

# LANGUAGE RIGHTS IN MULTICULTURAL STATES: A COMPARATIVE STUDY

JEROME B. PARADIS\*  
*Vancouver*

---

## I. *Introduction.*

The fashionable view of the world today often finds expression in the cliché of the global village. The credo dictates that new horizons, laden with the excitement of discoveries, are promised to anyone who dares to rise from his parochial torpor and make use of the technology of the communications revolution. By the flip of a switch, Western man, who by and large can afford a television set, can see how the other half lives. Conversely, people of the other half may get a reciprocal, representative glimpse of the developed world as long as they willingly suffer the frustrations that go with it. Bantus can see and hear Chinese; Frenchmen can get their first look at Eskimos; North Americans learn that Vietnamese women can be beautiful; and everyone has it in his power to at least begin to understand things which were, until very recently, hopelessly foreign.

But, like all world-views, the concept has many flaws, and one of the most disturbing is the fact that even in supposedly homogeneous quarters of the Village—in those places where the discovery of and the learning from neighbours would be most easily achieved—great divisions, arising from an even greater (and often voluntary) ignorance, exist. And it is even more disturbing that many of these conflicts exist *because* of the fundamental tool of discovery: language. The priorities of that impossibility, the totally rational world, would clearly have been to first learn to use the tools available, and then choose among them, as needed, to build the place of learning. Yet we have managed to put together a technological backwater town, without considering the nature of the being that would populate it. We have an entire global school, and we cannot do much with it as long as fights continue to break out, in different classrooms, over who gets to speak first.

Canada, even with its wealth, its alleged sophistication, and its well-developed systems of government, must take a leading place amongst the squabblers of this narrowing world.

The object of this study will be to examine, in some detail,

---

\*Jerome B. Paradis, of the British Columbia Bar, Vancouver.

the structure of other multilingual states, to analyze their development and to perhaps learn from their experience. The study will be more political than legal. It will be legal in that constitutions and laws passed in accordance with them will be dealt with at length; but it will be political in that all laws, including constitutions, come to exist because of political priorities and possibilities. In fact, rarely is this more true than in the case of legislation concerning language or culture generally.

The analysis will take a basic form. Two multilingual European states, Switzerland and Belgium, will be studied; and the constitutions, language legislation and present *de facto* status of the languages of each will be considered. An examination of the language problem in Canada will follow, incorporating a survey of the recommendations of the Royal Commission on Bilingualism and Biculturalism,<sup>1</sup> as well as an analysis of the Official Languages Act<sup>2</sup> recently passed by Parliament. Finally, a comparative analysis of Canada and the European states will take the form of three questions: from the experience in Switzerland and Belgium can minority use of language be considered a right? If so, should guarantees of it exist? And, if so, should they be purely constitutional and entrenched as part of the fundamental guarantees of the people, or does legislation in itself add substance? Finally, an attempt will be made to summarize all of the broad variables in the multilingual development of all three countries, and some recommendations will be made.

## II. *Switzerland.*

The reputation of Switzerland as a peaceful, idyllic, geographically beautiful country, seemingly deposited by accident in the midst of the major Western European powers, is by no means a myth. This tightly knit confederation of twenty-two cantons is all at once a tourist's dream, a democrat's ideal and a linguist's haven. Geographically, the country is tiny. From Geneva, on the French border, to the Eastern boundary of the canton of Grisons is only 220 miles. From the German border in the north, in the canton of Schaffhausen, to the southernmost tip of Ticino in the south, is 140 miles. The actual division of languages in the country will be outlined in more detail below, but it should be noted at this point that, as might be expected, the general language regions coincide with the borders of the larger states surrounding the country. Thus French is spoken mostly along the border of France, Italian is spoken primarily in Ticino, which is on the Italian border, and most (virtually all) of the other cantons are German-

<sup>1</sup> Report of the Royal Commission on Bilingualism and Biculturalism, Vol. 1 (1967).

<sup>2</sup> S.C., 1968-69, c. 54.

speaking and can be said to border Germany and Austria.

#### A. *The Constitution.*

The constitution of Switzerland grew out of a brief civil war in which liberal elements were victorious over religious-reactionary forces under strong influence from France and Germany. The new constitution was drafted in 1848, and it is apparent from the text that the drafters had in mind the creation of a liberal nation state in non-nationalistic terms. Considering the great surge of nationalism aroused in all of Europe by the Napoleonic wars, as well as a new concern for internal reform as evidenced by the widespread revolutions of 1848, this attitude is more than a little striking.

Nevertheless, they obviously met with success, for the constitution of 1848 stands with practically no amendments. One exception to this, however, is article 116, the only article in the Constitution which directly deals with language. In its present form, it reads:<sup>3</sup>

German, French, Italian and Romansch are the national languages of Switzerland.

The official languages of the Confederation shall be German, French and Italian.

In the 1848 draft, there was no mention of "national" languages: the entire article consisted of the last paragraph. The addition of the first paragraph in 1938 was the result of a petition to the federal government by the executive of Grisons (the only Canton where Romansch is spoken) requesting that Romansch be officially recognized. The change was submitted to a referendum (required under article 121) and, despite some complaints that the amendment was "an impractical exercise in symbolism",<sup>4</sup> it was accepted by a 92% majority of the country. One of the major factors behind the Grisons petition was the pressure of Italian tourism (a strong source of income) and Italian politics (fascist claims that Romansch was a form of Italian). The effects of the amendment are rather wryly described by Hughes:<sup>5</sup>

This gives [Romansch] a certain nuisance value in federal affairs, soothes the sensibilities of local patriots, and stakes out the claim that Romansch is a "language" and not a "dialect", in order to strengthen the hand of Switzerland against Italian cultural aggression.

Symbolic or not, the amendment provides a clear illustration of Swiss public policy generally towards the weaker language groups,<sup>6</sup> and this theme of majority acquiescence will recur

<sup>3</sup> Peaslee, *Constitutions of Nations* (3rd ed., 1966), Vol. 3, p. 327.

<sup>4</sup> McRae, K. D., *Switzerland: Example of Cultural Co-Existence* (1964),

p. 9.

<sup>5</sup> Hughes, C., *The Federal Constitution of Switzerland* (1954), p. 129.

<sup>6</sup> McRae, *op. cit.*, footnote 4, p. 9.

throughout this study. Considering that, according to the 1960 census, Romansch is spoken by only .9% of the population—approximately 50,000 out of 5.35 million<sup>7</sup>—and that it has no status as an official language, it will not be included in the following more detailed analysis of languages in Switzerland. But, as pointed out above, the fact of its official recognition as a national language should be borne in mind throughout.

Two other articles have a strong, if indirect, bearing upon use of languages:<sup>8</sup>

Article 107: Members and deputy members of the Federal Tribunal shall be elected by the Federal Assembly, which shall see that the three official languages of the Confederation are represented upon it.

The subject of the Federal Tribunal will be considered in detail below. This article provides a useful comparison with section 133 of the British North America Act.<sup>9</sup>

Article 3: The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution, and, as such, they exercise all rights which are not transferred to the Federal power.<sup>10</sup>

Needless to say, the component parts of the Swiss federation derive a great deal of power from this article. While it is true that, like similar constitutional provisions in other countries, its interpretation has been difficult,<sup>11</sup> there is no doubt that the use of languages has remained fundamentally a cantonal matter. This control is best illustrated through two principles.<sup>12</sup> The first is the principle of linguistic sovereignty (*Sprachenhoheit*), whereby the Canton reserves the right to determine any language matters within its territory which are not governed by Federal Power. An example of the latter would be languages spoken by postal employees, or, for that matter, by the employees of any federal department.<sup>13</sup> This principle of linguistic sovereignty has led to a further principle of "territoriality", whereby any Canton or linguistic area has the right to preserve and defend its own linguistic character against all outside forces that tend to alter or endanger it.

It is important to note at this juncture the effects of these two principles. First of all, anyone who moves into a new language area must assimilate to it. He may keep his own language and use it in the home or anywhere else he finds it possible to do so, but he must work and educate his children in the language of

---

<sup>7</sup> Annuaire Statistique de la Suisse (1964), p. 44.

<sup>8</sup> Hughes, *op. cit.*, footnote 5, p. 119.

<sup>9</sup> (1867), 30 and 31 Vict., c. 3.

<sup>10</sup> Hughes, *op. cit.*, footnote 5, p. 5.

<sup>11</sup> *Ibid.*, pp. 5-6.

<sup>12</sup> McRae, *op. cit.*, footnote 4, p. 11.

<sup>13</sup> Public service language requirements are dealt with *infra*.

the area. Secondly, whenever federal authorities deal with a Canton, they do so in the local language. Finally, all laws, directives, regulations, and so on emanating from the cantonal authority are published only in the one language. Commenting on article 116 in relation to these principles, Walter Burkhardt has said:<sup>14</sup>

It is now a tacitly recognized principle that each locality should be able to retain its traditional language regardless of immigrants of other languages, and consequently that linguistic boundaries once settled should not be shifted, neither to the detriment of the majority nor of minorities. It is trust in this tacit agreement that provides a foundation for peaceful relations among the language groups. Each group must be sure that the others do not wish to make conquests at its expense and diminish its territory, either officially or by private action. Adherence to this rule as well as respect of each group for the individuality of the others, is an obligation of Swiss loyalty. It is no less sacred because it is not laid down in any law; it is to be regarded as more sacred in that it is one of the foundations of our state itself.

The picture of language rights in Switzerland which emerges from a consideration of the bare constitutional framework can be somewhat confusing. On the one hand we have, in the revised article 116, an indication that despite greater expense and little utility, the majority language groups chose almost unanimously to preserve some sort of status for Romansch—a language spoken by less than 1% of the population. On the other hand we note that, in a country only 220 miles wide, members of language groups display a determined parochialism in respect of preservation of their own tongue.

Before venturing any comment upon this apparent contradiction, it is first necessary to briefly examine languages in both governmental and unofficial spheres. It should be pointed out at the outset, however, that legislative controls over, or guarantees of, languages are virtually non-existent. The reasons therefore for the distribution and use of languages must be sought outside the law—at least in those cases where regulations of certain government departments do not affect the pattern.

#### B. *Language Usage.*

There is a great disparity in the size of Switzerland's language groups. Out of the 1960 census figures of 5.35 million, approximately 70% (3.75 million) were German-speaking, 20% (1 million) were French-speaking, and 8% (0.5 million) were Italian. The remainder was made up of Romansch and other language

---

<sup>14</sup> McRae, *op. cit.*, footnote 4, pp. 11-12. Burkhardt's Commentary is the definitive work on the Swiss Federal Constitution. As the writer cannot read German, and as an available translation could not be found—either French or English—it has been necessary to search out his comments in secondary sources.

groups.<sup>15</sup> There are twenty-two Cantons and three of these are divided, making a total of twenty-five political entities. Of these, three may be said to be French: Geneva, Vaud and Neuchâtel. Ticino is the sole Italian Canton. Three Cantons are officially bilingual (Berne, Fribourg, Valais), Grisons is officially trilingual, and the remaining seventeen Cantons and half-Cantons are German-speaking.<sup>16</sup>

It is important to note that no high German is spoken, and the Swiss German will use whichever of the twenty-six German dialects is appropriate to his Canton or language area. On the other hand, the French spoken is very similar to that of France and, if such a term may be applied, it is the "prestige" language of the country. Finally, because of their small numbers, the Italian-speaking community can be counted on to have a good working knowledge of French or German, and this is becoming more true today since, in recent years, there has been a strong outflow of industrial labour to the rest of the country from predominantly agricultural Ticino.<sup>17</sup>

Generally, however, bilingualism—the ability to speak fluently and understand two languages—is a rarity. Most Swiss are capable of understanding other languages besides their own, but very few can speak them. What commonly results, therefore, is a sort of two-way unilingualism, whereby a conversation between people of different languages is carried on entirely by each in his mother tongue.

It can be seen, therefore, that a federal state dealing with this type of contrast and diversity will most likely encounter considerable difficulty. By and large, however, the four branches of government have managed to avoid the obvious snags, and while the protocol of language use is far too intricate to lay out in detail, a brief summary of the situation in each branch can be made.

In the Swiss Federal Assembly, French and German are used equally, while Italian is relegated to the second rank. Legally, all three languages are official, but even records of sessions indicate the *de facto* dominant position of French and German for, as McRae points out:<sup>18</sup>

. . . Italian-speaking members customarily address the house in French or German (usually French) preferring to make their points directly rather than through translation.

He further notes that a simultaneous translation service is provided, in French and German only, but that it is rarely used since virtually all members understand both languages. All working documents, such as executive messages and committee reports,

<sup>15</sup> *Op. cit.*, footnote 5, p. 45.

