# The Fourth Vision: the Constitution and Federal Democracy in the New Era of Global Competition

*Steve Patten*

Constitutional debate has become a fixture on the Canadian political landscape. As this paper is being written, Canada's political elite are engaged in the so-called "Canada Round" of constitutional renegotiation. While interested Canadians debate the merits of various constitutional proposals—on and off the table—it is illuminating to take a somewhat different tack and ask ourselves about the competing "visions" of Canada's federal constitutional order which animate these proposals. As broad ideological notions about the appropriate principles and practices which should be reflected in Canada's federal constitutional order, the study of "constitutional visions" provides a unique and revealing perspective from which to analyze constitutional debate.[1]

The sceptic may enter here and claim that no unique constitutional visions underlie the recommendations of the various constitutional protagonists; their proposals are merely self-interested power grabs or last ditch efforts to forestall the disintegration of the country by satisfying the multitude of competing constitutional demands. Certainly there would be a considerable amount of truth to such a claim.

Nevertheless, I would argue that each of the various competing

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1. Several analysts used the notion of broad constitutional visions as a framework for analyzing the Meech Lake Accord. See, for example, Simeon (1988), Cairns (1988) and Swinton (1988).





constitutional demands is an expression of a particular constitutional vision—that is, a perspective on the principles and priorities which should be reflected in the institutions and practices of Canadian federalism.[2] Moreover, I would argue that an analysis of the current round of constitutional debate reveals at least six distinct constitutional visions. Three of these are the traditional Canadian constitutional visions which can be captured by the notions of "dualism", "provincial equality" and "liberal citizenship". (This particular formulation owes a debt to Cairns, 1991.) What is unique about the current debate, is the emergence of three "new" visions vying for constitutional recognition and legitimation: the fourth or "neo-liberal" constitutional vision, the First Nations vision and the social citizenship vision. These latter two constitutional visions—the First Nations and social citizenship visions—will not be considered in this paper. (For a full discussion of all six constitutional visions, see Gotell and Patten, 1992.) My interest here is in the fourth vision; a constitutional vision which, I would argue, is based on the recently popularized assumption that the institutions and practices of Canadian federalism must respond to the exigencies of the globalizing world economy.

This new fourth constitutional vision, which is exemplified by the 1991 federal proposals to strengthen the Canadian economic union, is not unique simply because it is economic in nature; there have been constitutional proposals driven by economic imperatives in the past. What is unique about this constitutional vision is that it demonstrates more clearly than ever before that the "internationalization of the state"—a phenomenon identified by Robert Cox (1987: 253-265)—has penetrated constitutional politics.

The purpose of this paper is to draw attention to the importance of what I have called "constitutional visions" and, in addition, to illustrate the relationship between the internationalization of the Canadian state

2. Since the limitations of this paper do not allow for a full exploration of the origins of these constitutional visions, it is worth stressing that they do not "simply exist" in some idealist sense; rather, they each have their own social and material basis. Constitutional visions are ideological notions which maintain their influence as a result of extant social and political relations. Their importance goes beyond the way in which they influence constitutional amendments. The Canadian constitution is a "living constitution" which evolves even when not amended, and constitutional visions are an important determinant in the process of both political and judicial constitutional interpretation.

and the emergence of this new neo-liberal constitutional vision. Attention will be drawn to the significant consequences neo-liberal constitutionalism could have for, among other things, the democratic nature of Canada's federal constitutional order.

Prior to investigating the significance of this new fourth constitutional vision, I will briefly examine how the three more traditional constitutional visions have influenced the evolution of constitutional debate over the past three decades. Then, in the third section, I will explore the 1991 federal constitutional proposals which reflect the ideological principles and priorities of the new "fourth vision". It will be argued that these proposals—specifically those which aim to "strengthen the Canadian economic union"—would constitutionalize the internationalization of the state by institutionalizing marketization and constraining the public sector in a manner which is inconsistent with the principles of federal democracy and incompatible with many aspects of a progressive social, economic and industrial policy agenda.

