over monetary policy. The Thistle Group also favoured the guaranteeing of a percentage of places at Scottish Universities for Scottish students.⁶⁵ The Thistle Group had a considerable impact on the party, but it did not expose the divisions in the party over the issue of devolution to the extent that Edward Heath's speech to the Scottish party conference at Perth in 1968 did.

In his so-called declaration of Perth, Heath argued that the party was now in favour of limited devolution along the lines proposed in a report prepared by Sir William MacEwen Younger: a separate Scottish chamber that would play a role in the legislative process of

⁶⁴ James Mitchell, Conservatives and the Union: A Study of Conservative Party Attitudes to Scotland (Edinburgh: Edinburgh University Press, 1990), p. 53.

Parliament.⁶⁶ As Mitchell states, this was a major reversal of party policy and came as a shock to many in the party resulting in considerable opposition among the more right-wing members of the party who opposed any change in the constitutional status quo. Despite this, Heath established a committee under the chairmanship of Sir Alec Douglas Home to examine devolution and constitutional change. The report of Home's committee favoured a directly elected 'convention' which would perform the same functions as the Scottish Grand Committee and Scottish standing committees at Westminster in the consideration of legislation. Amendments, Third Reading and Royal Assent would take place at Westminster as a way of preserving the sovereignty of Parliament which the committee and party viewed as sacrosanct.⁶⁷ The shift in Conservative policy could be seen as responding in part to the rise in fortunes of the SNP following Hamilton. However, when the SNP performed poorly in the 1970 General Election, taking only one seat in the Western Isles on 11.4% of the popular vote, the Conservatives abandoned any devolutionary pretensions.⁶⁸

Kilbrandon, Oil, and the SNP

Following the 1970 election came the discovery and exploitation of oil reserves in the North Sea off the coast of Scotland. With this development the SNP quickly latched onto the slogan "It's Scotland's Oil" which became a rallying cry for the party. North Sea Oil could not have come at a better time for the SNP. It gave the party an issue that it could champion and one around which it could develop an economic policy that defended the economic feasibility of an independent Scotland. The second key event that proved a fillip for the party in the early 1970s was the publication of the Kilbrandon Commission report that recommended wide-ranging devolution for both Scotland and Wales.

⁶⁵ *Ibid.*, p. 54.

⁶⁶ *Ibid.* p. 56.

⁶⁷ *Ibid.*, pp. 58-59.

⁶⁸ Kellas, p. 135.

In his report, Lord Kilbrandon and his commissioners identified a wide range of fields to be devolved to a new Scottish Assembly including: housing, local government, planning, tourism, the administration of justice, and health. Most of the areas of jurisdiction that the commission argued should be devolved can be found in the areas devolved to the Scottish Parliament in the *Scotland Act, 1998*. The Kilbrandon Commission had been supported by a large cross-section of Scottish civil society with many groups including the Kirk and trade unions arguing for devolution but with groups such as those in industry arguing against. The SNP greeted the commission's findings with a sense of vindication. The findings and recommendations of Kilbrandon and the oil issue gave the SNP a significant boost in the 1974 general elections as they promoted them as key issues to the electorate.⁶⁹ With the constitutional status quo of the United Kingdom being effectively challenged by Kilbrandon the Scottish parties entered the February 1974 General Election with a certain amount of uncertainty.

The 1974 Elections

The February 1974 election resulted in a Labour minority government and the election of seven SNP MPs, many of whom had been elected in areas of previous Tory strength, such as the northeast. The SNP, under the chairmanship of Billy Wolfe, campaigned on a platform of advocating independence from a social-democratic perspective. As Mitchell argues, it was due to the influence of members of the SNP leadership such as Wolfe and Isobel Lindsay, who had been active in left-wing causes like the Campaign for Nuclear Disarmament, that there was a shift to the left in SNP ideology and strategy. Social-democracy was to be the base for the establishment of an independent Scotland: "The February 1974 manifesto made explicit reference to the 'programme of social democracy which the Scottish National Party proposes for the foundations of a self-governing

⁶⁹ Mitchell, *Conservatives and the Union*, p. 66.

Scotland’.’⁷⁰ The presence of more nationalists, both Scottish and Welsh, in the Commons forced Labour’s hand on devolution and they published in September of 1974 a white paper on devolution that proposed to implement much of what was contained in the Kilbrandon report. The results of the election were not to stand for long as the government of Harold Wilson was forced to call a second election that year for October in which the SNP picked up an additional four seats bringing its total to eleven and received its largest percentage of the vote ever. Labour had to rely on Liberal and nationalist support, therefore much of the government’s term was to be preoccupied with the issue of devolution and how the constitution might be reformed to halt the spread of nationalism in Scotland and Wales. If support for the nationalists was to have continued to increase it would have directly threatened Labour’s position in both Wales and Scotland.

The Scotland Act, 1978

The first attempt by the government at devolution legislation, the *Scotland and Wales Bill, 1976*, did not make it to third reading after Labour backbenchers revolted in February 1977 against the government’s guillotine motion to end debate. The subsequent *Scotland Bill, 1978* was given royal assent in July 1978 subject to a referendum with the requirement that at least 40% of those Scots entitled to vote must vote ‘Yes’ in support of devolution in order for the legislation to take effect –the ‘Cunningham amendment’.⁷¹ The *Scotland Act, 1978* provided for the establishment of a devolved assembly in Edinburgh which would exercise legislative power in a wide range of local fields, most of which had already been devolved to the Scottish Office. While there was significant popular support

⁷⁰ Mitchell, *Strategies for Self-Government*, p. 207.

⁷¹ George Cunningham was a Scottish-born Labour MP sitting for a London seat. During the final debate on the *Scotland Bill* rebel Labour MPs and the Conservatives passed an amendment sponsored by him which required that 40% of the total electorate had to support the devolution bill in the referendum, rather than just 40% of those who actually voted. This effectively meant that anyone who abstained was voting against devolution. It did not help also that the electoral list being used in the referendum was outdated and likely included many people who had since died and thus were

for the act in Scotland, the Labour Party itself was divided. A number of Labour backbenchers, such as Tam Dalyell from West Lothian, were opposed to any measure which would re-shape the Union in any way and therefore proposed numerous amendments to the *Scotland Bill, 1978* in an effort to water it down.⁷² The Labour Party thus approached the referendum campaign of 1979 with a less than united front.

Heath had committed the Conservatives to supporting Labour's devolution plan in 1974, naming Rifkind as the party's spokesman on devolution. Rifkind was ultimately responsible for drafting the Conservative's policy paper on devolution. It proposed an assembly with no independent executive, rather there would be one appointed by the Scottish Secretary and accountable to both the assembly and Westminster. In addition, the assembly would have no control over the block grant from Westminster.⁷³ As Mitchell argues: "The Rifkind proposals succeeded in making Labour's devolution white paper appear almost radical...A charitable interpretation of the Rifkind proposals is that they were an attempt to find a compromise."⁷⁴ Following Margaret Thatcher's assuming the leadership of the party in 1979 it gradually came to abandon devolution and ultimately was the only party who campaigned for the 'No' side in the referendum.

The 1979 Referendum

The referendum on 1 March 1979 gave a lukewarm sense that Scots were supportive of devolution with 51.6% voting 'Yes' compared to 48.4% voting 'No'. However, only 32.9% of the total electorate voted 'Yes' thus failing to meet the condition imposed on it by the Cunningham amendment. After the debacle of the devolution vote the Lib-Lab pact in Parliament that was helping to keep Labour in power was broken. The Liberals, who favoured a federal U.K. state, withdrew their support of the Callaghan government over

incapable of voting. The amendment to the bill was passed at the last minute leaving Labour unprepared to face the revolt.

⁷² Harvie, p. 193.

⁷³ Mitchell, *Conservatives and the Union*, p. 72.

Labour's handling of the devolution issue. In an effort to halt the repeal of *The Scotland Act, 1978* the SNP voted with the Conservatives and Liberals against the Callaghan government which precipitated the government's fall and the subsequent election of the Conservatives under Margaret Thatcher. This was a strategic decision which many in the SNP, in hindsight, saw the madness of. As Mitchell argues, the 1974-79 Parliament had given the SNP its greatest chance of achieving its goals.⁷⁵

The fall of the Callaghan government was followed by the Conservatives' victory under Margaret Thatcher in the 1979 General Election that brought about repeal of the *Scotland Act, 1978* and the death of this first attempt at devolution

In the lead-up to the 1979 vote the Labour Party was badly divided over devolution and facing the ever-present threat of a vote of no-confidence in the Commons. Within the SNP there were those who had favoured a gradualist approach to independence and saw in the party's support for devolution in 1979 an opportunity to bring about the first stage: limited self-government for Scotland. The SNP at the time had had its own debate over the merits of devolution, only coming to accept the principle in 1978. There was a half-hearted commitment to devolution made in a resolution passed at the 1975 SNP party conference which called on the party to adopt the gradualist approach and see the assembly as the first-step towards independence; an amendment to eliminate this provision only just passed by 594 votes to 425.⁷⁶ A case can be made that none of the parties involved were truly converted to the idea of devolution and the Conservatives under Thatcher were resolutely opposed to any form of devolution to Scotland or Wales.

The devolution project in the late 1970s was founded upon a negative premise: a weakened Labour government acting defensively in response to the nationalist threat. Devolution in Scotland did not get a great endorsement by the electorate either with the

⁷⁴ Ibid., p. 73.

⁷⁵ Mitchell, *Strategies for Self-Government*, p. 218.

‘Yes’ side gaining only a slim majority on a low turnout of less than 65%. One conclusion might be that while political nationalism had made inroads into Scottish political culture in this period, it failed in its attempt to impress upon a sufficient number of the Scottish population the potential benefits of devolution or how devolution could improve Scotland’s position within the Union. The demise of the *Scotland Act, 1978* and the election of Margaret Thatcher’s Conservative Party represented the nadir of the nationalist movement in Scotland and plans for legislative devolution at that time.

Thatcherism and Scotland

In the 1980s nationalism in Scotland reorganised as civil society met the challenges posed by the policies of the three successive Conservative governments of Margaret Thatcher. The approach towards governing that was taken by the Conservatives challenged Scottish institutions such as the legal system and public bodies, which did not fit in with Thatcher’s policy of centralising power. Lindsay Paterson argues that by ignoring Scottish institutions the Conservative government alienated the Scottish middle class that perceived itself as the protector of them:

The middle class saw themselves as the guardians of the welfare state; any threat to their hegemony was interpreted as a threat to Scotland itself. Thus Thatcher did not have to be deliberately anti-Scottish for her policies to be received as such. Her reforms impinged on specifically Scottish institutions because she wanted to end what she saw as the suffocatingly consensual way in which Britain had been governed since 1945.⁷⁶

Whether it was Thatcherite privatisation and monetary policy, or the imposition of the poll tax on Scotland first in 1988, or Thatcher’s so-called ‘Sermon on the Mound’ address to the Kirk that equated Conservative and Christian values, much of Scottish civil society became increasingly united in its opposition to the Westminster government and its centralisation of power. As Tom Devine argues persuasively, there was a fundamental clash of values between Conservative individualism, competition, and the values upheld by Scottish society:

⁷⁶ Mitchell, *Strategies for Self-Government*, p. 214.

Scottish opposition to Thatcherism went much deeper than simple hostility to an unpopular government. While the Scots remained loyal to the idea of state and community, the Conservatives made a virtue out of promoting nationalism, competition and privatization. The government's values had been rejected in the humiliating defeat of several Conservative candidates in 1987 but were nevertheless still to be imposed because of its electoral ascendancy elsewhere in the UK.⁷⁸

By the mid-1980s Scotland was indeed voting en masse against the Thatcher government thus giving rise to what came to be termed the 'democratic deficit' where Scots were being governed by a party they did not support. In the 1979 general election the Conservatives won in England by 10.5% over Labour, whereas in Scotland they lost by the same amount. By the 1987 election the Conservatives had been reduced to ten seats in Scotland on only 24% of the vote.⁷⁹ This disparity in voting patterns and the perception that the government at Westminster was a "little Englander administration" were representative of the democratic deficit and helped to motivate Scottish civil society into action.⁸⁰

The Role of Scottish Civil Society in the 1980s

Following the repeal of the *Scotland Act, 1978* the non-partisan Campaign for a Scottish Assembly was established in 1980 with its aim being to fight for the creation of a Scottish Assembly; it had support from a wide cross-section of society including the media, the trade unions, and local government. The Campaign later changed its call for a Scottish Assembly to arguing for a Scottish Parliament with taxation powers. As an organisation it was at the forefront of leading opposition against the Conservative government's constitutional policy, or what was perceived as its general lack of one. The most notable event in the campaign against Thatcherism and nationalist demands for self-government came in 1988 with the movement behind the *Claim of Right for Scotland*.

The *Claim of Right* followed in the tradition of popular sovereignty of other national covenants. The *Claim of Right* declared the right of Scots to govern themselves as they

⁷⁷ Paterson, p. 169.

⁷⁸ Devine, p. 606.

⁷⁹ Lynch, p. 448.

chose and called for the establishment of a constitutional convention with membership from civil society to debate constitutional issues with the ultimate aim being the establishment of a Scottish Parliament. The outcome was the establishment of the Scottish Constitutional Convention (SCC) in 1989 whose members came from the churches, trade unions, the Convention of Scottish Local Authorities (COSLA), minority groups, and the Liberal, Labour, and Green parties. The Conservatives chose to not take part and the SNP attended only the first meeting before abstaining from the Convention's deliberations.⁸¹

The Labour Party in the 1980s had come to embrace devolution largely through the efforts of pro-devolutionists such as John Smith and Donald Dewar. Under the leadership of Smith the party began to discuss the idea of devolution for Scotland and Wales as part of a package of extensive constitutional reform. The participation of Scottish Labour in the SCC was another significant factor in the shift taken by the Labour Party following the debacle of the 1992 general election. As leader, John Smith committed Labour to devolution should it be elected in the proceeding election. This position was maintained by Tony Blair upon his assuming the leadership of the party after Smith's death in 1994. The aim of creating a devolved Scottish Parliament following a referendum on devolution became a manifesto commitment for Labour in the 1997 General Election.

The SNP's opposition reflected the ongoing debate within the party between gradualists who favoured devolution and fundamentalists in favour of outright independence for Scotland. The SNP entered a prolonged period of internal struggle following the 1979 referendum with fundamentalists and gradualists attempting to take over the party and assert their respective programmes. There had also been a renewal of the radicalism in the party that had characterised the SNP in its early days as the leftists of the '79 Group and the

⁸⁰ Ibid.

⁸¹ David McCrone and Bethan Lewis, "The Scottish and Welsh Referendum Campaigns," in Scotland and Wales: Nations Again?, eds. Bridget Taylor and Katarina Thomson (Cardiff: University of Wales Press, 1999), p. 20.

crypto-fascists of *Siol nan Gaidheal* sought to take the movement in a more radical direction characterised by futile, comic attempts at civil disobedience.⁸² It was largely due to the divisions within the SNP that, once again, the party was unable to devise a clear strategy towards devolution. Ultimately, the SNP embraced the more fundamentalist position of choosing not to participate in the SCC and instead to continue the fight for independence and not to work with Labour and the Liberal Democrats as they had in 1979. The party remained opposed to participating in the SCC after the Conservatives' victory in the 1992 general election.

In 1990, the SCC reported consensus on the proposal to establish a Scottish Parliament elected through a system of proportional representation and funded through the Westminster block grant, which was made up largely of Scottish tax revenues. This consensus represented the willingness of Scottish civil society to come together and bring about constitutional change through popular will and action. The work of the SCC was stifled by the re-election of the Conservatives in 1992, however the campaign was taken up by other non-partisan groups such as Common Cause and Democracy for Scotland sought to keep up the momentum for constitutional change. The goals of these groups was to exert some political influence in an effort to keep the devolution issue on the political agenda during what would be five more years of Conservative government.⁸³ The re-elected Conservative government of John Major essentially ignored the SCC, demonstrating that there had been little change in Conservative policy; the party continued in its opposition to devolution.

The Scotland Act, 1998 and the Referendum

In the five year period following John Major and the Conservatives' victory in 1992 ongoing work on the model of Scottish devolution was undertaken by the members of the

⁸² Mitchell, *Strategies for Self-Government*, pp. 230-31.

⁸³ McCrone and Lewis, p. 21.

SCC. With the landslide victory of the Labour Party in 1997 came the declaration by Tony Blair that one of the new government's first priorities would be to enact legislation to provide a devolved Parliament for Scotland and a devolved assembly for Wales. The white paper *Scotland's Parliament* was published by the Labour Government under the Secretary of State for Scotland, Donald Dewar. It embraced the vast majority of the recommendations made by the SCC including the legislative model, the tax-varying power, and the mixed first-past-the-post/proportional representation electoral system envisaged by it. Considerable divisions arose when the Labour government decided to hold a two-question referendum to ratify the resulting *Scotland Act, 1998*. Many in the Labour party and the Liberal Democrats argued that the general election result was enough of a mandate for the government to proceed with its programme of constitutional reform.⁸⁴ Against this opposition the referendum was held on 11 September 1997 and asked Scots whether they were in favour of the establishment of a Scottish Parliament and secondly whether it should have tax-varying powers. Scotland FORward, a coalition of Labour, the Liberal Democrats and the SNP, had been formed in June 1997 to work for a 'Yes'-'Yes' vote in the referendum. This was the first time these three parties had worked together in the cause of devolution and represented a significant move on the part of the SNP, who under its gradualist leader Alex Salmond had, for the large part, chosen to support devolution. The Scottish Conservative and Unionist Party was alone in its opposition to devolution and constituted the campaign Think Twice, to push for a double 'No' vote. The referendum resulted in 74% voting 'Yes' on the first question and 63% on the second question on a turnout of 60%. The specific provisions of the *Scotland Act, 1998* and its impact on Scottish politics and the constitutional framework of the United Kingdom will be elaborated upon in chapter seven.

The development of Scottish political nationalism from the late nineteenth century has been characterised by the involvement of civil society, including the churches, the trade

⁸⁴ Ibid., pp. 22-23.

unions, business groups, citizens' groups, all of which worked alongside the political parties who favoured devolution. While the SNP emerged as the 'nationalist' party in the mid-twentieth century it did not have an exclusive claim to the use of nationalism as a tool for mobilising the Scottish populace. As was mentioned in the early part of this chapter, Scottish nationalism is diffuse and it is this characteristic that is evident when one examines the development of the movement to achieve self-government. It has been argued that nationalists have influenced the policy of all three unionist parties leading them to embrace home rule or devolution for Scotland in varying degrees as Scottish nationalism increasingly challenged Unionism as a constitutional doctrine and a political identity

In subsequent chapters on the constitutional structure of the State and nationalist arguments for change the similarity in approach and arguments by the nationalist movements in Scotland, Catalunya, and Québec will be drawn out. To make a comparison between these nationalisms and how they are affecting change within the broader multinational states of which they are a part, it is essential to examine the constitutional structures of these states. Following this there will be an analysis of nationalist arguments favouring constitutional change and their approach towards constitutional politics. The second half of this thesis will be dedicated to analysing how the State has responded to these demands and how participant-observers understand the relationship that exists between what are arguably two rival conceptions of the nation.

5

Québec's Constitutional Position within Canada and the Nationalist Response

From the very beginning there have been these two construals of the nation, purely political like the American or French revolutionary one, and the other relies on some idea of a certain cultural entity prior to political action. A nation of nations means literally a nation there before what can be called a political one. So, in Canada we have one political nation, which is the whole country, which is just a political nation. But then we have among other things this very important French Canadian or Québec nation in the other sense...¹

What we use to call the Québec nation is not a big family, it's full of dissonance, it's full of conflicts, it's full of distinctions and differences. Québec's people are not actively different from any other people in the world; they are trying to find a good balance between interests and passion. Passion in the sense that in order to survive you have to have this sentiment of belonging to a community, you can hardly exist solely as an individual.²

This chapter examines the constitutional position of the province of Québec within the Canadian federal system, the nationalist response, and how certain participant-observers understand this position. It also examines how the current constitutional politics of the Canadian State are shaping a conception of nationhood. In the above quotations Taylor and Létourneau echo the tension over national identity that is at the root of Canadian constitutional discourse. Both understand Québec to be a nation, but a nation within a nation where the conception of nation has been fundamentally reoriented as a result of constitutional reform since 1982. With the patriation of the *Constitution Act, 1982* and the entrenching of the *Canadian Charter of Rights and Freedoms* by the Liberal government of Pierre Elliott Trudeau a fundamentally new understanding of the Canadian federal system and Québec's position within it was brought about. This conceptualisation of the Canadian

¹ Interview with Prof. Charles Taylor, Department of Philosophy, McGill University, Edinburgh, 10.05.1999.

² Interview with Prof. Jocelyn Létourneau, Faculté des Lettres, Université Laval, Québec, 12.01.1999.

State was reflective of Trudeau's own understanding of Canadian federalism. In the almost two decades following the patriation of the Canadian constitution from the United Kingdom Parliament, the vast majority of English-speaking Canadians outside Québec have come to accept the Canadian State as the Canadian nation, inclusive of Québec. For these Canadians the state as the nation is represented in symbols such as the flag, in concepts such as multiculturalism and bilingualism, and in the liberal, rights-based understanding of Canadian society contained in the Charter. During the same period this understanding of the Canadian nation has been rejected by nationalists in Québec who view Québec as the nation within the framework of a federal Canadian state.

As in the case of Scotland and Catalunya there is a rival conception of nation. One is held by the majority outside the territory of the minority national group which views the state as the nation and one held by the minority national group who understand Québec, Scotland, or Catalunya as the nation. This nation is their primary, though not exclusive source of identity. An understanding of Québec as one of the two founding peoples of Canada was embraced within Canadian federalism prior to the late 1960s through the concept of duality. Duality was premised on the understanding that there were two founding peoples, the British and the French, who came together to establish Canada as a federal state in 1867 at the time of Confederation. As discussed in chapter two, the French-Canadians viewed themselves as a nation from very early on, having their own history, language, religion, culture, and legal system distinct within North America. While this compact theory of Confederation did not gain general credence until some decades after Confederation, it did influence an understanding of Canada and Canadian federalism that became dominant among political classes. It was based on the recognition of the French-Canadians as a distinct community, a people, and from their perspective a nation. This ultimately became restricted to the Québécois through the identification of Québec as the territorial basis of

French Canada and the political vessel of French Canadian nationalism.³ As Prime Minister Lester Pearson stated in 1963: “While Québec is a province in this national confederation, it is more than a province because it is the heartland of a people: in a very real sense it is a nation within a nation.”⁴ This understanding of the Canadian State as a multinational nation rooted in the principles of federalism has little resonance today in what can be called the Charter era of Canadian constitutional politics. The position adopted by Québécois nationalists that argues for greater sovereignty for the Québec nation has been shaped over the last thirty years, a period during which there has emerged two rival conceptions of the nation.

This chapter will examine the current character of Québécois nationalism and examine to what degree it is a diffuse nationalism. As in the following two chapters, this chapter will go on to analyse the current constitutional framework in Canada and Québec’s place within that framework. The aspects of the Canadian constitution that will be discussed are the principles of federalism and sovereignty within the federal system, the nature of the Charter itself, language rights and rights to minority language education that are entrenched in the constitution. Particular attention will be paid to areas of the constitution which nationalists in Québec view as being problematic and argue, in many cases, to be against the principles of federalism. As in the two previous chapters, this chapter will draw upon participant-observer interviews and on an analysis of constitutional documents to highlight the argument that nationalists have a different conception of what the nation is from the majority in the rest of the state.

The subsequent section will focus briefly on the failed attempts at constitutional reconciliation following the Québec government’s rejection of the patriation package of

³ For how this transformation from an idea of a French Canadian nation to a Québécois nation took place see Jeremy Webber, Reimagining Canada: Language, Culture, Community, and the Canadian Constitution, particularly chapter 3.

⁴ As quoted in Kenneth McRoberts, Misconceiving Canada: The Struggle for National Unity (Toronto: Oxford University Press, 1997), p. 40.

1982 and its subsequent endorsement by the other nine provinces and the federal government. Both the Meech Lake Accord of 1987 and the Charlottetown Accord of 1992 attempted to reconcile the concept of duality with the constitutional framework that had been adopted in 1982. They emerged as responses to the five specific demands made by the Québec government for its acceptance of the 1982 package of reforms. For many Québécois nationalists the acceptance of these five demands remains the foundation upon which to build a new partnership with ROC.

The following section will examine how this constitutional framework is viewed as being problematic by nationalists in Québec and how political developments since the late 1960s have given rise to nationalist demands for change. The question of duality versus the theory of provincial equality will be analysed as it impacts on nationalists' views of Québec within Canada and how this debate has affected approaches to constitutional reform. Finally, the Trudeauite vision of Canada and its embracing of bilingualism, individual rights within the Charter, and multiculturalism will be discussed in order to ascertain its impact on nationalist discourse.

The nationalist response to the current constitutional framework of Canada will be analysed largely through an examination of party documents coming from the Parti Québécois (PQ), Bloc Québécois (BQ), and the Action Démocratique du Québec (ADQ). Consideration will also be given to recent proposals for constitutional reform made by the Parti Liberal du Québec (PLQ) which can be said to represent the so-called soft nationalist position of that party. An analysis of the federal responses to the threat of Québec secession since the 1995 referendum will form the basis of a broader concluding discussion on the merits of asymmetry within the Canadian federal system. A qualitative analysis of interview data from political and academic participant-observers will serve to shed greater light on how they understand the debate over Québec's place in Canada.

The Federalist-Sovereigntist Divide

As was previously mentioned, the nationalist movement in Québec at the beginning of the twenty-first century is in many ways as diffuse as it was in the nineteenth or twentieth centuries. While the PQ, and since 1990 its federal partner the BQ, have been the dominant voices arguing for greater sovereignty for Québec, they are not alone in representing nationalist opinion. Like Catalan nationalism there is a plurality of groups and parties in Québec that explicitly identify themselves as nationalist, although this nationalism takes many forms. As is the case in both Scotland and Catalunya, it is common to find nationalists represented in those parties which do not openly advocate secession or division of the state to meet their aspirations. As with the PSC in Catalunya or the Labour Party in Scotland, the PLQ represents a sizeable segment of nationalist opinion. As in the other two cases nationalism in Québec is not synonymous with separatism. In Québec the key political divide is between federalists and sovereigntists. Federalists are a broad-based group who are supportive of the PLQ and advocate a reform of the status quo and greater recognition of Québec's distinct position within Canada as a nation, but all within the context of a strong, united and federal Canada. For them, a strong and united Canada is one that recognises the need to promote Québec's distinct language and culture. This link between federalists and sovereigntists is expressed well by the current leader of the PLQ, Jean Charest, who as a former federal cabinet minister was an active constitutional negotiator in the early 1990s:

All separatists are nationalists but not all nationalists are separatists. So that sort of sums it up. There is an important tranche of the Francophone population who are nationalist and federalist and in their case it's a more defensive form of federalism in which they say their nationalism is a shield against the tyranny of the majority who side with Canada in a way that to them does not recognise their distinct culture and language.⁵

Charest's perspective is an interesting one in that his comments are shaped by his experience as a Québec politician, as a former federal cabinet minister who played a role in

⁵ Interview with Hon. Jean Charest, Leader of the Opposition, Québec National Assembly, Montréal, 07.08.2000.

the Meech Lake constitutional round of 1987-1990, and as one of the chief negotiators of the Charlottetown Accord of 1992. In his current role as Leader of the PLQ, Charest is forced to balance the two dominant voices within his party. On the one hand there are those he identifies as federalist and nationalist and who adopt this defensive nationalism as a bulwark against a more strident federalism; they are seen as 'soft nationalists'. The other dominant group is the one with which Charest, from his choice of language, appears to identify. These are federalists who choose to adopt a less antagonistic posture towards Ottawa. Under Charest's leadership the PLQ has adopted a proactive approach that calls for a more progressive federalism. It is an approach that seeks to meet the concerns of 'soft nationalists' for a reform of federalism and a move away from the status quo while at the same time not alienating federalists, in particular Anglophones in Québec, who fear a more antagonistic, openly nationalist strategy. The exact nature of the PLQ's current constitutional position will be discussed below. For Charest, being able to balance these two often divergent views within the PLQ is key if both he and the party are to be a viable opposition to the sovereigntists of the PQ.

On the opposite end of the spectrum from federalists are the sovereigntists who are generally supportive of the PQ and BQ and who seek in varying degrees and in various forms independence for Québec. Some sovereigntists argue for outright separation from Canada while the majority is supportive of a new partnership with ROC, a partnership that would establish political and economic links between it and a sovereign Québec. Indeed, there are varying shades of opinion in all parties, including the ADQ that tries to occupy the nationalist middle ground. More will be said of the approaches of the different parties.

Language and Culture

As in Catalunya, language is the pre-eminent issue in Québécois nationalist discourse; it shapes Québec society and dominates its politics. The central goal of nationalists in Québec is the preservation of the French fact in North America through the

promotion of the language in all aspects of society: government, education, commerce and day-to-day living. As Catalunya has implemented linguistic normalisation legislation to promote the use of Catalan and enhance its status, so too has Québec. This has been the goal of the National Assembly, the provincial legislature, in enacting such laws as *La Charte de la langue française*, or Bill 101, and Bill 22 that ended language equality in Québec in 1972.⁶ While language is central to Québec nationalism, many nationalists would argue that this focus on the linguistic question does not imply that it is an ethnic nationalism:

We are talking about a nation of Francophones. That has nothing to do with ethnicity, it has to do with the fact that the language is the cement or cohesion that strengthens the link that people establish together. That means also that the French are participating in the same media society, they are listening to the same programmes, they are watching the same T.V., they are reading the newspapers and over a certain period of time it strengthens very much the existence of the community.⁷

A nationalist academic, Létourneau emphasises the role of the French language as a means of communication, a way of communicating culture in a society and thereby contributing to the ongoing construction of that society. The society of which he speaks is defined by its language, and the link between language and national identity is explicit. The broader recognition of this national community within Canada depends upon the ROC understanding and accepting the existence of this historically and linguistically-defined national community:

What we have to think about is the existence of an historical and political community made up by French Quebeckers, that is a history that cannot be erased and in order to reveal any functional or any positive or any possible agenda for Canada, this is my perspective, one has to take account of that reality: the existence of an historical and political community formed by French Québeckers.⁸

At the same time as this community is being fashioned and strengthened nationalist parties in Québec are attempting to construct an inclusive nationalism that does not exclude any individual or group from this community. It was argued in chapter two that Québécois

⁶ McRoberts, *Misconceiving Canada*, p. 99.

⁷ Interview with Prof. Jocelyn Létourneau, Faculté des Lettres, Université Laval, Québec, 12.01.1999.

⁸ Ibid.

nationalism had a more ethnic conception of the nation in the period prior to the Quiet Revolution. Yet, nationalist parties have worked to encourage the emergence of a nationalism that is inclusive and that uses language as a unifying characteristic. The PQ's conception of an inclusive nationalism will be looked at below in a closer examination of the party's policy.

It is difficult to gauge the extent to which Francophones embrace such an inclusive nationalism -one that attempts to accept the diversity of Québec society, including aboriginal peoples and the sizeable English minority, while also promoting French language and culture. Létourneau emphasises that a new form of partnership between a sovereign Québec and the ROC must meet the needs of Francophones as a community:

...traditionally I think we had a concept of nation which was a little bit exclusive. For some years now the concept of nation in Québec has been re-defined as a very inclusive one. But there is a sort of association in this re-definition in the concept of the nation as an inclusive one in that if a project of sovereignty partnership is not first and foremost for the Francophones there is no sense, because the concept of an inclusive nation which makes very few difference between all those who are participants or members of the nation is already the project pushed to the fore by Canada.⁹

This would appear to be a less inclusive and possibly more ethnic conception of the nation than the one that the PQ attempts to promote. Former Québec premier Jacques Parizeau echoed a similar view when he, in a speech on the night of the sovereigntists' defeat in the 1995 referendum, blamed the results on "money and the ethnic vote". Yet at the same time it would be naïve to think that the PQ is not fighting first and foremost for a sovereign, unilingual French political entity within North America that is also tolerant of diversity. Whether such an entity is an independent state or involved in some sort of partnership with the ROC is dependent upon circumstances at the time of negotiation should that time come. However, this goal of sovereigntists is pursued largely in spite of the massive and persistent opposition towards it on the part of Anglophones and aboriginal groups. Those nationalists

⁹ Ibid.

who support the sovereigntist project do so out of a belief in the existence of “an historical and political community formed by French Quebecers”, a Québec nation that has repeatedly been rejected by English-speaking Canada since 1982.

Constitutional Structure

The complex nature of Québécois nationalism is reflected in the politics surrounding Canada’s constitution and the question of its reform. The constitutional settlement of 1982 did not have the support of Québec since the National Assembly did not ratify it. Constitutional law as interpreted by the Supreme Court of Canada dictated that this was not necessary for the *Constitution Act, 1982* to come into effect and apply equally to Québec and the other nine provinces and two territories.¹⁰ This was viewed by nationalists in Québec as a rejection of the principle of duality and thus a repudiation of Québec’s status as a nation within Canada. To gain a greater understanding of the position of Québec following 1982 it is imperative to look at the framework of the Canadian constitution and to what extent Québec is recognised within it.

Federalism and Sovereignty

Unlike the United Kingdom and Spain, Canada is a federal country in which its component parts, the provinces as British North American colonies, came together in a federal union in 1867. As stated in the preamble of the *Constitution Act, 1867*: “Whereas the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:...”¹¹ Even though Canada has a written constitution as necessitated by virtue of its federal nature, it is similar to the United Kingdom’s unwritten constitution in that it is not based solely on one document. The principal documents of the Canadian Constitution are:

¹⁰ Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, 2nd ed. (Toronto: University of Toronto Press, 1993), p. 119.

¹¹ *Constitution Act, 1867*, preamble.

the *Constitution Act, 1867* and its amendments, the *Canada Act, 1982* including the *Constitution Act, 1982*, orders-in-council and statutes creating new provinces and regulating their boundaries, the *Statute of Westminster of 1931*, and any further amendments. These are outlined in s.52(2) of the *Constitution Act, 1982*.¹² The Canadian constitution also includes numerous conventions, rules of the constitution that are not expressly stated or legally enforceable, such as the convention that royal assent is never withheld from a bill that is duly passed by both houses of Parliament.¹³

As Canada is a federal state, the constitution divides sovereignty between the Federal Parliament and the legislatures of the ten provinces. Given that sovereignty operates within this federal context in Canada, the doctrine of the legislative supremacy of Parliament therefore cannot function precisely as it does in the United Kingdom. At the same time the doctrine is not entirely absent from the Canadian constitution. It does appear for example in s.33 of the *Constitution Act, 1982*, the so-called 'notwithstanding clause', which enables Parliament or a provincial legislature to enact a law that operates "notwithstanding" provisions contained in certain sections of the *Canadian Charter of Rights and Freedoms*. The areas of legislative jurisdiction, or sovereignty, for the Federal Parliament and the provincial legislatures are outlined in sections 91 and 92. Section 91 enumerates areas such as defence, monetary policy, and the criminal law given to the Federal Parliament and s.92 gives control of such areas as municipal institutions, property and civil rights and "Generally all Matters of a merely local or private Nature" to the provinces.¹⁴ In Canada, the residuary power lies with the Federal Parliament in s.91, that is, the Federal Parliament is given jurisdiction over all those areas not specifically enumerated. In contrast, the Spanish Constitution of 1978 establishes that residuary power lies with the autonomous communities.

¹² Peter W. Hogg, *Constitutional Law of Canada*, 1999 Student Edition (Toronto: Thomson Canada Limited, 1999), p. 6.

¹³ *Ibid.*, p. 18.

¹⁴ *Ibid.*, ss. 91-92.

Residuary Power

The federal residuary power in the Canadian constitution gives the Federal Parliament considerable legislative power. Together with the federal declaratory power and the powers of reservation and disallowance the Canadian constitution has a somewhat unitary flavour as many commentators have argued. The beginning of s.91 of the *Constitution Act, 1867* gives the Federal Parliament the power to “make Laws for the Peace, Order, and good Government of Canada, in relation to *all* Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces;...[emphasis added]”¹⁵ The Fathers of Confederation, in particular Sir John A. Macdonald, believed in a much more centralised federation and had been influenced by the events of the American Civil War. In their view the war between the states resulted from a weakness in the American federal model where residuary power had been left with the states.¹⁶ In the decades following Confederation a series of rulings by the Judicial Committee of the Privy Council (JCPC) in London, particularly those of Lord Watson and Viscount Haldane, established precedents which were founded upon a belief in greater provincial rights and thus somewhat redressed the imbalance between the provinces and the Federal Parliament that had existed since 1867. There has, however, been a centralising trend in constitutional jurisprudence since 1949 and the abolition of appeals to the JCPC.¹⁷

Declaratory Power

The federal declaratory power under s.92(10)(c) allows the Federal Parliament to declare an area of local jurisdiction in the national interest and bring it under federal control: “Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the General Advantage of Canada or for the Advantage of Two or more of the Provinces.”¹⁸ While it is invoked infrequently the

¹⁵ *Ibid.*, s. 91.

¹⁶ Hogg, p. 114.

¹⁷ *Ibid.*, p. 117.

¹⁸ *Constitution Act, 1867*, s. 92(10)(c).

declaratory power does give Ottawa the further scope to interfere in areas of provincial jurisdiction. Indeed, there has been increasing interference by the Federal Government in areas of provincial jurisdiction since the 1960s, particularly in health care and education. As will be discussed, many Québécois nationalists decry this ongoing interference on the part of Ottawa and see it as underlying what they argue are the inherent problems in the constitutional framework of the federal state.

Reservation and Disallowance

The federal powers of reservation and disallowance in sections 55 and 56 concurrently with s.90 allow the Federal Parliament, through the provincial lieutenant-governors as the sovereign's representative in the province, to reserve or disallow any piece of provincial legislation. Reservation places a hold on a piece of provincial legislation prior to royal assent whereas disallowance annuls legislation after it has received assent. While disallowance has not been used since 1943 and no bill has been reserved since 1961, these powers do remain a part of the constitution and along with the federal declaratory power are viewed with disdain by nationalists in Quebec.¹⁹

For political scientist Guy Laforest and other Québec nationalists, the continued presence in the constitution of powers such as reservation and disallowance demonstrate an incomplete form of federalism in which the Federal Parliament is able to encroach into areas of provincial jurisdiction. Laforest is frustrated by the lack of constitutional action and believes that as long as these dormant provisions in the constitution remain unreformed then it is impossible to afford greater recognition:

They are not conventions, they are in the constitutional text and if they don't exist then tell the minister that he just has to have them abrogated and I'll believe it. There is a sentence in French that says: "Un droit qui dort n'est pas un droit mort." Kill it and I'll believe that it's killed. It's dormant and in our legal tradition a dormant right or a dormant law is a law in effect, and after 1995 it was said by a

¹⁹ Russell, *Constitutional Odyssey*, p. 47.

federal representative that in the crunch they would use reservation and disallowance.²⁰

Although the powers of reservation and disallowance were to be repealed as part of the Charlottetown Accord in 1992 this failed to come about when the agreement died as a result of its defeat in a Canada-wide referendum. Nationalists in Québec have argued that these sections in the *Constitution Act, 1867* must be repealed or amended to allow for some greater degree of asymmetry if the ROC is to achieve a constitutional reconciliation with Québec. Québécois nationalists have continually emphasised in the years since the death in 1990 of the Meech Lake constitutional accord through documents such as the PLQ's Allaire Report and the report of the provincial Bélanger-Campeau Commission that there must be an end to federal interference in areas of Québec's jurisdiction.²¹ More will be said on this point below when the five traditional demands of Québec for constitutional renewal are discussed.

Laforest has argued that Canada and particularly Québec, labours under an imperial federalism in which the constitution permits the Federal Government to exercise power of an "imperial nature"; the powers discussed above are symptomatic of the "central government's imperial temptation."²² These constitutional relics of an imperial conception of federalism are, in Laforest's view, the most significant impediments towards a reconciliation between Québec and the ROC, a reconciliation based upon the explicit recognition of Québec as a nation. However, this recognition is proving increasingly difficult to achieve due to the re-assertion of what Laforest argues to be the essentially unitary character of the Canadian federal State:

Canada is treated as an undifferentiated, unitary society in article 1 of the Charter. So, in a land where a lot of people call themselves federalists we have had a

²⁰ Interview with Prof. Guy Laforest, Chair, Department of Political Science, Université Laval, Québec, 13.01.1999.

²¹ For an exhaustive and scholarly analysis of the Allaire Report, the Bélanger-Campeau Report and their impact on the development of Québec's constitutional position since 1990 look at Alain-G. Gagnon and Daniel Latouche, eds. *Allaire, Bélanger, Campeau et les autres*.

²² Guy Laforest, "Standing in the Shoes of the Other Partners in the Canadian Union," in *Beyond the Impasse: Toward Reconciliation*, eds. Roger Gibbins and Guy Laforest (Montreal: IRPP, 1998), p. 61.

constitutional reform that weakened the federal principle and maintained the non-federal elements of the 1867 constitution. The fact that Ottawa controls judicial appointments, the fact that we do not have, like Germany has, sufficient counter-balance in the second chamber... We have again a second chamber where members are nominated single-handedly by Ottawa. And we have, still, in the symbolism of the Canadian State the imperial civil servants that are the lieutenant-governors nominated by Ottawa and again the chief of state that used to be the Queen of the Empire, but now she is only of Canada for us. We have maintained it in a way...the fantastic thing is that we have had this gradual, typically pragmatic in the British sense, evolution and moving away from the colonial link with Britain from 1867 to 1982, but, we have internalised it in our institutions and cultures, we have still kept it.²³

Laforest's approach is that of a theorist who is seeking to understand the Canadian constitutional framework in the context of federalist theory to Canada. To this end he examines other federal models to see how Canada's federalism fits in with other existing federal states. Laforest finds Canada to be deficient and lacking in what he views to be certain key federalist credentials, namely proper regional representation in the Senate as exists in the German *Bundesrat*, a role for the constituent parts of the State in judicial appointments, and an independent head of state. The 1982 settlement failed to rectify what Laforest argues to be the flawed, imperial and unitary character of the Canadian constitution. For him the broader question deals less with the issue of Québec nationalism and more with the issue of the ill-formed federal state. From the perspective of Laforest, if the Canadian state could be reformed towards a federalism in which there is greater decentralisation of power, where there is recognition of Canada as a *differentiated* or multinational state, and where there is greater representation for the provinces in federal bodies then Québec would achieve greater recognition. His interest lies more in federal structures, their impact on political culture, and how they could be reformed, and less in

²³ Interview with Prof. Guy Laforest, Chair, Department of Political Science, Université Laval, Québec, 13.01.1999.

matters of nation and identity. As Laforest argued: “We are all in a way prisoners of the structures in question.”²⁴

Other interviewees, including Stéphane Dion and Bob Rae, rejected a contention such as Laforest’s that Canadian federalism is unitary in character. An ardent federalist and supporter of both the Meech Lake and Charlottetown constitutional accords, Bob Rae rejects the language employed by Laforest as nationalist rhetoric: “The fact remains that they don’t know what imperial federalism means, I mean that’s the use of language for an ideological purpose.”²⁵ Many federalists seek the greater accommodation of Québec and Rae, when Premier of Ontario in the early 1990s, tried to achieve this during the Canada round of constitutional negotiations that produced the Charlottetown Accord in 1992. Rae adopts an historical approach and traces how Québec has been accommodated in Canada and argues that since 1867 Canada has evolved into a highly decentralised federation:

Well, I mean I think it’s fair to say that the model of federalism that was chosen back in 1867 was a model that depending on who interprets it, if it’s the JCPC who’s interpreting it, it became a very decentralised form of federalism. We have a very decentralised federation. Sovereignist academics notwithstanding, Mr. [Bernard] Landry notwithstanding, and others notwithstanding it’s pretty hard to argue that the model we have today is highly centralised. It’s not.²⁶

By arguing in favour of Canadian federalism as a decentralised federalism federalists are responding to the rhetoric of more hard-line nationalists who argue that Québec can no longer function within Canada, largely as a result of how Canadian federalism has developed since 1982. Federalists who have supported reconciliation with Québec and moderate nationalists who argue for fundamental structural reform in the constitution can agree that the 1982 constitutional settlement and the view of the Canadian State it promotes is problematic. As argued by Rae: “...if you take Mr. Trudeau’s or the Charter ideology as

²⁴ Ibid.

²⁵ Interview with Hon. Bob Rae, Chairman of the Board, The Forum of Federations, Toronto, 14.01.1999.

being one which rejects the significance of a federation or federalism then that model is unsustainable; it's unsustainable because it does not deal with the pluralism of collectivities that is Canada.” This sentiment points back to the fundamental debate over the nature of the Canadian federal state and whether it is multinational in character or whether there is one undifferentiated Canadian idea of nation enshrined in its constitution.

The Constitution Act, 1982 and Its Impact

Following Confederation, Canada gradually gained its independence from the United Kingdom. However, up until 1982 it was still necessary for the Federal Parliament to petition the United Kingdom Parliament to amend the Canadian constitution, then called the *British North America Act, 1867*. From time to time during the post-war period the Federal Government and the provinces attempted to reach agreement on an amending formula so that the constitution could be patriated to Canada, thus severing the most significant remaining colonial attachment. It is not the function of this chapter to give an account of the process that led to patriation in 1982. It suffices to say that the patriation of the constitution in 1982 with an amending formula and the *Canadian Charter of Rights and Freedoms* was a watershed event in Canada's constitutional evolution. More will be said of the legacy of 1982 and how it embodied Pierre Trudeau's conception of Canada, one that was fundamentally at odds with the that of majority of Québécois in its rejection of duality. The goal here is to give a broad sketch of what is contained in the act and in particular the Charter.

Amending Formula

The patriation of the constitution in 1982 was “the culmination of a search for a domestic amending procedure”. It allowed the Federal Parliament to amend significantly

²⁶ Ibid.

the constitution within Canada for the first time since 1867.²⁷ The amending formula makes up one part of the act, encompassing sections 38 to 49; the other significant part consists of the Charter. Under the amending formula there are two procedures for amending the constitution. Certain areas of the constitution such as the office of the Queen, the Governor General, and of lieutenant governor, and the composition of the Supreme Court can only be amended with the unanimous consent of the Federal Parliament and the legislatures of all ten provinces as outlined in s.41. Most other amendments can be made by following the general procedure in s.38(1) that requires the consent of the Federal Parliament and the legislatures of at least two-thirds, or seven provinces, comprising at least 50% of Canada's population. The amending formula as it exists was not supported by Québec in 1982 and therefore its reform constitutes one of Québec's five demands that would have to be met before it could endorse the provisions of the act. At present Québec is subject to the 1982 amending formula, indeed it is subject to the entirety of the *Constitution Act, 1982* despite its lack of consent.

The Charter

The *Canadian Charter of Rights and Freedoms* is the recognition of a set of rights and freedoms comprising fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights, linguistic rights, and minority language educational rights. The Charter is framed in liberal principles emphasising individual equality while at the same time affording certain collective rights to linguistic communities. The Charter does impose certain limits to the enumerated rights including those in s.1, s.6(4), s.15(2), and in particular the limit established by s.33. As discussed above, the 'notwithstanding clause' allows legislation to operate notwithstanding a constitutional provision, specifically s.2 fundamental freedoms, and sections 7-15 which include all those rights enumerated with the

²⁷ Hogg, p. 62.

exception of linguistic rights and democratic and mobility rights. Section 33 has been used on only a few occasions since 1982. The most significant case was in 1988 when the Québec government made use of the clause to pass Bill 178 that restored restrictions on the use of languages other than French on exterior signs in the province; this followed the Supreme Court's striking down of the same restrictions in Bill 101. The provincial government under Robert Bourassa's Liberals defended the move because it prevented a Charter review by the Supreme Court in future, and thus would help to protect the position of French in the province.²⁸ Section 33 remains a controversial section of the constitution as a result of this episode.

Minority Language Rights

Language rights are enshrined in the Charter through the entrenchment of bilingualism and minority language educational rights. Prior to the *Constitution Act, 1982* the only mention of language was in s.133 which permits the use of either English or French in the Federal Parliament and in the Legislature of Québec and allows any person to use either language in any Canadian or Québec court.²⁹ Sections 16 to 22 establish French and English as Canada's official languages, as well as those of New Brunswick, and their equality of status in all federal institutions. The entrenchment of language rights was the culmination of a process of establishing official bilingualism in Canada that had begun with the Trudeau government's passage of the *Official Languages Act, 1969*. Along with democratic rights and mobility rights in sections 3 to 6, the language rights provisions are the only rights to which the 'notwithstanding clause' is not applicable. Section 23 of the Charter enumerates a collective right. This section guarantees that citizens who are members of a minority language group within a province, for example Francophones in

²⁸ Jeremy Webber, *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (Montréal: McGill-Queen's University Press, 1994), p. 139.

Nova Scotia, have the right to have their children receive primary and secondary education in their first language where numbers warrant.³⁰ This is a significant section of the Charter in that it affords a collective right to a minority group and protects their particular culture. Although the Charter does contain these provisions which protect language rights it perhaps more importantly contains section 27 that entrenches bilingualism and multiculturalism as defining elements of Canadian society. This view of Canada was rejected by Québécois nationalists in the PQ in 1981-82 at the time of patriation and all subsequent attempts at reconciling nationalists to the 1982 constitutional settlement have failed.

Attempts at Reconciliation

As has been discussed, both Meech Lake and the Charlottetown Accord of 1992 attempted to reconcile Québec to the Canadian constitutional settlement of 1982. The Québec government of Robert Bourassa issued five demands that would have to be met if Québec was to accept the *Constitution Act, 1982*. These demands were: 1) Recognition of Québec as a 'distinct society' within Canada; 2) The strengthening of Québec's role in the area of immigration; 3) Giving Québec a role in the selection of justices to the Supreme Court of Canada; 4) Giving Québec the right to opt out of federal spending programmes in areas of provincial jurisdiction without suffering a penalty; and 5) Affirming a constitutional veto for Québec on matters affecting the province's interests.³¹ These demands were met in the Meech Lake Accord and agreed to by all the provincial premiers and the Federal Government in 1987. However, the Accord failed as a result of its not being ratified by two of the ten provincial legislatures before the end of the three-year ratification period. This led to a deep sense of betrayal felt by Québec's leaders who believed that Québec had once again been rejected by English-speaking Canada as in 1982. The Charlottetown Accord

²⁹ *Constitution Act, 1867*, s.133.

³⁰ *Constitution Act, 1982*, s.23.

attempted, through a process of public consultation, to resurrect Meech Lake while at the same time trying to meet the concerns of western Canada in the area of Senate reform and of aboriginal groups over self-government. In the Canada clause that was to be added after s.1 of the *Constitution Act, 1982* the following declaration was made: "(c) Québec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition."³² The failure of the Charlottetown Accord in the 1992 referendum marked the end of large-scale attempts at constitutional reform by the Federal Government and provinces. With the rejection of both Meech Lake and Charlottetown many nationalist commentators have argued that a particular Trudeauite conception of Canada which rejected duality had triumphed. As Laforest has succinctly put the impact of the death of the Meech Lake agreement: "The April 1987 compromise had been torn up. In my opinion the Canadian and dualist dream the Québécois had also was shredded."³³ The acceptance of the 1982 constitutional settlement by the ROC and the failure of the two constitutional accords led to a constitutional impasse in Canada. This continuing impasse continues to exist due to the presence of two rival conceptions of federalism and of nation.

Trudeau's National Vision and Québec

The constitutional entrenchment of bilingualism and of multiculturalism in s.27 was representative of a new national character which Pierre Trudeau was seeking to promote within the whole of Canada. As a liberal who embraced the principle of the equality of individuals and repudiated nationalism as irrational, Trudeau himself fashioned a new Canadian nationalism. This nationalism centred upon concepts that found expression in the Charter such as bilingualism and multiculturalism, and a firm belief in the equality of

³¹ Russell, *Constitutional Odyssey*, pp.133-34.

³² "Consensus Report on the Constitution, Charlottetown, August 28, 1992," as given in the appendix to Russell, *Constitutional Odyssey*, p. 239.

³³ Guy Laforest, *Trudeau and the End of a Canadian Dream* (Montréal: McGill-Queen's University Press, 1995), p. 108.

provinces as a cornerstone of Canadian federalism. For nationalists in Québec the Trudeauite conception of Canada that has found expression in the *Constitution Act, 1982* is problematic. That it is problematic was reinforced by the rejection of Meech Lake and Charlottetown that would have moderated its impact and embraced a more dualistic concept of the state through the distinct society clause.

It is argued both within Québec and outside it that Trudeau's constitutional project and his promotion of a bilingual and multicultural Canada has fashioned a new source of identity for English-speaking Canadians, an identity focussed on the state:

Thanks to the spirit of 1982, the values associated with a certain view of liberalism have become the foundations of the Canadian national identity. Canadian citizens have come to feel an affinity with a central state whose institutions, such as the Charter and the Supreme Court, promote the kind of liberalism that guarantees their rights and protects them from discrimination. This helps explain the rhetoric of those who fought for absolute ascendancy of the Charter of Rights and Freedoms over the distinct society clause during the Meech Lake debate.³⁴

Academic commentators such as Kenneth McRoberts have argued since the death of the Meech Lake Accord that within Canada these are two fundamentally different concepts of nationality. These concepts are founded upon two understandings of Confederation that are irreconcilable.³⁵ Other academics such as Bercuson and Cooper do not accept the view that Québec is a distinct society.³⁶ With the failure of the process of constitutional reconciliation with Québec in 1990, in 1992, and following the result of the 1995 referendum a view has emerged among many commentators that the Trudeau vision of a bilingual and multicultural Canada is flawed. While most laud the protection of individual rights in the Charter they also call for a recognition of the dualistic nature of the Canadian federation, that Canada is a multinational state, and that greater recognition of Québec's distinct society is absolutely necessary.

³⁴ Ibid., p. 190.

³⁵ McRoberts, *Misconceiving Canada*, p. 2.

³⁶ See D.J. Bercuson and B. Cooper, *Deconfederation: Canada without Québec*.

For many Canadians in the ROC the vision of Pierre Trudeau to create a bilingual and multicultural Canada based on justice and equality for all Canadians has become a potent force and increasingly the dominant conceptualisation of the Canadian nation. It is a vision that is creating an ever-increasing gap between Canadians in the rest of Canada and many Québécois. What exists in Canada today are two diametrically opposed conceptions of federalism. The first extends the principle of the equality of individuals to the equality of provinces. In other words, all provinces are equal. Robert Vipond has argued that embracing such principles as fairness and equality are important in organising a liberal society, but it seems unrealistic to expect a federal system as diverse as Canada's to establish these as the state's main guiding principles.³⁷ Despite Vipond's view, Laforest has argued that the power of this conception of the Canadian state is considerable and that with the failure of the sovereigntist forces in the 1995 referendum it is beginning to take hold in Québec: "what we can see in the sovereigntist movement in Québec following the referendum is that there is something about a kind of primary belonging, unconditional allegiance to the Canadian nation-state that is making some ground."³⁸ For Laforest this is a further argument for the need to address the question of structural reform rather than being an entirely insular nationalist and dwelling on the Québec nation alone.³⁹

The second conception of the State is the one largely embraced in Québec that Canada is a multinational state with Québec existing as a distinct society within the federation; it is a province unlike the others. As Alain Gagnon has argued, the reality of the federal state is not Trudeau's view: "Provinces cannot be viewed as the fundamental ingredients that constitute the country. Neither can individuals be viewed as

³⁷ Robert Vipond, "From Provincial Autonomy to Provincial Equality (Or, Clyde Wells and the Distinct Society)," in *Is Québec Nationalism Just?: Perspectives from Anglophone Canada*, ed. Joseph H. Carens (Montréal: McGill-Queen's University Press, 1995), pp. 115-16.

