Federalism AND RIGHTS

Edited by

Ellis Katz and G. Alan Tarr

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INTRODUCTION

G. Alan Tarr and Ellis Katz

Does federalism promote or undermine rights? The importance of this question can scarcely be overstated. Emerging democracies in Europe and elsewhere are currently attempting to design constitutions that combine effective government, recognition of the diversity within their populations, and protection for rights. Federalism and federal arrangements are among the options from which they must choose in seeking to achieve these objectives. In addition, in the decades since World War II, many nations have adopted federal systems, experimented with federal arrangements, or decided to band together in confederal arrangements. For those nations participating in - or contemplating joining - what one scholar has called "the federalist revolution," the effect of federalism on rights is crucial.[1] Finally, for mature federal democracies, in North America and elsewhere, the relationship between federalism and rights remains important because their compatibility remains controversial. Various commentators have either denied that federalism promotes the security of rights or contended that it in fact undermines rights, and these arguments must be confronted by all who espouse federalism.[2]

I

By diffusing governmental power, federalism permits the constituent units of a federal system to determine to a significant extent the ends that they will pursue and the means by which they will accomplish those ends. Implicit in federal arrangements is the expectation that the retention of these choices by

the constituent governments will produce diversity; that given the opportunity, these governments will order their affairs in diverse ways. Thus, federalism can claim to serve the ends of both pluralism and self-government. In doing so, however, federalism necessarily sacrifices complete uniformity of treatment for those ruled by the various constituent governments. Put simply, in a federal system many of the laws one must obey, the benefits one receives, and the rights one enjoys depend on the political jurisdiction in which one resides.

It is this connection between residence and rights - and more particularly the notion that one's rights change when one moves from one part of a nation to another part - that raises important questions about the relationship between federalism and rights. For to speak in terms of rights is, typically, to speak the language of universality: rights belong to human beings *qua* human beings. Thus, the American Declaration of Independence recognizes that "all men are created equal and endowed by their Creator with certain inalienable rights," and the United Nations Declaration of Rights elaborates a detailed list of rights belonging to all human beings. Both the United States Congress and the President have at various times recognized rights as universal, arguing that American foreign policy should be guided by a concern for "human rights." In principle, these inalienable rights, these human rights, know no borders. Indeed, it can be argued, if a right deserves protection, then it should be equally protected for all people, regardless of where they happen to live.

If this argument is correct, then federalism and rights are necessarily at odds, for federalism countenances particularism and encourages diversity, while the protection of rights seems to require universal standards and uniform treatment. Yet, without reaching a final determination on the issue, it should be noted that the argument for the universality of rights ignores certain complexities in political theory and political practice. First of all, inherent in the concept of a right is the notion both of a realm of non-interference and of an authority that is obliged to respect and/or secure that realm. Thus, it is not inconceivable that one might have different rights as to different authorities. In addition, not all rights rise to the stature of natural or human - and hence universal - rights. The United States Constitution reflects this in distinguishing between the "privileges" and the "immunities" of citizens. This distinction, as explained in Blackstone's *Commentaries*, reflects the transformation of rights that accompanies the movement from a state of nature to civil society.[3] When one enters civil society, one gives up various rights possessed in the state of nature and receives in return certain "privileges" (*i.e.*, legal means to secure one's valid interests). These privileges quite properly vary from one civil society to another, reflecting the different circumstances

that these societies confront and differences in their political judgment about how to achieve the ends for which they were created. Of course, when one enters civil society, one also retains certain "immunities"; that is, rights which are not surrendered in leaving the state of nature because they involve aspects of human life that need not be regulated to achieve valid societal ends.

Moreover, in practice rights in a democratic society are largely defined and enforced by political majorities. In a federal system, this entails dual majority rule - a national majority establishing rights *vis-a-vis* the federal government and sub-national majorities establishing rights *vis-a-vis* constituent governments. This dual majority rule affords more opportunity to secure rights. When the federal government is receptive to rights claims, there may be opportunities to nationalize the protection of various rights on a uniform basis. But when the federal government is indifferent to rights or holds a restrictive view of them, then there may be opportunities to expand the protection of some rights in those constituent units that are receptive, as well as the possibility for citizens to make their choice of residence among those units based on their rights policies. This dual protection for rights also accommodates sharp public disagreements over particular rights. In the United States, for example, thirty-seven states permit capital punishment, while thirteen view it as inconsistent with human dignity and ban it.