## The Three Traditional "Visions"

Successive failures to arrive at an acceptable constitutional compromise have revealed three, often irreconcilable conceptions of the principles and priorities which should be reflected in the institutions and practices of Canadian federalism. At the risk of oversimplification, it can be argued that these three constitutional visions represent three different ideological conceptions of what is fundamental about Canadian political society—"dualism", "provincial equality" or "liberal citizenship". The tensions which result from the concomitance of these constitutional visions have animated three decades of constitutional debate and often thwarted the possibility of attaining the level of agreement necessary for constitutional amendment.

The first constitutional vision assumes that priority must be placed on responding to the exigencies of "dualism". In other words, constitutional priority must be placed on ensuring that the institutions and practices of Canadian federalism reflect a conception of Canada as a union of two cultural and linguistic communities. While the notion of dualism has existed, in one form or another, since before Confederation, Bill Coleman (1984) traces its modern resurgence to Quebec's 1956 Trembley Report. Working from the premise that





Confederation was a "cultural compact" between "two races, equal in status", the Trembly Report specifically identifies the Quebec government as the government of the French-Canadian nation and the federal government as the government of English Canada—thus implying that Quebec is "a province unlike the others" (Coleman, 1984: 85-86).

During the decade of the Quiet Revolution, both Liberal and Union Nationale premiers demanded a dualist constitutional regime which would recognize Quebec's special status (Gagnon, 1991: 65-68). Ottawa, for its part, showed some sympathy to the notion of dualism. Pearson, who spoke of Quebec as a "nation within a nation", appointed the Royal Commission on Bilingualism and Biculturalism, and both opposition parties demonstrated a willingness to accept the claim that Canada consists of two "founding nations" (McRoberts, 1991: 10-13). Substantive concessions were also made to Quebec in the form of deals on tax revenues, opting out provisions in cost-sharing agreements, a unique role in immigration policy, and control over their own pension plan. While Trudeau's election as Prime Minister subdued Ottawa's willingness to pursue asymmetrical constitutional arrangements, the dualist constitutional vision lived on. In Quebec, the francophone state managers and the emerging francophone business class joined forces with the governments of Robert Bourassa and of René Levesque to pursue options ranging from special status to sovereignty association. In Ottawa, the 1979 Pepin-Robarts Task Force on Canadian Unity came out explicitly in favour of recognizing the predominance of two cultures and the need to institutionalize asymmetrical federalism (Gagnon, 1991: 79).

The 1982 constitutional package was, at least in the eyes of the Levesque government and their Liberal opposition, a major setback for the dualist vision. Although the patriation package included elements which continue to allow de facto special status for Quebec, Levesque refused to sign. He believed the patriation agreement provided insufficient recognition of the dualistic notion that Quebec, unlike the other provinces, is a distinct national society. Levesque argued that Quebec's capacity to protect its distinct identity would be undermined by, among other things, the amending formula which restricted fiscal compensation to provinces opting out of amendments transferring power to Ottawa in the fields of education and culture, and the Charter

of Rights which tampered with Quebec's capacity to legislate in the field of language-of-education (Stevenson, 1989: 259). But the 1982 reforms did not quash the demands for a constitutional order sensitive to the dualist vision. In fact, in 1987 the Meech Lake Accord was introduced specifically as a response to Quebec's demands, and currently constitutional proposals are being carefully constructed to appease at least the more moderate of the Quebecois who have been demanding a dualist constitutional order.

The second constitutional vision assumes that priority must be placed on responding to the exigencies of "provincial equality"; that is, the constitutional arrangements which govern Canadian federalism must treat all provinces equally. Ken McRoberts argues that the contemporary salience of this constitutional vision can be traced to Pierre Trudeau's long-term strategy to undermine the nationalist project in Quebec (McRoberts, 1991: 30-32). I suspect, however, that the popularization of this constitutional vision was also closely related to the phenomenon of "province building" and the discovery during the 1970s by the other nine provinces that they could capitalize on the "Quebec problem" by demanding additional powers for themselves (Stevenson, 1989: 246). Nevertheless, by the 1980s the notion of provincial equality had become a "constraining norm" in constitutional debate. As evidence of this Cairns traces the evolution of amending formula proposals from the 1971 Victoria Charter, which was based on a "regional" formula, to the 1982 constitutional package which institutionalized the province, rather than the region, as the basic unit for determining support for constitutional amendments (Cairns, 1991: 81). Cairns also points to the growing support for a Triple "E" Senate, and the Meech Lake practice of giving to all ten provinces whatever was needed to respond to Quebec's demands as further evidence of the influence of the provincial equality vision (Cairns, 1991: 82).