³⁸ Interview with Prof. Guy Laforest, Chair, Department of Political Science, Université Laval, Québec, 13.01.1999.

³⁹ *Ibid.*

undifferentiated elements that compose the country.”⁴⁰ Since 1992 there has been an unwillingness on the part of the Federal Government to press the issue of the distinct society within a constitutional context; but it did pass a resolution in the House of Commons in November 1995 recognising the distinct society for the purposes of government actions. This action by the Federal Government will be discussed in greater depth below. Generally speaking, many of the dominant political élites in Ottawa continue to embrace a federalism based upon the equality of the provinces position.

The current federal Minister of Intergovernmental Affairs and former academic, Stéphane Dion, is chiefly responsible for articulating the Federal Government’s constitutional strategy. As minister, Dion has adopted a combative stance towards Québec sovereigntists, arguing that Québec’s distinctiveness is best promoted within Canada. In promoting the Federal Government’s view of the federal constitutional framework he has embraced the principle of provincial equality and argues that since 1982 Québec has gained greater protection and that despite what nationalists say there is no threat to Québec culture or identity:

...I don’t know one country that would be able to define itself in one sense. Canada is not only one definition, obviously it is the equality of the provinces because you have only one status quo. You are either a province or you’re not. There are no provinces plus and provinces minus. We are all provinces, we are all equal according to the statutes.⁴¹

Dion addresses here the view articulated by many nationalists that Québec is a province unlike the others. From a cultural and linguistic perspective this is certainly the case and Dion articulates this when he argues that “there is an obvious reality that Québec society is unique in English-speaking North America.”⁴² However, Dion adopts the view of the equality of provinces within the Canadian federal system as a means of refuting

⁴⁰ Alain-G. Gagnon, “Discussant’s Comments,” in *Seeking a New Canadian Partnership: Asymmetrical and Confederal Options*, ed. F. Leslie Seidle (Montréal: IRPP, 1994), p. 97.

⁴¹ Interview with Hon. Stéphane Dion, Minister of Intergovernmental Affairs and President of the Queen’s Privy Council for Canada, Privy Council Office, Ottawa, 05.01.1999

⁴² *Ibid.*

sovereignist arguments that they could negotiate some other form of arrangement and still remain politically and economically linked with the ROC. Notwithstanding the various asymmetrical arrangements which are discussed below, Québec cannot be more or less a province than any other constituent part of the State. While this might be legally the case, as a basis for Canadian national identity in provincial equality it does not carry a great deal of weight among nationalist Québécois who argue, like Gagnon, that a country cannot be based on a strictly political division into provinces without taking into account the existence of distinct national communities. Dion rejects the Québécois nationalist argument in favour of national recognition within Canada and argues that entrenching a distinct society clause is just, but not if it is used as a bargaining tool on the road to secession:

The Prime Minister of France came and spoke about community. What does he mean by community? Mr. Bouchard wanted to speak about peoples. My colleagues want to speak about nations. I really don't care, what I want is a capacity to have a foundation built upon good universal values, and certainly the capacity to express something collective...What I don't like is this attempt to...I am a people, you are only a community. Why do they do that? Because I want to have more rights than you and I want to have rights on you. And this I don't welcome.⁴³

It has been argued that the refusal on the part of English-speaking Canada to recognise Québec's claim to nationhood within Canada through a distinct society provision can also be linked to the idea of an undifferentiated concept of citizenship that is rooted in the Trudeau vision of Canada. For English-speaking Canada, the Federal Government and all its institutions, has come to represent the Canadian nation.⁴⁴ These institutions include the institutional and constitutional promotion of bilingualism and multiculturalism. This precludes the acceptance of a distinct culture that is somehow outside the accepted principles of bilingualism and multiculturalism that transcend Canada and link it together as a national community. The political scientist Kenneth McRoberts argues that the primacy of individuals that exists in the Canadian Charter has encouraged Canadians to see the

⁴³ Ibid.

⁴⁴ Will Kymlicka, "Multinational Federalism in Canada: Rethinking the Partnership," in *Beyond the Impasse*, p. 25.

Québécois as a culture among many others that contributes to the diversity of Canada.

McRoberts' position runs counter to that of Dion in that he rejects the orthodox Trudeauite view of the federal state in which provincial equality derives from the liberal view of the equality of individuals that is enshrined in the *Constitution Act, 1982*:

I think then that he [Trudeau] was successful in establishing a new kind of orthodoxy in which indeed all provinces had the same status as Québec had, it was a province like the others. Rights had the same status. There was not only the equality of individuals, the provinces, equality of cultures, all cultures had the same status, and language rights exist throughout the country in essentially the same way. Well, once you have this vision of the country then it is very hard, I think, to understand something like distinct society when you think about Québec as just a province like the others. Its language is a language that is spoken throughout the country. Its culture, to the extent that there is a distinct culture of the majority of Quebecers, is just one among a multitude of others.⁴⁵

McRoberts is sympathetic to Québécois nationalism and has embraced the principle that Canada should be construed as a multinational state in which Québec as a national minority culture constitutes a distinct society. It is his view that that the Trudeauite vision of a bilingual and multicultural Canada is one that has been imposed without taking into account the reality of Canada. McRoberts argues that by entrenching multiculturalism and bilingualism in the constitutional framework the whole notion of duality is undermined and therefore so is the conception that there could be national collectivities within Canada, one of which is Québec. Through his argument McRoberts helps to establish a paradox of national identities: on the one hand there is a liberal view of a bilingual, multicultural Canada made up of equal individuals and equal provinces which is increasingly the dominant identity, yet not dominant in Québec or accepted there by nationalists. Opposing this in Québec is a dominant identity based on duality and the existence of a distinct Québec nation, yet not accepted in the ROC:

The notion there is that Trudeau developed this idea of a Canada which rooted in official bilingualism and multiculturalism, equality of the provinces, Federal Government as the national government, the Charter of Rights to entrench language

⁴⁵ Interview with Prof. Kenneth McRoberts, Department of Political Science, York University, Toronto, 29.12.1998

rights in particular, this idea of Canada was perceived to incorporate Quebeckers within Canada so that they would see themselves first and foremost as Canadians. It didn't work in Québec, it was largely rejected in Québec...but was widely accepted in the rest of the country so then we find the rest of the country much more committed to the equality of the provinces and that's Québec not having any particular status, and by the same token to the idea of a bilingual nation. Once that conception of the country is adopted it becomes very hard to even comprehend what Québec is talking about let alone respond positively to this.⁴⁶

Many nationalists in Québec share McRoberts' view of how Québec's place in Canada has been understood or conceived of since 1982. In the eyes of nationalist commentators such as Alain Gagnon this Trudeauite view of Canada that has been imposed upon Québec is a reconstructed reality.⁴⁷

The promotion of the Trudeauite conception of the Canadian nation is rejected by Québécois nationalists as it does not permit the recognition of a Québec nation in a bicultural Canada. It is because of these essentially different conceptions of the nation that support has arisen in Québec for some form of renegotiation of its relationship with the ROC, whether this takes the form of secession, sovereignty-partnership, or a more asymmetrical Canada. The failure of both the Meech Lake Accord and the Charlottetown Accord and the near victory for the sovereigntists in the 1995 referendum are evidence of English-speaking Canada's apparent inability to conceive of the country in terms other than that of a bilingual, multicultural state. It is this conflict over what may constitute a nation in Canada that is at the root of the constitutional conflict.

Nationalist Arguments

Nationalists have reacted to the federalist view of a united Canada based on individual equality and the equality of provinces. Since 1976 the fundamental strategy of the main nationalist party, the PQ, has been that any change to Québec's status within Canada must be assented to by the citizens of Québec in a referendum. The party favours the creation of an independent state with or without association to the ROC. As discussed in

⁴⁶ Ibid.

⁴⁷ Gagnon, p.96.

chapter two, both the 1980 and 1995 referenda failed to endorse the sovereigntist project. Since 1990 the Parti Québécois has had an ally in the Federal Parliament, the BQ, which seeks to represent the views of Québec in Ottawa and endorse the sovereignty project articulated by the PQ. Both parties accept without reservation that Québec is a nation and has a right to self-determination. In party congress documents, programmes, election manifestos, and public speeches by party leaders the goal of self-determination for Québec is clearly enunciated.

The Parti Québécois

First elected to government under René Lévesque in 1976, the PQ has traditionally been a left-of-centre party that emphasises the role played by the Québec state, l'état du Québec, in the province's social, economic, and cultural development. Its programme from its founding in 1968 has been sovereignty for Québec and the establishment of a Québec state. During the course of the May 2000 party congress the PQ updated its programme outlining its conception of the nation and what sovereignty means for Québec. The programme emphasises the need to ensure the continued presence of a strong Francophone culture within North America and that this can best be adopted through the establishment of a sovereign Québec:

Le peuple québécois composé de l'ensemble de ses citoyennes et ses citoyens, est libre de décider lui-même de son statut et de son avenir. Le Parti Québécois s'est formé à partir de la conviction qu'il y a urgence d'établir un Québec souverain, avec au premier plan, l'urgence d'assurer que le Québec demeure un territoire de langue et de culture françaises. Ceci est le cœur du projet souverainiste. Le Parti Québécois a comme objectif fondamental de réaliser la souveraineté du Québec de façon démocratique.⁴⁸

The main objective of the party is to be achieved through a referendum put before the people having as its aim the establishment of a sovereign Québec while at the same time presenting

⁴⁸ Parti Québécois, Proposition adoptée par les délégués lors du XIVe Congrès National (5,6 et 7 mai 2000) (www.pq.org, 2000), p. 1.

to Canada an offer of partnership.⁴⁹ In many ways this is a curious approach for a party which is perceived by most federalist Québécois and English-speaking Canadians to be a separatist party.

The PQ and Sovereignty in the Québec Context

In the context of Canadian constitutional politics the term 'sovereignty' has a seemingly paradoxical meaning. As we have seen, Québec exercises sovereignty as a constituent part of the Canadian federal state through the National Assembly; this is demonstrated by the powers enumerated in s.92 of the *Constitution Act, 1867*. The same cannot be said of either the Scottish Parliament or the Generalitat in Catalunya, neither of which can be said to exercise sovereignty in areas of jurisdiction devolved to them. For the PQ sovereignty means independence, yet a qualified independence since the party argues for the maintenance of some political and economic links with Canada including the use of the Canadian dollar.

Thus, although sovereignty is a paradoxical term in the Québec context, but the rhetoric of the PQ might give another impression: "Pour un État, la souveraineté c'est la juridiction totale et exclusive sur les pouvoirs législatifs, exécutifs et judiciaires exercés sur son territoire. Les Québécoises et les Québécois doivent être maîtres chez eux et responsables d'eux-mêmes."⁵⁰ With this in mind it is difficult to conceive of a state that is truly independent when it is part of an economic and social union with another state. If the PQ is using the EU as a model it is clear from the organisation of the EU that neither Germany, Belgium, France, or the United Kingdom can be truly independent since they are bound to a greater or lesser extent by the decisions of the European Court, the Council of Ministers, the Commission, and the European Parliament. So it appears that the PQ's model

⁴⁹ Ibid.

⁵⁰ Ibid.

for a sovereign Québec would most certainly be qualified by the amount of influence the Canadian Parliament would have in areas such as monetary policy. Peter Leslie has argued that sovereigntists naturally desire an economic union since it would allow Québec to defend its economic interest within North America:

Understandably, then, Québec *indépendantistes* want to preserve the Canadian economic union more or less as it is; it offers them effective defence of Québec's interests *vis-à-vis* the ROC, and it would avoid loss of bargaining power *vis-à-vis* the United States. The latter consideration also explains why the ROC, even if it had assured access to Québec markets, has good reason to fear the disruption of the economic union in its present form.⁵¹

When referring to the Québécois people, the PQ has adopted an inclusive understanding of who the people are. This approach towards understanding the composition of the nation is shared by nationalists in both Catalunya and Scotland. Elements of ethnic nationalism do surface on occasion in Québec as in December 2000 when the prominent nationalist Yves Michaud made disparaging comments about Jews who chose to not support the sovereignty project of the PQ. However, these views are not tolerated and Québécois nationalism as espoused by the PQ, BQ, and ADQ has established itself as one that respects diversity in Québec society and will seek to promote it:

Un Québec souverain se doit de créer un environnement politique, social et culturel qui favorise le rapprochement entre les citoyens et qui se donne pour tâche d'intégrer ces diverses collectivités et les individus qui les composent dans un projet collectif basé sur la démocratie, l'égalité des droits et le français comme langue commune. Le Québec d'aujourd'hui est une société pluraliste dans sa composition démographique. De nouveaux arrivants, d'origines diverses, se sont installés au fil des ans sur le territoire québécois et ont enrichi la société essentiellement francophone.⁵²

Along with sections on citizenship, the indivisible national territory of Québec, and a reaffirmation of the *Charte de la langue française*, the PQ programme also discusses how sovereignty is to be achieved. Any referendum that garners a simple majority of the popular

⁵¹ Peter M. Leslie, "Asymmetry: Rejected, Conceded, Imposed," in [Seeking a New Canadian Partnership](#), p. 44.

vote, i.e. fifty per cent plus one, will be viewed by the National Assembly as a mandate for the negotiation of sovereignty and a new partnership with Canada.⁵³ The new partnership with Canada is to be based on the model of the European Union facilitating a form of economic partnership. The bases for this economic partnership would be a customs union and the free movement of goods, people, services, and capital.⁵⁴ This position of the PQ is problematic particularly since there is considerable disagreement on first of all whether a clear majority is enough to bring about Canada's division and secondly whether the Federal Government and the other nine provinces would agree to some form of partnership as envisaged here. These questions have been dealt with by the Supreme Court of Canada and the Federal Parliament in the Court's decision on the Québec secession reference in 1998 and the subsequent enacting of the Federal Government's Bill C-20 or 'Clarity Act.' The impact of these two actions will be dealt with below.

For nationalist leaders in Québec the 1982 constitutional settlement remains something to be derided as an attack on the principles of federalism. In a speech to an international conference on federalism at Mont-Tremblant, Québec in October 1999, PQ Premier Lucien Bouchard raised the legacy of 1982 arguing that it diminished the powers of the National Assembly over language and education:

Ne l'oublions pas, c'est ici et à nous Québécois qu'on a imposé, en 1982, une constitution qui a réduit les pouvoirs de l'Assemblée nationale du Québec dans des domaines aussi névralgiques que la langue et l'éducation. Faut-il rappeler que, depuis, tous les gouvernements québécois ont répudié cette constitution? Les Québécois ont perçu ce coup de force pour ce qu'il était, c'est-à-dire une rupture du pacte fédératif.⁵⁵

⁵² Ibid.

⁵³ Ibid., p. 5.

⁵⁴ Ibid., p. 6.

⁵⁵ Parti Québécois, "Notes pour une allocution de monsieur Lucien Bouchard, Premier ministre du Québec. Prononcée à l'occasion du «Forum des fédérations», Mont-Tremblant, le mercredi 6 octobre 1999," (www.pq.org, 1999), p. 2.

The PQ is highly critical of the Federal Government's use of the declaratory power and its residuary power. Again, nationalists view this as a violation of the principle of provincial autonomy, which they see as a fundamental premise of Confederation. Former premier Lucien Bouchard claimed time and again that federal interference in Québec's affairs is part of the continuing legacy of 1982 and the imposition of a conception of the state that "challenged the understanding of Canada as a fundamentally federal community."⁵⁶

Les Québécois ont toujours vu dans la fédération canadienne un pacte entre deux nations; un pacte qui devait leur garantir le contrôle de leur développement et l'exercice de compétences constitutionnelles exclusives...Décennie après décennie, mes prédécesseurs ont dénoncé l'intransigence et les envahissements fédéraux. Le régime fédéral canadien est présentement engagé dans une stratégie concertée de banalisation du Québec dont les conséquences pourraient s'avérer plus graves encore que celles de l'imposition de la constitution de 1982.⁵⁷

Again, the rejection of duality in the 1982 constitutional settlement is central to comprehending nationalist grievances in Québec. The PQ as a sovereigntist party has consistently seen its option of sovereignty-partnership with the ROC as the only viable option for solving the constitutional impasse.

The Bloc Québécois

In the 1993 federal election the Bloc Québécois garnered 49% of the popular vote and was elected in fifty-four out of seventy-three seats in Québec, which enabled them to become the Official Opposition in the federal House of Commons. The party's central argument was that Canadian political institutions had failed Québec.⁵⁸ The BQ said in 1993 that it would remain in Ottawa until a referendum was held on Québec sovereignty. This happened in 1995 but the BQ has continued to sit in the House of Commons despite their total number of seats having declined to a rough parity with the Liberals following the 2000

⁵⁶ Russell, *Constitutional Odyssey*, p. 111.

⁵⁷ Parti Québécois, "Notes pour une allocution de monsieur Lucien Bouchard, Premier ministre du Québec," p. 4-6.

⁵⁸ McRoberts, *Misconceiving Canada*, p. 219.

federal election. The BQ was established by Lucien Bouchard after his 1990 break with the Progressive Conservative government of Brian Mulroney in which he was a cabinet minister. When Lucien Bouchard became Premier of Québec after the 1995 referendum, Gilles Duceppe, the M.P. for Laurier-Ste-Marie in Montréal, became leader and has worked with Bouchard, his successor Bernard Landry and the PQ to promote a united front in the cause of Québec sovereignty. The positions adopted by the BQ on the question of Québec's place within Canada are identical to the PQ. The Bloc explicitly acknowledges that Québec is a nation and as such has a right to self-determination through its accession to sovereignty:

Québec is neither a province like the others, nor a region. It is a homeland. It is a legacy of settlers from France and elsewhere. It is a rich melting pot of influences that have molded and shaped it into a nation and a people. Quebeckers do not claim to be better than Canadians. They simply believe that they are different, as they do not share the same language, the same culture, nor the same social and economic visions...Québec has a legitimate desire to possess all the levers necessary to develop its economy, promote its culture and take its place as the only majority French-speaking people in North America. For this to happen, it must have the fundamental tools of any people: the ability to levy all its own taxes, to make all its own laws, and to conclude all its own treaties. In short Québec needs its sovereignty.⁵⁹

The BQ, like the PQ, embraces an inclusive concept of the Québécois nation and commits itself to “building a national identity that includes all Québec citizens. [This] must be the central concern of all Quebeckers.”⁶⁰ Its commitment to a democratic path to sovereignty is central to the BQ's programme, including a similar commitment to holding another referendum on Québec sovereignty where a majority of fifty per cent plus one will be enough for the National Assembly to commence negotiations with Ottawa.⁶¹

In parallel with the attitudes of the Catalan nationalist parties, the BQ and the PQ see the promotion and protection of French language and culture as central to their goal of

⁵⁹ Bloc Québécois, “Québec...on the Road to Nationhood” (www.blocquebecois.org, 2000), p. 4.

⁶⁰ Bloc Québécois, Main Proposal for submission to the party conference in Québec City, 28-30 January 2001 (www.blocquebecois.org, 2000), p. 4.

⁶¹ Bloc Québécois, “Québec...on the Road to Nationhood,” p. 6.

sovereignty. From the sovereigntist perspective language is intrinsic to the evolution of an independent Québec state and all members have a responsibility to preserve this French culture:

There could be no Québec nation if a national majority of Francophone Quebeckers with a specific language, culture and history constituting the basis of their common public identity did not live within Québec's borders. This common public identity is also consistent with the express recognition of cultural pluralism within Québec society, since English-speaking Quebeckers, Quebeckers of all other origins and Aboriginal peoples, in short all Québec citizens, have the opportunity and duty to take part in the preservation of this language, in the transformation, mixing and dissemination of this culture and the pursuit of this common history.⁶²

Although the sovereigntist parties might hope that all Québec citizens would choose to promote French culture and indeed take up their responsibility and do so, it does seem an unlikely prospect. When one considers that Anglophone residents of Québec have been particularly vehement in their criticism of the *Charte de la langue française* and how it limits their individual right of freedom of expression on signs, et cetera they may not choose to be the guardians of French culture that the sovereigntists feel they should be.

The Action Démocratique du Québec

The other smaller nationalist party within Québec is the Action démocratique du Québec. It came into being following its leader Mario Dumont's break with the PLQ over its unwillingness to implement the Allaire Report's recommendations. It has a base among those nationalists who do not feel that the PLQ is assertive enough in articulating Québec's demands to the Federal Government and who do not support the PQ/BQ approach of sovereignty-partnership. It is a centrist to centre-right party that argues for a reduction in provincial taxes, the diminution of government planning in the economy, a trimming of the

⁶² Bloc Québécois, Main Proposal for submission to the party conference in Québec City, 28-30 January 2001, p. 6.

provincial bureaucracy, and the reduction of the provincial debt.⁶³ In terms of its constitutional policy, the ADQ is supportive in the long term of a new Canada-Québec partnership, one between two states and founded upon common political and economic institutions.⁶⁴ This is in essence a confederal arrangement. However, the ADQ has chosen to emphasise the need to encourage economic growth and investment in the economy as well as good government instead of continually dwelling on constitutional and linguistic issues.

L'Action démocratique du Québec croit que le respect d'une trêve sur les questions linguistiques et constitutionnelles permettrait d'unir les forces vives du Québec derrière des objectifs communs. Un gouvernement de l'ADQ ne tiendra donc pas de référendum lors du prochain mandat et ne rouvrira pas les chicanes linguistiques. Il se consacrera d'abord et avant tout à la remise en marche du Québec par la révision de la fiscalité, la création d'emploi et une gestion responsable de l'État.⁶⁵

This is a position that distinguishes the ADQ from the PQ, who have vowed to hold another referendum on sovereignty when the right conditions are present. Although it is a comparatively marginal player in Québec politics, the ADQ does have a constituency among nationalists who are tired of the endless discussion of constitutional affairs that is often seen to distract government from important economic and social concern such as the reform of the health care system in the province.

The PLQ's Constitutional Proposals

The Québec Liberal Party in January 2001 presented the report of a committee that was established to examine the party's position on Québec's constitutional and political position within Canada. This was done in an effort to update the PLQ's constitutional policy. The report establishes at the outset the importance of federalism and that Québec continue to remain part of Canada: "we favoured federalism characterized by partnership,

⁶³ L'Action démocratique du Québec, *L'ADQ et le Québec du prochain millénaire* (www.adq.qc.ca, 2000), p. 2-4.

⁶⁴ *Ibid.*, p. 6.

that is, federalism based on rich and positive relations and associations between the governments concerned...It is clear to the Committee that Canada offers Québec excellent prospects for the future.”⁶⁶ The report’s proposals centre around five themes: 1) “A Collective Project for Quebeckers” that promotes the francophone heritage while at the same time reiterates the rights and privileges of the Anglophone minority and the right of immigrants to full participation in Québec society. 2) “Affirmation and Recognition of Québec’s Specificity” that calls for the entrenching in the constitution of an interpretive clause similar to the ‘distinct society clause’ that recognises Québec’s specificity. 3) “Federalism that is more flexible and based on co-operation between the partners in the federation” that argues for a more asymmetric approach to Canadian federalism which could incorporate more administrative agreements between Québec and Ottawa in areas such as international relations and the environment. 4) “Consolidation of the Canadian Social and Economic Union” which includes calls for expanding the 1994 *Agreement on Internal Trade* and revisiting the February 1999 Canadian social union agreement to rectify certain “deficiencies and inaccuracies”.⁶⁷ The final section calls for Québec to take a leadership role in improving the Canadian federation. In this last section the report re-states many of Québec’s traditional demands including a role for the provinces in nominating Supreme Court justices, the entrenching of the current composition of the Court, limits on the federal spending power, and the entrenchment of a regional veto for Québec. The regional veto would apply not only to Québec but to Ontario, British Columbia, two of the Western provinces and two of the Atlantic provinces. This is an arrangement similar to the one adopted by the Federal Government that is outlined below.

⁶⁵ Ibid.

⁶⁶ Québec Liberal Party, *Québec’s Choice: Affirmation, Autonomy, and Leadership. Summary of the Preliminary Report of the Special Committee of the Québec Liberal Party on the Political and Constitutional Future of Québec Society* (www.plq.org), p. 2.

⁶⁷ Ibid.

This approach adopted by the PLQ clearly represents the Québec federalist approach that has many soft nationalist aspects to it. It is supportive of the federation but not as it currently stands, it needs to be reformed to grant Québec greater recognition, *yet* recognition within Canada and not outside it. The arguments in favour of an entrenched interpretive clause that would establish Québec's unique character in the constitution are linked again to an understanding of Canada in which Québec is a province unlike the others.

As Charest argues:

the constitution has two dimensions to it: one of them is legal with very important consequences, but the other one is symbolic and ideally the constitution should be a mirror of who you are and what you are and it should reflect a good sense of yourself when you read it, and that's what an ideal constitution should be able to do. Now, the mirror aspect for Quebeckers is not satisfactory...⁶⁸

For nationalists in Québec, whether sovereigntist or federalist, some form of recognition for Québec is key. Despite the goals of the PLQ and the views of political leaders such as Charest, many non-Québec political leaders and political commentators in the ROC are increasingly unsure as to whether a distinct society clause is viable due to its rejection by the ROC in 1990 and 1992.

The Federalist Response

Nationalists who seek greater recognition of Québec as a distinct society within Canada have found that their arguments are failing to provoke any great degree of constitutional reform that might address some of Québec's grievances regarding the Charter, the amending formula, federal spending and other areas of particular concern. Canadian federalists such as Stéphane Dion will argue that never before has Québec had greater influence, never before has the French fact in Québec been as strong as it is today. To such

⁶⁸ Interview with Jean Charest, Leader of the Opposition, Québec National Assembly, Montréal, 07.08.2000.

federalists the rejection of a pan-Canadian identity in favour of a uniquely Québec one is nonsensical:

There is no way you can say that Québec culture or Québec identity is in danger, never has the province been more French than today. Québec's identity is alive and well thank you very much! But why give up Canadian identity? Where in the world now to have different identities is a great strength, to be Scottish, British and European is a strength and why choose. That is my argument: why choose?⁶⁹

Nationalists in Québec would argue that the Canadian identity that is presented to them is one in which they do not see themselves; it is one that does not explicitly acknowledge their distinctiveness and their presence as a nation within a multinational state. The perception of many in Québec is that they are being forced to choose between Canada and Québec by English-speaking Canada. In rejecting a certain conception of Canada and identifying first as Québécois nationalists in Québec are sometimes accused of not being good Canadians and undermining national unity. As Taylor argues:

[Newfoundland Premier] Clyde Wells said to us when that compromise was made on Meech which he then pulled the rug out of, he said: "Now you've got this, I want you to put Canada first and Québec second the way the rest of us do." Now, apart from the fact that coming from a Newfoundlander that is so...it boggles the mind. It is also a misperception of what it is to be a really gung-ho Québec federalist. The idea of putting one first is not the language that makes sense to us. So it's been this problem that the things that seems to solve our identity problems seem to many in the rest of the country to undermine Canadian unity, whereas in fact it would be exactly the opposite.⁷⁰

Charles Taylor's view of Québec's position in Canada is shaped very much by his development of communitarian theory as a challenge to liberalism. An opponent of Trudeau's vision of Canada, Taylor understands Québec as a national community within Canada. He would argue that it is this community that Québécois have as their primary identity, although not at the expense of an identification they have with the Canadian State.

⁶⁹ Interview with Hon. Stéphane Dion, Minister of Intergovernmental Affairs and President of the Queen's Privy Council for Canada, Privy Council Office, Ottawa, 05.01.1999.

⁷⁰ Interview with Prof. Charles Taylor, Department of Philosophy, McGill University, Edinburgh, 10.05.1999.

Such a dual identity is a reality that exists for Québécois. The referendum of 1995 provided a stark illustration of this reality in Québec. With 50.4% of voters supporting the federalist 'No' option and 49.6% supporting the sovereigntist 'Yes', the divide was exposed. The referendum had a profound impact on the Federal Government and determined how it would respond in the present and in the future to claims made by Québec. Following the referendum, the federal Liberal government of Jean Chrétien initiated a two-pronged approach to the Québec question and the threat of Québec secession: Plan A and Plan B. The following section will analyse the responses of the Federal Government to the referendum result and to the ongoing claims of Québécois nationalists.

In the period immediately after the referendum a number of academics proposed how the Federal Government might respond to the surprisingly close result. One of these was Peter Russell who favoured a two-track approach. Track One would be essentially non-constitutional and address many of the suggestions raised throughout Canada on how federalism could be reformed:

It should focus on reforms that do not require formal amendment of the Constitution. For more than a generation we Canadians have tortured ourselves searching for a mega-constitutional breakthrough –a grand-slam constitutional remedy for all that ails us. This is surely not the time for yet another frustrating round of constitutional wrangling.⁷¹

Track Two involved the Federal Government developing a plan that would consider how to handle a referendum, the rules on how it should be conducted, and how to negotiate if the sovereigntists were to win.⁷² Plan A and Plan B, which roughly corresponded to Russell's tracks one and two, are presently playing themselves out. This has the Federal Government

⁷¹ Peter Russell, "Preserving the Canadian Federation: A Two-Track Approach," in New Perspectives on the Canadian Constitutional Debate, ed. James M. Pitsula (Regina: Canadian Plains Research Centre, 1997), p. 3.

⁷² *Ibid.*, p. 10.

adopting both a non-constitutional, administrative approach to dealing with the threat of Québec secession and an aggressive, legislative approach.

Plan A – The Administrative Approach

Plan A is a strategy adopted by the Federal Government in an effort to promote Québec's unique linguistic and cultural character outside the framework of the constitution. In December 1995 the Federal Parliament passed the resolution discussed above that called upon the legislative and executive branches of the Federal Government to be guided by the reality that Québec constitutes within Canada a distinct society.⁷³ This resolution did provide some vague and limited recognition of the distinct society, but it did not entrench it constitutionally and so the Supreme Court is not required to take such a reality into consideration when ruling on constitutional matters. In addition, the lack of entrenchment vastly reduces the symbolic message conveyed by the declaration of 'distinct society'. As Webber has argued, a distinct society provision should lie at the "heart of the constitutional order" thereby confirming that the government of Québec has a right to promote this distinctiveness: "It would have acknowledged that Québec need not be a province like the others, and thus would have undone the harm caused by the denial of that claim during the patriation process."⁷⁴

Another manifestation of the Plan A approach was a bill that affected the conditions by which a constitutional amendment could be introduced in Parliament. The bill which received royal assent in February 1996 declared that any constitutional amendment that was subject to the general amending formula could not be introduced to Parliament unless it had been approved by Ontario, Québec, British Columbia, and two or more provinces from both western and Atlantic Canada whose populations together total at least 50% of the regional

⁷³ McRoberts, *Misconceiving Canada*, p. 236.

⁷⁴ Webber, p. 288.

population.⁷⁵ This essentially served to give Québec a constitutional veto, one of its original demands emanating from the Meech Lake constitutional accord. In addition, the Federal Government negotiated an agreement with the provinces that devolved considerable jurisdiction in the area of manpower training to the provincial legislatures; this had been a long-standing demand of Québec. Unfortunately, an historic agreement on the social union in Canada was not as successful.

The social union agreement of February 1999 between nine provinces, the three territories, and the Federal Government highlighted the need for greater cooperation and more effective delivery of social programmes and health care. The Federal Government committed itself “not to launch any new Canada-wide initiatives in the social field without the consent of the majority of the provinces and to work with the provinces to define objectives.”⁷⁶ Québec refused to sign the agreement as it believed that it would still allow Ottawa to interfere in areas of provincial jurisdiction such as housing and health insurance. One example of this cited by Québec was Ottawa’s creation of the Millennium Scholarship Plan for university students across the country; it was viewed as interfering with the province’s jurisdiction over education funding: The Québec government also objected to Québec taxpayers being forced to pay for social programmes throughout Canada when identical programmes existed in Québec funded by the provincial government. The social union agreement failed to give a concrete guarantee that Ottawa would not interfere in areas of Québec jurisdiction, one of the long-term goals of the PQ and Québécois nationalists.⁷⁷

Plan B – The Supreme Court Reference and the Clarity Act

⁷⁵ McRoberts, *Misconceiving Canada*, p. 236.

⁷⁶ Privy Council Office, “A Framework to Improve the Social Union for Canadians: An agreement between the Government of Canada and the Governments of the Provinces and Territories, February 4, 1999” (www.pco-bcp.gc.ca, 1999), p. 1.

⁷⁷ For a broader critical assessment of the social union agreement and the impact of Québec’s rejection of it see Alain-G. Gagnon and Hugh Segal, eds., *The Canadian Social Union without Québec: 8 Critical Analyses*.

The Federal Government's Plan B approach to the Québec question and the demands of nationalists picks up on some of the recommendations made by Russell. The Plan B strategy is a far more aggressive one that deals head on with what the federal response should be to the next referendum and, ultimately, to a 'Yes' vote in favour of sovereignty should it come to that. Plan B began with the Federal Government's reference to the Supreme Court on Québec secession, followed by its response to the court's decision in Bill C-20, the Clarity Act. Both actions were highly controversial and provoked strong reactions within Québec.

The Federal Government in September 1996 sought the opinion of the Canadian Supreme Court on a series of questions related to Québec secession. Ottawa sought to have the Court clarify what the ground rules would be in the event of another referendum and whether following such a vote Québec could declare its independence unilaterally from the rest of Canada. The Court was asked to rule on the following:

1. Under the Constitution of Canada, can the National Assembly, legislature, or government of Québec effect the secession of Québec from Canada unilaterally?
2. Does international law give the National Assembly, legislature or government of Québec the right to effect the secession of Québec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Québec the right to effect the secession of Québec from Canada unilaterally?
3. In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Québec to effect the secession of Québec from Canada unilaterally, which would take precedence in Canada?⁷⁸

On question one the Court ruled that Québec did not have the right under the Canadian constitution to secede unilaterally, declaring that "The Constitution vouchsafes order and stability, and accordingly secession of a province 'under the Constitution' could not be achieved unilaterally, that is, without principled negotiation with other participants in

Confederation within the existing constitutional framework.”⁷⁹ In response to the second question the Court ruled that Québec did not enjoy a right under international law vis-à-vis the right to self-determination to secede:

Some supporting an affirmative answer did so on the basis of the recognized right to self-determination that belongs to all “peoples”. Although much of the Québec population certainly shares many of the characteristics of a people, it is not necessary to decide the “people” issue because, whatever may be the correct determination of this issue in the context of Québec, a right to secession only arises under the principle of self-determination of a people at international law where “a people” is governed as part of a colonial empire; where “a people” is subject to alien subjugation, domination or exploitation; and possibly where “a people” is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state.⁸⁰

The Court did not believe that the Québécois had been denied the ability to pursue their development within Québec as a result of being part of the Canadian federal state.⁸¹ With the first two questions answered the third question became moot. The Court did, however, make the following statement regarding a referendum: “A clear majority vote in Québec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all other participants in confederation would have to recognize.”⁸² No definition was given as to what “clear” meant.

The Federal Government embraced the ruling by the Court, arguing that it ruled out the possibility of Québec seceding unilaterally. The nationalists in Québec also embraced the ruling, arguing that it mandated negotiation on the part of the Federal Government in the event of a ‘Yes’ vote. The ruling is a landmark in Canadian constitutional and judicial history. What is perhaps more significant is what it says about the concept of federalism and the nation. The judgement recognised the importance of the federal principle and that

⁷⁸ *Reference re: Secession of Québec*, [1998] 2 S.C.R. (www.lexum.umontreal.ca, 1998), p. 1.

⁷⁹ *Ibid.*, p. 2.

⁸⁰ *Ibid.*, p. 3.

⁸¹ *Ibid.*

⁸² *Ibid.*, p. 2.

the other partners in Confederation, the provinces and the Federal Parliament, would have to acknowledge Québec's decision and negotiate. McRoberts argues that this decision might show a swing of the pendulum away from the vision of the country expressed in 1982:

To be sure the Supreme Court said no, Québec doesn't have the right under the Canadian constitution to declare independence unilaterally, I don't think anybody really said it did. But then went on to say well, on the other hand, we have to understand that the Canadian constitution is rooted in several different principles and if there were in fact to be a democratically arrived at vote in favour of sovereignty with a clear majority on a clear question then the rest of the country in the name of the principle of federalism in particular is obliged to sit down and negotiate. That's a very strong statement. To a certain extent I think it represents an attempt to restore this older idea of Canada in which federalism is so important. It's a very important decision and to that extent the court may have broken with the tradition up to that point which seemed to be one of entrenching the vision of the country contained in 1982.⁸³

Along with Laforest and others sympathetic to the claims of Québécois nationalism, McRoberts sees in the Supreme Court's decision an affirmation of the arguments he has advanced that Canada is in reality a differentiated federation, a state in which considerable asymmetry exists. With the Court calling upon the Federal Government and the other provinces to negotiate with Québec in the event of a vote in favour of some form of secession the essential link between Canadian constitutionalism and federalism is established. Thus, McRoberts argues that what the court has said is that it would be unconstitutional for the Federal Government to try and use its powers of reservation and disallowance to stop Québec from exiting Confederation.⁸⁴ By extension it could be argued that Canadian federalism is an ongoing process of negotiation and compromise on the part of the provinces and the Federal Government and that the Federal Government cannot effectively impose its will against a decision democratically arrived at by the people of Québec.

⁸³ Interview with Prof. Kenneth McRoberts, Department of Political Science, York University, Toronto, 29.12.1998.

⁸⁴ *Ibid.*

The political scientist and federalist Peter Russell extends the point made by McRoberts even further by arguing that constitutional negotiations following a 'Yes' vote could lead Canada back towards some sort of modern compact with Québec, even if such a new deal involved separation for part of Québec:

The Reference Case helps to bring back some balance because it says that if there's a clear majority in Québec then Canada has to negotiate and almost make a modern compact somehow with Québec either on the terms of its leaving Canada or on its renegotiating its terms of being a part of Canada.⁸⁵

Whether Russell believes that a new compact would take the form of a renewal of the dualistic conception of Confederation outside of Québec to keep Québec in Canada or the negotiation of some form of confederal arrangement between Québec and the ROC is unclear from his comments. However, it can be argued, as McRoberts has, that the strength of the Trudeauite vision in the ROC more than likely precludes the reassertion of duality. Russell's new compact could be understood to refer to a confederal agreement, a post-referendum solution which finds favour with McRoberts and Gibbins.⁸⁶

Nationalist commentators outside of the PQ and BQ have been generally critical of the Supreme Court's role in the reference case. Legault has emphasised that the Supreme Court's judgement is an assault on Québec's rights and is symptomatic of Ottawa's continuing attack on the Québécois nation: "Once again, and with the full force of their unelected and unanswerable posts, these nine judges, these nine creatures of the federal executive power, have proved that they are political mercenaries working to reinforce the Canadian state, that they are tools used by Ottawa to combat Québec's affirmation."⁸⁷ Such

⁸⁵ Interview with Prof. Peter Russell, Professor Emeritus, Department of Political Science, University of Toronto, Toronto, 30.12.1998.

⁸⁶ Roger Gibbins, "The Institutional Parameters of a Canada-Québec Partnership," in *Beyond the Impasse: Toward Reconciliation*, eds. Roger Gibbins and Guy Laforest (Montreal: IRPP, 1998), p. 287.

⁸⁷ Josée Legault, "How to Deny Québec's Right to Self-Determination," *Globe and Mail*, 21 August 1998 in *The Québec Decision: Perspectives on the Supreme Court Ruling on Secession*, ed. David Schneiderman (Toronto: James Lorimer & Company Limited, 1999), p. 113.

an opinion reflects back to one of Laforest's central criticisms of federalism that Ottawa's control of Supreme Court appointments excludes the provinces having a say in the constitution of a federal body. From Laforest's perspective the Court exists within the context of an imperial federalism.⁸⁸

Other nationalist voices have argued that the decision in the Reference Case is so unspecific in terms of what part of the amending formula would apply to negotiations and that all partners in Confederation must be involved that the Federal Government can effectively block secession: "...the Supreme Court ruling knowingly or inadvertently gives the federal authorities the right to erect such substantial and numerous hurdles that this obstacle course will require Quebeckers to show enormous will, cohesion, and political dexterity."⁸⁹ Opinions such as these go to demonstrate that there is still a consensus among many Québécois opinion leaders and intellectuals that federalism is not working and that Ottawa is not understanding of Québec's position.

The Federal Government has chosen to act on the Supreme Court's judgement by legislating what the ground rules would be in the event of a 'Yes' vote, arguing that there is a need for greater clarity. This has taken place at the same time as the Federal Government continues to pursue the Plan A approach which would, if expanded and perhaps eventually constitutionalised, lead to a greater recognition of Québec's position as a nation within Canada.

The Clarity Act

As there was no guidance given by the Supreme Court on the meaning of the concepts of a clear question and a clear majority, the Federal Government has sought to

⁸⁸ Interview with Prof. Guy Laforest, Chair, Department of Political Science, Université Laval, Québec, 13.01.1999.

⁸⁹ Jacques-Yvan Morin, "The Supreme Court Ruling: A Legitimate and Achievable Secession...in Theory," *Le Devoir*, 31 August 1998 in *The Québec Decision*, p. 116.

clarify the situation and has laid out in C-20 how it would respond to another referendum on sovereignty. Ottawa also defended its decision to table Bill C-20 by stating that since the Premier of Québec had refused to rule out another sovereignty referendum as requested by the Prime Minister then it was incumbent upon the Federal Government to act.⁹⁰ The Federal Government came to the conclusion that a clear majority meant more than a simple majority of 50% + 1 and that a clear question had to address secession or independence alone without any offer of a partnership with the ROC as this would only confuse the situation.⁹¹ During the debate on the Clarity Act, the Federal Government and the Government of Québec went on to develop arguments based how majorities may be interpreted.⁹²

The Clarity Act (see Appendix D) establishes in s.1 that the House of Commons shall consider a referendum question as prepared by a provincial legislature and determine whether it will result in a clear expression of the will of the electorate. The act also clearly states that the Federal Government will not enter into negotiations if the question was not clear and thus there could be no absolute determination of the will of Québécois.⁹³ Section 2 of the act refers to the clear expression of the will of the people of the province which is to be determined by the House of Commons considering the following criteria: “a) the size of

⁹⁰ Privy Council Office, “‘Who’s Afraid of Clarity’ Brief submitted by the Honourable Stéphane Dion, President of the Privy Council and Minister of Intergovernmental Affairs to the Legislative Committee on Bill C-20, Centre Block, Ottawa, Ontario, February 16, 2000” (www.pco-bcp.gc.ca, 2000), p. 2.

⁹¹ *Ibid.*, pp. 4-5.

⁹² The use and understanding of the terms clear majority, simple majority, and absolute majority are highly politicised in the Canadian context, very often being used to misrepresent concepts of majority. A simple majority is understood to mean 50% + 1 of votes cast in an election, plebiscite, or referendum. An absolute majority would mean a majority of the total eligible electorate. The term clear majority is ambiguous and the Supreme Court in the Reference Case defined it as requiring a qualitative evaluation, such as considering particular regional majorities. The present Government of Québec understands a simple majority in a referendum on sovereignty to be a clear majority, whereas the Federal Government rejects this view.

⁹³ Canada, *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Québec Secession Reference*, Statutes of Canada 2000, 2nd Session, 36th Parliament, C-20, s.1.

the majority of valid votes cast in favour of the secessionist option; b) the percentage of eligible voters voting in the referendum; and c) any other matters or circumstances it considers to be relevant.”⁹⁴ Most importantly, the act establishes that since there is no right in the constitution for a province to secede, a constitutional amendment would be required; this would necessitate that all provincial governments and the Federal Government be involved.⁹⁵ This last section invokes the unanimity procedure of the amending formula in the case of negotiations on secession.

While the act does certainly clarify the position to be adopted by the Federal Government, its contents do seem to confirm the criticisms of nationalists who argue that it is illegitimate in that it places too many barriers in place. For federalists in the ROC this is seen to be beneficial, yet there are those such as Russell who would criticise the abandoning of the simple majority principle of 50% + 1 for deciding the matter.⁹⁶ Stéphane Dion, on the other hand opposes this position, arguing that if 50% + 1 is a clear majority, what would be an ‘unclear’ majority.⁹⁷ This raises the point that the Supreme Court implied that a simple majority was insufficient.⁹⁸ It is arguable whether a position can be adopted if we are talking about this issue in a hypothetical context rather than in the context of an actual vote with all those “other matters and circumstances” being in play. The simple majority rule of democracy that is intrinsic to most democratic action such as elections is upheld by the PQ as the only rule that can possibly apply and that the Federal Government cannot move the goalposts when a 50.4% vote in 1995 was enough to defeat the sovereignty option.⁹⁹ The

⁹⁴ *Ibid.*, s.2(2).

⁹⁵ *Ibid.*, s.3(1).

⁹⁶ Russell, “Preserving the Canadian Federation: a Two-Track Approach,” p. 16.

⁹⁷ Interview with Hon. Stéphane Dion, Minister of Intergovernmental Affairs and President of the Queen’s Privy Council for Canada, Privy Council Office, Ottawa, 05.01.1999.

⁹⁸ Privy Council Office, “Who’s Afraid of Clarity,” p. 6.

⁹⁹ Ministère des Affaires intergouvernementales canadiennes, “Allocution de Monsieur Joseph Facal, Ministre délégué aux Affaires intergouvernementales canadiennes: L’avenir du Québec sera décidé par le peuple québécois: principes et portée du projet de loi 99” (www.cex.gouv.qc.ca, 2000), p. 1.

Federal Government argues in the Clarity Act that all opinions in Québec must be taken into account when determining whether there is a clear expression of will. This would include the views of aboriginal groups, Anglophone groups, and members of the PLQ who would most likely be opposed to calling of the referendum and who would vote 'No'. Under the circumstances and based on the position adopted by the Supreme Court in its judgement, the view on a clear expression of will embraced by the Federal Government is the more democratic of the two positions.

The Québec Government views the Clarity Act as yet another affront to Québec's right to be recognised as a nation and the right of the Québécois to self-determination. Following the adoption of Bill C-20 by the Canadian Senate in June 2000, Québec's Minister of Intergovernmental Affairs, Joseph Facal, denounced the bill declaring it to be an illegitimate bill that violated the right of the Québec people to decide their own future:

En bref, pour le gouvernement du Québec, de même que pour tous les partis politiques représentés à l'Assemblée nationale, cette loi est une mesure totalement inacceptable et illégitime. Le gouvernement du Québec ne reconnaît aucune légitimité au Parlement fédéral pour s'ingérer de la sorte dans l'exercice du droit du peuple québécois de décider seul de son avenir.¹⁰⁰

The Government of Québec considered C-20 to be a complete misreading of the Supreme Court's decision in the Reference Case, declaring that the Federal Government "impos[e] ce que la Cour lui a clairement refusé." Québec has maintained its long-held position that it is up to the National Assembly to decide what an appropriate referendum question is and that the citizens of Québec would be the ultimate judges of the clarity of the question and of the referendum result.¹⁰¹

In direct response to the Clarity Act, the PQ government passed an act in December 2000 that reasserted Québec's right to self-determination (see Appendix E). The act asserts

¹⁰⁰ Ministry of Intergovernmental Affairs, "C-20: Une loi illégitime pour le Québec," www.mce.gouv.qc.ca.

that no other legislature or Parliament has the right to interfere in an area of Québec's sovereign jurisdiction.¹⁰² A further affirmation of Québec's distinctiveness is made in the preamble:

WHEREAS the Québec people, in the majority French-speaking, possesses specific characteristics and a deep rooted historical continuity in a territory over which it exercises its rights through a modern national state, having a government, a national assembly and impartial and independent courts of justice... WHEREAS it is incumbent upon the National Assembly, as the guardian of the historical and inalienable rights and powers of the Québec people, to defend the Québec people against any attempt to despoil it of those rights or powers or to undermine them.¹⁰³

The act is a further affirmation of Québec's sovereignty as it exists under the federal system. More importantly this act is a further confirmation that there is a considerable divide between nationalist Québécois and Canadians outside Québec on what federalism means and the place of Québec in Canada either as a nation or as a province equal to the others. It reasserts that nationalists in Québec view themselves as a nation; a view that is based on a dualistic conception of Canada.

Despite Plans A and B there are still significant divisions in how Québec perceives its position within Canada. The increasing asymmetry that has been encouraged by Plan A is welcomed and does go some way to trying to meet the demands of nationalists in Québec for broader recognition. However, for many in the ROC asymmetry implies more power to Québec rather than the recognition of the differential nature of the Canadian federal State -a fundamental reason behind the demise of Meech Lake and Charlottetown. For those outside Québec who have increasingly embraced the rival concept of nation identified in the nationalism promoted by Trudeau, 'distinct' often is seen to mean 'better'. As Charest argues:

¹⁰¹ Ibid.

¹⁰² Québec, National Assembly, *An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec state*, 1st Session, 36th Legislature, Bill 99, 2000, s.13.

¹⁰³ Ibid., preamble.

We are an asymmetrical federation. That's who we are. But I think it's very difficult for people to come to terms with that because...I mean, I think the core political problem has been that distinct has always been interpreted by some as meaning better or more...There is another vision of the constitution, another vision of Québec that we are all one country, we're all one nation, there's one law for everybody and there are no special deals for anybody and that's what living in a modern democracy is all about and there is a very strong part of English Canada which says that's who we are and that goes back to Lord Durham and beyond. It's been there and it has always been a theme. It's not a workable theme. It's not a do-able theme. It's an idea that can't be sustained but it's still there, so we have to deal with it.¹⁰⁴

Charest highlights what this chapter has been arguing, that there exists in Canada two conflicting conceptions of nation. As has been argued, one of these visions is dominant in Québec and embraced by nationalists; it favours the dualistic view of Canada in which Québec is a distinct society, a nation, one of the founding peoples. The idea of Canada being one, undifferentiated federation made up of equal provinces is the conflicting and more dominant vision which has evolved with the acceptance of Trudeau's view of Canada based in the *Constitution Act, 1982*. This latter conception of the nation is one that nationalists in Québec cannot reconcile with their dualistic conception of a federal Canada. As McRoberts asserts, Ottawa's claim to be a national government appears to reject the conception of a French-speaking community territorially defined in Québec and the duty of the Québec government to uphold it.¹⁰⁵ One means of reconciling these divergent conceptions of nation in Québec is to promote the idea of a multinational Canada which recognises asymmetry within the political and constitutional framework. Such an approach is made all the more difficult by the presence of a constitutional document which deliberately negates this reality. It is debatable, then, whether the promotion of asymmetry and recognition of Québec's distinctiveness should be first achieved through non-constitutional means similar to that conceived under Plan A or through the more difficult

¹⁰⁴ Interview with Hon. Jean Charest, Leader of the Opposition, Québec National Assembly, Montréal, 07.08.2000.

course of fundamental constitutional reform and the symbolic entrenchment of principles such as the distinct society. It is not, however, the purpose of this thesis to predict or speculate on which of these paths is better or which will be followed by the political actors involved.

As has been argued, Québec nationalists are divided as to whether greater recognition of Québec can best be achieved through reform of the existing constitutional structures or through some form of secession and subsequent negotiating of a new partnership with the rest of Canada. Similar questions of how nationalist claims for greater recognition are addressed by the state will be analysed in the subsequent two chapters. As in the case of Québec within Canada, there exist in Scotland and Catalunya rival conceptions of what the nation is and understandings of how the state is constituted vis-à-vis minority national communities. Seeing that the status quo is untenable, nationalists are prompted in each case to argue for greater recognition through constitutional reform. The nature of the conflict between nationalists and those opposed to their claims varies in each instance due to the differences in constitution of each state. Yet, what links the nationalists in these three cases is that they all are seeking greater recognition and a greater acceptance of their understanding of what the nation is, whether inside the state or outside it.

¹⁰⁵ McRoberts, *Misconceiving Canada*, p. 249.

6

Catalunya's Constitutional Position in Spain and the Nationalist Response

The Spanish Constitution of 1978 brought about a transformation in Spain's governmental system, in the state's approach towards individual rights, and in its territorial organisation. A process was initiated which facilitated the move from dictatorship to a modern liberal democracy, a key aspect of which was the recognition and entrenchment of the right to autonomy for all of Spain's regions and nationalities given in Article 2 of the constitution. The death of Franco, the promulgation of the constitution by King Juan Carlos, and the provisional reestablishment of the Generalitat signaled the rebirth of Catalan nationalism as the dominant political force in Catalunya. This chapter, as is the case with those devoted to Québec and Scotland, will analyse what form of state is established by the constitution and what the position of Catalunya is as a nation within the constitutional framework. Greater discussion and analysis will be devoted to how this framework is problematic in the eyes of nationalists and how the various nationalist parties in Catalunya are seeking to bring about changes in the constitutional status quo that would give greater recognition to Catalunya as a nation. As in the cases of Scotland and Québec the key argument being articulated by Catalan nationalists is for greater recognition for Catalunya and that Catalunya should exercise greater autonomy over what it defines as its own affairs. As will be demonstrated, there are varying and divergent opinions held by the four Catalan nationalist parties as to how this goal can best be accomplished. Finally, an analysis will be conducted of the extent to which the Spanish state has been responsive to the demands of Catalan nationalists and how this debate between 'nation' and 'state' has set up a conflict between two rival conceptions of what the nation is. In the first place, however, it is

important to understand the political position of nationalism in Catalunya and how it has shaped the political life of Catalunya since Spain's re-embracing of democracy in the late 1970s.

In the first elections held under the new constitutional regime in March 1980 the victory of the coalition between *Convergència Democràtica de Catalunya* and *Unió Democràtica de Catalunya* (CiU) ushered in what has been a period of nearly complete nationalist dominance of Catalan politics. There are five nationalist parties in Catalunya that in their ideology acknowledge, to a greater or lesser degree, Catalunya's position as a nation within Spain. These parties have dominated Catalan political life since 1980.

Aguilera de Prat argues that Catalan politics is divided into three strands: nationalist parties, Catalan national parties, and a Spanish party. The nationalist parties are the leftist *Esquerra Republicana de Catalunya* (ERC), the centrist CDC, and the centre-right UDC. Aguilera de Prat defines Catalan national parties as the socialist *Partit dels Socialistes de Catalunya* (PSC) and post-communist *Iniciativa per a Catalunya* (IC). They are distinguished from the nationalist parties by their acceptance of Catalunya's integration into Spain and that they place their left-wing or socialist ideologies ahead of their Catalanism. The Spanish party is the governing party in Madrid, the *Partido Popular*, which is seen to identify strongly with a statist, Spanish nationalism.¹ Together the CiU, the PSC, ERC, and IC have regularly polled between 77% and 87% of votes cast in elections to the Catalan Parliament, with the percentage not going below 86.5% between 1984 and 1995. Traditionally, the right-wing PP has rarely managed to receive more than 13% of the popular vote in Catalan elections.² Yet despite its opposition to Catalan nationalism, the PP managed to secure 22.8% of the vote in Catalunya in the 2000 general election as a result of a

¹ Interview with Prof. Cesáreo Aguilera de Prat, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 12.04.1999.

² Gabriel Colomé, "El sistema de partits polítics a Catalunya," in *La societat catalana*, ed. Salvador Giner (Barcelona: Institut d'Estadística de Catalunya, 1998), p. 1102.

booming Spanish economy.³ However, the recent history of Catalan nationalism speaks of the dominance of two parties in coalition: CiU. Since 1980, CiU under the leadership of Jordi Pujol has been in power either with an absolute majority or as the largest party in the Catalan Parliament; Pujol has been President of the Generalitat for as long.

