

LIBERALISM OR LIBERTY

An Assessment of Canada's New Constitution

by Bernard Zylstra



PREFACE

Although **Liberalism or Liberty: An Assessment of Canada's New Constitution** is not a labour speech in the traditional, rather narrow sense, the Christian Labour Association of Canada nevertheless asked Dr. Zylstra to speak on this topic at the CLAC's 30th Anniversary Convention on April 17, 1982.

Because it is such a dominant force in North American society liberalism affects that society in all its facets. The labour scene is one such facet and a significant one at that. Since Canada's new Constitution so much mirrors the liberal idea, the choice of the topic was a natural one.

We offer this speech as an important contribution to the ongoing debate about what shape and substance the Canadian mosaic should assume.

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Today Her Majesty Queen Elizabeth II proclaimed Canada's new Constitution. Today the Christian Labour Association of Canada is celebrating its 30th anniversary. This coincidence was not planned. No one could have predicted last fall when the new Constitution would be proclaimed. But I consider it providential that the topic on which I was then asked to speak on this anniversary is "Liberalism or Liberty."

You will, I trust, not take it ill of me if I focus this topic on the significance of the new Constitution. This focus will help us to be concrete in addressing the assigned topic because a country's Constitution must provide the channels of public liberty. We will have to ask whether the channels provided by the new Constitution are adequate. This focus is even more relevant when we take note of the fact that the new Constitution is the product of liberalism, for a century the dominant political ideology in Canada.

The themes for my address suggest themselves with an almost self-evident logic. To begin with, I will briefly describe the nature of liberalism. Secondly, I will point to its positive features as reflected in the new Constitution. Thirdly, we cannot avoid a discussion of the shortcomings of liberalism, again as reflected in the Constitution. Finally, I will ask what this new Constitution means for Canada's Christian citizenry, in the context of which the Christian Labour Association witnesses and works.

The Nature of Liberalism

"Liberalism" has many meanings today. It is a *view of society*, the small "1" liberalism which is dominant in both the Liberal Party and the Progressive Conservative Party, even the right wing of the New Democratic Party. It is a *view of the economy*, in which the "natural" forces of the market are considered sacrosanct — not to be hampered by external government interference. It is a *political ethic* which defends extensive government involvement, not in the production of goods but in the distribution of goods by means of taxation and social welfare policies. Liberalism is also a *theological attitude* which limits the authority of the Bible to the scope of human reason.

But what do these different meanings have in common? What

lies at their root? A recent book by James Laxer and Robert Laxer is helpful here. In their view, liberalism proceeds from

the assumption that man is a product of his experience and that his nature is rooted in material reality rather than in divine ordination. The assumption was revolutionary; it swept away the belief in providence that underlay medieval society and instead pointed to man's potential for ordering society as he saw fit. (*The Liberal Idea of Canada: Pierre Trudeau and the Question of Canada's Survival* [Toronto: James Lorimer, 1977], p. 80)

This quotation correctly spells out the characteristics which liberalism has in common with *humanism*, the secular version of Christianity in the modern age. Let's take a look at a few basic marks:

- **Liberalism is revolutionary.** Though it does not necessarily imply the denial of God's existence, or even the eternal destiny of the soul, liberalism in effect rejects the divine order for human society and history. The word "liberalism" comes from "liberal", which means "free". Freedom has two sides, a negative and a positive side. Negatively, humanist liberalism seeks freedom from divine revelation and the divine order for human existence. This is its revolutionary characteristic. It took some time, of course, for this to be fully evident. In the history of humanism, which is the history of the secularization of the Christian religion, the existence of God is first relativized, as in the fifteenth-century Italian Renaissance. Then, in a later stage, God's existence is made increasingly irrelevant to worldly — "secular" — affairs, as in the Enlightenment views of John Locke and Rousseau. Finally, in the most radical expressions of humanism, it is argued that as long as you believe in God you can't believe in man. This is the position of Marx and Nietzsche and Freud — the three thinkers who have shaped the worldviews of the contemporary intelligentsia who occupy the leading positions in our universities, the media, and the publishing houses. Liberals tend not to be that radical, and with respect to the question of God's existence prefer a more agnostic stance: you just don't know for sure!