It was the failure of the Meech Lake Accord, above all else, which demonstrated the extent to which Canadians outside Quebec are committed to a constitutional order which recognizes the equality of the provinces (Monahan, 1991: 159). Following almost two decades in which an increasing portion of anglophone Canada complained that Ottawa paid undue attention to Quebec, there emerged a widespread commitment to the belief that no province should be "more equal than





the others" (Stevenson, 1989: 247). Although Meech was carefully designed to avoid the impression of giving Quebec special status (Gagnon, 1991: 74; and Cairns, 1990b: 144), the accord's only asymmetrical provision—the distinct society clause—was the flash point of constitutional debate. Currently most proposals for a distinct society clause attempt to avoid this type of public reaction by dropping any reference to the role of Parliament or the legislature and government of Quebec within the text of the clause, by providing a non-threatening definition of Quebec's distinctiveness, and by moving the distinct society clause from section 2 of the constitution to section 25 of the Charter—thus situating it among existing references to aboriginal rights, equality of the sexes and the multicultural heritage of Canada. Nevertheless, it remains to be seen if this "compromise" can satisfy both those who want a dualist constitution and those who demand provincial equality.

The third constitutional vision assumes that priority must be placed on responding to the exigencies of "liberal citizenship".[3] In other words, the constitution must recognize all citizens as inherently "rights-bearing" and protect their liberal equality rights, regardless of their ascribed characteristics or province of residence. This constitutional vision has been most influential in recent years, however the origins of its recent influence can be traced back at least three decades. As Cairns explains, it was during the 1960s that we first witnessed a growth in society-driven constitutional demands (Cairns, 1990a: 14-16). These demands were given legitimacy by the 1960 Bill of Rights, which had injected a long absent citizen-state discourse into Canadian political debate. (Whitaker (1983) provides a useful discussion of the extent to which such a citizen-state discourse has been absent from Canadian constitutional debates and documents.) I would hasten to add, however, that the social basis of the constitutional vision which emphasizes liberal citizenship is also related to the changes in Western society which, since the 1960s, have spawned the so-called new social

3. Throughout this paper references to "liberal citizenship" are not meant to be interpreted in the overly narrow sense of a strictly individualistic notion of citizenship. In Canada, the existing Charter of Rights and the Constitution Act both refer to what could be called collective or group rights, however, this is always done in a manner not inconsistent with liberal political thought or the notion that all citizens are inherently "rights-bearing".

movements and a series of popular anti-majoritarian rights-seeking groups (see Offe, 1987).

The entrenched Charter of Rights and Freedoms has been the most significant response to the demands of liberal citizenship. Certainly, it was not the case that constitutionally self-conscious citizens forced the Charter proposal onto the constitutional agenda; the Charter was part of Trudeau's strategy to combat provincialism and Quebecois nationalism by creating a pan-Canadian identity (McRoberts, 1991: 23-26). Nevertheless, the Charter was an enormously popular document which Trudeau had also advocated on "traditional liberal grounds" (Whitaker, 1983: 254). Moreover, once in place the convergence of the entrenched Charter and the emerging popular social forces facilitated what Peter Russell has called a "democratic mutation in our constitutional culture" (Russell, 1991: 141-142). Over the past few years this emerging democratic constitutional culture has highlighted the exigencies of liberal citizenship by challenging constitutional proposals, such as the Meech Lake Accord's distinct society clause, which would have allowed for the asymmetrical application of Charter rights. Perhaps more significantly, the rise in constitutional self-consciousness has produced a potent challenge to elitist and government dominated constitutional processes, thus forcing governments to move in the direction of enhancing opportunities for popular input during the current round of constitutional reform. Unfortunately, lacking imagination or the willingness to experiment with innovative forms of popular democratic dialogue, popular input has been channeled through processes which amount to little more than what Whitaker has called "an insulting parody of democratic consultation" (Whitaker, 1991: 56).