<sup>16</sup> McRae, *op. cit.*, footnote 4, p. 2.

<sup>17</sup> *Ibid.*, pp. 15-17.

<sup>18</sup> *Ibid.*, p. 24.

are made up only in French and German, unless they are of special importance.<sup>19</sup> All laws passed by the house, however, are published in all three official languages. From all of this it is difficult to disagree with McRae's conclusion that this is a highly successful *bilingual* parliament.<sup>20</sup>

The Executive in Switzerland is a unique institution—a truly effective example of government by committee. It consists of a seven-man Federal Council, the members of which are elected every four years by the two houses of the Federal Assembly, the National Council and the Council of States.<sup>21</sup> Since the Council of States consists of two members from each Canton or half-Canton, and since the National Council is elected on a very careful, country-wide representational basis, the election to the Federal Council strongly reflects the language structure of the country as a whole. It therefore usually consists of four German-speaking members, one “permanent” French-speaking member (Vaud has had a representative since 1848) and two other non-Germans. Of the latter, one is usually French-speaking and the last seat vacillates between French and Italian-speaking members.<sup>22</sup>

Therefore, even though there exists no constitutional or legislative guarantee of proportional language representation at the executive level, this representation has evolved through practice and custom and, as noted by all the constitutional authorities, it could not be varied at this stage.

In the public service, a distinction must be made between the use of language in public contacts and in internal matters. Clearly, the principle of territoriality averred to above would apply to the former situation. While it is obvious that cantonal governments have no jurisdiction to force the federal public service to provide employees who speak the language of the Canton, the principle of territoriality virtually guarantees that members of the public in any given unilingual Canton will speak only the language of the Canton. Simple efficiency dictates that employees of the federal public service should also speak that language.

Internally, regulations of the public service require at least two languages for employment in the capital, Bern. Moreover, when the entire administrative structure is examined, it becomes evident that the French and Italian minorities are treated more than equitably. For example, out of eleven federal departments, eight employ as many or more French-speaking Swiss than the national population percentage. To illustrate, the national percentage of French-speaking Swiss is 20%, and 24.8% of the employees of the Department of Public Economy are French.<sup>23</sup>

<sup>19</sup> *Ibid.*, p. 25.

<sup>20</sup> *Ibid.*, p. 25.

<sup>21</sup> Hughes, *op. cit.*, footnote 5, p. 107.

<sup>22</sup> McRae, *op. cit.*, footnote 4, p. 26.

<sup>23</sup> *Ibid.*, p. 28.

Just as in the case of the Federal Assembly, the language policies in the public service have evolved through custom and are embodied in few written rules or regulations.

The Judiciary, on the other hand, operates under relatively more formal rules concerning language, and these strictures are based upon the above-mentioned provisions of article 107. The Tribunal has twenty-six members and twelve alternates, and the French and Italian languages are represented more than proportionately.<sup>24</sup> The Tribunal has several sections dealing with specialized areas of law and there is no absolute language requirement for these except where the Criminal Chamber is involved. In that case, all three languages must be represented.

The courts of Switzerland are structured vertically and their organization is within the jurisdiction of the Cantons. Thus, the principles of sovereignty of language and of territoriality apply, and this is reflected in the rules which govern procedure in the Federal Tribunal. For civil litigation, appeals are heard in the language of the Canton where the case originated.<sup>25</sup> In criminal cases, the language of the accused is used if it is an official language.<sup>26</sup> The problem of clearing up discrepancies in the triple translation of laws is solved in the only logical manner: use of all three versions simultaneously and strong reliance on opinions of commentators.

Education is basically a cantonal matter subject only to the kind of intervention permitted the Federal Government by virtue of article 3. That intervention usually takes the form of subsidies which, like any self-respecting Canadian province, no Canton is loathe to take.<sup>27</sup> In fact, these subsidies provide another illustration of linguistic generosity within the federation, for the amount provided to the Canton is based upon a formula which calculates so many francs per child, and in 1960, when the standard subsidy was four francs per child, Ticino and Grisons, in order to purchase books and give specialized teacher-training, were given up to ten times that amount.<sup>28</sup>

A second language is compulsory in all high schools, and there are three types of Federal Maturity Certificates, necessary for higher education, which have different language requirements. The highest Certificate, for example, requires two official languages as well as Latin and Greek. Finally, there are seven universities, also

<sup>24</sup> *Ibid.*, p. 32.

<sup>25</sup> McRae, *op. cit.*, *ibid.*, adds that, occasionally, the language of both parties will differ from that of the Canton. If the parties speak the same language, that language will be used. If they speak different languages, that of the defendant will prevail.

<sup>26</sup> Cases involving a Romansch-speaking accused are heard in German or Italian. McRae, *op. cit.*, *ibid.*, p. 32.

<sup>27</sup> Cf. commentary by Hughes on article 27 (which provides for subsidies), *op. cit.*, footnote 5, p. 27.

<sup>28</sup> McRae, *op. cit.*, footnote 4, p. 38.

under cantonal control: three German, three French and one bilingual Catholic university at Fribourg.

It is important to bear in mind the degree to which schools are used to enhance the operation of the principle of territoriality in the Canton. McRae states that:<sup>29</sup>

. . . indeed, the assimilation of migrants from other linguistic areas is accomplished primarily through the schools.

He adds, however, that:<sup>30</sup>

. . . for the relatively few children whose parents shrink from assimilation there is an alternative in the extensive network of private schools. . . . In the few bilingual areas where conditions warrant it, two state school systems exist side by side to accommodate different language groups.

In conclusion, a brief look at broadcasting affords one final example of Swiss public policy on linguistic matters. The basic principle behind broadcasting policies is the offering of three complete and equal program services and the degree to which this principle governs federal expenditure in this field is indicated by the Government's budgetary formula:<sup>31</sup>

<i>Service</i>	<i>% of population served</i>	<i>% of revenue</i>
German	70	45
French	20	33
Italian	8	22

It is clear that every attempt is made to allow each group to be entertained, diverted and informed in its mother tongue, and this has a strong bearing upon the ability of immigrants to different language areas to preserve their own languages.

### *C. Conclusions.*

A great many reasons are advanced by writers to explain the harmony which persists among the language groups of Switzerland. Some of these are less valid than others, but several predominate. Clearly, constitutional provisions in themselves have had little effect; they still necessitated certain adjustments and redefinitions which were rarely enacted into law. Instead, it could be said that, using the exceptionally liberal Constitution as a guide the Swiss people as a whole developed a mood, a nationalistic attitude, which always prevailed when language differences arose. This ill-defined, flexible socio-political approach of the people themselves, it is submitted, is the one single key to Swiss linguistic peace. Burkhardt's often-quoted comment raises the point in relation to the ultimate effects of article 116. Another writer, Hans

<sup>29</sup> *Ibid.*, p. 37.

<sup>30</sup> *Ibid.*, p. 37.

<sup>31</sup> *Ibid.*, p. 44. McRae also points out that this formula was in force until 1967. No later figures are available.

Kohn, has made a more generalized statement of the position in terms of historical perspective.<sup>32</sup>

Nothing was said [in the Constitution] regarding all the questions which vexed and often destroyed other multi-lingual states in Central and Eastern Europe. . . . Nevertheless, no disputes over these questions ever seriously disturbed the peace of the Confederation. This remarkable experience in a century in which ethnic and linguistic differences led elsewhere to conflicts which played a tremendous part in the disruption of Europe, was due not only to the Federal structure of Switzerland, but above all to the spirit of tolerance, restraint and good will towards minorities. All the questions were settled by practical adjustment . . . .

The question to be answered, therefore, is what factors allowed for the growth of this spirit of compromise and tolerance?

First, it is necessary to consider the status of the languages themselves. It has already been mentioned that the Swiss Germans, while in the overwhelming majority, speak twenty-six dialects, some so different from others that their speakers cannot understand each other and must resort to a second language. On the other hand, there is little variation in the French spoken in the country, and that language, despite the small number of its proponents, enjoys a prestige unknown to the other languages. One writer points out that there has never been any question of the minority being compelled to use the language of the majority, and he continues:<sup>33</sup>

[I]ndeed the attitude is far from that, for while French and Italian-speaking Swiss are not particularly eager to learn German, the German-speaking Swiss like to learn and to speak French or Italian. French in particular has an importance in Switzerland which is out of all proportion to the number of those who speak it as their mother tongue.

André Siegfried echoes this sentiment, although he feels confident enough to elaborate upon it somewhat whimsically by treading on that shakiest of analytical grounds, the "ethnic characteristic". His point is simply that the Alemannic Swiss harbour a secret admiration for both the virtues and the faults of their less stolid, more romantic French neighbours.<sup>34</sup> Be that as it may, it is clear that far from ever desiring the demise of Romance languages in Switzerland, the Swiss Germans show a desire to augment the presence and use of French and Italian.

A second important contributing factor to linguistic harmony is confederation itself. Obviously, as Siegfried points out:<sup>35</sup>

Given such differences of language, religion and culture, it is clear that

<sup>32</sup> Kohn, H., *Nationalism and Liberty: the Swiss Example* (1956), p. 115.

<sup>33</sup> Gilliard, C., *A History of Switzerland* (1955), pp. 109-110.

<sup>34</sup> Siegfried, A., *Switzerland: A Democratic Way of Life* (1950), pp. 65-66.

<sup>35</sup> *Ibid.*, p. 123.

a system of this kind could exist only on a most definite basis of decentralization, and hence the essential importance of the Cantonal background.

Confederation allows for political and cultural self-protection and provides the sense of security necessary for people to be open and unbiased in their assessment of the values and motives of others. Moreover, and this point is strongly emphasized by virtually all of the writers, the cantonal structure is such that religious and linguistic boundaries do not coincide. Siegfried calls this "a piece of good fortune whose importance it is quite impossible to over-estimate" and goes on to say that its effect is that:<sup>36</sup>

German-speaking Switzerland and French-speaking Switzerland both have their Protestant and Catholic citizens, and in such a way that no coalition of any sort between language and religion based on definite territorial limits is even conceivable.

Thus a majority in any given referendum (and it must be remembered that the vast majority of important legislation in Switzerland is done by referendum) cannot be achieved without a coalition of diverse language, religious and cantonal groups.

Thirdly, geography has played a leading role in the development of attitudes towards languages. The size of the country and of its Cantons has allowed a counterbalance to the effects of territoriality and *Sprachenhoheit*. Immigrants to Cantons of a different culture have found it simple and inexpensive to keep in contact with their mother culture. They are therefore in no way compelled economically to succumb to the strictures of Cantonal sovereignty if they wish to avoid them. Moreover, the geographical location of the country itself, while it has not resulted in cultural domination by neighbouring states, has permitted citizens of different cultures to maintain, if they wish, some contacts with the country of cultural origin.

It is difficult to come to any other conclusion but that the harmonious state of linguistic coexistence as it exists today will persist. The Swiss have managed to develop a rare and valuable sense of comity and understanding which pervades any cross-cultural intercourse, and the causes of this good will lie in factors which are permanent: *de facto* attitudes towards the languages themselves, the benefits of Confederation, and geography. The politics of Switzerland *vis-à-vis* the rest of the world, that is those of peace and neutrality, are reflected in its internal politics. Those who drafted the Constitution of 1848 sought to create a more liberal state which could avoid the pitfalls of narrow nationalism, and the result has been a country which has circumvented the aggressive nationalism of ethnic purity by substituting for it a precisely opposite sentiment: the true basis of Swiss nationalism

<sup>36</sup> *Ibid.*, p. 124.

today, the one factor in which all of the people take pride, is their very ability to survive so well and so long in the face of the fundamental cultural diversity of the country.

### III. *Belgium.*

Belgium presents a stark contrast to the peaceful and progressive situation in Switzerland. After a relatively quiet post-war period, the language issue has once again gained prominence and since 1960 has resulted in the resignations of governments, the continual realignment (to the point of confusion) of language boundaries, as well as marches, demonstrations and riots, and the resurgence of violently nationalistic political parties on both sides. What are the causes? How does a highly industrialized, politically sophisticated state come to a point where, as one commentator put it:<sup>37</sup>

[The] perennial linguistic battle is a threat to the very existence of democracy in the tiny country. The normal decision-making process has recently been repeatedly by-passed while Parliament, the cabinet, and even the electorate—preoccupied as they are with the language question—are paralysed. Instead, direct pressure is used by interests.

The answers are not readily available. Writers, commentators, journalists and even the Belgian people themselves—as will be noted below—all have their pet theories, each one relying upon his area of alleged expertise. Thus, one finds that the “whole problem” is a “direct” result of economic uncertainty, social disparity, bourgeois politics, overpopulation, geography and even the breakdown of the family unit. At the risk of confusing the issue even further, it appears that the animosity which exists is a product of all of the above (with perhaps the exception of family breakdown) and only some detailed historical analysis can show how each one has contributed to the present chaos.