• **Liberalism is man-centred.** Human nature, as the Laxers put it, is not a product of divine creation but of human experience itself. Creation, which is an activity of God, is now viewed as an activity of human beings themselves. Here lies the fundamental shift away from the religion of the Bible to the religion of humanism. The mark of humanness does not lie in the love of God but in the love of self. Here we see the positive dimension of liberalism's notion of freedom: human beings must be free to produce their best self. Liberal humanists have developed an entire "theological" vocabulary with reference to this fundamental matter: self-preservation, self-development, self-realization, and self-determination. These are but different expressions for the activity of self-creation which is "religiously" directed to the worship of human personality. Liberalism distinguishes itself from other expressions of humanism — like nationalism or socialism — in that it views the individual as the agent of this self-determination and self-creation.

• **Liberalism tends towards materialism.** Human nature is rooted in material reality, not in divine ordination. This means that ultimate happiness or salvation does not lie in the service of God and fellows but in the fulfilment of the material needs of the self. While early humanism made tremendous contributions to art and science, its dominant focus later shifted to the acquisition of material wealth, at first by means of empire building, later by means of industrial production. Here lies the link between liberalism and bourgeois capitalism. Human beings must master nature by means of science, technology and industrial production in their pursuit of life, liberty and happiness. In this pursuit liberalism distinguishes itself from socialism by arguing that economic production can best occur in the private sector instead of the public sector in order to guarantee the greatest possible freedom for the individual entrepreneur or corporation. The "magic of the market" (Ronald Reagan) is the key to economic progress.

• **Liberalism demands autonomy.** As the Laxers put it, liberalism points to man's own potential for ordering society as he sees fit. Without reference to the law of nature or the revelation of the Bible, human beings can construct a social order best suited for self-determination by relying on their own capacities, especially human reason. While conservatives hold that we should take into account the traditions and institutions of the past, and radicals prefer instant social change, liberals are moderate. They prefer gradual, piecemeal social change. But in the final analysis, as with other humanists, liberals rely on the autonomous, self-governing human will as the ultimate source of values by which we live, individually and in society. Government is based upon the consent of the governed.

In short, liberalism is the individualist expression of the religion of humanism. Today its main concern is freedom for individual self-determination on the basis of an abundance of material goods produced in the private sector and redistributed over the entire population by the mechanism of the welfare state.

Contributions of Liberalism

Has liberalism then made no contribution to modern history? Of course it has! As a matter of fact, Canada's new Constitution is the latest instance of the kind of positive contribution liberalism has made to the unfolding of the *liberal democratic state*. And that is by no means an accomplishment that one should sneer at as is often done today. Let me mention the key components of the liberal democratic state as they are reflected in our new Constitution.

• **The rule of law.** The preamble to the Charter of Rights and Freedoms states that "Canada is founded upon principles that recognize the supremacy of God and the rule of law." I do not know what the political meaning is of the supremacy-of-God clause. Perhaps we will never know. Let's hope it is a public recognition of the fact that Canada's public order is not entirely cut off from its Judeo-Christian roots. But the rule-of-law clause has a definite meaning. It refers to the source and the scope of political governance. In the middle ages, after the collapse of political institutions with the fall of the Roman Empire, people in western Europe were often governed by persons who occupied offices in non-political private institutions like the Church, the land-owning nobility, or the urban guilds. When new states like Spain, Portugal, England and France were gradually organized in the late medieval and early modern age, their governing authorities were often absolutistic, based on royal prerogatives and aristocratic privileges. Over against *feudalism* the rule of law meant wresting the power of political governance away from private institutions and placing it in the *public offices* of the state whose jurisdiction embraced every person living within the state's territory. And over against *absolutism* the rule of law meant the supremacy of law above the will of the ruler, including the monarchy. The rule of law means *lex rex* — the law is king. In modern terminology one can say that the rule of law means constitutional government: the government itself, in the execution of its office of public justice, is bound by the Constitution. Political liberalism made a distinct contribution to constitutional government in the Glorious Revolution of 1688, in the American Revolution of 1776, and in the French Revolution of 1789.