## Globalization and the Fourth "Vision"

Over the past decade there has been a considerable amount of scholarship arguing that the globalization of production and the increased importance of international markets have transformed the international political economy and fundamentally changed the relationship between markets and states.[4] While the Canadian literature on

4. This scholarship builds on the "globalization thesis" which is the thesis that the globalization of production, the increasing importance of global markets, the accelerated mobility of capital and the increased freedom of transnational corporations, have led to a new international division of labour and a structural transformation in the global capitalist system which makes government interventions futile in the face of international market forces. For an explication of the globalization thesis, see Gordon (1988).





"globalization" deals extensively with the issues of sovereignty, the changing composition of the labour force and the capacity of the state to pursue an independent industrial strategy, there is considerably less discussion of the impact of globalization on Canada's constitutional order. One principal exception to this is Michael Mandel's recent work which argues that the Canadian Charter of Rights is an example of how domestic government adapts to accommodate global economic developments such as trade liberalization and continental integration (Mandel, 1991). While I do not find Mandel's thesis entirely convincing, I do believe that the federal government's 1991 constitutional proposals which aimed at strengthening the Canadian economic union and harmonizing federal and provincial economic policies were indicative of the federal government's belief that Canada's constitutional order must respond to the exigencies of the globalizing world economy. In fact, even though these specific proposals have (for the time being) been amended or abandoned, I would argue that this belief has emerged as an important "fourth constitutional vision" which will influence the trajectory of future constitutional change. Moreover, as this new fourth constitutional vision is integrated into conventional political wisdom, it will be increasingly important that we rigorously examine its potential implications.

Earlier constitutional debates took place within a predominantly domestic framework. This is not to say that the international political economy and external economic forces have been unimportant. In fact, Confederation and the original division of powers in the BNA Act were part of an east-west economic development strategy necessitated by Canada's changing relationship with external economic actors, specifically Britain and the United States (Brodie, 1990; 92-100; and Stevenson: 23-27). What was different about the economic union proposals was that rather than pursuing domestic economic goals by developing a federal constitutional order which protects the domestic economy from external economic forces, they attempted to strengthen our domestic economic union by surrendering to the forces of global marketization and adapting the Canadian constitutional framework to the exigencies of the changing international political economy.

This new fourth constitutional vision is an example of what Robert Cox has called the "internationalization of the state" (Cox, 1987: 253-265). Essentially, Cox argues that with the internationalization of the state, the priority shifts from developing institutional arrangements and policies which act as a buffer between the external environment and the domestic economy to developing policies which ensure the domestic economy is adapting to the perceived exigencies of the world economy (Cox, 1987: 254-256; and Cox, 1991: 337). With the 1991 federal constitutional proposals it seems that the internationalization of the state has penetrated Canadian constitutional politics.

Few observers of Canadian politics would find this development surprising. The internationalization of the Canadian state has been proceeding apace for quite some time. Following the breakdown of Canada's post-war Keynesian economic development strategy in the early 1970s, and experiments with the "Third Option" and "mega-projects" in the 1970s and early 1980s, Canada moved decisively in the direction of a neo-liberal free trade development strategy (Brodie, 1990: chapter 7; and Clarke *et al*, 1991: 14-18). The scrapping of the Foreign Investment Review Agency, the Canada-U.S. Free Trade Agreement and, more recently, the Mulroney government's "prosperity agenda", are all examples of the internationalization of the Canadian state. The logic of the era plainly suggests the likelihood of a constitutional order which responds to the dynamics of globalization. Moreover, after the death of the Meech Lake Accord influential constitutional scholars began to turn their attention to the matter of globalization.

Central among these influential scholars was Thomas Courchene, who argued in a paper presented to the Belanger-Campeau Commission that the appropriate response to the pressures of globalization was a move toward marketization accompanied by a massive decentralization of Canadian federalism (Courchene, 1990). Soon after the failure of the Meech Lake Accord, press reports of a high level bureaucratic task force exploring the possibility of devolving federal powers to the provinces suggested that the Mulroney government was planning to pursue such an option. However, the federal government eventually backed away from this constitutionally radical option and, in September of 1991, proposed what Ronald Watts has called "rebal-





anced federalism"—a reconstituted constitutional order with some degree of decentralization and a stronger, more free market oriented economic union supported by increases in specific federal powers (Watts, 1991a: 9; 1991b: 24-25). While "rebalanced federalism" and its approach to strengthening the Canadian economic union appear less radical than Courchene's proposed response to globalization, I will argue below that it is a response to globalization which would have radical implications for both the democratic character of Canadian federalism and the future of social, economic and industrial policy in Canada.