In size, Belgium is even smaller than Switzerland: approximately 180 miles from east to west and 130 miles from north to south. The specific delineation of language areas will be detailed below, but some idea of broader divisions is necessary at this point. Flanders, in the north, is almost entirely Flemish, while Wallonia, in the south, is French-speaking. Brussels is an officially bilingual city lying slightly north of the rough east-west division and, as will be seen, this enclave of essentially French culture in Flanders has been one of the principal points of division between the two language groups.

Belgium is very densely populated, with approximately 380 people per square mile. Its present population is close to nine million, but the most recent census figures available for purposes of language analysis were compiled in 1947.<sup>38</sup> The reason for this,

<sup>37</sup> Lewis, *The Belgian Linguistic Crisis* (1966), 208 *Contemp. Rev.* 296.

<sup>38</sup> *Annuaire Statistique de la Belgique* (1967), p. 53.

briefly stated, is that population statistics are constantly used by both Flemings and Walloons as fuel for their arguments as to which group, at any given time, has the honour of being the underdog. Therefore, governments have been loathe to publish new official figures which would no doubt provide statistical grounds for claims of inequality, and this is especially true since the enactment of the language laws of 1962-1963.

In any event, the 1947 figures disclose a total population of 8.1 million and the breakdown of this figure into language groups is as follows:

<i>Mother Tongue</i>	<i>Population</i>	<i>%</i>
French	3.5 million	43.2
Flemish	4.1 million	50.0
German	100,000	1.2
Other	400,000	5.6

Thus it can be seen that the Flemings were numerically superior in 1947, and this factor has been a constant in Belgium since prior to the 1831 constitution. Moreover, it is in direct conflict with the fact that it has been the Flemings, and not the Walloons, who have agitated over the years for language rights. In itself, reconciliation of this apparent contradiction will provide important clues to the causes of the present unrest.

#### A. *The Constitution.*

The Constitution of Belgium dates from February 7th, 1831, and its only provision concerning languages remains unaltered.

Article 23: The use of languages spoken in Belgium is optional. This matter may be regulated only by law and only for acts of public authority and for judicial procedure.<sup>39</sup>

It is readily apparent that this article provides no guarantees whatsoever for the use of languages in the country. In fact, it can be said that the very impotence of article 23 has led to much of the difficulty which exists today. Governments, aware that no ready answer to the language conflict exists in the Constitution, have found it necessary, especially since World War I, to enact many pieces of stop-gap legislation designed to fill out the constitutional skeleton. Thus, with the inevitable variation in policies and philosophies of successive cabinets, the measures have resulted in a confusing mixture of detailed restrictions and freedoms, and it is best to describe these at this point in an historical perspective.

#### B. *History of Language Usage.*

##### (a) 1795-1931<sup>40</sup>

Shortly after the French Revolution, Belgium came under

<sup>39</sup> Peaslee, *op. cit.*, footnote 3, Vol. 1, p. 155.

<sup>40</sup> Keesing, *Contemporary Archives*, Vol. III (1937-1940), p. 3645 *et seq.*

French control and, under Napoleon I, French became solidly entrenched as the administrative and cultural medium. This lasted until after Waterloo, when Belgium was joined to Holland; and in 1819, the last Dutchman to rule the future Belgium made Dutch the only legal language. However, following the Revolution of 1830, the Dutch-Belgian connexion was broken and Belgium gained its independence. The period from 1830 to the outbreak of World War I is well summarized by Vivian Lewis:<sup>41</sup>

. . . control went to the *francophones* and the Catholic clergy, [and] Dutch, the language of the Calvinistic oppressor was suppressed. . . . With Parliament elected by limited suffrage, power was centered in the hands of a few *francophone* notables. There appeared no redress, despite often appalling conditions for Flemish speakers. In 1873, two Flemings were judged guilty of murder by a court which spoke only French, and it resulted in the first halting steps toward bilingualism, when both languages were made legal in courts of law.

Thus it can be seen that, from as early as 1795, and despite the brief *interregnum* of Dutch control, French, though its speakers were a numerical minority, became well-established as the language of the *arrivistes*. Every Belgian became well aware of the fact that, in the new industrial Belgium, the way to the top of its sharply-pyramiding economic structure was hopelessly barred without fluent French. The electorate dealt with its representatives and administration exclusively in French, and, perhaps of even greater importance in a nineteenth-century western European state, social prominence was impossible without liberal use of the "phrases précieuses" of the time. Flemish was *gauche*, and that was that. It is little wonder, then, that throughout these years there developed a progressively more vehement movement by the passionate nationalists of the Flemish majority. The movement was ultimately fruitful, but by then the animosity had been so deeply engrained in successive generations that it would not easily be wiped out.

In 1914, Flemish was permitted in the schools, but not made mandatory. Then, in 1920, agitation for political and cultural equality began to have effect. In that year, Flemish was legally equated with French as the official language of business; in 1921 and again in 1923, laws were passed to officially make the administration bilingual; and, finally, in 1931, Flemish was declared the official language of instruction at the University of Louvain. These pieces of legislation, however, were only to be the halting first steps in the emancipation of Flemish, and in 1932 began the concerted changes which persisted into the 1960's.

(b) 1932-1960<sup>42</sup>

On March 5th, 1932, the Belgian Parliament passed a bill

<sup>41</sup> *Op. cit.*, footnote 37, at p. 298.

<sup>42</sup> Keesing, *op. cit.*, footnote 40, Vol. I, p. 204 *et seq.*, and Vol. III, p. 3645 *et seq.*

which conferred equal rights upon the Flemish language in public life by officially separating, for the first time, the two language regions. Flemish became the official language in Flanders, French was declared the official language of Wallonia, and Brussels, Brabant and all Government departments were made bilingual. A significant feature of the legislation was its overall expression of conflicting policies: regional unilingualism coupled with a hope for future national bilingualism. Thus, it provided for protection of the language minority in each region in the form of allowing for administrative, educational and other services in that language where the minority population amounted to 10% or more of the total population of the locality. However, the unilingual character of the legislation dominated, and it marked the beginning of a policy of division and exclusiveness which, as will be seen, resulted in a trap for future governments. Further legislation in the years prior to the war was less significant but three items in particular deserve some mention. In 1935 the bilingual status of the courts was solidified in terms of the Act of 1932, that is all cases of first instance were to be heard in the language of the region (unless both parties were of the other language group) and appeals were to follow the language used in the lower courts. Moreover, between 1936 and 1938, the Belgian armed forces became affected by this new trend towards strict bilingualism, and army officers were given the right to study military science in Flemish. Finally, a Flemish Academy of Science was created in 1936, and in 1938 the Flemish Royal Academy was established.

The war and reconstruction put a halt to the concentration on language matters which had marked the pre-war years, and despite a serious clash in the mid-1950's between church and state over control of education, the language issue remained relatively dormant. Before proceeding to the development of conflict over the past nine years, however, it is of value to review the official status of languages in 1960. By the laws of 1932 and thereafter, in spite of the official status of languages in both Flanders and Wallonia, some exceptions were made. Thus, as pointed out above, local governments were to provide the necessary language facilities, especially schools, if the census showed a sufficient influx into the region of people speaking the other language. In the broadest sense, this did not particularly affect the regions themselves, for cross-migration was rare. It did, however, strongly affect the bilingual districts, and, in particular, Brussels. As will be presently seen, Brussels has been the battlefield of the 1960's with only occasional skirmishes elsewhere.

(c) 1960-1968

A brief sketch of economic conditions<sup>43</sup> is necessary for an

---

<sup>43</sup> See Bilingual Doubletalk (1961), 201 *The Economist* 352.

understanding of the present cultural conflict in Belgium. In 1960 the birthrate in Flanders was approximately four times that of Wallonia. The traditionally agricultural north, despite a brief upsurge of industrial activity during the 1950's, especially in the Antwerp area, found itself still unable to attract the necessary capital for true industrial growth. This scarcity of capital had two major effects. First, there was a growing outflow of labour to the south. Considering that, since 1932, Flemings had received all their schooling in Flemish, an entire generation grew up with a pure Flemish culture and outlook. Yet as they migrated south, and in particular to the Brussels area, they discovered that French was still a necessity for economic success. Thus, old resentments were regenerated and new protests began. It is interesting to note, in the light of the Canadian experience, a comment made at the time by a correspondent:<sup>44</sup>

The Flemings are deaf to the plea that Belgium needs this world language [French] for the foreign contacts upon which its position and its economy depend.

The second effect of Flemish economic disenchantment was the readiness to lay the blame on the French money markets of Brussels for their failure to provide the necessary capital for the industrial development of Flanders. Even though the government, administration, judiciary and even the schools had been officially realigned to give equal status to the Flemings, the fact remained that, as in all the time since independence, a French bourgeoisie still controlled the economy of the country. Thus, the economic resentment was easily joined to a cultural one.

Finally, at this time there persisted a general downward trend in the economy and even industrial Wallonia was in a depressed condition. The French residents of the south therefore found it difficult to turn a sympathetic ear to Flemish claims of economic and cultural second-class citizenship.

The Lefevre-Spaak government was elected in 1961, amid protests, demonstrations (a march on Brussels by some 60,000 Flemings in October, 1961) and the rapid growth of nationalist parties on both sides: the Flemish *Volksunie* which sought the establishment of federalism as a cure to the conflict, and the separatist *Mouvement populaire Wallon*.<sup>45</sup> Brussels became a meeting place for these forces, and as the numerically-superior Flemings began to gain the advantage they had sought for so long, there developed a strong reaction and entrenchment among the Walloons. The sequence of events from the time of the 1961 elections to the present affords a remarkable example of intransigence in a cultural dispute.<sup>46</sup>

<sup>44</sup> *Ibid.*

<sup>45</sup> Lewis, *op. cit.*, footnote 37, p. 299.

<sup>46</sup> Keesing, *op. cit.*, footnote 40, Vol. XIV, p. 19601 *et seq.*

On October 9th, 1962, the Belgian Senate gave final approval to the now-famous Collard laws, named after the Minister of the Interior in the Lefevre government who introduced the bill. The bill virtually erased earlier legislation on languages and attempted to create, once and for all, a static language situation in the country. Its major provisions were as follows:

1. It replaced the 1932 system whereby the linguistic border could vary according to periodic census changes, and declared the east-west Menin-Tongeren line to be the language border between Flanders and Wallonia.
2. Brussels, along with its surrounding suburbs was declared a bilingual "loop", north of the line. It was provided that if, in any locality within the loop, the French population should rise to 10% or more, appropriate language facilities were to be provided for the minority.
3. Flanders was declared officially Flemish, with some language guarantees to the French minority; and Wallonia was declared officially French with similar guarantees to the Flemish minority.
4. The Roman Catholic University of Louvain, although located in Flanders, was made officially bilingual.<sup>47</sup>

These laws marked a breakdown in the development of a bilingual nation which had been anticipated in 1932, and they reflected a general retreat to the high ground of policy. They instigated a new approach to the problem: highly restrictive unilingualism with an attendant obsessive care to avoid offence to either group. Their effect, consequently, was to entrench the growing divisions between French and Flemish and, in particular, to establish an explosive situation in Brussels. From April to October, 1962, while the bill was being debated by the Senate, Flemish extremists demonstrated in Antwerp and elsewhere in Flanders, particularly in protest of church services not conducted in Flemish. In October, 1962, shortly after passage of the Collard laws, thousands on both sides marched on Brussels to demonstrate their dissatisfaction with the new laws. From January to March, 1963, disorder over the linguistic question spread to the universities, and especially to Louvain where Flemish students demanded the abolition of French instruction. Finally, the disturbances reached an absurd culmination when, on March 31st, 1963, hundreds of "moderates" seeking a "united Belgium" demonstrated in Brussels in protest against extremists on both sides.

A compromise program of legislation was finally introduced on June 7th, 1963, in an attempt to cool the growing violence. Predictably, its only real effect was to strengthen animosities on both sides. The very detail of the legislation illustrates clearly the

<sup>47</sup> *Ibid.*, p. 19602.

inescapable trap the government had fallen into by adopting a strong policy of division. It provided that:<sup>48</sup>

1. The nineteen communes of Brussels should be expanded to twenty-five in order to take in six Flemish communes in which the French population had increased sharply since the war.
2. All "language facilities" (that is bilingual notices) provided in any part of the Brussels area apart from the twenty-five communes, should be abolished and only Flemish be used.
3. Official correspondence in both north and south should be conducted *only* in the language of the region.
4. The second language should be taught in primary schools of both regions to children over ten, and in primary schools in the Brussels area to children over eight.