The Charter of Rights and Freedoms, which constitutes the heart of Canada's new Constitution, is an expression of the rule of law. However, I must mention one potential threat to that rule of law. The Charter "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." (Article I) Who in the future will define the "reasonable limits" to freedom justified by a "democratic society"? There is little agreement and clarity about the meaning of "reasonable" and "democratic". The liberal democrat certainly differs from the social democrat in defining their meaning. Even the communist democrat is perfectly willing to use them, as long as he has the right to say what is "reasonable". It would be better to avoid such loaded terms in a Constitution.

• **Equality rights.** The corollary of the rule of law is the legal equality of every person subject to the law. This equality is excellently described in Article 15 (1):

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical ability.

That is a significant cornerstone of our new Constitution.

• **Legal rights.** Equality before the law, though essential, is not enough by itself. The content of the law must be just. And we must credit liberalism for contributing to this content during three hundred years of constitutional struggles. Canada's new Constitution reflects this struggle for material justice, as is evident from Article 7.

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

It is unfortunate that the right to private property is not included in this article — for that omission we can thank the New Democratic Party. Nevertheless, it is clear that the rights mentioned are indispensable to any just society. And the same can be said for the section on "Mobility Rights", which acknowledges the right of every citizen of Canada to enter, remain in and leave Canada. Just think of Russia, Poland or China, where one does not have such rights. At the same time, a warning is in order here. Article 7 refers to "principles of fundamental justice". Can liberalism, whose final court of appeal is the human will, tell us what those principles are? Without recourse to natural law or divine revelation, the content of these principles depends upon the shifting opinion of the majority of citizens.

• **Religious freedom.** In a special section entitled "Fundamental Freedoms" the Charter of Rights acknowledges that everyone has freedom of conscience and religion, freedom of the press, of peaceful assembly, and of association. I will return to this a bit later, but these freedoms are basic. Think again of Russia, Iran, or El Salvador.

• **Democratic rights.** Not only are fundamental rights of the individual person clearly spelled out in the Constitution; parliamentary democracy is also explicitly guaranteed. Article 3 reads thus:

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

If we recall that the apartheid system in South Africa is maintained only because blacks and Indians are denied the right to vote, we can be thankful for the contribution liberalism has made to the expansion of the franchise since Canada was founded in 1867.

Indeed, liberalism has fought for many indispensable channels of liberty in the modern state.

The shortcomings of liberalism

And yet . . . The very recitation of these positive dimensions in the Charter of Rights and Freedoms has a distinctly hollow ring about it. The Charter reminds us of the Bill of Rights in the American Constitution and the French Declaration of the Rights of Man and of the Citizen, both formulated in the 1780s. But we live in the 1980s! Has there then been no progress in our understanding of rights and freedoms in these two centuries? Is this what the debate has been about since Pierre Elliott Trudeau pressed for the patriation of the Constitution? I know there is more. There are extensive paragraphs about minority language educational rights, aboriginal rights, and equalization and regional priorities. There is an amendment formula which kept the federal and provincial governments apart for so long. There is a paragraph about the exploitation of non-renewable natural resources — very important in our consumer society.

And yet we cannot but take note of the weighty shortcomings in this new Constitution. It is basically a nineteenth-century document which does not address the pressing problems in the political arena which we face at the end of the twentieth century. The fact that it does not do so is an indictment of liberalism, the dominant political ideology in Canada. Permit me to mention the

most outstanding shortcomings.

• **The rights of the unborn.** The constitutional reformers missed the opportunity to define the constitutional framework within which the protection of the life of the unborn could be settled. This is an area where liberalism, despite its concern for individual human life, did not dare to extend its protective arms. Why not? Because today's liberals consider it quite "reasonable" to limit the right to life of unborn human beings who are not as yet members of a "free and democratic society". (See Article 1.)