Several aspects of the federal government's 1991 constitutional package were indicative of their willingness to respond to the forces of globalization and global marketization. As mentioned above, the most significant of these were the proposals which aimed to strengthen the Canadian economic union and harmonize federal and provincial economic policies. It is informative to examine each of these proposals, the governments justifications for them, and their potential implications. However, since the notion of strengthening the Canadian economic union through constitutional change is not entirely new, it is useful to first provide some historical context by examining recent constitutional debates regarding Canada's economic union.

*Recent Debates Regarding Canada's Economic Union*

During the late 1970s a variety of both private and public groups called for constitutional amendments to strengthen the Canadian economic union. (For a summary of some of the proposals related to the Canadian economic union and economic mobility within Canada, see Chretien (1980: 47-50).) Prominent among these were the Canadian Bar Association, the Task Force on Canadian Unity, and the Ontario Advisory Committee on Confederation (Roy, 1986: 71). Ottawa first put the issue on the negotiating table at the 1978-79 First Ministers Conferences when federal representatives expressed concern regarding the extent to which provincial interventions had become impediments to the free movement of people, goods, services and capital (Simeon and Robinson, 1990: 261). However, specific proposals directed toward protecting the integrity of the Canadian economic union were not put forward until 1980. That year the federal Justice Minister, Jean

Chretien, released a discussion paper which proposed three specific constitutional amendments. On the surface the Chretien proposals were similar to the 1991 federal constitutional proposals which will be discussed below—they involved amending section 121 of the constitution to enhance economic mobility, entrenching personal mobility rights, and enhancing the federal "trade and commerce" powers to allow for federal enforcement of the Canadian economic union (Chretien, 1980: 29). Nevertheless, regardless of similarities, the 1980 proposals differed from Ottawa's 1991 proposals in two important ways.

First, the 1980 proposals were not a self-conscious response to globalization and the changing international political economy. In explaining and justifying their 1980 proposals the federal government made some references to "changes on the international scene" and enhancing the international "competitiveness" of Canadian industry (Chretien, 1980: xii & 5). However, the emerging forces of globalization which were to become so influential during the 1980s did not feature prominently. Instead, the government's justifications for strengthening the Canadian economic union emphasized the way in which larger internal markets would allow for better allocation of factors of production and, as a result, provide greater scope for the sort of diversification and specialization which would allow industries in all regions of Canada to prosper (Chretien, 1980: 3).

Second, while both the Chretien proposals and the 1991 proposals involve both enhanced federal powers and the freeing up of market forces, the 1980 proposals appear to have been more consciously designed as a federal "power grab"; whereas the current proposals more consciously enhance marketization. In fact, it was because the 1980 Chretien proposals constituted a dramatic centralization of powers that the provinces were less than enthusiastic. In 1980 there was a recognition that federal concern with the economic union was "closely related to the issue of the division of powers—i.e., the desire to control provincial barriers, not to eliminate all barriers" (Courchene, 1986: 221). With this in mind, and arguing that many internal barriers to trade constitute the initiatives of responsible provincial governments, the Saskatchewan government declared that it would be inconsistent with the very essence of our democratic federal regime to adopt the





highly centralizing 1980 federal proposals. In their place Saskatchewan recommended a simple declaration of principle and a non-imperative agreement between Parliament and the provincial legislatures (Roy, 1986: 74-75).

As negotiations over the constitutional patriation package proceeded through 1980 and 1981, the federal government eventually backed away from their proposals to strengthen the economic union. Since then it has been argued that the federal government's proposals may have been a tactical move, a controversial centralizing proposal that could be traded away to secure approval of the overall package (Norrie, Simeon and Krasnick, 1986: 248; and Courchene, 1986: 220). Nevertheless, the debate had begun, the issue of the Canadian economic union was on the constitutional agenda and a new fourth constitutional vision was emerging.