Unlike either Scotland or Québec, Catalunya's largest political force without exception is the nationalist coalition CiU whose greatest electoral competition is other nationalist parties. In Scotland the SNP is the one explicitly 'nationalist' party, although the Scottish Socialist Party also advocates independence for Scotland. In Québec, there are the PQ and BQ, which are both explicitly nationalist. Although members of other parties might view themselves as nationalists they do not necessarily agree with the avowed aims of the PQ, BQ, or the SNP. The PQ, BQ and the SNP compete in elections against parties linked to the state who either support the constitutional status quo or who seek to change it to match a particular conception of a federal Canada or a devolved Britain. Indeed, this is a conception that rejects certain nationalist aspirations that favour some form of independence for the minority national group. In Catalunya, the party system is constructed in a very different way. This comes as a result of the dominance of nationalism in Catalan political discourse. The exact nature of each of the nationalist parties' nationalism and their arguments will be discussed below when the issue of constitutional reform is addressed. However, it is impossible to understand the constitutional position adopted by the Generalitat, and therefore Catalunya, vis-à-vis its relations with the state without acknowledging the central role played by nationalism and CiU in particular.

Catalan Nationalism Since 1976

The dominant concern of nationalism in Catalunya since the transition to democracy in the late 1970s has been the recognition of the Catalan nation within the Spanish state and

³ Kenneth McRoberts, *Catalonia: Nation Building Without a state* (Toronto: Oxford University Press, 2001), p. 89.

its promotion politically, culturally, and economically in a variety of spheres including the European Union. As argued by Puig, the Catalan nationalist model has a variety of foci:

The Catalan model of nationalism is complex and sophisticated. It has four main concerns: 1) to preserve national identity; 2) to guarantee internal cohesion; 3) to ensure economic survival in the globalized market and, finally, 4) to promote and strengthen the power of the regions within the European Union.⁴

The goals of preserving national identity, guaranteeing internal cohesion, and promoting and strengthening the powers of the European regions are dominant in the rhetoric and party platforms of the nationalist parties being examined here. It is essentially these goals that shape the Catalan nationalist approach towards constitutional reform. To gain some understanding of the various parties' views on how the state needs to be reformed and the national aims of Catalunya promoted, there has to be considerable consideration given to how the Spanish state is organised at present and how the constitution determines the relationship between Catalunya and Madrid.

The Spanish Constitution of 1978

The Spanish constitution of 1978, with its 169 articles, came into effect on 28 December of that year following an extensive period of consultation in the Committee of Constitutional Affairs and Public Liberties and its passage through both the Congress and the Senate. The people of Spain ratified the document in an historic referendum held in December 1978 in which 87.8% of the electorate gave it their endorsement, roughly 60% of the total eligible electorate.⁵ The constitution is modeled after other modern European constitutions in terms of its broad scope in enumerating various rights, the powers of the state, the role of the monarchy and succession to the throne, the organisation of government, the territorial organisation of the state, the role of the Constitutional Court (Tribunal Constitucional), and a process for constitutional reform. These key fields are organised into

⁴ Pau Puig i Scotoni, "The Four Dimensions of the Catalan Model." Paper presented at the Conference 'Regional Identities in Europe', University of Sunderland, Sunderland, 12 October 1998, 3.

eleven major sections or titles. The sections that will be discussed here are those in the main body of the constitution that apply directly to the position of Catalunya within the Spanish state, those being: the Preliminary Title which contains Articles 2 and 3 on national unity and the official language, Title VII on Economy and Finance, Title VIII on Territorial Organisation, Title IX on the Constitutional Court, and Title X on Constitutional Amendment.

Article 1 – The Form of the State

What is unique about the Spanish constitution in the very first instance is that it does not define what sort of state Spain is in terms of its territorial organisation. In Article 1 the ‘political form’ of the state is established as a constitutional monarchy. However, the state is not defined as being a union, unitary, federal, or confederal state as in the preamble to the *Constitution Act, 1867* that created a federal union in Canada.⁶ As noted by Fossas and Perez Francesch, the 1978 constitution is vague in this area:

Together with the basic principles that define the type of state (social and democratic state) and the type of government (Parliamentary Monarchy), the Constitution contains principles related to the territorial organisation of the state. Nevertheless, on this point our constitutional text does not establish a similar formula to those applied by other fundamental alternatives: the Preliminary Title of the Constitution does not contain a definition of state from the point of view of its territorial structure (as, for instance, the above mentioned article 20 from the Fundamental Law of Bonn does by defining the German Federal Republic as a “Federal state”, or as the article 1 of the 1931 Spanish Constitution did by framing the Republic as an “integral state”).⁷

This lack of specificity has led to an ongoing debate as to what extent the state, which is established with a central government and 17 autonomous communities, including Catalunya, is a federalising state and to what extent it is still strongly unitary in many ways. This debate will be discussed below when consideration is given to the problematic nature of much of the Spanish constitution as it applies to the goals of nationalists in Catalunya. What

⁵ Michael T. Newton, *Institutions of Modern Spain* (Cambridge: Cambridge University Press, 1997), p. 16.

⁶ *Spanish Constitution, 1978*, art. 1.

the 1978 constitution in effect does is effectively abandon the older 19th century Jacobin conception of the Spanish state, which was largely uniformist and centralist in favour of a much more decentralised regional model.⁸ The first indication of this shift in a conception of the state is given in Article 2 in which is contained the collective right to autonomy.

Article 2 – The Right to Autonomy

Article 2 of the constitution dedicated to national unity and regional autonomy is one of the most significant and most contested articles in the entire document. In its understanding of Spain it makes some paradoxical assertions:

The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognises and guarantees the right to autonomy of the nationalities and regions which make it up and the solidarity among all of them.⁹

In this short article are entrenched the key principles of the unity of the ‘nation’, the indivisibility of the ‘nation’, solidarity, and the collective right to autonomy. Firstly, there is the problematic assertion that the nation is Spain and that this geographically defined space, or homeland, is indivisible. The nation is understood to mean that territory in which Spaniards live, thus the nation is understood to be co-terminous with the state. While the nation is defined as Spain no other mention is given to other nations but rather to regions and nationalities that make up the nation and which share a solidarity in the framework, the state. For Catalan nationalists the principles of solidarity and indivisibility are anathema since they as nationalists make a clear distinction between the nation, Catalunya, and the state, Spain. The nationalities referred to in Article 2 have been understood to refer implicitly to the three historic nationalities of Catalunya, Euskadi, and Galicia. The equating of the nationalities with regions is a means of equalising the relationship between them and eliminating the creation of any asymmetry within the constitution:

⁷ Enric Fossas i Espadaler & Joan Lluís Pérez Francesch, *Lliçons de dret constitucional*, 2nd ed. (Barcelona: Edicions Proa, 1997), p. 173.

⁸ *Ibid.*, p. 52.

The three historical nationalities, which were not explicitly mentioned in the Constitution, are Catalonia, Euzkadi, and Galicia. But the obvious trick was to extend decentralisation to most other regions, thereby 'relativising' the potential impact of Basque and Catalan autonomy.¹⁰

The distinction between nation and nationality is a deliberate one and rests upon the idea of indissolubility and indivisibility of the Spanish nation. Spanish nationalists champion this understanding of the Spanish nation. The unwillingness of Francoists and other Spanish politicians in 1977 to countenance the idea of a multinational Spain forced Catalan and Basque nationalists to accept the compromise term 'nationality' during constitutional negotiations.¹¹ Puig argues that in this compromise lies the foundation for the argument over Catalunya's recognition as a nation:

The Spanish constitution recognises Catalunya as a nationality and as you know it is some sort of compromise so that the word 'nation' is not used. The framework is that Catalunya has some type of recognition within the Spanish state as a nationality, but not as a nation. And, of course, among nationalist politicians here there is some kind of revendication that there should be greater recognition of Catalunya's character.¹²

This question of 'nation' versus 'state' is a very important one to Catalan nationalists and it has provided the focus for a most important debate in Spanish constitutionalism - a debate that centres on this core issue of recognition. As argued further by Puig:

In Catalunya nationalists want a greater degree of recognition, but from the Spanish point of view there is enough. You have also the interpretation where Spain is seen as a nation, that is the majority point of view, or Spain as a plurinational state. You know in Catalan nationalist discourse there is a distinction between state and nation, Catalunya is the nation and Spain is the state.¹³

Pau Puig advances an orthodox nationalist understanding of the relationship between Catalunya and Spain. As a constitutional scholar and civil servant in the Generalitat Puig has been part of the process through which the CiU government of Pujol has gained greater

⁹ Spanish Constitution, 1978, art. 2.

¹⁰ Daniele Conversi, The Basques, the Catalans, and Spain: Alternative Routes to Nationalist Mobilisation (London: Hurst & Company Ltd., 1997), p. 144.

¹¹ McRoberts, p. 52.

¹² Interview with Dr. Pau Puig i Scotoni and Snra. Anna Repulló, Generalitat de Catalunya, Barcelona, 08.04.1999.

autonomy for Catalunya as a mean of promoting Catalunya as a nation in Spain, rather than just a nationality. Those commentators in Catalunya who embrace such a position are highlighting the problematic wording of Article 2. This article establishes an understanding of the state that is diametrically opposed to that held by nationalists in that it recognises only one nation rather than a plurality of nations coexisting within the Spanish state.

Certain commentators, such as Requejo, have argued that this debate over the question of nation is the key stumbling block towards substantive reform of Article 2 and its defining of the constitution:

...the recognition of the plurinationality of the Spanish state is unclear in the Spanish constitution. I am completely against the position of some constitutional lawyers who say that the political recognition of the plurinationality is already in the Spanish constitution. I don't agree with that. I think that Article 2, which is very, very confusing, speaks about nationalities and regions, but we aren't saying what is a nationality and what regions are nationalities or not...And for this reason I think that it's false to say that there is explicit, or literal, or constitutional recognition of the plurinationality of the state. I think that this is the main unresolved question to be overcome in the near future in the Spanish political system.¹⁴

As a nationalist academic, Requejo has been a staunch proponent of substantial constitutional reform. From his perspective there must be the reform of Article 2 to explicitly recognise the plurinational, or multinational character of the state; without this there can be little further development. With a clear definition of what regions are nationalities and, further to that, an explicit recognition of the existence of minority nations then progress can be made towards a differentiated, asymmetrical understanding of Spain. Requejo below refers to the importance of asymmetry as a concept that is implicitly acknowledged when speaking about the multinational character of Spain.

It has been argued that the right to autonomy entrenched in Article 2 is the only collective right entrenched in the constitution. This right is the basis for the recognition of the administrative autonomy of smaller territories such as municipalities and provinces and

¹³ Ibid.

the political autonomy of the regions and nationalities as autonomous communities.¹⁵ The exercise of this right by the regions and nationalities has led to the territorial organisation of Spain into 17 autonomous communities: Catalunya, Aragón, Navarra, Euskadi (Basque Country), La Rioja, Cantabria, El Principado de Asturias, Galicia, Castilla y León, Extremadura, Andalucía, València, Castilla-La Mancha, Comunidad de Madrid, Canarias, and Illes Balears (Balearic Islands). The autonomous communities are established through the constitution and by their own statutes of autonomy under which their government and administration is established. Six of these autonomous communities have claimed in their statutes that they are historic nationalities: Catalunya, Aragón, Navarra, Euskadi, Andalucía, Galicia, and València.¹⁶

To understand Catalunya's relationship to the central state it is important to note that Catalan nationalists recognise its collective right to autonomy as a nation and not as a nationality or as a region. This is despite the provisions contained in Article 2. However, as Requejo argues the distinction between nation and region is vague to many people, thus illustrating the problematic nature of this section of the constitution:

I would say that in the political élites the most important position is to understand that Catalunya is a real nation, a people with a common tradition, with a clear will for self-government et cetera. Among people, according to recent polls, the question is quite different because half the population of Catalunya have the position that a nation and a region is more or less the same; it is not very clear. This is a gray area and these kinds of distinctions are not very clear. But within the political parties, with the exception of the PP...practically all of them defend that Catalunya has to be defined as an historical 'other', as an historical nation with the right of self-government, maybe with federal, confederal, or regional agreements, so different solutions.¹⁷

Requejo argues from the perspective of a political scientist sympathetic to the nationalist view, in particular that advanced by CiU. Much of Requejo's own arguments and

¹⁴ Interview with Prof. Ferran Requejo i Coll, Departament de Ciències Polítiques i Socials, Universitat Pompeu Fabra, Barcelona, 09.04.1999.

¹⁵ C. Viver Pi-Sunyer, *Constitució* (Barcelona: Ediciones Vincens Vives, 1996), p.147.

¹⁶ *Ibid.*, p. 149.

conclusions that he has reached on the need for constitutional reform is echoed in the proposals put forward by CiU. Based on the position he articulates above, Requejo argues that there is a division between an élite view and the popular of the constitution and Catalunya's position vis-à-vis Article 2. If what Requejo argues is correct, that half the population makes little distinction between region and nation, it would illustrate two things. Firstly, that fin de siècle Catalans have an appreciation of their distinct character and do not dwell so much anymore on labels that describe Catalunya's constitutional position within the state. Secondly, it could demonstrate a real division between the Catalan nationalist political class and the populace. However, as Requejo argues the situation is not very clear and it could be further argued that the ambiguous nature of Article 2 only serves to confuse the situation even more.

Certain constitutional theorists, such as Roig, have adopted a much more liberal understanding of the right to autonomy, arguing that it is not a collective right: "A collective right in the doctrine of the constitution is always based on an individual right...Every right that the population in the communities has is always channeled through individual rights."¹⁸ As will be shown, Catalan nationalists do not equate their claim to autonomy or ultimately their right to self-determination with the claim of a region such as Extremadura or Castilla-La Mancha. Aguilera de Prat illustrates this point well when he reiterates an argument of Pujol that Catalunya as a nation cannot be compared with Spanish regions that do not perceive themselves as national communities: "Catalunya is not La Rioja, Catalunya is not Madrid, Catalunya is an historic nation with specific rights. This is the big difference between the nationalist and the [Catalan] national parties. The specificity of Catalunya calls

¹⁷ Interview with Prof. Ferran Requejo i Coll, Departament de Ciències Polítiques i Socials, Universitat Pompeu Fabra, Barcelona, 09.04.1999.

¹⁸ Interview with Eduard Roig Molés, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 08.04.1999.

for recognition by Madrid of specific rights.”¹⁹ In contrast to this nationalist view, the constitutional right to autonomy is viewed legally as a means of decentralising power into regional centres giving some freedom to them in terms of administration.²⁰ Nationalist parties in Catalunya, though, understand this collective right as a means to further promote and develop Catalunya as a nation in its own right either within or without the Spanish state.

Enric Fossas argues that the debate over the nature of autonomy and the question of ‘nation’ versus ‘state’ is one between symmetrical and asymmetrical understandings of the state created by the 1978 constitution. In an effort to gain greater recognition of their distinctiveness as nations within Spain and their difference from the regions, the historic nations, including Catalunya, seek a reform which would eliminate the symmetry imposed by the provisions of the constitution:

The evolution of the autonomic state has run in the contrary sense, trying to establish an equality among the seventeen autonomous communities and it is the fight between asymmetrical quasi-federalism defended by the nationalities, Catalunya, the Basque Country, against the symmetry defended by Spanish parties, the PP and the socialist party.²¹

It can be argued that Fossas views the state as having embraced symmetry while denying what is the reality of Spain -that there are national communities who reject symmetrical arrangements in favour of greater asymmetry and the recognition of difference that comes with it. As a constitutional lawyer who is also a Catalan nationalist, Fossas is sympathetic to the need for greater asymmetry as a means of promoting greater recognition for Catalunya in Spain. As other commentators have argued, the wording of Article 2 and the conception of the state it promotes makes it practically impossible to move towards asymmetry as asymmetry would undermine the core principle of the unity of the Spanish nation.

Article 3 – Language Provisions

¹⁹ Interview with Prof. Cesáreo Aguilera de Prat, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 12.04.1999.

²⁰ Newton, p. 123.

Article 3 establishes Castilian as the official language of the Spanish state and declares that “All Spaniards have the duty to know it and the right to use it.” Subsections 2 and 3 state that other languages in Spain will be considered official in the respective autonomous communities and that they represent a “cultural patrimony which will be the object of special respect and protection.”²² This provision must be seen as a progressive step when it is considered against the level of state repression of minority languages that took place during the Franco era and earlier under Primo de Rivera’s dictatorship. For Catalan nationalism as with Québécois nationalism the issue of language dominates nationalist discourse. For Catalan nationalists the Catalan language defines the nation and the language’s promotion and protection is a central goal for them. The recognition of Catalan as an official language of Catalunya in the 1978 constitution has enabled the Generalitat to be aggressive in its promotion of the language as the *llengua pròpia de la nació*, or the nation’s own language. Catalan has been promoted in law through the Statute of Catalan Autonomy, the 1983 Law of Linguistic Normalisation, and most recently through the 1997 Law of Linguistic Politics. These statutes will be discussed further below as will their impact on encouraging bilingualism.

The negative aspect of Article 3 is that it establishes Castilian not as *an* official language of the state, but *the* official language of the state. Thus, in the institutions of the state such as the parliament (Corts Generals), the high courts, and the Tribunal Constitucional, Castilian is the only language that may be officially used. Unlike Canada, there is no constitutional provision or other statutory provision for the use of more than one official language in institutions of the central state. This has been one of the key demands of all the nationalist parties, that the constitution be reformed to reflect the multilingual character of the Spanish state. In all of the various party manifestos, programmes, and other

²¹ Interview with Prof. Enric Fossas i Espadaler, Departament de Ciència Política i de Dret Públic, Universitat Autònoma de Barcelona, 12.04.1999.

documents that have been analysed, the promotion of Spain's multinational and multilingual reality has been a dominant goal. Indeed, Catalan nationalist parties have looked to other multinational states such as Canada, Belgium, and Switzerland as models of linguistic recognition.

Article 133 – Taxation Power

Title VII of the constitution pertains to economy and finance in the state and contains Article 133 that enumerates the taxation power enjoyed by the state. This article establishes that the power to establish taxes is an area of exclusive state control; the autonomous communities are able to establish taxes “in accordance with the constitution and the laws.”²³ Thus, the state exercises sole control over taxation and is therefore able to maintain again the constitutional principles of solidarity and equality by spreading the tax burden equally across Spain.²⁴ Catalunya's budget is based largely on state funds being transferred to it under the provisions of the Organic Law on the Funding of Autonomous Communities (LOFCA) of 1980. Catalunya is reliant on the state for its funds. However, the Generalitat is permitted to borrow on public credit, impose various fines, charges and surcharges, levy taxes on goods and services, and earn money from investments. There are federal aspects to this fiscal relationship, particularly its redistributive nature. However, Catalunya, unlike Canadian provinces, is not allowed under the constitution to tax income. Various agreements on taxation have been reached between the autonomous communities and the state, such as those in 1993 that established a regime by which a fixed percentage of 15% of taxes generated on a regional level were made accessible to the autonomous communities. Under pressure from Jordi Pujol this percentage was increased to 30% in 1996 when the PP government of José María Aznar was forced to concede to these demands in

²² *Spanish Constitution, 1978*, art. 3.

²³ *Ibid.*, art. 133.

²⁴ Newton, p. 125.

order to maintain nationalist support for his minority government.²⁵ The Generalitat continues to push for greater access to state tax funds that are generated in Catalunya, which would give it greater resources to develop Catalan language and culture, the welfare state, and Catalunya's infrastructure.

Article 137 – Organisation of the State

Catalunya exists as an autonomous community by virtue of the provisions of Title VIII of the Spanish constitution, which outlines the territorial organisation of the state, and through its own Statute of Autonomy. Title VIII is extensive in that it relates not only to the creation of autonomous communities but also to the position of municipalities and provinces in the organisation of the state. Since the principal concern here is with Catalunya the provisions relating to the creation of autonomous communities will be the focus.

Article 137 establishes that the state is organised into municipalities, provinces, and the autonomous communities, all of which enjoy autonomy in their respective areas of interest.²⁶ As has been mentioned, there are essentially two forms of autonomy outlined in this section of the constitution: administrative and political, both of which have been established by the Tribunal Constitucional. The provinces and municipalities are established as administrative units in articles 140 and 141, which outline their territorial relationship to each other and establish the composition of municipal councils. The autonomous communities enjoy political autonomy and considerable legislative and executive power in their areas of jurisdiction, or competences. Fossas and Pérez Francesch argue that the position of the autonomous communities in the constitution is "qualitatively superior" to that of the municipalities and provinces due to the political nature of their autonomy:

As recognised by the constitutional jurisprudence itself, autonomy is an indeterminate juridical concept that offers great scope for interpretation. Nevertheless, the Constitutional Tribunal has distinguished the purely administrative autonomy of the local entities (town councils and provinces), from the autonomy of

²⁵ *Ibid.*, p. 127.

²⁶ *Spanish Constitution, 1978*, art. 137.

the Autonomous Communities, which is qualitatively superior since it is **political autonomy**, given that they enjoy legislative and governmental powers that define them as such... In this sense, the Autonomous Communities are “public corporations with a territorial basis and a political nature”..., that is, territories with a state-like nature which hold juridical-constitutional power.²⁷

Indeed, in the subsequent articles of this section considerable space is given to outlining how regions and nationalities gain the status of an autonomous community, how the autonomous community should be organised, and what its competences may be.

Article 143 – Accession to Autonomous Status

Article 143 establishes which provinces may accede to self-government, how this shall be done, and in what time period. Article 143 grants the right to autonomy outlined in Article 2 to “bordering provinces with common historical, cultural, and economic characteristics, the island territories, and the provinces with a historical regional unity may accede to self-government and constitute themselves into autonomous communities.”²⁸

Initiating the process of autonomy is the responsibility of two-thirds of the municipal governments and the majority of the electorate in each province. If this was not successful within three months of an agreement on autonomy being adopted, then the process could not be attempted again until five years had passed. This was the path followed by most regions in gaining their autonomy, except Andalucía, which followed the exceptional route provided for in Article 151(1). Catalunya was able with Euskadi and Galicia to accede immediately to autonomous status as a result of transitional provision Article 2 of the constitution which recognised Catalunya's previous autonomy under the Second Republic and the establishment of the provisional Generalitat in September 1977:

The territories which in the past have, by plebiscite, approved draft Statutes of Autonomy, and which, at the time of the promulgation of this Constitution, have provisional regimes of autonomy, may proceed immediately in the manner provided in Article 148(2), when agreement thereon is reached by an absolute majority of their pre-autonomous higher collegiate organs, and the Government is duly

²⁷ Fossas i Espadaler and Pérez Francesch, p. 181.

²⁸ Spanish Constitution, 1978, art. 143.

informed. The draft statutes shall be drawn up in accordance with the provisions of Article 151(2) when so requested by the pre-autonomous collegiate organ.²⁹

Along with Euskadi, Catalunya became fully autonomous under the constitution on 31 December 1979 when the Catalan Statute of Autonomy was published in the *Diari Oficial de la Generalitat de Catalunya*; Galicia achieved autonomous status in 1981. Under the provisions of the articles contained in Title VIII there exist, as has been demonstrated, a slow and a fast route towards autonomous status. Yet despite this there is no hierarchy of autonomous communities since all can, if they so choose, ultimately reach the maximum level of autonomy prescribed in Article 148 (see Appendix A).³⁰ It is worthy of note, however, that Catalunya and the other historic nationalities that gained autonomous status through the special provision have chosen to attain the maximum level of autonomy. While Catalunya, Euskadi, and Galicia have had all the areas of competence not specifically reserved to the state by the constitution transferred to their jurisdiction, the other 14 autonomous communities have chosen not to accede to a level of autonomy beyond the minimum prescribed in Article 148.³¹ By taking maximum advantage of the provisions in the constitution regarding those competences over which it might exercise power, the Generalitat has been able to expand its influence in Catalan political life.

Article 145 – Indivisibility and Solidarity of the State

Article 145 is of particular interest in terms of how the state is able to maintain the principles of indivisibility and solidarity in that it prohibits any form of federation between autonomous communities. Further to this no agreements between autonomous communities may be entered into without the authorisation of the Corts Generals, unless these agreements relate to the administration and rendering of services or to the nature and purposes of

²⁹ *Ibid.*, trans. prov. art. 2.

³⁰ Viver Pi-Sunyer, p. 150.

³¹ *Ibid.*, p. 149.

corresponding with the Corts Generals.³² As noted by Conversi, this constitutional provision undermines any attempts by nationalist parties such as ERC to unite the Catalan-speaking nations, els països catalans, of Catalunya, València, parts of Aragón, and the Illes Balears. However, it has also contributed to the nationalist tension in Euskadi where irredentist nationalists seek a union with autonomous and culturally Basque Navarra.³³ Again, although there is a great degree of decentralisation and regionalisation, the power of the state to maintain solidarity and indivisibility is further enhanced in this article.

Articles 146 and 147 – Statutes of Autonomy

Articles 146 and 147 refer to the Statute of Autonomy and what they must contain and establishes that the statute shall be the basis on which the institutions of the community are built. Under the constitution statutes of autonomy must contain the following four elements:

- a) The name of the Community which best corresponds to its historical identity.
- b) The delimitation of its territory.
- c) The name, organization, and seat of its own autonomous institutions.
- d) The competences assumed within the framework of the Constitution and the bases for the transfer of the corresponding services to them.³⁴

The Catalan Statute of Autonomy, as is the case with all 17 statutes, builds upon this basic framework in its establishment of the Generalitat, the Catalan government, as Catalunya's chief autonomous institution. The statutes of autonomy, in delineating which competences the autonomous communities exercise power, draw from Articles 148 and 149.

Articles 148 and 149 - Competencies

These articles entrench in the constitution those competences that may be assumed by the autonomous communities and those in which the state holds exclusive jurisdiction. Article 148 lists competences that the autonomous communities may assume. These include areas that are essentially local in nature such as: organisation of institutions of self-

³² Ibid., art. 145.

³³ Conversi, p. 144.

government, housing, public works, agriculture and livestock raising, tourism within the autonomous community's territory, economic development of the autonomous community, culture and the teaching of language, and health and social assistance. Article 149 lists the areas of exclusive state competence including: international relations, defence and armed forces, administration of justice, banks and the monetary system, general finance and debt of the state, customs and tariffs, and labour legislation. In total, there are thirty-two fields of jurisdiction (see Appendix A). Any competences not specifically assigned to the state are understood to rest with the autonomous communities and as Article 149(3) states, the law of the state is to be viewed as supplementary to that of the autonomous communities:

The matters not attributed expressly to the state by this Constitution belong to the Autonomous Communities by virtue of their respective statutes. Authority over matters not assumed by the Statutes of Autonomy shall belong to the state, whose norms shall prevail in case of conflict over those of the Autonomous Communities in everything which is not attributed to their exclusive competence. The law of the state shall in every case be supplementary to the law of the Autonomous Communities.³⁵

These two articles then form the basis for the construction of the decentralised state. In many ways some very strong parallels can be drawn with both the Scotland Act, 1998 and particularly the federal aspect of the Canadian *Constitution Act, 1867*. Indeed, one notable comparison regards the issue of residuary power: in Canada it lies with the Federal Parliament whereas in Spain, as Article 149(3) establishes, it lies essentially with the autonomous communities. A question of relevance to this thesis is whether articles 143 to 149 point to the constitution being federal in nature. As has been discussed, the exact political form of the state is not explicitly given in Article 1.

The phrase 'may assume' in Article 148 has great significance for Catalan nationalists who oppose the undifferentiated character of the Spanish state. This provision in Article 148 effectively allows all seventeen autonomous communities to gain the maximum

³⁴ *Spanish Constitution, 1978*, art. 147.

³⁵ *Ibid.*, art. 149(3).

level of autonomy by exercising competence in all the listed areas of jurisdiction. Although only Catalunya and Euskadi have chosen to exercise maximum competence this article would still permit a region such as Cantabria to exercise full competence, thus placing it on the same level as Catalunya. To Catalan nationalists this possibility is intolerable as it denigrates Catalunya's status as a nation and rejects its claim to be different from the various Spanish regions who have achieved autonomous status. As argued above, the ability for all autonomous communities to reach the maximum level of autonomy has led to Catalan nationalists calling for an asymmetrical constitution that would recognise fully the differential and multinational character of Spain. The way competences are established in Article 148 is unique to the Spanish case and encourages a uniquely Spanish debate. Comparisons can be drawn with the division of jurisdictions in Canadian and British constitutional documents.

The areas of competence enumerated in articles 148 and 149 can be compared with sections 91 and 92 of the *Constitution Act, 1867* which state the provincial and federal heads of jurisdiction in Canada. If we see Article 148 corresponding roughly to section 92 in its establishment of the autonomous communities' jurisdiction in matters of a local nature we can also see similarities in how both Article 149 and section 91 establish jurisdiction in areas of a state or federal nature such as foreign relations, monetary policy, et cetera. The same can also be said of the *Scotland Act, 1998* where powers reserved to Westminster are enumerated in Schedule 5 and are matters of a general rather than local nature and thus related to the state, such as defence, foreign affairs, and fiscal and monetary policy. In another way the Spanish constitution is more similar to the Canadian constitution than to the devolution settlement in Scotland. In the United Kingdom the Scottish Parliament is not sovereign and exists by virtue of an act of Parliament at Westminster, thus preserving the

fundamental basis of the union state: parliamentary sovereignty.³⁶ The Generalitat exists by virtue of the Catalan Statute of Autonomy which emanates from the provisions in Title VIII of the Spanish Constitution, as we have seen, and is not subservient to the Corts Generals in Madrid. As in the Canadian federal state there is no hierarchy between the institutions of the state and those of Catalunya or other autonomous communities. Herein lies a federal characteristic of the Spanish constitution: power is diffuse and does not reside solely in the central state, rather the Generalitat enjoys exclusive power in its competences:

The central power of the state - as for instance, the Central Government - as hierarchical superior cannot impose its criteria on the autonomous entities in those areas that concern the Autonomous Community. In these areas the will of the least of the autonomous governments prevails over the will of the any of the central structures. And this is not because autonomous governments are in these areas superior to the central structures, but rather because they are the only structures who have the competence to decide over these areas.³⁷

While the institutions of the autonomous communities do have exclusive power in their competences, they are not exclusively sovereign in the context of a federal state since Article 2 establishes the sovereignty of the Spanish nation. Fossas confirmed the Spanish conception of sovereignty in an interview during which he argued about the distinction between autonomy and sovereignty:

The constitutional court has ruled many times that autonomy is not equal to sovereignty because just the Spanish nation is sovereign...autonomy in Article 2 is the right to become an autonomous community, it means not just this. So, when Article 2 established that nationalities and regions had the right to autonomy, here autonomy is just the right to become an autonomous community for nationalities and regions.³⁸

Many commentators who seek to analyse Spain's constitutional framework have debated the question of what kind of state it is.

³⁶ While this might be a strictly legal understanding of the Scottish Parliament's relationship to Westminster, based on Diceyan theory, the political reality is rather less clear cut. It must be remembered that the Scottish Parliament was endorsed through a popular referendum and had its genesis in a broad-based movement within Scottish civil society, all of which gave the Parliament a political legitimacy.

³⁷ Viver Pi-Sunyer, p. 157.

A Federal vs. a Regional State

It has been argued from the perspective of Spanish constitutional politics that Spain is somewhere in between a federal state and a regional state.³⁹ Without doubt there are many characteristics of the Spanish constitutional system that are federal such as the decentralisation of power, the equality of the Corts Generals, and the institutions of the autonomous communities such as the Generalitat in their respective areas of competence. Furthermore, in Article 69 the autonomous communities are given the power to designate a senator for every one million inhabitants. However, senators are elected on a provincial basis rather than on the basis of the 17 autonomous communities which would constitute a more representative, and federal upper chamber.⁴⁰ Article 162 on the organisation of the Tribunal Constitucional allows the executives, or where appropriate, the assemblies of the autonomous communities to initiate a challenge against the constitutionality of state laws and regulations.⁴¹ The autonomous communities are also allowed to initiate the process for the reform of the constitution under articles 166 and 87(2). All of these provisions point towards a strong federal current in the Spanish constitution, yet Spain is not a federal state. While most commentators would agree that the state is not federal there is not universal agreement on this point.

There are a number of key aspects that illustrate that the Spanish constitution does not establish a federal state but a rather a highly regionalised one where Catalunya and the other autonomous communities enjoy a high degree of legislative and executive power. Requejo has argued that there are eight aspects where the constitution betrays its lack of authentic federal credentials. These include constituent units, separation of powers, the

³⁸ Interview with Prof. Enric Fossas i Espadaler, Departament de Ciència Política i de Dret Públic, Universitat Autònoma de Barcelona, 12.04.1999.

³⁹ Viver Pi-Sunyer, p. 159.

⁴⁰ Spanish Constitution, art. 69.

⁴¹ *Ibid.*, art. 162.

senate, taxation, and the constitutional court.⁴² As has already been pointed out, the autonomous communities exist as secondary to the established indissolubility of the Spanish nation and the indivisibility of the national homeland; thus they are not separate constituent entities.⁴³ The Canadian federation, by contrast, is a federal union originally of Nova Scotia, New Brunswick, and the Province of Canada. With the other six provinces joining Confederation between 1871 and 1949, the Canadian federal state has arrived at its present constitution. There is enshrined in the *Constitution Act, 1867* of Canada and in other federal constitutions such as the United States and Germany a political will to unite various territories into a federation where they exist as constituent parts.

As Requejo argues, the separation and decentralisation of powers in the Spanish state is vague and leads to general confusion with a number of competences overlapping jurisdiction, between the state and the autonomous communities. For example, in the field of social assistance both the state and the autonomous communities enjoy competence with Article 149(1)(17) stating that the state holds exclusive competence in “basic legislation and economic system of social security, without prejudice to the execution of its services by the Autonomous Communities.”⁴⁴ A further example is in the field of health which is vaguely defined as both a state competence and an area of jurisdiction of the autonomous communities. Article 148(1)(21) permits the autonomous communities jurisdiction in the area of health and hygiene, yet Article 149(1)(16) gives the state competence in “external health; bases and general coordination of health; legislation concerning pharmaceutical products.”⁴⁵ The majority of Catalan nationalist parties have argued for greater transparency in the distribution of powers and for an end to overlapping and duplication.

⁴² Ferran Requejo, “Political Liberalism in Plurinational states. The Legitimacy of Plural and Asymmetrical Federalism: the Case of Spain,” in Alain-G Gagnon and James Tully, *Multinational Democracies* (Cambridge: Cambridge University Press, 2001), pp. 118-19.

⁴³ *Ibid.*, 12.

⁴⁴ *Spanish Constitution, 1978*, art. 149(1)(17)

⁴⁵ *Ibid.*, art. 149(1)(16)

In an interview, Requejo argued further that Spain has a clearly regional model and that despite the arguments made by some who favour federalism it cannot be considered a federal state.⁴⁶ Indeed, it is his contention that it is not possible to build a federal state based upon the current constitutional framework and that considerable reform would be required before a federalist model, as proposed by the PSC, could be imposed:

I think that with this constitutional framework it is very, very difficult to create a federal state, you can create a more decentralised state, that is, the process of the devolution of powers can be greater. For example the devolution of tax power to the regions, okay, but this doesn't mean that we are facing a federal state. I think different reforms need to be implemented in order to transform...even towards a classical federal state that is a symmetrical one.⁴⁷

For Requejo and many who share his views on constitutional reform within CiU the approach that should be adopted towards greater recognition of Catalunya within Spain is strongly constitutional in its approach. By this I mean it is an approach towards recognition of the nation that does not seek an overthrow of the current constitutional order as proposed by ERC and others who seek an independent Catalunya. For those in ERC the CiU approach of favouring greater autonomy for Catalunya within Spain over independence has clearly failed.⁴⁸ Speaking for ERC, Maestro agrees with Requejo when he argues that the nature of the constitution is ambiguous. The provisions of the 1978 constitution can be given a federal spin, but what they in effect amount to is a ruling out of any possibility of creating a federal state. In examining Articles 148 and 149 -the division of competences- Maestro makes the following argument:

It creates God knows what kind of state. You can read the constitution in a federal way, but that's silly. I think the constitution says that there is no way even to a federal state. Also the federal states go from the lowest level to the highest. That is what I understand from federalism, the sense of the constitution is not that. I would say the main purpose of those articles in the Spanish constitution according to, or relating to autonomy was to give a high degree of political autonomy to the three

⁴⁶ Interview with Prof. Ferran Requejo i Coll, Departament de Ciències Polítiques i Socials, Universitat Pompeu Fabra, Barcelona, 09.04.1999.

⁴⁷ Ibid.

⁴⁸ Interview with Snr. Jesus Maestro, Secretari de Política Internacional, Esquerra Republicana de Catalunya, Barcelona, 12.04.1999.

nations, and in that sense it would be an asymmetrical, decentralised, semi-federal state as far as I assume that. But, of course, those articles leave the door open to harmonisation and harmonisation of the division of powers means nought.⁴⁹

Maestro argues that if there was originally a goal of making Spain a more asymmetrical state this has clearly not been met, nor is it possible to move towards a federal state given current constitutional arrangements. As with other Catalan nationalists, Maestro is critical of how the division of powers has led to an undifferentiated, or what he terms harmonised, state where Catalunya's position is effectively harmonised with that of all the other autonomous communities. This is an untenable situation, in Maestro's view, that highlights the inherent problems with the state -problems that lead ERC to advocate the abandoning of the constitutional status quo in favour of independence. While Maestro and Requejo represent the majority view that Spain's constitution is not federal, there are constitutional experts who take a radically different approach.

The constitutional lawyer Eduard Roig argues that the Spanish constitution is federal in nature and bases his arguments on an examination of many of the same structures cited by Requejo in his criticism:

I think that this is absolutely federalism...This is a federal state with a very specific thing which is what he [Eliseo Aja] calls the differential fact which has some specific consequences for Catalunya, the Basque country, Galicia, the Canarias as well, and some other autonomies. But how this works is at the centre of the state, so we have different political centres with a normal political orientation, we have a distribution of powers warranted by the constitution, we have a constitutional court which decides on the differences. So that is a federal system. We have a constitutionally warranted financing system, fiscal system and so on.⁵⁰

Roig argues that the structures established by the constitution are federal in nature. These are the structures and arrangements that can be seen in many federal and non-federal states as discussed above in relation to the Canadian and U.K. models. What Roig does not account for, however, are two key elements of a federal system which are not present in the

⁴⁹ Ibid.

⁵⁰ Interview with Eduard Roig Molés, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 08.04.1999.

Spanish system: shared or divided sovereignty, and constituent units. As argued above by Fossas and Requejo, Spain cannot be anything but a decentralised form of regional state due to the fact that the autonomous communities exist only by virtue of the constitution and not of their own accord. In addition, sovereignty resides at the centre, in the Spanish nation, and is not shared with the autonomous communities despite their enjoying broad competences.

A further example that emphasises the non-federal nature of the Spanish constitution is the structure of the upper house of the Corts Generals, the Senate. The Senate does not exist as a truly representative upper chamber since it is not directly linked to the representation of the autonomous communities. The majority of senators are elected from the provinces, which are administrative units, rather than the political units into which the state is organised: the autonomous communities.⁵¹ In 1995, under pressure from CiU in the Corts Generals, the Senate set up a committee to look at ways of making the upper house more representative of the autonomous communities.⁵² To date little has come of this attempt at rectifying what is viewed by nationalists as an imbalance in representation. Many of those commentators interviewed see the Senate as a lost cause.

Fossas argues that a more representative Senate would not be favourable to nationalists as it would re-ignite the debate over symmetry and asymmetry within the Corts Generals:

Regarding the Senate, the Senate is completely useless. It's nothing. The Senate exists because senators want to be senators. Again, this is real politics. I think that nationalists in Catalunya and the Basque country are not interested in the Senate, this is why they are happy with the present situation. They say it's completely useless, but that's okay because it doesn't influence our politics...They think it could be worse for them to have a real, authentic Senate representing autonomous communities because they say we are not like Murcia, or Cantabria, or like Extremadura. We need special representation in a would-be Senate in the future. This is important, we are not like the others, the other autonomous communities, if one day we have a real Senate we claim for specific representation...Clearly, all the communities and clearly the central government will never agree on this point with nationalists, never, because it is impossible. They will never accept that Catalunya

⁵¹ Requejo, "Political Liberalism in Plurinational states", 12.

⁵² McRoberts, p. 75.

and the Basque country will have greater representation, more senators or different regional divisions like in Canada. Never.⁵³

Again, the inability of the state to accept a multinational Spain and the differentiation between autonomous communities that it implies is linked to the inability to reform the Senate. Fossas argues that there exists a perception in Catalunya that the Senate does not influence Catalan politics due to its not representing Catalunya as a whole. A further argument could be made that the autonomous structures of the Generalitat serve the interests of Catalans better than any reformed Senate could and that greater recognition of Catalunya as a distinct national community is best achieved by local institutions. However, Puig argues that one of the key failures of the Spanish system is that it does not provide a mechanism for horizontal consultation between the autonomous communities -a mechanism through which they could reach common positions.⁵⁴ One example of this sort of mechanism developing is the coming together of nationalist parties from Euskadi, Catalunya, and Galicia to reach common positions on approaches to constitutional reform. These are discussed below. The non-federal structure of the Senate is problematic though not seen by Catalan nationalists as a key source of grievance, whereas issues surrounding the redistribution of wealth in Spain and the structure of the Tribunal Constitucional are.

Through the provisions of Article 133 the central state enjoys the exclusive power of taxation with almost all taxes collected by the state which are then redistributed to the autonomous communities to finance the cost of maintaining all of the institutions and services which are established through the Statute of Autonomy. Navarra and Euskadi are exceptions to the rule in that they are able to levy their own taxes as a result of certain historic rights. As argued by Requejo, this is hardly a model of fiscal federalism.⁵⁵

⁵³ Interview with Prof. Enric Fossas i Espadaler, Departament de Ciència Política i de Dret Públic, Universitat Autònoma de Barcelona, 12.04.1999.

⁵⁴ Interview with Dr. Pau Puig i Scotoni and Snra. Anna Repulló, Generalitat de Catalunya, Barcelona, 08.04.1999.

⁵⁵ Requejo, "Political Liberalism in Plurinational states", 12.

Finally, there exists the constitutional court that is established in the constitution as a state institution. The court is responsible for arbitrating, among other cases, disputes over competences between the state and the autonomous communities and similar conflicts between autonomous communities. The autonomous communities have no role whatsoever in the appointment of judges to the court. This power of judicial appointment is the purview of the Corts Generals, the judiciary, and the government in particular as laid down in Article 159(1). Despite the existence of a separate system of civil law in Catalunya there is no mechanism, as in the Canadian Supreme Court and the case of Québec civil law judges, for judges to be appointed to the constitutional court with a background in Catalan civil law. In the case of the Supreme Court of Canada there is no provision for provinces to recommend nominees for appointment to the Governor-in-Council. In Canada, however, convention dictates that the various provincial bar associations are consulted and that positions on the Supreme Court bench are allocated by province with three being civil law justices from Québec. So while the federal principle is rather indirectly applied in the case of the Supreme Court of Canada, there is no such principle in the case of the Spanish constitutional court with the autonomous communities having no role to play in appointments or indirect representation on the court.

It is difficult to determine whether the state will evolve towards a fully federal system as the PSC and IC argue for from a Catalan perspective:

The territorial model included in the 1978 Spanish Constitution has evolved in very different conditions compared to those of past periods: 1) the transition from authoritarian to liberal-democratic rule; 2) the development of the Spanish welfare state; and 3) the ongoing process of European integration. The result has been the “estado de las autonomias”, a new model of fundamentally regional nature that establishes a number of sub-state self-governing regions (autonomous communities or “ACs”) based on a process of “variable geometry” determining the configuration of each.⁵⁶

⁵⁶ *Ibid.*, 11.

The constitutional structure based on “variable geometry” is problematic in a number of respects and is viewed by Catalan nationalists as restrictive vis-à-vis their goal of self-determination for the Catalan nation. Whether the existing constitutional framework has established a decentralised, regional state or some form of quasi-federal state is not so much the issue for Catalan nationalist parties; rather, it is the fact that the status quo fails to adequately reflect the reality of the Spanish state -that it is both multilingual and multinational. It is multinational in the sense that it is comprised of more than one distinct nation, as Catalunya claims to be a nation within Spain along with Euskadi and Galicia. To some degree the Generalitat acts as a force for bringing the attention of the state to Catalunya’s position within the Estat de les autonomies. Through the Catalan Statute of Autonomy Catalunya’s voice is established as one of the autonomous communities of the state. Through other legislation such as the Generalitat’s linguistic legislation, the specific Catalan goal of promoting the Catalan ‘nation’ within Spain is being largely achieved. Yet, most Catalan nationalists would argue that there is little broader recognition outside of Catalunya that it is a nation. Although most nationalists consider the current constitutional structure problematic and untenable in the long term it can be argued that it has served to augment Catalunya’s position politically and culturally.

The Catalan Statute of Autonomy

The Catalan Statute of Autonomy of 1979 is that document which establishes political power in Catalunya -political power which emanates from the above sections of the constitution. In its overall scope the Catalan Statute of Autonomy is a means to implement the requirements for the establishment of an autonomous community as laid down in the constitution. The statute is comprised of a preamble and five sections with the sections being devoted, in order, to general provisions, the jurisdiction of the Generalitat, the organisation of the Generalitat, finance and the economy, and amendment of the statute. In

Article 1 it establishes the Generalitat, comprising the Catalan parliament and the executive, as “the institution around which the self-government of Catalonia is politically organized.”⁵⁷ The position of the Generalitat as an historical institution is established in the preamble to the statute emphasising its link with the “collective freedom of Catalonia.”⁵⁸ The importance of the Generalitat as an institution with deep roots in Catalunya’s history helps to explain why it was chosen as the central institution of autonomy under the statute.⁵⁹ As required by the constitution, the Statute of Autonomy also enumerates in articles 9 to 28 the jurisdiction of the Generalitat and its areas of competence and areas of shared competence with the state. Again, these competences are essentially of a local nature such as: Catalan civil law, tourism, social welfare, sport and leisure, and language and culture (see Appendix B).

Along with nationalist calls for reform of the 1978 constitution to reflect Catalunya’s status as a nation there have also been significant demands by nationalists for an expansion of the Statute of Autonomy. The chief argument behind these demands is that the statute as it currently stands does not give Catalunya the degree of autonomy it requires to continue to develop Catalan society. Puig argues that the statute was a result of a compromise during the very difficult period of transition from dictatorship to democracy when there was little support for aggressive Catalan nationalism in the rest of Spain:

What I think is that the Statute of Autonomy was a product of compromise in a very difficult situation. And so obviously from the beginning Catalan nationalists didn’t think that it was sufficient, that it’s enough. Now we are twenty years after and of course maybe there are people now who think that there is some possibility to increase the powers, but you know it is very difficult to change the Spanish

⁵⁷ Generalitat de Catalunya, *The Catalan Statute of Autonomy, 1979* (Barcelona: Entitat Autònoma del Diari Oficial i de Publicacions, 1993) art. 1(2).

⁵⁸ *Ibid.*, Preamble.

⁵⁹ The role of the Generalitat during the Second Republic was discussed at length in chapter 3. However, the pedigree of the Generalitat as an institution of Catalan government is more ancient. The original Generalitat, or Diputació del General, was established in the 14th century as a committee of state that would negotiate with the king over the sums of money he was to have access to. By the fifteenth century the Generalitat had evolved into a political body which acted as a check on the power of the sovereign (McRoberts, p. 10).

constitution and at least our president, he is not calling for a constitutional change but a more generous reading of the constitution.⁶⁰

Again, there is a question of approach echoed in Puig's argument. Whether it is better to demand comprehensive reform of the constitution and statute or to adopt the Pujolist approach and gain greater power incrementally is a key debate among nationalists. During the years when the CiU and the moderate Basque nationalists held the balance of power in the *Congrès dels Diputats* in Madrid Pujol was able to gain more powers for Catalunya in return for supporting the government. Since the 2000 general election CiU no longer holds a balance of power and Aznar is no longer beholden to Pujol for support. It could be argued that this could lead to a shift away from the Pujolist approach towards one that seeks constitutional reform instead of incremental devolution. One area of competence that has benefited from Pujol's approach and is of particular concern to the Generalitat is its jurisdiction over language.

In the area of language the statute in Article 3 states that "the language proper to Catalonia is Catalan" and that "Catalan is the official language of Catalonia, as is Castilian, the official language of the whole of the Spanish state."⁶¹ As previously stated, the position of the Catalan language is of primary importance to the Generalitat and to Catalan nationalists in general; the official place of Catalan as the 'national' language is enshrined in the 1983 *Llei de la normalització lingüística de Catalunya* (Law of Linguistic Normalisation of Catalonia). This legislation has since been updated and expanded in the 1998 *Llei de política lingüística*. It is the earlier provisions that will be examined as they were the first to bring about normalisation of the use of Catalan in Catalunya.

⁶⁰ Interview with Dr. Pau Puig i Scotoni and Snra. Anna Repulló, Generalitat de Catalunya, Barcelona, 08.04.1999.

⁶¹ Generalitat de Catalunya, The Catalan Statute of Autonomy, 1979, art. 3.

Linguistic Legislation

While the Statute of Autonomy contains no mention of the terms ‘nation’ or ‘national’ in keeping with Catalunya’s identity within the Spanish nation as an historic ‘nationality’, the 1983 language legislation is explicit in its use of ‘nation’ to describe Catalunya and makes a definite link between Catalan as a language and the nation. While Article 3(3) gives Castilian equality of status with Catalan in Catalunya and Article 6(1) alludes to the civic nature of Catalan nationalism through its granting the political status of Catalans to all Spanish citizens resident in Catalunya, the historical link between nation and language is of paramount importance. Despite the provision granting linguistic equality many Castilian-speaking immigrants have felt discriminated against, particularly when it comes to the language of instruction in school.⁶² In many ways the Law of Linguistic Normalisation of Catalunya performs the same functions and has the same role as the *Charte de la langue française* of Québec which established in 1977 the goal of normalising the use of French in all sectors of Québec society. In both the Québécois and the Catalan cases the need to promote the national language is a focus of the legislation. For Catalan nationalists the nation cannot exist without the language:

In fact, our land and our language form an inextricable whole. Our language does not make sense without the land. But the land would not make sense either without the language that belongs to it... Yes: one can only completely understand a country if one knows its language.⁶³

These sentiments are expressed equally forcefully in Catalunya’s language legislation. The preamble to the linguistic normalisation law recalls the loss of Catalan’s official status to Castilian in the eighteenth century and all of the subsequent persecutions of the language through to the period of Franco’s dictatorship. As will be shown, there are provisions in the legislation for bilingualism giving Castilian legal equality with Catalan. However, this

⁶² For greater background on Castilian speakers opinions of bilingualism in Catalunya see chapter 7 “The Catalan Language: The Politics of ‘Normalisation’” in Kenneth McRoberts, *Catalonia: Nation Building Without a state* (Toronto: Oxford University Press, 2001).

equality is purely legal since it is the clear intention of the legislation to establish Catalan as the first language of Catalunya and to further its development.

In what could arguably be termed a paradoxically ethnic call to link the nation with the soil, the preamble declares that Catalan is the mother tongue of the nation and at the same time calls upon all Catalans to advance the cause of the national language. It is worth quoting at some length:

The Catalan language, an essential element in the formation of Catalonia, has always been the nation's mother tongue and natural vehicle of communication, as well as the symbol of a cultural unity with deep historical roots. Besides, it has always been a witness to the fidelity of the Catalan people to their land and specific culture. Finally, it has served very often as an instrument of integration, enabling every citizen of Catalonia, regardless of geographical origin, to participate fully in our peaceful coexistence...The restoration of Catalan to its rightful place as Catalonia's own language is the unquestionable right and duty of the Catalan people and must be respected and protected. In this regard, knowledge of the language must spread throughout the whole of Catalan society, to all citizens regardless of the language they normally speak, within a global framework in which everyone will accept the use of both languages and recognise and contribute to the recovery of Catalan as one of the fundamental aspects of the reconstruction of Catalonia.⁶⁴

The wording of the language legislation does appear to imply an ethnic identification of the Catalan nation based upon the use of the Catalan language, the "mother tongue". It can be argued that this linguistic conception of the nation goes against a civic conception of the nation that CiU has worked to promote in which all residents of Catalunya are Catalans.⁶⁵ Aguilera de Prat has argued that understanding Catalan nationalism as either civic and ethnic is too simplistic an understanding and that there are many layers to a nationalism that is essentially inclusive and civic: "Catalan nationalism is, in general, a civic nationalism but with certain ethnic ingredients. Pujol dwells continually on the linguistic question because in his view the Catalan language is the great identifying element of the nation."⁶⁶ The

⁶³ Joan M. Pujals, *Les noves fronteres de Catalunya* (Barcelona: Columna Edicions, 1998), p. 79.

⁶⁴ Generalitat de Catalunya, *Law 7/1983, of 18 April, of Linguistic Normalisation of Catalunya* (www.troc.es/mercator, 2000), Preamble.

⁶⁵ McRoberts, p. 67.

⁶⁶ Interview with Prof. Cesáreo Aguilera de Prat, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 12.04.1999.

importance of the Catalan language to nationalists cannot be underestimated and as Aguilera de Prat argues it should not be viewed strictly as an identifier of ethnicity, rather as tool that serves to identify the nation within the Spanish context. The Catalan language, it could be argued, enables the high degree of differentiation and recognition that Catalunya seeks as a nation but which is not afforded to it by the constitution. Nationalists see the linguistic legislation as promoting Catalan as a national language in which all Catalans can share.

Article 1 of the law declares the intent of the legislation to make use of the Catalan Statute of Autonomy to bring about the normalisation of the use of Catalan “in all spheres, and to guarantee the normal and official use of Catalan and Castilian.”⁶⁷ Further provisions are contained in Articles 2 through 4 outlawing discrimination against citizens in Catalunya for using either of the official languages. The specific goals of the legislation are enumerated in Article 1(2): “a) To promote and protect the use of Catalan by all citizens. b) To make effective the official use of Catalan. c) To normalise the use of Catalan in all communication media. d) To ensure the spread of knowledge of Catalan.”⁶⁸ The use of Catalan is also standardised in all institutions of the Generalitat. To ensure the development of Catalan the language is declared to be the language of education at all levels in Section II of the law, although fluency in both Catalan and Castilian is expected of all children upon completion of their education.⁶⁹ It is worthwhile noting the extent to which the use of Catalan has been normalised within Catalunya and whether it can truly claim to be the language of the nation in terms of the number of native speakers. If statistics related to language are analysed it appears that the linguistic legislation of the Generalitat has had the desired effect.

⁶⁷ Generalitat de Catalunya, Law 7/1983, of 18 April, of Linguistic Normalisation of Catalunya, art. 1(1).

⁶⁸ *Ibid.*, art. 1(2).

⁶⁹ *Ibid.*, art. 14(4).

If we look at data on Catalan language competence between 1991 and 1996 it is possible to see an improvement in the status of the language.

Table 6.1 – Competence in the Catalan Language

	1991 (%)	1996 (%)
Understand Catalan	93.8	94.9
Speak Catalan	68.3	75.3
Read Catalan	67.6	72.3
Write Catalan	39.9	45.8

Source: Generalitat de Catalunya, "Coneixement de la llengua catalana" (www.cultura.gencat.es, 2000), p. 3.

What is most notable is that in the 5 to 24 age group, those who have no real experience of Catalunya prior to the democratic transition language competence is even higher: 98% of those between 5 and 24 understand Catalan; 90% of those between the ages of 10 and 24 speak it; 90% between the ages of 10 and 24 can read it; and 87% between 10 and 19 can write Catalan.⁷⁰ Increasingly, the link between language and nation is second nature as the use of Catalan becomes normalised throughout Catalunya.