• **Social justice.** Like every advanced industrial country, Canada is faced with the crisis of the welfare state. What rights do Canadians have to basic economic subsistence in times of crisis? What are the rights of the unemployed? In Great Britain and the United States one can detect a return to an earlier expression of liberalism — laissez-faire market mechanisms — to solve the problems of the welfare state. But what about those classes in society that have little or nothing to bring to the market? What about those groups that are economically not "productive", the groups described in the Bible as the poor, the alien, the widow, and the orphan? Except for the section on the equalization of regional disparities, the new Constitution does not deal with socio-economic rights. It is clear that the constitutional reformers made a deliberate choice here. The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in 1948 as a common standard of achievement for all peoples and all nations, did deal with matters of social and economic justice. And it did so precisely because of the individualistic onesidedness of liberalism. Article 25 (1) is a clear example:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

I know that this is very broad terminology. But in an advanced industrial nation, like Canada, in which the forces of production are largely controlled by the powerful institutions of corporations, unions, and the government itself, it is imperative to spell out the fundamental rights to livelihood for persons and their families. The U.N. Declaration dealt with the issue. Our Constitution does not.

• **Institutional rights.** A just society is not merely one where the rights of individual persons are protected but also one where the rights of institutions are protected. Here the new Constitution is woefully deficient. There are a few references to groups and group structures. But there is no recognition of the concrete reality that the lives of individual persons are always caught up in institutions like marriage, family and the church, and in voluntary associations of a hundred kinds, such as businesses, clubs, political parties, labour unions, schools, etc. A free society is known by the freedom of its institutions and associations. Their office, calling, and roles must be constitutionally protected. Here again the U.N. Declaration of Rights should have served as a model for transcending the limits of liberalism. Here are a few examples:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. (Article 16 (3))

That should have been in our Constitution. And there is more.

Everyone has the right to freedom of peaceful assembly and association.

We have that, but the U.N. Declaration goes on to say:

No one may be compelled to belong to an association.
(Article 20)

We do not have that. And that means that the authoritarian collectivism which labour unions in Canada impose upon workers is constitutionally protected. And then there is that amazing clause in the U.N. Declaration about education:

Parents have a prior right to choose the kind of education that shall be given to their children. (Article 26 (3))

That should have been in the new Constitution. But it was deliberately excluded. Why? Because liberalism can only maintain its dominant position in the political arena if the state controls the schools and the universities.

Because of the inherent individualism of liberalism, the new Constitution does not adequately protect the rights of institutions and associations. By the same token, it does not protect us against the abuses of institutions and associations, whether they be businesses, labour unions, universities, or branches of the state's bureaucracy itself. This means that the free interplay of market forces will have to protect us against such abuses in the hope that social harmony will result. This hope has proved to be unfounded. Liberal individualism is not an adequate safeguard against authoritarian collectivism.

• **The rights of cultures.** The 1976 election of René Levesque as Premier of Quebec was the event that sparked the momentum for constitutional repatriation and reform. So one would expect that the rights of the diverse cultures in Canada would be clearly stipulated. The existing rights of the "aboriginal peoples of Canada", identified as the Indian, Inuit and Métis, are affirmed. But the content of these rights is disputed, and the Constitution does not provide a framework for the resolution of the dispute. And what about the place of Quebec culture — the most significant political problem of Canada? The Constitution provides (1) for dual language rights in the federal government, and (2) for the right of individual citizens whose first language was either French or English to have their children educated in their own language. This is indeed significant. But it is a typically liberal solution. It gives rights to individuals in the area of languages but it does not protect minority cultures faced with the overwhelmingly homogenizing presence of the North American melting pot.

• **Freedom of religion in institutions.** I have already commented favourably on the fundamental freedoms clauses of Article 2 with respect to the individual's freedom of conscience and religion. But right here we detect liberalism's most detrimental heresy, namely the conviction that religion is a matter of individuals, not institutions. In the entire history of the human race religion has been the foundation of culture, society, and civilization. Liberalism, because of its humanistic bias, argues that this role of religion is old-fashioned, and that real modernization starts with the elimination of religion as the foundation of the public order and by limiting it to the pursuit of individual soul salvation. Liberalism will guarantee the right of the individual to pursue his soul salvation as he sees fit but it will do its utmost to limit the expression of religion in non-church institutions like schools, universities, labour unions, political parties, and the numerous institutions in the area of health and welfare. This means that religiously based institutions like Christian and Jewish schools or a Catholic children's aid society