In 1985 the Royal Commission on the Economic Union and Development Prospects for Canada made a series of recommendations to strengthen the Canadian economic union. They recommended that section 121, the constitution's "common market clause", should be amended to explicitly encompass trade in "services" as well as in goods, and that Ottawa should have responsibility over "product standards" (Fed. Govt. of Canada, 1985: 135-137). However, their main recommendation was that the federal and provincial governments should cooperate in the development of a joint "code of economic conduct". In a clear break with the 1980 proposals the commissioners expressed reservations about constitutionalizing a matter where complex economic and political trade-offs were required, and recommended against rushing to entrench this code of economic conduct in the constitution (Fed. Govt. of Canada, 1985: 137-140). Since the balancing of economic union and other goals is an "essentially political process" they argued that the appropriate vehicle for negotiations would be the "political forum" provided by intergovernmental cooperation (Fed. Govt. of Canada, 1985: 139).

*The 1991 Federal Constitutional Proposals*

The 1991 proposals to strengthen the Canadian economic union and harmonize federal and provincial economic policies have much in common with both the 1980 proposals and the recommendations of the

Royal Commission on the Economic Union and Development Prospects for Canada. However, they are unique in the extent to which they are firmly rooted in a constitutional vision which assumes Canada's constitutional order must respond to the exigencies of globalization and global marketization. Evidence of this can be found in the proposals and the government's justification of them.

Throughout the Mulroney government's 1991 discussion paper on Canadian federalism and economic union there were references to the changing international political economy and the need for Canada to adapt to the new era of global competition. With regard to strengthening the Canadian economic union, the federal government argued that removing internal barriers to the free flow of people, goods, services and capital would "enhance our capacity to compete in the global world economy" (Fed. Govt. of Canada, 1991a: 28). They argued that to compete in the era of globalization, governments must be able to "deliver" secure access to an integrated internal market (Fed. Govt. of Canada, 1991b: 20). Certainly, these pronouncements are not surprising. Since the introduction of the Canada-U.S. Free Trade Agreement they have become conventional economic wisdom. What is significant from a constitutional perspective, is that the government's constitutional package went on to argue that the problem is not merely the existence of internal trade barriers, but "the ability to erect new ones" (Fed. Govt. of Canada, 1991b: 21). And, in an embrace of constitutionalized marketization, the government proposed two constitutional amendments to impede the ability of future Canadian governments—both federal and provincial—to erect barriers to the free movement of persons, goods, services or capital.

In proposal 14, the government recommended broadening section 121 of the Constitution Act, the common market clause, to explicitly state that "Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions based on provincial or territorial boundaries" (Fed. Govt. of Canada, 1991a: 55). And, in proposal 15, the government recommended a new section 91A of the Constitution Act which would state that "the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union" (Fed. Govt. of Canada, 1991a: 56).





The federal government then went on to argue that the maintenance of an internationally competitive economic union requires both federal and provincial governments "be willing to modify policies that are currently inconsistent with the economic objectives of the federation" (Fed. Govt. of Canada, 1991b: 9). As a particularly telling example of policies which are "inconsistent with economic objectives of the federation", the federal government stated that in recent years

> Ontario's (expansionary fiscal) policy made the Bank of Canada's task of reducing inflation more difficult and more costly to all Canadians. Inflation pressures were exported from Ontario to the rest of the economy, and national interest rates rose much more than would have been the case with a more appropriate Ontario fiscal policy (Fed. Govt. of Canada, 1991b: 28).

As a means to reducing the possibility of such "inappropriate" policies in the future, proposal 16 recommended that guidelines to harmonize federal and provincial economic policies "be set in federal legislation under the economic union power" which would be provided by the new section 91A of the Constitution Act (Fed. Govt. of Canada, 1991a: 56).

In this era of free trade agreements and globalization many Canadians, professional economists among them, would contend that bringing an end to internal economic barriers and harmonizing economic policies will be necessary if Canada is to be internationally competitive. While I do not want to debate this contention here, it is worth noting that the growing consensus among mainstream economists and state officials regarding the importance of competitiveness and, more importantly, the "one correct way" to achieve it, is a part of the neo-liberal agenda which has emerged with the internationalization of the Canadian state over the past decade. The new fourth constitutional vision and the ideological consensus on the correct manner to attain competitiveness in the globalizing world economy are interrelated phenomenon.[5] Nevertheless, what is important in terms of this

5. There are a variety of explanations of the growing consensus among mainstream economists and state officials regarding the importance of "competitiveness" and the "one correct way" to achieve it. From one perspective, Cox explains that various multi-

paper is not the wisdom of a particular competitiveness strategy, but the long-term implications of certain constitutional visions for Canada's federal constitutional order. With regard to the neo-liberal constitutional vision and the 1991 economic union proposals it seems that there are two, closely related implications which would be particularly troubling.