Furthermore, although discussions of human rights or natural rights characteristically focus on individual rights, our contemporary understanding of rights is not so limited. During the Middle Ages, one's rights depended on one's status or position. While the hierarchical aspect of this notion has disappeared, the idea that rights belong to groups or collectivities, as well as to individuals, continues to find wide acceptance. Indeed, recent decades have witnessed a reemergence of the sense that primordial ties are basic to one's individual identity, and with it a multiplication of claims based on notions of collective entitlement. Group rights have been tied to ethnicity (as in American affirmative action programs and in the concept of "federal character" in Nigeria), to language (as in Canada), and to a host of other factors. Federal systems, with their traditions of shared-rule and self-rule, have generally found it easier to respond to claims for group rights than have unitary systems. In fact, groups seeking recognition of their claims have frequently called for a devolution of political power or, in short, for some sort of federalism.

Finally, in considering the relation between federalism and rights, it bears mention that the world's great federal democracies (*e.g.*, Australia, Canada, Germany, Switzerland, and the United States) by and large have good records

of protecting rights. One might dismiss the correlation between federalism and security of rights as spurious, the product of other factors. One might even seek to deny it; certainly, some nonfederal and quasi-federal nations - *e.g.*, France and Great Britain - have impressive records of protecting rights, while some federal systems - *e.g.*, India and Brazil - have had mixed records. Nonetheless, if, as it appears, federal systems have a better overall record of protecting rights than unitary systems have, then this fact deserves consideration in any assessment of the compatibility of federalism and rights.

II

In the United States the relationship between federalism and rights has been particularly controversial. For much of the twentieth century, the received wisdom was that federalism was the enemy of rights and that appeals to federalism were, as Michael Zuckert has noted, merely "thinly veiled attempts to maintain segregation and other morally suspect social practices."[4] This notion, based largely on Southern intransigence in opposing civil rights, contrasts sharply with the expectation voiced by James Madison in *Federalist* No. 51. Madison argued that American federalism would provide a "double security" for rights, because both federal and state governments could act to safeguard them. In practice, the relationship over time between federalism and rights in the United States has been both more complex - and more interesting - than is suggested by either of these positions. The division of responsibility between nation and state for protecting rights has varied throughout American history, and so too has the willingness of nation and state to live up to that responsibility.

Immediately after independence, the responsibility for protecting rights fell to the states, which in designing their constitutions typically prefaced these documents with declarations of rights. These guarantees, however, did not ensure adequate protection for rights, and state violations of rights were among the factors that prompted the Constitutional Convention of 1787. Nevertheless, the new Constitution did not dramatically alter the division of responsibility for rights protection. While the Constitution augmented national power and placed some restrictions - for example, bans on coining money and on interfering with contracts - on the exercise of state power, the states remained the primary locus of governing authority. Even the addition of a Bill of Rights, which was insisted upon by the Anti-Federalists, the champions of state power, did not change the situation, since it imposed restrictions only on the federal government.

Given the expansion of slavery and the denial of other rights in the Southern states in order to sustain that "peculiar institution," the record of the states in securing rights during the antebellum period was mixed at best. (Of course, the record of the federal government, which produced the Alien and Sedition Acts, fugitive slave legislation, and the Dred Scott decision, was little better.[5]) Following the Civil War and the recognition that not all states could be trusted to safeguard the rights of the newly free black citizens, the Thirteenth, Fourteenth, and Fifteenth Amendments were adopted, empowering the federal government to guarantee rights when the states failed to do so. That these amendments were designed to alter the roles of the state and federal governments in protecting rights is clear. Beyond that, however, scholarly debate continues as to whether the aim of the amendments was a constitutional revolution or merely an adjustment of the federal balance.[6] In any event, the U.S. Supreme Court's evisceration of the Thirteenth and Fourteenth amendments in *The Slaughterhouse Cases* (1873), *The Civil Rights Cases* (1883), and other rulings limited their immediate impact.[7] Because the federal government virtually abdicated its responsibility to protect rights, the primary responsibility reverted to state governments in the latter part of the nineteenth century.