Promotion of Multinationalism

One of the fundamental problems Catalan nationalists have with the conception of the Spanish state is its rejection of the multinational and multilingual character of Spain. As Article 2 clearly states, the constitution is based upon the existence of a Spanish nation -one nation, that is indivisible and indissoluble and co-terminous with the territory of the state. The 1978 constitution, in creating a decentralised regional state based upon vague autonomy criteria, has maintained a strong unitarism.⁷¹ The failure to give constitutional recognition to the existence of multiple nations within the state is a typical response by the central power in liberal-democratic states rooted in nineteenth-century conceptions of how a state should be organised. As Requejo argues, liberal-democratic states aim to build a uniform identity, whether national or imperial, that rejects any non-state nationalisms as both emotive and

⁷⁰ Ibid., p. 4.

particularistic.⁷² Ultimately, the state will fail to recognise the claims made by minority national entities and will persevere with building a state-oriented nationalism that rejects any form of cultural difference.⁷³ It has been argued by other Catalan nationalists that what lies at the heart of the constitution is a further attempt to build a homogenous state nationalism:

The failure of Spain as a nation is the failure of the liberal state to produce a homogeneous community that did not correspond naturally with a heterogeneous reality, not only of languages and cultures but also of mentalities and rhythms of economic development.⁷⁴

The failure to recognise the diverse nature of the state has led Catalan nationalists of various political stripes to call for a reform of the autonomic state so that at all levels there may be a recognition of Spain's multinational character.⁷⁵ The differing conceptions of the state held by Madrid and by Barcelona lie at the centre of the constitutional debate with the former embracing a statist model and the latter a pluralistic, multinational model:

The autonomic state is a model characterized by a 'regionalising' logic rather than by a genuinely federalist one. We can say that it is a model that turns out to be more 'open' by lack of definition than by real will. But, in any case, to decentralise a state is not the same as articulating the different national entities that exist together inside it. In this case 'self-government' is not equivalent to 'more competences'. The list of these could be augmented and, in spite of it [autonomy], the 'unease' of minority national identities would persist because the recognition and the broader development of their cultural specificity is not being established in an effective and concrete manner.⁷⁶

The argument then follows that the so-called Catalan problem can only be resolved by extending the regional state to one that is not based merely on the decentralisation of power, but rather on the acknowledgement of multinationalism through a federal or some other form

⁷¹ Ferran Requejo, *Zoom polític: Democràcia, federalisme i nacionalisme des d'una Catalunya europea* (Barcelona: Edicions Proa, 1998), p. 152.

⁷² Ferran Requejo, "Diferències nacionals i federalisme asimètric," in *Federalisme. per a què? L'acomodació de la diversitat en democràcies plurinacionals* (Barcelona: Edicions l'Hora del Present, 1998), p. 52.

⁷³ Ferran Requejo, "Political Liberalism in Plurinational states," 2.

⁷⁴ Pujals, p. 89.

⁷⁵ 'Autonomic state' is a translation of the Catalan 'Estat de les autonomies', or the Castilian 'Estado de las autonomias', which is used to define the current Spanish state system.

⁷⁶ Ferran Requejo, "L'Acomodació "federal" de l'estat plurinacional espanyol," in *Federalisme. per a què? L'acomodació de la diversitat en democràcies plurinacionals*, p. 164.

of relationship. Catalunya's nationalist parties address the problems that lie in the way the state is organised and the lack of full recognition given to Catalunya as a constituent nation. The parties aim in their programmes drawn up at party conferences and in their election manifestos for the Catalan Parliament, the Corts Generals, and the European Parliament to articulate visions for reforming the autonomic state. All parties have as their aim the recognition and development of Catalunya as a nation. However, their means of achieving this are diverse and range from the gradualist approach of CiU to the republicanism and independence-centred approach of ERC. The following section will examine the views of nationalist parties towards the constitution and the changes that they have proposed.

Nationalist Parties' Arguments

Catalan nationalism as a political force is non-violent and unlike the more militant Basque nationalists works within the institutions of civil society to bring about a greater recognition of Catalunya as a nation.⁷⁷ While the five parties under investigation, UDC, CDC, PSC, ERC, and IC-Verds are all nationalist in orientation, they differ largely in their approaches to achieving Catalan self-determination and promoting a multinational Spain. They also differ in terms of how strong their links are to state parties with the PSC being affiliated to the Spanish socialist party, the Partido Socialista Obrero Español (PSOE), and IC being linked with the Green Party or Verds after having established a formal coalition between the two parties in Catalunya in 1987.

Pujolism

Convergència Democràtica de Catalunya (CDC) has been in coalition with Unió Democràtica de Catalunya (UDC) as Convergència i Unió (CiU) since 1979. CDC existed prior to this date as a social-democratic party and then moved towards the centre after deciding to join with the Christian democratic UDC, which was in danger of being subsumed

⁷⁷ Miquel Caminal, *Nacionalisme i partits nacionals a Catalunya* (Barcelona: Editorial Empúries, 1998), p. 161.

by CDC.⁷⁸ CiU under the leadership of Jordi Pujol has been in power in Catalunya for the last twenty years and as a result its brand of Catalan nationalism and consequently the approach taken by the Generalitat towards the central state has come to be labeled as Pujolism. Pujolism is centrist in its ideology and gradualist in its approach, and this is evident in party manifestos. It emphasises the importance of Catalan civil society and national institutions:

Pujol argued as Prat de la Riba did when he pointed out the great importance of the Mancomunitat if only because it represented institutional recognition of Catalunya, is not concerned about Catalunya being 'more of a state'; though he would be concerned if Catalunya would become 'less of a nation'. And the institutions (not only the institution of the state) are those which make the nation. The family, school, work, associations, unions, parties, and so on as long as they identify with the common goal of constructing a country, they constitute an inter-institutional society that recognises itself and takes up a singular identity different from others.⁷⁹

To get a clearer understanding of what CDC stands for apart from UDC an analysis will be made of the party statutes and programme approved by the tenth party congress held at l'Hospitalet de Llobregat in November of 1996. The speeches of Jordi Pujol and other CDC leaders such as the former secretary-general of the party, Pere Esteve, are also useful for analysis and enlightening in terms of outlining party strategy and ideology.

Convergència Democràtica de Catalunya

The statutes of CDC outline the structure of the party, its discipline, and also its basic goals. In the 1996 party statutes there are five objectives listed to be met if the party is to move towards the realisation of a country (the term *el país* is employed here rather than *la nació*). The five objectives are stated as the following: a) the drive towards the exercise of full national sovereignty; b) the drive to achieve a balanced country; c) the drive to protect and improve the environment; d) the drive to consolidate the Catalan Countries; e) the drive towards mutual help and respect amongst all nations and regions that constitute the Spanish

⁷⁸ Albert Balcells, Catalan Nationalism: Past and Present (London: Macmillan Press Ltd., 1996), p. 174.

⁷⁹ Caminal, p. 164.

state; f) the drive to construct the Europe of the peoples.⁸⁰ The impulse to exercise full national sovereignty is a core aim of CDC.⁸¹ As with the other nationalist parties CDC places emphasis on the importance of building a national community, a community with historic roots. The conception of a national community is extended in the fourth party objective which calls for greater cooperation with the other Catalan-speaking areas of Spain in economic, social, political, cultural, and linguistic fields while at the same time respecting the uniqueness of each community, including València, les Illes Balears, and parts of Aragón. Unlike ERC, CDC does not embrace a political pan-Catalanism that urges the creation of an independent Catalan republic that would unite all of the Catalan lands, including the Catalan-speaking region of southern France. One of the most important objectives of CDC is the principle of mutual assistance and respect among all the various regions and ‘nations’, not nationalities, which make up the Spanish state. This objective is based upon the party’s argument for the recognition of Spain’s linguistic and national communities: “CDC has contributed to maintaining fully democratic governmental forms and must continue to progress in the recognition of our identity in a pluri-national, pluri-cultural and pluri-linguistic state.”⁸² CDC is a nationalist party that works within the Spanish state to promote the Catalan nation’s right to self-determination. It is a party that emphasises the importance of an institutional framework for advancing its goals. This, of course, is an approach that has worked for CDC in its coalition with UDC since it has been able to have a tremendous influence on the development of Catalunya’s political, social, economic, and linguistic culture during its twenty years of unbroken control of the Generalitat.

The fundamental objectives of the party that have been briefly discussed in the CDC statutes are more fully developed in the party’s programme adopted at the tenth congress in

⁸⁰ Convergència Democràtica de Catalunya, Estatuts. Aprovats al X Congrés, celebrat a l’Hospitalet de Llobregat els dies 8, 9, i 10 de novembre de 1996 (Barcelona: CDC, 1996), títol preliminar.

⁸¹ Ibid.

⁸² Ibid.

1996 and in two speeches by party leaders, one delivered by Jordi Pujol in March 1999 on political power in Catalunya and another recent one given by Pere Esteve on what the future holds for Catalunya. In the 318-page party programme, *Convergència: La força decisiva per a Catalunya*, CDC's position on a myriad of issues, including the position of the nation, reorganisation of the state, Catalunya in Europe, fiscal arrangements, and reform of Catalan local administration, is presented. The premise for much of the party's programme is that the twenty-first century will be a period of change in Catalunya, Spain, and Europe which will be characterised by an acceptance of the multinational nature of the Spanish state where Catalunya's claim to nationhood will be accepted:

Convergència believes that the time for recognition has arrived. The time for recognising Catalunya's national character within the supranational European and state frameworks in which it participates. Let the concepts of 'nation' when referred to Catalunya, and 'pluri-national' when referred to the Spanish state become facts, realities.⁸³

CDC argues that what is hindering this greater recognition is first of all the unwillingness of the majority of Spaniards to accept the idea of Spain as a multinational state as a result of central government attitudes to the contrary.⁸⁴ Requejo argues that the 1978 constitution provides a very poor framework for the recognition of a degree of multinationality within the state:

Nevertheless, in spite of all these and other merits shown in the present understanding of the constitution, with the same vigour it can be affirmed that it is not a good constitution to articulate a pluri-national state. The fact is that it does not recognise the national pluralism of the Spanish state, and, moreover, it dilutes the regulation of this pluralism into mere decentralisation, which is generalising and uniformising in character.⁸⁵

Thus, CDC argues for a fundamentally new conception of the organisation of the state that is 'bottom-up' rather than 'top-down' and recognises to a much greater degree the role of the

⁸³ Convergència Democràtica de Catalunya, *Convergència: La força decisiva per a Catalunya* (Barcelona: CDC, 1996), p. 20.

⁸⁴ *Ibid*, p. 25.

⁸⁵ Requejo, *Zoom polític: Democràcia, federalisme i nacionalisme des d'una Catalunya europea*, pp. 154-55.

state's constituent parts. Furthermore, the party calls for a more active approach towards pushing for the recognition of nations within the state and Catalunya's own identity. This can be accomplished constitutionally through a variety of different measures. Catalan national identity can be better promoted within the state through the following means: senate reform, asymmetry and multinationality, a pact with the state, and a role in international affairs. Greater political power can be achieved by reforming the system of state finance, expanding the Generalitat's areas of competence, and reforming institutions.⁸⁶

CDC proposes the negotiating of a pact with the state: the *Pacte d'Estat*. This pact would take the form of a constitutional amendment that would extend the constitution by entrenching a clause that gives an explicit meaning to the concept of Catalan national identity: "The content of the pact, naturally should be the recognition of Catalunya's national identity and, consequently, of the Spanish state as truly pluri-national state."⁸⁷ It is anticipated that this pact would be the centrepiece of a programme of constitutional reform of the state.

The party's proposals to reform the Senate illustrate CDC's acceptance of the doctrine of asymmetry within the state, that being the differentiation between nationalities and regions. This would further the assertion of Catalan nationalists that Catalunya is a nation within a multinational state, not merely a nationality within a homogenous state. As has been noted previously, the provisions of Title VIII of the constitution on territorial organisation actually contribute to symmetry among the autonomous communities since all are able to gain the maximum number of competences allowed in Article 148 if they so choose. The proposals for Senate reform would turn the upper chamber of the Corts Generals into a territorial chamber that would reflect the asymmetry that exists between regions and nationalities. The proposals are for:

⁸⁶ Convergència Democràtica de Catalunya, *Convergència: La força decisiva per a Catalunya*, p. 28.

⁸⁷ *Ibid.*, p. 29.

- a) a Senate elected on the basis of autonomous communities, not provinces;
- b) a Senate where the composition is based on the national asymmetry of the state while reflecting demographic criteria;
- c) the Senate to have specialisation in matters pertaining to political autonomy and territorial legislation;
- d) the use of all official languages in Senate debates;
- e) the introduction of a veto for the Senate in questions which affect the national characteristics of those nationalities represented in the chamber.⁸⁸

Again, the primary goal of these reforms is to bring about a recognition of the asymmetrical, multinational, and multilingual character of the state.

In the field of international relations the party calls for the establishment of mechanisms which would allow for the greater participation of representatives of the Generalitat in supra-state bodies. This would include direct Catalan participation in EU bodies and cultural organisations such as UNESCO where at present Catalunya is represented indirectly by state nominees. The ultimate goal is to promote the greater international recognition of Catalunya.⁸⁹

In the connected fields of competences and financial arrangements between the state and Catalunya, CDC proposes a substantial reordering and restructuring as a means to bring about true and greater self-government. Among other proposals, the party's programme calls for an end to the excessive regulation imposed by the state's organic laws and basic laws which play a central role in determining competences; they are viewed as centralising instruments of state power.⁹⁰ CDC also perceives the judiciary as a centralising force since it maintains a rigidly centralised structure. To help remedy this the party calls for the establishment of a Consell del Poder Judicial Català (Catalan Council of Judicial Power) which would be appointed by the Generalitat and would have jurisdiction in judicial matters within Catalunya.⁹¹ This would expand the executive and legislative power already decentralised to Catalunya to include judicial power as well. This is curiously the reverse of

⁸⁸ Ibid., p. 31.

⁸⁹ Ibid., pp.31-32.

⁹⁰ Ibid., p. 33.

what existed in Scotland prior to the passage of the *Scotland Act, 1998* where only administrative and judicial power, and not legislative power, had been devolved through the Scottish Office. Further demands are also made on the state in these fields to respect the principle of exclusive competence and thereby restrict state interference in matters under the jurisdiction of the Generalitat.⁹² There are other areas in which CDC calls for the Generalitat to exercise competence, and these are discussed further in the party's election manifestos.

Much of what was presented in CDC's party programme of 1996 has been reinforced in the past four years by speeches of the party leaders. Jordi Pujol, in a speech entitled "The Political Power of Catalunya: an Instrument for the Service of Citizens", argues in favour of constitutional reform, particularly of Title VIII, which would help to meet some of the concerns held by Catalunya and Euskadi.⁹³ Pujol reiterates the centrist, gradualist, and moderate approach adopted by CiU in his calling for reform of the constitution within the context of the state. There is no call here for revolutionary changes in the state or for Catalunya's abandoning of it. On the contrary:

The Constitution was and must continue being a fundamental pact of co-existence. Co-existence of citizens and people who constitute Spain... The combination of re-reading the Constitution with a reform or a reinterpretation of the Statute [of Autonomy] in agreement with this re-reading and to modify a long list of laws that have been reducing the autonomous competences in a way not necessarily implied in the Constitution, allows for many substantial changes.⁹⁴

Pere Esteve, in a speech on the future of Catalunya within the Spanish state and the European Union, calls for the adoption of a multinational model in Spain and in the EU that allows each nation to exercise its collective right to self-determination. In touching upon language and culture, symbols and institutions, competences, fiscal arrangements, and

⁹¹ Ibid., p. 34.

⁹² Ibid., p. 33.

⁹³ Jordi Pujol, "Discurs del president Pujol: 'Poder polític de Catalunya: un instrument al servei dels ciutadans'. ESADE, 1 de març de 1999" (www.convergencia.es, 2000), p. 1.

⁹⁴ Ibid., pp. 3 & 5.

international relations, Esteve suggests the adoption of a new cooperative model that would further promote Catalan self-determination:

Precisely concerning the achievement of the aimed goals, we must say that, already in the introduction, we distinguish two different strategies. The first is to negotiate with the central government certain elements in a series of competences which will aim to reinforce Catalunya's self-government. But there is also a second more important strategy that comes from the new framework, from the new model, from the new horizon. Naturally, this second strategy goes beyond particular negotiations and it requires creative work in an appropriate climate in order to make this proposal effective; particularly concerning increasing the national conscience of Catalunya's citizens and, also, through the complicity of Catalan political parties.⁹⁵

The focus is again on reforming the system from the inside and continuing to develop a national conscience among Catalans. From Esteve's perspective, it is through the political parties that much of this can be achieved. Indeed, CDC has often put forward the argument that it has motivated the national conscience and has guaranteed the survival of Catalunya over the long run.⁹⁶

Unió Democràtica de Catalunya

The views of CDC and the doctrines of Pujolism have guided the strategy of CiU as a coalition, due in large part to that party's greater popularity among voters and as a result of the towering presence of Jordi Pujol in Catalan nationalism. Unió Democràtica de Catalunya has the role of junior partner in the coalition. UDC is a smaller nationalist party which, like CDC, embraces a moderate and gradualist position somewhere between Pujolism and the federalism of the left; it is ideologically rooted in the principles of Christian democracy.⁹⁷

The party documents of UDC express a stronger ideological focus than one finds with CDC.

The political ideology of UDC is shaped by a dual emphasis on humanism and nationalism:

As a humanist association, the person and his dignity is for us the first point of reference for our political activity. The person has the right to develop his moral capacity and capacity for spiritual growth and he should neither be considered as a gear subjected to society nor as an isolated individual without common links to other citizens. On the contrary, family and nation are the natural communities in which the

⁹⁵ Pere Esteve, "Per un nou horitzó per a Catalunya" (www.convergencia.es, n.d.), p. 2.

⁹⁶ Caminal, p. 165.

⁹⁷ *Ibid.*, p. 166.

person completes his development and within which the person can exercise and assume his freedom, his creativity and his responsibilities.⁹⁸

The communitarian ideology of UDC fits well together with CDC's emphasis on the importance of institutions, such as the family, in the construction of a Catalan identity. The ideologies of Pujolism and UDC's personalism and Christian humanism come together in the coalition of CiU, literally "Convergence and Union."

Convergència i Unió

Since 1980 the two parties have fought elections together at all levels of government, electing members to the Parliament of Catalunya, the Corts Generals, and the European Parliament. In each of the recent elections to these governing bodies CiU has put its gradualist and moderate strategies into practice. The coalition's manifesto for the elections to the Catalan Parliament in late 1999 called for the gradual transfer of more competences to the Generalitat, thereby facilitating greater autonomy. This would include changes in the following fields of jurisdiction:

- 1) In administration, particularly in the areas of judicial procedure and function, to allow the simplification of administrative procedure;
- 2) in the economic field, the augmentation of competence in industry, agriculture, tourism, fishing, commerce, and stockbreeding and in the socio-economic field greater control over cooperatives; credit, savings banks, and professional associations;
- 3) in public security; and
- 4) in education, where the platform calls for exclusive competence in educational matters.⁹⁹

In the party programme passed at the tenth CDC party congress in 1996 there are further calls made in the coalition manifesto for the decentralisation of the judicial system and the establishment of the Tribunal Superior de Justícia de Catalunya as the court of first instance so that all cases which originate in Catalunya can be heard in Catalan courts.¹⁰⁰ Vis-à-vis Europe, CiU seeks in their electoral programme the representation of Catalunya in European

⁹⁸ Unió Democràtica de Catalunya, "Estratègia i Política" (www.unio.es, 2000), p. 1.

⁹⁹ Convergència i Unió, Catalunya, primer: Programa electoral. Eleccions al Parlament de Catalunya 1999 (Barcelona: CiU, 1999), pp. 34-36.

institutions for the purpose of advancing the nation's interest in supra-state bodies: "The external promotion of Catalunya is indispensable nowadays in order that it be able to defend its interests by itself in a social and economic context that is becoming increasingly international and global."¹⁰¹ In the recently held elections for the Corts Generals, the coalition held to the same strategy of demanding the expansion of Catalunya's competences in various economic and administrative areas. However, in CiU's electoral programme the status quo within the state is attacked much more vociferously and it is repeatedly pointed out to voters that the autonomic state is insufficient and needs to be reformed to better reflect the multinational nature of the state and Catalunya's position within it:

The present model of the autonomic state has several shortcomings: shortcomings concerning the development of competences, as well as concerning the obvious deficiencies of our financial system in which the result is clearly the fiscal discrimination against Catalunya by the Spanish state. There are other shortcomings concerning the idea of Spain as a plural state, where it should be possible to recognise the diverse realities that are present within it...¹⁰²

The need for greater asymmetry within the state, a greater recognition of Spain's multinationality, an expansion of autonomy, and greater Catalan representation in international fora are the goals of CiU. It is important to emphasise that the coalition seeks to implement this programme through constitutional means, working with the central government and organs of the state to achieve a radical reorientation of the Estat de les autonomies. This reorientation would represent a further evolution of the liberal-democratic Spanish state into a more pluralistic and diverse one.

¹⁰⁰ Ibid., p. 32.

¹⁰¹ Ibid.

¹⁰² Convergència i Unió, *La força positiva: Programa electoral per a les eleccions a Corts Generals 2000*. (Barcelona: CiU, 2000), p. 22.

Partit dels Socialistes de Catalunya

The other major contender for government in Catalunya, and CiU's principal adversary, is the Partit dels Socialistes de Catalunya which is directly affiliated with the Spanish socialist party. They are known officially in Catalunya as PSC-PSOE but will be referred to here as PSC. PSC is a democratic socialist party of the left that reluctantly embraces Catalan nationalism and like CiU seeks to work within the state to promote greater autonomy for Catalunya. The ideology of PSC-PSOE is one that embraces a federal solution for Spain and Catalunya; it is an ideology where federalism comes before nationalism:

The Catalanism of PSC emphasises the federalist project rather than nationalism, though without putting aside 'Catalunya's national rights'. It is a Catalanism that not only links the democratic and socialist project in Spain with the fulfillment of Catalunya as a nation but also makes them dependent on each other.¹⁰³

The party's platform for the 2000 elections to the Corts Generals cites the examples of how other countries in Europe such as the United Kingdom and Italy are devolving power and how Spain is a model of a state which moved from dictatorship that did not recognise cultural and linguistic diversity to a federalising one which values the idea of unity and liberty.¹⁰⁴ The PSC believes that Catalunya is stronger when it works with the other peoples of Spain towards the same goal: a further evolution of the state towards a more federal Spain. The party's federalism emphasises the need to recognise within the state linguistic and national diversity and to recognise Catalunya as a nation:

Twenty years later, it is fair to expect an explicit recognition as a nation reflected in the definitive acceptance of historic nationalities, as well as in the writing and application of basic laws, in the basic functioning of the democratic state, in the great strategic options, and in the positive assumption of linguistic and cultural diversity.¹⁰⁵

The PSC proposes in its manifesto four types of federalism: political, fiscal, cultural, and judicial. Political federalism consists of two proposals: reform of the Senate and the

¹⁰³ Caminal, p. 170.

¹⁰⁴ Partit Socialistes de Catalunya, Per repartir el progrés: El programa dels socialistes catalans per a Espanya (Barcelona: PSC, 2000), p. 10.

establishment of a Catalan presence in European institutions. In terms of Senate reform the party embraces many of the same ideas as CiU, such as calling for the Senate to be transformed into a truly representative chamber that allows for territorial representation based on Spain's multinational character; thereby becoming an expression of the federal nature of the state. A reformed Senate would also be the chamber of first reading for all bills related to the autonomous communities and should have as its responsibility the protection of the multinational reality of Spain. The PSC does not, however, propose that the Senate should have any power of veto in matters relating to the autonomous communities, as does CiU. Furthermore, in embracing the principle of subsidiarity provision would be made for Catalunya's representation alongside the state in European institutions insofar as matters discussed at the European level relate to Catalunya's areas of competence.¹⁰⁶

The proposals relating to fiscal federalism are founded upon the principles of solidarity, autonomy, and equality. The PSC supports the idea of granting the Generalitat a greater role in the administration of the taxation system through the Agència Estatal de la Administración Tributaria, which is the state body responsible for tax affairs. Furthermore, it entails that an essential portion of the Generalitat's expenditures be derived directly from taxes paid by Catalan citizens. This would mean embracing a model of fiscal federalism similar to that of Canada and other federal states.¹⁰⁷

The cultural federalism proposals deal directly with the need to recognise Spain's plurality of languages and cultures. The PSC makes the following proposals:

- the explicit constitutional recognition of cultural and linguistic plurality in Spain; the use of the four languages in the Senate and in other areas, as well as in all personal identity documents and collective symbols;
- the expression of Hispanic plurality in schools' curriculum and in the politics of public broadcasting;
- the teaching of the common history of the Spanish peoples;

¹⁰⁵ Ibid., p. 11.

¹⁰⁶ Ibid., p. 12.

¹⁰⁷ Ibid.

- a federal conception of the Ministry of Culture as the ministry of cultures, with special attention to the promotion of the four languages and the diverse cultures of the state, in close collaboration with the Autonomous Communities; and
- participation of the representative autonomous governments of the four languages in the representation of Spain in European and international organisations of co-operation, together with the goal of moving towards the politics of conservation and promotion of cultural plurality.¹⁰⁸

In making reference to the four languages the PSC is referring to Castilian, Catalan, Basque, and Galician. Provisions are also made, as is the case in CiU policy, for the protection and promotion of Aranese, which is a minority language similar to Occitan spoken in the Vall d'Aran in Catalunya's northwest. Along with these provisions relating to how the multilingual and multinational character of Spain can be institutionally promoted there are also a number of proposals which explore the details on how this could be funded. The PSC's cultural federalism has both a federal and a nationalist element. The federal element exists in the party's desire to federalise cultural institutions so that the various autonomous communities can work in collaboration with state bodies. The nationalist element lies in the desire to promote national languages, not only in their respective autonomous communities but also across a federal Spain through a plan of constitutional reform and educational development.

The PSC's judicial federalism is similar in many ways to the judicial reforms proposed by CiU. To bring about a greater federal element in the judicial system, the PSC argues that it would be necessary to integrate into the constitution a different and decentralised judicial system since, as argued by the PSC, the process of decentralisation begun in 1978 has passed by the judicial branch of government.¹⁰⁹ The two most important proposals here are to transfer to the Tribunal Superior de Justícia de Catalunya (the Catalan high court) competence in civil and administrative law as the court of second instance and to create the Comissió de Justícia de Catalunya. This latter body would be responsible for

¹⁰⁸ Ibid., p. 13.

¹⁰⁹ Ibid., p. 14.

some of the competences related to the administration of Catalan justice, which is at present largely the responsibility of the state body which governs the judiciary: the Consell General del Poder Judicial. The Comissió would then work together with the Tribunal Superior de Justícia de Catalunya and the Catalan Parliament in administering justice in Catalunya.

As we can see, the PSC and CiU hold many of the same aims in common: the promotion of a multinational and multilingual state and the promotion of greater autonomy for Catalunya. While CiU aims to achieve these principal goals through the promotion of an intrinsically nationalist agenda and through asymmetrical arrangements with the central power, the PSC favours the evolution of Spain into a federal state. The third Catalan nationalist party, Esquerra Republicana de Catalunya (ERC), rejects both of these approaches.

Esquerra Republicana de Catalunya

ERC is a socialist party that supports the independence of Catalunya from Spain and the creation of a Catalan socialist republic among the Catalan-speaking lands, els països catalans.¹¹⁰ It was ERC that emerged as the dominant nationalist party of the left in the years leading up to the proclamation of the Second Republic in 1934; the party itself was founded in 1931. In its declaration of ideology ERC emphasises territorial solidarity, the need to protect cultural and linguistic traditions, and the right to economic and political sovereignty. These rights, it argues, can only be achieved without the interference of an external power, and thus ERC asserts the following right:

The right to create in its territory the centre for political, cultural and economic decisions, and the right to be independent of any external body that has not been accepted in a sovereign manner. The right to manage its rightful space, to explore its resources, and to direct the economy and administration of the territory and the government of the people.¹¹¹

¹¹⁰ Interview with Snr. Jesus Maestro, Secretari de Política Internacional, Esquerra Republicana de Catalunya, Barcelona, 12.04.1999.

¹¹¹ Esquerra Republicana de Catalunya, Declaració ideològica d'Esquerra Republicana de Catalunya (Barcelona: ERC, 1993), p. 13.

It is the expressed opinion of ERC that in multinational states where one nation effectively exercises the power, even if democratically, it is impossible to guarantee the national rights of other peoples in the state. In this rejection of the multinational approach towards the reforming of the Spanish state, the party further affirms that the right of the Catalan nation to independence within a united Europe is irrenounceable.¹¹² In this respect ERC shares with the Scottish National Party a common approach towards independence within Europe for the Catalan nation.

In ERC's manifesto for the last general election to the Corts Generals, the argument is made that the 1978 constitution and the state which it created, which the party has never supported, has failed. Therefore, from the perspective of ERC the only option for the immediate future is to develop bilateral relations between Catalunya and the Spanish state and to establish a direct presence for Catalunya in European institutions. Furthermore, the party wants to bring about the abolition of Article 145, which prohibits any form of federation between autonomous communities and thus frustrates pan-Catalanism.¹¹³ While ultimately ERC doubts that there can be any true recognition of national and linguistic diversity within the state, it does make some similar proposals for constitutional reform in an attempt to bring this about. The party's proposals for Senate reform echo those of CiU almost exactly with the additional proposal that a law be passed through a reformed Senate within Parliament which would amend Article 145 and allow autonomous communities to establish a *província única* (a single province).¹¹⁴ ERC's proposals for the recognition of linguistic diversity are also similar to those of CiU, and call for the amending of Article 3, which names Castilian as the only obligatory language of the state.¹¹⁵ The similarities between the platform of CiU and ERC regarding constitutional reform and linguistic and

¹¹² *Ibid.*, p. 14.

¹¹³ Esquerra Republicana de Catalunya, Mans lliures: Resum del programa de les Eleccions al Congrés dels Diputats ni al Senat de l'Estat espanyol març 2000 (Barcelona: ERC, 2000), p. 6.

¹¹⁴ *Ibid.*, p. 10.

national recognition are striking, yet once again the ultimate goal is different. For ERC it is independence in the EU and a union of the Catalan-speaking areas whereas for CiU it is greater autonomy and recognition for Catalunya within the state.

ERC has been harshly critical of what they view as the piecemeal approach adopted by CiU and the PSC. Maestro argues that ERC is the only party with a clear sense of purpose and a clear programme:

They [the autonomist parties] don't know where to go, that's what we regret about them. If one party is federalist or autonomist, that's okay, but we reject the thing that the socialist party usually says and *Convergència* always says and that's Catalunya first, independence we don't know, federalism we don't know, and we don't know where to go. We are a clear party. We fight peacefully for independence, but independentism not as an ideology. The ideology is left, socialism in democracy. Independence is our political goal.¹¹⁶

Being both an active member of ERC's National Executive Council and a political scientist shapes Maestro's position. While being interviewed he chose to speak exclusively from the perspective of an ERC office-bearer and thus reflected a strongly held political belief that autonomy has failed Catalunya and that the constitutional status quo is unreformable. ERC argues that it is the only clear alternative to those nationalist parties in favour of greater autonomy for Catalunya, yet polls have demonstrated that more people support independence for Catalunya than support ERC. In a poll published in the year 2000 32% of those polled were in favour of independence for Catalunya, whereas only 10% were sympathetic to ERC. In addition over half of CiU supporters, 56%, supported independence for Catalunya.¹¹⁷ ERC's leftist ideology is more significant and that it is not viewed as the natural political home for those nationalists who favour independence, particularly those of the centre-right who support CiU.

¹¹⁵ *Ibid.*, p. 18.

¹¹⁶ Interview with Snr. Jesus Maestro, Secretari de Política Internacional, Esquerra Republicana de Catalunya, Barcelona, 12.04.1999.

¹¹⁷ Institut de Ciències Polítiques i Socials, *1999 Sondeig d'Opinió Catalunya* (www.icps.es, 2000), pp. 76 & 98-99.

The goal of national independence is one shared by ERC and the Basque separatist party, Eusko Alkartasuna, with which it has entered into an agreement: the Acord d'Iruña. This agreement commits both parties to work for the realisation of their respective nations' right to self-determination. Both parties allege the failure of Spain's democratic transition to bring about the recognition of this right:

After more than twenty years of unfinished 'democratic transition' which has often been regressive concerning the recognition of our national realities, it is time to present very concrete commitments to push forward towards a fundamental advance in recognition or, if preferred, a second transition that would assume without reservations the democratic principle of free self-determination of the nations integrated in the Spanish and French states, a principle that is part of the democratic transition of our Peoples renewed by the resolutions of the Catalan and Basque Parliament on the Right to Self-Government adopted in 1989 and 1990.¹¹⁸

As this accord states, ERC has adopted the position that the democratic right to self-determination which is affirmed in the 1966 United Nations International Agreement on Civil and Political Rights is rejected by the Spanish state. ERC seeks to develop the Catalan nation based on a socialist model outside of an unworkable Spanish state; the gradualist and centrist approach of CiU is seen to be untenable in the long run.

Iniciativa per a Catalunya-Verds

The final nationalist party to be examined is the coalition between Iniciativa Catalunya-Verds which is a neo-Marxist party of the far left that emerged out of the old Catalan Communist party; it is loosely tied to the state party Izquierda Unida (United Left). IC-V defines itself in its ideological statement as a new political formation that fights for socialism and for political, social, and economic democracy that will overcome the capitalist system. The IC-V goes on further to embrace green principles as a guiding force in its struggle to establish a socialist system.¹¹⁹ The party embraces Catalan nationalism, Catalan popular sovereignty, and federalism as the means to bring about the reform of the Spanish

¹¹⁸ Esquerra Republicana de Catalunya & Eusko Alkartasuna, "Acord d'Iruña" (Barcelona: ERC, 2000), p. 1.

state and the promotion of Catalunya's right to national self-determination. The party programme was ratified at the coalition's first conference, the *Assemblea Nacional de Castelldefels*:

IC-V originates and acts in Catalan society and fights for the full recognition of its national character and for effective self-government. In this sense, IC-V affirms that Catalunya's sovereignty resides in its people, who have the right to fully exercise their self-determination, and it understands that this right must be promoted in this present period through a change and a transformation of the current Spanish autonomic state a state organised according to the principles of federalism, where each nation enjoys its own sovereignty within the wider framework of a united Europe of citizens and peoples that is federal character...¹²⁰

IC-V shares its federalist credentials with the PSC, which has also encouraged the evolution of Spain into a federal state, but without the socialist rhetoric of IC-V. The coalition seeks to establish itself as the alternative national party of the left and it appears to have accomplished this in terms of its percentage of the popular vote. IC-V is the second party of the left after the PSC and regularly garners a greater percentage of the vote in elections to the Catalan Parliament and to the *Corts Generals* than ERC.¹²¹

Multilateral Efforts at Constitutional Reform

All the parties examined share a commitment to the promotion of Catalunya's right to greater autonomy, albeit in varying degrees, and the goal of greater recognition for Catalunya as a nation within Spain. Generally speaking, all the parties, except ERC, seek to advance Catalunya's national claims within the framework of the Spanish state through constitutional and administrative reform. The reforming of the Spanish state would, it is anticipated, bring about a recognition of Spain's diversity and its multinational and multilingual identity. Clearly there exists within Spain today a conflict between two rival conceptions of the nation: one that is a unitarist and statist concept entrenched in the first articles of the 1978 constitution and is rejected by Catalan nationalists, and one embraced by

¹¹⁹ *Iniciativa per Catalunya-Verds*, "Principis d'Iniciativa-Verds" (www.iniciativa-cat-verds.org, 2000), p. 1.

¹²⁰ *Ibid.*, p. 2.

nationalists that view Catalunya as the nation, not Spain. It is this latter conception which leads to Catalan, Basque, and Galician nationalist arguments for a so-called nation of nations.¹²² In the last three years an alliance of the principal nationalist parties in the three nations has been created. This alliance between CiU, the Galician Bloque Nacionalista Galego, and the Basque Partido Nacionalista Vasco has resulted in three agreements being reached over the course of 1998: the Declaration of Barcelona, the Gasteiz Accord, and the Declaration of Santiago. The purpose of these agreements is to establish a common front among these parties to push for the recognition of a multinational Spain, as the Declaration of Barcelona states:

- After twenty years of democracy an articulation of the Spanish state as pluri-national has not yet been dealt with.
- During this period we have suffered from the lack of judicial and political recognition and, moreover, from the lack of cultural and social acceptance of our respective national realities within the state...

AND WE RESOLVE

- To summon Spanish society to share and to dialogue on a new political culture in agreement with this new understanding of the state, and to promote collective awareness reinforcing the idea of their own pluri-nationality.¹²³

The degree of cooperation between these nationalist parties illustrates what they perceive to be an urgent need to reform the state. Their arguments are for working within the Spanish state to bring about reform and embracing a new political culture that should be extended into the European Union through a multinational model where the three nations can enjoy greater representation.¹²⁴ Many commentators are supportive of these efforts, in particular those such as Requejo who advocate a more concerted effort towards constitutional reform

¹²¹ Colomé, p. 1102.

¹²² Requejo, *Zoom polític: Democràcia, federalisme i nacionalisme des d'una Catalunya europea*, p. 162.

¹²³ Bloque Nacionalista Galego, Partido Nacionalista Vasco, & Convergència i Unió, "Declaració de Barcelona de la Trobada entre BNG, PNB, CiU" (www.convergencia.org, 2000), pp. 1-2.

¹²⁴ Bloque Nacionalista Galego, Partido Nacionalista Vasco, & Convergència i Unió, "Acord de Gasteiz" (www.convergencia.org, 2000), p. 4.

of the autonomic state.¹²⁵ ERC repudiates these efforts as ineffectual: “We think that the Declaration of Barcelona in principle is nothing. It says nothing, it just wants a re-reading of the constitution.”¹²⁶ Thus, there remains a division between the autonomist parties who favour a reform of the status quo through constitutionalism and those in ERC who reject this approach in favour of independence. This situation is not too dissimilar from those in Scotland and Québec.

Thus far the Spanish state has not initiated any fundamental reform of the 1978 constitution as envisaged and argued for by most nationalist parties in Catalunya. The process towards Senate reform is languishing and very little has been achieved. The recognition of Spain as a multinational and multilingual state remains largely a nationalist argument and one to which a majority of Spanish political leaders and commentators are not responsive. Instead, they choose to view the Spanish nation as the Spanish state. Granted, Spain’s transition from dictatorship to a decentralised liberal-democratic state has highlighted the success of constitutionalism as a process. Further, state competences continue to be transferred from Madrid to Barcelona largely through the recent influence that CiU has exerted on minority Spanish governments prior to Aznar’s winning of a majority of the seats in the Corts Generals in 2000. Indeed, Catalunya has had more areas of competence transferred to it by the central state than any other autonomous community. 141 royal decrees have been issued between June 1978 and May 1999 proclaiming the transferal of areas of competence, some very minor, from the state to the Generalitat.¹²⁷ Yet, while the process of decentralisation and democratisation in Spain is ongoing, the demands being made by Catalan nationalists for greater national recognition through constitutional reform

¹²⁵ Interview with Prof. Ferran Requejo i Coll, Departament de Ciències Polítiques i Socials, Universitat Pompeu Fabra, Barcelona, 09.04.1999.

¹²⁶ Interview with Snr. Jesus Maestro, Secretari de Política Internacional, Esquerra Republicana de Catalunya, Barcelona, 12.04.1999.

¹²⁷ Ministerio de Administraciones Públicas, “Reales Decretos de Traspasos” (www.map.es, 2000), pp. 1-14.

are going largely unheeded by Madrid. Even for the moderate goals of Catalan nationalists to be met there must be a sea change in how the idea of the nation is conceived of in Spain, and thus how the organisation of the state as it is entrenched in the 1978 constitution relates to Catalunya's place within Spain.

7

Scotland's Constitutional Position within the United Kingdom and the Nationalist Response

In many ways Scotland stands out in this study of constitutional politics and nationalism. The nationalism of Scotland is distinguishable from that of Québec and Catalunya by not having a linguistic element at its core. As McCrone has argued, Scottish nationalism is unorthodox in some respects in that “it draws very thinly on cultural traditions [and] there is virtually no linguistic or religious basis.”¹ Scotland's constitutional position within the United Kingdom is also unique in that Scotland forms part of a state in which there is an unwritten constitution. The UK's constitution is said to be ‘unwritten’ in that there is no single document to which one can point to in the United Kingdom that determines the territorial organisation of the state, the rights enjoyed by its citizens, or how it is governed. In both Canada and Spain there are documents that achieve this, the Canadian constitution acts of 1867 and 1982 and the Spanish constitution of 1978, both of which have been discussed earlier. The other significant difference lies in the way the state is conceived. In the UK there has always been an explicit recognition of four nations: Scotland, England, Wales, and Ireland (prior to 1921); as will be shown this is a constitutional, political, and cultural recognition. Nationalists in Québec and Catalunya continue to argue that their national minority cultures are indeed nations existing within a multinational state—a state that in both cases largely fails to acknowledge this claim. The creation of a devolved Scottish Parliament, which is commonly known as Holyrood after its eventual home in Edinburgh, reflects the distinct national character of Scotland within the UK as it has come to be viewed as a national institution. Although the Scottish Parliament has contributed

significantly to differentiating Scotland politically within the UK and giving Scotland greater legislative control over its affairs, its powers are seen by nationalists in the Scottish National Party as insufficient. These developments must be kept foremost in mind when analysing the constitutional position of Scotland within the UK and how Scottish nationalists who favour independence respond to it.

This chapter is structured in a similar way to those devoted to Québec and Catalunya. After examining how the term 'nation' is understood in the Scottish context and how Scotland's nationhood is explicitly acknowledged within the state, some consideration will be given to how the British state should be defined. To what extent the United Kingdom is a unitary state as Spain was in the period prior to 1978 or a union state that operates under different constitutional and political assumptions will be discussed. The following section will examine the current constitutional structure of the British state and Scotland's constitutional position within it. When the term 'state' is used here it refers to the United Kingdom of Great Britain and Northern Ireland in the same way as it refers to Spain and Canada in other chapters. The four documents that will be discussed in this section are the Treaty of Union of 1707 between Scotland and England and Wales; the report of the Scottish Constitutional Convention of 1995; the Labour government's White Paper *Scotland's Parliament* of 1997; and finally the *Scotland Act, 1998*. These are some of the most significant constitutional documents for Scotland in that they have shaped, and are shaping, Scotland's relationship to the rest of the UK. In examining these documents it is possible to give a picture of how Scotland's place in the UK has evolved and how the creation of the Scottish Parliament in 1999 and the devolution of power from Westminster has initiated a process of profound constitutional change. The subsequent section will explore the extent to which this constitutional structure is viewed as problematic, and in the case of an evolving

¹ David McCrone, *Understanding Scotland: the Sociology of a stateless Nation*, rpt. (London: Routledge, 1998), p. 214.

constitutional process, how it might affect Scotland's position in the UK constitution.

Pertinent issues related to devolution such as the legislative supremacy of the Westminster Parliament, the effect of judicial review, and quasi-federalism and asymmetry will be analysed. In the fourth section of the chapter, the nationalist response to devolution and Scotland's role within the United Kingdom will be analysed through an examination of party documents and the arguments of leading members of the Scottish National Party (SNP). To what extent devolution is a sufficient enough response to nationalist demands will be examined as will the debate it has provoked within the SNP itself on the goal of independence for Scotland in Europe. In addition, the ongoing discussion of a conflict between rival concepts of the nation in multinational states will address the Scottish case. Running throughout the chapter, as in chapters five and six, will be an analysis of the views of political, academic, and other participant-observers that will inform the discussion on the various issues addressed in the chapter.

The Evolving UK Constitution

The constitution of the United Kingdom is at present going through a period of radical change, change that has had an impact on Scotland through the creation of the Scottish Parliament but also on the rest of the United Kingdom. The Labour government elected in May 1997 has initiated a process of constitutional reform that will alter fundamentally the character of the state. From devolution to Scotland, Wales, and Northern Ireland to House of Lords reform, elected mayors for many of the larger cities, including London, and the entrenchment of the European Convention on Human Rights (ECHR) in UK law, the reforms are far-reaching. While some would argue that this is the greatest period of constitutional reform since, for example, the passage of the Treaty of Union in 1707 or since the Great Reform Act of 1832, it can be as persuasively argued that this is the greatest period of constitutional reform since the Glorious Revolution of 1688. Through the

1688 settlement the doctrine of the legislative supremacy of Parliament was confirmed as was the Protestant succession to the throne, thus resolving the long-running battle between Parliament and the monarch that had culminated in the Civil Wars. No single legal principle has had greater effect on the constitution of the United Kingdom than that of Westminster's legislative supremacy, or parliamentary sovereignty.² The nature of this principle will be discussed below and it will be further argued that the present era of constitutional reform has undermined parliamentary sovereignty as a concept governing the constitution. Devolution has also thrown into question the entire nature of the Union settlement of 1707, which established the United Kingdom as an incorporating union of the two Parliaments of Scotland, and England and Wales. The Treaty of Union of 1707 established the United Kingdom as a union state, a constitutional settlement that is often mistakenly linked to the idea of a unitary state.

The UK as a union state

The United Kingdom's constitution has many unitary elements to it, such as the lack of constitutional entrenchment and a strong centralised government that, even after the implementation of devolution in 1999, enables Westminster to wield considerable financial control over Wales, Scotland, and Northern Ireland. However, the UK is not a unitary state in the same sense that France is where all power resides in the central state and there are no constituent nations that came together to create the modern French state. Rather, the UK is a union state forged through first a dynastic union of Scotland, England and Wales in 1603, then through a union of the Scottish and Westminster parliaments in 1707, and finally through a union with Ireland in 1800. The union state was from the beginning a multinational one: "It [UK] is a union state, whose component nations joined the union at

² This understanding of the doctrine of the legislative supremacy of Parliament was first developed by A.V. Dicey in his *Introduction to the Study of the Law of the Constitution*, 10th ed. (London: Macmillan, 1959) and has been further elaborated upon by numerous constitutional scholars including

different times and on different terms. Like other union states, it was asymmetrical in origin, and still exhibits asymmetrical features today...”³ Asymmetrical provisions in the Treaty of Union such as guarantees for Scots law, the system of Scottish local government, a separate system of education, and the presbyterian organisation of the Church of Scotland provide evidence of this.

Although there is a history of asymmetrical arrangements in the British constitution and the state is multinational in reality, this multinational character is sometimes misunderstood. In establishing the existence of a union state the frequent use of the term “English” to describe the UK constitution is incorrect and ignores the multinational reality of the state.⁴ Scotland’s position in a multinational UK state has been explicitly recognised in various ways, particularly through the role of uniquely Scottish institutions, all of which have helped to contribute to an understanding of Scotland as a nation. Brown identifies the UK as a multinational state and argues that the present evolution of the constitution resulting from devolution is essentially about re-organising the institutional arrangements that hold the multinational state together.⁵ Crick argues that the UK “has to be perceived as a multinational state” as a means of recognising Scotland’s existence as a nation within a state. However, it is Crick’s argument that post-war England has been very slow in recognising the reality of Scotland’s place within the Union.⁶ The recognition of Scotland’s nationhood within the Union is the focus for much of the current debate surrounding devolution and the SNP’s arguments in favour of independence within Europe.

A.W. Bradley and K.D. Ewing in Constitutional and Administrative Law, 12th ed. (London: Longman, 1997).

³ Robert Hazell, “The New Constitutional Settlement,” in Constitutional Futures: The History of the Next Ten Years (Oxford: Oxford University Press, 1999), p. 231.

⁴ A.W. Bradley and K.D. Ewing, Constitutional and Administrative Law, 12th ed. with appendix (London: Longman, 1997), p. 38.

⁵ Archie Brown, “Asymmetrical Devolution: The Scottish Case,” Political Quarterly, vol. 69, no. 3 (July-September 1998), p. 216.

⁶ Interview with Prof. Bernard Crick, Professor Emeritus, Department of Political Science, University of Edinburgh, Edinburgh, 09.07.1999.

Scottish Nationhood

The question of nationhood and the theoretical problems behind defining a nation have already been discussed in chapter one, but it does serve to mention briefly the basis of Scotland's claim. While many commentators on the Scottish nation have looked at its socio-economic condition, its political culture, and its various cultural, religious, and social identities, the concern here is with how this national identity is understood in constitutional terms.⁷ In the constitutional context, the existence of Scotland as a nation in the United Kingdom rests largely on the recognition given to certain legal, religious, social, and political institutions. The presence of uniquely Scottish institutions mentioned above has contributed to the creation of a distinctive Scottish civil society. Paterson has traced the development of Scottish civil society back to before 1707 when powerful institutions such as Scots law, the education system, and especially the Kirk encouraged greater autonomy against the backdrop of a weak central state.⁸ From 1707 onwards, Scottish civil society's unique nature was acknowledged within the union state, thus allowing it to maintain a high level of autonomy.⁹ Since 1707, this autonomy has been further enhanced by emerging differences in social and cultural attitudes, all of which have contributed to distinguishing Scotland from England within the Union. However, as McCrone has argued, Scotland shares many similarities with England in these areas. This common heritage has served to highlight some of the social and cultural links that have developed since 1707 and further contributed to the union state:

⁷ There are a number of worthwhile sources that examine these various perspectives of the Scottish nation and its distinctiveness within the United Kingdom including Calum Brown, Religion and Society in Scotland since 1707; Christopher Harvie, No Gods and Precious Few Heroes; T.C. Smout, A Century of the Scottish People, 1830-1950; William Storrar, Scottish Identity; and David McCrone et al., The Making of Scotland: Nation, Culture and Social Change.

⁸ Lindsay Paterson and Richard Wyn Jones, "Does Civil Society Drive Constitutional Change?," in Scotland and Wales: Nations Again?, eds. Bridget Taylor and Katarina Thomson (Cardiff: University of Wales Press, 1999), pp. 176. Paterson develops this argument further in The Autonomy of Modern Scotland (Edinburgh: Edinburgh University Press, 1994).

Indeed, in its industrial and occupational structures, and its concomitant patterns of social mobility, Scotland has far more similarities with than differences from its southern neighbour. Nevertheless, in its cultural behaviour, Scotland has become more not less distinctive in the late twentieth century. Indeed, it is possible to talk of Scotland's distinctive 'civil society' in which social and political values at virtually all levels of that society are different.¹⁰

Nevertheless, it is in focussing on how the United Kingdom's constitutional structure has incorporated Scotland's distinctive civil society that we can get a clearer indication of what the impact of devolution as a constitutional reform process will be. It can be argued that devolution will fundamentally alter the position of Scotland within the United Kingdom much in the same way that granting autonomy to Catalunya has transformed its position in Spain since 1978. The devolution process is one that further confirms the distinctiveness of the Scottish nation within the UK by promoting greater asymmetry within the constitution.

Parliamentary Sovereignty

A key principle of British constitutional law and one that has led to a centralisation of power at Westminster is the doctrine of the legislative supremacy of Parliament, or as the nineteenth-century constitutional scholar A.V. Dicey termed it, "parliamentary sovereignty." This doctrine lies at the core of the unwritten constitution and has played a dominant role in the construction of the British state, yet it is a doctrine that is being gradually undermined by devolution and greater incorporation into the European Union (EU) which bring with it the application of European Commission (EC) law. Indeed, the impact of multi-level governance, the EU, Westminster, and the Scottish Parliament at Holyrood on traditional understandings of governance is significant. In order to understand better the uniqueness of the British constitution from either the Canadian or the Spanish, it is essential to understand how the concept of parliamentary sovereignty has shaped the state.

⁹ Alice Brown et al. *Politics and Society in Scotland*, 2nd ed. (London: Macmillan Press Ltd, 1998), p. 39.

¹⁰ McCrone, *Understanding Scotland: the Sociology of a stateless Nation*, pp. 197-98.

Parliament at Westminster is sovereign in that there are no legal limits, including any review of legislation by the courts, which can be applied to Parliament's exercising its powers of legislation. When the term Parliament is used it refers to the House of Commons, the House of Lords, and the monarch who act together to legislate for the United Kingdom: the Queen in Parliament.¹¹ Any law or statute passed by Parliament is supreme and thus the highest form of law within the British constitution.¹² The principle of the legislative supremacy of Parliament was enshrined in English constitutional practice by the settlement brought about by the Glorious Revolution of 1688 at which time the *Bill of Rights* and the *Act of Settlement* established the legislative authority of Parliament over the person of the sovereign. These two documents are central in the establishment of Britain's constitutional framework, legal system and in the gradual evolution of its system of democracy.

The 'unwritten' British constitution based upon the common law comprises statutes and convention with the rule of law being of paramount importance. Statute law being the highest form of law has, in effect, meant that there is no way in which an Act of Parliament can be challenged except by Parliament itself when it seeks to repeal or amend statute law. British courts have adopted this orthodox view of parliamentary sovereignty and have never taken a position that an Act of Parliament or a provision of an act was illegal; such a position would be a violation of this doctrine. Dicey helped to establish what has become known as the continuing theory of parliamentary sovereignty, which holds that no Parliament can bind its successors. In other words, no Parliament can legislate in a way so as to prohibit a successive Parliament from amending or repealing existing legislation.¹³ This Diceyan principle is an important one, particularly in the way it relates to the position of Acts of Parliament such as the Treaty of Union of 1707 and the *Scotland Act, 1998*. Since Parliament is sovereign and sovereignty does not rest with the people, in the orthodox

¹¹ Bradley and Ewing, p. 58.

¹² Ian Loveland, Constitutional Law: A Critical Introduction (London: Butterworths, 1996), p. 29.

Diceyan view, nor is it shared between legislatures in a federal state such as Canada, Parliament can repeal or amend any act or provision of an act. Thus, Westminster could in theory repeal entirely or in part, or amend in part the *Scotland Act, 1998* without the consent of the Scottish Parliament, although this could have political consequences as will be discussed below. Indeed, Westminster has amended and repealed sections of the Treaty of Union that many Scots have argued over the last three centuries constitutes fundamental law. Fundamental law refers to law that is so essential to the constitution that it could not be altered in any way; it is immutable.¹⁴ The Diceyan interpretation of the doctrine of parliamentary sovereignty holds that there is no fundamental law vis-à-vis the British constitution. This doctrine has had a profound effect on Scotland's position within the Union, a position first established in the Treaty of Union and now reconfigured through the process of devolution since 1999. The impact of devolution on parliamentary sovereignty and vice versa will be examined below.

The Diceyan doctrine on parliamentary sovereignty has remained the dominant interpretation of Westminster's power to legislate and on the primacy of statute law within the UK constitution. However, some contemporary commentators have argued that Dicey's understanding of Parliament's central place within the constitution should be viewed with a certain degree of historical perspective. The Scottish constitutional scholar, J.D.B. Mitchell, argues that there exists a "difficulty of proof" with the doctrine of parliamentary sovereignty in that there are not many cases in which the question of Parliament's sovereignty could be raised. Mitchell goes on to caution that such cases as do exist should be interpreted with a full understanding that they may be "inappropriate today, since, inevitably, they reflect the then current political facts."¹⁵ In a similar vein, Munro argues that the role of politics and its impact on the Diceyan conception of parliamentary sovereignty must be considered. While

¹³ Ibid., p. 46.

¹⁴ Ibid., p. 28.

not directly refuting the Diceyan argument, Munro argues that it was possibly influenced by Dicey's politics and furthermore by the politics of the late-nineteenth century. Furthermore, Munro emphasises in his argument that the doctrine of parliamentary sovereignty "denotes only the absence of legal limitations, not the absence of *all* limitations or, a more appropriate word, inhibitions on Parliament's actions."¹⁶ This discussion raises the question of whether political considerations do in fact limit, or inhibit, Westminster from legislating purely as it sees fit. As will be discussed further on, this question is of considerable importance when considering the impact of the *Scotland Act, 1998* on Westminster's sovereignty.

Before examining the nature and impact of devolution on Scotland and the UK constitution it is essential to look at the Union settlement of 1707 and how it shaped the United Kingdom. The Treaty of Union of 1707 created a customs union and established a common Parliament at Westminster. More importantly for this analysis, the Treaty of Union guaranteed the continuing existence of Scottish civil society. From a comparative perspective many similarities can be found between the guarantees provided for Scottish institutions in the Treaty of Union, with the protection given by the British, to the distinctive institutions of New France in the *Quebec Act, 1774*, the settlement which followed the conquest of Québec by the British in 1759-60.