Riots took place on June 22nd in Wemmel, one of the six to-be-incorporated communes, and on June 29th in Wezembeek. Moreover, the Flemish wing of Lefevre's own party refused to have anything to do with the bill. Consequently, the government proposed a compromise.

1. There would be no integration of the six communes.
  2. There would be special guarantees to their French-speaking population.
  3. The whole problem would be reviewed after three years.
- This "compromise" was rejected by the socialist wing of Lefevre's party as being too transitional, and the Prime Minister, despairing of ever arriving at a mutually-acceptable solution, submitted his resignation on July 2nd, 1963. King Baudouin refused to accept it, however, and Lefevre, his ministers, and all party leaders went into seclusion on July 3rd. Their solution, arrived at after fourteen hours of debate, was announced on July 5th: the six communes were to remain Flemish, and their French population was guaranteed French schools, as well as the right to use French in dealings with the administration. The amended bill was finally passed on July 12th and came into force on September 1st, after a summer of riots and demonstrations. It affected barely 100,000 inhabitants out of a population of nearly nine million.

It is important to note here one aspect of all three pieces of legislation. The Prime Minister and his cabinet showed remarkable political courage in approaching the language issue at all. While it is true that the results of the government's efforts were unfortunate, the economic difficulties outlined above had bred a situation which, by 1962, had become close to intolerable. To ignore it further would have no doubt allowed far more serious divisions to develop and there was even some likelihood of open warfare between extremists on both sides. In any event, the final

---

<sup>48</sup> *Ibid.*, p. 19602.

compromise had some cooling effect, for from September 1963 to early 1965, matters remained as they were and, save for the usual isolated activities of extremists on both sides, disturbances were at a minimum.

At the time of the passage of the Collard laws, in 1962, a Constitutional Revision Committee had been established. Its debates and its researches over the next three years were often marked by overt conflicts, but it finally handed down its report on February 13th, 1965. The new constitutional provisions are too lengthy to detail here, but it can be stated briefly that the committee recommended entrenchment in the Constitution of four language districts (Flanders, Wallonia, bilingual Brussels and a German-speaking district on the German border), as well as administrative, parliamentary and judicial guarantees of language protection. It also recommended the establishment of a permanent commission to advise on means of harmonizing the language differences in the Brussels area.<sup>49</sup>

On the basis that the successful party would be specifically empowered to proceed with the reforms proposed by the Committee, elections were held on May 23rd, 1965. The supporters of the new amendments were defeated and, although his coalition won a bare majority, Lefevre resigned on May 24th, staying on only as caretaker until Hamel took over on July 12th. The new government rejected the proposed amendments and sought new bases upon which to proceed. Unsuccessful in its search, Hamel's cabinet resigned only seven months later, and, after another prolonged (five-week) political crisis, a new government was formed. In Hamel's case, language had been only one contributing factor to his government's downfall. High on his list of problems had been a strike by doctors across the country and miners' strikes in the south. However, it is difficult to refute Vivian Lewis' analysis that the activities of the doctors and the miners could be traced to the by-passing of the normal decision-making process in the language dispute. Self-help in a democracy can become habit-forming.<sup>50</sup>

In any event, throughout the fall of 1965, disturbances (again, in respect of masses conducted in French) by Flemish extremists continued in the north; and on November 10th there was a violent battle in Brussels between competing Flemish and Walloon demonstrations.

The activities of the Vanden Boeyants government on the language issue, from March 1966 to February 1968 may be briefly stated.<sup>51</sup> On June 23rd, 1966, a bill was passed which established a Permanent Commission for Improvement of Re-

<sup>49</sup> Keesing, *op. cit.*, footnote 40, Vol. XV, p. 20975.

<sup>50</sup> Lewis, *op. cit.*, footnote 37, p. 296.

<sup>51</sup> Keesing, *op. cit.*, footnote 49, p. 21600.

lations between the Linguistic Communities, and which proposed a linguistic "armistice" for two years.<sup>52</sup> Both proposals were undermined by renewed Flemish demands that the French section of the University of Louvain be transferred to Wallonia and, for the first time, an anti-clerical tone entered the language dispute in demonstrations at the University in May.

Acts of terrorism mounted (for instance a hand grenade thrown into the house of the Minister of the Interior, June 9th, 1966), and the leader of the Flemish Liberation Army (V.V.L.) claimed his membership to be over 2,000 and boasted that the Army's stockpile was sufficient for a full-scale civil war.

Finally, on February 7th, 1968, the language issue brought down its third government since 1965. Despite four days of riots at the University of Louvain and strong demands from several quarters that the University be split, the Prime Minister refused to accede and, along with his cabinet, resigned. The succeeding government has had, since that time, no less a problem dealing with the University issue as well as with renewed conflicts in Brussels.<sup>53</sup>

### C. *Conclusions.*

In the preface to the 1968 edition of his study, *A History of the Flemish Movement*,<sup>54</sup> Shepard B. Clough makes the following remarks:

Over the years the Flemings have obtained all the legislative safeguards imaginable for their language. Since 1932 Belgium has been divided into linguistic regions and the language of the region . . . has become the exclusive language for all governmental business and for education. . . . So exclusive have the languages become that if a child residing in the Flemish region is educated in schools in the French speaking region, that child must pass all his examination in the language of his region of residence. So rigid have the laws made the use of languages that even the names of streets are in only one language.<sup>55</sup>

The comments come from a man who, in 1930, published a work which laid out in detail the grievances of the Flemings and which made clear that he was well in tune with the general sentiment in Belgium—as evidenced by the Act of 1932. But the above was written in 1967, and the tone of bewilderment is obvious. Surely, he may ask, this is not the result which was wanted when Flanders set about to gain cultural recognition. Clearly, a country the size of Belgium cannot survive such a picayune partition of cultures, where language protocol is more minutely examined than govern-

---

<sup>52</sup> *Ibid.*, Vol. XVI, p. 22823.

<sup>53</sup> Montreal, *The Gazette*, Thursday, December 11th, 1969.

<sup>54</sup> P. ii.

<sup>55</sup> *Ibid.*, p. iii.

ment accounts. This, however, is the status quo. And, compared to Switzerland, it is inconceivable that Belgium can long survive. Belgium has fewer constitutional guarantees than has Switzerland; but on the other hand, its legislation on the issue is far more diverse. Religion in Belgium, as in Switzerland, is not a factor in language division. The vast majority of the country is Catholic, the only possible variant being the fact that Flanders is more devout in its practice. The actual composition of languages is not at all comparable to Switzerland, there being in Belgium no large, overwhelming majority of one language. Finally, there exists in Belgium a clear case of economic disparity between the two groups, where there is no such economic complication in Switzerland. These few points of comparison yield little in the way of guides to both the causes of, and solutions to, the Belgian language conflict, but they do offer some insight into the variables inherent in such a conflict.

The Swiss *do* have their separatists: a small, strongly nationalistic group in the Jura region of the Canton of Basel. McRae dismisses their activities with the simple statement that:<sup>56</sup>

... the Jurassiens have developed a conception of intense, self-conscious nationalism that is most untypical of Swiss tradition.

Not so the Belgians, both French and Flemish. With them, a "conception of intense, self-conscious nationalism" has become a way of life, and the causes of this development, as stated at the outset, are difficult to pinpoint.

Three factors, however, are quite clear: the intensity of Flemish demands, the reactions of the French community when those demands were met, and the over-reaction, to both sides, of the government.

The conclusion seems inescapable that the Belgian government in its legislation dealt itself into a hole. Had the constitution been more precise, or had Flemish demands been less voluble, it is probably true that the degree of separation-with-equality which exists today would never have come to pass. Unfortunately, when the Parliamentary representation of the demanding group is in a majority (according to the 1947 census, Flanders had 104 representatives, Wallonia had seventy-six and Brussels had thirty-two) and when those demands can be met without offending constitutional provisions, it is politically impossible for a government not to heed them.

Therefore, we conclude with a simple progression: the long-standing cultural and economic grievances of a large linguistic group are presented and a government acts upon them; a competing block reacts to the concessions made to its rivals, and, in an attempt to balance the equities, the government over-legislates to the point where its very democratic foundations are

<sup>56</sup> McRae, *op. cit.*, footnote 4, p. 60.

shaken. Perhaps the only solution, as advocated by the Flemish *Volksumie* and some commentators, is a federal state. This will be considered below in the light of the Canadian problem, but it is obvious that no system of federation of separate states in Belgium could now achieve any greater degree of regional unilingualism.

Finally, it is well to consider the possibility of constitutional change. Wigny points out that the plethora of language legislation now in force is reconciled to an ordinary reading of article 23 only with an enormous effort of twisted language.<sup>57</sup> On the other hand, he states optimistically that there is no reason an uncompleted policy should be halted on the grounds of constitutional technicality. His view is that given ten more years and a state of complete unilingualism in both regions, in fact as well as in law, there is good reason to expect a reverse swing of the pendulum and new demands for a more bilingual Belgium.<sup>58</sup> In the light of all of the above, this seems unlikely. Witness some results of a survey conducted in 1963 which asked, among other questions, "Do you approve of the linguistic policies of the Government?"<sup>59</sup>

	% of total interviewed
Wholly	9.27
Partly	22.51
Not at all	50.21
No opinion	18.01

In spite of the fact that a surprisingly large percentage had no opinion, the disapproval of 50% of the sample is a telling statistic. The figure was higher in Wallonia (64.61%) and in Brussels (67.41%), than in Flanders (32.77%),<sup>60</sup> but it is interesting to note some comments amongst that 50%:

A quarrel among idiots in which 99.99% of Belgians have no interest. But what a discredit to us in the era of the Common Market!

The government has been had by those who make the most noise.

Why not just let the few extremists scream?

Are we going to transplant the Berlin wall into Belgium?

No sense in dividing the country in two, good will and two languages everywhere.

Exclusively Flemish = zero. Exclusively French = zero. We are as many times men as the languages we speak.

I am a long-time *Bruxellois*. I speak Flemish at home, French at work and both languages elsewhere. That's what Brussels is!

These comments are representative of attitudes amongst all three groups, and one trend is clear in other statements as well as these: the electorate condemns its government for over-reacting to extremism and fearing a dilution of its power through federalism.

<sup>57</sup> Wigny, P., *Propos Constitutionnels* (1963), p. 157.

<sup>58</sup> *Ibid.*, p. 157.

<sup>59</sup> La politique du gouvernement devant l'opinion publique (1963), p. 29.

<sup>60</sup> *Ibid.*, p. 34 *et seq.*

In the light of this, it is impossible to share Wigny's optimistic view of the policy of regional unilingualism.

#### IV. *Canada.*

No amount of historical review, within the limits and restrictions of a study of this size, can possibly do justice to the checkered career of language rights in Canada. The results of that development can be seen at a glance: a fundamentally English state, with a more or less unified bloc of French-speaking people in the Province of Quebec, and French "colonies" scattered about the country from New Brunswick to British Columbia. As can be easily determined from the presence of section 133 in the British North America Act,<sup>61</sup> the Fathers of Confederation considered the language question to be one of some importance, and they attempted to provide for it in as thorough a manner as could be permitted by the temper of mid-nineteenth Century Canada. No doubt Georges-Etienne Cartier and his Lower Canada brethren felt that Confederation would be a foundation for the spread of the French language in North America, for, like everyone else, they viewed the West of the continent as virgin territory and therefore easily available for bilingual development.

Their optimism was initially justified by the Manitoba Act,<sup>62</sup> which, while allowing for the entry into Confederation of the first Western province, provided that either the English or the French language could be used in the Legislature of the new province, and in its records and journals, as well as in any pleading or process for any court of Canada or of the province. It seemed, from this, that Manitoba would develop its language base upon the same lines as were set out in section 133. This provision, however, could not long survive the rapid growth of the English-speaking population in Manitoba, nor the general anti-Roman Catholic feeling which grew in Ontario and moved westward in the 1880's. In 1890 the English Language Act<sup>63</sup> was passed by the Legislature, and English became the sole official language of the province. It is submitted that, at this point, any hopes of a unified western expansion of both languages came to an end, and to this day Western Canada remains a very strong bloc of English-speaking people who are often bewildered and sometimes angered by the extent to which this country tends to dwell on a language "problem" which never seems to affect them directly.

The following analysis will concern itself with the present-day legal status of languages in the country, with observations on the non-legal status, and with some examination of the recent report

<sup>61</sup> *Supra*, footnote 9.

<sup>62</sup> S.C., 1870, c. 3, s. 23.