Nonetheless, doubts about the states' commitment to protecting individual rights led to intermittent national action to secure rights. During the early part of the twentieth century, for example, the states' inability or unwillingness to deal with the abuses of child labor prompted national legislation and, after the Supreme Court invalidated the statutes, to congressional proposal of a constitutional amendment to address the problem.[8] The states' failure to protect adequately the rights of workers to organize led to the enactment of the Wagner Act in 1935. And the Southern states' record of racial repression launched the civil rights movement and prompted congressional and executive efforts to safeguard rights against violation by state and local officials or by private parties.

Yet the major innovation in protecting rights during the twentieth century has been the expansion in the role played by federal courts - and particularly the United States Supreme Court - through the process of constitutional litigation. Although examples of state initiatives exist - Iowa, for example, adopted the exclusionary rule prior to *Weeks v. United States* (1914), and Wisconsin required the provision of counsel to indigent defendants over a century before *Gideon v. Wainwright* (1963) - for the most part, state courts did little to stimulate the development of state civil liberties law.[9] Within the past half century, however, the U. S. Supreme Court and other federal courts

have taken a leading role in extending rights protections through their efforts to develop the full implications of the Fourteenth Amendment. The Court has adopted the selective incorporation doctrine, under which provisions of the Bill of Rights become fully applicable to state governmental action, and has proceeded to incorporate most criminal justice guarantees of the Bill of Rights. In addition, rulings such as *Gideon v. Wainwright* and *Miranda v. Arizona* (1966) have given considerably broader scope to federal constitutional provisions than had previously been the case and have imposed new and often detailed requirements on the states. In effect, these rulings produced a federalization of legal standards for criminal justice. Litigants were encouraged to base their claims on federal constitutional guarantees and precedents and to ignore state law.

Beginning in the early 1970s, however, state declarations of rights reemerged as a source of constitutional protections. Prompted in part by Burger Court rulings, which either altered Warren Court decisions or directly encouraged a reliance on state constitutional principles, some state courts began to rely on their state bills of rights to provide greater protection than was available under U. S. Supreme Court rulings.[10] By the early 1990s, what had begun as a response by a handful of courts to specific Burger Court rulings had been transformed into a more general resuscitation of state civil-liberties law. This rediscovery of state bills of rights may mark another important shift in the state and federal roles in protecting rights. Instead of a single government bearing responsibility for protecting rights, the emergence of this "new judicial federalism" may promote complementary roles for state and federal authorities, providing the "double security" envisioned by Madison two centuries ago.

III

The complexities of the relationship between federalism and rights are particularly evident when one looks beyond the borders of the United States to the multiplicity and diversity of federal systems worldwide. While some of these federal (or confederal) systems long antedated the American federal system, many of those countries which instituted federal systems during the nineteenth and twentieth centuries have drawn on the American federal model, either implicitly or explicitly, in constructing their own federal systems. In some instances, too, the American federal experience has served a cautionary function. During deliberations over the Australian constitution in the late nineteenth century, for example, a major concern was whether the American

Civil War suggested that federal systems were inherently unstable.[11] Yet whatever the lessons other nations have drawn from American federalism, they have confronted a common set of problems. They, like the United States, have had to combine a respect for rights with the requirements of effective government and to apportion responsibility for defining and protecting rights between general and constituent governments.

Comparative analysis of federal systems highlights three points pertinent to discussions of federalism and rights. First, as noted at the outset of this essay, the past fifty years have witnessed a "federalist revolution." Since World War II, over a dozen nations - among them, Germany, India, and Nigeria - have established federal systems. Others - including Colombia and Denmark - have experimented with various quasi-federal arrangements, ranging from union to federacy to associated statehood. Still others have banded together in supranational confederal arrangements, best exemplified by the European Community. According to one estimate, "nearly 40 percent of the world's population now lives within polities that are formally federal; another third live in polities that apply federal arrangements in some way."[12] The implications of this development for discussions of federalism and rights are even greater than mere numbers might suggest. For this proliferation of federal arrangements has largely resulted from a concern for rights - or more particularly, from efforts to accommodate the rights claims of diverse groups residing within individual nations.