The Treaty of Union as a Constitutional Document

In 1707, the Treaty of Union established the Protestant succession to the throne (Article II) and established a single Parliament for the United Kingdom (Articles III and XXII) at Westminster and, as most commentators have accepted, was the incorporation of Scottish MP's and peers into the pre-existing English parliament. The bulk of the treaty deals with trade liberalisation, customs duties, and tax harmonisation throughout the UK (Articles IV – XVIII) thus fully incorporating the Scots into the English network of imperial

¹⁵ J.D.B. Mitchell, *Constitutional Law* (Edinburgh: W. Green & Son Ltd., 1964), p. 49.

¹⁶ Colin R. Munro, *Studies in Constitutional Law*, 2nd ed. (Edinburgh: Butterworths, 1999), p. 135.

trade. As discussed in chapter four, all of this was a welcome development since it enabled the Scots to take advantage of imperial markets; something Scottish merchants were thankful for after the collapse of the ill-fated Darien scheme. As has been mentioned before, in the treaty recognition and protection was given to the system of Scots law, the Church of Scotland, local government, and the Scottish universities as established. It is a valid argument to state that these provisions recognised the distinctiveness of Scottish legal, religious, educational, and governmental institutions and confirmed Scotland's existence as a nation within the UK. By way of example, articles XIX and XXI of the Treaty of Union gave protection to the Court of Session and other law courts and to the Convention of Royal Burghs.¹⁷ Whether these provisions were indeed to remain in effect for all time coming is another issue, one that relates directly to the constitutional doctrine of legislative supremacy. The subsequent *Act for Securing the Protestant Religion and Presbyterian Church Government* confirmed the presbyterian Church of Scotland as the established church in Scotland, a church that was distinct in both its government and its doctrine from the episcopalian Church of England.¹⁸ In each one of these cases recognition is given to the distinctive nature of Scottish civil society. Yet, these were guarantees and not entrenched rights since it remained within the power of the newly constituted Westminster Parliament to repeal or amend any of these articles. It is debatable as to whether what was in fact created was an entirely new Parliament based upon new theoretical and practical approaches to legislating for the newly formed United Kingdom or an institution firmly anchored in the theoretical approaches of the old English Parliament.

Without question the new Union Parliament at Westminster maintained the English tradition of parliamentary sovereignty. It rejected what was seen to be the Scottish tradition of popular sovereignty that had its basis in the principle of limited monarchy and in

¹⁷ George S. Pryde, ed., *The Treaty of Union of Scotland and England 1707* (Edinburgh: Thomas Nelson and Sons Ltd, 1950), pp. 96-98.

declarations of popular sovereignty such as the Declaration of Arbroath of 1320 and Claim of Right of 1690.¹⁹ Indeed, the pre-Union Scottish Parliament never saw itself as a sovereign body.²⁰ Dicey and Rait argued that the Scottish Parliament prior to 1707 had never been able to establish its sovereignty due to the diversity of forces and institutions that exercised various forms of sovereignty:

It is certain that neither the judicial nor the legislative power of the King could before, say, 1745 be always effectively exercised among the Highland clansmen. This weakness of the Crown obtained a certain kind of recognition from the existence of hereditary jurisdictions held by landowners, nobles, and chiefs, which to a considerable extent competed with the jurisdiction of the King's Court. Hence, from historical circumstances, the Parliament of Scotland never had, or felt that it had, the omnipotence of the English Parliament. Indeed, the Scottish Parliament almost at all times acknowledged some power which restrained or competed with parliamentary authority. Up to 1690, except in revolutionary periods, the competitor was the King acting through the Lords of Articles. After 1560, during the revolutionary period from 1638 to 1651, and even between 1690 and 1707, the competitor was the established Church of Scotland.²¹

So the concept of the legislative supremacy of Parliament in Scotland did not develop due to the inherent weakness of the Parliament vis-à-vis the King, magnates, and in particular the Kirk whose General Assembly was widely regarded as a surrogate parliamentary body for Scotland. This lack of the tradition of legislative supremacy led to English statesmen making an assumption that the new Westminster Parliament would maintain "the same theoretical and practical authority that the English Parliament already possessed."²² What emerged out of the Union in 1707, which was in theory a union of equals, was a Parliament that was essentially a continuation of the English Parliament. In this context the Union was in MacCormick's view a consolidation of Parliament's position established in 1688 by the Glorious Revolution: "it extended the authority of parliament geographically and enhanced

¹⁸ *Ibid.*, pp. 105-06.

¹⁹ Neil MacCormick, "The English Constitution, the British state, and the Scottish Anomaly," *The British Academy Lecture*, 1997, pp. 11-12.

²⁰ Albert V. Dicey and Robert S. Rait, *Thoughts on the Union between England & Scotland* (London: Macmillan and Co., Limited, 1920), p. 20.

²¹ *Ibid.*, pp. 21-22.

²² *Ibid.*, p. 243.

its membership in a matching way. But there was no disturbance of the prevalent balance of parliamentary forces, and no new constitutional doctrine, no development of popular or other powers attributable to it.”²³ While the Treaty of Union did bring Scotland into a parliamentary union with England it ultimately meant that Scotland would have to acquiesce to the English parliamentary tradition inasmuch as it had existed prior to 1707. This acceptance by Scotland of parliamentary sovereignty as the core principle of the constitution was only held up to judicial scrutiny once in 1953 in the *obiter dicta* of Lord Cooper in *MacCormick v. Lord Advocate*. Lord Cooper questioned why it should have been expected that the new Union Parliament should embrace all the constitutional principles of the English Parliament but none of the Scottish.²⁴ Others, in particular Himsworth and Munro, have played down the inclination to contrast Scotland’s historical tie to the notion of popular sovereignty with the English principle of parliamentary sovereignty and the implication that these are mutually exclusive concepts. They argue that here exists a specific interpretation of political history that ignores the need for English kings to maintain political support. Further, Magna Carta is cited as the point at which the English monarch was subordinated to the law.²⁵ The embracing of the Union Parliament of the doctrine of parliamentary sovereignty has had a significant impact on the Union and continues to be an important consideration today, particularly as it is applied to devolution. As will be shown, devolution and parliamentary sovereignty are two concepts that will ultimately be difficult to reconcile in the present constitutional era.

Through the application of the doctrine of parliamentary sovereignty the idea that the Treaty of Union constitutes fundamental law has been rejected.²⁶ The Union legislation is

²³ MacCormick, “The English Constitution, the British State, and the Scottish Anomaly”, p. 15.

²⁴ Bradley and Ewing, p. 81.

²⁵ C.M.G. Himsworth and C.R. Munro, Devolution and the Scotland Bill (Edinburgh: W. Green and Son Limited, 1998), p. 25.

²⁶ Colin R. Munro, “The Union of 1707 and the British Constitution,” in Scotland and the Union, Hume Papers on Public Policy, Vol. 2, No. 2 (Edinburgh: David Hume Institute, 1994), p. 90.

actually two acts of Parliament, first passed by the Scottish Parliament and subsequently by the English. Although there is language in the treaty, as seen above, that sought to bind future Parliaments regarding certain provisions such as those referring to heritable jurisdictions and local government, Dicey's continuing theory of parliamentary sovereignty has held that the treaty is an Act of Parliament like any other and can be amended or repealed. A precedent for this was the *Union with Ireland Act, 1800* which maintained that the provisions contained within it which united Ireland with the rest of the UK were to "be in force and have effect for ever", yet this union was largely dissolved in 1922.²⁷ Numerous articles in the Treaty of Union have been repealed or amended by Parliament, including Articles XX and XXI, which granted protection to heritable jurisdictions and the system of local government under the Convention of Royal Burghs. Heritable jurisdictions were abolished following the 1745 Jacobite rebellion and the Royal Burghs lost their position in the 1970s.²⁸ Munro goes on to point out that there has never been a case in which an Act of Parliament was deemed illegal or made invalid due to its being contrary to the Treaty of Union.²⁹ In terms of the Treaty of Union, then, Scotland's distinct position within the UK has been subject to the legislative actions, arbitrary or otherwise, of Westminster. The doctrine of parliamentary sovereignty upon which the British constitution has rested for over three hundred years has shaped the nature of the union state. However, the current process of devolution is proving a significant challenge.

The Background to the Scotland Act, 1998

As was discussed in chapter four, devolution of power to Scotland from Westminster was frustrated in 1979 with the failure of the then Labour Government's referendum on the *Scotland Act, 1978*. The subsequent period of Conservative government from 1979 to 1997 was one of profound centralisation motivated by the statist, neo-liberal ideology of

²⁷ *Ibid.*, p. 92.

²⁸ *Ibid.*

Thatcherism. It was during this period, as has been shown, that there was a mobilisation in Scottish civil society that brought about even greater demand for some form of constitutional change. Scottish civil society sought a change that would recognise Scotland's position as a distinct nation within the UK and eliminate the perceived 'democratic deficit' brought about by the nature of Scottish electoral politics. It was argued that the 'democratic deficit' resulted from a situation in which legislation and policies were imposed on Scots by a Conservative government which enjoyed only minority electoral support in Scotland.³⁰ The work of the Scottish Constitutional Convention from 1989 to 1995 established a framework for devolution to Scotland which was adopted almost in its entirety by the Labour Government in its 1997 White Paper on Scottish devolution, *Scotland's Parliament*. The starting point for the convention was an explicit declaration of Scottish popular sovereignty in the 1989 *Claim of Right*, and thus an implicit rejection of the doctrine of parliamentary sovereignty as applied to Scotland:

We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and do hereby pledge that in all our actions and deliberations their interests shall be paramount.³¹

The convention's final report *Scotland's Parliament. Scotland's Right* called for the establishment of a Scottish Parliament with the power to legislate on a wide range of devolved issues and with the power to vary the basic rate of income tax by a maximum of 3p on the pound. The report also called for the implementation of a system of proportional representation for elections to the Parliament: the additional member system. It was planned that this system would also incorporate a gender balance improving upon what was viewed as the gender imbalance at Westminster. This gender balance was achieved by the Labour

²⁹ Ibid., p. 95.

³⁰ Alice Brown, "Deepening Democracy: Women and the Scottish Parliament," in *Remaking the Union: Devolution and British Politics in the 1990s*, eds. Howard Elcock and Michael Keating (London: Frank Cass Publishers, 1998), p. 106.

Party in the 1999 elections to the Scottish Parliament in which exactly half of their MSPs (Members of Scottish Parliament) elected were women. The SNP came close to approaching parity of representation between men and women with 43%, whereas the Liberal Democrats and Conservatives did not.³² While those who were behind the *Claim of Right* and the convention were a conservative, largely male group with a distinctly Protestant outlook, they did in effect represent many of the institutions of civil society in Scotland.³³ In adopting an approach that encouraged Scotland's exercising popular sovereignty, the convention introduced proposals that would amount to a radical re-orienting of the constitutional framework of the state.

The radical nature of the SCC's report and the impetus it gave to devolution has been repeatedly emphasised by Kenyon Wright, one of the convention's two co-chairs. Wright argues that the coming together of civil society in the SCC achieved what no political party could have: it reached a consensus on the form and nature of devolution and a blueprint for a devolved Scottish Parliament:

That document was a historical and theological argument for a fundamental understanding of power and it was really because of that that the convention did not begin with its political aims, they were there, but they were clearly from the beginning set in the context of the initial statement of the *Claim of Right*, which was that the people had the sovereign right to determine how they would be governed, and that came directly out of Scottish civil society. No political party would have produced that for obvious reasons, and indeed it was one of the astonishing moments in my life when all of those politicians lined up to sign that. I still think many of them to this day don't know what they were signing. Certainly they don't realise the implications of what they were signing which was a view of power that directly challenges and contradicts the sovereignty of the Crown in Parliament. I don't think they quite saw that, but it was a watershed from which there was no retreat. There was no way back. We crossed the Rubicon that day.³⁴

³¹ Scottish Constitutional Convention, "Scotland's Parliament. Scotland's Right," (Edinburgh: Scottish Constitutional Convention, 1995), p. 10.

³² William L. Miller, "Modified Rapture All Round: The First Elections to the Scottish Parliament," *Government and Opposition*, vol. 34, no. 3 (Summer 1999), p. 308.

³³ Brown et al., p. 66.

³⁴ Interview with Rev. Kenyon Wright, Former Chair of the Executive Committee, The Scottish Constitutional Convention, Perth, 05.07.1999.

A clergyman in the Scottish Episcopal Church, Wright demonstrates a profound belief in the power of civil society to bring about political change. Clearly, the convention achieved something quite considerable, as Wright argues, in bringing together civil society to act as a force for constitutional change. What is notable about his comments is his particular view of sovereignty; it is a contested idea. Wright understands the SCC's project to be an exercise in popular sovereignty in which the determined will of the Scottish people to choose how they would be governed was voiced. Civil society in this instance was representative of the Scottish people. Wright argues that the actions of the convention and the arguments made in its report challenged the principle of parliamentary sovereignty and opined that Scottish popular sovereignty should be paramount. Although the *Scotland Act, 1998* reasserted the sovereignty of the Westminster Parliament the act was made subject to a referendum, an exercise in popular sovereignty that gave the Scottish Parliament even greater legitimacy. It can and will be argued that popular sovereignty has played a role in devolution and that as a result the continued adherence to the constitutional doctrine of parliamentary sovereignty vis à vis the Scottish Parliament is highly problematic.

The White Paper "Scotland's Parliament"

The government's White Paper of 1997 that paved the way for the *Scotland Act, 1998* met Labour's manifesto commitment to devolution for Scotland through the establishment of a Parliament. In his preface to the White Paper, Tony Blair set out the goals of the Labour government in terms of constitutional reform: devolution to Scotland and Wales; an elected mayor for London and "more accountability in the regions of England"; the incorporation of the ECHR into UK law; a freedom of information act; and a referendum on electoral reform. All of this was to be accomplished with the wider aims of modernising British politics, decentralising power, and creating more open government.³⁵ Furthermore, the position of Scotland as a nation was affirmed, with a clear emphasis being placed on its

continued presence within the UK: “Scotland is a proud historic nation in the United Kingdom and the plans that we put forward in this White Paper will give it an exciting new role within the United Kingdom.”³⁶ Again, Scotland was referred to explicitly as a nation and in a document published by the government at Westminster. Such an explicit reference to the existence of a minority nation is unlikely to be made by either the Canadian government in reference to Québec or by the Spanish government in reference to Catalunya. In the British case the use of the term nation with regards to Scotland is not a loaded term that is employed by the SNP, nor does use of it somehow lead directly to the advancement of a nationalist or separatist agenda. The government’s White Paper views the creation of a Scottish Parliament as the creation of a national institution.

The White Paper went on to outline the structure of the Parliament, of the Scottish Executive made up of ministers and headed by the First Minister, the electoral system, the various areas of jurisdiction reserved to Westminster and those devolved to the Parliament, and the tax-varying power of the Parliament. In outlining the government’s plans for Scottish devolution the White Paper embraced the vast majority of the Scottish Constitutional Convention’s recommendations and endorsed its approach, yet the government did not fully embrace the convention’s belief in popular sovereignty. The proposals were subject to a referendum among the Scottish electorate. This injected an element of popular sovereignty and legitimised the devolution process through an expression of popular will. However, it can be argued that the Labour government in the White Paper did not embrace fully popular sovereignty but held to the doctrine of parliamentary sovereignty. In paragraph 4.2 the government made the following assertion:

Under the Government’s proposals, the UK Parliament will devolve wide-ranging legislative powers to the Scottish Parliament. Scotland will of course remain an integral part of the United Kingdom. The Queen will continue to be Head of state of the United Kingdom. The UK Parliament *is* and *will remain* sovereign in all

³⁵ The Scottish Office, “Scotland’s Parliament,” (Edinburgh: HMSO, 1997), p. v.

³⁶ *Ibid.*

matters: but as part of the Government's resolve to modernise the British constitution Westminster will be choosing to exercise that sovereignty by devolving legislative responsibilities to a Scottish Parliament without in any way diminishing its own powers [my emphasis]. The Government recognise that no UK Parliament can bind its successors. The Government however believe that the popular support for the Scottish Parliament, once established, will make sure that its future in the UK constitution will be secure.³⁷

The aim of the government is to preserve the integrity of the Union while at the same time responding to Scottish demands for a greater say in their own affairs through greater representation at the level of Scottish institutions. The creation of the Parliament also completed the process of administrative devolution, which had begun in the late nineteenth century with the establishment of the Scottish Office, by giving Scotland legislative and executive control over previously devolved fields. Yet, the Scottish Parliament is not legally sovereign in devolved areas and thus does not exercise complete control in devolved matters, a constitutional situation that the SNP views as entirely inadequate. As has been argued above, the Scottish Parliament can be understood to be politically sovereign in that it is unlikely that Westminster will interfere in the business of the Parliament due to its existence being legitimised through an expression of the popular will. In examining more closely the Scotland Act itself, the degree to which the balance of power in the UK has shifted can be analysed as well as the potential impact of devolution will be on the United Kingdom's constitutional framework.

The Scotland Act, 1998

The *Scotland Act, 1998*, is composed of 132 sections in six parts and 9 schedules. The sections of the Act are, in order: The Scottish Parliament, the Scottish Administration, Financial Provisions, the Tax-Varying Power, Miscellaneous and General, and a Supplementary part. The analysis undertaken here will concern itself largely with provisions contained in Part I and Schedules 4 to 6 insofar as they relate in particular to the balance of power within the UK, sovereignty, and specific judicial reforms brought about by

³⁷ Ibid., p. 12.

devolution. A broader discussion of the electoral system, the roles of ministers, the tax-varying power, fiscal arrangements, and general administrative questions is beyond the scope of this chapter.³⁸ However, it is worth noting that the proportional representation electoral system employed by the Scottish Parliament is a wholly novel arrangement within the UK, one that goes a long way in principle towards achieving greater representation of the range of political support. The tax-varying power is also a significant change in its granting of limited control over revenue-raising to the Parliament in Edinburgh.

Section 1: Establishing the Parliament

The expressed aim of the *Scotland Act, 1998* is stated in Section 1(1): “There shall be a Scottish Parliament.”³⁹ With this simple statement of intent the nature of the relationship of Scotland within the state is changed. Part II of the Act establishes the Scottish Executive headed by the First Minister who is appointed by the Queen upon the nomination of the Parliament. The model is one of responsible government based on the conventions of Westminster.⁴⁰ In establishing the Scottish Parliament, Westminster has not only devolved legislative and executive power to Holyrood but has in fact divided power creating another centre of power in the Scottish Parliament.⁴¹ Along with Hazell, Bogdanor argues that the creation of the Scottish Parliament establishes a new political relationship between Holyrood and Westminster, quite different from the legal one. Again, the position of the Scottish Parliament as a national institution representing the Scottish people challenges

Westminster’s sovereign power:

Constitutionally, then, the Scottish Parliament will be subordinate. Politically, however, unlike other statutory bodies such as local authorities or public

³⁸ For further reading regarding these aspects of devolution to Scotland see Alice Brown et al., The Scottish Electorate; P. Dunleavy et al. Devolution Votes – PR Elections in Scotland and Wales; articles in the special issue of Scottish Affairs, Understanding Constitutional Change; further entries in Robert Hazell, ed. Constitutional Futures.

³⁹ *Scotland Act, 1998*, s. 1(1).

⁴⁰ C.M.G. Himsworth and C.R. Munro, The Scotland Act 1998 (Edinburgh: W. Green & Son Limited, 1999), p. 60.

⁴¹ Hazell, “The New Constitutional Settlement,” p. 234.

corporations, it will be anything but subordinate. For the Scotland Act creates a new locus of political power. The most important power of the Scottish Parliament will be one not mentioned in the Act at all: that of representing the people of Scotland.⁴²

As will be argued here, the establishment of the Parliament as a new centre of power and the process of devolution in general will introduce many quasi-federal elements into the UK constitution. It will also create a complex asymmetrical relationship within the UK and will fundamentally undermine parliamentary sovereignty.

Sections 28-30: The Legislative Power

Sections 28 to 30 of the *Scotland Act, 1998* cover the Parliament's power to legislate and define the Parliament's legislative competence. In s.28 the power of the Parliament to make law is established, subject to the provisions of s.29 which sets out that Acts of the Scottish Parliament may only be passed within areas of its competence. The path of legislation through the Parliament from bill to Royal Assent is outlined here and conforms to the norms of parliamentary practice.⁴³ S. 29 outlines those cases in which a provision of an Act of the Scottish Parliament lies outwith its legislative competence. This section along with s.30 and Schedules 4 and 5 delineates the statutory limits imposed on the Parliament.⁴⁴ As s.29(2) states, the Parliament's legislative competence is limited under the following circumstances:

29(2) A provision is outside that competence so far as any of the following paragraphs apply-

- (a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
- (b) it relates to reserved matters,
- (c) it is in breach of the restrictions in Schedule 4,
- (d) it is incompatible with any of the Convention rights or with Community law,

⁴² Vernon Bogdanor, "Devolution: Decentralisation or Disintegration?," *Political Quarterly*, vol. 70, no. 2 (April-June 1999), p. 185.

⁴³ *Scotland Act, 1998*, s. 28(2) – 28(4).

⁴⁴ Himsworth and Munro, *The Scotland Act 1998*, p. 37.

- (e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.⁴⁵

The following section puts into effect Schedule 5 which lists the powers reserved to Westminster.

Schedule 5: The Reserved Powers

Unlike the previous attempt at devolution in the *Scotland Act, 1978* where the powers devolved to the assembly were enumerated in the Act, the powers reserved to Westminster are expressly stated and anything lying outwith these powers is thereby considered to be devolved to the Parliament. Schedule 5 establishes those matters outside the competence of the Scottish Parliament and thus reserved to Westminster; it is divided into three parts of which the first two are the most significant (see Appendix C). The first part contains general reservations: the constitution (including the Crown, Parliament, the Union, and the Scottish Courts), political parties, foreign affairs, the public service, defence, and treason.⁴⁶ Part II establishes the specific reservations and categorises them into twelve heads: financial and economic matters, home affairs, trade and industry, energy, transport, social security, regulation of the professions, employment, health and medicines, media and culture, and miscellaneous reservations.⁴⁷ The reserved powers given in Part II distinguish what are in fact exceptions to those matters devolved in broader terms to the Scottish Parliament. The devolved, or non-reserved matters implicit in the Scotland Act were highlighted in the government 1997 White Paper as essentially being those areas of jurisdiction already devolved administratively to the Scottish Office including: health, local government, school education, housing, inward investment, agriculture, and the legal system.⁴⁸

⁴⁵ *Scotland Act, 1998*, s. 29(2).

⁴⁶ *Ibid.*, sch. 5.

⁴⁷ *Ibid.*

⁴⁸ The Scottish Office, "Scotland's Parliament," pp. 3-6.

Section 28(7): Establishing the Sovereignty of Westminster

Along with the definition reserved powers the most significant provision in sections 28-30 of the Act is in s.28(7), which affirms the full competence of Westminster to legislate in matters affecting Scotland, thus upholding the doctrine of the Parliament's sovereignty. This section originated in the 1997 White Paper's proposals: "This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland."⁴⁹ The implication is that Westminster will continue to legislate in matters reserved to it, but may also if it so chooses legislate in any of the matters specified in Schedule 5 of the Act as being devolved to the Parliament. The insertion of this subsection into the Scotland Act is significant, particularly in terms of the comparison being made here. Devolution is not federalism. Although the process of devolution incorporates many quasi-federal characteristics such as a division of powers and limited judicial review into the UK constitution, it does not put Scotland, or Wales for that matter, into a federal relationship with Westminster. Federalism cannot exist where none of the devolved bodies exercise sovereignty in the matters devolved to them. Constitutionally and therefore legally sovereignty continues to reside at the centre, at Westminster.

As noted by Himsworth and Munro, s.28(7) gives statutory expression to the orthodox principle of parliamentary sovereignty.⁵⁰ The government has already established the desire to have a convention emerge where Westminster would not legislate in areas devolved to the Scottish Parliament without the consent of the Parliament in Edinburgh.⁵¹ However, an important question is raised by Westminster's insistence on the preservation of this doctrine of parliamentary sovereignty, a doctrine that is already being eroded by the loss

⁴⁹ *Ibid.*, s. 28(7).

⁵⁰ Himsworth and Munro, *The Scotland Act 1998*, p. 36.

⁵¹ *Ibid.*

of power to EU institutions.⁵² It will be very difficult for Westminster to legislate in devolved areas when the Scottish Parliament is understood to be representative, of, and to have been achieved largely through popular sovereignty. The Parliament's power and indeed its existence as a national institution within Scotland was legitimised by the devolution referendum of 1997 when 74% of the population voted in favour of the government's White Paper proposals for the establishment of a parliament and 63% for one with tax-varying powers.

The role of s.28(7) is important in another respect as regards the Scotland Act as a whole. Under an orthodox, Diceyan interpretation of the doctrine of parliamentary sovereignty Westminster has the power to amend any section of the Act or repeal it entirely without the consent of Edinburgh. Again, this is not likely since Westminster is constrained by political realities. The popular endorsement of the Scotland Act which gave it and the parliament it created tremendous legitimacy raises the question of whether the Act can be treated as fundamental law, and thus beyond the scope of Westminster to amend or repeal at will. Many commentators have argued that due to the way in which Holyrood was created the *Scotland Act, 1998* is essentially unalterable without the consent of the Scottish Parliament. Bogdanor argues that the *Scotland Act, 1998* could come to constitute fundamental law in that it would be impossible in practice for Westminster to alter it in the same way as other legislation.⁵³ Himsworth in an interview has made a similar argument that the Scotland Act is unique, although not fundamental law.

A professor of public law at the University of Edinburgh, Himsworth embraces the principle of parliamentary sovereignty:

I think that beyond that when you come to devolution, then I suppose I am one of those who would say in a strict sense, and I think it remains important to attach significance to this, in a strict sense because we are talking about devolution rather

⁵² Robert Hazell, "Westminster: Squeezed from Above and Below," in *Constitutional Futures: A History of the Next Ten Years*, p. 111.

⁵³ Bogdanor, "Devolution: Decentralisation or Disintegration?," pp. 187-88.

than a federal structure, because it is done at the hand of the Westminster Parliament, on the whole we can continue to expect courts whether in Scotland or other parts of the United Kingdom to continue to pay respect to acts of Parliament even acts of Parliament which run counter to the terms and spirit of the Scotland Act. As long as we can expect that, then we can say in that respect that devolution has not dented the strict theory of the legislative supremacy of Parliament.⁵⁴

Himsworth argues that legally speaking the doctrine of parliamentary sovereignty remains intact. However, as has been argued, parliamentary sovereignty is subject to political considerations. While Scottish and UK courts will continue to respect acts of the Westminster Parliament this does not necessarily preclude an understanding of the Scotland Act as being in essence unalterable. Himsworth is in agreement with this position and argues that any sort of approval required of the Scottish Parliament for an amendment of the Act will in fact represent a limit on Westminster's sovereignty:

I think I can be reasonably sure, that as a political fact, that the spirit of the Scotland Act is substantially unamendable, obviously in detail it will be. I am quite sure it has already been amended by consent. One can't say it *cannot* be amended, it can be amended even by order, not even with an act of Parliament. But, obviously there will be some assumption under the conditions which we can reasonably call safe that a degree of consent at this end of the deal, the Scotland end of the deal, would be expected to be forthcoming and that obviously operates as some sort of restriction on the legislative freedom of Westminster.⁵⁵

Himsworth qualifies his argument by addressing the political aspect of the Scotland Act, that its role in establishing the Scottish Parliament and devolving power from Westminster to Holyrood cannot be undermined through substantial amendment without the approval of the Scottish Parliament. Himsworth is referring here to the legitimacy the Scotland Act enjoys which, as argued by Bogdanor, is unlike other acts of the Westminster Parliament. Thus, as a result of the unique nature of the Scotland Act there is a check placed on Westminster's power to substantially amend any act of Parliament as it sees fit. The establishment of a popularly elected legislature in Edinburgh and a popularly approved scheme of devolution has dealt a considerable blow to the orthodox understanding of parliamentary sovereignty.

⁵⁴ Interview with Prof. Chris Himsworth, Department of Public Law, University of Edinburgh, Edinburgh, 26.06.1999.

As one of the drafters of the *Scotland Act, 1998* Kenneth MacKenzie argues that the establishment of the Scottish Parliament has further undermined parliamentary sovereignty. It is his view that the demise of parliamentary sovereignty as the guiding force in the UK constitution is long and drawn out and began before devolution with the impact of the EU on Westminster's sovereignty and with the increasing role of the media in shaping policy.⁵⁶ Indeed, MacKenzie argues that devolution is one of a series of developments that have diminished, in practical terms, the sovereignty of Parliament:

Of course you and I know that the sovereignty of Parliament in theory and in statute, in law, is undiminished and they could abolish the Scottish Parliament tomorrow. They could repeal the act, but the chances of that happening would be very, very...well, because one of the few things that hasn't been said since the Scottish Parliament took over is: Can we not all just go back to where we were? Nobody, certainly not the Conservatives, is taking that view. So, I think that some of the old certainties that at the end of the day the sovereign Parliament at Westminster was the great anchor and lynchpin of the whole system have gone. It was being eroded in any case because of the transfer of sovereignty and power to the European Union. It's a constitutional change of much longer duration.⁵⁷

Despite the view articulated by MacKenzie that the devolution process does not amount to radical constitutional reform, the continued undermining of parliamentary sovereignty is a significant constitutional development. Devolution has prompted a re-examining of the relationships between the constituent nations of the UK and Westminster, and the demise of parliamentary sovereignty impacts the understanding of political power within the state and where that power actually lies.

The Scotland Act and its Impact on the UK

There has been considerable debate since the tabling of the 1997 White Paper as to what sort of state would emerge from the process of devolving power to Scotland. While it is the argument of this chapter that devolution represents a highly significant constitutional

⁵⁵ Ibid.

⁵⁶ Interview with Mr. Kenneth MacKenzie, Head, Development Department, The Scottish Executive, Leith, 22.09.2000. MacKenzie argues that all too often government policy is announced on the Today show, as he put it, before it makes it to the House of Commons for debate.

⁵⁷ Ibid.

reform and does result in a shift in power away from Westminster there are alternative positions. Indeed, the continued emphasis on parliamentary sovereignty, in spite of what some argue is its slow demise, is considered by some to be a stabilising force within the devolutionary process.

MacKenzie argues that devolution has formalised or better defined constitutional relationships within the UK. From his perspective, devolution has meant an extension of the already devolved administrative structures of the Scottish Office to legislative devolution through the Scottish Parliament. In an interview, MacKenzie stated that the *Scotland Act, 1998* was drafted with a “doomsday scenario” in mind where the SNP would form a government in the Parliament and encourage confrontation with Westminster over jurisdiction.⁵⁸ He later argued that since the doomsday scenario has failed to materialise as of yet that devolution has not, in fact, brought about any great constitutional change:

I'll come back later to the point that the machinery in the Act and in the White Paper were both designed with the doomsday scenario of political confrontation. Because we haven't had that, there has been no dramatic change, it seems to me, in the constitutional relationships. But, we have actually formalised the fact that things in Scotland were administered and now legislated for separately...The actual handling of business and the consultation and the awareness of what's happening in different parts of the UK has, if anything, been more defined than it was before. Perhaps that's what I mean by formalised, but it's not changed radically in its substance.⁵⁹

MacKenzie makes an argument that has a particular legal perspective, that the Scotland Act has not brought about any real constitutional reform in terms of changing the balance of constitutional power in the UK. As he argues, what the Act has achieved is a formalising of new legislative arrangements between Westminster and the Scottish Parliament. These arrangements have been made based on “an awareness of what's happening in different parts of the UK”, in other words on the need for asymmetry within the UK. It can be argued that MacKenzie understands devolution as a way of reorganising and expanding existing relationships within the UK while at the same time meeting the challenge posed by

⁵⁸ Ibid.

nationalists in Scotland to the integrity of the UK. However, as discussed the creation of the Scottish Parliament has tremendous political implications and cannot be understood purely in legal terms. As argued above, the establishment of the Scottish Parliament creates another political centre in the UK, one that cannot be ignored by Westminster despite a continuing emphasis being placed on the doctrine of parliamentary sovereignty.

Many commentators have argued that devolution *does* bring about significant, if not dramatic changes in the constitutional relationships within the UK by transforming it into an asymmetrical state. This asymmetry goes beyond the historical recognition of difference between the constituent nations of the UK and creates a state where each one of them enjoys a different political relationship with Westminster and Whitehall.⁶⁰ The distribution of powers contained in the Scotland Act introduces into the UK constitution a quasi-federal element through its establishment of another centre of legislative power with the Scottish Parliament.

The importance of this constitutional reform cannot be emphasised enough in the context of the changing nature of the UK state; it has helped along with other reforms to introduce into the constitution a degree of quasi-federalism.⁶¹ Bogdanor, however, argues that the new legislative relationship between Westminster and the Scottish Parliament, as defined in the Scotland Act, is federal when compared to its relationship to England and Wales:

Only with respect to England will MPs continue to enjoy the power which, until now, they have enjoyed for the whole of the UK, that of scrutinising both primary and secondary legislation. Thus Westminster, from being a parliament for both the domestic and non-domestic affairs of the whole UK, will be transformed into a domestic parliament for England, part of a domestic parliament for Wales, and a federal parliament for Northern Ireland and Scotland.⁶²

⁵⁹ Ibid.

⁶⁰ Munro, *Studies in Constitutional Law*, p. 44.

⁶¹ Robert Hazell, "Reinventing the Constitution: Can the state Survive?," *Public Law*, Spring, 1999, p. 92.

⁶² Bogdanor, "Devolution: Decentralisation or Disintegration?," p. 189.

However, in arguing that this asymmetry exists Bogdanor is speaking rather of a quasi-federal, rather than a federal relationship since in federal constitutions there exists a division of power between the federal and sub-state governments and a division of legal and political sovereignty. As has been argued, this does not exist in the UK. Contrary to Bogdanor's argument, MacKenzie argues that the listing of reserved powers in schedule 5 of the Scotland Act is the only quasi-federal element in the Act.⁶³ He does not agree that there has been any fundamental re-orienting of the constitutional framework of the UK.

In contrast to the quasi-federal relationship of the Scotland Act, a federal division of power does exist in the Canadian case where the *Constitution Act, 1867* in s.91 and s.92 enumerates the heads of jurisdiction of the Canadian federal Parliament and the provincial legislatures respectively. In the Canadian case sovereignty is divided between the federal Parliament and the provincial legislatures with each being sovereign in their powers to legislate; this is not the case in the Scotland Act and so we must consider the division of powers here as being quasi-federal. In the Spanish Constitution of 1978, as has been demonstrated, there is a similar division of powers between the competencies of the state and those of the autonomous communities; sovereignty resides in the Spanish nation. As in the Scotland Act there exist in the Spanish constitution some quasi-federal elements despite the fact that Spain is a decentralised, regional state and not a federal one. In all three constitutions matters pertaining to the state such as defence, the constitution, and foreign affairs are the exclusive jurisdiction of the central state whereas matters of a local nature are given over to the sub-state legislature or parliament. This arrangement largely holds for the Scotland Act as well. Another point of comparison is where residuary power lies in each of the three constitutions. In both the Scotland Act and the Spanish Constitution those areas not specifically given to the central state are seen to be within the jurisdiction or competence of

⁶³ Interview with Mr. Kenneth MacKenzie, Head, Development Department, The Scottish Executive, Leith, 22.09.2000.

the Parliament at the sub-state level, even though there is overlapping jurisdiction in both cases. In the Canadian constitution the residuary power lies with the federal Parliament under s.91 of the *Constitution Act, 1867* except in subjects that are merely local or private in nature where the provinces shall exercise jurisdiction (s. 92(16)).

Although the exact nature of the state that devolution has helped to create is debatable, what is certain is that the Scottish Parliament has considerable legitimacy within the Scottish polity. The Parliament at Holyrood has emerged as a new national institution and, it can be argued, has established itself as the centre of political activity for Scotland as a nation.

The Scottish Parliament as a National Institution

In establishing the Parliament, Westminster has helped to give birth to a new national institution. Bogdanor draws a comparison between the Parliament and the ill-fated Stormont Parliament abolished by Westminster in 1972 when direct rule of the province was instituted:

It [Scottish Parliament] will speak, moreover, not for an artificially created province in danger of being extruded from the kingdom against its wishes, but, as it conceives itself to be, the representative of a nation. Independence is therefore a very real option for Scotland, which it never was for Northern Ireland.⁶⁴

The prospect of Westminster legislating for Scotland in a devolved field without the consent of the Parliament is highly unlikely. However, the Scottish Conservative and Unionist Party is now an active participant in the Scottish Parliament having accepted the outcome of the 1997 referendum and having put forward candidates for the 1999 Scottish Parliament elections. Indeed, the Scottish Conservative and Unionists elected all of their members in the 1999 elections through the additional member system of proportional representation, an electoral system they previously condemned. While under s.28(7) Westminster can legally

⁶⁴ Vernon Bogdanor, "The Start of a New Song," The Hume Lecture 1998, 19 November 1998, Hume Occasional Paper No. 55 (Edinburgh: The David Hume Institute, 1998), p. 5.

make laws for Scotland, the political reality is that to do so would be, as argued by the previous SNP leader Alex Salmond on another occasion, “unpardonable folly”.

At the time of writing it is difficult to know what conflicts, if any, might arise between the Scottish Parliament and Westminster and also to what extent the Parliament will exert what rights it has as a national institution to push for greater devolution. In its first two years of operation Holyrood has already diverged from Westminster in terms of policy; it has abolished tuition fees for Scottish university students and has chosen to fund care for the elderly. Nationalists in the SNP have argued that as the Parliament at Holyrood becomes more and more entrenched as a national institution the significance of Westminster will become less, regardless of parliamentary sovereignty. SNP MSP Michael Russell articulated this position in an interview:

What we have walked into is Westminster withering on the vine and therefore its relevance will become less with each passing day until people don't think it exists. We'll wake up one morning and find out that we're not involved in it in any way because things have been transferred to Brussels, things have been transferred to Edinburgh. That's a possibility. It isn't even a possibility, that's just what will happen.⁶⁵

Russell's position is that of a gradualist nationalist who argues that devolution is beneficial in that it improves the governance of the people of Scotland and is a step along the path to independence. Thus, he argues that devolution and the growing role of the EU are stripping Westminster of power so that it will eventually no longer be a centre of political power for Scotland. Russell's argument is representative of the SNP's opinion that Scotland should take its place as an independent state within Europe thereby separating Scotland from the rest of the UK and eliminating Westminster's powers to legislate in reserved matters. Since the SNP has argued in favour of expanding Holyrood's jurisdiction and enlarging the list of devolved matters, Russell foresees Westminster becoming irrelevant. He argues that greater devolution might mean that Holyrood would end up exercising jurisdiction in areas such as

broadcasting and relations with Europe as they pertained to Scotland. Furthermore, the SNP would most likely argue for greater fiscal autonomy and control over the taxation system.⁶⁶ For Russell, devolution and the presence of the Scottish Parliament as a national institution is all part of a longer process of which the inevitable result will be independence.

In terms of the power of devolved parliaments and governmental institutions to mobilise national feeling and argue for greater jurisdiction a comparison can be drawn with the re-establishment of the Generalitat in Catalunya in the 1979 Catalan Statute of Autonomy. The Statute of Autonomy and the Spanish Constitution of 1978 worked in concert to establish the institutions of autonomous government in Catalunya, giving the Catalan Parliament legislative and executive powers over a wide range of devolved areas. Despite the fact that the Generalitat does not exercise sovereignty in the areas in which it has assumed competence by s. 1 of the Statute of Autonomy, the Generalitat has quickly become a powerful national institution within Catalunya and makes use of its status to extract further concessions from the state in areas of jurisdictional competence. Granted, for much of the 1990s CiU held the balance of power in the *Corts Generals* and was able to have its demands met; such a situation is unlikely to arise at Westminster. Recently, Catalan nationalists have called for a greater transfer of powers to the Generalitat under the provisions of Article 150(2) which permits the state to delegate or transfer further areas of state competence to an autonomous community.⁶⁷

Impact of Judicial Review

Along with a formal division of powers the further quasi-federal principle of judicial review has been introduced into the constitutional framework of the UK through sections 31-35 and Schedule 6 of the Scotland Act. In s. 31 the member of the Scottish

⁶⁵ Interview with Mr. Michael Russell, Scottish National Party MSP, The Scottish Parliament, Edinburgh, 12.07.2000.

⁶⁶ Ibid.

⁶⁷ Spanish Constitution, 1978, art. 150(2).

Executive, as the cabinet has been styled under the Act, in charge of a bill must declare before its introduction whether it falls within the legislative competence of the Parliament subject to a ruling by the Presiding Officer, as the speaker has been styled.⁶⁸ Sections 32 and 33 establish the process by which a bill can be referred to the Judicial Committee of the Privy Council (JCPC) for scrutiny. Referral can be made by the Lord Advocate, the Attorney General, or the Advocate General. The position of the Advocate General as a law officer is a new one brought about by s. 48 and s. 87 of the Scotland Act which transfers the offices of Lord Advocate and Solicitor General from Westminster to the Scottish Executive; the Advocate General's role is to advise Westminster on matters of Scottish law. If a referral is made by the law officers to the JCPC in the pre-enactment stage of a bill, the Presiding Officer is not allowed to submit the bill for Royal Assent; this is done according to a particular timetable as laid out in s.33(2). Post-enactment judicial review is enumerated in Schedule 6 which outlines the procedures by which a "devolution issue" is subject to challenge in the courts. A "devolution issue" is defined as the following: "a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is within the legislative competence of the Parliament."⁶⁹ The effect of this is that legislation of the Scottish Parliament in either the pre-Royal Assent stage as a bill or post-Royal Assent as an act is justiciable. Thus, the JCPC or another court in the UK can rule whether an act or bill is *ultra vires*, that is, outside the Parliament's competence. As it has already been demonstrated, such a form of judicial review of Westminster legislation is not possible nor is it tenable due to the doctrine of parliamentary sovereignty. With these powers, the JCPC will have an impact on not just Scotland, but the UK constitution as a whole.

⁶⁸ Scotland Act, 1998, s. 31.

⁶⁹ *Ibid.*, sch. 6, para. 1.

The Role of the JCPC

The JCPC exists along with the Appellate Committee of the House of Lords as generalist courts whose remit includes constitutional questions.⁷⁰ The JCPC was established in 1833 as an appeals court which ruled on appeals from colonial, admiralty, and ecclesiastical courts.⁷¹ It evolved into an imperial court which heard appeals from across the British Empire and later the Commonwealth, and was the highest court of appeal for Canada until 1949 when the Supreme Court came to fulfil this role. The JCPC remains the highest court of appeal for New Zealand, Jamaica, Trinidad & Tobago and a number of other sovereign Caribbean states as well as British Dependent Territories such as Bermuda. Yet the JCPC has emerged as a constitutional court for resolving devolution issues thus representing an increase in the court's functions in adjudicating constitutional matters.⁷² Lord Hope has argued that there is an advantage in having the JCPC over the House of Lords as a constitutional court. He bases this argument on two points. Firstly, it seems wrong that the upper house of the Westminster Parliament should rule on the validity of legislation emanating from the Scottish Parliament. Secondly, the JCPC enjoys a wider membership which includes the Scottish Lords of Appeal in Ordinary, retired Lords of Appeal in Ordinary, and Privy Councillors who have held high judicial office including the Lord President, the Lord Advocate, and the Lord Justice Clerk.⁷³ This will provide a broader base of experienced members of the Scottish judiciary from which to constitute the JCPC to hear Scottish Appeals. It is also interesting to note that the Scotland Act in s. 95(2) provides that the Prime Minister in recommending to the Queen appointees to the offices of Lord President and Lord Justice Clerk may not do so unless they have been nominated by the First

⁷⁰ Andrew Le Sueur and Richard Cornes, "What do the Top Courts do?" (London: The Constitution Unit, 2000), p. 22.

⁷¹ Bradley and Ewing, p. 411.

⁷² Le Sueur and Cornes, p. 24.

Minister.⁷⁴ What is most significant about JCPC decisions on constitutional matters is that they will bind all other courts, making it the highest court on constitutional issues – a *de facto* constitutional court for the UK.⁷⁵

The debate over the choice of the JCPC as the arbiter of disputes between Westminster and Holyrood rested very much on the need to demonstrate the independence of the institutions of devolution from Westminster. MacKenzie recalled that the Lord Chancellor, Derry Irvine, played a central role in choosing the JCPC and developing the procedure by which it would arbitrate disputes. MacKenzie argues that the choice of the JCPC was based on a number of issues not the least of which were strengthening the Crown in the devolution process and House of Lords reform:

If they [the JCPC] sat in their capacity as members of the House of Lords, which is very clearly part of the UK Parliament from which this whole thing was supposed to become disassociated, would it look as if, ah, this is nasty old Westminster wanting to umpire in what would effectively be a tug-of-war between the two Parliaments... Calling it the House of Lords would have that very clear association at the time when the government was tilting publicly at the House of Lords as a second chamber. So that turned to well, we can have the same people but in their capacity as the Judicial Committee of the Privy Council which sounds much more separate, doesn't have the label attached to it and is much more obscure to the public mind. Of course the reference with the Privy Council links it very closely to the monarchy and all of that and there was no doubt in the Lord Chancellor's mind that this would redefine the position of the Crown in all this, whatever controversies might surround the monarchy. Nevertheless, it was a safer bet, putting it crudely, to have it associated with the Judicial Committee than with the House of Lords, partly because of the obscurity but also because the Privy Council sounds more apolitical, more respectable, more the great, the good, and the grandees of yesteryear who made it to the Privy Council.⁷⁶

MacKenzie argues for the need to keep this *de facto* constitutional court separate from Westminster. From this perspective the JCPC fulfils a dual purpose. Not only does it act as a judicial forum in which disputes between the two parliaments can be resolved at a

⁷³ Lord Hope of Craighead, "Working with the Scottish Parliament: Judicial Aspects of Devolution," The Hume Lecture 1997, 5 December 1997, Hume Occasion Paper No. 54 (Edinburgh: The David Hume Institute, 1998), pp. 16-17.

⁷⁴ Scotland Act, 1998, s. 95(2).

⁷⁵ Le Sueur and Cornes, p. 26.

perceived distance from Westminster; it also manages to reinforce already existing constitutional structures such as the House of Lords and the monarchy. As the JCPC, the Law Lords are given a new function as a domestic constitutional court that enjoys a power of judicial review. As MacKenzie argues, by giving a new role to the Privy Council the position of the sovereign is confirmed within the new order, thus strengthening the position of the Crown in relation to the Scottish Parliament. Ultimately, it can be argued that the JCPC in its new capacity will come to play a role in the ongoing process of constitutional reform.

The establishment of a court to deal with constitutional issues arising within the framework of the UK constitution is unique in the history of British jurisprudence. The functions performed by the JCPC are very similar to those performed by constitutional courts in federal countries such as Belgium, Germany and those with a common law tradition such as Canada, Australia, and South Africa. The establishment of the JCPC as a constitutional court has a federalising effect on the constitution.⁷⁷ The long-term impact of the Judicial Committee on the constitution is difficult to gauge; yet its role in arbitrating Scottish devolution is a significant one:

The courts, and ultimately the Privy Council will have a central role in interpreting the devolution settlement; and in adjusting it in the light of changing circumstances and changing political values. This may go further than purely marginal adjustment: in the first century of the Canadian federation a series of decisions by the Privy Council in London turned the intended division of powers between the federal and provincial governments on its head.⁷⁸

And so the courts, particularly the JCPC, will play an important role in the determination of the Scottish Parliament's exercise of its legislative competence. It is to be expected that there will be a good deal of co-operation and communication between Westminster and the

⁷⁶ Interview with Mr. Kenneth MacKenzie, Head, Development Department, The Scottish Executive, Leith, 22.09.2000.

⁷⁷ Hazell, "Reinventing the Constitution: Can the state Survive?," p. 92.

Parliament in terms of legislative agendas. It could be anticipated that this would be accepted as convention, thus reducing the number of judicial decisions that could conceivably bring the two parliaments into repeated conflict with one another. The result of such a conflict could bring about a questioning of the exclusive sovereignty of Westminster in relation to Scotland and the perceived limits of the Parliament's legislative powers .

A rival interpretation to Cornes' is that of Himsworth who argues that the JCPC will not, most likely, turn the UK constitution on its head. He argues that the Canadian example should not be considered to any great degree as the JCPC will be more predictable in how it handles its domestic tasks than how it supposedly re-shaped Canadian federalism.⁷⁹

Regarding the choice of the JCPC as a constitutional court, Himsworth questions the use of it as a constitutional court and thinks that at some stage it might no longer be suitable. He argues as well that it is very hard to speculate on what matters might arise before the JCPC:

I find it very difficult to guess necessarily what sorts of issues are going to arise. I find it very difficult to guess which way they [the JCPC] will jump in relation to those issues. I don't know how far human rights issues are likely to dominate rather than the issues we would associate with reserved and devolved matters. It is difficult to guess quite what they are likely to do. If we are talking simply about the acceptability of that court presently dubbed with that name and with that particular composition then I can hardly believe there is anyone, in the Irish phrase, who would have started from there if they'd had the choice.⁸⁰

Through his argument Himsworth highlights one of the particular problems behind an examination and analysis of the structures of devolution such as the JCPC in that it is very hard to try and predict what may or may not happen. For Himsworth, the choice of the JCPC as a body to arbitrate disputes is a curious one, although he does not give reasons for why he finds it so or what other possible alternatives for such a court might exist. This illustrates the degree of uncertainty there is among certain observers over how devolution will function in

⁷⁸ Richard Cornes, "Intergovernmental Relations in a Devolved United Kingdom: Making Devolution Work," in *Constitutional Futures: A History of the Next Ten Years*, p. 169. And Interview with Mr. Richard Cornes, The Constitution Unit, University College London, London, 23.06.1999.

⁷⁹ Interview with Prof. Chris Himsworth, Department of Public Law, University of Edinburgh, Edinburgh, 26.06.1999.

the long term. Commentators such as Cornes are willing to argue that decisions of the JCPC could in the future bring about significant constitutional change similar to that of the first seventy years or so of Canadian federalism. Himsworth and other are less than willing to speculate that far.

Relations with Westminster

Having examined some of the fundamental constitutional reforms brought about by the provisions of the *Scotland Act, 1998* and how a new constitutional framework is emerging in the UK, the question arises as to whether this structure in its current form is tenable over the long term. In many ways it is difficult to determine this at such an early stage. This new constitutional framework may become untenable if Westminster tries to limit the process of devolution in any way. Scottish nationalists in the SNP are particularly conscious of this and see any interference by Westminster as a vindication of their position that Scotland must be independent if it is to have full control over its own affairs. Russell argues that any controversial ruling by the JCPC against legislation emanating from the Scottish Parliament would be highly problematic: "The moment that kicks in they've [Westminster] had it. It will be interesting to see what happens the first time it's used because what will actually happen is that the impression will be given very strongly that the Scottish Parliament is being told what to do by somewhere else."⁸¹ Nationalists could argue that such a perception would generate greater support for independence among the Scottish population, who would see in a ruling against Holyrood the failure of devolution. For the SNP such a situation would demonstrate that devolution as established in the *Scotland Act, 1998* is untenable. Although much of this is speculative on the part of the SNP it is worthwhile noting that they have in fact considered the political ramifications of such a situation.

⁸⁰ Ibid.

As argued before, there is a new political and legal dynamic within the UK constitution and for devolution to succeed this dynamic must be allowed to take hold. Whether this dynamic will lead to the creation of a federal UK or more likely a quasi-federal UK based on asymmetrical relationships between Westminster, Scotland, Wales, and Northern Ireland depends largely on the development of an institutional framework to manage devolution:

Each initiative has been planned with little obvious regard to the other elements in the devolution package...; and with no sense of the package as a coherent whole. But as devolution is implemented in this piecemeal fashion there may be a growing need to develop a coherent framework, if only after the event, for practical and political reasons. Coherence need not mean symmetry or even federalism by another name; but it should imply, where appropriate, the development of common solutions to common problems, and a common institutional framework to cement the devolution settlement.⁸²

It has been argued by many, including Hazell, that if and when disputes over jurisdiction arise between Scotland and Westminster it would be in the best interest of both Parliaments to develop an intergovernmental relations network. To a certain degree this process is already underway with the government's establishment of the Joint Ministerial Committee, whose membership consists of the UK government and representatives from the devolved bodies. Greater co-operation between Westminster and Holyrood has also been facilitated through the series of concordats reached between Whitehall departments in London and the Scottish Executive prior to the creation of the Scottish Parliament in 1999. The committee emphasises the need for co-operation and "provides institutional recognition of the fact that devolution creates a situation of interdependence rather than a separation of powers."⁸³ From a comparative perspective the UK can look to Canada and Spain where there are elaborate networks of intergovernmental relations between the central government and the

⁸¹ Interview with Mr. Michael Russell, Scottish National Party MSP, The Scottish Parliament, Edinburgh, 12.07.2000.

⁸² Robert Hazell and Brendan O'Leary, "A Rolling Programme of Devolution: Slippery Slope or Safeguard of the Union?," in *Constitutional Futures: A History of the Next Ten Years*, p. 21.

governments of the provinces and autonomous communities. One particular area of intergovernmental relations that will need to be developed in the near future are dispute settlement mechanisms. Cornes argues for the establishment of both formal and informal types of dispute settlement mechanisms to deal with particular areas where conflict may arise, including the enforceability of concordats, financing, foreign affairs negotiations, rights under intergovernmental agreements, and the right to secede.⁸⁴

To what degree the emerging constitutional framework of the UK functions as expected is difficult to ascertain at present. It is outside the scope of this thesis to speculate on the constitutional future of Scotland and the rest of the UK. However, the impact of devolution on the doctrine of parliamentary sovereignty and the increasing role of judicial review in the constitution will be significant issues. Yet it must be stated that devolution has helped to resolve the issue of democratic accountability in the previous system of administrative devolution through the Scottish Office, which lacked a direct legislative check on its actions. Furthermore, devolution has done a great deal to alleviate the perceived democratic deficit that had been identified as a result of Scottish voters' support for the Labour Party during a period of eighteen years of Conservative government. While devolution is a considerable achievement, it is viewed by Scottish nationalists within the SNP who advocate an independent Scotland in Europe as being either insufficient or merely a stepping stone to independence.

⁸³ Vernon Bogdanor, *Devolution in the United Kingdom* (Oxford: Oxford University Press, 1999), p. 284.

⁸⁴ Cornes, p. 173.

Character of Scottish Nationalism

If one places Scottish nationalism in context alongside nationalism in Catalunya and Québec it becomes obvious that there are some notable differences as well as some similarities. Nationalism in Scotland is not as diffuse as it is in Québec or Catalunya in terms of the number of parties. In Québec the Parti Québécois is the provincial nationalist party whereas the Bloc Québécois has been a party dedicated to promoting Québec's interests and the goal of Québec independence in the federal Parliament since 1991. The two parties are very closely tied in terms of strategy and ideology with the PQ taking the leading role. In Catalunya the existence of five nationalist parties, CDC, UDC, PSC, IC-Verds, and ERC, illustrates the diversity of nationalism in Catalunya with each party committed to a nationalist agenda but with differing approaches and ideologies.