<sup>63</sup> S.M., 1890, c. 14.

of the Royal Commission on Bilingualism and Biculturalism, and its legislative consequence, The Official Languages Act.<sup>64</sup> It is hoped that a review of these items will provide a substantive basis upon which to effectively analyze the Canadian experience, both present and future, in terms of the conditions in Belgium and Switzerland; and it is further expected that the comparison will lead to some humble recommendations for the future.

#### A. *The Constitution.*

The British North America Act, 1867<sup>65</sup> contains one major provision which deals exclusively with language.

Section 133: Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

The detail of the section would lead the casual observer to conclude that it consists of a closed book on the language issue. This position may certainly be argued, but, as will be seen below, the section is in many respects unclear. Further provisions of the British North America Act which have, or might have had, some bearing on language rights, are sections 91(1) and 93. The former was added by the British North America (No. 2) Act, 1949, and reads *inter alia* as follows:<sup>66</sup>

Section 91: . . . it is hereby declared that (notwithstanding anything in this Act), the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,

1. The amendment from time to time of the Constitution of Canada, except as regards . . . the use of the English or the French language. . . .

Section 93 says nothing about languages, but it is of interest because it provides for Provincial jurisdiction over education, subject to the proviso that:<sup>67</sup>

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

<sup>64</sup> *Supra*, footnote 2.

<sup>65</sup> *Supra*, footnote 9.

<sup>66</sup> (1949), 13 Geo. VI, c. 81, s. 91(1).

<sup>67</sup> *Ibid.*

This proviso has been held not to apply to languages by the Judicial Committee of the Privy Council in *Trustees of the Roman Catholic Separate Schools for the City of Ottawa v. Mackell et al.*,<sup>68</sup> and while it is true that, upon a plain reading of the section, this conclusion is not surprising, the case raises a key point which will be considered below in respect of Bill C-120, namely, the restrictive nature of section 133 of the British North America Act. For the moment, it is interesting to note that, despite the fact that the Separate Schools Act<sup>69</sup> which preceded the Union, empowered the appellants to determine the "kind and description" of separate schools to be established, the Board held that language legislation by the provincial authority superseded this power.<sup>70</sup>

Thus it is clear that the courts have not been inclined to extend language rights beyond the ambit of section 133, and it appears that, at present, the power of Parliament or the Provinces to legislate in respect of languages is determined only by the limits imposed upon their competence under sections 91 and 92 of the British North America Act. It is necessary, therefore, to proceed with a brief examination of the exercise of that power and outline the *de jure* status of language rights in Canada today.

## B. Present Status of Language Rights.<sup>71</sup>

### (a) In the Constitution

Present language guarantees can best be delineated in terms of section 133, and it provides for use of either language in Debates, Records and Journals of both the Federal Parliament and the Legislature of Quebec. Beyond that, no guarantees, as such, exist, but several Provinces (for instance New Brunswick) have made provisions for language usage at the legislative level.

The situation in the courts is far less certain. It is beyond doubt that either English or French may be used in the courts of Quebec and in "the Courts of Canada" established under the British North America Act.<sup>72</sup> Several questions, however, are left open by section 133. Generally speaking, it would appear that Federal administrative tribunals are not included; and provincial courts established under section 92 (14) of the British North America Act, but which are designated as courts of exclusive competence over matters of Federal jurisdiction, are nevertheless not *ipso facto* bilingual. This conclusion was arrived at, as a matter of

<sup>68</sup> [1917] A.C. 62.

<sup>69</sup> (1863), 26 Vict., c. 5.

<sup>70</sup> *Trustee of the Roman Catholic Separate Schools for the City of Ottawa v. Mackell, et al.*, *supra*, footnote 68, at p. 74.

<sup>71</sup> Much of this section is drawn from an excellent short article, *Language Guarantees and the Power to Amend the Canadian Constitution*, by A. L. C. de Mestral and William Fraiberg (1966-67), 12 McGill L.J. 502.

<sup>72</sup> I.e., the Supreme Court of Canada; the Exchequer Court of Canada; Admiralty Court; Prize Court; Courts Martial and the Courts of the Yukon and Northwest Territories.

conjecture, by de Mestral and Fraiberg<sup>73</sup> and their judgment has been borne out by recent, almost simultaneous decisions of the Supreme Courts of British Columbia and New Brunswick.

In *Regina v. Watts, ex parte Poulin*,<sup>74</sup> Verchere J. of the British Columbia Supreme Court heard an application for a writ of prohibition against a West Vancouver magistrate, seeking to prevent him from trying a criminal charge against Mrs. Poulin in English. The accused spoke only French and it was argued on her behalf that, since section 91(27) gives Parliament exclusive jurisdiction over matters of criminal law, and since section 92(14) expressly gives the Provinces jurisdiction over matters of *civil* procedure in their courts, by implication, the phrase "Courts of Canada established" in section 133 should be extended to include provincial courts exercising an exclusively Federal jurisdiction. This view was rejected principally on the ground that a Magistrate's Court in West Vancouver, being established under the Magistrates Act<sup>75</sup> is clearly a provincial court, and its exercise of a Federal jurisdiction under the Criminal Code<sup>76</sup> does not bring it within the ambit of section 133 because the Code itself defines a Magistrate as one appointed under provincial law. Verchere J. went on, however, to add that the Statute of 4 Geo. II, c. 26, which decreed that all court proceedings in England were to be conducted in English, is in force in British Columbia by virtue of the English Law Act of November 19th, 1858.<sup>77</sup> Therefore, above and beyond any negative implication that French *cannot* be used in British Columbia courts, there is an affirmative principle that English *must* be used.

*Regina v. Murphy, ex parte Belisle and Moreau*<sup>78</sup> is interesting because on a similar application—in this case, one for certiorari to quash a lower court decision after its proceedings had been carried on entirely in English—and in a decision handed down only one week after *Regina v. Watts*,<sup>79</sup> the Appellate Division of the Supreme Court of New Brunswick reached the same conclusion on virtually the same grounds. There was, however, one variation: the court stated, *inter alia*, that it was prepared to accept the argument that Parliament *could* legislate in respect of languages used in criminal proceedings, under section 91(27); but, since it had not, the same arguments as those put forward in *R. v. Watts* prevailed and the motion was dismissed.

Therefore, while there may still be room for argument in respect of the exercise of a criminal jurisdiction by provincial

<sup>73</sup> *Op. cit.*, footnote 71, at p. 505.

<sup>74</sup> (1968), 69 D.L.R. (2d) 526 (B.C.S.C.).

<sup>75</sup> S.B.C., 1962, c. 36.

<sup>76</sup> S.C., 1953-54, c. 57, s. 2(10)(b) and Part XVI.

<sup>77</sup> R.S.B.C., 1960, c. 129.

<sup>78</sup> (1968), 69 D.L.R. (2d) 530 (N.B.S.C. App. Div.).

<sup>79</sup> *Supra*, footnote 74.

courts,<sup>79A</sup> it appears that no claim can be made under the British North America Act for the use of French in provincial courts when they exercise other Federal jurisdictions (for instance in respect of Citizenship or Bankruptcy).

Finally, section 133 is inapplicable to the administrative branch of government; and as pointed out above, the British North America Act in no way provides for language use in schools.

(b) *In Legislation*

As has already been mentioned, the power to legislate as regards languages is ancillary to the powers divided between the Federal and provincial authorities under sections 91 and 92 of the British North America Act, and this power has been exercised by both levels of government in a variety of ways over the years.

At the Federal level, we note *inter alia* provisions in the Criminal Code<sup>80</sup> for mixed juries, rights to an interpreter under various statutes,<sup>81</sup> and requirements for publication of bilingual notices.<sup>82</sup> Moreover, it should be noted here that, although no right appears under the Constitution to have proceedings under the Citizenship Act<sup>83</sup> conducted in either language, the Act provides that an applicant for citizenship must satisfy the court of the adequacy of his knowledge of either French or English.<sup>84</sup> It may be argued that this provision is *prima facie* limited by section 133 of the British North America Act and that only Quebec courts may be so satisfied in French. The implication is obvious, however, that any provincial court exercising this jurisdiction is empowered by this Act to conduct proceedings in either language.

The most prominent example of provincial legislation concerning languages under the ancillary doctrine is education, and recent developments in the Province of Quebec in this regard deserve mention at this point. In the fall of 1968, the *Commission Scolaire* of St. Leonard, a northern suburb of the City of Montreal, pursuant to its authority under section 203 of the Education Act<sup>85</sup> declared that henceforth all education in its district would be conducted in French only and no English education would be available. This measure directly affected some 200 English-speaking students, and led their parents and two members of the Commission to seek an injunction against this ruling.<sup>86</sup> In his decision,

<sup>79A</sup> See e.g., the decision of the Supreme Court of Canada in *Miller and Kyling v. The Queen* (1970), 10 D.L.R. (3d) 785.

<sup>80</sup> *Supra*, footnote 76, ss 535, 536, 544, 579 and 580.

<sup>81</sup> E.g., the Canada Election Act, S.C., 1960, c. 39, s. 45(11).

<sup>82</sup> *Ibid.*, s. 25(2); see also The Civil Service Act, S.C., 1960-61, c. 57, s. 39.

<sup>83</sup> R.S.C., 1952, c. 33.

<sup>84</sup> *Ibid.* s. 10(1)(e).

<sup>85</sup> R.S.Q., 1964, c. 235.

<sup>86</sup> *Perusse et Papa v. Commissaire d'Ecole de St. Léonard de Port-Maurice*, S.C. Montreal, Sept. 25th, 1968, 754, 206.

Nichols J. noted that nothing in the law on public education in Quebec prevented the decision to eliminate English-language education, and he pointed out that religious, not linguistic, considerations had always been at the base of education legislation in Quebec. On the issue of discrimination, he conceded that the decision might be discriminatory, but pointed out that most administrative decisions dealing with public services usually are discriminatory, and pointed to zoning by-laws as an example.

The Government of Quebec did not intervene directly at this time but instead proposed legislation to guarantee language rights in education. This legislative proposal, called Bill 85, was put forward towards the end of 1968 but very quickly dropped as a result of protests from both sides. The English-speaking population of Quebec protested that the proposal did not unequivocally guarantee parents' rights to have their children educated in the language of their choice, while the French protest was to the effect that such an Act would only aggravate an already difficult problem by putting into law a privilege which had previously been granted to the English minority of Quebec through the tolerance of the French population. In an interesting review of this dispute,<sup>87</sup> Patrice Garant concludes that local authorities should be allowed to choose the language of instruction. Moreover, that writer concludes that Quebec has done very well in protecting, without specific law, the language rights of the English minority and any further guarantee should not be forthcoming until some reciprocal guarantees can be seen for the French minorities of Sudbury, St. Boniface, Gravelburg, Maillardville and so on.

Nevertheless, the Quebec Legislature did not give up with the death of Bill 85, and in the fall of 1969 proposed a new piece of legislation which would accomplish what had been tried in late 1968 with Bill 85. This new legislative project, called Bill 63, was ultimately passed by the Quebec Legislature following a lengthy filibuster and the subsequent abandonment of the Liberal party by René Levesque and Yves Michaud. Mr. Levesque's principal objection to the bill was that it pretended to be what it was not, and he compared it to the taking of cod liver oil in orange juice: those things which are difficult to swallow are best camouflaged.<sup>88</sup>

A review of the act tends to give a great deal of support to Mr. Levesque's arguments. While it calls itself "An Act to Promote the French language in Quebec" it merely consists of four amendments to Quebec legislation already in existence, allows for the use of French in schools, the promotion of the use of French by immigrants both before and after they arrive in Quebec, and

<sup>87</sup> *Les droits fondamentaux en matière d'enseignement: la question linguistique* (1969). 29 R. du B. 520.

<sup>88</sup> *Débats de l'Assemblée nationale du Québec*, Vol. 8, No. 74, 30th Oct. 1969, pp. 3454-3455.

gives more extensive powers to the French Language Bureau which was established under section 14 of the Cultural Affairs Department Act.<sup>89</sup> It is obvious that what Mr. Levesque refers to is the fact that, while the act is full of affirmations for the French language, its real core is in paragraph 4 of section 2. That paragraph provides for the revision of section 203 of the Education Act 1964,<sup>90</sup> and empowers school commissioners to take the measures necessary to see that courses of study are given in the French language. However, in the following paragraph it is provided that:<sup>91</sup>

[Such courses] shall be given in the English language to any child for whom his parents or the persons acting in his stead so request at his enrolment; the curricula and examinations must ensure a working knowledge of the French language to such children and the Minister shall take the measures necessary for such purpose.

The Act therefore generally provides for the entrenchment of French as the official language of Quebec; but, in the process, it provides, for the first time, a legal guarantee to the English minority that it may, upon its request, have its children educated in English. Thus, the "cod liver oil" of a legal guarantee to the English minority is submerged in the "orange juice" of provisions for the preservation of the French language—most of which are in the main superfluous, since practice in the province had already made such a preservation quite secure.