Second, nations may seek to accomplish quite different aims through federal union. In some countries - for example, Australia and Brazil - federalism serves the same purpose as it has in the United States, namely, to sustain a longstanding territorial diffusion of political power that cuts across differences in ethnicity, religion, and similar factors. To a considerable extent, the problems these federal nations face in reconciling federalism and rights mirror those confronted in the United States, even to the necessity of dealing with the claims of an indigenous population. But for most federal nations, these arrangements serve a different purpose. Canada, India, Nigeria, and a host of other nations have chosen federalism as a way of recognizing and accommodating ethnic and cultural differences within their populations, differences that correspond with rather than crosscut regions. When territorial divisions correspond with societal cleavages, this places particular strains on federal systems. Nations must be careful that their recognition of group rights and the devolution of power to constituent units does not so reinforce group attachments that it undermines allegiance to the larger political entity of which those constituent units are a part. They must also ensure that the recognition

of group rights does not come at the expense of individual rights, that the devolution of power does not become a vehicle for the oppression of minorities within the constituent units.

The difficulties in achieving a proper federal balance in such circumstances led at least one early commentator, Alexis de Tocqueville, to conclude that federal systems would succeed only when territorial divisions crosscut, rather than reinforced, societal cleavages.[13] To some extent, recent events - the dissolution of Yugoslavia, the political turmoil in Nigeria, and the endemic regional crisis in Canada - support this judgment. Yet the use of federalism to reflect cleavages has not always produced such dire results. From an academic perspective, what this diversity of outcomes suggests is the need for sustained research on why some such federal systems have flourished while others have failed. In addition, researchers must consider whether federalism or other factors are decisive in determining the success of efforts to integrate diverse groups into a single nation.

Finally, comparative analyses of federalism underscore the diversity of federal forms and arrangements. Presumably, at some point researchers should be able to assess the strengths and weaknesses of various forms of federalism and pinpoint the circumstances under which each is most advantageous. Yet at present, because so few comparative studies of federalism have been undertaken, scholars' aims must be less ambitious. They need to look in detail at the operation of various federal systems and examine how successful they have been in protecting rights. They also need to identify the factors that have contributed to their success or failure in this endeavor.

IV

The essays in this volume were first presented at an international conference on federalism and rights, sponsored by the Center for the Study of Federalism and supported by National Endowment for the Humanities. They include the perspectives of both academics and practitioners, from the United States and abroad, on the relationship between federalism and rights. Although most authors focus on the American experience, because it has had such influence throughout the world and is so widely misunderstood, others address theoretical issues relating to federalism and rights or trace the experience of other countries in attempting to reconcile federalism and rights.

The first set of essays in this volume offers theoretical perspectives on federalism and rights. In the initial essay, Daniel Elazar focuses on the primary task confronting contemporary political leaders, namely, the creation

and nurturing of democratic societies. For Elazar, federalism and the protection of individual rights are necessarily interrelated because they are - together with the idea of a civil society - the three pillars on which successful democracies rest. In asserting that federalism is essential to democracy, Elazar understands federalism broadly, not as a particular political arrangement but as a perspective on political life that diverges from both simple majoritarianism and parliamentary democracy. In the political realm, democracy requires a sense of political partnership and the operation of political choice through discussion and deliberation. It must accommodate diversity within the populace arising both from individual differences and from primordial ties and must prevent the development of a permanent majority ruling over a permanent minority. In the social realm, democracy requires the creation of a sphere within which private and public non-governmental activities can develop and flourish. Federalism, with its emphasis on power sharing and its refusal to reify the state, obviously contributes - along with the recognition of individual rights and the idea of a civil society - to the creation of a democratic political-social order. Yet if democracy is to flourish, it also requires a proper balance among the three pillars that support it. In recent decades the threat to this balance, Elazar asserts, has come from an overemphasis on individual rights and a depreciation of both federalism and the idea of a civil society. In seeking to redress the balance and achieve an appropriate relationship between private and public concerns, he proposes a reinvigoration of the notion of "federal liberty." This concept stresses that the fundamental right is that of establishing the sort of society in which one will live and of determining the obligations one will undertake; and in so doing, it seems to offer a means of reconciling individual rights and public group concerns.