In both Scotland and Québec there is a broader concept of nationalism when it comes to party support. In the first place there are those voters who, for the purposes of this chapter, can be described as soft nationalists -those who identify with the national character of Scotland or Québec within the state and believe that its distinctiveness should be recognised by certain constitutional, political, or fiscal arrangements. Soft nationalists can support a federalist party in Québec, for example the Québec Liberal Party, and unionist parties in Scotland, either the Scottish Labour Party or the Scottish Liberal Democrats, both of which support and fought for home rule for Scotland. As discussed in chapter four, soft nationalists were to be found in the Conservative Party from 1969 to the mid-1970s when the Thistle Group argued the case for Scottish devolution.⁸⁵ However, soft nationalists might also support hard nationalist, separatist parties such as the PQ, BQ, or SNP if they believe they can best represent the interests of Scotland or Québec, although they might not support independence as a constitutional solution. For example, in the *Scottish Election Survey* of 1997 over a third of SNP supporters, 34%, supported a Scottish Parliament within the UK as

their preferred constitutional option rather than the SNP's position of independence. The same poll showed that 23% of Labour supporters favoured some form of independence for Scotland⁸⁶ Thus, it appears that the SNP does not enjoy the allegiance of all those nationalists in Scotland who support independence.⁸⁷ It can be argued that soft nationalists in the Scottish case are those who support devolution as a means of recognising Scotland's right to enact legislation and govern in areas of concern to Scotland. The establishment of a Scottish Parliament, having jurisdiction over devolved matters, is a means of recognising the distinctiveness of Scotland as a nation within the UK. For nationalists in the SNP who advocate an independent Scottish state devolution cannot be an end in itself.

The Position of the SNP

The SNP is the only main party in Scotland that identifies itself as nationalist and that explicitly invokes the Scottish nation's right to self-determination -the right to exist as an independent state. The Scottish Socialist Party of MSP Tommy Sheridan also favours independence for Scotland. The SNP is a monolithic party in that it runs candidates in both Westminster and Scottish Parliament elections and does not divide the party by way of a federated structure as is the case with the Labour Party, the Liberal Democrats or the Conservatives who have separate party structures in Scotland. The SNP is the only party in Scotland advocating separatism: the creation of an independent Scottish state within Europe. The character of the SNP's nationalism is moderate and inclusive, and it embraces the principles of equality among all citizens who reside in Scotland.⁸⁸ The party is moderate in that it has adopted a democratic and constitutional, and thus non-violent approach to try to reach its goal of Scottish independence:

⁸⁵ Andrew Marr, *The Battle for Scotland*, rpt. (London: Penguin Books Ltd., 1995), p. 125.

⁸⁶ *Scottish Election Survey 1997* as cited in Alice Brown et al., *Politics and Society in Scotland*, p. 162.

⁸⁷ McCrone, *Understanding Scotland: the Sociology of a stateless Nation*, p. 212.

⁸⁸ Neil MacCormick, "Unrepentant Gradualism," in *A Diverse Assembly: the Debate on a Scottish Parliament*, ed. Lindsay Paterson (Edinburgh: Edinburgh University Press, 1998), p. 176.

The SNP has been devoutly and unshakeably constitutionalist and democratic throughout its history, and is so now. Even if there were shortcuts to its cherished goal of a free Scotland, the party has never shown any inclination towards them, and rightly, since attempts to dodge round either would put at profound risk the integrity of the objective sought. The general temper of Scottish politics in modern times provides its own guarantee against any successful adventures down such shortcuts.⁸⁹

The SNP is a moderate, democratic party but it is one which has been divided somewhat by the process that led up to the creation of the Scottish Parliament. The source of this division within the party lies in an ongoing, historical debate on whether the SNP should participate in and advocate devolution. Generally, there are considered to be two wings within the party, one gradualist and the other fundamentalist, who differ over the approach taken towards reaching the goal of an independent Scotland. The gradualist wing has embraced devolution as the first step on the road towards independence. Russell has articulated the gradualist position:

There's a principled argument which is to say that any change in the governance of Scotland, that improves the governance of Scotland, is something that the SNP should support and on the SNP membership card you find two things: one is a belief in independence and the second one is to help further Scottish interests. Now therefore does not better governance for Scotland, even though it's not as good as we want, further Scottish interests? So for both reasons it was right to support the referendum and right to support devolution.⁹⁰

Russell's argument presents the view held by the current leadership of the SNP who see the Parliament as an effective tool for getting their message across. As Russell argues, the SNP working within Holyrood can show that devolution means good governance for Scotland and that they are willing to work within the system to further Scottish interests rather than outside where their impact would be diminished.

The emphasis on good governance by those who embrace the gradualist position has found favour with some other commentators in Scotland, such as Kenyon Wright, who

⁸⁹ *Ibid.*, p. 175.

⁹⁰ Interview with Mr. Michael Russell, Scottish National Party MSP, The Scottish Parliament, Edinburgh, 12.07.2000.

argues that devolution gives the SNP the opportunity to evolve and move away from a nationalism that focuses on creating an independent Scottish nation-state:

...My hope would be that nationalism would go in the same direction as Catalan nationalism has gone, mainly the importance of an independent and totally separate nation-state would become less significant and the importance of Scottish identity and personality being revised, and indeed in expanding the powers of the Parliament, but not necessarily towards the direction of total nation-state independence which makes less and less sense when you're in Europe anyway.⁹¹

Wright embraces the approach of CiU in Catalunya as a means of furthering the autonomy of the nation within the larger multinational state. His emphasis on Scottish personality and his own Christian ethos would tend to lead him to embrace a Christian democratic view of the nation as espoused by UDC. Certainly, for Wright the Catalan model is attractive as it shows how devolution and the establishment of powerful autonomous governmental institutions can further the interests of the minority nation. As one of the architects of devolution, Wright argues that the preferred option is to continue to expand the jurisdiction of Holyrood. He discounts the SNP's goal of independence in Europe, arguing that such a plan is unnecessary considering the evolution of the EU. From Wright's perspective, the success of devolution and its possible expansion could effectively render ineffectual the SNP's position on independence.

The move towards a more gradualist position within the leadership of the SNP can be attributed to the leadership of Alex Salmond, who after rejecting the SCC, went on to steer the party towards participation in the 1997 referendum and the Scottish Parliament. The gradualists have been ascendant in the party during his leadership. Under the leadership of Salmond and his successor as Party Chairman John Swinney, the SNP has emerged as the Labour Party's main adversary in Scotland. In the 1999 elections to the Scottish Parliament the SNP won 35 seats, making it the second largest party behind Labour with 56.⁹² The

⁹¹ Interview with Rev. Kenyon Wright, Former Chair of the Executive Committee, The Scottish Constitutional Convention, Perth, 05.07.1999.

⁹² Miller, p. 307.

fundamentalist wing sees the Scottish Parliament and devolution as a diversion on the path towards independence, taking the SNP away from its overall goal. It was largely as a result of the influence of fundamentalists that the SNP withdrew from the Scottish Constitutional Convention in 1989 arguing that “it would not take independence seriously enough.”⁹³

MacCormick, a gradualist within the party who is supportive of a European federal union in which Scotland would be a member, has argued that the SNP’s rejection of the convention was misguided. In his view, non-participation in the convention’s discussions on the devolution scheme was more damaging than the possible consequences of taking part.

Fundamentalists saw these consequences as being the dilution of the independence message:

Some will say that the very act of working out such a scheme would so dilute the SNP’s commitment and demoralise its workers that it would be counter-productive. I doubt it. Further, when one takes it the other way and speculates on the morale and drawing power of a party which appears to have walked away from the attempt to articulate an all Scotland consensus as to one workable scheme, one is left doubting whether the course of non-participation in the convention is not the course which incurs by far the greater damage. I am sure it is.⁹⁴

As it was, the SNP stayed out of the convention but then when the 1997 White Paper was published and the referendum was fought the SNP campaigned as part of Scotland FORward and fought for the establishment of the Parliament.

For the party the creation of a Scottish Parliament represents increased democracy and greater Scottish self-government:

The new Parliament approved by the Scottish voters does not, of course, amount to Independence nor even to the construction of a federal state in the UK, since England is left untouched. It represents internal self-government for Scotland; but the changes do represent a significant advance for democracy and will bring back to Scotland powers over a whole range of important policies such as health, education, law & order and land use.⁹⁵

While the adoption of a gradualist strategy by the party leadership in the Scottish Parliament might be criticised by fundamentalists it does not necessarily represent a dilution of the

⁹³ Brown et. al., *Politics and Society in Scotland*, pp. 65-66.

⁹⁴ MacCormick, “Unrepentant Gradualism,” p. 182.

party's message of independence in Europe. As many have argued, the gradualist approach has given the SNP a platform in the Scottish Parliament to argue for independence.⁹⁶

By examining party manifestos and policy documents we can get a better sense of how the SNP articulates its goals and what the party means when it advocates a policy of "Independence in Europe." The SNP believes that a "civilised divorce" from the UK would allow it to be an independent state within Europe where it argues Scotland can have a greater voice than in the UK and play a greater role along the lines of other small nations such as Denmark and Ireland:

People here can see that, as a small independent country, Scotland can have considerable influence in a Europe in which all member states play an active and positive role. Independence would give Scotland voting power and negotiating influence as a member state of the European Union. Under international law, successor states inherit the treaty obligations of the old state. Maintaining membership of the European Union after independence for both Scotland and England, is therefore guaranteed.⁹⁷

Indeed, the SNP views the EU as a political unit that is more open to the interests of Scotland than the UK state. Scotland can achieve greater recognition as a small nation by becoming an independent state within the EU. Since its conversion to a pro-European stance in the early 1980's and its adoption of the "Independence in Europe" strategy at the 1988 party conference, the party has campaigned in European elections. From his perspective as an MSP Russell articulates what the SNP understands independence in Europe to mean:

You could express independence in Europe by saying Scotland, or the SNP recognises that Scotland would be a better place to live in if we had direct relationships with nations and supra-national organisations and confederalist organisations than it is being part of an incorporating union at this particular stage in our history.⁹⁸

⁹⁵ Allan Macartney, Scotland on the Move: a Guide to the International Policies and Priorities of the Scottish National Party (Edinburgh: Scottish National Party, 1998), p. 2.

⁹⁶ Hazel and O'Leary, p. 22.

⁹⁷ Macartney, p. 12.

⁹⁸ Interview with Mr. Michael Russell, Scottish National Party MSP, The Scottish Parliament, Edinburgh, 12.07.2000.

Russell argues that the UK state as a union state is holding Scotland back and that by becoming an independent state within the EU Scotland's present condition would improve through "direct relationships" with other European nations and EU institutions. In the interview Russell contrasted what the SNP views as Westminster's understanding of the state and Scottish nationalists in the SNP's conceptions of the state. His argument rests upon the premise that the SNP has a 21st century, progressive understanding of the state where a small nation is able to "pool sovereignty" with other nations in the EU. In contrast, Westminster's perceived reticence towards Europe and continued emphasis on the Union is seen as static and thereby limiting Scotland. The SNP leadership and Russell would argue that independence for Scotland in Europe is the best way to end the incorporating union and separate Scotland from the rest of the UK. The SNP's advocating of "Independence in Europe" for Scotland has been central to their strategy for the thirteen years since the party conference of 1988.

The SNP and Europe

In the 1999 elections to the European Parliament the SNP further articulated its stance towards Europe. In its European elections manifesto the SNP sought to expand Scotland's presence in European institutions, notably through the establishment of a Scottish-European Joint Assembly made up of members of the Scottish Parliament and European representatives such as Scottish MEPs and members of the Committee of the Regions. The joint assembly would "coordinate Scotland's voice on issues of national importance."⁹⁹ The party also declared its support for joining the Euro and the European common monetary policy, its belief in the principle of subsidiarity and the development of decentralised European democracy, and its position on a wide range of EU issues from fishing to the Common Agricultural Policy, regional aid, and transport. Throughout the

⁹⁹ Scottish National Party, Standing Up for Scotland: Scottish National Party Manifesto for the European Parliament Elections 10 June 1999 (Edinburgh: SNP, 1999), p. 3.

manifesto the SNP gradualist position is clear: an independent Scotland in Europe would flourish and prosper in Europe:

With the Scottish Parliament established, and a new Europe emerging based on principles of inclusiveness and co-operation between independent member states, Westminster is left looking out-of-date and increasingly irrelevant to Scotland's future interests. As we open a new chapter in Scotland's history, there can be no better time for Scotland to redefine its status within the European Union by becoming an independent member state. Independence in Europe has never looked more attractive or more achievable.¹⁰⁰

For the gradualist SNP leadership, the Parliament is viewed as a vehicle towards achieving independence with the European Union facilitating Scotland's exit from the union state.

The SNP and the Scottish Parliament

In its manifesto for the elections to the Scottish Parliament in the month prior to the European elections, the party claimed to be "Scotland's Party", the only party which could truly speak for Scotland. This assertion was based on the fact that the SNP is in no way tied to a Westminster party, thus painting their rivals in the Labour Party, in particular, as subservient to the wishes of 'new' Labour at Westminster: "Scotland's Parliament needs Scotland's Party. A party in tune with Scottish needs and hopes, and always with Scottish priorities at the forefront of our thinking. A party that does not dance to Westminster's tune."¹⁰¹ In keeping with its social democratic tradition, the SNP centred its manifesto commitments around the themes of enterprise, compassion, and democracy. In an effort to meet its commitments to improving education, the health service, and housing the SNP stated that it would not increase the basic rate of tax but rather would not implement Westminster's 1p tax cut thus making available additional funds. This "Penny for Scotland" strategy set the SNP apart from the other parties. The party argued that this policy addressed those Scots who were in favour of greater investment in public services. Again, the SNP positioned itself as being the one party that understood Scotland.

¹⁰⁰ Ibid., p. 5.

While the SNP came to form the second largest party in the Parliament following the 1999 election the result was not a positive one for the party. It can be argued that the “Penny for Scotland” slogan lost the party votes as the Scottish electorate understood it as a tax increase, the infamous “Tartan Tax” as labelled by the former Conservative Secretary of State Michael Forsyth. As Miller argues, this test of Scottish voters’ presumed support for higher taxes and greater spending proved to be a failure as it did not produce a net gain in votes for the SNP.¹⁰² Salmond’s criticism of the NATO bombing of Kosovo, which he described as ‘unpardonable folly’, also damaged the party’s fortunes as it was condemned by many as an inappropriate intervention.¹⁰³ In the election the SNP failed to meet its target of 40 seats. It won only one more constituency seat than at the 1997 general election, owing the rest of its seats to the additional member electoral system.¹⁰⁴

The SNP’s manifesto for the Scottish Parliament election made a commitment to independence and embraced a gradualist position by arguing that the Parliament was a vehicle for achieving independence and that each commitment made by the party could best be achieved through independence. The SNP argued that independence would enable it to legislate on issues such as the constitution, defence, and foreign relations, all of which are reserved matters:

On to INDEPENDENCE...and the opportunity to make our own decisions on matters such as conflict resolution, international relations and foreign policy, such as the removal of the Trident missile system from Scotland. And we will be able to introduce a written Constitution and a Bill of Rights, making all Scots citizens, not subjects –guaranteeing their protection before the law and from unjustified government interference or inequitable action.¹⁰⁵

¹⁰¹ Scottish National Party, Scotland’s Party for Scotland’s Parliament: the Scottish National Party Manifesto for the Scottish Parliament Elections 6 May 1999 (Edinburgh: SNP, 1999), p. 1.

¹⁰² Miller, p. 318.

¹⁰³ Ibid., p. 316.

¹⁰⁴ Ibid., p. 299.

¹⁰⁵ Scottish National Party, Scotland’s Party for Scotland’s Parliament: the Scottish National Party Manifesto for the Scottish Parliament Elections 6 May 1999, p. 31.

The SNP further committed itself to holding a referendum on independence within the first four-year term of the Parliament if it were elected to govern.¹⁰⁶ This commitment echoes that made by the Parti Québécois when it came to power in 1976, promising to hold a referendum on sovereignty-association before the end of its mandate. The decision to hold a referendum on independence flows from the SNP's firm commitment to democracy, popular sovereignty, and constitutionalism.

It can be argued that if an SNP administration were to hold a referendum, it would be very difficult for Westminster to ignore the result since the same process was used to legitimise the establishment of the Scottish Parliament. The Scottish Parliament does not have the power to change the UK constitution and so a unilateral declaration of independence by an SNP administration would not be constitutional. Nevertheless, given such an eventuality it would arguably be a great political mistake to ignore the popular will.¹⁰⁷ Again, a direct comparison can be drawn from the Canada-Québec debate. The Supreme Court of Canada ruled in 1998 in the federal government's reference case on secession that Québec could not unilaterally secede under Canadian constitutional law or under international law, but that the federal government would be bound to negotiate with Québec in the event of a referendum vote in favour of sovereignty. The referendum result would have to be a clear majority on a clear question, though the court did not define what 'clear' meant in these two cases.

The SNP and Westminster

In its election manifesto for the 1997 General Election, the SNP steered clear of specific constitutional proposals, choosing rather to argue the economic reasons for independence. The party's argument rests largely on two assertions: that Scotland is a wealthy nation but is not meeting its full potential in the Union, and that Scotland has

¹⁰⁶ Ibid., p. 1.

¹⁰⁷ Hazel and O'Leary, p. 23.

contributed more in taxes to Westminster than it has received back in public expenditure.

The Treasury and independent economists have challenged this second assertion, particularly the SNP's figure of £27 billion. Whereas in the European and Scottish Parliament manifestos the SNP argued that the constitutional arrangements of the union state were responsible for holding back Scotland, here the argument is that it is the economic arrangements of the state that are responsible for Scotland's post-imperial decline:

Scotland is a wealthy country. When our share of the wealth produced from North Sea oil and gas is taken into account, **Scotland is the 8th richest** nation in the industrialised world, nestling between Canada and Austria. At the turn of the century we were the most prosperous nation in the world. In the intervening years, the steady decline of the United Kingdom has dragged Scotland down.¹⁰⁸

In each of its manifestos the SNP advocates radical constitutional change: the dissolution of the Union and the establishment of an independent Scottish state. If independence is defined as exercising full political sovereignty over a geographic territory it is doubtful whether Scotland can truly be independent in the manner conceived of by the SNP. Since a great deal of the UK's own sovereignty has been ceded to the European Union it would be impossible for an independent Scotland to be fully sovereign within Europe. What the SNP argues in favour of is Scotland being able to exercise what limited sovereignty it has in a European context where the rights of smaller nations are seen to be acknowledged and better protected than in the context of the UK state. Such a position would fundamentally question the whole concept of independence being the exercise of sovereignty.

In bringing about devolution Westminster responded to long-standing Scottish demands for greater self-government or home rule. It responded to the persistent criticism emanating from many sectors of Scottish civil society that Scotland as a nation was not having its concerns adequately addressed through the centralised institutions of the UK state. Westminster has not directly met any of the SNP's key demands as this would be seen as

¹⁰⁸ Scottish National Party, Yes We Can Win the Best for Scotland: The SNP General Election Budget 1997 (Edinburgh: SNP, 1997), p. iii.

endorsing the SNP's position and conceding to it. From the perspective of the SNP the establishment of the Scottish Parliament and the devolution of power to it has been a positive step, but it is not an end in itself. Devolution alone is insufficient as a final solution for the SNP, as it does not afford the level of recognition desired by nationalists in that party.

In the Scottish case, recognition of the nation within the UK state is unquestioned, yet the issue is more one of how much recognition is enough to meet the demands of some nationalists. Unlike Spain, there is not an explicit constitutional rejection of the existence of nations other than that identified with the UK state and the Union. Similarly in Canada there is no constitutional recognition of the state as being multinational –multicultural, bicultural and bilingual yes, but not multinational. As has already been demonstrated, the United Kingdom since the unions with Scotland in 1707 and Ireland in 1800 has acknowledged its multinational character and has embraced a degree of asymmetry through constitutional arrangements. This asymmetry has expanded considerably and has taken on a quasi-federal nature with devolution. The undermining of the doctrine of parliamentary sovereignty by the process of devolution has further contributed to an emerging quasi-federalism in the UK constitution. As has been argued in this chapter, the whole conception of Britain and the union state is being reshaped as devolution establishes in Scotland a new centre of political power in Holyrood, a Parliament that has emerged as a national institution.

The changes brought about through the process of devolution, particularly the creation of new institutions in Scotland, have had an impact on the development of Scottish national identity. Britishness and Scottishness have existed side by side as two aspects of a national identity, and this dual identity is very much a factor in how Scots view themselves and their place within the UK.¹⁰⁹ McCrone has argued that national identities have historically been ambiguous within the UK and that only with the economic decline faced by the UK during the post-war period has there been a greater emphasis on particular national

interests.¹¹⁰ While both Catalans and Québécois also share multiple identities with Spain and Canada, the majority within the state does not accept the primacy of the Catalan and Québécois national identity within this duality. The majority within the state and its members frequently and openly contest the minority national identity. Although the UK accepts the idea of a differentiated and increasingly asymmetric state, there remains a debate among nationalists over the degree of recognition Scotland requires in order to assert itself fully as a nation. What impact devolution will have on the balance between Scottish and British identity is difficult to consider at this point. However, polling data demonstrates that a growing majority of Scots are more particularistic and identify with being Scottish or Scottish more than British.¹¹¹ Whether growing asymmetry and expanding quasi-federalism is strengthening or weakening this dual national identity is hard to confirm. However, it has the ability to bring about fundamental changes in how Scotland perceives itself as a nation and how the UK constitution strives to accommodate this reality.

¹⁰⁹ Brown et al., p. 209.

¹¹⁰ McCrone, Understanding Scotland: the Sociology of a stateless Nation, p. 208.

¹¹¹ Scottish Election Survey 1997 as cited in Alice Brown et al., Politics and Society in Scotland, pp. 220-21.

8

A Concluding Analysis

The previous chapters of the thesis have examined theories of nationalism, the historical background to the nationalist movements in Catalunya, Scotland, and Québec, the constitutional frameworks in which these nations exist, and nationalist arguments for change. The aim of these chapters was to present the issues, controversies, and arguments that surround the topic of nationalist perspectives on constitutional change in the three nations. In chapters five, six, and seven the views held by various participant-observers shaped an analysis of constitutional arrangements, recent constitutional reforms, and nationalist arguments as articulated in party manifestoes and speeches by nationalist leaders. The principal goal of this concluding chapter is to extend the comparative analysis further by drawing together some of the common concepts that emerge out of this study. This chapter will also discuss the nature of the comparative approach and the effective use of data from participant-observer interviews to support a particular claim.

The first part of the chapter will discuss aspects of the research method. This section will establish the claim as to why this thesis is unique, examine what it has added to broader knowledge, and discuss what the practical and theoretical significance of the research is. Particular attention will also be paid to looking at issues around the use of participant-observer interviews.

The subsequent part of the chapter discusses the use of the comparative approach and sets up a theory of comparative analysis. In conducting a comparative, qualitative analysis one comes across certain problems in research. In this particular analysis a research problem manifested itself in trying to compare and analyse certain concepts that were understood in very different ways depending upon which of the three cases was being

considered. This leads into a discussion of how to characterise apparent similarities and differences when comparing nationalist discourse, the views of participant-observers, and constitutional debates in Scotland, Québec, and Catalunya.

The third section of the chapter is concerned with the interviewees themselves. The reason behind choosing political and academic participant-observers as interviewees will be discussed, as will some of the challenges faced in working with participant-observers. Some attention will be paid to the role of these observers in their society, what their perceptions of the nation are, and finally what their views are of the world around them; in other words, how does their environment shape their views.

The final section is devoted to a broader analysis of the qualitative data itself. The dominant argument of this thesis is that there exists a conflict between rival conceptions of the nation within multinational states with specific reference to Spain, the United Kingdom, and Canada. As has been argued, the Catalans, Québécois, and Scots as minority national groups understand themselves to be nations and assert that Catalunya, Québec, and Scotland constitute minority nations within a larger multinational state. This view of the nation conflicts with an identity that equates the state with the nation, an identity that is more or less embraced by the population of the state outside the minority nation. The argument of nationalists in these three cases under analysis is largely centred on the need for greater recognition of their national status. In the cases of Spain and Canada there is very little or no recognition given by the state that Catalunya and Québec constitute nations within a multinational state. In the UK there is an explicit recognition of four constituent nations comprising the state, Scotland is one of them. However, despite the fact that devolution has greatly furthered the recognition of this fact, it has proved to be insufficient recognition in the eyes of nationalists in the Scottish National Party (SNP) who argue that independence

and Scotland's leaving the Union is the only way Scotland can achieve the full recognition of its national status.

This conflict as it has been presented in the previous chapters centres on a series of common concepts. These concepts are recognition, asymmetry, and most importantly sovereignty. These are concepts that dominate the discourse of nationalists and other commentators and re-occur in each one of the cases being studied. Each one of these issues will be analysed in the context of how the participant-observers interviewed understood them. Particular focus will be paid to how these concepts relate to a particular understanding of nationalism and constitutional change in Scotland, Québec, and Catalunya.

The Research Claim and Method

This thesis is based upon qualitative research on nationalist responses to constitutional change and, as such, it seeks to present an argument found in the language of nationalists and certain participant-observers and how they express and conceive of a set of ideas and controversies. As Buchanan argues: "Its [qualitative research] quality lies in the power of its language to display a picture of the world in which we discover something about ourselves and our common humanity."¹ The data and its analysis in this thesis are what help to paint a particular picture. The analysis and presentation of this data enables this research project to be a significant contribution to the fields of nationalism and constitutional politics. This research has been conducted over a four-year period in which considerable changes have taken place in the constitutional politics of the UK, Canada, and Spain, particularly in the first two. The process of devolution and the creation of the Scottish Parliament have led to a fundamental reconfiguring of the constitutional framework of the UK. The Canadian Federal Government's obtaining of a judicial ruling on Québec's inability to declare unilateral independence in the *Reference Case on Québec Secession* has helped establish the

current parameters of the Canadian constitutional debate. It can be argued that political developments in Spain are less significant. However, the results of the 2000 general election saw the coalition *Convergència i Unió* (CiU) of Jordi Pujol lose its role as a power broker in the *Corts Generals* in Madrid, which had helped enable Catalunya to achieve a greater degree of autonomy over the last decade. The author's having had an opportunity to research these developments while they have been taking place, and to speak with many of those who have been part of the process, gives this thesis practical significance. From the theoretical perspective, this thesis illustrates how these changes are impacting on conceptions of the state and nation and their relationship, and also on ideas of political and legal sovereignty. This thesis, and this chapter in particular, demonstrates that even though Scotland, Québec, and Catalunya are nations existing within three different constitutional frameworks, in each case the debate over conceptions of the nation is similar.

As a research project based upon qualitative and comparative research this thesis has made use of data obtained from interviews conducted with participant-observers. As mentioned in the introduction, these observers were grouped into three categories: academics, civil servants, and political actors. The academics chosen were mostly political scientists, whose research interests lie in the field of nationalism and constitutional politics, and constitutional lawyers. The civil servant and political actor categories were made up of those officials, politicians, and former politicians who have been involved in developing constitutional policy or negotiating constitutional agreements. The data obtained from these interviews was used to inform and illustrate the arguments made in the thesis on issues of constitutional change, nationalist platforms, and the conceptions of nation and state. During the process of analysing this data many common concepts and perceptions emerged from the

¹ D.R. Buchanan, "An Uneasy Alliance: Combining Qualitative and Quantitative Research Methods," *Health Education Quarterly* (Spring 1992), p. 133.

arguments made by participant-observers on the above issues; these common concepts are discussed in the final section of this chapter.

As this thesis is concerned with broad questions of nationalism and constitutional change in multinational states, it was determined that participant-observers would be the best source of information to help inform the research questions and develop the research argument. As Johnson and Joslyn have argued, these interviewees are useful in the context of a research project such as this because of their position as an “insider” with valuable information to offer the researcher.² Due to these observers having such specific knowledge they are given individualised treatment in interviews.³ The usefulness of this form of interviewing is found in the fact that the interviewees are familiar with interview techniques, as most of them have experience either conducting or giving interviews. This fact enables the interviewer to assume that the interviewee is familiar with styles of questioning and is also familiar with the topics being covered in the interview. While this is a benefit it can also be a disadvantage as interviewees will frequently assume ahead of time what the interviewer wishes to discuss and thus will come prepared with certain stock answers. It is principally for this reason that an open-ended style of interviewing was adopted, thus avoiding a “straightjacket of standardised questions” which could have been viewed by interviewees as too limiting in scope.⁴

While access to participant-observers is often a problem in this form of qualitative research, it was not a significant factor in this research project except in the case of Scotland. In Scotland, there has been for the last four years considerable interest expressed by media and social science researchers in the devolution issue. In Scotland, the advent of devolution with the double-Yes vote in the 1997 referendum and the subsequent political activity

² Janet Buttolph Johnson and Richard A. Joslyn, *Political Science Research Methods* (Washington: Congressional Quarterly Press, 1991), p. 193.

³ Jarol B. Manheim and Richard C. Rich, *Empirical Political Analysis: Research Methods in Political Science* (New York: Longman, 1991), p. 139.

leading up to the establishment of the Scottish Parliament in 1999 brought with it a tremendous boom in research activity. This increase in activity was evident in the number of research studies being conducted by graduate students and academics on related aspects of devolution, not to mention the great number of academic and other conferences on the 'New Scotland' or the 'New Scottish Politics'. There appeared to be a certain degree of interview fatigue on the part of some participant-observers who were involved in the devolution process. In a couple of cases, interviewees appeared apathetic to certain questions or frustrated at again being asked for their view on the nature of devolution in Scotland. Although this was problematic and on one occasion required the demonstration of considerable patience, most of the interviews did provide useful data that was analysed and incorporated in the thesis. In three or four cases requests for interviews were never responded to even after repeated attempts to contact the proposed interviewee. Many of these participant-observers, particularly those in the Scottish Parliament and Scottish Executive had what Johnson and Joslyn refer to as "gatekeepers", whose role was to limit access.⁵ This can be one of the more problematic aspects of interviewing.

One danger to be overcome by any interviewer conducting interviews is the propensity to pick and choose preferred or convenient answers and thereby construct a particular analysis. A serious attempt was made to avoid this. On more than one occasion an interviewee would present an entirely new argument on a particular issue, or as in the case of an interview with a constitutional lawyer in Catalunya, encourage the interviewer to rethink completely a particular interpretation of Catalunya's position within Spain. The data obtained from the interviews has enabled a comparison to be made of Scotland, Catalunya, and Québec from the perspective of participant-observers. More will be said of the data and

⁴ Ibid.

⁵ Ibid., p. 194.

the interviewees themselves in the analysis of the common concepts that have emerged from this research.

The Comparative Approach

Comparative Theory and Method

The thesis adopts a comparative approach in its qualitative analysis of the research data. The research project is in its very essence a comparative or multiple case study, in that it takes a particular phenomenon and analyses its existence in certain cases. The phenomenon, which has already been discussed in some depth, is that there is a conflict between rival conceptions of the nation within a multinational state. When the phenomenon was analysed in the cases of the three minority nations of Catalunya, Québec, and Scotland a pattern emerged. This pattern indicated a series of common concepts present in each case: sovereignty, recognition, and asymmetry. As discussed above, these concepts informed the debate over nationalists' responses to constitutional change and also helped to account for the presence of the phenomenon in each case. By using several different means of data collection which are central to making empirical observations, including personal interviews with participant-observers and document analysis, the thesis develops an explanation for this phenomenon.⁶ The explanation rests on how each concept is understood and interpreted differently by nationalists and those who are unsympathetic to various nationalist claims. For example, a nationalist politician in Catalunya who is a member of CiU will be highly sympathetic to the promotion of an asymmetric, multinational Spain. In contrast, a Spanish political leader or commentator outside of Catalunya who embraces the idea that Spain constitutes the nation will view such a multinational and asymmetric conception of the state as anathema.

⁶ Johnson and Joslyn, p. 169.

In contemplating a comparative analysis of different nationalisms and different constitutions it was expected that some clear similarities would be uncovered. As examples of similarities it was considered that nationalists might share common approaches to seeking greater recognition or view the lack of sufficient representation of the minority nation in state institutions as a central issue. As will be discussed the three cases being researched do share similarities such as these. Similarities of a more theoretical nature are drawn from the analysis of the various common concepts that shape the debate on the conflict between rival conceptions of nation. However, adopting a comparative approach does bring with it certain difficulties, in particular the problem of comparing nationalisms and constitutional frameworks that are different in many ways.

Uniqueness of the Three Cases

In comparing nationalisms and constitutional frameworks in Catalunya, Québec, and Scotland, it is not feasible to adopt an approach that seeks to arrive at a normative rule for how minority nationalisms should behave in multinational states. While common concepts do exist, these three cases must be treated as *sui generis*, emphasising that their uniqueness has to be considered when drawing conclusions about how nationalist politics operate within the context of each nation. When conducting a comparative analysis of this sort it would be wrong to assume that all three nations fit neatly together and that all aspects of their nationalism and their place within their respective states' constitutional structure can be compared. Indeed, as Mackie and Marsh argue it is not fully possible to adopt a positivist approach to research when taking a comparative look at a number of countries: "it is rare, if not impossible, to find a country which is so similar to another on all except one variable, so the types of tightly-controlled experiment that characterise the natural sciences are very

unlikely.”⁷ As has been shown, the three minority nations being examined are part of states that are at different stages of constitutional change. The nationalist movements in Scotland, Catalunya, and Québec are also at different stages of development, with nationalist parties in the latter two only having been elected to power and having had considerable experience in government. There will always be substantial differences that should not be discounted, but rather discussed. In the context of this research, differences do exist in the nature of nationalism in Scotland, Québec, and Catalunya and also in the constitutional framework of the states of which they are a part.

Constitutional Frameworks

In terms of the constitutional framework and structure of the states being discussed three types of state have been analysed here.

Table 9.1 State Constitutional Structures

State	Type of State	Organisation of State	Sovereignty ¹	Residuary Power
UK	Constitutional Monarchy	Devolved-Union	Exclusive to the state (Sovereign Parliament at Westminster)	None ²
Spain	Constitutional Monarchy	Regional	Exclusive to the state (Spanish nation)	Autonomous Communities
Canada	Constitutional Monarchy	Federal	Divided between Federal Parliament and Provincial Legislatures	Federal Parliament

¹ Sovereignty in the legal or constitutional context rather than political sovereignty.

² In a strict legal context, sovereignty lies exclusively at Westminster. However, any area not specifically reserved at Westminster is considered devolved to the Scottish Parliament under the *Scotland Act, 1998*.

Each state’s constitutional framework is unique and, as has been shown, is the result as much of political history as of local traditions of constitutional law. All three states are in the process of evolving, albeit the United Kingdom is moving considerably faster than the other two in that regard. The United Kingdom is a union state in which sovereignty, in a strictly legal context, continues to reside in the Westminster Parliament. The Treaty of Union of

⁷ Tom Mackie and David Marsh, “The Comparative Method,” in *Theory and Methods in Political Science*, eds. David Marsh and Gerry Stoker, *Theory and Methods in Political Science* (New York: St. Martin’s Press, 1995), p. 180.

1707 that united the Parliaments of Scotland and England in a new union Parliament at Westminster remains a foundation of the UK's constitution. However, as argued in chapters four and seven, nationalism in Scotland, partly through the mobilisation of civil society, has succeeded in bringing about legislative devolution through the creation of the Scottish Parliament. This legislative devolution is in addition to the pre-existing devolved administrative structure. As has been shown, devolution has helped to undermine the doctrine of parliamentary sovereignty, a doctrine which is clearly protected in s. 28(7) of the *Scotland Act, 1998*. However, as argued in chapter seven, devolution has established a rival centre of political power to Westminster at Holyrood. As a rival centre of power, the Scottish Parliament has been legitimised through the 1997 referendum in which the Scottish electorate endorsed the devolution process. It can be argued, then, that as an institution the Scottish Parliament represents the Scottish people. This is the argument of people such as Kenyon Wright who focus on the perceived tradition of Scottish popular sovereignty. As a result of this legitimacy, the Scottish Parliament can be argued to exercise a practical equivalent of political sovereignty, although it does not have legal sovereignty under the constitution. As previously argued, this political sovereignty challenges the sovereignty of Westminster in that it effectively renders the *Scotland Act, 1998* fundamentally unamendable without the consent of Holyrood. However, for Scottish nationalists who are members of the SNP devolution is merely a stepping stone on the path towards independence for Scotland within Europe. While the SNP leadership supports better governance for Scotland, and the Parliament goes some way to achieving this, it is not the final stage in the process of constitutional change. The current constitutional status quo in the UK is untenable in the opinion of the SNP.

The Spanish constitution and Catalunya's position within its framework is a product of the transition from dictatorship under Franco to liberal democracy founded upon

constitutionalism and the rule of law. It is very different from both the UK and Canada because it is argued to be regional in structure having both federal elements and some of the unitary elements of the union state. Sovereignty is not divided in Spain and there are no constituent parts to the state as in a federal system. The autonomous communities were created through the 1978 constitution instead of coming together to form a new state. The Spanish nation is sovereign as stated in Article 2, yet there is the ambivalent recognition of regions and nationalities rather than the clearer declaration that Spain is a multinational state that is sought by Catalan nationalists. While the 1978 constitution does enumerate areas of jurisdiction between the state and the autonomous communities and does give residuary jurisdiction to the autonomous communities, sovereignty is not divided. Neither the Senate nor the constitutional court, the Tribunal Constitucional, are federal in composition. Others have argued that Spain is a federal state, citing the constitutionally entrenched nature of the system of financing the autonomous communities and the distribution of powers. Without a constitutional division of sovereignty between the state and its constituent parts there cannot be a federal arrangement. The critical issue for nationalists in Catalunya with the Spanish constitution is again a lack of recognition of their constituting a nation within a multinational Spain. For nationalists, the constitutional status quo is highly problematic if not completely unacceptable, and depending on the party there has to be either an explicit recognition of the multinational character of Spain and the reform of institutions to reflect this, or independence for Catalunya within the EU.

The constitutional structure of Canada is entirely distinct from the other two in that it is the only one that is explicitly federal in nature. The degree to which it is truly federal is challenged by many Québécois nationalists who argue that Ottawa's declaratory power, for example, which gives it the power to intervene in areas of provincial jurisdiction is more unitary than federal in character. Sovereignty is divided in the *Constitution Act, 1867*

between the Federal Parliament and the Provincial legislatures, including the National Assembly of Québec. As has been argued in chapter five, this structure has its flaws. Nationalists in Québec are largely unsatisfied with the constitutional status quo since 1982 which has been imposed on them, the National Assembly never having approved the *Constitution Act, 1982*. Again, the desire for the constitutional recognition of Québec as a nation, a distinct society within Canada, has not been realised due to the failure of both the Meech Lake Accord of 1987 and the Charlottetown Accord of 1992. Nationalists in Québec argue for an end to the interference of the Federal government in areas of Québec jurisdiction and either a significant reform of the constitution or the creation of a fully sovereign Québec in a new economic and political relationship with Canada.

Character of Nationalism

While the constitutional structures are considerably different between these three states, the goals of nationalists in Scotland, Québec, and Catalunya are roughly similar: greater recognition of the nation through constitutional reform or some form of independence. Although this is the goal of nationalists in each case, the nature of nationalism differs from nation to nation. Generally speaking, nationalism in Scotland, Québec, and Catalunya is liberal, democratic, moderate, and inclusive, in that membership in the nation is based upon the basis of citizenship and participation within the political community, rather than of birth or ethnicity. The fundamental difference that exists between these three nationalisms is that Québécois and Catalan nationalism are essentially language-based whereas Scottish nationalism is not, and, as argued by McCrone, has few obviously distinct cultural traditions or a religious basis. Conversely, linguistic and cultural issues are of paramount importance to nationalists in Catalunya and Québec. Through the exercise of governmental power, both Catalan and Québécois nationalists have been able to promote Catalan and French respectively through language legislation, especially with reference to

primary and secondary education. In Scotland, language questions are of a relatively minor importance as there is a general consensus among all parties of the need to protect Gaelic and promote its use in the Gaidhealtachd of the Western Highlands and Islands. There has been recent debate on what status should be granted Gaelic by the Scottish Parliament with many SNP politicians arguing that it should be given the status of an official language and commensurate funding.

While nationalism is diffuse in all three nations, it is only in Catalunya that several parties espousing different ideologies claim explicitly that they are nationalist. In Scotland and Québec nationalists can be found in parties which do not label themselves as nationalist. Nationalists in the Scottish Labour Party or the Liberal Party of Québec may identify themselves as such, but they are distinguished from those nationalists in the SNP or the Parti Québécois (PQ) and Bloc Québécois (BQ) who favour independence of some form for the minority nation. The following table therefore deals only with those parties that have been discussed in depth in the above chapters and are explicitly nationalist; it summarises what has been discussed in greater detail in chapters five, six, and seven.

Table 9.2 Character of Nationalism in Scotland, Catalunya, and Québec

Nation	Party	Ideology	Constitutional Option	Level of Operation
Scotland	SNP	Left/Social-Democratic	Independence within EU	Local councils, Holyrood, Westminster, EU
Catalunya	CDC	Centre	Reform of 1978 Constitution, Autonomy	Local, Generalitat, Corts Generals, EU
	UDC ¹	Centre-right/Christian Democrat	Reform of 1978 Constitution, Autonomy	Local, Generalitat, Corts Generals, EU
	PSC	Left/Social-Democratic	Federalism	Local, Generalitat, Corts Generals, EU
	ERC	Left/Neo-Marxist	Independence within EU	Local, Generalitat, Corts Generals, EU
	IC-V	Left-Green	Federalism	Local, Generalitat, Corts Generals, EU
Québec	PQ	Centre-Left	Sovereignty-Association	Québec National Assembly
	BQ	Centre	Sovereignty-Association	Federal Parliament

¹ Unió Democràtica de Catalunya is in a governing coalition with Convergència Democràtica de Catalunya as CiU.

Having examined the general similarities and differences between the three case studies, it is important to reassert that in this comparative approach the expectation should not be to prove that they are all alike in terms of the responses made by nationalists to constitutional change. Rather, these similarities and differences can be analysed in an effort to explain the attitudes and responses in each case to the phenomenon of a conflict between rival conceptions of the nation.

Interviewees

This thesis is not concerned so much with popular attitudes to or conceptions of nationalism and constitutional change. The decision to interview academic and political participant-observers was made because the ideas being discussed in this thesis are largely elite concepts: nations, constitutions, nationalism, and sovereignty. The political scientists, constitutional lawyers, civil servants, and other political actors were seen to be the most qualified to discuss these concepts at both a theoretical and practical level. Many of those interviewed, particularly in the Scottish and Canadian cases, are intimately involved in the constitutional politics and nationalist debates being researched. Academics, political leaders, and cultural commentators have always played a dominant role in the development of nationalism as discussed in chapter one. They are also responsible for the development of constitutional theories as well as designing and reforming constitutions. In researching concepts of nation in particular the insight provided by academic participant-observers was valuable, in that they could perceive the nation from an abstract point of view and thus provide considerable data on theoretical aspects of the research. Political participant-observers were able to discuss the practical aspects of constitutional reform and the responses made by states to nationalist arguments for change.

As a result of their positions within society and the role that they play in disseminating and articulating ideas on nationalism and constitutional politics gives these

commentators a particular view of the world. It is also important to consider how their environments have shaped their views as well. While the topic of the interviews was the same in each case, constitutional change and the nationalist perspective, the interviewees would each approach the topic in a different way, affected by a variety of factors. These factors include nationality, and whether they were academics or non-academics. These factors impacted on how they understood concepts such as sovereignty, recognition, and asymmetry. For example, a constitutional lawyer might have a very different conception of what sovereignty means compared to a political scientist with the former possibly focussing on sovereignty as a legal construct and the latter on the political issues affecting it. Similarly, a Scottish constitutional lawyer when considering the concept of sovereignty is more likely to view it from the perspective of parliamentary sovereignty whereas a Québécois constitutional lawyer will probably consider the concept in a federal context first. Appreciating these different perspectives is essential when analysing how the different participant-observers emphasised the common concepts in the research. The qualitative data from the interviews reinforced the pattern that was evident from the document analysis: that certain concepts dominated academic, political, and other discourse on the research topic.

Interview Data

The remainder of the chapter will focus on an analysis of the data. This analysis will consider how participant-observer conceptions of recognition, asymmetry, and sovereignty help provide an explanation for the conflict that exists between rival concepts of nation that was found in each of the three cases.

Recognition

The level of recognition as nations enjoyed by Catalunya, Scotland, and Québec is of concern to nationalists in each nation. It can be said to be of primary concern in Catalunya and Québec where there is no constitutional or other explicit means of recognising them as

nations within a multinational state. The explicit recognition of Scotland as a constituent nation of the UK distinguishes it from the other two; however, the level of recognition is still contested by nationalists within the SNP.

Québécois nationalists argue for the recognition of Québec's national status within Canada; its existence as a distinct society that is founded upon those characteristics that defines it as a nation: the French language and culture and its distinct system of civil law. As has been discussed, the constitutional entrenchment of this recognition would have helped to affirm the dominant understanding of the Canadian federal state held in Québec. This understanding is based upon a concept of duality in which the Québécois view Canada as having two founding peoples or nations: the French and the English, without mentioning the many aboriginal nations. The issue of recognition and the conflict between the dualistic conception of the state and the so-called Trudeauite conception of the state was argued by many interviewees to be the basis for nationalist criticism of the Canadian constitution. The Trudeauite conception of the state was presented as the antithesis of duality; it identifies the state as the nation and entrenches liberal values in the constitution establishing that all provinces are equal, as all citizens are equal. Interviewees focussed in particular on how the Trudeauite conception of the state enjoys a hegemony within Canada outside of Québec and how this has severely hindered Québec's acceptance as a nation. Interviewees who identified more strongly with the Trudeauite conception of the state argued that recognition of Québec had been achieved through official bilingualism and the presence of Québécois in many senior positions of power in the federal government. For many interviewees the issue of recognition remains unresolved. The desire for greater recognition as a nation was identified as a principal issue for nationalists in the BQ and PQ who desire a new arrangement between Québec and the rest of Canada, one that is based on greater sovereignty for Québec.

In the case of Catalunya there exists a similar debate to that in Québec. The Spanish Constitution of 1978 recognises only one nation and that is Spain; hence the nation is equated with the state. The solidarity and indivisibility of the Spanish nation is established and sovereignty rests with the Spanish people. The constitution in Article 2 makes explicit reference to regions and nationalities rather than to nations, a provision that is challenged by nationalists not only in Catalunya but in Euskadi and Galicia as well. Article 2 and its failure to recognise Catalunya as a nation within Spain was cited by all interviewees as problematic for nationalists. In discussing the Spanish constitutional framework and nationalist responses to it, interviewees argued that the nationalist desire for greater recognition had two aspects to it. Firstly, nationalists argued that Catalunya must be recognised as a nation and secondly that there must be a broader recognition of Spain as a multinational state, a state that contains within it several minority nations. For Catalan nationalists recognition of their status as a nation is their central demand, yet as interviewees argued, this demand can be achieved in a variety of ways. Nationalists in the CiU favour greater autonomy for Catalunya within Spain and a constitutional recognition of the nation. The Partit dels Socialistes de Catalunya (PSC) believes that a federal solution for Spain will accord Catalunya the greater recognition it seeks. Esquerra Republicana de Catalunya (ERC) argues that Catalunya can only achieve full recognition as a nation outside the Spanish state since the constitutional status quo is completely untenable. Recognition of Catalunya means accepting that Catalunya is distinct from the rest of Spain, and, as was argued by certain interviewees, Madrid cannot accept this since it would negate that concept of the solidarity of the Spanish nation. There can be no differentiation within the state.

Unlike Catalunya and Québec, where there is no explicit recognition of multinationality, Scotland has been recognised as a nation in the UK context since 1707 with the UK as whole being understood to comprise four nations. The need for greater

recognition was not as strong a concept in the Scottish case; the majority of interviewees did not make reference to it. The devolution process was viewed as further establishing the distinctiveness of Scotland within the UK and reaffirming the need for the Scottish people to exercise greater control over their own affairs. Recognition was only raised as an issue by those who supported the SNP's position of advocating independence for Scotland in Europe. The recognition afforded to Scotland by the union state, even a devolved union state, remains insufficient from the perspective of the SNP. This position is very similar to that advocated by the PQ and BQ in Québec and by ERC in Catalunya. All four parties argue that the constitution of the present state has failed to give the minority nation adequate recognition of its national status and so the only remedy that exists is separation. While for many fundamentalists in the SNP devolution may be unacceptable in the long-term, interviewees argued that it has improved the governance of Scotland. Some interviewees argued that what devolution had achieved was the gradual reconfiguring of the UK state and the introduction of greater asymmetry into the existing framework.

Asymmetry

It can be argued based on the data collected that asymmetry within a multinational state is a means of providing greater recognition to the minority national group. Asymmetry exists in a state when the state has a unique relationship with one or more of the constituent units, thus differentiating that unit or those units from others that comprise the state. These relationships can be administrative or legislative, constitutionally entrenched or not. Asymmetry and its promotion are central concepts in the three cases presented. However, participant-observers' views on asymmetry vary from case to case reflecting the particular stage of constitutional development that each state is at.

Asymmetry is a highly contested concept in Québec and in the rest of Canada.

Asymmetry exists largely at the administrative level where the Federal Government and the Government of Québec have negotiated a number of agreements over the years that devolve certain federal responsibilities to Québec, for example pensions, immigration, and manpower training. Québec exercises greater jurisdiction in these areas than other provinces, although the other provinces may do so if they choose. As argued above, this establishes an asymmetrical relationship on an administrative level between Ottawa and Québec. For nationalists in Québec these arrangements have given Québec greater control over their local affairs and helped to reduce federal encroachment in areas of provincial jurisdiction; this remains a contentious issue for nationalists. However, these administrative agreements have not brought about the greater recognition of Québec as a nation that nationalists in Québec seek. Interviewees who accept a dualistic conception of the Canadian state and acknowledge that Québec is a nation within a multinational Canada argued that there is insufficient asymmetry within Canada. Many raised the concept of the 'distinct society' as an example of how asymmetry could be entrenched in the constitution and thus recognise Québec's distinctiveness. Various models of constitutional reform have been advocated for Canada, many of which were supported by interviewees including a confederal Canada and a Canada where there was a high degree of asymmetry that recognised the national claims of not only Québec but also of aboriginal peoples. Several interviewees argued that the hegemony of the Trudeauite conception of Canada means that achieving a greater degree of constitutional asymmetry in which Québec would be recognised as distinct from the other provinces is increasingly unlikely. From the Trudeauite perspective, greater asymmetry in the Canadian constitution runs counter to the liberal ideals of individual equality and by extension the equality of the provinces enshrined in the *Constitution Act, 1982*. This is a view which denies the distinctiveness of Québec.

Asymmetry is a contested idea in the Catalan case as well. The Spanish Constitution of 1978 grants all regions and nationalities in Spain the collective right to autonomy and all autonomous communities may accede to a wide range of competences that are devolved from the state to their governments. Catalunya and Euskadi have achieved a high degree of autonomy by choosing to exercise competence in most areas devolved to the autonomous communities. However, their doing this does not in fact differentiate them from the other autonomous communities who, if they chose to, could achieve the same level of autonomy by choosing to exercise competence in more areas. Theoretically, then, the seventeen autonomous communities that comprise Spain are undifferentiated, in other words no one can have an intrinsic right to more extensive jurisdiction than any other. Interviewees as well as many nationalist party documents argued that this lack of asymmetry amounts to insufficient recognition of Catalunya's status as a nation and thus provides a platform for nationalists to criticise the Spanish state. As in Québec's case, the desire for greater recognition as a nation is linked to an argument in favour of a greater asymmetrical state where in the Spanish case a nation such as Catalunya is differentiated from a region like Extremadura. In interviews, Catalan participant-observers made explicit links between a more asymmetrical Spain, recognition of Catalunya as a nation, and the reinterpretation of Spain as a multinational state. Asymmetry for Catalan nationalists, apart from those in ERC, is thus seen as one of the key building blocks of a new constitutional order.

There has been considerable discussion of an evolving asymmetry in Britain as a result of the creation of the Scottish Parliament. The fact that there has always been an explicit recognition of four distinct nations in the United Kingdom demonstrates a degree of asymmetry, especially when considering the existence, since the late nineteenth century, of a separate bureaucracy for Scotland in the Scottish Office. A number of those interviewed in Scotland argued that devolution was encouraging the evolution of an increasingly

asymmetrical state where Scotland through its Parliament enjoys a new, quasi-federal relationship with Westminster. The Scottish Parliament has control over Scottish domestic issues whereas Westminster retains control over non-domestic issues and the constitution. The establishment of the Scottish Parliament reinforces the differentiated nature of the British constitution by setting up an asymmetrical arrangement with Westminster, an arrangement that is unique in the UK. Asymmetry is not treated as a contested concept in the UK in the same way as it is in Canada and Spain. This asymmetry has been legitimised by the Scottish people through the referendum result of 1997 that led to the passage of the *Scotland Act, 1998*. It has been argued, based on the data obtained, that this increased degree of asymmetry has further promoted Scotland as a distinct nation within the UK.

In each of the three cases there appear some linkages between the concepts of recognition and asymmetry, a link that was frequently made by interviewees in discussing these concepts. The most significant common concept that links these three cases is sovereignty. Debates over sovereignty and the role that sovereignty plays in the conflict between rival concepts of nation were found to be significant in the research data. Sovereignty has a variety of meanings in each case and is a complex, and again, contested concept.

Sovereignty

In the context of Catalunya, Scotland, Québec and their position within their respective states, the concept of sovereignty has a number of different connotations. It can be argued that at its most basic level sovereignty is about power, who or what holds it, where it is exercised, and the freedom to exercise it in a variety of spheres. From the data obtained it is clear that nationalists in minority nations within multinational states frequently have a very different conception of sovereignty and how it should be exercised from those operating at the state level. The presence of sovereignty as a contested concept in these three cases

helps to explain why the phenomenon of a conflict between rival conceptions of nation exists.

As has already been discussed and argued in chapter six, the Spanish conception of sovereignty as entrenched in the 1978 constitution is highly problematic for Catalan nationalists. Since sovereignty rests in an indivisible Spanish nation, any Catalan claim to sovereign nationhood is denied. A number of Catalan interviewees contrasted what they termed a Jacobin conception of the state held by Madrid where the state is the nation with the Girondin conception held by Catalan nationalists where the state can incorporate a multiplicity of nations. A majority of interviewees saw the constitution's understanding of sovereignty as being characteristic of a unitary state. It was argued that the problem with the Spanish constitution was that it failed to accept the reality of the Spanish state: that it is multinational and not unitary. The nationalist response to this conception of sovereignty has been varied. CiU argues for a reform of the present constitution in which the multinational character of Spain would be explicitly stated, and as discussed, there would be greater asymmetry and thus greater autonomy for Catalunya. The PSC and IC-Verds argue in favour of a federal reform of the constitution that would incorporate a division of sovereignty as in other federal states. ERC rejects the constitution in favour of an independent, sovereign Catalunya within the European Union. It was argued by all that from a nationalist perspective the present conception of sovereignty entrenched in the 1978 constitution was highly problematic.

In the Québec case sovereignty has a paradoxical meaning. From a constitutional perspective, Canada is a federal country and therefore sovereignty is divided between the Federal Government and the ten provincial legislatures, of which Québec is one. This view of sovereignty is uncontested, although its practical application is. Interviewees sympathetic to Québécois nationalism identified one of the main criticisms of nationalists as being the

Federal Government's continual interference in Québec's areas of sovereign jurisdiction. This has led nationalists in favour of separation to argue for a renewed partnership between Québec and the rest of Canada, an arrangement frequently termed sovereignty-association, or more recently, sovereignty-partnership. In this case sovereignty is understood to mean separation or independence from Canada and has led to those advocating this view being called sovereigntists. For nationalists in the PQ and BQ the exercising of Québec's 'sovereignty' implies that it is being done outside the present constitutional framework. Nationalists argue that in achieving its sovereignty through a referendum process and subsequent negotiations with the rest of Canada, Québec would resolve the conflict between rival conceptions of nation by exiting from the state that does not recognise its conception. This highlights the contested nature of the term sovereignty in the Québec-Canada context.