do not enjoy equality before the law. They are severely discriminated against with respect to public funding and increasingly so in maintaining the freedom to act in accordance with their religious basis. Here liberalism has turned into an opponent of institutional religious freedom, which is most flagrantly evident in the U.S. Supreme Court's interpretation of the First Amendment of the U.S. Constitution. This Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." By interpreting this Amendment in the light of the strict separation of religion from the state, the U.S. Supreme Court has in effect established the religion of secularism in the cultural sectors of health, education and welfare when there is any link between institutions in these sectors and the state itself. This has led to a phenomenal amount of litigation concerning the meaning of the First Amendment in the United States. Our constitutional reformers should have learned from this negative experience in the United States. They didn't. And we will be saddled with the same problems in Canada during the century that lies ahead. This could have been avoided if we had been more critical of the fundamental tenet of liberalism which holds that there are two orders, a secular and a sacred, with a strict wall separating the one from the other.

Why then this Constitution?

Why these shortcomings? Why will Canada enter the twenty-first century with a nineteenth-century Constitution? Why did we not come to grips with the real problems? My answer is basically simple: *apart from liberalism there is no comprehensive political vision in Canada today that could have provided an alternative framework for constitutional reform.* I want to illustrate this with reference to the role of the political parties and the Christian churches.

Canada has this new Constitution because the Liberal Party has been in power at the federal level during most of the twentieth century. The Liberal Party has played this role because it is the only party that has been able to maintain a power base in both French- and English-speaking Canada. We cannot blame the Liberal Party for promoting a liberal Constitution. From an even more immediate point of view we have this Constitution because of the persistence of Pierre Elliott Trudeau. I do not intend this remark as an accusation. As a matter of fact, I admire Trudeau for sticking to his guns. *But Trudeau is the most perfect embodiment of the ideology of liberalism in Canada!* He has rejected the political stance of classic Roman Catholicism, in which he was reared, and has adopted humanist liberalism as his political credo, as Sir Wilfrid Laurier did a century ago. The Constitution we now have is a reflection of the fact that the most outstanding political leaders Quebec has contributed to Canada have accepted Anglo-Saxon liberalism as the tie that binds us together.

At no time in the prolonged battle for constitutional reform did the Progressive Conservative Party or the New Democratic Party challenge the liberal frame of reference and provide an alternative one. The PC Party confined itself largely to protecting the rights of the provinces over against an encroachment from the federal government, and the NDP focused mainly on the rights of women and natives. All this was fine and good, but quite inadequate for the task at hand. The roles of the PC Party and the NDP reflect the so-called end-of-ideology phase in North American politics, in which a principled debate about the foundation of the social order is considered outdated and in which the debate is limited largely to single issues. In such a

climate the ideology of liberalism flourishes. It lacks principled opposition and is accepted as the universally valid basis for the resolution of differences.

But what then about Canada's Christians? Can they accept the "reasonableness" of liberalism as the universally valid basis for the social order? In truth, they cannot, since for the Christian only divine revelation is universally valid. At this basic point one would have expected a fundamental disagreement between liberalism and Christianity. There was no indication of this disagreement in the constitutional debate. Why not? Because Christians have accepted the *limited* role of religion in society: religion as limited to personal piety and involvement in church life. John Locke, one of the founders of liberalism, looked for toleration in society on the basis of a strict separation between matters of religion and the affairs of state: "The only business of the church is the salvation of souls, and it no way concerns the commonwealth." *The success of liberalism in the Anglo-Saxon world presupposes the acceptance by Christians of this privatization of religion.* Today this is most evident in the fundamentalist and evangelical churches, which are concerned primarily with "the salvation of souls." In these circles one would not look for an alternative framework to constitutional reform. Not surprisingly, the primary contribution from evangelicals and fundamentalists to the Constitution was strong support for the recognition of "the supremacy of God" in the preamble to the Charter of Rights and Freedoms.