Dick Howard's essay assesses the arguments which historically have been advanced for and against federalism. What is striking about his listing is that proponents of federalism seldom expressly champion it as promoting civil liberties, whereas opponents often emphasize the variations in rights that federalism countenances as among its major disadvantages. Yet in another sense, a concern for rights pervades the arguments for federalism. According to these arguments, the most important right is the right of self-government, and proponents insist that federalism is crucial to ensuring effective self-government. It promotes self-government first of all by ensuring that important choices are made at a level where citizens can feel a sense of political efficacy, and by encouraging community so that citizens can feel comfortable in voicing their opinions and acting upon them. It also fosters

self-government and choice by encouraging pluralism, by allowing communities to devise their own goals and experiment with their own ways of achieving them. The expectation of federalism's proponents is that on balance this local autonomy will promote the security of rights. While opponents of federalism emphasize the dangers of local tyrannies, its proponents view concentrations of power as the primary concern. Thus, for proponents of federalism, the devolution of political power both secures the right of self-government and is instrumental to the protection of other rights.

Historically, legal scholars and jurists in the United States have made important contributions to our understanding of the relation between federalism and rights. Thus, one might have expected contemporary constitutional theory, with its preoccupation with the protection of rights, to explore that relationship in depth. Yet in his essay Gary Jacobsohn argues that constitutional theorists have not done so, largely because they have not taken federalism seriously. Although these theorists have differed in their assessments of federalism, Jacobsohn insists that these differences derive less from analyses of federalism than from disagreements over how rights are to be defined and protected. Leading non-interpretivist scholars, such as Ronald Dworkin and Michael Perry, have defined rights in universal terms and have therefore disparaged the notion that the particularism of federalism serves the cause of rights. Interpretivist theorists and judges, such as Robert Bork, have viewed rights as determined by popular mandate and thus have not demanded a uniformity of rights across jurisdictions. Yet they too have conceived of rights largely in terms of a freedom from regulation and have therefore not explored federalism's contribution to self-government. Even theorists wedded to the tradition of civic republicanism, which emphasizes the right to self-government, have substituted notions of group representation for geographically based federalism. As a result, Jacobsohn concludes, contemporary constitutional theorists have too quickly dismissed federalism as unimportant to the attainment of a regime of liberty.

A second section of this volume deals with the relation between federalism and rights in the United States. Jean Yarbrough's essay, which opens this section, explores the conceptions of federalism and of rights prevalent during the American Founding. Yarbrough rejects the portrayal of the Anti-Federalists as proponents of classical republicanism, maintaining that the Federalists and Anti-Federalists shared a common understanding of rights. Their disagreement centered rather on the likely source of threats to rights. Federalists distrusted local, factional majorities, while Anti-Federalists feared a powerful national government that might overreach its powers and violate

rights. The system of federalism enshrined in the United States Constitution anticipated some of the Anti-Federalists' concerns by guaranteeing a constitutional status for state governments, a necessity if they were to check federal encroachments. Even those founders who initially adopted a nationalist position, such as James Madison, eventually concluded that the federal features which they had initially opposed were necessary to safeguard rights. In recent years, Yarbrough recognizes, this connection between federalism and rights has been severed by the nationalization of rights protections. Yet she questions whether this development, which she believes cannot be supported by any reasonable interpretation of the Fourteenth Amendment, has in fact made rights more secure.

In contrast to Yarbrough, Michael Zuckert denies that James Madison was ever a thorough-going nationalist. Rather, Madison championed a new and distinctive form of federalism which did not displace the states as the primary locus of governing authority but empowered the national government to intervene to check unwise or unjust measures in the states. Unfortunately, the Constitutional Convention did not fully endorse Madison's solution for protecting rights against state violation. While his fellow delegates inserted into the Constitution various prohibitions, such as the contract clause, to deal with the states' most egregious violations of rights, they rejected Madison's oft-repeated call for a congressional veto over all state laws. Moreover, the First Congress refused to support Madison's proposal to secure basic rights against state as well as national violation. Zuckert maintains that not until after the Civil War, in the Reconstruction amendments, did a modified version of the sort of "corrective federalism" espoused by Madison find constitutional expression. Even then, however, the Supreme Court, motivated by an attachment to antebellum federalism, read those aspects of corrective federalism out of the Constitution in *The Slaughterhouse Cases*. Only in the 1960s, through the gradual incorporation of the various guarantees of the Bill of Rights, did the Court eventually establish the national superintendence over state violations of rights that Madison had originally favored. Yet this new corrective federalism diverged from Madison's in important respects: oversight authority was lodged in the Supreme Court, rather than Congress, and the states had lost their primacy in policy making.