In Scotland and in the rest of the UK the devolving of power from Westminster to the Scottish Parliament has challenged ideas of sovereignty within the UK constitution. The creation of the Parliament at Holyrood as another political centre has had an impact on the doctrine of the legislative supremacy of the Westminster Parliament, a doctrine enshrined in the *Scotland Act, 1998*. Chapter seven presents the argument that the presence of a Scottish Parliament, with political legitimacy founded upon a popular expression of will, undermines Westminster's claim to be sovereign. Interviewees were largely divided on the importance of this and the degree to which it was, in fact, a significant change, with one arguing that it was part of an ongoing process in which the idea of parliamentary sovereignty was being challenged by other factors such as the growing importance of EU institutions. The debate that emerges is one between sovereignty in a legal or constitutional sense and sovereignty in a political sense. While arguing that in a purely legal conception of parliamentary sovereignty Westminster would, for instance, have the power to abolish the Scottish Parliament or significantly amend the Scotland Act, in political terms it could not do so

without the prior approval of Holyrood. This implies that Holyrood exercises a certain political sovereignty that acts as a check on Westminster; it is a sovereignty that one interviewee saw as resting with the Scottish people as represented in their Parliament. Sovereignty in the Scottish and UK context is evolving to reflect the changes taking place in the constitution as new centres of power are established and greater asymmetry is introduced into the organisation of the state.

Sovereignty, recognition, and asymmetry are common concepts that emerge from the research undertaken on the conflict between rival conceptions of nation within multinational states. The way in which these concepts are interpreted in each of the three case studies helps to give a better understanding of why this conflict exists. Considerable differences do exist in the character of Catalan, Scottish, and Québécois nationalism and in the constitutional frameworks of Spain, the United Kingdom, and Canada. This chapter has demonstrated how, despite these differences that often defy narrow comparisons, there is a pattern that emerges in the discourse that is made up of common concepts. Sovereignty, recognition, and asymmetry inform an understanding of the phenomenon that lies at the core of this thesis argument. The comparative approach is indeed very fruitful in identifying how nationalist perspectives on constitutional change are shaped by these common concepts, and in many cases by common goals.

Conclusion

This thesis has adopted a comparative approach in analysing participant-observer perspectives on nationalism in Scotland, Québec, and Catalunya and the link between nationalism and constitutional change within the broader nation-states of the United Kingdom, Canada, and Spain. This study is unique in that it was conducted over the course of four years, from 1997 to 2001, during which time the United Kingdom and Scotland in particular have undergone a period of considerable constitutional reform. The creation of the Scottish Parliament is a centrepiece of the Labour government's constitutional package and has had a significant impact on constitutional structures within the UK. In an arguably less dramatic, though still important way, the Supreme Court of Canada's judgement on Québec's right to unilateral secession has impacted on Ottawa-Québec constitutional relations and will play a role in shaping them for the foreseeable future. In Spain, the re-election of the Partido Popular with a majority government in Madrid has the potential to reduce the political influence of the Catalan nationalists at the level of the Spanish state.

These political developments have to a greater or lesser extent determined the path taken by this thesis. However, this thesis is much more than an effort to explain these events. It is a qualitative analysis of the attitudes of participant-observers in Catalunya, Scotland and Québec towards nationalist movements in these nations and their impact on constitutional politics. From the outset, some explanation has been sought for a particular phenomenon that relates to how these minority nations are understood within the context of the multinational state. In the multinational states of which these nations are a part there is a conflict over different conceptions of the nation, one held by Catalan, Scottish and Québécois nationalists and one that is dominant in the rest of the state.

After a consideration of nationalist theories and Kymlicka's arguments on the relationship between minority national groups and multinational states, a broader analysis and discussion of the growth of nationalist movements in Catalunya, Scotland, and Québec was undertaken. In chapters two, three, and four the role of particular leaders and polemicists in the construction of nationalist movements was the particular focus as was the various strands of nationalism that evolved and coalesced around particular ideologies in each nation. These three chapters brought the discussion up to the point at which the current constitutional framework of each state emerged. This corresponded with the passage of the 1978 Spanish constitution and the Catalan Statute of Autonomy in 1980, the passage of the *Constitution Act, 1982* in Canada and the subsequent failure of the Meech Lake and Charlottetown constitutional accords in 1990 and 1992 respectively, and the passage of the *Scotland Act, 1998*. These constitutional events were the points of departure for the following three chapters on nationalist perspectives on constitutional change. Chapters five, six, and seven dealt more specifically with the conflict between ideas of nations and analysed how nationalists understand the present constitutional framework in which their nations operate and how this is problematic. Considerable attention was paid to the critical arguments made by interview subjects regarding the constitutional positions of the state and of nationalists in the minority nations. The final substantive chapter, chapter eight, drew together many of the similarities and differences between the three cases and argued for the existence of a pattern of shared concepts that informed the broader discussion on how rival conceptions of the nation come into conflict.

Through an analysis of data obtained from personal interviews with academic and political participant-observers, and from constitutional and political party documents, an explanation for the existence of this phenomenon was offered. In studying this question of how the nation is conceived of and how it is recognised within the state, a pattern emerged

from the data. Several concepts that were common to the discourse in all three cases informed this explanation: sovereignty, asymmetry, and recognition. These concepts were highly important to participant-observers, particularly to nationalists as they determined the relationship of the minority nation to the state, the way the minority nation is conceived, and finally, the constitutional approach adopted by nationalists and non-nationalists. The concepts are also interwoven in that the level of recognition afforded to the minority nation is dependent on the level and form of sovereignty it enjoys and whether its distinctiveness is reflected in constitutional arrangements. While the three cases of Scotland, Catalunya, and Québec are different in many ways, both in the character of their nationalist movements and in the constitutional structures of their respective states, nationalists in each nation are all seeking greater recognition.

In conclusion, there is great room for speculation when considering the current constitutional situations in these three nations and how their relationship with the rest of Canada, Spain, and the UK will evolve in the long term. Many of the subjects interviewed and many commentators have advocated the idea that a greater degree of constitutional and non-constitutional, or administrative, asymmetry within each multinational state would be a positive step towards reconciling differing conceptions of nation. It has been argued by many that greater asymmetry and the promotion of these three states, particularly Spain and Canada, as differentiated, multinational states is the best means available for discouraging the secessionist goals of some nationalists. In the cases of Catalunya and Québec, greater recognition should be promoted through the constitutional entrenchment of clauses that acknowledge their distinct status as nations and recognise the state as multinational and differentiated. Such a solution could face considerable opposition on the part of the other autonomous communities and provinces. In the Canadian context, one approach that could be adopted would be to offer greater asymmetry to all provinces on a rolling basis. This

Conclusion

would be a modification of the Spanish model in which sections 92 of the *Constitution Act, 1867* could be expanded and modified so that provinces are permitted to exercise jurisdiction in as many or as few of the new areas as they chose. Most likely Québec and the other larger, wealthier provinces would choose to exercise control over the maximum number of jurisdictions, whereas the smaller provinces would leave many areas under the continued jurisdiction of the Federal Government.

Such a model of rolling devolution could be made applicable to the UK. Hazell and O'Leary have already mooted the idea of what they call rolling devolution for the United Kingdom, arguing that it could be one method of maintaining the Union while achieving a high degree of progressive constitutional reform.¹ A system of rolling asymmetry in the UK, moving on from the asymmetry that already exists with Scotland, Northern Ireland, Wales, and London, could be a highly effective means of devolving administrative and possibly legislative power to regions which desire it. The evolution of a system such as this would promote greater subsidiarity in the UK and at the same time maintain the Union. Any department or office of intergovernmental affairs that evolves would administer the transferral of powers to devolved institutions and promote similar principles of flexibility as in the case of Spain. The UK's ongoing evolution into a quasi-federal state is positive as it reflects changing conceptions of what sovereignty means vis-à-vis both devolved institutions and the European Union. As the sovereignty of Parliament is increasingly challenged, a viable and constitutionally progressive form of asymmetry could lead to a unique form of federalism that fully embraces the multinational character of the UK through some transfer of sovereignty to devolved institutions.

Advocating approaches such as these is somewhat prescriptive and speculates on what direction constitutional politics will take in Canada and the UK. However, these

approaches derive from arguments made in this thesis and from the possible solutions that have been presented by a variety of participant-observers. This thesis has articulated a view of the constitutional dynamics within multinational states where minority nations strive for recognition and nationalists in these nations argue in favour of a variety of constitutional options to achieve this recognition. The conflict that exists between rival conceptions of the nation should not be ignored as it points to a significant element in the political reality of these multinational states.

At the beginning of this thesis Kymlicka's argument on the recognition of minority national cultures in multinational states served as a point of departure. It makes sense, then, to return to Kymlicka and his conclusion that multinational states cannot exist unless the diversity of national groups within those states have an allegiance to the larger political community they inhabit.² In the preceding chapters the argument has been made that in the multinational states of the UK, Spain, and Canada there exists this rival conception of what the nation is. If looked at from the perspective of Kymlicka, it can be argued that Catalan, Scottish, and Québécois nationalists do have an allegiance to the multinational state, yet it is more an identification with the state in comparison to the strong allegiance they feel to their minority national groups. Indeed, this thesis has gone to demonstrate that from the viewpoint of participant-observers there exists a disconnect between the concepts of "nation" and "state" in these multinational states. In each cases of Catalan, Scottish, and Québécois nationalism, political conceptions diverge into these two incompatible definitions of what the nation is, with the majority of the population within the minority nation identifying with it as the nation and the greater majority of the population outside the minority nation identifying with the state as nation. Ultimately, the problem that this creates is that nationalists in the

¹ See Robert Hazell and Brendan O'Leary, "A Rolling Programme of Devolution: Slippery Slope or Safeguard of the Union?" in *Constitutional Futures: A History of the Next Ten Years*, ed. Robert Hazell (Oxford: Oxford University Press, 1999), pp. 21-46.

² Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995), p. 13.

Conclusion

minority nation do not find themselves represented in the state, even if they did at one time as in the case of Scotland within the British Empire. The minority nation is therefore driven to define its interests as best it can outside the existing constitutional structure, either by seceding from the state or by redefining its relationship within the state so that it can truly claim to be represented in the state. As argued above, a response to this problem or phenomenon is greater recognition partially through increased asymmetry within the state, which would allow the minority nation to find expression as a willing part of the state instead of in opposition to it. In other words, nationalists are calling for a re-conceptualising of sovereignty. Such a re-conceptualisation could lead to greater recognition and greater asymmetry that arguably would respond to the tensions that result from this disconnect between nation and state in Canada, Spain, and the UK.

Appendix A

Articles 137 – 151 of the Spanish Constitution, 1978

Title VIII Territorial Organization

Chapter I General Principles Article 137 [Municipalities, Provinces, Autonomous Communities]

The State is organized territorially into municipalities, provinces, and the Autonomous Communities which may be constituted. All these entities enjoy autonomy for the management of their respective interests.

Article 138 [Economic Balance]

(1) The State guarantees the effective realization of the principle of solidarity vested in Article 2, insuring the establishment of a proper and just economic balance among the various parts of Spanish territory, with particular attention to the status of the island possessions.

(2) The differences between the Statutes of the various Autonomous Communities may in no case imply economic or social privileges.

Article 139 [Equal Rights, Free Movement]

(1) All Spaniards have the same rights and obligations in any part of the territory of the State.

(2) No authority may adopt measures which directly or indirectly hinder the freedom of movement and establishment of persons and the free movement of goods throughout Spanish territory.

Chapter II Local Administration

Article 140 [Municipalities]

The Constitution guarantees the autonomy of the municipalities. These enjoy full legal personality. Their government and administration is the responsibility of their own city governments which are made up of the mayors and councilmen. The councilmen shall be elected by the residents of the municipality via universal equal, free, direct, and secret suffrage in the manner established by law. The mayors shall be elected by the councilmen or by the residents. The law shall regulate the conditions under which the system of an open council may proceed.

Article 141 [Provinces]

(1) The province is a local entity with its own legal personality determined by the collection of municipalities and territorial division for the fulfillment of the activities of the State. Any alteration in the provincial limits must be approved by the Parliament by means of an organic law.

(2) The government and Autonomous Administration of the provinces shall be trusted to Deputations or Corporations of a representative nature.

(3) Groupings of different municipalities of the province may be created.

(4) In the archipelagos, each island shall also have their own administration in the form of Cabildos or councils.

Article 142 [Financial Autonomy]

The local treasuries must have the means necessary for carrying out the functions which the law attributes to the respective corporations and they shall be supported basically by their own taxes and by sharing those of the State and the Autonomous Communities.

Chapter III Autonomous Communities

Article 143 [Autonomy Initiative]

(1) In the exercise of the right to autonomy recognized in Article 2, bordering provinces with common historical, cultural, and economic characteristics, the island territories, and the provinces with a historical regional unity may accede to self-government and constitute themselves into autonomous communities in accordance with the provisions of that Title and the respective statutes.

(2) The initiative for the autonomous process belongs to all the interested deputations or to the pertinent inter-island body and to two-thirds of the municipalities whose population represents at least the majority of the electorate of each province or island. These requirements must be fulfilled within a period of six months from the first agreement adopted on the subject by one of the interested local corporations.

(3) The initiative, in case it does not prosper, can only be repeated after the passage of five years.

Article 144 [Authority Authorization]

The Parliament, by means of an organic law, may for reasons of national interest:

- a) authorize the establishment of an Autonomous Community when its territorial area does not exceed that of a province and does not have the conditions set forth in Article 143;
- b) authorize or accord, depending on the case, a statute of autonomy for territories which are not integrated into the provincial organization; and
- c) substitute the initiative of the local corporations to which Article 143(2) refers.

Article 145 [Restricted Cooperation]

(1) In no case shall the federation of Autonomous Communities be allowed.

(2) The statutes may specify the conditions, requirements, and terms under which the Autonomous Communities may establish agreements among themselves for the administration and rendering of services pertaining to them, as well as the nature and purposes of the corresponding communication of them to the Parliament. Under other conditions, cooperation agreements between Autonomous Communities shall require the authorization of the Parliament.

Article 146 [Statute of Autonomy]

The draft of the statute shall be prepared by an assembly consisting of members of the Deputation or inter-insular organ of the affected provinces and by the Deputies and Senators elected in them and shall be forwarded to the Parliament for its enactment into law.

Article 147 [Adopting the Statute]

- (1) Within the terms of the present Constitution, the statutes shall be the basic institutional norm of each Autonomous Community and the State shall recognize them and protect them as an integral part of its juridical order.
- (2) The Statutes of autonomy must contain:
 - a) The name of the Community which best corresponds to its historical identity.
 - b) The delimitation of its territory.
 - c) The name, organization, and seat of its own autonomous institutions.
 - d) The competences assumed within the framework of the Constitution and the bases for the transfer of the corresponding services to them.
- (3) The reform of statutes shall be in accordance with the procedure established in them and shall in any case require the approval of the Parliament by means of an organic law.

Article 148 [Competences]

- (1) The Autonomous Communities may assume competences in the following:
 - 1) organization of their institutions of self-government;
 - 2) alterations of the municipal boundaries contained within its area, and in general the functions which belong to the State Administration concerning local corporations and whose transfer is authorized by the legislation on Local Governments;
 - 3) regulation of the territory, urbanism, and housing;
 - 4) public works of interest to the Autonomous Community in its own territory;
 - 5) railways and highways whose itinerary runs completely in the territory of the Autonomous Community and within the same boundaries and transportation carried out by these means or by cable;
 - 6) ports of refuge, recreational ports, airports, and generally those which do not carry out commercial activities;
 - 7) agriculture and livestock raising in accord with the general regulations;
 - 8) woodlands and forestry;
 - 9) activities in matters of environmental protection;
 - 10) water projects, canals, and irrigation systems of interest to the Autonomous Community and mineral and thermal waters;
 - 11) fishing in inland waters, hunting, and river fishing;
 - 12) interior fairs;
 - 13) promotion of the economic development of the Autonomous Community within the objectives marked by the national economic polity;
 - 14) handicrafts;
 - 15) museums, libraries, and conservatories of interest to the Autonomous Community;
 - 16) monuments of interest to the Autonomous Community;
 - 17) promotion of culture, research, and, when applicable, the teaching of the language of the Autonomous Community;
 - 18) promotion and regulation of tourism within its territorial area;
 - 19) promotion of sports and adequate utilization of leisure;
 - 20) social assistance;
 - 21) health and hygiene; and
 - 22) the custody and protection of its buildings and installations, the coordination and other functions with respect to local police forces under the terms an organic law shall establish.

(2) After five years have elapsed and through the reform of its statutes, the Autonomous Communities may then expand their competences within the framework established in Article 149.

Article 149 [State Competences]

(1) The State holds exclusive competence over the following matters:

- 1) the regulation of the basic conditions which guarantee the equality of all Spaniards in the exercise of their rights and fulfillment of their constitutional duties; nationality, immigration, emigration, alienage, and the right of asylum;
- 2) international relations;
- 3) defense and the Armed Forces;
- 4) administration of Justice;
- 5) mercantile, penal, and prison legislation, procedural legislation, without prejudice to the necessary specialties which in this order may derive from the particularities of the substantive law of the Autonomous Communities;
- 6) labor legislation, without prejudice to its execution by the organs of the Autonomous Communities;
- 7) civil legislation, without prejudice to the preservation, modification, and development by the Autonomous Communities of civil "fueros", or special rights, where they may exist; in any case, the rules relative to the application and effectiveness of legal norms, civil-legal relations having to do with the form of matrimony, regulation of registers and public instruments, the bases for contractual obligations, norms for resolving the conflicts of laws, and the determination of the sources of the law, in this last case, with respect to the norms of the "fueros" and special law;
- 8) legislation concerning intellectual and industrial property;
- 9) system of customs, tariffs, and foreign trade;
- 10) monetary system, foreign credits, exchange and convertibility; the general bases for the regulation of credit, banking, and insurance;
- 11) legislation on weights and measures, determination of the official time;
- 12) bases and coordination of general planning and economic activity;
- 13) general finance and debt of the state;
- 14) promotion and general coordination of scientific and technical research;
- 15) external health; bases and general coordination of health; legislation concerning pharmaceutical products;
- 16) basic legislation and economic system of social security, without prejudice to the execution of its services by the Autonomous Communities;
- 17) the bases of the legal system of the public administrations and the statutory system for its officials which shall in every case guarantee that the administered will receive a common treatment by them; a common administrative procedure, without prejudice to the specialties deriving from the particular organization of the Autonomous Communities; legislation on forcible expropriation; basic legislation on contracts and administrative concessions, and the system of responsibility of all public administration;
- 18) maritime fishing, without prejudice to the competences attributed to the Autonomous Communities in the regulation of the sector;
- 19) merchant marine and the ownership of ships; lighting of coasts and maritime signals; ports of general interest, airports of general interest, control of the air space, transit and transport, meteorological service and registration of aircraft;
- 20) railroads and land transport which crosses through the territory of more than one Autonomous Community; general communications system, traffic, and movement of motor

vehicles; mail and telecommunications; aerial cables, submarine cables, and radio communication;

22) the legislation, regulation, and concession of water resources and projects when the waters run through more than one Autonomous Community and the authorization of electrical installations when their use affects another community or when the transport of energy goes beyond its territorial area;

23) basic legislation on environmental protection without prejudice to the faculties of the Autonomous Communities to establish additional standards of protection; basic legislation on woodlands, forestry projects, and livestock trails;

24) public works of general interest or whose realization affects more than one Autonomous Community;

25) bases of the mining and energy system;

26) system of production, sale, possession, and use of arms and explosives; 27) basic norms of the system of press, radio, and television and, in general, of the other means of social communication, without prejudice to the faculties which in their development and execution belong to the Autonomous Communities;

28) protection of the cultural, artistic, and monument patrimony of Spain against exportation and exploitation; museums, libraries, and archives belonging to the State without prejudice to their management by the Autonomous Communities; 29) public security, without prejudice to the possibility of the creation of police by the Autonomous Communities in the manner which may be established in the respective statutes within the framework of the provisions of the organic law;

30) regulations of the conditions for obtaining, issuing, approving, and standardizing academic and professional degrees and basic norms for carrying out Article 27 in order to guarantee compliance with the obligations of the public powers in this matter;

31) statistics for State purposes; and

32) authorization for the convocation of popular consultations via referendum. (2) Without prejudice to the competences which the Autonomous Communities may assume, the state shall consider the service of culture a duty and essential attribute and shall facilitate cultural communication among the Autonomous Communities in agreement with them.

(3) The matters not attributed expressly to the state by this Constitution belong to the Autonomous Communities by virtue of their respective statutes. Authority over matters not assumed by the Statutes of Autonomy shall belong to the state, whose norms shall prevail in case of conflict over those of the Autonomous Communities in everything which is not attributed to their exclusive competence. The law of the State shall in every case be supplementary to the law of the Autonomous Communities.

Article 150 [Granting and Retaining Authority]

(1) The Parliament, in matters within the competence of the State, may grant to all or one of the Autonomous Communities the authority to dictate for itself legislative norms within the framework of the principles, bases, and directives established by a state law. Without prejudice to the competence of the Courts, within the framework of every law shall be established the method of control by the Parliament over these legislative norms of the Autonomous Communities.

(2) The State may transfer or delegate to the Autonomous Communities by an organic law those faculties on matters within the competence of the State, which because of their own nature are susceptible to transference or delegation. The law shall in each case contain the pertinent transfer of financial means as well as the forms of control the State reserves for itself.

(3) The State may dictate laws which establish the principles necessary to harmonize the normative provisions of the Autonomous Communities even in the case of matters attributed to their competence when the general interest so demands. It is up to the Parliament, by the absolute majority in each Chamber, to evaluate this necessity.

Article 151 [Immediate Autonomy]

(1) It shall not be necessary to wait for the five-year period referred to in Article 148(2) to elapse when the initiative for the autonomous process is agreed upon within the time limit specified in Article 143(2), not only by the corresponding Provincial Deputations or inter-island bodies, but also by three-quarters of the Municipalities of each province concerned, representing at least the majority of the electorate of each one, and said initiative is ratified by means of a referendum by the affirmative vote of the absolute majority of the electors in each province, under the terms to be established by an organic law.

(2) In the case provided for in the foregoing paragraph, the procedure for drafting the statute shall be as follows:

1) The Government shall summon all the Deputies and Senators elected in the electoral districts within the territorial area seeking self-government in order to constitute themselves into an Assembly for the sole purpose of drawing up the corresponding draft statute for self-government, to be adopted by the absolute majority of its members.

2) Once the draft statute has been passed by the assembly, it shall be remitted to the Constitutional Commission of the House of Representatives which shall examine it within the time of two months with the concurrence and assistance of a delegation from the Assembly which has proposed it, in order to decide in common agreement upon its definitive formulation.

3) If such an agreement is reached, the resulting text shall be submitted in a referendum of the electoral corps of the provinces within the territorial area to be covered by the proposed statute.

4) If the draft statute is approved in each province by the majority of validly cast votes, it shall be referred to the Parliament. Both Chambers, in plenary assembly, shall decide upon the text by means of a vote of ratification. Once the statute has been approved, the King shall sanction it and shall promulgate it as law.

5) If the agreement referred to in Subparagraph 2) is not reached, the draft statute shall be treated like a draft law in the Parliament. The text approved by them shall be submitted in a referendum of the electoral corps of the provinces within the territorial area to be covered by the draft statute. In the event that it is passed by the majority of the validly cast votes in each province, it shall be promulgated under the terms outlined in the foregoing subparagraph.

(3) In the cases described in Subparagraphs 4) and 5) of the foregoing paragraph, failure to pass the draft statute by one or several of the provinces shall not impede the constitution of the remaining provinces into an Autonomous Community in the form as shall be established by the organic law envisaged in Paragraph (1).

Appendix B

Catalan Statute of Autonomy, 1979 Articles 9-20

SECTION ONE

Jurisdiction of the "Generalitat"

Article 9

The "Generalitat" of Catalonia shall have sole jurisdiction over the following matters:

1. Organization of its own institutions of self-government, within the framework of this Statute.

2. Preservation, modification and development of Catalan civil law.

3. Procedural laws and laws concerning administrative procedure arising from the particular features of the substantive law of Catalonia or from the special characteristics of the organization of the "Generalitat".

4. Culture.

5. Historical, artistic, monumental, architectural, archaeological and scientific heritage, without prejudicing the provisions laid down under point 28 of paragraph 1 of article 149 of the Constitution.

6. Archives libraries, museums, newspaper libraries and other centres of cultural reference not under State control. Conservatories of Music and Fine Arts services of interest to the Self-Governing Community.

7. Research, without prejudicing the stipulations laid down under point 15 of paragraph 1 of article 149 of the Constitution. Those Academies whose seat is in Catalonia.

8. Local Government, without prejudicing the provisions laid down under point 18 of paragraph 1 of article 149 of the Constitution. Alterations to municipal boundaries and the official names of municipalities and other place names.

9. Territorial and coastline planning, housing and town planning.

10. Woodland, forestry resources and services, livestock trails and pastures, specially protected natural and mountain areas, in accordance with the provisions laid down under point 23 of paragraph 1 of article 149 of the Constitution.

11. Health, taking into account the stipulations of article 17 of this Statute.

12. Tourism.

13. Public works not legally classified as being of general interest to the State or whose execution does not affect any other Self-Governing Community.

14. Roads and highways whose routes are entirely contained within the territory of Catalonia.

15. Railways, transport by land, sea, river and cable; ports, heliports, airports and the Meteorological Service of Catalonia, without prejudicing the provisions laid down under points 20 and 21 of paragraph 1 of article 149 of the Constitution. Hiring centres and loading terminals for transport services.

16. Hydraulic projects, canals and irrigation works, whenever the waters flow entirely within the territory of Catalonia; installations for the production, distribution and transportation of energy, whenever such transportation does not leave the territory and its use does not affect any other province or Self-Governing Community; mineral, thermal and underground waters. All of these without prejudicing the provisions laid down under point 25 of paragraph 1 of article 149 of the Constitution.

17. Fishing in inland waters, the shellfish industry, aquaculture, hunting and lake and lake fishing.

18. Handicrafts.
19. Pharmaceutical regulations, without prejudicing the provisions laid down under point 16 of paragraph 1 of article 149 of the Constitution.
20. Setting up and planning of centres for dealings in commodities and securities, in accordance with commercial legislation.
21. Co-operatives, mutual benefit societies not included in the Social Security system and other co-operative associations in accordance with commercial legislation.
22. Real Estate Chambers, Chambers of Commerce, industry and Shipping, without prejudicing the provisions laid down under point 10 of paragraph 1 of article 149 of the Constitution.
23. Professional Associations and the exercise of degree-qualified professions, without prejudicing the provisions of articles 36 and 139 of the Constitution.
24. Foundations and associations of an educational, cultural, artistic, charitable, welfare or similar nature, whose activities are carried on chiefly in Catalonia.
25. Social welfare.
26. Youth.
27. Promotion of women.
28. Public institutions for the protection and guardianship of minors, with constant respect for civil, penal and penitentiary legislation.
29. Sport and leisure.
30. Advertising, without prejudicing the laws passed by the State for specific sectors and media.
31. Entertainment.
32. Casinos, gaming and betting, excluding the state system of sports betting for charity (football pools).
33. Statistics of interest to the "Generalitat".
34. Other matters expressly stated in this Statute as being under the sole jurisdiction of the "Generalitat" and those of a similar nature which are transferred to it by the State through an Organic law.

Article 10

1. Within the framework of the basic legislation of the State and, when appropriate, under the terms established therein, it is incumbent upon the "Generalitat" to develop and implement legislation in the following areas:
 - 1) Juridical system and system of liability of the administration of the "Generalitat" and the public bodies dependent on it, in addition to the Statute of their civil servants.
 - 2) Compulsory expropriation, administrative contracts and concessions, within the area under the jurisdiction of the "Generalitat" '.
 - 3) Retention for the public sector of essential resources or services, especially in the case of monopolies, and the auditing of companies when the general interest so demands.
 - 4) Planning of credit, banking and insurance.
 - 5) Mining and energy organization.
 - 6) Protection of the environment, without prejudicing the powers of the "Generalitat" to lay down additional standards of protection.
 - 7) Fisheries planning.
2. It is incumbent on the "Generalitat" to develop the legislation of the system of Municipal Popular Consultations within the area of Catalonia, in accordance with the provisions of the laws referred to in paragraph 3 of article 92 and point 18, paragraph 1

of article 149 of the Constitution, it being the responsibility of the State to authorize such consultations.

Article 11

It is incumbent on the "Generalitat" to implement State legislation in the following areas:

1. Prisons.
2. Labour affairs, assuming the powers, jurisdiction and services currently held in this area at executive level by the State in respect of labour relations, without prejudicing the State's powers of inspection. The State retains all powers as regards internal and external population movement and national employment funds, without prejudicing whatever State laws may lay down on these matters.
3. Copyright and patents.
4. Appointment of bill brokers, stockbrokers and commercial brokers. Intervention, when appropriate, in drawing up the corresponding demarcations.
5. Weights and measures. Hallmarks.
6. International fairs held in Catalonia.
7. Museums, archives and libraries under State management when the State does not reserve this management for itself.
8. Ports and airports classified as being of general interest, whenever the State does not reserve their direct management for itself.
9. Planning of the transportation of goods and passengers whose points of departure and destination lie within the territory of the Self-Governing Community, even though such transportation may be effected on infrastructures belonging to the State, as referred to under point 21 of paragraph 1 of article 149 of the Constitution, without prejudicing such direct implementation as the State may reserve for itself.
10. Rescue work at sea and dumping of industrial waste and pollutants in State territorial waters off the Catalan coast.
11. Other questions expressly stated in this Statute as coming under the jurisdiction of the "Generalitat" and those of this nature which may be transferred to it by the State through an organic law.

Article 12

1. In accordance with the bases and planning of the general economic activity and monetary policy of the State, it is incumbent on the "Generalitat", under the terms of the provisions of articles 38, 131 and points 11 and 13 of paragraph 1 of article 149 of the Constitution, 17 to hold sole jurisdiction over the following areas:
 - 1) Planning of economic activity in Catalonia.
 - 2) Industry, without prejudicing whatever State laws may determine for reasons of safety, health or military interest, and the regulations concerning industries subject to legislation on mines, hydrocarbons and nuclear power. The power to authorize the import of foreign technology lies solely with the State.
 - 3) The development and implementation in Catalonia of plans drawn up by the State for the restructuring of industrial sectors.
 - 4) Agriculture and livestock farming.
 - 5) Internal trade, protection of the consumer and user, without prejudicing the general policy on prices and legislation on defence from competition. "Appelations c ntrol es" in collaboration with the State.
 - 6) Corporate, public and territorial credit institutions and Savings Banks.
 - 7) The public economic sector of the "Generalitat", in so far as this is not envisaged under other laws in this Statute.

2. The "Generalitat" shall also participate in the management of the State's public economic sector, in appropriate cases and activities.

Article 13

1. The "Generalitat" may set up an Autonomous Police Force within the framework of this Statute and that of the Organic Law provided for in article 149, 1.29 of the Constitution for matters not specifically regulated in the former.

2. The Autonomous Police Force of the "Generalitat" shall have the following functions:

- a) The protection of property and persons and the maintaining of law and order.
- b) The guarding and protecting of the buildings and installations of the "Generalitat".
- c) The remaining functions provided for in the Organic Law referred to in paragraph 1 of this article.

3. It is incumbent on the "Generalitat" to exercise overall command of the Autonomous Police Force and to co-ordinate the activities of Local Police Forces.

4. The State Security Forces and Corps under State control shall have sole responsibility for police services of an extra- and supra-community nature, such as guarding ports, airports, coasts and frontiers, customs, controlling the entry and exit from national territory of Spaniards and foreigners, the legal framework for foreign residents, extradition and expulsion, emigration and immigration, passports, national identity cards, traffic of arms and explosives, fiscal protection of the State, smuggling and tax fraud and other functions directly assigned to them by article 104 of the Constitution and by the Organic Law which is to develop it further.

5. The Judiciary Police and Corps which perform this function shall depend on the judges, the Courts and the Office of the Public Prosecutor in respect of the functions set out in article 126 of the Constitution 20 and in the terms provided for in the procedural laws.

6. The Security Council is hereby set up, comprising an equal number of representatives of the State Government and the "Generalitat", for the purpose of co-ordinating the activities of the "Generalitat" Police and the State Security Forces and Corps.

7. The Security Council shall determine the Statute, Regulations, staff, numbers and recruitment of the Police Force of the "Generalitat", whose commanding officers shall be appointed from among the Chiefs and Officers of the State Armed Forces and State Security Forces and Corps who, while serving in the Police Force of the "Generalitat", shall be placed in the administrative situation to be established in the Organic Law referred to in paragraph 1 of this article or in the situation that the State Government may determine, and while in this situation shall not be subject to military law. Licences for arms shall in all cases be the responsibility of the State alone.

Article 14

1. Using the powers and exercising the jurisdiction assigned to it by the Constitution, the Government shall take control of all the services included in the previous article and the Security Forces and Corps may intervene in functions ascribed to the Police Force of the "Generalitat", in the following cases:

- a) When called upon to do so by the "Generalitat". Intervention shall cease at the request of the "Generalitat".
- b) On their own initiative, when they consider that the State interest is gravely endangered, and with the approval of the Security Council.

In cases of particular urgency, the State Security Forces and Corps may intervene under the sole responsibility of the State Government, which shall report to the

"Cortes Generales". The "Cortes Generales", through constitutional procedures, may exercise the powers vested in them.

2. In the event of the declaration of states of alarm, exceptions or siege, all police Forces and Corps shall be placed under the direct order, of the civil or military authorities, as the case may be, in accordance with the legislation regulating such matters.

Article 15

It is fully within the jurisdiction of the "Generalitat" to regulate and administer education in all its scope, levels, degrees, kinds and specialities, within the area of its jurisdiction, without prejudicing the provisions of article 27 of the Constitution and Organic Laws which, in accordance with the first paragraph of article 81 therein, may develop it, or the powers assigned to the State under point 30 of paragraph 1 of article 149 of the Constitution 2 and the inspection necessary for its proper implementation and safeguarding.

Article 16

1. Within the framework of the basic laws of the State, it is the responsibility of the "Generalitat" to develop and implement legislation for the system of radio and television broadcasting in the terms and cases established by the law which is to regulate the Legal Statute for Radio and Television.

2. It is also incumbent on it, within the framework of the basic laws of the State, to develop and implement legislation for the press system and, in general, that of all the media for social communication.

3. In the terms established in the foregoing paragraphs of this article, the "Generalitat" may regulate, create and maintain its own television, radio and press and, in general, all the media for social communication used for the accomplishing of its ends.

Article 17

1. It is the responsibility of the "Generalitat" of Catalonia to develop and implement the basic legislation of the State on internal health matters.

2. With regard to Social Security, it shall be incumbent on the "Generalitat" of Catalonia to:

a) Develop and implement the basic legislation of the State, except for the laws which constitute the Social Security's economic organization.

b) Manage the said economic organization of the Social Security

3. The "Generalitat" shall also be responsible for the implementation of State legislation on pharmaceutical products.

4. Within its territory, the "Generalitat" of Catalonia may organize and administer for these purposes all the services connected with the matters expressed above and shall supervise institutions, organizations and foundations connected with Health and Social Security matters. The State shall reserve for itself the inspection facilities which shall enable it to fulfil the duties and powers contained in this article.

5. The "Generalitat" of Catalonia shall adapt the exercise of the powers it may assume in Health and Social Security matters to criteria of democratic participation on the part of all those involved, and also of the Employees' Union, and Employers' Associations in the terms to be established by the law.

Article 18

As regards the administration of justice, except for military justice, it shall be incumbent on the "Generalitat":

1. To exercise all the powers which the Organic Laws of the Judiciary and the General Council of the judiciary recognize or assign to the State Government.
2. To establish the boundaries of the territorial divisions of the jurisdictional agencies of Catalonia and to determine their seat.
3. To contribute to the organization of common law and traditional courts and to the setting up of magistrates, courts in all cases in accordance with the provisions of the Organic law of the judiciary.

Article 19

The High Court of Justice of Catalonia, with which the present Territorial Court of Barcelona shall be merged, is the organ of justice which shall embody judicial organization in its territorial area and before which all procedural appeals are to be heard under the terms of article 152 of the Constitution 24 and in accordance with this Statute.

Article 20

1. The jurisdiction of the judicial authorities in Catalonia extends:
 - a) In civil cases, to all instances and degrees, including appeals for case review and High-Court appeals in matters of Catalan Civil Law.
 - b) In penal and social cases, to all instance, and degrees, with the exception of High-Court appeals and appeals for case review.
 - c) In cases of administrative litigation, to all instances and degrees, whenever acts handed down by the Executive Council or Government or by the Administration of the "Generalitat" are involved, in matters where legislation is the sole responsibility of the Self-Governing Community and in the first appeal, when acts handed down by the State Administration in Catalonia are involved.
 - d) To questions of jurisdiction among the different judicial organs of Catalonia.
 - e) To appeals concerning the classification of documents referring specifically to Catalan law which shall have access to Real Estate Registers.
2. In other matters, appeals may be lodged, when appropriate, with the Supreme Court. Such appeals shall comprise the High Court appeal, or whichever is appropriate according to State Law, including the appeal for revision. The Supreme Court shall also solve disputes affecting powers and jurisdiction between the Courts of Catalonia and those of the rest of Spain.

Appendix C

Schedule 5 of the *Scotland Act, 1998*

SCHEDULE 5
RESERVED MATTERS
PART I
GENERAL RESERVATIONS

The Constitution

1. The following aspects of the constitution are reserved matters, that is-
 - (a) the Crown, including succession to the Crown and a regency,
 - (b) the Union of the Kingdoms of Scotland and England,
 - (c) the Parliament of the United Kingdom,
 - (d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal,
 - (e) the continued existence of the Court of Session as a civil court of first instance and of appeal.
2. - (1) Paragraph 1 does not reserve-
 - (a) Her Majesty's prerogative and other executive functions,
 - (b) functions exercisable by any person acting on behalf of the Crown, or
 - (c) any office in the Scottish Administration.(2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of honours and dignities or the functions of the Lord Lyon King of Arms so far as relating to the granting of arms; but this sub-paragraph does not apply to the Lord Lyon King of Arms in his judicial capacity.
 - (3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the management (in accordance with any enactment regulating the use of land) of the Crown Estate.
 - (4) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
3. - (1) Paragraph 1 does not reserve property belonging to Her Majesty in right of the Crown or belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown.
 - (2) Paragraph 1 does not reserve the ultimate superiority of the Crown or the superiority of the Prince and Steward of Scotland.
 - (3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of-
 - (a) the hereditary revenues of the Crown, other than revenues from bona vacantia, ultimus haeres and treasure trove,
 - (b) the royal arms and standard,
 - (c) the compulsory acquisition of property held or used by a Minister of the Crown or government department.
4. - (1) Paragraph 1 does not reserve property held by Her Majesty in Her private capacity.
 - (2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the subject-matter of the Crown Private Estates Acts 1800 to 1873.
5. Paragraph 1 does not reserve the use of the Scottish Seal.

Political parties

6. The registration and funding of political parties is a reserved matter.

Foreign affairs etc.

7. - (1) International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

(2) Sub-paragraph (1) does not reserve-

(a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law,

(b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

Public service

8. - (1) The Civil Service of the State is a reserved matter.

(2) Sub-paragraph (1) does not reserve the subject-matter of-

(a) Part I of the Sheriff Courts and Legal Officers (Scotland) Act 1927 (appointment of sheriff clerks and procurators fiscal etc.),

(b) Part III of the Administration of Justice (Scotland) Act 1933 (officers of the High Court of Justiciary and of the Court of Session).

Defence

9. - (1) The following are reserved matters-

(a) the defence of the realm,

(b) the naval, military or air forces of the Crown, including reserve forces,

(c) visiting forces,

(d) international headquarters and defence organisations,

(e) trading with the enemy and enemy property.

(2) Sub-paragraph (1) does not reserve-

(a) the exercise of civil defence functions by any person otherwise than as a member of any force or organisation referred to in sub-paragraph (1)(b) to (d) or any other force or organisation reserved by virtue of sub-paragraph (1)(a), (b) the conferral of enforcement powers in relation to sea fishing.

Treason

10. Treason (including constructive treason), treason felony and misprision of treason are reserved matters.

PART II
SPECIFIC RESERVATIONS

Preliminary

1. The matters to which any of the Sections in this Part apply are reserved matters for the purposes of this Act.

2. A Section applies to any matter described or referred to in it when read with any illustrations, exceptions or interpretation provisions in that Section.

3. Any illustrations, exceptions or interpretation provisions in a Section relate only to that Section (so that an entry under the heading "exceptions" does not affect any other Section).

Head A - Financial and Economic Matters

A1. Fiscal, economic and monetary policy

A1. Fiscal, economic and monetary policy Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties, government borrowing and lending, control over United Kingdom public expenditure, the exchange rate and the Bank of England.

Exception Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates).

A2. The currency

A2. The currency Coinage, legal tender and bank notes.

A3. Financial services

A3. Financial services Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.

Exception The subject-matter of section 1 of the Banking and Financial Dealings Act 1971 (bank holidays).

A4. Financial markets

A4. Financial markets Financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.

A5. Money laundering

A5. Money laundering The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business.

Head B - Home Affairs

B1. Misuse of drugs

B1. Misuse of drugs The subject-matter of-

(a) the Misuse of Drugs Act 1971,

(b) sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs), and

(c) Part V of the Criminal Law (Consolidation) (Scotland) Act 1995 (drug trafficking) and, so far as relating to drug trafficking, the Proceeds of Crime (Scotland) Act 1995.

B2. Data protection

B2. Data protection The subject-matter of-

(a) the Data Protection Act 1998, and

(b) Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data).

Interpretation If any provision of the Data Protection Act 1998 is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

B3. Elections

B3. Elections Elections for membership of the House of Commons, the European Parliament and the Parliament, including the subject-matter of-

(a) the European Parliamentary Elections Act 1978,

(b) the Representation of the People Act 1983 and the Representation of the People Act 1985, and

(c) the Parliamentary Constituencies Act 1986,

so far as those enactments apply, or may be applied, in respect of such membership. The franchise at local government elections.

B4. Firearms

B4. Firearms The subject-matter of the Firearms Acts 1968 to 1997.

B5. Entertainment

B5. Entertainment The subject-matter of-

(a) the Video Recordings Act 1984, and

(b) sections 1 to 3 and 5 to 16 of the Cinemas Act 1985 (control of exhibitions).

The classification of films for public exhibition by reference to their suitability for viewing by persons generally or above a particular age, with or without any advice as to the desirability of parental guidance.

B6. Immigration and nationality

B6. Immigration and nationality Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.

B7. Scientific procedures on live animals

B7. Scientific procedures on live animals The subject-matter of the Animals (Scientific Procedures) Act 1986.

B8. National security, interception of communications, official secrets and terrorism

B8. National security, interception of communications, official secrets and terrorism

National security.

The interception of communications; but not the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.) or surveillance not involving interference with property.

The subject-matter of-

(a) the Official Secrets Acts 1911 and 1920, and

(b) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.

Special powers, and other special provisions, for dealing with terrorism.

B9. Betting, gaming and lotteries

B9. Betting, gaming and lotteries Betting, gaming and lotteries.

B10. Emergency powers

B10. Emergency powers Emergency powers.

B11. Extradition

B11. Extradition Extradition.

B12. Lieutenancies

B12. Lieutenancies The subject-matter of the Lieutenancies Act 1997.

Head C - Trade and Industry

C1. Business associations

C1. Business associations The creation, operation, regulation and dissolution of types of business association.

Exceptions The creation, operation, regulation and dissolution of-

(a) particular public bodies, or public bodies of a particular type, established by or under any enactment, and

(b) charities.

Interpretation "Business association" means any person (other than an individual) established for the purpose of carrying on any kind of business,

whether or not for profit; and "business" includes the provision of benefits to the members of an association.

C2. Insolvency

C2. Insolvency In relation to business associations-

- (a) the modes of, the grounds for and the general legal effect of winding up, and the persons who may initiate winding up,
- (b) liability to contribute to assets on winding up,
- (c) powers of courts in relation to proceedings for winding up, other than the power to sist proceedings,
- (d) arrangements with creditors, and
- (e) procedures giving protection from creditors.

Preferred or preferential debts for the purposes of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986, and any other enactment relating to the sequestration of the estate of any person or to the winding up of business associations, the preference of such debts against other such debts and the extent of their preference over other types of debt.

Regulation of insolvency practitioners.

Co-operation of insolvency courts.

Exceptions In relation to business associations-

- (a) the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or of that part,
- (b) the effect of winding up on diligence, and
- (c) avoidance and adjustment of prior transactions on winding up.

Floating charges and receivers, except in relation to preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.

Interpretation "Business association" has the meaning given in Section C1 of this Part of this Schedule, but does not include any person whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 or any public body established by or under an enactment.

"Winding up", in relation to business associations, includes winding up of solvent, as well as insolvent, business associations.

C3. Competition

C3. Competition Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.

Exception Regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services.

Interpretation "The legal profession" means advocates, solicitors and qualified conveyancers and executry practitioners within the meaning of Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

C4. Intellectual property

C4. Intellectual property Intellectual property.

Exception The subject-matter of Parts I and II of the Plant Varieties Act 1997 (plant varieties and the Plant Varieties and Seeds Tribunal).

C5. Import and export control

C5. Import and export control The subject-matter of the Import, Export and Customs Powers (Defence) Act 1939.

Prohibition and regulation of the import and export of endangered species of animals and plants.

Exceptions Prohibition and regulation of movement into and out of Scotland of-

- (a) food, animals, animal products, plants and plant products for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and
- (b) animal feeding stuffs, fertilisers and pesticides for the purposes of protecting human, animal or plant health or the environment.

C6. Sea fishing

C6. Sea fishing Regulation of sea fishing outside the Scottish zone (except in relation to Scottish fishing boats).

Interpretation "Scottish fishing boat" means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging.

C7. Consumer protection

C7. Consumer protection Regulation of-

- (a) the sale and supply of goods and services to consumers,
- (b) guarantees in relation to such goods and services,
- (c) hire-purchase, including the subject-matter of Part III of the Hire-Purchase Act 1964,
- (d) trade descriptions, except in relation to food,
- (e) misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products,
- (f) price indications,
- (g) trading stamps,
- (h) auctions and mock auctions of goods and services, and
- (i) hallmarking and gun barrel proofing.

Safety of, and liability for, services supplied to consumers.

The subject-matter of-

- (a) the Hearing Aid Council Act 1968,
- (b) the Unsolicited Goods and Services Acts 1971 and 1975,
- (c) Parts I to III and XI of the Fair Trading Act 1973,
- (d) the Consumer Credit Act 1974,
- (e) the Estate Agents Act 1979,
- (f) the Timeshare Act 1992,
- (g) the Package Travel, Package Holidays and Package Tours Regulations 1992, and
- (h) the Commercial Agents (Council Directive) Regulations 1993.

Exception The subject-matter of section 16 of the Food Safety Act 1990 (food safety and consumer protection).

C8. Product standards, safety and liability

C8. Product standards, safety and liability Technical standards and requirements in relation to products in pursuance of an obligation under Community law.

Product safety and liability.

Product labelling.

Exceptions Food, agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides.

In relation to food safety, materials which come into contact with food.

C9. Weights and measures

C9. Weights and measures Units and standards of weight and measurement. Regulation of trade so far as involving weighing, measuring and quantities.

C10. Telecommunications and wireless telegraphy

C10. Telecommunications and wireless telegraphy Telecommunications and wireless telegraphy.

Internet services.

Electronic encryption.

The subject-matter of Part II of the Wireless Telegraphy Act 1949 (electromagnetic disturbance).

Exception The subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.).

C11. Post Office, posts and postal services

C11. Post Office, posts and postal services The Post Office, posts (including postage stamps, postal orders and postal packets) and regulation of postal services.

C12. Research Councils

C12. Research Councils Research Councils within the meaning of the Science and Technology Act 1965.

The subject-matter of section 5 of that Act (funding of scientific research) so far as relating to Research Councils.

C13. Designation of assisted areas

C13. Designation of assisted areas The subject-matter of section 1 of the Industrial Development Act 1982.

C14. Industrial Development Advisory Board

C14. Industrial Development Advisory Board The Industrial Development Advisory Board.

C15. Protection of trading and economic interests

C15. Protection of trading and economic interests The subject-matter of- (a) section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964 (Treasury power in relation to action damaging to economic position of United Kingdom), (b) Part II of the Industry Act 1975 (powers in relation to transfer of control of important manufacturing undertakings), and (c) the Protection of Trading Interests Act 1980.

Head D - Energy

D1. Electricity

D1. Electricity Generation, transmission, distribution and supply of electricity. The subject-matter of Part II of the Electricity Act 1989.

Exception The subject-matter of Part I of the Environmental Protection Act 1990.

D2. Oil and gas

D2. Oil and gas Oil and gas, including-

- (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas,
- (b) the subject-matter of section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in connection with mineral exploration) so far as relating to exploration for oil and gas,
- (c) offshore installations and pipelines,
- (d) the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act,
- (e) the application of Scots law and the jurisdiction of the Scottish courts in relation to offshore activities,

(f) pollution relating to oil and gas exploration and exploitation, but only outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974),

(g) the subject-matter of Part II of the Food and Environment Protection Act 1985 so far as relating to oil and gas exploration and exploitation, but only in relation to activities outside such controlled waters,

(h) restrictions on navigation, fishing and other activities in connection with offshore activities,

(i) liquefaction of natural gas, and

(j) the conveyance, shipping and supply of gas through pipes.

Exceptions The subject-matter of-

(a) sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),

(b) the Offshore Petroleum Development (Scotland) Act 1975, other than sections 3 to 7, and

(c) Part I of the Environmental Protection Act 1990.

The manufacture of gas.

The conveyance, shipping and supply of gas other than through pipes.

D3. Coal

D3. Coal Coal, including its ownership and exploitation, deep and opencast coal mining and coal mining subsidence.

Exceptions The subject-matter of-

(a) Part I of the Environmental Protection Act 1990, and

(b) sections 53 (environmental duties in connection with planning) and 54 (obligation to restore land affected by coal-mining operations) of the Coal Industry Act 1994.

D4. Nuclear energy

D4. Nuclear energy Nuclear energy and nuclear installations, including-

(a) nuclear safety, security and safeguards, and

(b) liability for nuclear occurrences.

Exceptions The subject-matter of-

(a) Part I of the Environmental Protection Act 1990, and

(b) the Radioactive Substances Act 1993.

D5. Energy conservation

D5. Energy conservation The subject-matter of the Energy Act 1976, other than section 9.

Exception The encouragement of energy efficiency other than by prohibition or regulation.

Head E – Transport

E1. Road transport

E1. Road transport The subject-matter of-

(a) the Motor Vehicles (International Circulation) Act 1952,

(b) the Public Passenger Vehicles Act 1981 and the Transport Act 1985, so far as relating to public service vehicle operator licensing,

(c) section 17 (traffic regulation on special roads), section 25 (pedestrian crossings), Part V (traffic signs) and Part VI (speed limits) of the Road Traffic Regulation Act 1984,

(d) the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988,

(e) the Vehicle Excise and Registration Act 1994,

(f) the Road Traffic (New Drivers) Act 1995, and
(g) the Goods Vehicles (Licensing of Operators) Act 1995.
Regulation of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road.

The conditions under which international road transport services for passengers or goods may be undertaken.

Regulation of the instruction of drivers of motor vehicles.

Exceptions The subject-matter of sections 39 and 40 (road safety information and training) and 157 to 159 (payments for treatment of traffic casualties) of the Road Traffic Act 1988.

E2. Rail transport

E2. Rail transport Provision and regulation of railway services.

Rail transport security.

The subject-matter of the Channel Tunnel Act 1987.

The subject-matter of the Railway Heritage Act 1996.

Exceptions Grants so far as relating to railway services; but this exception does not apply in relation to-

(a) the subject-matter of section 63 of the Railways Act 1993 (government financial assistance where railway administration orders made),

(b) "railway services" as defined in section 82(1)(b) of the Railways Act 1993 (carriage of goods by railway), or

(c) the subject-matter of section 136 of the Railways Act 1993 (grants and subsidies).

Interpretation "Railway services" has the meaning given by section 82 of the Railways Act 1993 (excluding the wider meaning of "railway" given by section 81(2) of that Act).

E3. Marine transport

E3. Marine transport The subject-matter of-

(a) the Coastguard Act 1925,

(b) the Hovercraft Act 1968, except so far as relating to the regulation of noise and vibration caused by hovercraft,

(c) the Carriage of Goods by Sea Act 1971,

(d) section 2 of the Protection of Wrecks Act 1973 (prohibition on approaching dangerous wrecks),

(e) the Merchant Shipping (Liner Conferences) Act 1982,

(f) the Dangerous Vessels Act 1985,

(g) the Aviation and Maritime Security Act 1990, other than Part I (aviation security),

(h) the Carriage of Goods by Sea Act 1992,

(i) the Merchant Shipping Act 1995,

(j) the Shipping and Trading Interests (Protection) Act 1995, and

(k) sections 24 (implementation of international agreements relating to protection of wrecks), 26 (piracy) and 27 and 28 (international bodies concerned with maritime matters) of the Merchant Shipping and Maritime Security Act 1997.

Navigational rights and freedoms.

Financial assistance for shipping services which start or finish or both outside Scotland.

Exceptions Ports, harbours, piers and boatslips, except in relation to the matters reserved by virtue of paragraph (d), (f), (g) or (i).

Regulation of works which may obstruct or endanger navigation.
The subject-matter of the Highlands and Islands Shipping Services Act 1960 in relation to financial assistance for bulk freight services.

E4. Air transport

E4. Air transport Regulation of aviation and air transport, including the subject-matter of-

- (a) the Carriage by Air Act 1961,
- (b) the Carriage by Air (Supplementary Provisions) Act 1962,
- (c) the Carriage by Air and Road Act 1979 so far as relating to carriage by air,
- (d) the Civil Aviation Act 1982,
- (e) the Aviation Security Act 1982,
- (f) the Airports Act 1986, and
- (g) sections 1 (endangering safety at aerodromes) and 48 (powers in relation to certain aircraft) of the Aviation and Maritime Security Act 1990, and arrangements to compensate or repatriate passengers in the event of an air transport operator's insolvency.

Exceptions The subject-matter of the following sections of the Civil Aviation Act 1982-

- (a) section 25 (Secretary of State's power to provide aerodromes),
- (b) section 30 (provision of aerodromes and facilities at aerodromes by local authorities),
- (c) section 31 (power to carry on ancillary business in connection with local authority aerodromes),
- (d) section 34 (financial assistance for certain aerodromes),
- (e) section 35 (facilities for consultation at certain aerodromes),
- (f) section 36 (health control at Secretary of State's aerodromes and aerodromes of Civil Aviation Authority), and
- (g) sections 41 to 43 and 50 (powers in relation to land exercisable in connection with civil aviation) where land is to be or was acquired for the purpose of airport development or expansion.

The subject-matter of Part II (transfer of airport undertakings of local authorities), sections 63 and 64 (airport byelaws) and 66 (functions of operators of designated airports as respects abandoned vehicles) of the Airports Act 1986.

The subject-matter of sections 59 (acquisition of land and rights over land) and 60 (disposal of compulsorily acquired land) of the Airports Act 1986 where land is to be or was acquired for the purpose of airport development or expansion.

E5. Other matters

E5. Other matters Transport of radioactive material.

Technical specifications for public passenger transport for disabled persons, including the subject-matter of-

- (a) section 125(7) and (8) of the Transport Act 1985 (Secretary of State's guidance and consultation with the Disabled Persons Transport Advisory Committee), and
- (b) Part V of the Disability Discrimination Act 1995 (public transport).

Regulation of the carriage of dangerous goods.

Interpretation "Radioactive material" has the same meaning as in section 1(1) of the Radioactive Material (Road Transport) Act 1991.