In marked contrast, somewhat more precise and less veiled language legislation was assented to by the Legislature of Manitoba in July of 1970. With very little fanfare and apparently very little public discussion, the Legislature of that Province repealed section 258 of its Public Schools Act,<sup>92</sup> and substituted instead the provisions of Bill 113.

At the outset, the Bill officially makes French and English "languages of instruction in public schools", and then proposes a formula whereby instruction may be given in either language. Briefly, the Bill provides that where there are twenty-eight pupils in an elementary school, or twenty-three pupils in a secondary school, who could be grouped together for instruction, and whose parents desire them to be taught in either French or English, the Board of the school district, division or area *may*, and if the parents of the pupils in question petition the Board, *shall* group those pupils in a class and provide for instruction in the desired language. The Bill also provides that the Minister may in his discretion specify a language of instruction where there are fewer

<sup>89</sup> R.S.Q., 1964, c. 57.

<sup>90</sup> *Supra*, footnote 85.

<sup>91</sup> Bill 63: An Act to Promote the French Language in Quebec, assented to Nov. 28th, 1969, s. 2(4).

<sup>92</sup> R.S.M., 1970, c. 250.

than the required number of pupils.

In an apparent effort to ensure proper guidance for the Government in these matters, the Bill makes provision for the establishment of "Advisory Committees" of nine members each for each language, which will be known jointly as "Languages of Instruction Advisory Council", and to which the Minister may refer any matters pertaining to the new section 258. Needless to say, the Bill ensures that English may still be taught in any grade, and in fact, provides that English *shall* be taught in any class from grades four to twelve where French is the language of instruction; moreover, the Minister in his discretion may provide that French or English be the language of administration and operation of any particular public school.

It should be clearly noted that the Bill does not overlook other languages in the Province, and this would particularly apply to Ukrainian. The Bill provides that other languages may be used if authorized by the Board of the school district, division or area during religious teaching period, during any period authorized specifically for another language, or before or after regular school hours.

There is no doubt that Bill 113 is a major innovation in language legislation in Canada since public school education is the only viable source of effective bilingualism, not only in terms of the language specifically taught, but also in terms of the acceptance of the "other" language as a normal and natural part of the citizen's upbringing.

Nevertheless, Bill 113 as well as Bill 63 provide the foundation for mathematical squabbling on the issue of languages, and only time will tell whether the establishment of the Advisory Council will successfully overcome this obvious drawback. In any event, as will be noted below, both Bills provide a useful comparison to the use of language legislation in Belgium.

### C. *The Unofficial Use of Languages.*

This short outline serves mainly to review, very briefly, the distribution of languages in Canadian society, and much of the statistical data to follow was drawn from the *Report* of the Royal Commission on Bilingualism and Biculturalism.<sup>93</sup> According to the Census of Canada, 1961, the total population was 18,238,247. Dividing this figure into groups according to mother tongue yields these results:<sup>94</sup>

<i>Language</i>	<i>Total</i>	<i>% of population</i>
English	10,660,534	58.5
French	5,123,151	28.1
German	563,713	3.1

<sup>93</sup> *Supra*, footnote 1, Vol. I, Chapter II.

<sup>94</sup> *Ibid.*, p. 26.

Italian	339,626	1.9
Ukrainian	361,496	2.0
Other	1,189,727	6.4

The "other" group includes all language groups numbering 170,000 or less, for instance Dutch, Polish, Yiddish.

The one other pertinent and interesting statistic reveals the percentage distribution of the population of each Province by mother tongue:

<i>Province</i>	<i>English</i>	<i>French</i>	<i>Other</i>
Newfoundland	98.6	0.7	0.7
P.E.I.	91.3	7.6	1.1
Nova Scotia	92.3	5.4	2.3
New Brunswick	63.3	35.2	1.5
Quebec	13.3	81.2	5.5
Ontario	77.5	6.8	15.7
Manitoba	63.4	6.6	30.0
Saskatchewan	69.0	3.9	27.1
Alberta	72.2	3.2	14.7
British Columbia	80.9	1.6	17.5
Yukon and N.W.T.	50.6	3.8	45.6

Two obvious points emerge from these figures. The first is that, west of Ontario (and even, to some degree, in Ontario itself) the French language minority is of minimal numerical importance. And the second is that a significant fraction of the population of every province is not of English or French extraction.

But, more broadly, these statistics tend to indicate the possibility that the recent preoccupation with the issue of the "status" of the two "official" languages may be much ado about nothing. After all, outside of New Brunswick and Quebec, the French language factor leaves barely a mark; and, in the Western Provinces, the totality of other language groups overwhelms the French-speaking group.

None of this is denied, nor is there any intention that it should be ignored when considering the nature and effect of governmental action in the area of language rights. What does matter, however, is that close to one third of the population of Canada has French as a mother tongue—wherever that third may be located. The breakdown of population figures into provincial blocks serves little to alter that fact, although it goes a long way towards explaining the prevalence in those provinces where French is not a factor, of a fundamental ignorance on the language issue. Witness, for example, the following, taken from the Letters to the Editor column in a Vancouver newspaper. In this writer's experience it is far from atypical. In fact, it was chosen because it encompasses so neatly all of the less-than-telling arguments against French language rights which repeatedly arise both in the

press and in personal conversation:

I am as Canadian as anyone in the country, however I am a member of the unfortunate majority of Canadians who were debauched early in life by being taught the English language. We must really take our hats off to the French who, although defeated by Wolfe, are finally winning the war.

Of course our legislators are for bilingualism. Who is going to commit political suicide by opposing the Quebec bloc? Do you realize that your income tax is so high because everything has to be printed twice?

In this century at least, the business language of the world is mainly English, whether De Gaulle and Bertrand like it or not. We who speak English do not have to speak French to communicate with most of the world, it is they, on an English-speaking continent, who must speak English.

With this in mind I can see no point to prolonging the agony of this issue by pushing French down everyone's throat. We are a conglomerate nation, so is the United States of America, they have one language and it's about time we did too.<sup>95</sup>

It is important to note that the succession of misconceptions—the relating of the language problem to the Conquest, high taxes being due to the high cost of bilingual federal services, the belief that what is being attempted is “pushing French down everyone's throat”—are symptomatic of a widespread lack of understanding of the basic factors of language duality.

These factors were considered in great detail by the Royal Commission on Bilingualism and Biculturalism and its recent report is a remarkable compendium of materials, both subjective and objective, on the issue. Basically the Commissioners, in their *Report*, considered the term “bilingualism” as well as its nature and extent in Canada at the present time. They then reviewed historically the status of language rights in Canada and commented on the present *de facto* recognition of language rights. Finally, as is being done here, they reviewed the experience of several other states (including Belgium and Switzerland), considered the possibilities and the realities of the Canadian context, and proceeded to make several recommendations.

The Commissioners chose to define language rights in the following manner:

. . . language rights are measured by the degree to which a given language receives formal and practical recognition in the constitution of a country and in its political, social, educational and economic life.<sup>96</sup>

Their view, therefore, was to make realistic recommendations to the Federal Government as well as requests to the provincial authorities, which, in their opinion, would maximize the attainment of this definition. These recommendations might be paraphrased as follows:

<sup>95</sup> Vancouver, The Province, Feb. 27th, 1969, at p. 4.

<sup>96</sup> *Op. cit.*, footnote 1, p. 41.

1. That English and French be formally declared the official languages of the Federal courts, of Parliament and of the Federal administration;
2. That New Brunswick and Ontario also declare French and English to be official languages;
3. That any province whose official language minority reaches or exceeds 10% should declare French and English to be official languages of the province;
4. That all provinces allow French and English to be used in the debates of their legislatures, and that appropriate government services be provided to French minorities in French;
5. That bilingual districts be established throughout Canada;
6. That a Federal Provincial Review Council be established, whose main duties would be to decide when the provinces and the Federal Government are at loggerheads whether or not any given district should be declared bilingual;
7. That all of the provinces permit the use of both languages at the municipal level;
8. That special provisions for both languages be made for a Federal Capital Area;
9. That the right of Canadian parents to have their children educated in the official language of their choice be recognized in the educational systems of each province, the degree of implementation to depend on the concentration of the minority population;
10. That a new section be added to the British North America Act, to be noted as 93A, whereby education laws of the provinces might provide for the establishment of schooling in either of the languages where the minority warrants it;
11. That a new section 133 be included in the British North America Act, more or less encompassing all of the recommendations stated above;
12. That the Federal Parliament adopt a Federal Official Languages Act and that the Governor in Council appoint a Commissioner of Official Languages charged with ensuring respect for the status of French and English in Canada;
13. That each province adopt a similar Act.

Clearly, any recommendations made to the provinces really only take the form of a request and some of the recommendations seem to be somewhat at odds with reality—for example that which suggests an amended section 133, which is impossible as long as section 91 of the British North America Act remains in force. In any event, it is clear that the Commissioners' main concerns were in the areas of language minorities in certain unspecified areas of the country, and in the proper education of these minorities in

their mother tongue.

The Federal Government proceeded quickly upon these recommendations and in particular No. 12, and on July 7th, 1969, Parliament passed "An Act Respecting the Status of the Official Languages of Canada".<sup>97</sup>

#### D. *The Official Languages Act.*

Despite considerable protest and debate, both in and outside Parliament, the Federal Government saw fit to consider the implementation of the recommendations of the Commission on Bilingualism and Biculturalism as a matter of the highest priority, and as a result it enacted into law many of the recommendations of the Commission. For the purposes of this study, it will suffice to briefly outline the major provisions of the Official Languages Act, to comment on the issue of its constitutionality, and further to comment on the extent to which it will fulfill the hopes of the Commission on Bilingualism and Biculturalism. Its importance, however, cannot be overestimated, since it is our first Federal venture into language legislation *per se*, and its wisdom, both politically as a whole and substantively in its separate provisions, must be carefully examined.

Briefly, the Act makes these provisions: it declares French and English to be the official languages of Canada,<sup>98</sup> and provides that all notices,<sup>99</sup> rules, orders, regulations and by-laws,<sup>100</sup> promulgated or issued under the authority of the Parliament of Canada must appear in both languages. Section 5 provides for the issuing of all final decisions, orders and judgments of any judicial or quasi-judicial body established by Parliament in both French and English, where the circumstances require it. Section 8 of the Act lays out rules for the construction of Federal legislation, and section 9 provides that Government departments "in the National Capital Region or other central locations", or in "a federal bilingual district" must ensure that services can be provided in both official languages. Moreover, anybody providing services to "the travelling public", must ensure that those services are available in either official language anywhere in the country.<sup>101</sup>

Along with the parts of the Act dealing with the Federal Bilingual Districts, section 11 appears to be central to the Act and it provides that "every judicial or quasi-judicial body established by or pursuant to an Act of the Parliament of Canada . . . [and] every court in Canada . . . exercising . . . any criminal jurisdiction conferred upon it by or pursuant to an Act of Parliament of

---

<sup>97</sup> *Supra*, footnote 2.

<sup>98</sup> S. 2.

<sup>99</sup> S. 3.

<sup>100</sup> S. 4.

<sup>101</sup> S. 10.

Canada" has the duty to ensure that any person may give evidence before it in the official language of his choice;<sup>102</sup> and, if it is located in the National Capital Region or a Federal Bilingual District, it has the duty to ensure that, upon request by any party to the proceedings, it can make available facilities for simultaneous translation.<sup>103</sup> Moreover, "every court in Canada . . . exercising . . . any criminal jurisdiction conferred upon it by or pursuant to an Act of the Parliament of Canada" may, in its discretion, and if it appears to that court that the proceedings can *effectively* be conducted and the evidence can *effectively* be given and taken wholly or mainly in one of the official languages, at the request of the accused, direct that the entire proceedings be conducted in the official language of the accused's choice.<sup>104</sup> This latter provision, which originally was stated by itself in the first draft of the Act, was amended on second reading, and now the Act as passed on July 7th, 1969, also provides in sub-section (4) of section 11 that the above sub-section (3) "does not apply to the courts of any province until such time as a discretion in those courts or in the judges thereof is provided for by law as to the language in which, for general purposes in that province, proceedings may be conducted in civil causes or matters". The question of the use of either of the official languages in courts of law is still dependent on a sort of process of ratification by the provinces.