In campaigning for the ratification of the Constitution, Madison emphasized that American federalism provided a double security for rights, because both national and state governments could act to protect them. Even the development during the 1960s of a national superintendence over rights has not eliminated this dual protection of rights. Indeed, according to Justice

William Brennan, among the most significant constitutional developments in recent years has been the "rediscovery" of state guarantees of rights, a phenomenon known as the "new judicial federalism."[14] In her essay Judge Dorothy Beasley explores the legal principles that undergird the dual system of rights protection in the United States. Although the application of these principles remains complex and controversial, Judge Beasley insists that the development of state civil-liberties law encourages valuable experimentation in the "little laboratories" of the states and ensures that the scope of rights protections reflects the diverse perspectives of the various states. Her discussion of the right to privacy illustrates how the dual system of rights protection promotes judicial creativity: state judges, relying on express guarantees in their state constitutions, have developed an impressive body of privacy law. She also recognizes that the division of responsibility for protecting rights serves an important educative function, as state and federal judges learn from each other's interpretations of their constitutional guarantees.

Like Beasley, Talbot D'Alemberte finds inspiration in Justice Brennan's vision of a revived state commitment to the protection of rights. Yet countering this vision, he notes, is another vision of federalism, one which views invocations of federal principles as a tactic used to defeat rights claims. The transfer of responsibility from nation to state threatens rights, however, only if state authorities are either disinterested in protecting rights or incompetent in doing so. D'Alemberte thus concludes that those who share a principled attachment to federalism and to rights must become concerned with reforming state institutions so that they can effectively safeguard rights. With this in mind, he identifies two areas of particular concern. First is the states' woefully inadequate provision of counsel for indigent defendants, particularly in capital cases. This failure to accord capital defendants their right to effective assistance to counsel, he notes, encourages *habeas corpus* challenges to state convictions, thereby undermining respect for state courts, and raises questions about the states' willingness to vindicate basic rights. Second is the vulnerability of state judges to majoritarian forces, which interfere with their ability to protect rights. To combat this, D'Alemberte champions merit selection of state judges as a way to increase the independence - and hence the fearlessness - of state judges.

The essays in the final section of this volume examine the interplay of federalism and rights beyond the borders of the United States, in both national and supranational contexts. Probably the leading example of supranational federalism is the European Community. Although the treaties that created the

European Community never characterized it as a federal arrangement, over time the Community has developed federal features that distinguish it from other international organizations. According to Judge Koen Lenaerts, the development of federal features in the European Community derives in large measure from the EEC Treaty's recognition of entitlements as rights which citizens of member states could claim against member states other than their own. The recognition of individual rights under the Treaty, according to Lenaerts, has helped to vindicate the authority of Community law; for litigation by private parties, concerned for their own rights, has ensured effective compliance with that law. In addition, the obligation of protecting individual rights under Community law has promoted the development of legal mechanisms for extending the Community's supervisory authority over member states. For example, the European Court of Justice has required changes in the procedural law of member states and even the creation of new causes of action to vindicate rights under Community law. Thus, Lenaerts concludes that the European Community has become more federal (and less confederal) through its involvement in protecting rights, while the recognition of those rights owes much to federal features inherent in the constitutional structure of the European Community from the very outset.

Most countries that have adopted federal systems have done so to protect group rights, to accord ethnic or religious groups within their borders a measure of autonomy and therefore the opportunity to develop and express their group identities. Irwin Cotler analyzes the extraordinary constitutional changes that Canada has introduced - or attempted to introduce - over the last decade or so in an effort to counter secessionist sentiments and to create a more viable federal system. The constitutional revolution in Canada began in 1982 with the adoption of the Canadian Charter of Rights and Freedoms. Before its adoption, constitutional analysis even in rights cases revolved around the distribution of power between the federal and provincial governments. By constitutionalizing and judicializing rights protection, the Charter promoted the development of a Canadian rights consciousness and the proliferation of civil-liberties litigation that arguably made individual rights more secure. However, the Charter was also designed to enhance national unity by giving appropriate recognition to the multicultural character of the population and by safeguarding diversity and pluralism, and in this it failed. The Charter did include special protections for aboriginal and minority-language rights among its provisions, but these safeguards did not eliminate group concerns. Both the aboriginal people and the Quebecois continued to press for greater autonomy, while new groups (for instance, the western