Head F - Social Security

F1. Social security schemes

F1. Social security schemes Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.

Requiring persons to-

(a) establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or

(b) make payments to or in respect of such schemes,

and to keep records and supply information in connection with such schemes. The circumstances in which a person is liable to maintain himself or another for the purposes of the enactments relating to social security and the Child Support Acts 1991 and 1995.

The subject-matter of the Vaccine Damage Payment Scheme.

Illustrations National Insurance; Social Fund; administration and funding of housing benefit and council tax benefit; recovery of benefits for accident, injury or disease from persons paying damages; deductions from benefits for the purpose of meeting an individual's debts; sharing information between government departments for the purposes of the enactments relating to social security; making decisions for the purposes of schemes mentioned in the reservation and appeals against such decisions.

Exceptions The subject-matter of Part II of the Social Work (Scotland) Act 1968 (social welfare services), section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of welfare services), section 50 of the Children Act 1975 (payments towards maintenance of children), section 15 of the Enterprise and New Towns (Scotland) Act 1990 (industrial injuries benefit), and sections 22 (promotion of welfare of children in need), 29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.

Interpretation "Benefits" includes pensions, allowances, grants, loans and any other form of financial assistance.

Providing assistance for social security purposes to or in respect of individuals includes (among other things) providing assistance to or in respect of individuals-

(a) who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care,

(b) who qualify by reason of low income, or

(c) in relation to their housing costs or liabilities for local taxes.

F2. Child support

F2. Child support The subject-matter of the Child Support Acts 1991 and 1995.

Exception The subject-matter of sections 1 to 7 of the Family Law (Scotland) Act 1985 (aliment).

Interpretation If section 30(2) of the Child Support Act 1991 (collection of payments other than child support maintenance) is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

F3. Occupational and personal pensions

F3. Occupational and personal pensions The regulation of occupational pension schemes and personal pension schemes, including the obligations of the trustees or managers of such schemes.

Provision about pensions payable to, or in respect of, any persons, except- (a) the persons referred to in section 81(3),

(b) in relation to a Scottish public authority with mixed functions or no reserved functions, persons who are or have been a member of the public body, the holder of the public office, or a member of the staff of the body, holder or office.

The subject-matter of the Pensions (Increase) Act 1971.

Schemes for the payment of pensions which are listed in Schedule 2 to that Act, except those mentioned in paragraphs 38A and 38AB.

Where pension payable to or in respect of any class of persons under a public service pension scheme is covered by this reservation, so is making provision in their case-

(a) for compensation for loss of office or employment, for their office or employment being affected by constitutional changes, or circumstances arising from such changes, in any territory or territories or for loss or diminution of emoluments, or

(b) for benefits in respect of death or incapacity resulting from injury or disease.

Interpretation "Pension" includes gratuities and allowances.

F4. War pensions

F4. War pensions Schemes for the payment of pensions for or in respect of persons who have a disablement or have died in consequence of service as members of the armed forces of the Crown.

The subject-matter of any scheme under the Personal Injuries (Emergency Provisions) Act 1939, sections 3 to 5 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 or section 1 of the Polish Resettlement Act 1947.

Illustration The provision of pensions under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.

Interpretation "Pension" includes grants, allowances, supplements and gratuities.

Head G - Regulation of the Professions

G1. Architects

G1. Architects Regulation of the profession of architect.

G2. Health professions

G2. Health professions Regulation of the health professions.

Exceptions The subject-matter of-

- (a) section 21 of the National Health Service (Scotland) Act 1978 (requirement of suitable experience for medical practitioners), and
- (b) section 25 of that Act (arrangements for the provision of general dental services), so far as it relates to vocational training and disciplinary proceedings.

Interpretation "The health professions" means the professions regulated by-

- (a) the Pharmacy Act 1954,
- (b) the Professions Supplementary to Medicine Act 1960,
- (c) the Veterinary Surgeons Act 1966,
- (d) the Medical Act 1983,
- (e) the Dentists Act 1984,

- (f) the Opticians Act 1989,
- (g) the Osteopaths Act 1993,
- (h) the Chiropractors Act 1994, and
- (i) the Nurses, Midwives and Health Visitors Act 1997.

G3. Auditors

G3. Auditors Regulation of the profession of auditor.

Head H - Employment

H1. Employment and industrial relations

H1. Employment and industrial relations Employment rights and duties and industrial relations, including the subject-matter of-

- (a) the Employers' Liability (Compulsory Insurance) Act 1969,
- (b) the Employment Agencies Act 1973,
- (c) the Pneumoconiosis etc. (Workers' Compensation) Act 1979,
- (d) the Transfer of Undertakings (Protection of Employment) Regulations 1981,
- (e) the Trade Union and Labour Relations (Consolidation) Act 1992,
- (f) the Industrial Tribunals Act 1996,
- (g) the Employment Rights Act 1996, and
- (h) the National Minimum Wage Act 1998.

Exception The subject-matter of the Agricultural Wages (Scotland) Act 1949.

H2. Health and safety

H2. Health and safety The subject-matter of the following Parts of the Health and Safety at Work etc. Act 1974-

- (a) Part I (health, safety and welfare in connection with work, and control of dangerous substances) as extended or applied by section 36 of the Consumer Protection Act 1987, sections 1 and 2 of the Offshore Safety Act 1992 and section 117 of the Railways Act 1993, and
- (b) Part II (the Employment Medical Advisory Service).

Exception Public safety in relation to matters which are not reserved.

H3. Job search and support

H3. Job search and support The subject-matter of-

- (a) the Disabled Persons (Employment) Act 1944, and
- (b) the Employment and Training Act 1973, except so far as relating to training for employment.

Exception The subject-matter of-

- (a) sections 8 to 10A of the Employment and Training Act 1973 (careers services), and
- (b) the following sections of Part I of the Enterprise and New Towns (Scotland) Act 1990 (Scottish Enterprise and Highlands and Islands Enterprise)-
 - (i) section 2(3)(c) (arrangements for the purpose of assisting persons to establish themselves as self-employed persons), and
 - (ii) section 12 (disclosure of information).

Head J - Health and Medicines

J1. Abortion

J1. Abortion Abortion.

J2. Xenotransplantation

J2. Xenotransplantation Xenotransplantation.

J3. Embryology, surrogacy and genetics

J3. Embryology, surrogacy and genetics Surrogacy arrangements, within the meaning of the Surrogacy Arrangements Act 1985, including the subject-matter of that Act.

The subject-matter of the Human Fertilisation and Embryology Act 1990.
Human genetics.

J4. Medicines, medical supplies and poisons

J4. Medicines, medical supplies and poisons The subject-matter of-
(a) the Medicines Act 1968, the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 and the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994,
(b) the Poisons Act 1972, and
(c) the Biological Standards Act 1975.

Regulation of prices charged for medical supplies or medicinal products which (in either case) are supplied for the purposes of the health service established under section 1 of the National Health Service (Scotland) Act 1978.

Interpretation "Medical supplies" has the same meaning as in section 49(3) of the National Health Service (Scotland) Act 1978.

"Medicinal products" has the same meaning as in section 130(1) of the Medicines Act 1968.

J5. Welfare foods

J5. Welfare foods Schemes made by regulations under section 13 of the Social Security Act 1988 (schemes for distribution of welfare foods).

Head K - Media and Culture

K1. Broadcasting

K1. Broadcasting The subject-matter of the Broadcasting Act 1990 and the Broadcasting Act 1996.

The British Broadcasting Corporation.

K2. Public lending right

K2. Public lending right The subject-matter of the Public Lending Right Act 1979.

K3. Government Indemnity Scheme

K3. Government Indemnity Scheme The subject-matter of sections 16 and 16A of the National Heritage Act 1980 (public indemnities for objects on loan to museums, art galleries, etc.).

K4. Property accepted in satisfaction of tax

K4. Property accepted in satisfaction of tax The subject-matter of sections 8 and 9 of the National Heritage Act 1980 (payments to Inland Revenue in respect of property accepted in satisfaction of tax, and disposal of such property).

Head L - Miscellaneous

L1. Judicial remuneration

L1. Judicial remuneration Determination of the remuneration of-

(a) judges of the Court of Session,

(b) sheriffs principal and sheriffs,

(c) members of the Lands Tribunal for Scotland, and

(d) the Chairman of the Scottish Land Court.

L2. Equal opportunities

L2. Equal opportunities Equal opportunities, including the subject-matter of- (a) the Equal Pay Act 1970,

(b) the Sex Discrimination Act 1975,

(c) the Race Relations Act 1976, and

(d) the Disability Discrimination Act 1995.

Exceptions The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements. Imposing duties on-

(a) any office-holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements, or

(b) any cross-border public authority to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.

Interpretation "Equal opportunities" means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

"Equal opportunity requirements" means the requirements of the law for the time being relating to equal opportunities.

"Scottish functions" means functions which are exercisable in or as regards Scotland and which do not relate to reserved matters.

L3. Control of weapons

L3. Control of weapons Control of nuclear, biological and chemical weapons and other weapons of mass destruction.

L4. Ordnance survey

L4. Ordnance survey The subject-matter of the Ordnance Survey Act 1841.

L5. Time

L5. Time Timescales, time zones and the subject-matter of the Summer Time Act 1972. The calendar; units of time; the date of Easter.

Exceptions The computation of periods of time.

The subject-matter of-

(a) section 1 of the Banking and Financial Dealings Act 1971 (bank holidays), and

(b) the Term and Quarter Days (Scotland) Act 1990.

L6. Outer space

L6. Outer space Regulation of activities in outer space.

PART III GENERAL PROVISIONS

Scottish public authorities

1. - (1) This Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross- border public authority.

(2) Sub-paragraph (1) has effect as regards-

- (a) the constitution of the authority, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
- (b) conferring or removing any functions specifically exercisable in relation to the authority.

(3) Sub-paragraph (2)(b) does not apply to any function which is specifically exercisable in relation to a particular function of the authority if the particular function relates to reserved matters.

(4) An authority to which this paragraph applies is referred to in this Act as a Scottish public authority with mixed functions.

2. Paragraph 1 of Part I of this Schedule does not reserve any Scottish public authority with functions none of which relate to reserved matters (referred to in this Act as a Scottish public authority with no reserved functions).

Reserved bodies

3. - (1) The reservation of any body to which this paragraph applies has effect to reserve-

- (a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
- (b) conferring functions on it or removing functions from it,
- (c) conferring or removing any functions specifically exercisable in relation to it.

(2) This paragraph applies to-

- (a) a body reserved by name by Part II of this Schedule,
- (b) each of the councils reserved by Section C12 of that Part,
- (c) the Commission for Racial Equality, the Equal Opportunities Commission and the National Disability Council.

Financial assistance to industry

4. - (1) This Schedule does not reserve giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment.

(2) Sub-paragraph (1)-

- (a) does not apply to giving financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved,
- (b) does not apply to Part I of this Schedule, except paragraph 9, or to a body to which paragraph 3 of this Part of this Schedule applies,
- (c) is without prejudice to the exceptions from the reservations in Sections E2 and E3 of Part II of this Schedule.

(3) Sub-paragraph (1) does not affect the question whether any matter other than financial assistance to which that sub-paragraph applies is reserved.

Interpretation

5. - (1) References in this Schedule to the subject-matter of any enactment are to be read as references to the subject-matter of that enactment as it has effect on the principal appointed day or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which this Act is passed, as it had effect immediately before that time.

(2) Subordinate legislation under section 129(1) may, in relation to the operation of this Schedule at any time before the principal appointed day, modify the references to that day in sub-paragraph (1).

Appendix D

The Clarity Bill

2nd Session, 36th Parliament, 48-49 Elizabeth II, 1999-2000
The House of Commons of Canada

BILL C-20

An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference
Preamble

WHEREAS the Supreme Court of Canada has confirmed that there is no right, under international law or under the Constitution of Canada, for the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally;

WHEREAS any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;

WHEREAS the government of any province of Canada is entitled to consult its population by referendum on any issue and is entitled to formulate the wording of its referendum question;

WHEREAS the Supreme Court of Canada has determined that the result of a referendum on the secession of a province from Canada must be free of ambiguity both in terms of the question asked and in terms of the support it achieves if that result is to be taken as an expression of the democratic will that would give rise to an obligation to enter into negotiations that might lead to secession;

WHEREAS the Supreme Court of Canada has stated that democracy means more than simple majority rule, that a clear majority in favour of secession would be required to create an obligation to negotiate secession, and that a qualitative evaluation is required to determine whether a clear majority in favour of secession exists in the circumstances;

WHEREAS the Supreme Court of Canada has confirmed that, in Canada, the secession of a province, to be lawful, would require an amendment to the Constitution of Canada, that such an amendment would perforce require negotiations in relation to secession involving at least the governments of all of the provinces and the Government of Canada, and that those negotiations would be governed by the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities;

WHEREAS, in light of the finding by the Supreme Court of Canada that it would be for elected representatives to determine what constitutes a clear question and what constitutes a clear majority in a referendum held in a province on secession, the House of Commons, as the only political institution elected to represent all Canadians, has an important role in identifying what constitutes a clear question and a clear majority sufficient for the Government of Canada to enter into negotiations in relation to the secession of a province from Canada;

AND WHEREAS it is incumbent on the Government of Canada not to enter into negotiations that might lead to the secession of a province from Canada, and that could

consequently entail the termination of citizenship and other rights that Canadian citizens resident in the province enjoy as full participants in Canada, unless the population of that province has clearly expressed its democratic will that the province secede from Canada;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

House of Commons to consider question

1. (1) The House of Commons shall, within thirty days after the government of a province tables in its legislative assembly or otherwise officially releases the question that it intends to submit to its voters in a referendum relating to the proposed secession of the province from Canada, consider the question and, by resolution, set out its determination on whether the question is clear.

Extension of time

(2) Where the thirty days referred to in subsection (1) occur, in whole or in part, during a general election of members to serve in the House of Commons, the thirty days shall be extended by an additional forty days.

Considerations

(3) In considering the clarity of a referendum question, the House of Commons shall consider whether the question would result in a clear expression of the will of the population of a province on whether the province should cease to be part of Canada and become an independent state.

Where no clear expression of will

(4) For the purpose of subsection (3), a clear expression of the will of the population of a province that the province cease to be part of Canada could not result from

- (a) a referendum question that merely focuses on a mandate to negotiate without soliciting a direct expression of the will of the population of that province on whether the province should cease to be part of Canada; or
- (b) a referendum question that envisages other possibilities in addition to the secession of the province from Canada, such as economic or political arrangements with Canada, that obscure a direct expression of the will of the population of that province on whether the province should cease to be part of Canada.

Other views to be considered

(5) In considering the clarity of a referendum question, the House of Commons shall take into account the views of all political parties represented in the legislative assembly of the province whose government is proposing the referendum on secession, any formal statements or resolutions by the government or legislative assembly of any province or territory of Canada, any formal statements or resolutions by the Senate, any formal statements or resolutions by the representatives of the Aboriginal peoples of Canada, especially those in the province whose government is proposing the referendum on secession, and any other views it considers to be relevant.

No negotiations if question not clear

(6) The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada if the House of Commons determines, pursuant to

this section, that a referendum question is not clear and, for that reason, would not result in a clear expression of the will of the population of that province on whether the province should cease to be part of Canada.

House of Commons to consider whether there is a clear will to secede

2. (1) Where the government of a province, following a referendum relating to the secession of the province from Canada, seeks to enter into negotiations on the terms on which that province might cease to be part of Canada, the House of Commons shall, except where it has determined pursuant to section 1 that a referendum question is not clear, consider and, by resolution, set out its determination on whether, in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada.

Factors for House of Commons to take into account

(2) In considering whether there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada, the House of Commons shall take into account

- (a) the size of the majority of valid votes cast in favour of the secessionist option;
- (b) the percentage of eligible voters voting in the referendum; and
- (c) any other matters or circumstances it considers to be relevant.

Other views to be considered

(3) In considering whether there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada, the House of Commons shall take into account the views of all political parties represented in the legislative assembly of the province whose government proposed the referendum on secession, any formal statements or resolutions by the government or legislative assembly of any province or territory of Canada, any formal statements or resolutions by the Senate, any formal statements or resolutions by the representatives of the Aboriginal peoples of Canada, especially those in the province whose government proposed the referendum on secession, and any other views it considers to be relevant.

No negotiations unless will clear

(4) The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada unless the House of Commons determines, pursuant to this section, that there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada.

Constitutional amendments

3. (1) It is recognized that there is no right under the Constitution of Canada to effect the secession of a province from Canada unilaterally and that, therefore, an amendment to the Constitution of Canada would be required for any province to secede from Canada, which in turn would require negotiations involving at least the governments of all of the provinces and the Government of Canada.

Limitation

(2) No Minister of the Crown shall propose a constitutional amendment to effect the secession of a province from Canada unless the Government of Canada has addressed, in its negotiations, the terms of secession that are relevant in the circumstances, including the division of assets and liabilities, any changes to the borders of the province, the rights,

interests and territorial claims of the Aboriginal peoples of Canada, and the protection of minority rights.

Appendix E

Québec Bill 99

AN ACT RESPECTING THE EXERCISE OF THE FUNDAMENTAL RIGHTS AND PREROGATIVES OF THE QUÉBEC PEOPLE AND THE QUÉBEC STATE

WHEREAS the Québec people, in the majority French-speaking, possesses specific characteristics and a deep-rooted historical continuity in a territory over which it exercises its rights through a modern national state, having a government, a national assembly and impartial and independent courts of justice ;

WHEREAS the constitutional foundation of the Québec State has been enriched over the years by the passage of fundamental laws and the creation of democratic institutions specific to Québec ;

WHEREAS Québec entered the Canadian federation in 1867 ;

WHEREAS Québec is firmly committed to respecting human rights and freedoms ;

WHEREAS the Abenaki, Algonquin, Attikamek, Cree, Huron, Innu, Malecite, Micmac, Mohawk, Naskapi and Inuit Nations exist within Québec, and whereas the principles associated with that recognition were set out in the resolution adopted by the National Assembly on 20 March 1985, in particular their right to autonomy within Québec ;

WHEREAS there exists a Québec English-speaking community that enjoys long-established rights ;

WHEREAS Québec recognizes the contribution made by Quebecers of all origins to its development ;

WHEREAS the National Assembly is composed of Members elected by universal suffrage by the Québec people and derives its legitimacy from the Québec people in that it is the only legislative body exclusively representing the Québec people ;

WHEREAS it is incumbent upon the National Assembly, as the guardian of the historical and inalienable rights and powers of the Québec people, to defend the Québec people against any attempt to despoil it of those rights or powers or to undermine them ;

WHEREAS the National Assembly has never adhered to the Constitution Act, 1982, which was enacted despite its opposition ;

WHEREAS Québec is facing actions by the federal government, including a legislative initiative, that challenge the legitimacy, integrity and valid operation of its national democratic institutions ;

WHEREAS it is necessary to reaffirm the fundamental principle that the Québec people is free to take charge of its own destiny, determine its political status and pursue its economic, social and cultural development ;

WHEREAS this principle has applied on several occasions in the past, notably in the referendums held in 1980, 1992 and 1995 ;

WHEREAS the Supreme Court of Canada rendered an advisory opinion on 20 August 1998, and considering the recognition by the Government of Québec of its political importance ;

WHEREAS it is necessary to reaffirm the collective attainments of the Québec people, the responsibilities of the Québec State and the rights and prerogatives of the National Assembly with respect to all matters affecting the future of the Québec people ;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

THE QUÉBEC PEOPLE

1. The right of the Québec people to self-determination is founded in fact and in law. The Québec people is the holder of rights that are universally recognized under the principle of equal rights and self-determination of peoples.
2. The Québec people has the inalienable right to freely decide the political regime and legal status of Québec.
3. The Québec people, acting through its own political institutions, shall determine alone the mode of exercise of its right to choose the political regime and legal status of Québec. No condition or mode of exercise of that right, in particular the consultation of the Québec people by way of a referendum, shall have effect unless determined in accordance with the first paragraph.
4. When the Québec people is consulted by way of a referendum under the Referendum Act, the winning option is the option that obtains a majority of the valid votes cast, namely fifty percent of the valid votes cast plus one.

CHAPTER II

THE QUÉBEC STATE

5. The Québec State derives its legitimacy from the will of the people inhabiting its territory. The will of the people is expressed through the election of Members to the National Assembly by universal suffrage, by secret ballot under the one person, one vote system pursuant to the Election Act, and through referendums held pursuant to the Referendum Act. Qualification as an elector is governed by the provisions of the Election Act.
6. The Québec State is sovereign in the areas assigned to its jurisdiction within the scope of constitutional laws and conventions. The Québec State also holds, on behalf of the Québec people, any right established to its advantage pursuant to a constitutional convention or obligation. It is the duty of the Government to uphold the exercise and defend the integrity of those prerogatives, at all times and in all places, including on the international scene.
7. The Québec State is free to consent to be bound by any treaty, convention or international agreement in matters under its constitutional jurisdiction.

No treaty, convention or agreement in the areas under its jurisdiction may be binding on the Québec State unless the consent of the Québec State to be bound has been formally expressed by the National Assembly or the Government, subject to the applicable legislative provisions.

The Québec State may, in the areas under its jurisdiction, establish and maintain relations with foreign States and international organizations and ensure its representation outside Québec.

8. The French language is the official language of Québec.

The Québec State must promote the quality and influence of the French language.

The Québec State shall pursue those objectives in a spirit of fairness and open-mindedness, respectful of the long-established rights of Québec's English-speaking community.

The status of the French language in Québec, and the related duties and obligations, are established by the Charter of the French language.

CHAPTER III

THE TERRITORY OF QUÉBEC

9. The territory of Québec and its boundaries cannot be altered except with the consent of the National Assembly.

The Government must ensure that the territorial integrity of Québec is maintained and respected.

10. The Québec State exercises, throughout the territory of Québec and on behalf of the Québec people, all the powers relating to its jurisdiction and to the Québec public domain. The State may develop and administer the territory of Québec and, more specifically, delegate authority to administer the territory to local or regional mandated entities, as provided by law. The State shall encourage local and regional communities to take responsibility for their development.

CHAPTER IV

THE ABORIGINAL NATIONS OF QUÉBEC

11. In exercising its constitutional jurisdiction, the Québec State recognizes the existing aboriginal and treaty rights of the aboriginal nations of Québec.

12. The Government undertakes to promote the establishment and maintenance of harmonious relations with the aboriginal nations, and to foster their development and an improvement in their economic, social and cultural conditions.

CHAPTER V

FINAL PROVISIONS

13. No other parliament or government may reduce the powers, authority, sovereignty or legitimacy of the National Assembly, or impose constraint on the democratic will of the Québec people to determine its own future.

14. This Act comes into force on *(insert here the date of assent to this Act)*.

Bibliography

Interviews

Prof. Cesáreo Aguilera de Prat, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 12.04.1999.

Hon. Jean Charest, Leader of the Opposition, Québec National Assembly, Montréal, 07.08.2000.

Mr. Richard Cornes, The Constitution Unit, University College London, London, 23.06.1999.

Prof. Bernard Crick, Professor Emeritus, Department of Political Science, University of Edinburgh, Edinburgh, 09.07.1999

Hon. Stéphane Dion, Minister of Intergovernmental Affairs and President of the Queen's Privy Council for Canada, Privy Council Office, Ottawa, 05.01.1999.

Prof. Enric Fossas i Espadaler, Departament de Ciència Política i de Dret Públic, Universitat Autònoma de Barcelona, Barcelona, 12.04.1999.

Mr. Robert Gordon, Head, Executive Secretariat, The Scottish Executive, Edinburgh, 25.09.2000.

Prof. Chris Himsworth, Department of Public Law, University of Edinburgh, Edinburgh, 26.06.1999.

Prof. Guy Laforest, Chair, Department of Political Science, Université Laval, Québec, 13.01.1999.

Prof. Jocelyn Létourneau, Faculté des Lettres, Université Laval, Québec, 12.01.1999

Mr. Kenneth MacKenzie, Head, Development Department, The Scottish Executive, Leith, 22.09.2000

Prof. Hector MacQueen, Department of Private Law, University of Edinburgh, Edinburgh, 03.07.1999

Mr. Jesus Maestro, Secretari de Política Internacional, Esquerra Republicana de Catalunya, Barcelona, 12.04.1999

Prof. Josep Martí, Institut Milà i Fontanals, CSIC, Barcelona, 07.04.1999

McGill Law Professor, Faculty of Law, McGill University, Montréal, 04.01.1999

Prof. Kenneth McRoberts, Department of Political Science, York University, Toronto, 29.12.1998

Bibliography

Mr. David Millar, Europa Institute, University of Edinburgh, Edinburgh,

Prof. Brendan O'Leary, Department of Government, London School of Economics and Political Science, London, 23.06.1999

Dr. Pau Puig i Scotoni, Generalitat de Catalunya, Barcelona, 08.04.1999.

Hon. Bob Rae, Chairman of the Board, The Forum of Federations, Toronto, 14.01.1999.

Ms. Anna Repulló, Generalitat de Catalunya, Barcelona, 08.04.1999

Prof. Ferran Requejo i Coll, Departament de Ciències Polítiques i Socials, Universitat Pompeu Fabra, Barcelona, 09.04.1999.

Dr. Eduard Roig Molés, Departament de Dret Constitucional i Ciència Política, Universitat de Barcelona, Barcelona, 08.04.1999.

Mr. Michael Russell, Scottish National Party MSP, The Scottish Parliament, Edinburgh, 12.07.2000.

Prof. Peter Russell, Professor Emeritus, Department of Political Science, University of Toronto, Toronto, 30.12.1998

Prof. Charles Taylor, Department of Philosophy, McGill University, Edinburgh, 10.05.1999.

Rev. Kenyon Wright, Former Chair of the Executive Committee, The Scottish Constitutional Convention, Perth, 05.07.1999

Government Documents

Canada. "Consensus Report on the Constitution, Charlottetown, August 28, 1992." As given in the appendix to Peter H. Russell. Constitutional Odyssey: Can Canadians Become a Sovereign People?. 2nd Ed. Toronto: University of Toronto Press, 1993.

Canada. *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Québec Secession Reference*, Statutes of Canada 2000, 2nd Session, 36th Parliament, C-20.

Constitution Act, 1867

Constitution Act, 1982

Constitutional Accord, 1987. Ottawa: Minister of Supply and Services, 1987.

Generalitat de Catalunya, "Coneixement de la llengua catalana." www.cultura.gencat.es, 2000.

Generalitat de Catalunya. Law 7/1983, of 18 April, of Linguistic Normalisation of Catalonia. www.troc.es/mercator, 2000.

Generalitat de Catalunya. Llei 1/1998, de 7 de gener, de política lingüística.
www.troc.es/mercator, 2000.

Generalitat de Catalunya. Catalan Statute of Autonomy, 1979. Barcelona: Entitat Autònoma del Diari Oficial i de Publicacions, 1993.

Ministère des Affaires intergouvernementales canadiennes. "C-20: Une loi illégitime pour le Québec." www.mce.gouv.qc.ca, 2000.

Ministère des Affaires intergouvernementales canadiennes. "Allocution de Monsieur Joseph Facal, Ministre délégué aux Affaires intergouvernementales canadiennes: L'avenir du Québec sera décidé par le peuple québécois: principes et portée du projet de loi 99." www.cex.gouv.qc.ca, 2000.

Ministerio de Administraciones Públicas. "Reales Decretos de Traspasos." www.map.es, 2000.

Privy Council Office. "'Who's Afraid of Clarity' Brief submitted by the Honourable Stéphane Dion, President of the Privy Council and Minister of Intergovernmental Affairs to the Legislative Committee on Bill C-20, Centre Block, Ottawa, Ontario, February 16, 2000." www.pco-bcp.gc.ca, 2000.

Privy Council Office. "A Framework to Improve the Social Union for Canadians: An agreement between the Government of Canada and the Governments of the Provinces and Territories, February 4, 1999." www.pco-bcp.gc.ca, 1999.

Québec Act, 1774. 14 George III, c.83 (U.K.)

Québec, National Assembly. *An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec state*, 1st Session, 36th Legislature, Bill 99, 2000, www.cex.gouv.qc.ca, 2000.

Reference re: Secession of Québec. [1998] 2 S.C.R. www.lexum.umontreal.ca, 1998.

Scotland Act, 1998

Scottish Office. Scotland's Parliament. Edinburgh: HMSO, 1997.

Spanish Constitution, 1978

Party Documents

L'Action Démocratique du Québec. L'ADQ et le Québec du prochain millénaire.
www.adq.qc.ca, 2000.

Bloc Québécois. "Québec...on the Road to Nationhood." www.blocquebécois.org, 2000.

Bloc Québécois. Main Proposal for submission to the party conference in Québec City, 28-30 January, 2001. www.blocquebecois.org, 2000.

Bloque Nacionalista Galego, Partido Nacionalista Vasco, & Convergència i Unió. "Declaració de Barcelona." www.convergencia.org, 2000.

Bloque Nacionalista Galego, Partido Nacionalista Vasco, & Convergència i Unió. "Acord de Gasteiz." www.convergencia.org, 2000.

Convergència Democràtica de Catalunya. Convergència: La força decisiva per a Catalunya. Barcelona: CDC, 1996.

Convergència Democràtica de Catalunya. Estatuts. Aprovats al X Congrés, celebrat a l'Hospitalet de Llobregat els dies 8,9 i 10 de novembre de 1996. Barcelona: CDC, 1996.

Convergència i Unió. La força positiva: Programa electoral per a les eleccions a Corts Generals 2000. Barcelona: CiU, 2000.

Convergència i Unió. Catalunya, primer: Programa electoral. Eleccions al Parlament de Catalunya 1999. Barcelona: CiU, 1999.

Esquerra Republicana de Catalunya & Eusko Alkartasuna. "Acord d'Iruña." Barcelona: ERC, 2000.

Esquerra Republicana de Catalunya. Mans lliures: Resum del Programa de les Eleccions al Congrés dels Diputats i al Senat de l'Estat espanyol març 2000. Barcelona: ERC, 2000.

Esquerra Republicana de Catalunya. Declaració ideològica d'Esquerra Republicana de Catalunya. Barcelona: ERC, 1993.

Esteve, Pere. "Per un nou horitzó per a Catalunya." www.convergencia.org, n.d.

Iniciativa per Catalunya-Verds. "Principis d'Iniciativa-Verds." www.iniciativa-cat-verds.org, 2000.

Macartney, Allan. Scotland on the Move: A Guide to the International Policies and Priorities of the Scottish National Party. Edinburgh: SNP, 1998.

Parti Québécois. Proposition adoptée par les délégués lors du XIVe Congrès National (5, 6 et 7 mai 2000). www.pq.org, 2000.

Parti Québécois. "Notes pour une allocution de monsieur Lucien Bouchard, Premier Ministre du Québec. Prononcée a l'occasion du «Forum des fédérations», Mont-Tremblant, le mercredi 6 octobre, 1999." www.pq.org, 1999.

Partit dels Socialistes de Catalunya. Per repartir el progrés: El programa dels socialistes catalans per a Espanya. Barcelona: PSC, 2000.

Pujol, Jordi. "Discurs del president Pujol: 'Poder polític de Catalunya: un instrument al servei dels ciutadans'. ESADE, 1 de març de 1999." www.convergencia.es, 2000.

Québec Liberal Party. Québec's Choice: Affirmation, Autonomy, and Leadership. Summary of the Preliminary Report of the Special Committee of the Québec Liberal Party on the Political and Constitutional Future of Québec Society. www.plq.org, 2001.
Scottish National Party. Scotland's Party for Scotland's Parliament: The Scottish National Party Manifesto for the Scottish Parliament Elections 6th May 1999. Edinburgh: SNP, 1999.

Scottish National Party. Standing Up for Scotland: Scottish National Party Manifesto for the European Parliamentary Elections 10 June 1999. Edinburgh: SNP, 1999.

Scottish National Party. Yes We Can Win the Best for Scotland: The SNP General Election Budget 1997. Edinburgh: SNP, 1997.

Unió Democràtica de Catalunya. "Estratègia i Política." www.unio.es, 2000.

Other Primary Sources

Almirall, Valentí. Lo Catalanisme. Barcelona: nap., 1885.

Bourassa, Henri. "French Canadians and Canadian Nationalism." In Henri Bourassa on Imperialism and Bi-culturalism, 1900-1918. Ed. Joseph Levitt. Toronto: The Copp Clark Publishing Company, 1970, pp. 103-06.

Bourgault, Pierre. "Dépendance, indépendance, interdépendance." In La Politique. Vol. I of Écrits polémiques. Ed. Pierre Bourgault. Montréal: Lanctôt Éditeur, 1996, pp. 46-47.

Craig, F.W.S., Ed. Minor Parties at British Parliamentary Elections 1885-1974. London: Macmillan Press Ltd., 1975.

Craig, Gerald M. Lord Durham's Report. Toronto: McClelland and Stewart Limited, 1963.

Fletcher, Andrew. "An Account of a Conversation Concerning the Right Regulation of Governments for the Common Good of Mankind." In Fletcher of Saltoun: Selected Writings. Ed. David Daiches. Edinburgh: Scottish Academic Press Ltd., 1979.

Groulx, Lionel. "French Canadian Nationalism." In Abbé Groulx: Variations on a Nationalist Theme. Ed. Susan Mann Trofimenkoff. Toronto: Copp Clark Publishing Company, 1973, pp. 87-96.

Groulx, Lionel. "L'autonomie du Québec." In Lionel Groulx: Une anthologie. Montréal: Bibliothèque québécoise, 1998, p. 140.

Institut de Ciències Polítiques i Socials. 1999 Sondeig d'Opinió Catalunya. www.icps.es, 2000.

Laflèche, Louis-François. "The Providential Mission of the French Canadians." In French-Canadian Nationalism: An Anthology. Ed. Ramsay Cook. Toronto: Macmillan of Canada, 1969, pp. 92-106.

- Lévesque, René. "A Country that Must be Made." In Canadian Political Thought. Ed. H.D. Forbes. Toronto: Oxford University Press, 1987, pp. 389-401.
- Nelson, Robert. "Proclamation de l'indépendance du Bas-Canada." In Papineau. Ed. Fernand Ouellet. 2nd Ed. Québec: Les Presses de l'Université Laval, 1970, pp. 82-84.
- Papineau, Louis-Joseph. "Adresse de la Confédération des Six Comtés." In Papineau. Ed. Fernand Ouellet. 2nd Ed. Québec: Les Presses de l'Université Laval, 1970, pp. 79-81.
- Plessis, Joseph-Octave. Discours à l'occasion de la victoire remportée par les forces navales de sa majesté britannique dans la Méditerranée le 1 et 2 août 1798 sur la flotte française. 1799; rpt. Québec: Dussault & Proulx, 1905.
- Scottish Constitutional Convention. Scotland's Parliament. Scotland's Right. Edinburgh: Scottish Constitutional Convention, 1995.
- Tardivel, Jules-Paul. "On Liberalism." In Canadian Political Thought. Ed. H.D. Forbes. Toronto: Oxford University Press, 1987, pp. 152-55.
- Trudeau, Pierre Elliott. Federalism and the French Canadians. Toronto: Macmillan of Canada, 1968.
- Unió Catalanista. "Bases pera la constitució regional catalana." Barcelona: Estampa de «La Renaixensa», 1900.
- Secondary Sources*
- Anderson, Benedict. Imagined Communities. Rev. Ed. London: Verso, 1991.
- Balcells, Albert. Catalan Nationalism: Past and Present. Ed. Geoffrey J. Walker. Trans. Jacqueline Hall. London: The Macmillan Press, Ltd., 1996.
- Behiels, Michael D. Prelude to Quebec's Quiet Revolution. Montréal: McGill-Queen's University Press, 1985.
- Bisson, Thomas N. "L'Epoca dels Grans Comtes-Reis (1137-1276)." In Història de Catalunya. In Història de Catalunya. Eds. Joaquim Nadal i Farreras and Philippe Wolff. Barcelona: Oikos-Tau, s.a.-ediciones, 1983, pp. 279-320.
- Bogdanor, Vernon. Devolution in the United Kingdom. Oxford: Oxford University Press, 1999.
- Bogdanor, Vernon. "Devolution: Decentralisation or Disintegration?." Political Quarterly. Vol. 70, No. 2, April-June 1999, pp. 185-94.
- Bogdanor, Vernon. The Start of a New Song. The Hume Lecture 1998, 19 November 1998. Hume Occasional Paper No. 55. Edinburgh: The David Hume Institute, 1998.

- Bogdanor, Vernon. "The English Constitution and Devolution." In Politics and the Constitution: Essays on British Government. Ed. Vernon Bogdanor. Aldershot: Dartmouth Publishing Company Limited, 1996.
- Bonamusa, Francesc. "Les Dificultats de la Reconstrucció nacional (1898-1980)." In Història de Catalunya. Eds. Joaquim Nadal i Farreras and Philippe Wolff. Barcelona: Oikos-Tau, s.a.-ediciones, 1983, pp. 461-511.
- Bradley, A.W. and K.D. Ewing. Constitutional and Administrative Law. 12th Ed. with appendix. London: Longman, 1998.
- Brown, Alice. "Deepening Democracy: Women and the Scottish Parliament." In Remaking the Union: Devolution and British Politics in the 1990s. Eds. Howard Elcock and Michael Keating. London: Frank Cass Publishers, 1998, pp. 103-19.
- Brown, Alice et. al. Politics and Society in Scotland. 2nd Ed. London: Macmillan Press Ltd, 1998.
- Brown, Archie. "Asymmetrical Devolution: The Scottish Case." Political Quarterly. Vol. 69, No. 3, July-September 1998. pp. 215-23.
- Buchanan, D.R. "An Uneasy Alliance: Combining Qualitative and Quantitative Research Methods." Health Education Quarterly. Spring 1992, pp. 117-135.
- Caminal, Miquel. "Joan Comorera: veers un communism català." In El Pensament polític català: del segle XVII a mitten segle XX. Ed. Albert Balcells. Barcelona: Editions 62, 1988, pp. 383-97.
- Caminal, Miquel. Nacionalisme i partits nacionals a Catalunya. Barcelona: Editorial Empúries, 1998.
- Casañas, Joan. El Progressisme Catòlic a Catalunya. Barcelona: La Llar del Llibre, 1988.
- Cassavas i Ember, Jordi. "Enric Prat de la Riba: la tenacity d'un estrange." In El Pensament polític català: del segle XVII a mitten segle XX. Ed. Albert Balcells. Barcelona: Edicions 62, 1988, pp. 179-92.
- Colley, Linda. Britons: Forging the Nation 1707-1837. London: Pimlico, 1992.
- Colomé, Gabriel. "El sistema de partits polítics a Catalunya." In La societat catalana. Ed. Salvador Giner. Barcelona: Institut d'Estadística de Catalunya, 1998, pp. 1099-110.
- Conversi, Daniele. The Basques, the Catalans, and Spain: Alternative Routes to Nationalist Mobilisation. London: Hurst & Company Ltd., 1997.
- Cornes, Richard. "Intergovernmental Relations in a Devolved United Kingdom: Making Devolution Work." In Constitutional Futures: A History of the Next Ten Years, pp. 156-77.
- Devine, T.M. The Scottish Nation 1700-2000. London: Allen Lane The Penguin Press, 1999.

- Dicey, Albert V. and Robert S. Rait. Thoughts on the Union between England & Scotland. London: Macmillan and Co., Limited, 1920.
- Dickinson, John A. and Brian Young. A Short History of Quebec. 2nd Ed. Toronto: Copp Clark Pitman Ltd., 1993.
- Donaldson, Gordon. "Scottish Devolution: the Historical Background." In Government and Nationalism in Scotland. Ed. J.N. Wolfe. Edinburgh: Edinburgh University Press Ltd., 1969, pp. 4-16.
- Duarte, Àngel. "La Restauració Canovista, 1875-1900." In Història de la Catalunya Contemporània. Eds. Manuel Risques et al. Barcelona: Pòrtic, 1999, pp. 151-200.
- Finlay Richard J. A Partnership for Good? Scottish Politics and the Union Since 1880. Edinburgh: John Donald Publishers Ltd., 1997.
- Fossas i Espadaler, Enric & Joan Lluís Pérez Francesch. Lliçons de dret constitucional. Barcelona: Edicions Proa, 1994.
- Fry, Michael. Patronage and Principle: A Political History of Modern Scotland. Aberdeen: Aberdeen University Press, 1987.
- Gagnon, Alain-G. "Discusant's Comments." In Seeking a New Canadian Partnership: Asymmetrical and Confederal Options. Ed. F. Leslie Seidle. Montréal: IRPP, 1994, pp. 95-100.
- Gellner, Ernest. Nations and Nationalism. Rpt. Oxford: Basil Blackwell Publisher, 1984.
- Gibbins, Roger. "The Institutional Parameters of a Canada-Québec Partnership." In Beyond the Impasse: Toward Reconciliation. Eds. Roger Gibbins and Guy Laforest. Montréal: IRPP, 1998, pp. 275-300.
- Grau, Ramon and Marina López. "Antoni de Capmany: el primer model del pensament polític català modern." In El Pensament polític català: del segle XVII a mitjan segle XX. Ed. Albert Balcells. Barcelona: Edicions 62, 1988, pp. 13-40.
- Hamelin, Marcel. Les Premières années du parlementarisme québécois (1867-1878). Québec: Les Presses de l'Université Laval, 1974.
- Harvie, Christopher. Scotland & Nationalism: Scottish Society and Politics 1707-1994. 2nd Ed. London: Routledge, 1994.
- Hazell, Robert and Brendan O'Leary. "A Rolling Programme of Devolution: Slippery Slope of Safeguard of the Union?" In Constitutional Futures: A History of the Next Ten Years. Ed. Robert Hazell. Oxford: Oxford University Press, 1999, pp. 21-46.
- Hazell, Robert. "The New Constitutional Settlement." In Constitutional Futures: A History of the Next Ten Years, pp. 230-47.

- Hazell, Robert. "Westminster: Squeezed from Above and Below." In Constitutional Futures: A History of the Next Ten Years, pp. 111-35.
- Hazell, Robert. "Reinventing the Constitution: Can the State Survive?" Public Law, Spring 1999, pp. 84-103
- Himsworth, C.M.G. and C.R. Munro. Devolution and the Scotland Bill. Edinburgh: W. Green and Son Ltd, 1998.
- Himsworth, C.M.G. and C.R. Munro. The Scotland Act 1998. Edinburgh: W. Green & Son Limited, 1999.
- Hobsbawm, E.J. Nations and Nationalism since 1780. Rev. Ed. Cambridge: Cambridge University Press, 1995.
- Hogg, Peter W. Constitutional Law of Canada. 1999 Student Edition. Toronto: Thomson Canada Limited, 1999.
- Lord Hope of Craighead. Working with the Scottish Parliament: Judicial Aspects of Devolution. The Hume Lecture 1997, 5 December 1997. Hume Occasional Paper No. 54. Edinburgh: David Hume Institute, 1998.
- Johnson, Janet Buttolph and Richard A. Joslyn. Political Science Research Methods. Washington: Congressional Quarterly Press, 1991.
- Jones, Richard. "Duplessis and the Union Nationale Administration." In Quebec Since 1945: Selected Readings. Ed. Michael D. Behiels. Toronto: Copp Clark Pitman Ltd., 1987, pp. 6-20.
- Keating, Michael. Nations Against the State: the New Politics of Nationalism in Quebec, Catalunya and Scotland. London: Macmillan Press Ltd., 1996.
- Keating, Michael and David Bleiman. Labour and Scottish Nationalism. London: Macmillan Press Ltd., 1979.
- Kedourie, Elie. Nationalism. 3rd Ed. London: Hutchinson & Co. Ltd., 1966.
- Kellas, James G. The Scottish Political System. 4th Ed. Cambridge: Cambridge University Press, 1989.
- Kymlicka, Will. "Multinational Federalism in Canada: Rethinking the Partnership." In Beyond the Impasse: Toward Reconciliation. Eds. Roger Gibbins and Guy Laforest. Montréal: IRPP, 1998, pp. 15-50.
- Kymlicka, Will. Finding Our Way: Rethinking Ethnocultural Relations in Canada. Toronto: Oxford University Press, 1998.
- Kymlicka, Will. Multicultural Citizenship. 1995; Rpt. Oxford: Clarendon Press, 1997

Laforest, Guy. "Standing in the Shoes of the Other Partners in the Canadian Union." In Beyond the Impasse: Toward Reconciliation. Eds. Roger Gibbins and Guy Laforest. Montréal: IRPP, 1998, pp. 51-79.

Laforest, Guy. Trudeau and the End of a Canadian Dream. Montréal: McGill-Queen's University Press, 1995.

Le Sueur, Andrew and Richard Cornes. "What do the top Courts do?" London: The Constitution Unit, 2000.

Legault, Josée. "How to Deny Québec's Right to Self-Determination." Globe and Mail. 21 August 1998. In The Québec Decision: Perspectives on the Supreme Court Ruling on Secession. Ed. David Schneiderman. Toronto: James Lorimer & Company Limited, 1999, pp. 113-15.

Leslie, Peter M. "Asymmetry: Rejected, Conceded, Imposed." In Seeking a New Canadian Partnership: Asymmetrical and Confederal Options. Ed. F. Leslie Seidle. Montréal: IRPP, 1994, pp. 37-70.

Loveland, Ian. Constitutional Law: A Critical Introduction. London: Butterworths, 1996.

Lynch, Michael. Scotland: A New History. London: Pimlico, 1992.

MacCormick, Neil. "Unrepentant Gradualism." In A Diverse Assembly: The Debate on a Scottish Parliament. Ed. Lindsay Paterson. Edinburgh: Edinburgh University Press, 1998, pp. 174-82.

MacCormick, Neil. "The English Constitution, the British State, and the Scottish Anomaly." The British Academy Lecture, 1997.

Mackie, Tom and David Marsh. "The Comparative Method." In Theory and Methods in Political Science. Eds. David Marsh and Gerry Stoker. New York: St. Martin's Press, 1995, pp. 173-87.

Manheim, Jarol B. and Richard C. Rich. Empirical Political Analysis: Research Methods in Political Science. New York: Longman, 1991.

Marr, Andrew. The Battle for Scotland. Rpt. London: Penguin Books Ltd, 1995.

Martí, Casimir. "Torras i Bages: el regionalisme tradicionalista, un antitipus ètico-històric del sistema de la Restauració." In El Pensament polític català: del segle XVII a mitjan segle XX. Ed. Albert Balcells. Barcelona: Edicions 62, 1988, pp. 159-77.

McCrone, David and Bethan Lewis. "The Scottish and Welsh Referendum Campaigns." In Scotland and Wales: Nations Again?. Eds. Bridget Taylor and Katarina Thomson. Cardiff: University of Wales Press, 1999, pp. 17-40.

McCrone, David. Understanding Scotland: The Sociology of a Stateless Nation. Rpt. London: Routledge, 1998.

McRoberts, Kenneth. Catalonia: Nation Building Without a State. Toronto: Oxford University Press, 2001.

McRoberts, Kenneth. Misconceiving Canada: The Struggle for National Unity. Toronto: Oxford University Press, 1997.

McRoberts, Kenneth. "The Sources of Neo-Nationalism in Québec." In Quebec Since 1945: Selected Readings. Ed. Michael D. Behiels. Toronto: Copp Clark Pitman Ltd., 1987, pp. 6-20.

Mestre i Godes, Jesús. Breu història de Catalunya. 3rd Ed. Barcelona: Edicions 62, 1998.

Miller, William L. "Modified Rapture All Round: The First Elections to the Scottish Parliament." Government and Opposition. Vol. 34, No. 3, Summer 1999, pp. 299-322.

Mitchell, J.D.B. Constitutional Law. Edinburgh: W. Green & Son Ltd., 1964.

Mitchell, James. Strategies for Self-Government. Edinburgh: Polygon, 1996.

Mitchell, James. Conservatives and the Union: A Study of Conservative Party Attitudes to Scotland. Edinburgh: Edinburgh University Press, 1990.

Molas, Isidre. "Francesc Pi i Margall: democràcia i federalisme." In El Pensament polític català: del segle XVII a mitjan segle XX. Ed. Albert Balcells. Barcelona: Edicions 62, 1988, pp. 75-85.

Molas i Batllori, Joaquim. "La Literatura." In Història de Catalunya. Eds. Joaquim Nadal i Farreras and Philippe Wolff. Barcelona: Oikos-Tau, s.a.-ediciones, 1983, pp. 127-41.

Moody, T.W. "Fenianism, Home Rule, and the Land War (1850-91)." In The Course of Irish History. Eds. T.W. Moody and F.X. Martin. 3rd Ed. Niwot, Colorado: Roberts Reinhardt Publishers, 1995, pp. 275-93.

Morgan, Kenneth O. The People's Peace: British History Since 1945. 2nd Ed. Oxford: Oxford University Press, 1999.

Morin, Jacques-Yvan. "The Supreme Court Ruling: A Legitimate and Achievable Secession...in Theory." Le Devoir. 31 August 1998. In The Québec Decision: Perspectives on the Supreme Court Ruling on Secession. Ed. David Schneiderman. Toronto: James Lorimer & Company Limited, 1999, pp. 116-19.

Munro, Colin R. Studies in Constitutional Change. 2nd Ed. Edinburgh: Butterworths, 1999.

Munro, Colin R. "The Union of 1707 and the British Constitution." In Scotland and the Union, Hume Papers on Public Policy, Vol. 2, No. 2. Edinburgh: The David Hume Institute, 1994, pp. 87-109.

Newton, Michael T. Institutions of Modern Spain: A Political and Economic Guide. Cambridge: Cambridge University Press, 1997.

Noel, S.J.R. Patrons, Clients, Brokers: Ontario Society and Politics 1791-1896. Toronto: University of Toronto Press, 1990.

Ouellet, Fernand. "The Insurrections." In Canada: Unity in Diversity. Ed. P.G. Cornell et al. Toronto: Holt, Rinehart and Winston of Canada, 1967. Rpt. In Readings in Canadian History: Pre-Confederation, Eds. R. Douglas Francis and Donald B. Smith, 3rd Ed. Toronto: Holt, Rinehart and Winston of Canada Limited, 1990, pp. 322-36.

Paterson, Lindsay and Richard Wyn Jones. "Does Civil Society Drive Constitutional Change?." In Scotland and Wales: Nations Again?, Eds. Bridget Taylor and Katarina Thomson. Cardiff: University of Wales Press, 1999, pp. 169-98.

Paterson, Lindsay. The Autonomy of Modern Scotland. Edinburgh: Edinburgh University Press Ltd., 1994.

Pryde, George S. The Treaty of Union of Scotland and England 1707. London: Thomas Nelson and Sons Ltd, 1950.

Puig i Oliver, Lluís de. "La Renaixença." In Història Contemporània de Catalunya. Volum I. Ed. Jaume Sobrequés i Callicó. Barcelona: Columna Assaig, 1997, pp. 331-52.

Puig i Oliver, Lluís M. de. "El catalanisme polític durant la Restauració. Dels orígens a la Mancomunitat." In Història Contemporània de Catalunya. Volum I. Ed. Jaume Sobrequés i Callicó. Barcelona: Columna Assaig, 1997, pp. 353-402.

Puig i Scotoni, Pau. "The Four Dimensions of the Catalan Model." Paper presented at the conference "Regional Identities in Europe," University of Sunderland, Sunderland, 12 October 1998.

Pujals, Joan M. Les noves fronteres de Catalunya. Barcelona: Columna Assaig, 1998.

Ramisa, Maties. Els orígens del catalanisme conservador i «La Veu de Montserrat» 1878-1900. Vic: Eumo Editorial, 1985.

Requejo, Ferran. "Diferències nacionals i federalisme asimètric." In Federalisme, per a què?. Barcelona: Edicions l'Hora del Present, 1998, pp. 49-83.

Requejo, Ferran. "Political Liberalism in Plurinational States. The Legitimacy of Plural and Asymmetrical Federalism: The Case of Spain." Paper presented at the conference "In Search of Justice and Stability," McGill University, Montréal, 27-29 March, 1998.

Requejo, Ferran. Zoom polític: Democràcia, federalisme i nacionalisme des d'una Catalunya europea. Barcelona: Edicions Proa, 1998.

de Riquer, Borja. "Franquisme, Transició i Democràcia." In Història de la Catalunya Contemporània. Eds. Manuel Risques et al. Barcelona: Pòrtic, 1999, pp. 337-456.

Risques, Manuel. "Liberalisme, Industrialització i Pràctiques Subalternes, 1833-1874." In Història de la Catalunya Contemporània. Eds. Manuel Risques et al. Barcelona: Pòrtic, 1999, pp. 61-150.

- Roig Rosich, Josep M. "Catalanisme, Anticatalanisme i Obrerisme, 1900-1930." In Història de la Catalunya Contemporània. Eds. Manuel Risques et al. Barcelona: Pòrtic, 1999, pp. 203-77.
- Roig Rosich, Josep M. "Segona República i Guerra Civil." In Història de la Catalunya Contemporània. Eds. Manuel Risques et al. Barcelona: Pòrtic, 1999, pp. 279-335.
- Romero Salvadó, Francisco J. Twentieth-Century Spain: Politics and Society in Spain, 1898-1998. London: The Macmillan Press Ltd., 1999.
- Russell, Peter H. "Preserving the Canadian Federation: A Two-Track Approach." In New Perspectives on the Canadian Constitutional Debate. Ed. James M. Pitsula. Regina: Canadian Plains Research Centre, 1997, pp. 1-36.
- Russell, Peter H. Constitutional Odyssey: Can Canadians Become a Sovereign People?. 2nd Ed. Toronto: University of Toronto Press, 1993.
- Seton-Watson, Hugh. Nations and States. London: Methuen & Co. Ltd., 1977.
- Silver, A.I. The French-Canadian Idea of Confederation, 1864-1900. 2nd Ed. Toronto: University of Toronto Press, 1997.
- Smith, Anthony D. Nations and Nationalism in a Global Era. Rpt. Cambridge: Polity Press, 1996.
- Smith, Anthony D. National Identity. London: Penguin Books Ltd., 1991.
- Smout, T.C. A Century of the Scottish People. London: Harper Collins, 1986.
- Smout, T.C. A History of the Scottish People 1560-1830. London: Harper Collins, 1969.
- Taylor, Charles "The Politics of Recognition." In Multiculturalism: Examining the Politics of Recognition, Ed. Amy Gutmann. Princeton: Princeton University Press, 1994, pp. 25-73.
- Vipond, Robert. "From Provincial Autonomy to Provincial Equality (Or, Clyde Wells and the Distinct Society)." In Is Québec Nationalism Just?: Perspectives from Anglophone Canada. Ed. Joseph H. Carens. Montréal: McGill-Queen's University Press, 1995, pp. 97-119.
- Viver Pi-Sunyer, C. Constitució. Barcelona: Ediciones Vicens-Vives, 1996.
- Wade, Mason. The French Canadians, 1760-1967. 2nd Ed. Vol. 1. Toronto: The Macmillan Company of Canada Limited, 1968.
- Walzer, Michael. "Pluralism: a Political Perspective." In The Rights of Minority Cultures. Ed. Will Kymlicka. 1995; rpt. Oxford: Oxford University Press, 1997, pp. 139-54.
- Webber, Jeremy. Reimagining Canada: Language, Culture, Community, and the Canadian Constitution. Montréal: McGill-Queen's University Press, 1994.

Bibliography

Young, Brian. "Federalism in Quebec: The First Years After Confederation." In Federalism in Canada and Australia: The Early Years. Eds. Bruce W. Hodgins et al. Waterloo: Wilfrid Laurier University Press, 1978, pp. 97-108.

Zimmerman, Michel. "Orígens i Formació d'una Societat Feudal (785-1137)." In Història de Catalunya. Eds. Joaquim Nadal i Farreras and Philippe Wolff. Barcelona: Oikos-Tau, s.a.-ediciones, 1983, pp. 241-78.