First, by going beyond proposing a non-imperative "code of economic conduct", and actually "constitutionalizing" a far-reaching economic policy orientation, the federal government's proposals would serve to undermine the democratic federal principle of divided sovereignty.[6] Once the constitution, or federal legislation authorized by the constitution, begins to restrict the options available to sovereign provincial governments within their own sphere of jurisdiction, the democratic nature of the relation between the citizen and the state is threatened. By broadening section 121 of the Constitution Act to prohibit any provincial legislation which creates "barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province" (Fed. Govt. of Canada, 1991a: 43), democratically elected governments would be severely and inappropriately constrained. Moreover, citizens lose much of their capacity to democratically vote for a change in economic policy orientation.

Similarly, by proposing a new section 91A which would authorize the Parliament of Canada to make laws to harmonize provincial fiscal and federal monetary policies—or any other matter it declares to be for the efficient functioning of the economic union—the government's constitutional package would have further challenged the sovereignty of democratically elected provincial governments. Certainly, it is true

lateral forums, economic summits and international institutions, such as the IMF, the World Bank and the OECD have, particularly over the past two decades, played an important role in defining the ideological basis of consensus on the correct manner in which states must respond to the exigencies of the globalizing world economy (Cox, 1987: 259).

6. It is worth noting that the principle of divided sovereignty has never been fully adhered to in practice. The history of Canadian federalism has taught us that powers and responsibilities can never be divided so clearly as to avoid jurisdictional overlap and conflict. Also, the original BNA Act provided the federal government with the so-called "declaratory powers" and "powers of reservation" over provincial legislation. However, I would argue that none of this undermines the importance of divided sovereignty as a federal democratic principle.





that the proposal would have allowed provinces to opt out of legislation passed under the authority of 91A; but only for a three year non-renewable period. It is also true that the proposed federal constitutional powers under the new section 91A, including the capacity to harmonize economic policies, would have been contingent on approval of two-thirds of the members of the proposed "Council of the Federation", which would be composed of federal and provincial government representatives. However, this unelected Council, which would likely evolve into a virtual third level of government, would do nothing to ensure democratic legitimacy. In fact, the role of a Council of the Federation in creating new constitutional-economic policy is extremely reminiscent of executive federalism and the discredited Meech Lake process of constitutional reform. It would bring an elite group of representatives from the various federal and provincial cabinets together into a forum which has no explicit relationship with the broader community, and entrust to them a series of fundamentally important decisions which will define the limits of "appropriate" economic policy. Thus, even with opportunity to opt out under 91A and the proposed Council of the Federation, the federal government's 1991 constitutional proposals would have potentially undermined important federal democratic principles.

The second troubling implication is that these proposals would likely result in constraints on the actions of government which are incompatible with many aspects of a progressive social, economic and industrial policy agenda. By constitutionalizing a far-reaching neo-liberal economic policy agenda the 1991 federal proposals would restrict future federal and provincial governments from pursuing an anticipatory industrial strategy, non-conventional economic policies, or progressive social policy. As Whitaker argues, the proposals to strengthen the Canadian economic union would "do for the parts of Canada what free trade did to the country as a whole" (Whitaker, 1991: 55). A few examples should serve well to illustrate this point.

Shortly after the 1991 federal constitutional package was introduced Constitutional Affairs Minister Joe Clark said that the proposed reforms intended to harmonize provincial fiscal and federal monetary policy could have prevented Ontario's NDP government from budgeting a $9.7 billion dollar deficit. Since then Clark and his colleagues

have down-played such possibilities, however the lengthy quote above regarding Ontario's "inappropriate" expansionary fiscal policies clearly indicates that Clark's speculation was not entirely off the mark. In fact, if we take note of proposal 17, which would permanently entrench the Bank of Canada's monetarist policy by restricting the Bank to fighting inflation at the expense of concerns for levels of employment, production or trade, the goal of harmonizing economic policies could mean little else.

More recently, former Saskatchewan Premier Allan Blakeney speculated that, as initially proposed, the broadened section 121 of the Constitution Act would prohibit provincially legislated monopolies. In fact, he argued that the province of Ontario would be constitutionally restricted from, for example, prohibiting Hydro Quebec from selling electricity within the Ontario market.