And the mainline churches? It cannot be said that "the salvation of souls" is the first item on their agenda. As a matter of fact one notices a definite shift from evangelism and missions to social concerns in the mainline churches. In the twentieth century the mainline churches have gradually moved away from "the individual gospel" to "the social gospel." But what Richard John Neuhaus recently said about the social gospel in the United States applies also to the social gospel movement in Canada:

For all the good it produced, it also effected the fatal equation of Christianity with secular progress The restlessly transcendent truth claims of the faith were domesticated and placed in service to a society moving ever upward and onward toward a socialized version of the beatific vision. The promise that pointed toward the kingdom of God was replaced by programs that pointed toward the Great Society. (*Christianity Today*, March 19, 1982, p. 18)

While an earlier phase of the social gospel was marked by a fusion of liberal Christianity with progressive liberalism, today that fusion is more likely to be one of left-wing Christianity with progressive socialism. As a matter of fact, the forces for social renewal that were born in the mainline churches of Canada in the twentieth century have nearly all ended up in the New Democratic Party. It is not in the least surprising that the United Church, the Anglican Church, and the Presbyterian Church — the most visible mainline denominations within Protestantism — did not address themselves prophetically to the ideology of liberalism during the constitutional debate. Their contributions were piecemeal, *ad hoc*, and issue-oriented. They did not offer a spiritual vision necessary for an alternative to political liberalism.

Finally, what about us? What about the reformational community that gave birth to the Christian Labour Association thirty years ago? What have we done to make the new Constitution a more meaningful channel for authentic liberties in Canada? Let me be specific and identify the institutional components of the reformational movement which in one way or another are related to the political scene in Canada and thus to

the revision of the Constitution:

1. The CLAC itself;
2. The Committee for Justice and Liberty, today known as Citizens for Public Justice;
3. The Canadian divisions of Christian Schools International, like the Ontario Alliance of Christian Schools;
4. The Committee for Contact with the Government of the Council of Christian Reformed Churches in Canada; and
5. The Institute for Christian Studies, which employs political theorists like myself.

What have we done? We sent a number of submissions to the Joint Committee of the Senate and House that was established to hear "the public" on various dimensions of the proposed Constitution. In themselves, these submissions were proper. They were especially directed to the place of religion in society and the rights of institutions and associations. They had no impact on the final formulation of the Constitution.

But I think our self-assessment would not be critical enough if I left the matter there. *We did not come, together, with an architectonic alternative framework for constitution building.* I know that this would have pushed us to the limits of both our resources and insights. I surmise that our impact would have been negligible. *But my indictment of the reformational leadership consists in the simple fact that we did not even try to develop a constitutional frame of reference as an alternative to the liberal model.* Like just about everybody else in our pragmatic society, we directed our attention to issues, not underlying principles and coherent legal structures. In the five years between 1976 and 1981 we did not have a common diagnosis of the constitutional crisis, nor a common strategy, nor a shared plan of action. In short, we did not have our act together.

Quite a few of us have been nourished in many ways by the Christian democratic movement in Holland. That movement came off the ground in reaction to the early dominance of liberalism in the middle of the last century. At its birth this Christian democratic movement was led by leaders who humbly accepted the Scriptures as the final rule for faith and life and who engaged the dominant forces of liberalism in an intense struggle for the direction of constitutional reform between 1840 and 1870. That principled, systematic struggle gave Holland a new Constitution, much later, in which liberal democracy was replaced — not by Christian democracy but — by *pluriform democracy* in which the ideologically differing institutions were granted equality before the law. Canada, composed of an amazing variety of different religious, cultural, lingual and ethnic identities, needs its own equivalent of pluriform democracy: This is where we, as representatives of the Christian democratic movement, should have made our contribution to the constitutional debate.

Liberal democracy has made an indispensable contribution to our freedoms. Social democracy has proved to be a meaningful corrective to the onesidedness of liberalism in its *laissez-faire* reliance on the economic forces of the market. But social democracy and liberal democracy share common roots in humanism, the religion of human personality. Canada needs a political redirection that transcends both liberalism and socialism. It needs a Christian democratic movement. Only such a movement can be true to the preamble in the Charter of Rights and Freedoms in the new Constitution: "Canada is founded upon principles that recognize the supremacy of God and the rule of law."