Finally, the Act provides for the establishment of the above-mentioned Federal Bilingual Districts, and establishes an Advisory Board to aid in the creation of the districts, as well as a Commissioner of Official Languages to act more or less as an ombudsman in respect of language practices by Government departments or agencies within the districts.<sup>105</sup>

The major arguments against both the constitutionality and the political viability of the Act were put forward in the debate on second reading by a splinter group from the Progressive Conservatives, with Mr. Jack McIntosh (P.C.-Swift Current-Maple Creek) being the spokesman.<sup>106</sup> In his opening remarks, Mr. McIntosh stated that: "I am opposed to this Bill as bad law, bad politics, and bad public relations. I believe it to be unconstitutional, undesirable and in the light of the other great problems confronting us, most frivolous."<sup>107</sup>

The arguments against the constitutionality of the Act raised by Mr. McIntosh are substantially the same as those stated by the Honourable J. T. Thorson, lately President of the Exchequer

<sup>102</sup> Ss. (1).

<sup>103</sup> Ss. (2).

<sup>104</sup> Ss. (3).

<sup>105</sup> S. 12 *et seq.*

<sup>106</sup> House of Commons Debates, Vol. 113, No. 151, pp. 8811-8812 and p. 8833 *et seq.*

<sup>107</sup> *Ibid.*, pp. 8811-8812.

Court of Canada, in a letter to the Prime Minister which was published in *Chitty's Law Journal*.<sup>108</sup> These arguments rest on two points:

1. The Act is, in effect, an amendment of the British North America Act, in that it seeks to extend the status of the French language and thus to effect "a basic change in the character of Canada";<sup>109</sup> or, in the alternative it seeks to extend the status of French beyond the clear limits of section 133, which status was "an essential condition of Confederation",<sup>110</sup> and in that way becomes an amendment to the Constitution. Therefore, it clearly contravenes section 91(1) of the British North America Act which prohibits any amendments "as regards the use of the English or the French language".
2. The Act is *ultra vires* the Parliament of Canada because the extension of the use of either language through legislation is repugnant to section 133.

There is published in the following issue of the same journal,<sup>111</sup> a letter from the Prime Minister replying to these arguments. Briefly, he states that:

1. The Act in no way affects or modifies the "permission conferred or the obligations imposed by s. 133 of B.N.A. Act".<sup>112</sup> And, since that section is the only one in the Constitution which deals with languages, the Act cannot be considered an amendment.
2. It is impossible to find any implied or expressed limitation in the language of section 133. Therefore, both Parliament and the Legislatures, acting within their respective jurisdictions "are competent to legislate so as to deal with language as a means of communication . . . so long as the legislation does not conflict with the principles contained in section 133".<sup>113</sup> The Act in no way conflicts with section 133 and cannot therefore be considered *ultra vires*.

It is difficult not to accede to the point of view of the Prime Minister. It appears that, for the major part of the Act at least, the government has attempted to place in a statute that which is already either fact or government practice, that is a bilingual public service, bilingual services offered by Canadian National Railways and Air Canada, bilingual publication of notices, and so on. It must constantly be borne in mind that throughout the Act only those boards, departments, agencies, courts and corporations prop-

<sup>108</sup> Proposed Official Languages Act (1968), 16 *Chitty's L.J.* 325.

<sup>109</sup> *Ibid.*, at p. 326.

<sup>110</sup> *Ibid.*, at p. 326.

<sup>111</sup> Proposed Official Languages Act (1969), 17 *Chitty's L.J.* 1.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*, at p. 2.

erly under the jurisdiction of Parliament are affected by its provisions. And even the "Bilingual Districts", which appear at first glance to be such a major innovation, are merely a recognition in statute form of government practice, that is where a minority language population warrants it, the government will ensure that any services under its jurisdiction will be provided in that language.

Its practical aspects, on the other hand, appear to leave a great many questions unanswered. Those portions of the Act dealing with a bilingual public service, for example, would seem to be redundant in the light of the fact that, except for its judicial aspects, the Act has merely made official existing practice. The bilingual nature of the administration, where required, is already a fact, or, if not, is rapidly becoming so. And, assuming French-language groups across the country grow to a size which warrants the label "Bilingual District", it is obvious that the necessary employees could be drawn from those very same groups.

This, therefore, is the basic condition of language rights in Canada, and of recent attempts to embody those rights in legislation. Viewed in the light of the Belgian and Swiss experiences, the pattern becomes very complex and its success depends upon a myriad of variables which have only barely been touched upon. It is possible, however, to perform some comparative analysis of the three situations and even to arrive at some tentative conclusions. This attempt must be prefaced, however, by three questions. Is the use of language in fact a "right"? If it is, does it require specific guarantees in a multicultural state? If so, need these guarantees be entrenched, or does legislation suffice?

#### E. *Three Questions.*

##### 1. *Is the Use of Language a Right?*

Obviously, the question whether language use enjoys the status of a "civil right" or a "human right" is central to the issue of language guarantees. If it can be so classified, then it becomes one of those things which a citizen of a democratic state considers inviolate, and by its very nature dictates the guarantees of it must exist. It is difficult however to find much parallel between language as a "right" and, for example, those rights entrenched in the first ten amendments to the American Constitution, although one possible exception to this general view might be the "due process" clauses under that constitution. It seems quite arguable that no "due process under law" can exist if the proceedings are in a different language from that of the parties. In any event, a survey of views taken of the nature of language rights reveals interesting contrasts.

In Switzerland, as Hughes points out,<sup>114</sup> the use of any of the

<sup>114</sup> Hughes, *op. cit.*, footnote 5, at p. 127.

three official languages is not regarded as a right vested in Swiss citizens—although Burkhardt's comment on article 116<sup>115</sup> clearly intimates a strong, if unwritten, *duty* on the part of citizens to tolerate such use. Under article 113, a right of appeal to the Federal Tribunal exists for Cantonal violation of certain constitutional rights (for instance secrecy of the posts), and early *arrêts* of that Tribunal excluded language usage from this provision. Thus it can be seen that in the formal sense, no right of language exists in Switzerland, while informally the use of any official language is universally regarded as an adjunct to Swiss citizenship.

Belgium, unlike Switzerland, is a signatory to the European Convention on Human Rights. Consequently, while nothing in its domestic law recognizes the use of Flemish or French as a matter of right, by article 1 of the Convention, all of the Contracting Parties have agreed to "secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention".<sup>116</sup> On this basis some French residents of Flanders filed complaints in 1966 with the European Court of Human Rights on behalf of themselves and of their 800 children, to the effect that "Belgian legislation regarding education in the Dutch-speaking areas did not make French-language education available to them".<sup>117</sup> They argued that legislation restricting grants to French-speaking institutions and denying validation of leaving certificates from these institutions forced them into a system of "scholastic emigration" and was therefore in violation of articles 8, 9, 10 and 14 of the Convention and article 2 of the Protocol of 1952.

None of the first three of these articles makes direct reference to languages. They merely purport to protect the right to "respect for family life";<sup>118</sup> the right to "freedom of thought";<sup>119</sup> the right to "freedom of expression".<sup>120</sup> Article 14, on the other hand, guarantees the enjoyment of the rights set forth in the Convention without discrimination on any ground, such as, *inter alia*, "language" or "association with a national minority". Finally, article 2 of the Protocol guarantees a right to education of children in conformity with the religious and philosophical convictions of the parents. These provisions clearly form a very wide pattern of "rights" under which the right of a minority to use its mother tongue can readily be subsumed, either directly or indirectly. The court did not hesitate to overrule the preliminary objection

---

<sup>115</sup> *Op. cit.*, footnote 14.

<sup>116</sup> Weil, *The European Convention on Human Rights* (1963), p. 43.

<sup>117</sup> *Re the Laws on the Use of Languages in Education in Belgium (Preliminary Objection)* (1967), 61 *Am. J. of Int. L.* 1075, at p. 1076.

<sup>118</sup> Art. 8.

<sup>119</sup> Art. 9.

<sup>120</sup> Art. 10.

of the Belgian Government to the effect that the issue was a purely domestic matter, and it assumed jurisdiction to hear the complaints as they were presented.

It handed down its decision in the late spring of 1969,<sup>121</sup> whereby it dismissed five of the six claims brought against the Belgian Government principally on the basis that the letter of the Belgian law regarding language use in education did not infringe the specific provisions of the European Convention on Human Rights.

Nevertheless, even though Belgium lacks any internal recognition of language as a right, it appears that its position as a high contracting party to the Convention renders the Belgian Government at least open to attack for violation of language rights under the Convention.

Apart from Quebec's Bill 63, Canada has not, up to this time, considered the use of language a matter of right, at least outside the scope of section 133. However, on the basis of the above observations on the European Convention, it is of interest to note Canada's position as a signatory to the Universal Declaration of Human Rights. Several articles of the Declaration are worthy of note:

- Article 2: Everyone is entitled to all the right . . . set forth in this Declaration, without distinction of any kind such as . . . language . . . or national or social origin.
- Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to . . . receive and impart information and ideas through any media. . . .
- Article 26: (1) Everyone has a right to education. . . .  
(3) Parents have a prior right to choose the kind of education that shall be given to their children.
- Article 27: Everyone has the right freely to participate in the cultural life of the community. . . .

Admittedly, none of these creates any rights or obligations on the part of individuals or the Canadian Government. But it is submitted that such Declarations and Conventions which this country supports as a member of the United Nations represent a clear statement of policy. If we are to join with other states in declaring certain fundamental rights as being inalienable, we surely cannot renege on our home ground and piously condemn others for violations. If the articles referred to can be said, therefore, to be a statement of policy, it logically follows that the use of a minority language should indeed be recognized as a right. Moreover, if such ideals as inviolate rights to education, to participation in the cultural life of the community, to freedom of expression, and so on, have any meaning at all in a multilingual state, they *must* subsume the right to the tool of communication, without which they would be meaningless.

<sup>121</sup> (1969), 8 Int. Leg. Mat.

## 2. *Is There a Need for Guarantees of Language Rights?*

The answer to this question seems to follow inevitably from the preceding section. The very recognition of the use of language as a right is the beginning of its guarantee and recognition of a need for guarantees. It can be argued, admittedly, that in the Canadian context, if the use of a minority language is a right, then guarantees should be developed as a matter of course for *all* minority languages in the country. The position in favour of a preference-among-minorities of the French language is based on two points: numbers, and history. Both must be left to be elaborated upon elsewhere, but this much can be said: historically, this Continent was first a French-language territory, and the expansion of the English language took place after the American Revolution and the victory of Wolfe. In 1867, there was very little representation from other ethnic groups in the country and those who have emigrated since must be assumed to have accepted the duality of the foundation. Finally, this duality is borne out by the total population percentages cited above and it seems clear that when two language groups form nearly 80% of the population of a country, a clear line can be drawn between the granting of guarantees in respect of those two languages and the granting of guarantees in respect of other, considerably smaller, language groups which make up the remaining 20%. A good example of this "preference" is the position of Italian *vis-à-vis* French and German in the Swiss General Assembly.

In Canada, therefore, we must first assume two crucial premises, and only then can we proceed to examine the various types of guarantees available. These premises are:

1. It is of value to preserve the bicultural nature of the country.
2. It is impossible to do so without providing the French minority outside Quebec, and the English minority in Quebec, with assurances of their cultural survival.

These premises may well be debatable, but not in the context of this article. The writer assumes their validity, and it now becomes necessary to consider the form which guarantees of language rights might take.

## 3. *What Form Should Language Guarantees Take?*

None of the three countries studied provides extensive entrenched rights of language. The most specific constitutional provision amongst them is section 133 of the British North America Act and while it does indeed provide guarantees, their scope is highly limited. The declaration of languages as "official" or "national" in article 116 of the Swiss Constitution only peripherally affects language as a guaranteed right, but the importance of the recognition itself should not be under-estimated. Clearly, declar-

ing (as in article 23 of the Belgian Constitution) that the use of languages is "optional" in no way guarantees the right to use any language.

It is evident that, by necessity, the manner and form of entrenched rights of any kind will differ in a federal state from those in a unitary state. The principle of territoriality in Switzerland is an almost insurmountable barrier to entrenchment, unless, of course, the right to language were to be recognized only in so far as it did not conflict with that principle. Similarly in Canada, the present status of the federal amending power would virtually prohibit constitutional amendment on languages.

Be that as it may, there is no particular magic in entrenched rights, and the arguments for it rest mainly upon the assumption that such a fundamental expression of national values in a democratic society has a stronger effect upon the people than mere legislation. It is also said that the obvious safety against variation of an entrenched right argues strongly in favour of it. On the other side of the coin, however, it is argued that values, mores and social composition change with time, and entrenched rights are then left to be reinterpreted by the courts—which is hardly better than the variation of existing legislation by elected representatives.

Admittedly, if those who are against entrenchment use as their model of constitutional interpretation by the judiciary the decisions of the Judicial Committee of the Privy Council in the first half of this century, it is impossible to disagree that courts are far from well-equipped to reinterpret a constitution according to changes in our society. However, it is not really an exercise in wishful thinking to expect that the Supreme Court of Canada will in the future be aware of, or responsive to, changes in the character and make-up of Canada.