The proposed broadened section 121 did provide an exemption for federal programmes of equalization or regional development which may impede the functioning of the economic union. However, no such exemption was made for similar laws passed by provincial legislatures. This has lead some to speculate that programmes which address inequalities within provinces, such as a pay equity programme which is stronger and more far reaching than in any other part of the country, could be declared an impediment to the free flow of capital and the efficient functioning of the economic union. The fear here is that with time there would be a "levelling down" of important provincial social policies.

In short, the government's initial constitutional response to the exigencies of globalization and global marketization was a series of proposals which would hamper the capacity of any federal or provincial, but particularly provincial, government which wished to pursue a non-conventional or progressive political agenda. Rather than leaving such matters of social and economic policy orientation to the processes of political debate and struggle, the government had embraced the constitutionalization of a neo-liberal political agenda.

## Conclusion

The purpose of this paper has been to draw attention to the importance of what I have called "constitutional visions" and, in particular,





to illustrate the relationship between the internationalization of the Canadian state and the emergence of a neo-liberal constitutional vision which could have significant and troubling implications. In doing so I am clearly challenging the conventional wisdom. Most Canadians, it seems, accept the need to strengthen the Canadian economic union. While I accept that the cooperative elimination of many existing barriers to the free flow of persons, goods, services and capital is a valuable goal, the costs which would be associated with the 1991 federal proposals are too high.

In introducing their economic union proposals, the federal government admitted that it is exceptionally difficult to measure precisely the overall effect of existing barriers on the national economy. Nevertheless, in an attempt to justify their proposals, the government's discussion papers went on to cite some "worst case scenarios" regarding the costs of internal trade barriers (Fed. Govt. of Canada, 1991b: 19). These were inflated estimates. Research studies commissioned by the Royal Commission on Economic Union and Development Prospects for Canada concluded that "the economic case against barriers is still weak" (Norrie et al.: xx), and that "the economic significance of interprovincial barriers to trade has been overplayed in recent policy debates" (Courchene, 1986: 214). Even the final Report of the Commission stated that

> despite recent expressions of concern that the economy is becoming balkanized and fragmented, the Canadian economic union generally functions effectively. Goods, capital, services and people move relatively freely within the Canadian common market (Fed. Govt. of Canada, 1985: 135).

Why then did the government propose such far reaching constitutional measures to strengthen the Canadian economic union? There certainly are less radical options, such as non-imperative intergovernmental cooperation. In part the answer is likely to be found in the pervasive neo-liberal ideological orientation in this new era of free trade and global competition. However, the purpose of this paper has been to argue that a full understanding of the government's 1991 constitutional proposals must take into account the ideological notions captured by the new fourth constitutional vision—the vision which

demands that Canada's federal constitutional order respond to the exigencies of globalization and global marketization.

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# Japanese Aid, Politics and the Growth of Regionalism in Eastern Asia

*Kurtis H. Simpson*

The West's fascination with Japan as "the economic miracle" has led us to both interpret and measure the actions of that country in largely unidimensional terms. Japanese initiatives are invariably associated with economic considerations and for most the matter ends there. What is missing from this simplification is recognition of the role that politics has always played in Japan's foreign policy decisions, and the degree to which the political dimension has increased since 1965.

This paper will begin by establishing the fact that Japanese aid has served as the country's chief foreign policy tool in the post-war period. While initially aid was designed to achieve economic ends it was never entirely divorced from political ambitions. As Japan developed, participation in multilateral aid programs legitimized that country's re-emergence as a regional power. By 1965 the United States was demanding that Japan play a larger role in the affairs of Eastern Asia. Japan complied by broadening its criteria for granting aid to include strategic as well as economic goals in the 1970s. As American interests in the Pacific receded and Japan's ability to project influence abroad increased, more aid was used as a means of guaranteeing political objectives. The Plaza Accord of 1985 and the likelihood of North American free trade have forced Japan to dramatically speed up the process of regionalization taking place in Eastern Asia, as it is now considered politically expedient to reduce Japan's dependence on the United States and "a new world order" that promises to be far less accommodating than before.

Japanese aid is best viewed as an instrument of Japan's national