On the balance, the best conclusion seems to be that, if any particular value is recognized by a state to be an inalienable right vested in some or all of its citizens, entrenchment is the best form of guarantee of that value. Moreover, the Belgian experience gives us a valuable lesson. The piece-by-piece construction of language legislation in that country—a clear example of "response by politicians to changes"—argues very strongly against leaving the issue in the hands of legislators. Their dependence (as opposed to the judiciary's obvious independence) upon the electorate has resulted in repeated over-reactions to extremist demands; and those responses, according to the "Insoc" survey,<sup>122</sup> could not be said to have been sanctioned by the people.

Accepting as a fact that entrenchment of language guarantees,

---

<sup>122</sup> *Op. cit.*, footnote 59, pp. 31-32.

while preferable, is not forthcoming in Canada, it is necessary to examine the value of legislation. As was just pointed out above, the Belgian situation seems clearly to dictate an extremely cautious approach to this form of language guarantee. Switzerland has kept its legislation in this respect to a bare minimum, and has nevertheless developed harmonious language conditions. It should be borne in mind, however, that article 107 of the Swiss Constitution has removed judicial proceedings as an area of friction, and the mass of regulations for civil service employment has also helped considerably.

The Official Languages Act has, for the most part, enacted practice into law. Where it deals with judicial proceedings, it has formalized a unified practice in that one area where formality is most essential. On the other hand, the provisions dealing with the Federal Bilingual Districts are another matter entirely. Obviously, they are designed primarily to encourage a breakdown of the Quebec Ghetto; but their secondary purpose seems to be educational. The Prime Minister, having received what he justly considers a clear mandate to do "something" about the language "problem", seems to have concluded, along with the Commission on Bilingualism and Biculturalism, that one of the best avenues is to create a more widespread representation of French culture across the country and thereby create greater opportunity for contact between the cultures, which, it is intended, will naturally result in greater understanding. Whether or not this end can be achieved through legislation is a question which remains to be answered, and perhaps a brief summary of the conditions in the three subject states may now provide some clues.

### V. *Summary and Conclusions.*

It is obvious that a great many factors have contributed to the present condition of language rights in all three countries. Unfortunately, a great many more contrasts than parallels emerge when comparisons are made, and the only viable means of summarizing them is to deal, in turn, with six major elements: economics, religion, geography, history, the type of state and the status of the languages in question elsewhere in the world.

#### A. *Economics.*

While economic disparity has had little effect upon the situation in Switzerland, there are doubtless some similarities in the Belgian and Canadian experiences. The sense of economic depression which prevailed in Flanders after the war enhanced, and in many ways provided, the basic support for the cultural demands of the 1960's which led to the present state of disruption. Similarly, much of the "awakening" of Quebec after the death of Maurice Du-

pléssis and the coming to power of the Lesage Government in 1960, was economic in nature; and (at least at the outset) the most vehement attacks were directed at outside control of commerce and finance in the province. Moreover, as in Belgium, the basis for complaint in many cases was the unavailability of employment in industry without a knowledge of English—in a province which was 81% French-speaking. Therefore, economic restrictions on the grounds of cultural “deficiencies” can be said to have had a strong effect on language conflicts in two of the three states studied.

#### B. Religion.

Canada is the only country of the three which has experienced some conjunction between differences of language and of religion, and there are two facets to the religious issue. The first is external to Quebec, and it reveals that much of the conflict on the language question, which existed at the time of Confederation and later, was closely interwoven with a fundamental animosity between Catholic Quebec and Protestant Ontario. An excellent illustration of the relationship can be found in the difficulties which arose in respect of the settlement of Manitoba, and which culminated in the Manitoba Schools Question of the 1890's, whereby an essentially religious dispute had linguistic repercussions.

The second facet reflects the internal development of Quebec, which, since Confederation, has been severely restricted by Church control over education. While this factor is no longer of great importance, it must be looked upon as a major contributor to the evolution of Quebec as a form of ghetto.

#### C. Geography.

Geography is the most puzzling element of comparison. It has been a principal factor in the development of a harmonious language situation in Switzerland. Yet, even though the same geographical considerations apply to Belgium—ready access for the minority to cultural and educational amenities outside of the language region, and proximity of the culturally parent states—they have had no cooling effect upon the cultural conflict in that country. Thus, while it may appear that Canada's vast territory militates against a cultural *rapprochement*, there is no indication that, all other things being equal, closer geographic ties would be a panacea.

#### D. History.

If historical responses to linguistic diversity were considered in terms of a spectrum, Switzerland and Belgium could be placed at opposite ends and Canada would rest close to the middle. The Swiss have never experienced serious cultural conflict, and

the Belgians have rarely, if ever, been without it. Since Confederation, however, relations between the two major cultures of Canada have varied, with periods of high conflict—the conscription crisis of the early 1940's—separated by periods of relative harmony. Historically it would appear that religious conflict was primary and language became an ancillary problem; but, by and large, the trend of Canadian history, unlike that of Belgium, points to an *ability* to reconcile cultural differences—an ability which, depending upon the social or political or religious strictures of the time, may or may not be exercised.

#### E. *Form of State.*

Swiss federalism, with its strong cantonal control over language, and with its resultant form of checkerboard unilingualism, is a valuable contributor to cultural amity. Similarly, there exists a substantial demand for a federation in Belgium, where many feel that the unitary nature of the state has been a major cause of unrest. There is no doubt that a federal form of government provides the best format for preservation and development of minority culture in different parts of the country, and this is a major advantage Canada possesses as it begins to deal in language rights *per se*. One point should be considered along with federalism, however, and that is geography. The cantonal unilingualism and “one-way” bilingualism of Switzerland, while obviously aspects of policy and political development, are made possible only by the small size of the Federation. The same principles in Canada, even with certain minority language guarantees (principally to English-speaking *Québécois*), have actually lessened the bicultural nature of the entire country.

#### F. *The Languages Outside the State.*

This final point is included only because it often arises in the context of arguments for and against preservation of minority cultures. The fact remains that whether or not a particular language is widely used in the world at large or in neighbouring states, such outside use has little or no relevance to the continued existence of a minority culture within the state. Put more directly, the fact that a language is not in widespread use outside the country in question is no reason to let it die within. Nevertheless, this is a point raised often to discount the development of Flemish in Belgium, or even to support the continued existence of the minority languages of Switzerland. In Canada, there is no doubt that French is a “contained” language: the principal language of North America is obviously English. This argument, however, does little to assuage the anxiety of some five million people on the continent whose mother tongue is French. Regardless of whether there is “use” for it *outside* of Quebec, the existence of the langu-

age, in itself and as a cultural foundation, is a reality.

### G. *Conclusions.*

The renewed vigour of, and interest in, Quebec has, in the past ten years, forced a confrontation. Clearly, we cannot continue to deal with minority language rights in terms of short-run solutions to periodic clashes, and there must be some new direction in dealing with the entire problem. The above analysis tends to show that the federal form of government, as well as the historically-demonstrated ability to cope with language conflicts, argue strongly for an optimistic outlook. As a nation, Canada *can* develop the mood of compromise and tolerance which prevails so strongly in Switzerland, and *can* avoid the downward spiral of animosity which has developed in Belgium. Religion is no longer a serious block to better cultural understanding. Geography appears to be a barrier, but it most often is used (principally in the West) as a facile explanation for misunderstanding, a sort of *facade* designed to avoid expression of a more profound dissatisfaction. The fact remains that modern communications technology has virtually eliminated geography as a valid argument against closer cultural relations—even if it were legitimate to assume that geographical proximity is some kind of guarantee of cultural peace, which, on the above analysis, is not necessarily so.

The conditions are present, and the opportunity is obvious. The only question which remains is which direction to take. If entrenchment is improbable, and if legislation is essential, then it must be submitted that the Official Languages Act, at least in respect of its provisions on the Federal Bilingual Districts, is a misdirected effort.

Language legislation in Belgium has not only been a result of unrest, but has also become a cause of it. The establishment of grounds for dissatisfaction (Is there a 10% minority? Is it properly provided for?) have opened the door to "documented" complaints and have provided the necessary fuel for further demands. This is not to say that nothing should have been done, since there was clearly a need for greater cultural recognition of Flanders. The difficulty lies in the passing of legislation which is apparently coercive before the people themselves feel a need for it.

The Royal Commission on Bilingualism and Biculturalism was apparently interested in finding a fundamental *approach* to the problem of language usage in Canada. In order to do so, the Commissioners made some comparisons to the states considered above, and their conclusions, it is submitted, are somewhat startling. For example, having briefly reviewed the status of language rights in four other countries—Belgium and Switzerland included—they conclude:

In the first place the constitution and legal terms of the recognition given the official languages in the other [four] countries have established a more fundamental principle of equality than has section 133 of the B.N.A. Act. In addition to this basic principle, Belgium and Finland in particular have firm, precise legislation to which there is no equivalent in Canada in such key realms as education and the public service.<sup>123</sup>

The question of the precision of constitutional provisions on languages was considered above, and for the reasons stated there it is submitted that, far from being the least precise statement, section 133 of the British North America Act is in fact the most detailed constitutional provision of the three we have considered. Moreover, the Commission seemed impressed by the "precise legislation" in Finland and Belgium. While Finnish legislation is outside the scope of this article, Belgian legislation as described above, would clearly indicate the opposite view. Its preoccupation with more and more detail, far from adding anything to the harmony between language groups, has proved to be divisive. The Commissioners proceed by stating that:<sup>124</sup>

In Belgium and Switzerland a principle of territoriality has rested upon the concept of a permanent linguistic frontier, which has been *stabilized* in Switzerland by means of natural mountain barriers and long-standing custom, and in Belgium through legislation.

It has been pointed out above that the stability in Switzerland is due only to custom and not to geography; and in Belgium it must be repeated that the linguistic frontier may have been stabilized by legislation, but the degree of comity between the language groups certainly was not.

Nevertheless, having considered the relevant factors in other countries, the Royal Commission settled upon the following guiding principle:<sup>125</sup>

We take as a guiding principle the recognition of both the official languages in law and practice wherever the minority is numerous enough to be viable as a group.

The question then became one of how to put this principle into practice, and the result came in the form of the already stated thirteen recommendations.

The Federal Government acted upon these recommendations and chose to go as far as it could within the framework of the British North America Act with the Official Languages Act. In its basic provisions dealing with the Federal Government, the Federal public service, crown corporations and judicial and quasi-judicial bodies, the Act seems to be a sound statement of what is politically and practically possible in Canada today.

On the other hand, it is submitted that, despite the clear recom-

<sup>123</sup> *Op. cit.*, footnote 1, p. 83.

<sup>124</sup> *Ibid.*, p. 84.

<sup>125</sup> *Ibid.*, p. 86.

mendations of the Royal Commission on Bilingualism and Biculturalism, there is a need for a critical preliminary step to the establishment of Bilingual Districts. Such a step should take the form of an intensive educational campaign, which should be directed at Quebec and the Western Provinces, and which should have three major purposes:

1. To break down the Quebec Ghetto effect and convince French Canada that it does indeed have a full interest in Confederation.
2. To dispel misunderstandings and misconceptions, which are widespread in the West, about the nature and effect of the "official" status of the French language.
3. To convince both sides of the validity of the two necessary premises to a successful bicultural state.

It is further submitted that Bill 63 is an excellent example of government reaction to a sudden disruption of a status quo without a clear mandate from the people for such a reaction. It seems clear that the Bertrand Government was thinking principally of St. Leonard at the time of the enactment of Bill 63; and its actions are an excellent first step in the direction taken by Belgium over the last nine years. Similarly, an over-zealous implementation of the *Report* of the Commission on Bilingualism and Biculturalism would only succeed in further alienation of those population blocs in Canada which are still highly confused and certainly not convinced about the language "question".

Only when these portions of the population are properly informed of the philosophy and politics behind the government's actions can we be assured that legislation will not, in itself, become a cause of conflict. Only when Quebec accepts the value of a spread of French culture, and when the West accepts that there is no threat inherent in that dispersal, will we be able to proceed effectively. While this position admittedly provides little in the form of immediate concrete assurances for French Canada, it offers the best long-range prospect based on the experiences in the other two countries studied. It is based upon the one indisputable conclusion which arises from an examination of the language rights in Switzerland and Belgium: unless and until the conflicting quarters of a multi-cultural state learn to take pride in the very diversity of the state, in their unique ability to shed all of the trappings of narrow ethnic nationalism, no amount of constitutional or legislative activity can ever hope to bridge the gap between them.

---